

## **NGA TOOLKIT**

### **What is the International Competition Network (“ICN”)?**

The ICN is a network of more than a hundred and twenty competition agencies set up with a view to promoting superior standards and procedures in competition enforcement and policy by member agencies around the world, formulating proposals for procedural and substantive convergence, and seeking to facilitate international cooperation through a results-oriented agenda. While it is primarily a network of competition authorities, the ICN has always sought to reach out to the entire competition community and take on additional expert advice through the engagement of Non-Governmental Advisors (“NGAs”).

### **Who are the NGAs?**

NGAs are private practitioners, representatives of non-governmental international organizations, members of industry and consumer groups, and academics, who volunteer to contribute to the ICN’s work.

The ICN’s virtual nature provides a flexible structure, allowing member agencies to work more closely with such non-governmental experts. This structure promotes a degree of interplay of public and private sector participation and expertise in the development of ICN’s projects, resulting in a work product that benefits from the input of a wide spectrum of stakeholders.

### **Purpose of this toolkit:**

The ICN hopes to broaden and enhance NGA engagement in the ICN’s second decade. To that end, this toolkit has been produced to provide guidance to prospective NGAs on the role of NGAs, the benefits of participation and advice on how to get involved. This guidance incorporates the results of a 2010 survey of NGAs (“the 2010 Survey”) to assess their involvement in the ICN and their level of satisfaction with the ICN and its working, and draws from the feedback received during the NGA Engagement Breakout session at the 2011 Annual Conference in The Hague. This toolkit also provides tips to ICN member agencies on NGA recruitment.

#### **1. WHAT IS THE ROLE OF AN NGA?**

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#### **1. WHAT IS THE ROLE OF AN NGA?**

NGAs have been a part of the fabric of the ICN since its inception. The participation of NGAs is reflected in all aspects of the activities carried out within the ICN, as described below.

##### **1.1. Working Groups:**

The ICN’s substantive work is currently carried out by five Working Groups, in which NGAs play an active role. The current Working Groups are as follows (for more details, check the current work plans on each Working Group’s home page).

**Advocacy:** this Working Group is concerned with building public support for competition and markets through a range of soft policy instruments, with a view to enhancing awareness of competition policy issues on the part of lawmakers, businesses and consumers.

**Agency Effectiveness:** this Working Group aims to focus on various aspects contributing to efficient and effective enforcement of competition rules such as institutional and operational characteristics of competition agencies, and to enable exchange of experience among the ICN members.

**Cartel:** the mandate of this Working Group is to address the challenges of anti-cartel enforcement, including the prevention, detection, investigation and punishment of cartel conduct, both domestically and internationally, across the entire range of ICN members with differing levels of experience and resources.

**Merger:** this Working Group promotes the adoption of best practices in the design and operation of merger review regimes to enhance the effectiveness of each jurisdiction's merger review mechanisms. It has developed recommended practices and practical guidance for the design and operation of merger review systems across issues of merger notification, investigation and analysis.

**Unilateral Conduct:** the primary objectives of this Working Group are to examine how to address anticompetitive unilateral conduct of dominant firms and firms with substantial market power, facilitate greater understanding of the issues involved in analysing unilateral conduct, and promote convergence and sound enforcement of laws governing unilateral conduct.

## **1.2 NGA participation in Working Group activities:**

The ICN Working Groups undertake their activities in a number of ways. NGAs contribute to these activities.

NGAs are very active in Working Groups that are concerned with business practices, upon which they are likely to have well informed views and real-life experience. It has been the case for instance that the Cartel, Unilateral Conduct and Merger Working Groups have attracted great participation of NGAs. But NGAs are no less present in Working Groups dealing with issues pertaining to the structure, organization and/or competences of competition agencies, such as the Advocacy and Agency effectiveness Working Groups, where their views prove to be highly profitable.

NGAs can also play a part in Working Groups via consultations with their member agency on topics of discussion of the Working Groups. While less visible, this is also a valuable role that adds to the expertise gathered in-house by the member agency.

