



(Nearly) A Century with the ICN

*By Maria Coppola, Elizabeth Kraus, Cynthia Lagdameo,
Paul O'Brien & Randolph Tritell
(Federal Trade Commission)¹*



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Nearly twenty years after its founding, the International Competition Network (“ICN”) is an active, vibrant network of competition law enforcers, practitioners, and academics from around the world. Twenty years ago, the idea of the ICN as a primary driver of international competition dialogue, development, and convergence was no guarantee. How did it happen? As the ICN approaches twenty, five ICN participants from the U.S. Federal Trade Commission (“FTC”) – with nearly 100 years of combined ICN participation – offer their perspectives on the keys to the ICN’s accomplishments.

The FTC was a founding member of the ICN and has maintained its participation in the network as a top priority for the agency’s international program. With the support of successive agency heads and a major resource commitment, the FTC has: helped lead the ICN’s strategic thinking as part of the Steering Group; led the Merger, Unilateral Conduct, and Agency Effectiveness Working Groups as well as the ICN’s implementation work and its Training on Demand project; led or co-led the development of recommended practices on merger review procedures, merger analysis, the assessment of dominance, and agency investigative process; organized and co-hosted seven ICN workshops; and participated in dozens of projects across the ICN. It is a privilege to work with counterparts from around the world to support international competition convergence and cooperation through the ICN. For this article, the authors bring to bear nearly 100 years of ICN experience to discuss five pillars of the ICN’s success:

- inclusive growth
- innovative tools
- commitment to implementation
- growth of content
- development of a voice as global advocate for competition

I. The ICN’s Inclusive Growth

Founded a mere decade after the fall of the Soviet Union, even the most visionary of ICN’s creators could not have anticipated the explosive growth of ICN membership. Established in the Fall of 2001 by 15 competition agencies,² ICN membership had already grown to 59 members by the ICN’s first annual conference in 2002. By 2004, that number had increased by more than half, to 91 members; 98 members by 2006; 109 members by 2010, and so forth. Today, the ICN counts nearly all of the world’s competition agencies as members – with 140 members and hundreds of non-governmental experts (“NGAs”) from around the globe.³

This expansion in ICN membership reflected an intentional strategy to be inclusive. The ICN, one of the early chairs famously said, “is open to everyone” in the competition community.⁴ Membership requirements are minimal and largely unchanged since the network’s creation: “A member of the ICN is a . . . competition agency entrusted with the enforcement of competition law(s).”⁵ This simple criterion, along with the widespread adoption of competition laws around the world, has facilitated the network’s exponential growth.

Although a network of government agencies, members work hand in hand with a broad array of NGAs, including academics, in-house counsel, private practitioners, economic consultants, consumer groups, and representatives of international organizations. NGAs help identify projects; produce and offer important comments on work product; contribute to the policy dialogue at conferences and workshops; and help disseminate ICN work product and promote its use.⁶ In no other government competition fora do non-governmental experts play such an integral role. The

network's inclusive approach to membership coupled with the active participation of non-governmental advisors from around the world means that the ICN is truly a reflection of the global antitrust community.

ICN leadership also has underscored a commitment to inclusiveness by ensuring that the network responds to the needs of all of its members; deep engagement of members and NGAs has been a priority of every ICN Steering Group. Early on, to address the challenges of a growing membership, a Vice Chair for outreach was created in 2007, a position held first by South Africa's David Lewis, followed by FTC Chairman Bill Kovacic, and today by the President of the Mexican competition agency, Alejandra Palacios Prieto. David Lewis focused on the needs of newer agencies with the purpose of engaging them more fully in the activities of the ICN. He helped the network intensify the presence and degree of participation of young agencies in the activities of the ICN, including the governance structures, the working groups, and the various conferences and workshops.⁷ Fifty-two ICN members responded to his outreach questionnaire, and dozens of NGAs participated in the focus groups Lewis led in 2009. Bill Kovacic continued these efforts, and expanded the scope of focus to engagement of a broader range of NGAs – both geographically and professional background (academics and consumer groups), and drafted a proposal for the ICN to engage in self-assessment to determine, among other things, how best to ensure that the ICN is responsive to all of its constituents.

The self-assessment exercise expanded into ICN Chair John Fingleton's signature initiative – the ICN's "Second Decade" project. The project is described more in Section II below, but as part of the process of formulating the ICN's Second Decade Vision,⁸ almost every member of the ICN was interviewed about its views on the ICN's work and future direction. Feedback was solicited from non-governmental advisers, through a questionnaire and discussions via conference call, with over 70 NGAs contributing. The Second Decade project resulted in institutional change to increase member engagement, for example, by expanding the number of leadership position and requiring working group leaders to rotate in order to open up leadership opportunities to more members.

Current ICN Chair, Andreas Mundt, assumed office with a commitment to three "pillars," one of which was inclusiveness.⁹ According to Mundt, broad membership has numerous benefits: "Not only does it ensure that the issues dealt with really matter to the competition law community worldwide, but it also gives the ICN the possibility to advocate its vision on the worldwide playing field of multinational enterprises."¹⁰ Mundt reiterated that inclusiveness is not only about agencies, but "is also about the participation of NGAs who provide extremely valuable input."¹¹

The network created structures specifically to support engagement, in the Advocacy and Implementation Network, now known as the Promotion & Implementation team. The P&I team aims to raise awareness of ICN work product and promote its implementation, engaging members, working groups, and non-governmental advisors, to make the ICN the key element of global convergence in competition law. P&I's work is complemented by the activities of Vice Chair Palacios Prieto, introducing new members to the ICN, and encouraging the participation of younger agencies across the network.

To underscore commitment to engaging with all of its members, ICN leadership instituted "town hall" sessions, open to all members and NGAs, for discussion and debate; Steering Group chairs instituted regular updates for members and NGAs via a newsletter; and for nearly a decade, the ICN hosted a blog and now posts updates on its website and twitter to highlight network and member activity. In addition to these communication initiatives aimed at inclusiveness, ICN chairs and vice chairs have targeted specific groups for deeper engagement, for example, by creating projects for and by competition economists, and by developing "toolkits" of what to expect and how to get involved for new members and NGAs.

Still other parameters, such as project selection, reflect ICN's commitment to inclusiveness. Every working group, and every ICN project, is open to the participation and input of all members. The network's earliest projects addressed advocacy and capacity building, selected intentionally for their widespread relevance and responsiveness to the needs of younger agencies. The ICN regularly has used its resources to examine and address the needs of new and younger agencies. For example, in 2006, it produced a report that identifies the type of challenges young agencies experience and the measures these agencies have applied to address the challenges.¹² In 2019, the ICN revisited the topic, with an update to the 2006 report.¹³ The ICN's Training on Demand online compilation of training videos also includes a module on competition policy in developing countries¹⁴ and one offering advice for new and young competition agencies,¹⁵ in addition to many on the fundamentals of enforcement.

The ICN has continued its commitment to diversity by addressing a wide portfolio of work: investigative fundamentals and more sophisticated enforcement subjects across the Merger, Cartel, and Unilateral Conduct Working Groups, and a host of operational and institutional matters in the Agency Effectiveness Working Group. In addition, conference hosts and the Steering Group regularly take on special projects to address particular interests such as competition policy in an economic downturn, competition law and policy in small economies, competition issues involving state-owned enterprises, abuse of superior bargaining position, and disruptive innovation.

Through these concerted efforts that touch on every aspect of the network, today the ICN has mainstreamed the participation of its younger agencies – a reflection of the additional experience gained by the agencies once considered “younger,” but equally proof of ICN's integration of members large and small, old and young. The network's approach to membership, participation, leadership roles, work product, and communication has created a fully inclusive body.

