

INTERNATIONAL COMPETITION NETWORK

COMPETITION POLICY IMPLEMENTATION WORKING GROUP (CPI WG)

REVIEW OF WORK UP TO SEOUL 2004 ANNUAL CONFERENCE

ICN Members at the 2002 Inaugural Conference in Naples established the *Capacity Building and Competition Policy Implementation Working Group*, and asked the European Commission and the South African Competition Tribunal to co-chair this new work project.

Following the specific mandate handed to it, the Working Group set out by focusing on those issues that were of particular relevance to the ICN's Members in developing and transition economies.

The Working Group presented the first major results of its work to the ICN's 2003 Annual conference in Merida, in the form of a report discussing three main themes: (i) how to build the case for competition law and policy in developing and transition economies; (ii) how to tackle the challenges that agencies in these countries typically have to confront; and (iii) how to enhance the effectiveness of technical assistance for capacity building.

Building on the main conclusions coming out of that report, ICN Members in Merida asked the Working Group, now under the joint leadership of the European Commission and Mexico's Federal Competition Commission, to continue its work with four more focused follow-up projects:

1. Improving the effectiveness of technical assistance to support an agency's enforcement and advocacy action
Lead agencies: US FTC and Romanian Competition Council
2. Enhancing the stature of competition authorities with consumers
Lead agency: South African Competition Tribunal
3. ICN Workshop on Capacity Building: Strengthening the cooperation with donor bodies
Lead agency: European Commission
4. Improving the effectiveness of competition advocacy with a particular emphasis on the regulated sectors in developing and transition economies
Lead agencies: Secretariat for Economic Monitoring, Brazil, and Competition Bureau, Canada.

Despite the relatively brief interval between the 2003 and 2004 Annual Conferences, the work of all four Subgroups made significant progress, and resulted in various work products that will be presented to the Seoul conference: first of all, a number of reports have been drawn up that will be the basis for discussion in Seoul. Moreover, one Subgroup compiled an inventory of technical assistance programs that will provide relevant information that is otherwise very difficult to obtain to the various constituencies involved with such programs.

As a key development, on 11 February 2004 the ICN's first Workshop on Capacity Building took place in Paris, organised by the European Commission on behalf of the Working Group. The main conclusions of that Workshop have been summarised in a final report that will be submitted to the Seoul conference. With that report, the relevant Subgroup has completed its work.

In view of the important issues at stake, the Working Group's remaining three Subgroups suggest to continue their work until the 2005 Annual Conference in Germany. Updated and partially expanded work plans for these on-going projects are set out below.

During its first two years of existence, the special needs of younger competition agencies in developing and transition economies had rightly been the prime occupation of this Working Group. In view of the importance of this work to the ICN as a whole, the Working Group will also in the future make the special needs and concerns of those agencies a main and constant feature. This is particularly true of the continuing work of its Subgroup no. 1 on the effectiveness of technical assistance. In much the same way, however, the Working Group also realised in the course of its activities that several issues in its remit were of similar importance to agencies in both developing and developed countries. A case in point in this respect is the issue of the appropriate interaction with the consumer movement which is a challenging policy issue common to all agencies, irrespective of their environment. In view of the increasing importance of such cross-cutting themes to its work, the Working Group therefore suggests that the title *Competition Policy Implementation Working Group* would more accurately reflect the scope of its activities. It is understood that capacity building issues are one of the most important ingredients of a proper implementation of competition policy.

As a horizontal element common to all work projects, special attention will continue to be given to the particular challenges that the regional competition frameworks, which are currently emerging in various continents, typically have to face.

PROPOSED FUTURE WORK TO BE UNDERTAKEN BETWEEN SEOUL 2004 AND BONN 2005 ANNUAL CONFERENCES

1. *Improving the effectiveness of technical assistance to support an agency's enforcement and advocacy action*

Lead agencies: US Federal Trade Commission and Romanian Competition Council (probably)

Background: External technical assistance to developing competition authorities has been widely recognized as an important component of capacity building. While significant work has been gained with technical assistance in recent years, little systematic work has been done to identify what works well and what does not. Building on the work of its first year, last year the subgroup compiled a comprehensive inventory of technical assistance to competition agencies since 1990. The subgroup also worked with a variety of agencies and NGAs to develop an initial survey methodology that they used in Seoul to conduct "pre-test" interviews to prepare for more detailed interviews of recipient agencies that will occur between the

third and fourth annual conferences. The goal of the larger project is to answer three particular questions: (i) how the technical assistance needs of a developing or transition country competition agency can best be assessed, (ii) which models of technical assistance work best at the various stages of a competition agency's development, and (iii) if the impact of a technical assistance program can be measured, and if so, how it should be done.

