

**MEMORANDUM**

To: Cynthia Lagdameo  
Paul O'Brien  
From: James Musgrove  
Date: August 18, 2021  
Re: ICN 20<sup>th</sup> Anniversary - Reflections

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Cynthia, further to your foolish invitation, I am delighted to send along a few ICN reflections – feel free to use them if you find them helpful, or disregard them if not.

I hope that all is well with you.

James

Reflecting back on twenty years of the ICN it turns out that what you think of, first and last, is the people. With typical Canadian modesty<sup>1</sup> I note the disproportionate Canadian leadership in the launch years. That leadership baton passed – to John Fingleton and now Andreas Mundt – as the ICN has matured in its accomplishments and sophistication. But of course, while the Chair sets the tone the work, as particularly befits a virtual network, is widely distributed. All of the many, many working group leaders and participants along the way with whom I have had the pleasure and privilege of working made, and make, it happen, and made it fun.

The ICN is a peculiar institution for a number of reasons, including its virtual but very real existence. And because of its mandate. “All Competition, All the Time”, is how my compatriot, Konrad von Finckenstein, the ICN steering group’s first Chair, described the work of the network. And of course he was correct – but for an NGA like me it didn’t seem like such a breakthrough insight – after all I am/we are always all competition all the time – ask our long suffering families. However, for seasoned government personnel – and Konrad had a long and varied career in the Canadian government, including key roles in trade negotiations – an international agency focused on just competition, not letting its concerns about merger notification convergence get sidetracked by disputes about rule of origin disputes or the like, was an important breakthrough.

As a result of its focus on competition the ICN has been able to advance thinking, and convergence, on a broad range of issues, in a deep and sustained way. Mergers are probably the leading example of consensus convergence – which is not to say that there is not lots of work still to do, but much has been done. And, unsurprisingly, unilateral conduct in particular remains the area of greatest

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<sup>1</sup> In fact, we are mostly passive aggressive, and somewhat insecure. That sometimes presents superficially as modest.

challenge, as it was a decade ago.<sup>2</sup> But, progress has been, and continues to be made across the board.

The flipside of “all competition, all the time” however – because in antitrust all swords have two edges – is that at the ICN we are generally preaching to the choir. While we, whether government enforcer or NGA, tend to believe in the importance of antitrust, out there in the wider world it remains a minority taste. And sometimes when the outside world takes note it is to seek to use the antitrust tools in peculiar ways. The ICN lets us focus on core competition issues –but there is a danger we are just talking to ourselves. That can result in some achievements, but we also have to attract the attention of ‘outsiders’ who make important decisions, and convince them of the important elements of antitrust. That can be challenging. However, the keynote address by Ivan Duque Marquez, the President of Columbia, to the 2019 ICN Annual Meeting, which indicated a real engagement in the substantive issues, was an extremely happy event in my personal ICN experience.

One of the things which has particularly struck me is that the ICN is in fact engaged in genuine diplomacy. Lawyers are very familiar with disputes, but those of us who have bought into the antitrust mission generally think that, outside the context of a particular case or dispute, we are likely to agree with one another about the basics. Participating in the ICN brought home to me that while the ICN has no enforcement ‘teeth’ it still sets important goals and norms, and that nations seek to advance their perceived interests through its activities, workbooks, studies, recommended practices and the like. A year labouring in the vineyard of an unrealized recommended practice in the Unilateral Conduct area brought that lesson home. Nevertheless, progress is made, if incrementally and sometimes painfully.

Turning from ‘big picture’ issues back to the people and more personal issues brings many many happy memories. Some random recollections of what stands out:

- The extraordinary main hall at the Kyoto conference, which I believe may also have been the Bond villain lair in *You Only Live Twice*.
- An extremely welcoming welcome reception – with limited food, but rapid-fire caipirinhas, such that discussion proceeded enthusiastically but not necessarily coherently the rest of the evening.
- Being serenaded with tunes from *Fiddler on the Roof*, at the Dolmabahce Palace in Istanbul, while my table mate live broadcast the scene back home to his astonished wife.
- Trekking (almost) half way around the world and becoming as sick as a I have ever been *en route* (remember when you could travel? Remember when it was only mildly antisocial to do so while sick?), convinced that my fever would set off the alarms at the airport, only to be transferred to a

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<sup>2</sup> See “The International Competition Network Unilateral Conduct Working Group – A Brief, Unauthorized and Idiosyncratic Primer”, Newsletter of the ABA Section of Antitrust Law Unilateral Conduct Committee, Summer 2010.

special line and welcomed with a small bow and the greeting "Guest of the Japanese Government".

- The Sydney Opera house – not as menacing a potential Bond villain lair, but it has some real potential.
- The NGA seating – inevitably off to the side and with no table to write on.
- A little break-out session debate with Andreas Mundt about online travel agencies – he seemed to think there might be an issue there.
- The loyal, but dwindling, 'been to every meeting' band.
- Learning, through production of an ICN on-demand training video, why I did not make it in the movies.
- Reliving the excitement of my grade five social studies course ("The World Was Wide" was our textbook) when recalling all of the bold Portuguese Navigators (also the Yeatman hotel – a Good Thing).
- The Taj Mahal!
- My friend Nigel Caesar – the best known competition law officer in the world.
- Dinner at various castles and chateaux.
- And, of course, Randy's review of key proverbs and sayings from the host venue!

But, most of all I recall, and cherish, all of the conversations – at welcome receptions, over dinner, during harbour cruises, at host cultural events, over late night drinks or early morning breakfasts – which helped create the many wonderful friendships so important to enriching a professional life. And which, to pick up on an early theme, are important to the efforts of diplomacy. These are events which strengthen the sinews of the international competition law community, and which have largely been dead to us the last long months as a result of COVID-19.

I look forward to seeing all my ICN friends again, soon I hope!

James Musgrove