II. ICN Innovations Leading to Convergence and a Community of Common Cause

The ICN was launched to provide antitrust agencies from developed and developing countries with a more focused network for addressing practical antitrust enforcement and policy issues of common concern.¹⁶ From its inception, the ICN had the lofty goals of facilitating procedural and substantive convergence and cooperation in antitrust policy and enforcement, as a virtual, soft-law network involving the full range of competition community participants. Its combination of innovative elements related to institutional design, informal, inclusive working methods, and bottom-up approaches to project selection and development has not only helped the ICN to achieve these goals, but has also resulted in this virtual network incubating a deeper competition community.

Innovative Institutional Design

Through both foresight and necessity, ICN was founded as a virtual, specialized network based on inclusiveness and consensus. It was conceived as the only international forum dedicated exclusively to competition policy and law. With membership open to all competition agencies – not only those of like mind and experience – working hand-in-hand with non-governmental advisors, private sector experts, interested academics and experts from multilateral organizations engaged in the field, the ICN has proved unique in its capacity to engage all relevant actors on all issues of competition law and policy. Moreover, its novel, virtual nature has prompted ICN members and project participants to engage more directly and frequently with one another in comparison to other international fora that rely on permanent secretariats and established infrastructures.¹⁷ The network's virtual nature also has allowed ICN to adjust its organization flexibly around projects of interest to its participants, over time. Finally, though it lacks rule making functions, the ICN's consensus-based, soft-law approach to developing understanding and convergence has, in fact, complemented and enhanced

these attributes to prove one of its strongest features. There is an inextricable link between the ICN's non-binding nature and the scope, content, and value of its work. To achieve consensus, ICN actors engage with one another to understand similarities and differences in approaches in an effort to build common understanding as to the best approaches to competition policy and enforcement issues.¹⁸ This process helps to promote dialog and the exchange of experience and learning among all ICN participants. Thus, even before identifying certain approaches as best practice, the consensus process serves to disseminate know-how and experience, providing valuable learning and support to newer agencies.

As described by former ICN Chair David Lewis, at its foundation, the ICN's soft-law approach is founded on persuasion through shared experience rather than coercion.¹⁹ ICN members are free to use and implement its work product within their own legal contexts as they see fit. The lack of binding implementation obligations has a beneficial byproduct in terms of work product development. Discussions can focus on the identification of optimal practices without defensiveness from participating members about their non-compliance. Without the threat of binding rule-making authority, members have been open to and accepting of aspirational, forward-looking best practice approaches that may not reflect their own practices.

Innovative Working Methods

The ICN established its working methods around these institutional features, providing for flexibility in developing demand-driven projects. Members select projects and produce work product in conjunction with interested NGAs, which helps to ensure that the ICN's work is relevant to all. This has resulted in a long history of work product focused on issues of practical import to the community.²⁰ While the ICN is guided by a Steering Group composed of representatives of ICN member agencies, its work is developed from the bottom up, in project-oriented Working Groups, currently addressing Advocacy, Agency Effectiveness, Cartels, Mergers, and Unilateral Conduct.²¹ Participation in individual projects and working groups is purely voluntary, yet a broad swath of agencies and the NGA community actively engage in the ICN's work. They rely on informal and flexible communications and working methods, focused on e-mails and teleconferences to do so, which allow for timely, frequent, direct discussion. In this way, the scheduling of in-person meetings does not dictate the pace of the group's work, as it has in other international fora. Yet the working groups also benefit from face-to-face meetings, at the ICN's annual conference, at workshops, and on the margins of other international meetings. The ICN's work product is strengthened by the diversity of views that underlie its creation. Broad-based project participation ensures that the work reflects sound approaches applicable across various legal traditions and experience levels. This further reinforces the relevance of ICN work product, promoting support by newer and more mature agencies as well as NGA community, and thus ready advocates for the adoption and implementation of such work product.²²

Importantly, working together toward a common goal fosters close relationships and trust among different actors within the community. This has the benefit of not only creating communities of interest related to working group topics, but also has fostered the development of related communities, for example, cartel enforcers or economists focused on antitrust, within the ICN's network. One could think of these sub-communities as overlapping constellations of experts within the broader ICN orbit. As they have developed, so too has the value of the overall network. Moreover, as these communities grow, and relations of trust develop within the network over time, the ICN has been able to move from its initial projects, sometimes deemed low hanging fruit, to tackling more intractable issues, including unilateral conduct concerns and procedural fairness,²³ and addressing some of the most challenging competition issues of our day, including competition challenges posed by the digital economy.

Innovative Outputs

Intimately linked to the innovations of its design and working methods are the ICN's outputs. ICN work product generally serves to accomplish one or more functions: promoting transparency and understanding of agency approaches and transference of skills; assessing comparative approaches; and developing and promoting consensus norms and approaches. The projects focus on disseminating learning, experience, and best practice, and are intended to support the network's overall goals of facilitating procedural and substantive convergence and cooperation in antitrust policy and enforcement. They not only promote the adoption of the ICN's preferred norms and approaches, but also help to support the ICN's less experienced agencies to mature quickly and leapfrog over the failures of others.

The work product developed has been as innovative as the ICN's structure and working methods. Working groups were not and continue not to be limited by prescribed forms of or approach in developing work product. Instead, they consider the most useful format to reach the project's desired goal, from developing online templates to make information on each of the ICN member agency's policies and practices available and transparent, to creating self-assessment tools for use by agencies. Work product may be written, or presented in other manners, including through interactive, hands-on workshops or web-based seminars. Notably, the ICN has even developed a comprehensive curriculum of training materials, available as video modules and available online, which serves as a virtual university on competition law and practice for competition agency officials and those interested in competition law and policy.²⁴ The range and evolution of the ICN's project selection and work product is discussed below in Section IV.

We focus here on the innovation of these approaches, recognizing that for each format, the ICN essentially started with a blank slate. For example, consider the ICN's most high-profile work, its Recommended Practices. While ICN recognized the importance of facilitating convergence toward best practice from its earliest stages, the concept of an ICN Recommended Practice did not exist until created by the members and NGAs of the Merger Working Group's Notification and Procedures subgroup. This group determined that they needed not only to identify best practices on the subject, but also had to present the agreed best practices in a manner in which the practices could be best understood and implemented by the ICN's membership. The tool had to be user friendly and applicable across legal traditions. The group determined that the recitation of non-binding, black-letter statements of consensus best practice, followed by explanatory comments would best serve these requirements, and allow for updating and expansion as appropriate. The format proved so successful that it has served as the template for all following ICN Recommended Practices.

Of course, the ICN will not be judged a success based merely on its innovations or the amount of work that it produces. Yet through its innovative design, working methods and work product, the ICN has already brought the broader competition community together and instilled a common purpose. Its success has and will continue to be assessed based on the impact that it has on international competition law and enforcement, and whether it, in fact, meets its goals of facilitating procedural and substantive convergence and cooperation in antitrust policy and enforcement. The implementation of its work is a considerable factor in this assessment.

III. The ICN's Commitment to Implementation

The ICN was set up by its members to be "a project-oriented, consensus-based, informal network of antitrust agencies"²⁵ that explicitly does not exercise any rule-making function. Its "activities take place on a voluntary basis and rely on a high level of goodwill and cooperation among members."²⁶ The ICN's project-oriented status plays out in defined working groups, focused on specific areas

of competition law and policy, i.e. mergers, cartels, advocacy, unilateral conduct, and agency operations. Working groups are open to all ICN members and non-governmental advisors, and project selection is pursued via open discussion within working groups each year.

