

## NGA TOOLKIT

### ***Introduction – The ICN and NGAs***

The ICN is a network of more than a hundred and forty 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”).

NGAs are competition experts from all backgrounds – lawyers and economists in private practice, in-house counsels, representatives of non-governmental international organizations, members of industry and consumer groups, academics and judges – who volunteer to contribute to the ICN’s work.

This toolkit has been produced to provide guidance to member agencies and to existing and prospective NGAs on NGA engagement.

***1. The Working Groups are the workplace of the ICN, where member agencies and NGAs interact to advance ICN projects, in the interest of greater cooperation and convergence. Working Groups can benefit from encouraging NGA participation in all segments of their work, whenever practicable.***

The ICN’s virtual nature provides a flexible structure, allowing member agencies to work closely with NGAs. This structure promotes a degree of interplay of public and private sector participation and expertise in the development by the Working Groups of ICN’s projects.

#### ***1.1 The ICN’s substantive work is carried out by five Working Groups.***

**The Advocacy Working Group (AWG)** 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, consumers and media.

**The Agency Effectiveness Working Group (AEWG)** focuses on various aspects contributing to efficient and effective enforcement of competition rules such as institutional and operational characteristics of competition agencies, and to enable the exchange of experience among ICN members.

**The Cartel Working Group (CWG)**’s mandate 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.

**The Merger Working Group (MWG)** promotes the adoption of good practices in the design and operation of merger review regimes to enhance the effectiveness of each jurisdiction’s merger review mechanisms.

**The Unilateral Conduct Working Group (UCWG)**’s primary objective is 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 analyzing unilateral conduct, and promote convergence and sound enforcement of laws governing unilateral conduct.

#### ***1.2 Both member agencies and NGAs take part in Working Group activities***

##### **Co-chairs**

Each Working Group is co-chaired by three ICN member agencies that serve staggered three-year mandates. In addition, the Cartel Working Group has two sub-groups, each co-chaired by two agencies. Working Group co-chairs maintain a contact list of their Group’s membership, consisting of the agencies and NGAs that have expressed interest in the Group’s work.

Working Group co-chairs update their membership of their work via regular emails sent to their contact lists.

### **Work plans**

Each Working Group sets out its annual and long-term projects in a work plan, revised every year. The Working Groups' work plans are available on the ICN website.

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

### **Written work products**

The ICN Working Groups constitute a productive workplace, issuing many practical documents, such as recommended practices, case-handling manuals, databases, and toolkits.

The ICN work products are available on the ICN website.

NGAs can contribute to crafting this resource, e.g., they may either volunteer or be asked to take part in its drafting or to review and comment on draft documents.

### **Conference calls**

Each Working Group has regular conference calls – about once a month – to update their Group members on its projects. NGAs can join in Working Group conference calls and seek out ways to contribute to the Group's work.

### **Teleseminars / webinars**

Working Groups put together seminars, which Group members join over the phone or online, to engage into a discussion on topical issues, on the basis of presentations by experts.

NGAs can participate in or moderate most teleseminars / webinars, where their expertise and input are especially relevant.

### **Workshops**

Each Working Group organizes regular workshops, hosted by a member agency that consists in a one- or multi-day series of sessions of various formats on topical issues.

NGAs and member agencies are invited to take part in Working Group workshops, including as speakers by responding to calls for expressions of interest to participate.

### **Annual Conference**

The Annual Conference, hosted by a member agency, is the one large event that gathers the whole ICN membership, where all can meet in person. Working Groups come together, present their work products from the past year, and discuss topical issues in the course of one plenary and several breakout sessions. NGAs may be invited to join the ICN Annual Conference by their jurisdiction's member agency and/or the co-chairs of a Working Group in which they have been most active. Most sessions include one or more NGAs as speakers, and they also actively participate from the floor.

Additional sessions can also be organized for a dedicated audience, including one for NGAs.