**ICN work products:** The ICN is a forum for debate but it is also a productive workplace, producing a wealth of practical documents, for example recommended practices, case-handling manuals, databases, and toolkits. Overall, the ICN has produced over 125 work products on a wide range of topics.

NGAs contribute to crafting this resource. They may be asked to review and comment on draft documents, and by so doing contribute to their relevance, practicality and added-value. NGAs may also help identify topics for discussion and projects.

As the work product of the ICN is intended for the competition community at large, the NGAs are in a position to help make it fit for a whole array of end users, whose needs they are aware of. They also are able to tap different types of resources, as the variety of their professional environments and mindsets enables them to bring fresh perspectives to draft documents.

They may also participate in the drafting of this work product, most often when the proposed document aims to be a tool for business users and their counsels, or when the ICN needs to include in its work a first-hand account of how a given practice is being handled by competition agencies.

Overall, more than half (56.2%) of the NGAs who took the 2010 Survey said they were involved in either drafting or reviewing ICN written work product.

**Conference calls:** NGAs participate with member agencies in some of the regular conference calls organized by Working Groups where their expertise and direct input are especially relevant. No fewer than 80% of NGAs interviewed in the 2010 Survey reported that they participated in Working Group conference calls.

**Teleseminars/Workshops:** NGAs are also invited to attend Working Group teleseminars and workshops, including as speakers. A third of NGAs said in the 2010 Survey that they had been to at least one workshop.

**Workplans:** NGAs can be consulted when Working Groups plan their future work, and are thus able to offer suggestions toward the ICN's substantive agenda.

### **1.3. The ICN Annual Conference:**

The ICN also has its big event: the Annual Conference, hosted by one of the member agencies, in which NGAs are also fully involved.

This is the time and place where all participants meet in person. Working Groups come together, present their work products for the past year, and discuss topical issues in the course of plenary and breakout sessions.

NGAs may be invited to join the ICN Annual Conference by their respective member agencies and/or the chairs of the Working Groups in which they have been active. Almost all discussion panels include NGAs as speakers, and they enliven the participation from the floor.

The 2010 Survey showed that two thirds (65.8%) of responding NGAs have attended an ICN Annual Conference.

### **1.4 What is expected of me?**

Being an NGA comes with a number of expectations. To name a few:

- Stay interested and active throughout the year's activities;
- Select at least one Working Group to be part of on a regular basis;
- Join in the calls of the Working Group, when relevant, and seek out ways to contribute to the work product;
- Attend workshops or annual conferences if you are invited and able to do so;
- Assist in the dissemination of ICN policy and materials by keeping it active in your own thinking and discussions on competition issues.

Furthermore, independence and integrity are key features of the NGA role. NGAs work towards the advancement of the ICN's general interest to the benefit of all stakeholders.

### **1.5. How much work is this?**

Being an NGA does entail some commitment – but the reward to be gained is likely to exceed the input in time and effort.

Still, just how much time NGAs spends on ICN activities is for the most part for them to decide, as there is no compulsory attendance, but only voluntary work.

The 2010 Survey showed that the workload does vary a lot, as almost 40% of NGAs reported spending 10 to 25 hours per year on the ICN (not including annual conference or workshop attendance), while the rest was equally divided between those who spend less or more time, and extremes (less than 5 hours / more than 50 hours) were scarce.

## 1.6. Role of the NGA Liaison

Considering the growing importance of the role of NGAs, an NGA Liaison has been designated, whose mandate is to better engage NGAs of diverse backgrounds and geographic distribution to participate more actively in the ICN, so that the network can benefit from a wide spectrum of views and interests.

Please feel free to contact Bruno Lasserre, President of the French Autorité de la concurrence, and NGA Liaison, at [ICN.NGALiaison@autoritedelaconcurrence.fr](mailto:ICN.NGALiaison@autoritedelaconcurrence.fr).

## 2. NGA: WHAT ARE THE BENEFITS?

Being an NGA offers many benefits not only to NGAs but also to member agencies and the ICN community as a whole.