The sixth and final clause of the ICN's Mission and Activities provisions in its Operational Framework raises the central challenge of the network: "Where the ICN reaches consensus on recommendations arising from a project, *it is left to its members to decide whether and how to implement the recommendations . . .*"²⁷ This is the only mention of implementation in the ICN's founding framework, and it acknowledges the soft spot of a soft law network: there is no commitment, no obligation to follow ICN recommendations. Nonetheless, what the ICN has done to address implementation has been vital to its success. This provision could have been the first and final word on the implementation of ICN work. The network could have chosen to stand down and leave members alone to consider, interpret, and use ICN work. Instead, the ICN chose to actively support and inform member decisions on whether and how to implement ICN recommendations. The network made the challenge of implementation integral to how the ICN operates – from work planning and work product format choices to a variety of other activities such as workshops and seminars. Accepting this challenge has been a crucial factor of the ICN's success.

The Challenge of Measurement

The aspirational nature of the ICN's work makes measuring implementation difficult. Former ICN Chair David Lewis argued that ICN's "range of activities" and work "do not easily lend themselves to textual consensus and harmonized implementation."²⁸ He explained that the development of soft law "is rooted in consensus, rather than majority; in persuasion through shared experience, rather than coercion; in understanding and celebrating differences, rather than suppressing them."²⁹ This led him to conclude that the ICN should not judge itself by the "norms and standards" of organizations that devise binding rules. Rather, the ICN should judge itself by "a more qualitative and nuanced set of norms: are we developing a deeper understanding of each other's key drivers and practices? Are we providing a framework where the better resourced and more experienced agencies are able to transmit the learnings from their successes and failures to the newer agencies? Are we providing room for the full participation and voice of these newer agencies? Is the ICN a voice for competition on the international stage and in the various national policy debates?"³⁰

When the ICN has undertaken the resource-intensive task of tracking the use of its work, the results point to a good deal of influence and success. The ICN's 2010-11 Second Decade review included interviews with most ICN members. The report stated that, "Over the past decade, ICN work products have influenced agency practice of many ICN members, and have also influenced legal and policy reforms in many ICN member jurisdictions. For example, 39 ICN members have reported using the Anti-Cartel Enforcement Manual to advance their cartel enforcement programs. Two-thirds of ICN members that made changes to their merger control regimes cited the ICN Recommended Practices for Merger Notification and Review Procedures as having influenced their reforms. More than a dozen agencies have reported using the ICN's Recommended Practices on Dominance / Substantial Market Power Analysis Under Unilateral Conduct Laws in their casework or staff training."³¹ A 2010 Merger Working Group assessment of the use of its work reported that "over 90% of responding agencies indicated that they used MWG work product – dozens reported the use of MWG RPs contributing to change in their merger regimes."³²

The nature and volume of ICN work has become so vast and varied that real-time, hard statistics on implementation are not feasible. What is known about use of ICN work tends to be anecdotal – stories and experiences shared by members within the network. Undoubtedly there is a vast amount of ICN work product implementation and influence that is not known – for instance, day-to-day staff investigative choices and practices informed by participation at a workshop, viewing of an ICN online

training video, or review of a good practices manual on specific enforcement areas. The ICN encourages members to share these stories, but the reach and impact of ICN work is beyond efficient and easy measure.

Implementation Takes Root

The ICN's first years focused on creating work product on topics of vital importance. Its first two projects addressed divergence in merger notification rules and competition advocacy basics. Other early work addressed capacity building for new and younger agencies, merger analysis guidelines, and the building blocks of cartel enforcement. No sooner did the working groups accomplish creative new output than questions arose about how to ensure its influence. ICN working groups very quickly realized they were not just in the business of creating work product, but also nurturing, promoting, and advocating for its use.

ICN working groups have been integral to promotion and use of ICN work product. Over the years, working groups have explored creative ways to raise awareness about existing ICN work and encourage its implementation. By nature of its status as drafter of ICN's first recommendations, the Merger Working Group became a pioneer in implementation efforts. No sooner had the group completed a groundbreaking set of Recommended Practices for Merger Notification and Review Procedures,³³ than it turned to members' experiences with implementation. In 2005, the working group published a report on Implementation of the Recommended Practices for Merger Notification and Review Procedures,³⁴ identifying implementation challenges and how members addressed them, and in 2006, it compiled examples of conforming language from competition laws and regulations around the globe.³⁵ The group later introduced a new type of work product developed solely to encourage implementation – the self-assessment tool – that allows agency members to benchmark their own practices against ICN recommendations.³⁶ Today, working groups routinely promote their existing work through network teleseminars and workshop sessions based around ICN recommendations and good practices. Annual conferences include sessions that highlight member stories of using ICN work to inform new laws or agency practices. The ICN newsletter and “town hall” conference calls have been used to promote awareness of ICN work. The ICN's “Training on Demand” set of online videos with agency and academic presenters reinforce existing ICN work in a novel, accessible format.³⁷

The ICN also offers formal advice to members when they seek external support for reforms. Former ICN Chair Eduardo Perez Motta called for the ICN to take a “more active role when asked by members for assistance on specific policy initiatives.”³⁸ Over the years, the Steering Group and working groups have authored several letters about ICN recommendations to agency members who have requested advice. There also are many more instances of working groups assisting members by identifying relevant ICN work recommendations for consideration to benchmark internal practices. As Perez Motta explained, “[o]ne should not underestimate the potential influence of 123 agencies speaking with one voice to support one of their own, on the basis of well-founded and time-tested best practices.”³⁹

Institutionalizing Implementation

The ICN has made institutional decisions to strengthen its advocacy for implementation. In its Second Decade project, the ICN institutionalized its view on the importance of encouraging implementation. In 2012, when the ICN revised its mission statement on the occasion of its tenth anniversary, it embraced the challenge of implementation as part of its top line goal, beginning, “[t]he ICN's mission is to *advocate the adoption* of superior standards and procedures in competition policy around the world”⁴⁰ Taking on this role as an advocate, the ICN confirms that it is not enough to identify, articulate, or create standards, but essential to see them through

to implementation. In the words of former ICN Chair John Fingleton, ICN's work "has to translate into real outcomes."⁴¹ The Second Decade report's long-term vision for the ICN also identified four high level goals for the ICN, including to "encourage the dissemination of competition experience and best practice."⁴²

Current ICN Chair Andreas Mundt has maintained the network's emphasis on the value of implementation efforts. His vision statement for the ICN cites implementation as one of three "key factors" to ICN success, emphasizing that if the ICN wants "to ensure that the ICN and its work products matter, we need to make our high-quality products available to everyone and continue our efforts to promote their implementation."⁴³ The ICN also has tailored its work planning process to emphasize promotion and implementation efforts. Each year, ICN working groups discuss and propose annual and three-year work plans. A network-wide review of the proposals by the Steering Group encourages a category of implementation work that promotes and highlights existing work product.

The single biggest act of institutionalizing the ICN's commitment to encouraging use and implementation of its work came with the establishment of a group dedicated to implementation. The ICN established an "Advocacy and Implementation Network," later renamed the Promotion and Implementation ("P&I") team. The P&I team is made up of Working Group chairs and other interested members. It coordinates network-wide implementation initiatives, being the first stop for questions from members about existing ICN work and its application. P&I encourages ICN member implementation stories to help inspire members with ideas from their peers about how to use ICN work. It also coordinates ICN advice to members that are contemplating changes to laws, rules, or practices that may be informed by ICN recommendations or other work.

Implementation Success in a Non-binding Context

How has a non-binding network that eschews any obligation to implement its recommendations had success in the adoption of its recommendations? There are three key aspects of the ICN and its operations that serve to support and promote implementation in the ICN's non-binding context.

First, do not overlook the power of the ICN's working process, as described above in Section II. ICN work product is developed by a broad range of its membership and non-governmental experts working in dedicated working groups. Its consensus is built on a foundation of best practices, common approaches, and perspectives of member agencies and experts from around the world from a variety of institutional and legal settings. This well-informed input allows members to benchmark their own practices against the best that the competition community has to offer – the direct experiences of similarly situated agencies that share similar needs and missions. ICN work is created for the competition community, by the competition community. Producing work with widespread relevance from sources tested by experience amounts to a very powerful starting point for implementation. By nature of its consensus development and quality content, the work itself is compelling, and worthy of consideration and implementation.