## **2. NGA engagement in the ICN is beneficial for NGAs and for agencies**

**NGA engagement brings much added value to the ICN, as NGAs offer a variety of perspectives, enhance the relevance and practicality of the ICN's work, expand the ICN's resources and support the dissemination of the ICN message and of its work products.**

**Engagement in the ICN benefits NGAs as they have a unique chance to interact with their and other competition agencies as well as with fellow NGAs, while enhancing their own knowledge of agency practice worldwide. NGAs and agencies bring different perspectives, which allows for rich and robust ICN work and ultimately contributes to the betterment of competition law and policy.**

### **2.1. NGA engagement brings a wide range of benefits to the ICN and its member agencies**

#### **Diversity**

NGAs can bring a variety of perspectives to the ICN's work. NGAs can provide new ideas from a different viewpoint, which can enrich the ICN's output, e.g., by sharing the 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 ICN. Since the ICN produces only non-binding instruments, and fosters voluntary convergence through a peer-to-peer process, the visibility of its work is enhanced by the engagement of NGAs.

### **Dissemination**

NGAs are also a support for ICN members when it comes to disseminating the ICN message and its work products, as they know well their local competition communities. NGA effectiveness in dissemination is even greater when they have participated in the development of the ICN message or work product at stake.

### **Resources**

NGAs can contribute valuable time, resources and thinking to the ICN's work, and thus expand the ICN's overall capacity to undertake its work projects.

## **2.2. NGA engagement can be beneficial to competition experts of all backgrounds**

### **Interaction**

ICN NGAs interact with their and other member agencies in a stimulating though informal environment. The ICN is an arena where NGAs may work side by side with agencies on an open cooperative, friendly, multinational, non-case related basis. NGAs also build relationships with other competition agencies and with other NGAs. As such, the ICN offers a network of contacts, at home and abroad, within the international competition community.

### **Contribution**

Being an NGA provides a unique chance to make a contribution that goes beyond the reach of one's usual involvement in competition issues. 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.

### **Continuing education**

Engagement in the ICN also enhances the knowledge of NGAs and improves their own skills, as it offers educational / internal training, as well as extra experience in one's curriculum.

Engagement in the ICN keeps NGAs abreast of the latest trends and agency activities, with discussions on cutting edge topics from a vast array of experts, in a multi-jurisdictional context.

**3. To reach the goal of enhanced NGA diversity, ICN Member agencies of every size, seniority and jurisdiction are encouraged to take a pro-active approach to engaging a variety of NGAs. Competition experts of all backgrounds can also reach out to the member agency in their jurisdictions to express their interest in engaging in the ICN as NGAs.**

## **3.1 Broadening the base of potential NGAs**

### **Enhancing NGA diversity**

Achieving diversity is an important goal for the ICN. The participation of a diversity of NGAs in terms of geographical distribution, professional backgrounds, gender balance and age scope is encouraged. The ICN welcomes NGAs nominated by younger agencies and / or originating from smaller economies. Similarly, the ICN encourages greater representation of academics, judges, consumer organizations and business organizations – in addition to lawyers and economists in private practice who interact more frequently with competition agencies.

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

To get enthusiastic individuals to contribute to the work of the ICN, it can be good for agencies to show that they care for the ICN.

It can be useful for agencies to mention on their website or in their brochures that they are ICN members, and to publicize the concrete impact of ICN work products on competition enforcement and policy. NGAs can likewise publicize their contribution to the ICN. This can give the ICN more visibility.

### **Identifying potential NGAs among the local antitrust community**

Engagement with individuals actively involved in competition law and policy is key to broadening the base of potential NGAs. It allows a competition agency to build up a diversified pool of NGAs with a range of perspectives, including younger members of the Bar, academia, consumer groups, judiciary, etc.

Many events (Bar association programmes, continuing legal education seminars, industry or chambers of commerce roundtables, etc.) allow for agencies to develop their engagement with the local antitrust community.

### **Tapping into the NGA network**

Agencies may seek the assistance of existing NGAs in broadening their base of potential NGAs – for instance, private bar practitioners can introduce the notion of NGA engagement to their clients, many of whom are specialist in-house counsels, or to academics they meet at law events. Agencies may also consider involving NGAs from other jurisdictions.