### 2.1. Key NGA benefits:

**Have we met before?** Being an NGA is a unique opportunity to interact with your member agencies in a stimulating though informal environment. The ICN is an arena where NGAs may work side by side with their agencies on a cooperative, friendly, multinational, non-case related basis.

**General interest:** One of the most often cited benefits of being an NGA is that it provides a unique chance to make a contribution that goes beyond the reach of your usual involvement in competition issues, be it as a private practitioner (lawyer or economist) or a direct stakeholder. It can for instance give academics exposure to the actual working of competition policies, and allow consumer organizations or business representatives to contribute to a policy that is intended to make markets work better, in their interest. For those who believe that better-functioning markets make for greater consumer welfare, the ICN is a forum where their commitment can make a difference.

**Self-improvement, too:** While NGAs work in the interest of the community, they also enhance their knowledge and improve their own skills, as participating in the ICN provides first-class educational/internal training, as well as extra experience in your curriculum.

It strengthens your current practice by keeping you abreast of the latest trends, giving you access to discussions on cutting edge topics with a vast array of experts and broadening your experience on competition policy and enforcement issues in a multi-jurisdictional context.

**Tying the knot:** Being an NGA gives you the opportunity to build relationships with foreign competition agencies – with more than 120 competition agencies at hand – and with their NGAs. As such, the ICN offers a unique venue to create a network of valuable contacts within the international competition community.

**How rewarding is it?** Take their word for it: no less than 95% of NGAs interviewed in the 2010 Survey reported that they had gained “some” or “considerable benefit” from “contributing toward adoption of better policies and practices worldwide”, 5 out of 6 said that they had taken “some” or “considerable” benefit out of the fact that “ICN work product is useful for own educational/internal training”, and another 4 out of 5 stated that being an NGA had “improved [their] relationship with the competition agency in [their] jurisdiction”.

**Being an NGA also benefits members of the ICN. How?**

## **2.2. Key ICN member benefits:**

**Diversity:** NGAs can bring a variety of perspectives to the ICN's work. NGAs can provide new ideas and an outside viewpoint which can enrich the ICN's output. NGAs have, for example, provided input on ICN work products which reflected and addressed the many practical issues faced by consumers, business and the private bar. This diversity enhances the legitimacy and relevance of the ICN, of the work it produces, of the standards it aims to offer.

**Inclusiveness:** NGAs engage in a constructive dialogue with ICN members, which promotes greater inclusiveness of the network. Since the ICN produces only non-binding instruments, and fosters voluntary convergence through a horizontal process, the visibility of its work can be enhanced if it has input from non-governmental parties.

**Talk of the town:** NGAs are also a support for ICN members when it comes to disseminating the ICN message and its work products. Since many NGAs (whether they are attorneys, in-house counsel, economists, academics or representatives of consumer groups) have an extensive knowledge of their local competition communities, they are well placed to do so. NGA effectiveness in dissemination can be all the more credible and valuable when they have participated in the development of the ICN initiative or work product being communicated locally.

**Extra hands:** NGAs can contribute valuable time, resources and thinking to the ICN's work, and thus increase the ICN's overall capacity to undertake its work projects.

**So if you are ready to jump in and to assume the role of NGA, here is what to do to become an NGA.**

## **3. HOW DO I BECOME AN NGA?**

*"Now that I, a member of the antitrust community, know how interesting this is, I want to become an NGA too. How shall I proceed?"*

According to the 2010 Survey, the majority of NGAs were invited to participate by their member agencies. Only one in ten NGAs became an NGA because they approached their agency – a feature that would greatly vary from one jurisdiction to another.

### **Expressions of interest are welcome:**

That being said, member agencies welcome expressions of interest in becoming NGAs from members of the antitrust community in their jurisdiction. No need to wait to be called on: you may go ahead and apply.

### **Don't be shy:**

Many talents are useful in a network such as the ICN. All individuals involved in competition enforcement and policy are eligible and may make a valuable contribution to the ICN. As per the principles of fair competition, new entrants should not be afraid to try to get in.