Second, the active commitment of the ICN and its members to promoting ICN work has bolstered interest and implementation. The approach behind the ICN's work is to make best practices accessible to all competition agencies. The many agencies and experts that actively participate in developing ICN work are invested in its success. They realize that a work product has a potential lifespan and utility that far outreaches the time and resources to develop it. They introduce existing work to new ICN members and new staff that become involved in the ICN across its membership. The success of ICN work is linked to its use and implementation, and working groups understand that.

Third, the ICN's success with encouraging implementation can be attributed to the creativity with

which it has pursued member implementation. The ICN has a long, innovative history of finding ways to promote and support member decisions on “whether and how to implement” ICN recommendations, as mentioned earlier. As a voluntary, non-binding, non-rule making network, the ICN lacks the proverbial stick or enforcement mechanism. It can only offer carrots. However, the ICN has embraced this spirit with a variety of tools and formats that support and encourage member implementation – offering carrots, broccoli, apples, spinach, berries, pears, and peppers; a virtual cornucopia of healthy recommendations and advice for member agencies to consider.

Future of Implementation

In its current form, the ICN remains a non-binding, virtual and voluntary network with no impetus to change the nature of the network’s soft law convergence mission. Still, the ICN’s efforts to encourage agencies to implement its work should not be dismissed as an afterthought. ICN Chair Mundt’s vision for the network links the ICN’s commitment to implementation and its overall influence by emphasizing the “great importance for the ICN in the future to raise awareness for its work products, promote them and ensure that they are implemented into legislation and everyday work, making the ICN the key element of global convergence in competition law.”⁴⁴ Implementation efforts in the ICN have evolved and likely will continue to influence global convergence in at least two ways.

First, a review of the ICN’s history reveals innovative steps in its implementation efforts, from institutional efforts, work planning and formats, and promotion by working groups. There may be internal innovations in development yet to come. For example, the ICN has developed a novel addition to the ICN work product family: opt-in frameworks. The ICN has promulgated three such frameworks, one on merger enforcement cooperation, one on cartel enforcement cooperation, and one covering procedural fairness principles for competition agency procedures.⁴⁵ The idea of these frameworks is to complement the ICN’s typical consensus building work but allow participants to affirm additional principles. These ICN frameworks are a creative, evolutionary step in the ICN’s approach to the implementation of its work. This is not a move to hard commitments. However, the frameworks have their own built-in implementation tools, permitting additional cooperation and engagement among agencies with the potential to help boost convergence. These frameworks demonstrate the ICN’s willingness to expand its toolbox for implementation, allowing for additional opt-in commitments for and among willing agencies on specific topics.

Second, ICN work and consensus building influences the development of norms elsewhere. For instance, the Organization for Economic Co-operation and Development’s (“OECD”) merger review recommendation⁴⁶ took inspiration from ICN recommendations. Likewise, the OECD is developing a recommendation on procedural fairness that borrows from ICN consensus principles. Organizations such as Asia-Pacific Economic cooperation (“APEC”) have used or referenced ICN work in their programs and training. Given its development by competition experts, ICN work is likely to continue to influence norm creation in more binding settings, providing a ready-made resource on the competition community’s best thinking.

One of the key pillars of the ICN’s success has been its insistence that implementation is not an afterthought. The ICN’s non-binding nature could have excused the ICN from the hard work of promoting real world impact, but ICN members and leadership have accepted and maintained the challenge to craft compelling, relevant work and promote its use. This has breathed life into the ICN’s mission and influence. The ICN’s history of prioritizing implementation efforts and its robust and creative practices of encouraging such efforts suggest that the ICN’s next twenty years will be filled with many examples, anecdotes, and stories of how the network drives convergence.

IV. The Evolution of ICN Work Product

Work product is central to the ICN's mission and success. It is the focal point for ICN participation and how the ICN as a virtual network addresses the practical needs of its member agencies. Three general trends characterize the ICN's work topics, types, and formats over its first twenty years: 1) growth from a focus on enforcement fundamentals to incorporating a full-fledged range of topics, 2) organization around a loose hierarchy of types of work, and 3) a creative expansion in terms of the formats used.

Trend 1: From Fundamentals to Full-range

In the beginning, the ICN's first two projects addressed the basics of competition advocacy and merger notification rules. These topics were identified for different purposes, both vital to the ICN's mission and success. The first identified and articulated the underpinnings of competition law and policy that are relevant to all agencies: the benefits of competition. The second project had a different purpose: target divergence, compare approaches, and draft consensus recommendations. These projects demonstrated the ability both to reinforce foundational needs shared by all competition agencies and to promote new convergence of specific agency approaches via practical recommendations. From the very beginning, the ICN would walk and chew gum at the same time.

With a growing familiarity with and confidence in its working methods – and the expansion in the number of members – the ICN's annual slate of projects also grew. Within its first five years, the initial Merger and Advocacy Working Groups were joined by working groups on Cartels,

Unilateral Conduct, and a work stream focused on agency operations that went through several naming iterations from “Capacity Building” to “Competition Policy Implementation” to today's “Agency Effectiveness” Working Group. Today, a typical working group annual plan includes two or three written projects (a mix of new work and regular revisions to existing work), several teleseminar topics (often in a themed series), a workshop, and implementation-related efforts to raise awareness of existing work. All combined, ICN working groups tackle some 20-25 distinct topics each year.

The topics that the ICN addresses have expanded to match the full range of issues that its member competition agencies address. The ICN's early focus on perceived pressing problems, issues of wide-applicability, and the fundamentals of enforcement led to work on topics such as merger guidelines; the building blocks of anti-cartel enforcement; the objectives of unilateral conduct enforcement; case selection; and investigative techniques. Building upon these initial, often broad-based projects, working groups developed work product on more tailored, related topics such as advocacy before various stakeholders such as legislatures, business, and the public; market studies; obstruction; various types of single firm conduct; leniency programs; merger notification forms and filing fees; agency ethics rules; remedies and settlements in mergers and cartels; private enforcement; and agency use of social media.⁴⁷

One vehicle for the introduction of new topics is the ability of annual conference hosts to lead a special project or showcase topic. Past conference projects have focused on telecom law and the interaction with telecom regulators, enforcement in small economies, the nature and meaning of consumer welfare, agency interaction with judges, state-owned enterprises, disruptive innovation, and online vertical restraints. The ICN has also expanded its work product into important cross-cutting topics that are not easily captured in individual working groups. A seminal example occurred in 2011, with a Steering Group decision to initiate two large-scale projects outside of the working group annual plans: one on enforcement cooperation and one on procedural fairness in competition agency procedures. While each topic was relevant to various working groups, there was a value to projects that could draw experience from multiple competition enforcement and policy areas. Both

projects led to significant ICN work product and standalone workshops.⁴⁸

It is important to note that the ICN has not forgotten work on the fundamentals of competition law enforcement and policy. Many of the seminal work products that address the basics of investigation, enforcement, and agency approaches are regularly revisited and updated as needed.

For example, the two sets of ICN Recommended Practices on merger notification rules and on merger analysis have been updated since their creation and many of the ICN Anti-cartel Enforcement Manual chapters have been renewed over its decade-plus lifespan.

Over time, in addition to work on shared goals and specific convergence on established enforcement frameworks and approaches, a third strand of work developed: exploring new, developing, and unresolved topics in various formats. Part of effective enforcement is addressing challenges presented by new issues, markets, and theories. Member agencies have brought these challenges to a shared dialogue within the ICN. The discussion of hot topics is a purposeful decision by the ICN to facilitate experience sharing and take part in shaping global competition law dialogue. Examples of this “ICN 2.0” line of topics have included disruptive innovation, competition advocacy in an economic downturn, online vertical restraints, public interest standards and industrial policy, and implications of the digital economy. These types of topics often are recognized as not ripe for consensus recommendations, but the ICN has valued member discussion and exchange on new developments. Competition agencies created the ICN as their own forum, and have increasingly used it to address topical policy issues alongside more traditional work on enforcement fundamentals. The evolution of content is a shining example of how the ICN reflects the needs of its members and chooses meaningful priorities for its work. Today’s ICN work program is every bit as vibrant and varied as its member agencies and the full range of issues they face.

