

Reflections on the International Competition Network at 20

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My personal journey with the International Competition Network (“ICN”) started in May 2006 at the 6th Annual ICN Conference in Moscow. Those who were at that conference will remember that it was sweltering, and Moscow is not a city necessarily designed to withstand a heat wave! But while the weather may have been challenging, the conference itself was invigorating! I was at that time with the Jersey Competition Regulatory Authority (“JCRA”), which was the newest (and smallest) ICN Member. I still remember being filled with pride at that meeting when seeing the Jersey flag represented among the ICN Membership, and taking our rightful seat at the table of global antitrust and competition enforcers.

Jersey’s competition law had just been enacted the prior year, and the ICN offered us an immense wealth of material to help implement and enforce the new law, making sure we introduced it the right way. From the very start, however, the JCRA’s participation in the ICN was not intended solely to learn and take valuable materials, but also to contribute to the ICN’s important ongoing work. In that regard, we saw ICN Membership as a two-way street, with membership having both benefits and responsibilities.

To that end, we soon became deeply involved in both the founding of the ICN’s Unilateral Conduct Working Group and the subsequent development of the Recommended Practices on the Assessment of Dominance/Substantial Market Power. From the start, I was impressed by the willingness of other, larger ICN Members to give its newest member, the JCRA, a meaningful role in this process and a real voice in the associated debate – so much so that these Recommended Practices contain a dedicated section on the analytical framework for dominance analysis in small and isolated economies. That theme of accounting for the views of all ICN Members, large and small, was continued at the 8th Annual ICN Conference in Zurich in May 2009, where the application of antitrust and competition law in small economies was the meeting’s special project.

My journey with the ICN continued after my return to private practice as a Non-Governmental Advisor (“NGA”), first for Jersey and later for my home country, the United States. As an NGA, I became particularly involved in the ICN’s focus on procedural fairness, which culminated in the 2018 Guiding Principles for Procedural Fairness in Competition Agency Enforcement. While perhaps not going as far as some had hoped, these Guiding Principles represent an important step to build inter-agency consensus on vital components of procedural fairness, and they also have served as a platform for further work in this area. We may still have a way to go to build further consensus on procedural fairness concepts, but the ICN provides the best forum to foster that debate and advance the project overall.

Even more valuable than any single project, document, or meeting, is the ICN’s central role in the development of our global antitrust and competition community. I am virtually certain that many fellow ICN Members and NGAs share my memories of some of the most valuable ICN experiences not being inside the conference hall or break out rooms, but on breaks over cups of coffee or tea. Personally speaking, the ICN is not just a collection of colleagues, but also friends from around the world, whom I care for deeply.

By bringing together enforcement agencies from jurisdictions large and small, developed and developing, from all regions of the Earth, over the past 20 years the ICN has helped to build the strong antitrust and competition law community of lawyers, economists, and other professionals that we all know and gain from today. The benefits of building that community have been immeasurable to the profession and subject matter that are central components to many of our lives. I look forward to the ICN continuing in this spirit of inclusiveness, as it continues to build our community for the next 20 years and beyond.