### **Don't worry about switching sides:**

Some professionals may not feel entirely comfortable engaging in a direct relationship with the competition agency in their jurisdictions. But being an NGA is not about switching sides: it is about sharing your expertise and deepening your sense of belonging in the antitrust community at large.

## **Show what you know:**

Being an NGA is not a position, but rather a contribution. Therefore when approaching your agency, it is advisable that you know what you want to bring as an NGA. You may want to outline your competences and expertise. You may also look into the work plans of the Working Groups, the debates they are having and the documents they are drafting, so that you can identify which projects you would like to contribute to. All the relevant information in this respect is readily available on the [ICN website](#).

## **Who should I talk to?**

It is your choice. You may contact:

- the member agency in your jurisdiction:  
<http://www.internationalcompetitionnetwork.org/members/member-directory.aspx>; or
- the chairs of the Working Group that you would like to join:  
<http://www.internationalcompetitionnetwork.org/working-groups/current.aspx>; or
- the NGA Liaison :  
[ICN.NGALiaison@autoritedelaconurrence.fr](mailto:ICN.NGALiaison@autoritedelaconurrence.fr).

If you approach the Chairs of a Working Group or the NGA Liaison, they will share your interest in becoming an NGA with your member agency.

Existing NGAs may also be good resource persons for you.

## **4. HOW TO ENGAGE NGAs?**

*“We, competition agencies, members of the ICN, are well convinced of how beneficial NGAs are to our activities. But how do we recruit NGAs?”*

### **Not a one-way track:**

Because of the variety of situations, there can certainly be no single piece of advice, let alone prescription, to issue with regard to finding NGAs. Some competition agencies, and most notably the largest, longest-established, now have significant experience in interacting with NGAs. Others would probably welcome some guidance toward such recruitment.

### **Diversity:**

Diversity of NGAs in terms of geographical distribution and in terms of backgrounds is a goal for the ICN.

In terms of geographical distribution, most ICN NGAs come from North America and Europe. This situation should not be a surprise as it reflects the involvement of those member jurisdictions that have the longest-standing and busiest history with the ICN. Quite naturally, this distribution has already been gradually evolving since the founding of the ICN, as new member jurisdictions have become actively involved, but a gap remains to be bridged in terms of the number of NGAs from Asia, Latin America and Africa.

Similarly, the ICN is keen to encourage greater representation of academics, consumer organizations and business organizations – in addition to private practice competition lawyers and economists who are more frequently interacting with competition agencies.

In most jurisdictions, there are members of the academic community who lead important research projects in various branches of competition policy and/or in a related discipline (law, economics, business administration, etc.), as well as representatives of organizations promoting consumer welfare whose greater involvement in the ICN would provide additional value and insight.

## **Tips for agencies to engaging NGAs:**

The 2010 Survey showed that three quarters (74.4%) of NGAs became involved because the competition agency in their jurisdiction had asked them to participate.

Whether you choose to actively recruit NGAs or await members of the antitrust community to knock at your door, what can you do to facilitate the process?

### **→ Getting to know your antitrust community:**

While more easily said than done, this is very much a prerequisite.

There are many ways to seek out and identify active members of the antitrust community. Keeping track of those actively involved in competition law and policy is key to building up but also to renewing a diversified pool of NGAs. It allows a competition agency to go beyond the usual suspects, and get acquainted with less obvious characters. Who does what, and how well, within the bar, academia, and consumer groups? Who appears in Court, writes in legal journals, talks at symposia and conferences, gets involved in professional training and continuing education, appears in the media, advocates for consumers, lobbies for changes in legislation, advises governmental bodies... While this is something that, even in a loose manner, all competition agencies would probably do, knowledge management may make a difference to how this information is used. It is therefore advisable that when someone in the competition agency gets to know of a prominent figure in the antitrust community, they think of bringing it to the attention of those in charge of the ICN.