Trend 2: A Focus on Purpose

The second trend in ICN work product involves the type of work, or its purpose and intended audience, often reflected in titles such as recommended practices or practical guide. Early ICN work product carried an assortment of titles, including recommended practices, best practices, suggested best practices, good practices, workbooks, handbooks, manuals, booklets, frameworks, toolkits, reports, findings, models, practical guides, guiding principles, and lessons learned. While the titles of ICN work product still evidence this creativity, working groups have settled around three general categories of written work, with different purposes.

“Recommended Practices” or RPs are the ICN’s “gold standard” for network approved consensus recommendations, intended as a resource to benchmark agency rules and practices and a driver of convergence. The ICN’s RPs include:⁴⁹

- Recommended Practices for Merger Analysis (2002-2017) addressing common legal framework and merger guidelines factors.
- Recommended Practices for Merger Notification & Review Procedures (2002-2017) addressing notification principles such as nexus between the merger’s effects and the reviewing jurisdiction and appropriate notification threshold as well as procedural principles such as procedural fairness, transparency, and confidentiality.
- Recommended Practices for Dominance/Substantial Market Power Analysis (2008) addressing the framework and criteria for assessing dominance/substantial market power.
- Recommended Practices for Investigative Process (2019) promoting fair and informed enforcement through principles of transparency, engagement, internal safeguards, and the protection of confidential information.

Next, working groups developed a category of work that includes “good practices” and other practical work product (often with titles such as guides, manuals, or workbooks) that often are more focused on day-to-day investigative choices. These guides are reference tools for agency staff to enable them to evaluate and compare their own approaches. They detail practices that work well for some, or even many, members but may not be readily applicable for all. More is written in the annals of ICN’s work product for the front-line investigator than any other audience. Examples include:

- The Anti-Cartel Enforcement Manual is a compilation of practical discussions, tips and techniques employed at various stages of enforcement and identifies approaches that have proven effective and successful.⁵⁰
- The Investigative Techniques Handbook for Merger Review describes the tools and techniques used in merger review, such as how to plan a merger investigation, developing reliable evidence in merger cases, economic and econometric analyses, and the benefits of sound economics and including economists in merger review.⁵¹
- The Unilateral Conduct Workbook explores techniques and approaches to various aspects of unilateral conduct enforcement, covering the analytic framework, assessing market power and approaches to analyzing specific type of conduct.⁵²
- The Agency Effectiveness Competition Agency Practice Manual identifies key elements of a well-functioning competition agency and provides best practices for agency strategy, planning, implementation, and operations.⁵³

Finally, a majority of ICN work makes up a category of informative or comparative reports – often the first line of work when the ICN explores a new topic. These reports often articulate different approaches in different jurisdictions but do not present a consensus recommendation. Examples (just a few) include reports on the objectives of unilateral conduct laws, merger remedies, market studies, competition advocacy, vertical mergers, cartel settlements, merger filing fees, obstruction of justice, and waivers of confidentiality in merger investigations.⁵⁴

One of the reasons that this loose, natural hierarchy of ICN work developed is ‘implement-ability,’ as RPs represent ICN recommendations for all; good practices and practical guides offer accessible advice for investigative staff and agency investigative practices; and reports provide the opportunity to scan and compare the spectrum of approaches across different jurisdictions. Many of the dedicated ICN implementation efforts on issues of procedure, analysis, and policy emanate from the consensus RP category, with investigative techniques training workshops and experience sharing seminars often espousing ICN’s practical, investigator-facing work and reports.

Trend 3: Font of Creativity

The third overarching trend or characteristic of ICN work product has been the creativity in delivery. The growth of different formats for ICN work product has matched the expansion of topics addressed. Early ICN work was dominated by the written word, with a project typically starting with a comparative survey and report, the identification of consensus approaches, and ultimately progressing to a written practical guide or recommendation. This is still the tried and true working procedure for most topics that are addressed within the ICN. However, over the years, the ICN’s written output has been joined by creative complements in a variety of formats.

In 2002, the ICN held its first staff-facing workshop, a merger workshop held in Washington, hosted by the U.S. agencies. It involved a detailed hypothetical case with an agenda built around investigative techniques tips and exercises. This type of event has been replicated in ICN Cartel and

Unilateral Conduct workshops targeted to investigative staff and enforcement managers. All ICN Working Groups, including Advocacy and Agency Effectiveness, regularly organize workshops dedicated to staff training or policy discussions.

In 2005, the Cartel Working Group introduced the idea of a dedicated, themed teleseminar series as a work product to facilitate experience sharing on topics such as settlements and criminal enforcement. Before then, ICN calls were primarily used for written work drafting and updates. Today, every working group holds substantive discussion calls that complement existing work products or often explore novel issues not addressed in ICN's existing catalog of written work.

The advent and increase of discussion seminars in working groups across the network on a wide variety of topics has provided opportunities for real-time, direct experience sharing and substantive discussion on timely topics. The ICN Chair has also hosted network-wide "town hall" seminars on topical issues, such as public interest review in mergers.

The creativity in work formats can be seen across the ICN's website, with online tools such as the ICN Market Studies Information Store,⁵⁵ cartel, merger, and agency procedures templates⁵⁶ provided by members that explain basic agency rules and practices, online guides to explaining the benefits of competition⁵⁷ and advocacy toolkits,⁵⁸ and a library of leniency⁵⁹ links. Large, new projects, such as the 2012 ICN's Market Studies Handbook⁶⁰ (later updated in 2016), have undergone a period of "road testing" with a few agencies before they are finalized in order to learn from how agencies use the information. Recommended Practices are now often accompanied by companion "self-assessment tools" – checklists for agencies to benchmark their own practices with the ICN recommendations. Choices about work formatting, planning, and roll-outs represent some of the creative ways that the ICN has put the use of ICN work product at the heart of its operations.

The ICN's most significant and prolific creative choice for alternative work formatting is its Training on Demand project, an idea initiated in 2010 by the FTC.⁶¹ The Training on Demand project's library of 25 (and growing) modules is an effort to create a comprehensive curriculum of training materials to serve as a virtual university on competition law and practice for competition agency officials. Training modules produced by academics and agencies, consisting of video lectures and accompanying ICN materials, provide an on-line interactive educational center for competition authorities from around the world.

The story of the ICN's output – with well over 100 distinct work products (and counting) – is a vibrant story of purposeful growth to address member needs and creativity to deliver meaningful information and guidance to its members. The ICN's first wave or "1.0-era" work tended to focus on written work products addressing enforcement fundamentals and the basic underpinnings and benefits of competition law. The ICN's "2.0 era" work incorporates more cross-cutting policy topics that overlap with competition, timely debates, cooperation-oriented tools, and a wider variety of work formats. Both aspects are alive and well today within the ICN, and combine to produce a robust, treasure trove of work for ICN members.

V. Evolution of the ICN into a Global Advocate for Competition

The ICN was established as a project-oriented network to address practical issues facing its member agencies.⁶² Thus, its early work focused on promoting convergence on common standards for dealing with challenges such as divergent merger notification thresholds,⁶³ and fundamentals of enforcement such as investigative techniques.⁶⁴ Throughout its history, the large majority of the ICN's work product has fallen into these categories, with best practices work expanding to cover most areas of competition law including merger analysis, unilateral conduct analysis, and anti-cartel

enforcement, as well as practical aspects of the design and organization of competition agencies.