## **3.2 Welcoming the expressions of interest by potential NGAs**

### **Voluntary applications can be made by potential NGAs**

Agencies are encouraged to welcome expressions of interest in becoming NGAs from members of the antitrust community in their jurisdiction. Without being called on, competition experts may reach out to their agency or file a voluntary application.

Many talents are useful in a network such as the ICN. All individuals involved in competition law and policy are eligible and may make a valuable contribution to the ICN.

### **NGA engagement entails commitment to the ICN**

Upon receiving expressions of interest by potential NGAs, agencies may outline that being an NGA comes with a number of expectations. Being an NGA is not a position, but rather a contribution, such as: actual participation to at least one Working Group, input into work product or other work, making time for interaction with the agency, etc.

### **The worth of NGA engagement in the ICN rests on their independence**

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 one's own expertise and deepening a sense of belonging in the antitrust community at large.

**4. *Member agencies are encouraged to give careful consideration to their choice of NGAs. It is advisable for member agencies and NGAs to maintain a sustained dialogue, in order for all to maximize the benefits of NGA engagement.***

## **4.1 Making an informed choice of NGAs**

### **Advertising about the choice of NGAs**

It is advisable for member agencies to communicate about how their choice of NGAs is made, wherever practicable. This is useful both for potential NGAs and for the agency itself, as it may help define what profiles are best suited to the needs of the agency, and may enhance the mutual trust between the agency and its NGAs.

There are different ways in which to choose NGAs. Some agencies advertise publicly that they are seeking NGAs to join the ICN, while others prefer a more informal process. It is for every agency to identify what degree of communication is most comfortable in its own jurisdiction.

### **Matching NGAs and ICN work**

When seeking out and choosing NGAs, agencies may consider the ICN work they value against the skills of potential or existing NGAs. For instance, agencies may seek specific expertise on a topic discussed in a Working Group, or may want to enrich their own expertise with the perspectives of a private sector antitrust lawyer, or they may wish to consider the point of view of consumer organizations, etc.

### **Renewing, maintaining or expanding an NGA team**

Many agencies find it worthwhile to renew their NGAs periodically. This can expand their NGA community and may bring in a fresh outlook on competition issues. Whether they retain NGAs over time or rotate their selection of NGAs, agencies are encouraged to make their choice on the basis of merit and to take into consideration the involvement and participation to ICN work of existing NGAs.

## **4.2 Maintaining a meaningful relationship between agencies and NGAs**

### **Introducing NGAs to ICN work**

Competition agencies should be wary of scaring off newer NGAs by asking them to do too much, too soon. It may be useful to allow for a gradual participation, at first on a small scale, and only later by taking part in larger, more demanding work and events.

Specific initiatives to allow for successful involvement of NGAs may be taken, for instance an induction programme presenting the structure and work of the ICN.

### **Accompanying NGAs along their engagement in the ICN**

Agencies should invite their NGAs to join and actively participate in at least one Working Group. Agencies are advised to contact the co-chairs of the chosen Working Groups and ensure their NGAs are added to contact lists. More generally, agencies should accompany NGAs in their ICN engagement, for instance by highlighting ICN projects of specific interest, suggesting they participate in a work or event, etc.

### **Maintaining a sustained dialogue between agencies and NGAs**

While NGAs retain their full independence and integrity, agencies are encouraged to interact with NGAs in order to enable them to make a useful contribution to the ICN and, conversely, to benefit fully from ICN engagement. Agencies may think of creative ways to maintain a meaningful dialogue with their NGAs, whether by meeting with them (annual launch meeting for example), pointing to work products that NGAs may help disseminate, asking for NGAs' input on topics and issues to bring forward in the ICN, etc. They may also consider, if practicable, putting together an "NGA programme" that provides their NGAs with guidance and coordination.

### **=> More questions? Contact the NGA Liaison!**

In view of the importance of the role of NGAs, an NGA Liaison has been designated, whose mandate is to better engage NGAs to participate in the ICN, so that the network can benefit from a wide spectrum of views and interests.

Isabelle de Silva, President of the French *Autorité de la concurrence*, is the ICN's NGA Liaison.

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