Approach: The subgroup will use its existing survey instrument, together with the lessons learned from the Seoul pre-test interviews, to prepare a detailed interview methodology to guide interviewers. The subgroup will select particular agencies and projects for interviews, using the inventory of technical assistance projects to ensure a selection of agencies and projects that are representative of types of assistance that have been provided to agencies at differing levels of development, with an emphasis on those agencies that have received multiple types of technical assistance in order to facilitate horizontal comparisons of different types. ICN members will conduct the interviews, referencing the inventory to overcome instances of weak institutional knowledge. In order to avoid biased responses, however, ICN members who are providers of technical assistance will not interview recipients of their technical assistance. The results of the interviews will be used to prepare a report. Assuming that the resulting data lends itself to drawing conclusions, the subgroup will consider whether the results lend themselves to "best practices", as a possible yardstick for agencies against which to measure the technical assistance projects that they undertake, and, if so, will formulate and submit to the working group a proposal to develop best practices.

The subgroup will also undertake one additional project that grew out of the inventory exercise. In gathering data for the inventory, it became clear that there was insufficient coordination among providers of technical assistance. As one way of addressing that problem, the subgroup plans to establish an electronic "bulletin board" with information on past, on-going and future technical assistance projects that will be available on the ICN website.

2. *Enhancing the stature of competition authorities with consumers*

Lead agencies: South Africa's Competition Tribunal, and Competition Bureau, Canada

Background: The report of this Working Group to the Merida conference identified five key stakeholders whose 'buy-in' is considered critical to the success of the overall competition project. These are the government, the judiciary, the business community, the law and economics professions and, finally, the broad community of consumers. This project will focus on the latter constituency - the community of consumers - and it will ask how competition authorities should go about the crucial task of securing their support.

Approach: In attempting to answer this question we will:

- consider how the competition enforcement and consumer protection 'synergise' with each other.

- examine programs and strategies designed to 'reach out' to consumers. This will include an examination of the investigative and decision making processes of the competition authority and an evaluation of their degree of accessibility to consumers.
- examine a number of relevant analytical issues, for example how to distinguish between consumer injury and competition harm and identifying the appropriate welfare standard to be employed in competition analysis.

The future work of this group will not only seek to engage the broad membership and experience of the ICN but also NGAs who have hitherto only been peripherally involved in the work of the ICN, notably the various national and international consumer bodies. Accordingly we envisage that this work programme will be further refined once the Subgroup is established and the views of a wider group of participants have been canvassed.

3. *Improving the effectiveness of competition advocacy with a particular emphasis on the regulated sectors in developing and transition economies*

Lead agencies: Secretariat for Economic Monitoring, Brazil, and Federal Competition Commission, Mexico

Background: With competition advocacy, competition authorities perform a review of existing and proposed laws and regulations and activities of other governmental bodies, by providing suggestions and advice on government policies and measures that may result in anti-competitive practices or inefficiencies as a by product. Activities often include the review of possible sources of public restraints on competition in trade policies, investment policies, and sectoral regulation. These activities are particularly important in economies where the benefits of competition are not well understood. With much of the developing world introducing competition into environments accustomed to government intervention and price control, advocacy activities are often prioritized in capacity building. Yet a rigorous examination of advocacy's actual role in reducing public policy restraints has not been conducted. The subgroup completed the first step in this examination, surveying the advocacy activities of more than 30 countries to better understand both the frequency and the perceived success of agencies' advocacy activities. In responding to the survey, agencies identified particular areas and activities in which they performed advocacy. This data was used to identify particular practices and sectors that are more prone to success than others, with the results published in a report presented at Seoul.

Approach: The results of the Seoul surveys will be used to select particular jurisdictions for case studies. The case studies will serve two purposes. First, the thorough, detailed examination of advocacy initiatives will create a comprehensive database of advocacy activities that competition authorities can consult. Second, through qualitative and quantitative analyses the subgroup will also use the case studies to measure the benefits of advocacy initiatives. A checklist of criteria will be developed to gauge performance qualitatively. One indicator of success will be pro-competitive legislative or regulatory change. In determining whether changes were pro-competitive, the qualitative criteria will include: authorities' perception of the change, consumer satisfaction with the change, publicity surrounding initiatives and the quality of service, among others. Quantitative sector-specific indicators will also

be considered. For example, changes in the penetration density of telecommunications or the number of power outages per year. Moreover, the sector will be evaluated for changes in industry concentration and prices of goods and services. Time-series and horizontal comparative research, where available, will increase the identifiability of the causal relationship between a particular legislative reform and less concentration or lower prices. One source of time-series data will be the OECD's Statistics Portal, e.g. the Electricity Information Database and the Telecommunications Database 2001. The analyses will provide information on the success and failures of activities, as well as important insight about the usefulness of the indicators that competition authorities may then use to engage in future internal reviews of advocacy activities.