As the organization matured and its membership rapidly grew to encompass almost every competition agency in the world, it began to consider whether, in addition to working on internal agency policies and practices, it could assert a common voice more widely to advocate procompetitive policies. Although there was some concern about venturing into a realm that could be more political and could intersect with other Ministries in members' governments, ICN leadership understood that the collective breadth and expertise of the ICN membership could be an important voice for consumers. The value of moving the ICN in this direction was heightened by the realization that there was no comparable international body that could speak with the authority of the ICN as a voice for competition. Moreover, it became clear that the proposition that competition policy should be a key organizing principle for national economies in many cases needed buttressing and in some cases was under serious challenge.

The movement toward a broader advocacy role was an evolutionary rather than revolutionary step for the ICN. Domestic competition advocacy was a key component of the ICN's work from the outset. Indeed, the Advocacy Working Group was, along with the Merger Working Group one of the ICN's first projects. The working group shared experiences and developed tools for competition agencies to serve as advocates for competition. Its work has included preparing an advocacy toolkit to enhance the capacity of agencies to influence domestic policy, a project on explaining the benefits of competition, developing recommended practices for assessing the competitive effects of existing or proposed policies, and a report on developing a "culture of competition."⁶⁵

ICN member agencies participate in numerous international bodies that deal with economic issues that directly or indirectly involve competition policy – for example, the OECD, UNCTAD, APEC, the G20 and G7, and BRICS – and their governments participate in higher-level discussions on broader economic policy. Over time, the ICN recognized that it had the ability and desire to use its experience in formulating and advocating procompetitive policies to advocate procompetitive policies, including in such international bodies, in the media, and elsewhere.

The ICN thus began to spread its wings in several directions. There were occasions when members' legislatures were considering reforms that involved issues on which the ICN had adopted recommended practices, particularly regarding merger review procedures. When the ICN determined that its intervention would likely be welcome and effective, it submitted letters on behalf of its Steering Group urging that the legislative body enact rules that were consistent with international standards as reflected in the ICN's recommended practices. The ICN also teamed with the OECD on a project to examine international enforcement cooperation,⁶⁶ and with the World Bank on an annual competition advocacy contest⁶⁷ that brings member agencies' work promoting competition policy to an audience of global policymakers.

The challenge to competition policy became particularly acute during the financial crisis that began in 2008. As many governments reacted by diminishing the role of competition policy or even explicitly overriding it,⁶⁸ ICN Chair David Lewis recognized the issue and the ICN's potential role in confronting it:

Competition law ... is the Magna Carta, the fundamental law, of the market system. As such, it cannot be confined to an island where its relationship with every other branch of economic and social policy – particularly with trade and industrial policy – is studiously ignored. And if anybody seriously believed that this was ever possible, then the financial and economic storm that has battered us all since the latter half of 2007 and the policy responses to these events should have put paid to any such illusions. With industrial policy ascendant and protectionism in the air, can we afford

to remain aloof? Must we not rather engage with the concerns of policy makers to ensure that their interventions – many of them necessary – respect and preserve that which is dynamic and creative and democratic in a market system? [W]e can use the forum of the ICN to discuss the appropriate interface of our work with industrial and trade policy and with the social and developmental needs of our citizens.⁶⁹

As the challenges to competition policy mounted during the financial crisis, the ICN put this call to arms into practice by developing and disseminating to its members “The Case for Competition in Difficult Times.” A big step forward for the network, the document was a strong collective statement of how competition has fostered economic growth, how it can aid economic recovery, and how it can support broader government policy objectives.⁷⁰ ICN members used the statement to influence public debate and policy to ensure that competition was properly considered by governments as they dealt with the crisis.

This enhanced role for the ICN was enthusiastically embraced by the ICN’s next Chair, Eduardo Perez Motta, who made it a key theme of his remarks to the ICN’s 2012 annual conference:

The recent global financial crisis showcased ... the importance of embedding competition principles in the broader policy debate at the national and international level. The ICN did important work in supporting its members’ advocacy efforts with products as the *Competition in Times of Crisis* document, but there is no question competition concerns still have, if at all, a rather precarious hold on the minds of most policy makers, locally and globally.

The ICN ... is uniquely placed to supplement local efforts by its members with initiatives to place competition issues on the agenda of national and international (regional or global) organizations and fora. If I am allowed to speak of the Mexican experience, we have found that it is often a matter of reminding policy makers over and over again, linking competition concerns with existing policy goals and providing concrete, easily comprehensible and implementable guidance.

Of course, this is not something that can be achieved easily or fast. But it will not happen spontaneously, nor will somebody else do it for us. I believe it is time for us to start making a concerted effort to push competition as an item on the global policy agenda, by using every opportunity to pitch the idea to anyone with potential impact on that agenda – whether it is members of national administrations with a say in international initiatives or international officials of all levels- and by providing guidance on (fairly) general principles for competition-friendly policy formulation.⁷¹

Perez Motta further elaborated on this theme the following year:

In addition to efforts in our respective domestic spheres, we need also to use our voice in the international arena. Whether with the G20 or B20 or other groups suggested this week, we must seek to promote sound competition policy.... It is my hope that you will individually seek opportunities to promote competition. With your permission, I will work with the ICN’s Steering Group to identify additional ways we can reach a new audience as a network.⁷²

While these proclamations were in speeches to a competition audience, Perez Motta also joined with EC Vice President and Competition Commissioner Joaquín Almunia in an op-ed in a major media outlet entitled, “The Competition Factor,” which appealed to policymakers to include

competition on the economic agenda.⁷³

The ICN had another, recent opportunity to showcase its role as a leading venue for influencing global competition practice through agency-led dialogue and convergence. In 2018, there was a proposal for competition agencies to create a multilateral framework on agency procedures.⁷⁴ The proposal was envisioned as a standalone, non-binding international arrangement to encourage basic procedural fairness principles with the ability to facilitate agency-to-agency consultations. The framework's content was generally non-controversial, as it largely mirrored work on procedural fairness that the ICN and others had been doing. The structure of the proposal, however, was met with opposition because many ICN members viewed creating a new forum as confusing or inefficient, as well as unnecessary given the ICN's near-universal membership, established working procedures, and existing work addressing the substantive topics. For example, EU Competition Commissioner Vestager argued that such initiatives should be accomplished through existing multilateral bodies like the ICN, and a European Commission official summed up this perspective by stating, "For an agency, I would be probably more willing to join an initiative under the umbrella of the ICN, rather than join now a new self-standing initiative where you don't really know where it will end, what are your obligations, what it will mean in terms of resources and so on."⁷⁵

Ultimately, ICN members addressed these reservations about the structure and came together to promulgate the principles through the ICN, which issued the Framework for Competition Agency Procedures (known as "CAP").⁷⁶ The ICN Steering Group "ICN-ized" the proposal by adapting it to its own structure using an opt-in framework for interested participants, an idea pioneered in its Merger and Cartel Working Groups for enforcement cooperation frameworks. For transparency, it added online templates on agency procedures, following models in the Merger and Cartel Working Groups. The CAP's novel agency consultation provisions allowed the ICN to expand its toolbox for encouraging convergence.

The evolution of the proposed framework from a standalone mechanism to being housed in the ICN was a vote of confidence in the ICN and its value to member agencies as a preferred venue for competition agency interaction. It is an example of a mature network reaffirming members' investments and their trust in the ICN's tools and capacity to address multilateral issues. This confidence and maturity can serve as a valuable foundation for the ICN, to the extent it decides to identify and articulate its own voice on specific issues in international policy discussions.

In April 2020, amid the COVID-19 pandemic, the ICN Steering Group again led an initiative to articulate basic, common considerations for its member agencies related to competition law enforcement in times of crisis. The statement "Competition During and After the COVID-19 Pandemic"⁷⁷ recognizes the challenges that competition agencies face to maintain their enforcement missions and reaffirms the importance of maintaining competition to economies in crisis. It urges member agencies to remain vigilant to anticompetitive conduct and supports agency advocacy to promote competition as a guiding principle for economic recovery efforts. The ICN has also used its platform to inform member agencies and share experiences with operational changes and policy statements across the network of competition enforcers throughout the pandemic.

