

2001–2003



Konrad von Finckenstein, Q.C.

ICN Steering Group Chair:
October 2001 to August 2003

The ICN is about to celebrate 20 years of successfully promoting concepts and practices of competition around the world. How did this all begin?

Globalization has led to the need for greater harmonization or at least compatibility between competition regimes. Attempts to build it into the WTO were unsuccessful and progress before the OECD was painfully slow and hampered by need for consensus between governments. However in 1997 the International Competition Policy Advisory Committee set up by the US recommended exploring:

“...the scope for collaborations among interested governments and international organizations to create a new venue where government officials, as well as private firms, nongovernmental organizations (NGOs), and others can consult on matters of competition law and policy.”

The rationale being:

“...a recognition that countries may be prepared to cooperate in meaningful ways but are not necessarily prepared to be legally bound under international law.”

At that time, I was Commissioner of Competition for Canada and participated in a meeting at Ditchley Park to discuss the launch of such an organization that was subsequently agreed upon by the US and EU at the 10th anniversary of EU merger review in Brussels with the informal blessing of all major competition agencies attending the event.

A steering group of agencies endorsing the concept was set up. I became interim chairman of the steering group and the Canadian Competition Bureau became the de facto secretariat in terms of coordination and communication. It also held the pen for the creation of the constituent documents. Most of the work on the ICN was done at the margins of OECD meetings and competition conferences.



Many persons were involved in the creation of the ICN. The leading drivers that I recall were Alex Schaub and Mario Monti from the EU, Tim Muris, Bill Kovacic and Charles James from the US, Alan Fels from Australia, Ulf Boege from Germany, Fernando Sanchez Ugarte from Mexico and Giuseppe Tesauero from Italy. Non-agency persons playing a major role were Jim Rill, Merit Janow, Cal Goldman and Bill Rowley. Jim Rill also created a consultation group of his own with members from around the globe who provided thoughtful input and reviewed early drafts.

The ICN was designed to avoid some of the obstacles or difficulties encountered in other international bodies:

- the ICN would be an informal group of experts from both the public and private sectors;
- there would be no government funding or support;
- its members would be agencies charged with competition enforcement (not governments) and other bodies interested in competition (non-government agencies);
- non-government advisors would have the same role as agencies in the elaboration of work products of the ICN;
- it would advise and try to persuade but not direct or recommend/demand;
- there would be no secretariat (which inevitably drives the agenda and produces the main work product); the work product would be produced by virtual working groups led by a specific agency;
- annual meetings would be hosted by one of the competition agencies; the costs of attending borne by attendees and the costs of staging the event borne by the host agency;
- attending agency personnel would vote on any issue as experts not as country representatives; and

- the name ICN was most appropriate as it reflected both collaborative effort but non-binding effects.

To create the ICN, we borrowed heavily from the Memorandum of Understanding which set up the International Marketing Supervision Network but made some major changes.

Specifically, we made the NGA's full participants, agreed on virtual working groups and provided that the steering group each year would set up its slate for the next year. It would try to assure sufficient change-over and regional and developmental representation but also that core competencies and contributions would be recognized.

The ICN was formally launched at the annual Fordham Competition Law conference in 2000. I also had the privilege of presiding as steering group chairman over the first two annual conferences in Naples, Italy and Merida, Mexico.

The success of the ICN was instant and showed the value of the ICN approach. The conferences generated excitement, intensive but productive discussions and best practices that were widely accepted. Given its structure, the absence of a secretariat, the active participation of NGAs and having attendees voting as experts allowed best products to be produced and endorsed within one year. This was close to lightning speed compared to other international organizations.

I am delighted to see how the ICN has grown in the last 20 years and has become the preeminent body in competition policy.

The model of a network of international experts in both public and private spheres working together virtually to agree on best practices hopefully will serve as a model for achieving policy consensus in other areas of activity in the modern digital world.