Many events, such as: Bar Association programs, continuing legal education seminars, industry or chambers of commerce roundtables, etc, allow for agencies to go talk to the private sector, with no conflict of interests. These can make for very profitable occasions to develop the agency's portfolio of worthy contacts in the competition community – a rather small investment from which young agencies, especially, may expect a high return.

### **→ Making it known that the ICN matters:**

Publicizing the ICN is a task that rests not only with the ICN itself, but also, to a large extent, with member agencies. As the aim is to have enthusiastic individuals contribute, together with the agency, to the work carried out in the ICN, it is probably a good idea for that agency to show that it cares for the ICN in the first place. The more ICN participation matters to the competition agency in their jurisdiction, the more likely it is that competent and committed members of the antitrust community will want to participate.

Mentioning on the agency's website (or in its brochures) that it is an active member of the ICN, and that professionals of all sorts can be associated with this as NGAs, will signal that this matter is taken seriously; hence there is recognition to gain from getting involved.

It can also be appropriate for agencies to publicize the concrete impact of ICN work products on national policy-making. This will give the ICN more visibility to potential NGAs.

### **→ The network effect:**

When broadening their base of potential NGAs, agencies may also seek the assistance of existing NGAs, who may well be instrumental in expanding that circle beyond themselves. For instance agencies may encourage private bar practitioners to talk to their clients, many of whom are specialist in-house counsels, and introduce the notion of NGA engagement. Existing NGAs may also be willing to spread the word to academics whom they encounter in the course of attending continuing legal education events, requesting expert advice, or publishing articles in legal journals.

→ **Setting out opportunities and needs:**

As a competition agency is approaching and is being approached by a number of prospective NGAs, it is advisable to advertise how its choice is made. This is useful also for the agency itself, as it is an occasion to define what profiles are best suited to its needs.

- **What you need:** When seeking out NGAs, consider the ICN work that your competition agency values and participates in, the skills of potential NGAs, and the issues upon which the agency is seeking advice. Does the agency need to have a better grasp of the current thinking on a topic discussed in a Working Group where it is engaged? Does it rather need to enrich its own expertise with the practical approach of an antitrust enforcement lawyer? It is concerned with the consumers' point of view on a policy issue? Does it need a renowned speaker to help make its voice heard in a particular debate or roundtable?

- **Reaching out:** The ICN benefits by drawing upon a diverse range of perspectives and professional backgrounds. In some relatively less common backgrounds, competition agencies may consider reaching out to appropriate members of the antitrust community who may not have spontaneously applied, because they are not so used to putting themselves at the forefront of the crowd. Academics and representatives of consumer organizations, among others, may need a hand to stand out.

- **Make your guests comfortable:** Competition agencies should be wary of scaring off “newer” NGAs by asking them too much, too soon: it may be useful to devise a gradual introduction to ICN involvement, by suggesting at first that they participate on a small scale, and only later, once when they have become accustomed with the workings of the ICN, by offering them to join in larger, more demanding work and events; one may also want to think of specific initiatives to allow for a sustained involvement of NGAs from smaller jurisdictions.

- **Develop a value proposition:** Member agencies seeking to engage NGAs can refer to the “Key NGA benefits” outlined above so as to develop a convincing value proposition for prospective NGAs. Be it in terms of leading edge ideas, enhanced skills or acute insight, competition experts of every origin can derive much value from the ICN. Hence a member agency aiming at broadening its NGA base, by shifting its value proposition and shedding the light on one or the other aspect of these key benefits, may also shift the type of NGA it will attract.

- **Freshmen and seniors:** Some members retain NGAs that are interested in continuing to contribute to ICN work over time. Other competition agencies periodically rotate their selections for NGA involvement.

**DRAW YOUR OWN CONCLUSION...**

Why wait? The ICN is a work in progress. It has become visible, and it has become a reference – but as it looks to increase its influence, and the effectiveness of its work, the role of the wider antitrust community is key.

While the ICN remains a network of competition agencies, it is founded on a principle of inclusiveness – of its members, and also of its partners: NGAs.

**To potential NGAs: Get on board.**

**To member agencies: Welcome them aboard.**