The ICN's first twenty years have laid a firm foundation for the ICN to serve as a global competition advocate. The FTC has been a consistent advocate for the ICN to fulfill this role. The FTC will continue to highlight its importance and to be alert for opportunities for the ICN to perform this critical function, which will serve the interests of consumers in the United States and around the world. With both the need for sound competition policy and the challenges to its role, for example by national industrial policies, greater than ever, it is important that the ICN, as a – many would say the – pre-eminent international competition body, continue to serve as strong voice for competition policy.

Conclusion

It is hard to imagine today's international competition community without the ICN. It is a key connector and facilitator of global antitrust dialog, central to international competition agency interaction. We would have to invent something like the ICN if it did not exist. However, it is easier to imagine if a more modest, less ambitious ICN had developed, in terms of its membership, its active participation, its work product accomplishments, its working procedures, and its voice as competition advocate. The first generation of ICN participants made many choices along the way to invest in and build today's ICN. Their ambitious creativity, stewardship, and enthusiasm pushed the potential of the network far beyond initial expectations. Their vision of an inclusive, active, pragmatic network that addresses the full range of competition agency needs and challenges in a cooperative, aspirational manner gives the ICN the tools, inspiration, and institutional standing for future success. The authors and the FTC Office of International Affairs look forward to another extraordinary 20 years for the ICN.

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- ¹ The authors work together at the Federal Trade Commission (“FTC”), Office of International Affairs (“OIA”). This article represents their views, not necessarily those of the Commission or any Commissioners. This article is a chapter of a forthcoming book of essays: *The ICN@20*, edited by Paul Lugard & David Anderson, reproduced with permission.
- ² Press Release, *U.S. and Foreign Antitrust Officials Launch International Competition Network*, October 25, 2001, available at <https://www.ftc.gov/news-events/press-releases/2001/10/us-and-foreign-antitrust-officials-launch-international>.
- ³ A notable exception is the Chinese competition agency, the State Administration for Market Regulation, which has declined to join.
- ⁴ Ulf Boge, ICN Chair, Closing Speech, ICN 4th Annual Conference (2005).
- ⁵ ICN Operational Framework 2(i) (2001), “A member of the ICN is a national or multinational competition agency entrusted with the enforcement of competition law(s) or a competition agency of a customs territory entrusted with the enforcement of competition law(s) throughout the customs territory,” available at <https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/07/ICNOperationalFramework.pdf>.
- ⁶ See ICN Operational Framework, 6. Non-Governmental Advisors at 6-7, *supra* note 5.
- ⁷ New and young agencies have regularly hosted ICN events, such as working group workshops and the ICN’s annual conference, bringing an important voice to the organization and content of such events. For example, agencies in Morocco, Botswana, Ukraine, El Salvador, India, Poland, Mauritius, Colombia, Czechia, Panama, Singapore, and Turkey have all hosted ICN events.
- ⁸ The ICN’s Vision for its Second Decade (2011), available at <https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/07/ICN2dDecade2011.pdf>.
- ⁹ A statement by Andreas Mundt, President of the Bundeskartellamt, ICN Chair (2013), available at <https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/07/ICNSGMundtVision.pdf>.
- ¹⁰ *Ibid.* p. 3.
- ¹¹ *Ibid.*
- ¹² ICN Report, Lessons to be Learnt from the Experiences of Younger Competition Agencies (2006) available at <https://www.internationalcompetitionnetwork.org/portfolio/lessons-learned-from-the-experience-of-young-competition-agencies/>.
- ¹³ ICN Report, Lessons to be Learnt from the Experiences of Younger Competition Agencies, An Update to the 2006 Report (2019) available at https://www.internationalcompetitionnetwork.org/wp-content/uploads/2019/06/SGVC_YoungerAgenciesReport2019.pdf.
- ¹⁴ ICN Training on Demand, Developing Countries and Competition, available at <https://www.internationalcompetitionnetwork.org/training/developing-countries-and-competition/>.
- ¹⁵ ICN Training on Demand, Advice for New and Young Competition Agencies, available at <https://www.internationalcompetitionnetwork.org/training/advice-for-new-and-young-competition-agencies/>.
- ¹⁶ See for example, <https://www.internationalcompetitionnetwork.org/about/>; Paul Lugard (ed.): *The international competition network at ten. Origins, accomplishments and aspirations* (2011).
- ¹⁷ For example, the OECD’s Competition Committee and related Working Parties, the U.N. Conference on Trade and Development International Group of Experts on Competition Law and Policy. Recognizing the benefits of direct member engagement, the permanent secretariats of these groups also have developed new working approaches for selected projects that promote direct engagement of small groups of interested agencies between meetings.
- ¹⁸ For an excellent assessment of ICN’s consensus process and how it has helped to promote convergence, see Hugh M. Hollman & William E. Kovacic, *The International Competition Network: Its Past, Current and Future Role*, Minnesota Journal of International Law, Vol. 20, p. 274, 2011.
- ¹⁹ David Lewis, ICN Chair, Introductory Address to 2009 ICN Conference, June 3, 2009 at 5, available at <https://www.internationalcompetitionnetwork.org/wp-content/uploads/2020/01/SpeechChairIntroLewis2009.pdf>.
- ²⁰ See current compendium of ICN work product, ICN Work Product Catalog available at <https://www.internationalcompetitionnetwork.org/wp-content/uploads/2019/11/ICNWPCatalog9-2019.pdf>.
- ²¹ See <https://www.internationalcompetitionnetwork.org/working-groups/> for further information on the ICN’s working groups.
- ²² Agencies and individuals unable to participate in the ICN’s day-to-day work still benefit from ICN work product, which is available free-of-charge, on the ICN’s website, and the network, including discussion of work product and issues with experts from around the world either remotely or via participation in the ICN’s annual conference.
- ²³ See Cynthia Lewis-Lagdameo, *Climbing Mount Everest with the ICN Unilateral Conduct Working Group*, Competition Policy International, November 2012, available at <https://www.competitionpolicyinternational.com/assets/Uploads/ICN-11-27-2012-3.pdf>; and Paul O’Brien, *Procedural Fairness: Convergence in Process*, Competition Policy International Antitrust Chronicle, November 2018, available at https://www.ftc.gov/system/files/attachments/key-speeches-presentations/obrien_-_procedural_fairness_convergence_in_process_cpi_11-18.pdf.
- ²⁴ See ICN Training on Demand Project, available at <https://www.internationalcompetitionnetwork.org/training/>.
- ²⁵ ICN Operational Framework 1(i), *supra* note 5.
- ²⁶ *Ibid.* at 1(iii) Mission and Activities.
- ²⁷ *Ibid.* at 1(vi)(emphasis added).
- ²⁸ David Lewis, *supra* note 18 at 2.
- ²⁹ *Ibid.*
- ³⁰ *Ibid.*

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- ³¹ ICN'S Vision for its Second Decade, *supra* note 8 at 2.
- ³² ICN Statement of Achievements (2001-2013) at 14-15.
- ³³ ICN Merger Notification and Review Procedures (2002-2018), available at <https://www.internationalcompetitionnetwork.org/portfolio/merger-np-recommended-practices>. The project and group that produced the ICN's N&P recommendations were led by the FTC.
- ³⁴ ICN Report on Implementation of the Recommended Practices for Merger Notification and Review Procedures (2005) available at <https://www.internationalcompetitionnetwork.org/portfolio/implementation-of-the-merger-notification-and-review-procedures-rps>.
- ³⁵ ICN Merger Notification Implementation Handbook (2006), available at https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/05/MWG_NPImplementationHB.pdf.
- ³⁶ ICN Merger Notification and Procedures Self-Assessment Tool (2011) and ICN Merger Analysis Self-Assessment Tool (2019).
- ³⁷ ICN Training on Demand, *supra* note 23.
- ³⁸ Eduardo Pérez Motta Chairman, ICN Chair, Closing Remarks for the International Competition Network's Eleventh Annual Conference (April 20, 2012) at 4, available at <https://www.internationalcompetitionnetwork.org/wp-content/uploads/2020/01/SpeechChairMottaclosing2012.pdf>.
- ³⁹ *Ibid.*
- ⁴⁰ The ICN's Vision for its Second Decade, *supra* note 8 at 4-5.
- ⁴¹ John Fingleton, ICN Chair, The ICN's Vision for its Second Decade, Speech (May 18, 2011) at 5, available at <https://www.internationalcompetitionnetwork.org/wp-content/uploads/2020/01/SpeechChairFingleton2011.pdf>.
- ⁴² The ICN's Vision for its Second Decade, *supra* note 8 at 5.
- ⁴³ Andreas Mundt, *supra* note 9 at 4.
- ⁴⁴ *Ibid.* at 2.
- ⁴⁵ The three ICN Frameworks: for Merger Review Cooperation (2012), for Promotion of Sharing Non-Confidential Information for Cartel Enforcement (2016), and for Competition Agency Procedures (2019), are available at <https://www.internationalcompetitionnetwork.org/frameworks/>.
- ⁴⁶ Recommendation of the OECD Council on Merger Review (2005), available at <https://www.oecd.org/daf/competition/mergers/40537528.pdf>.
- ⁴⁷ For the best overview of all of the ICN's work product, see the ICN Work Product Catalog, available on the ICN's homepage and regularly updated, *supra* note 19.
- ⁴⁸ See the OECD/ICN Questionnaire and Report on International Enforcement Cooperation (2013) available at <https://www.internationalcompetitionnetwork.org/working-groups/icn-operations/cooperation/> and Report on 2011 ICN Roundtable on Enforcement Cooperation (Washington DC, 2011) available at <https://www.internationalcompetitionnetwork.org/portfolio/report-on-2011-cooperation-roundtable/>; ICN Recommended Practices for Investigative Process (2019) available at <https://www.internationalcompetitionnetwork.org/portfolio/recommended-practices-for-investigative-process/>; and Report on ICN Roundtable on Competition Agency Investigative Process (Washington DC, 2014) available at https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/09/AEWG_RoundtableReportInvestigativeProcess.pdf.
- ⁴⁹ See list of, and links to, ICN Recommended Practices available at <https://www.internationalcompetitionnetwork.org/working-groups/icn-operations/icn-recs/>.
- ⁵⁰ ICN Anti-Cartel Enforcement Manual (2008-2019) available at <https://www.internationalcompetitionnetwork.org/working-groups/cartel/investigation-enforcement/>.
- ⁵¹ ICN Investigative Techniques Handbook for Merger Review (2005) available at https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/05/MWG_HBInvestigativeTechniques.pdf.
- ⁵² ICN Unilateral Conduct Workbook (2011-2017) available at <https://www.internationalcompetitionnetwork.org/working-groups/unilateral-conduct/investigation-analysis/>.
- ⁵³ ICN Competition Agency Practice Manual (2010-2017) available at <https://www.internationalcompetitionnetwork.org/working-groups/agency-effectiveness/agency-operations/>.
- ⁵⁴ See ICN Work Product Catalog available on the ICN homepage for a full list of ICN reports, too numerous to list here, *supra* note 19.
- ⁵⁵ ICN Market Studies Information Store available at <https://www.internationalcompetitionnetwork.org/working-groups/advocacy/market-studies/market-studies-information-store/>.
- ⁵⁶ ICN Cartel Templates available at <https://www.internationalcompetitionnetwork.org/working-groups/cartel/templates/>; ICN Merger Templates available at <https://www.internationalcompetitionnetwork.org/working-groups/merger/templates/>; ICN CAP agency process templates available at <https://www.internationalcompetitionnetwork.org/frameworks/competition-agency-procedures/cap-templates/>.
- ⁵⁷ ICN Benefits Project Online Resource available at <https://www.internationalcompetitionnetwork.org/working-groups/advocacy/benefits-of-competition/>.
- ⁵⁸ ICN Advocacy Toolkits available at <https://www.internationalcompetitionnetwork.org/working-groups/advocacy/other-advocacy-work/>.
- ⁵⁹ ICN Leniency Links available at <https://www.internationalcompetitionnetwork.org/working-groups/cartel/leniency/leniency-links/>.

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- ⁶⁰ ICN Market Studies Good Practice Handbook available at <https://www.internationalcompetitionnetwork.org/working-groups/advocacy/market-studies/>.
- ⁶¹ ICN Training of Demand, *supra* note 23.
- ⁶² See Press Release on ICN launch, *supra* note 2.
- ⁶³ ICN merger notification work available at <https://www.internationalcompetitionnetwork.org/working-groups/merger/notification/>.
- ⁶⁴ For example, ICN Handbook on Investigative Techniques for Merger Review, *supra* note 50, and ICN Anti-Cartel Enforcement Manual, *supra* note 49.
- ⁶⁵ See ICN Advocacy Working Group available at www.internationalcompetitionnetwork.org/working-groups/advocacy/.
- ⁶⁶ OECD/ICN joint project available at <https://www.oecd.org/competition/oecd-icn-international-cooperation-survey.htm>.
- ⁶⁷ World Bank/ICN Competition Advocacy Contest available at <https://www.worldbank.org/en/events/2019/11/11/2019-2020-competition-advocacy-contest>.
- ⁶⁸ See, for example, Adrian Croft, UK clears Lloyds TSB takeover of HBOS, Reuters (October 31, 2008) available at <https://www.reuters.com/article/lloyds-hbos/update-2-uk-clears-lloyds-tsb-takeover-of-hbos-idUSLV42573620081031>; and Michael Reynolds, Sarah Macrory & Michelle Chowdhury, EU Competition Policy in the Financial Crisis: Extraordinary Measures, Fordham International Law Journal, Vol. 33, Issue 6 (2001) available at <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2218&context=ilj>.
- ⁶⁹ David Lewis, *supra* note 18
- ⁷⁰ ICN, The Case for Competition in Difficult Times (2009) available at <https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/07/ICNSGCase4competition.pdf>
- ⁷¹ Eduardo Perez Motta *supra* note 37 at 4-5.
- ⁷² Eduardo Perez Motta, ICN Chair, Closing Speech to ICN Conference (April 26, 2013) available at <https://www.internationalcompetitionnetwork.org/wp-content/uploads/2020/01/SpeechChairMottaclosing2013.pdf>.
- ⁷³ Joaquin Almunia & Eduardo Perez Motta, The Competition Factor (April 25, 2013) available at <https://www.project-syndicate.org/commentary/how-pro-competition-policies-can-boost-economic-recovery-by-joaquin-almunia-and-eduardo-p-motta?barrier=accesspaylog>.
- ⁷⁴ Makan Delrahim, Remarks on Global Antitrust Enforcement at the Council on Foreign Relations (June 1, 2018) available at <https://www.justice.gov/opa/speech/assistant-attorney-general-makan-delrahim-delivers-remarks-global-antitrust-enforcement>.
- ⁷⁵ Michael Acton, *US global antitrust initiative runs into EU skepticism, but DOJ vows to push ahead*, Mlex (November 12, 2018).
- ⁷⁶ ICN Framework for Competition Agency Procedures, *supra* note 44.
- ⁷⁷ ICN Steering Group Statement: Competition during and after the COVID-19 Pandemic” available at <https://www.internationalcompetitionnetwork.org/featured/statement-competition-and-covid19/>.