



**International
Competition
Network**

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2018-2019**

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Section I: Working Groups

Advocacy Working Group

The mission of the Advocacy Working Group ([AWG](#)) is to improve the effectiveness of ICN members' advocacy activities in advancing the adoption of competition principles in government and promoting the development of a competition culture within society through the development of practical tools and guidance, and the facilitation of experience sharing among ICN member agencies. During the 2018-2019 ICN year, by the Hong Kong Competition Commission, the Norwegian Competition Authority and the Competition and Consumer Commission of Singapore were the co-chairs of the AWG. The AWG has been engaged in the following main activities:

- the Strategy Project;
- the Market Studies Project;
- the Advocacy and Digital Markets Project; and
- the Competition Advocacy Contest Project.

The AWG's work on dissemination, implementation and outreach is also reported below.

Strategy Project

This multiple-year project aims to encourage experience-sharing among the AWG Members on the different approaches and steps that can be taken to plan, design, monitor and assess an overall advocacy strategy in an effective manner. In 2018-19, the project team organized a telesminar dedicated to this topic which was then further discussed in-depth at the plenary as well as breakout sessions in the 2019 Advocacy Workshop. In 2019, the project team aims to provide a collection of case studies to be presented by agencies. These case studies will offer a deeper look into how a specific competition agency formulates its overall advocacy strategy and evaluates the advocacy efforts. Given that the illustration of a high-level advocacy strategy could sometimes be abstract to be understood, the project team also invites each agency to select one of its major advocacy programs to illustrate its case study of strategy. In brief, the case-study will be composed of two parts: Part 1 *Overall Advocacy Strategy* – which illustrate an individual competition agency's overall advocacy strategy is formulated and how the advocacy efforts are evaluated; Part 2 *Major Advocacy Program* gives an detailed account of a selected advocacy program of which the specifics could help support and elaborate on an agency's formal strategy/ informal process as well as evaluation efforts. To assist Member Agencies in preparing their case-study, the project team prepares a list of guiding questions which would guide them through the submission write-up. The team has been working to garner more support and submissions from Member Agencies, and will be sharing them at the Working Group's webpage once ready.

Competition Assessment

With respect to the competition assessment workstream, the AWG has in 2018-19 focused particularly on approaches to ex officio identification of candidates for competition assessment. This is reflected in this being the topic for a December 2018 AWG Teleseminar, and one of the issues explored at the AWG Workshop in Kyiv. Combined with member input and new and updated OECD material, the experiences presented at these events will be used to update previous work by the AWG in this area, i.e. Recommended Practices on Competition Assessment (2014) and Framework of Competition Assessment Regimes (2015).

Advocacy and Digital Markets Project

Digital markets have grown significantly in recent years. The rapid growth of digital markets has significantly transformed markets' characteristics and their competitive dynamics. Digital markets often involve more complicated competition issues involving multi-sided markets, platform-based models and network effects. This has resulted in many competition authorities looking deeper into how they assess competition and whether the available assessment tools are suitable and sufficient to cope with the changing competitive landscape. Related to this change is the need for competition authorities to continue to review and revise their advocacy strategies, and to understand the new technologies and business practices to ensure that competition policy objectives can be met.

In view of this, the ICN Advocacy Working Group (AWG) gathered information on competition authorities' advocacy efforts in digital markets, and the changes to the advocacy efforts made by competition authorities for the digital markets, as compared to their traditional advocacy efforts. The aim was to encourage experience sharing and discussion among ICN Members on their recent experiences in conducting competition advocacy in digital markets. A report was produced on the 22 experiences received from competition authorities from 16 jurisdictions which includes the objectives and reasons for their advocacy effort in digital markets, the advocacy strategies/tools used, the differences between their advocacy strategies and approaches in digital markets as compared to other advocacy efforts, and the methods used to monitor and assess their advocacy efforts in digital markets.

ICN – World Bank Group Competition Advocacy Contest 2018-2019

The Contest Project aims to highlight the key role competition agencies play in promoting competition by showcasing their advocacy success stories. In 2018 the ICN and the World Bank Group launched the [2018-2019 Competition Advocacy Contest](#), following the successful [2017-2018 edition](#). The 2018-2019 edition was focused on "Pro-competition solutions for complex global challenges: From the battle against corruption

to digital inclusion”. The winners, whose stories will be announced at the 2019 ICN Annual Conference in Cartagena, Colombia, will be invited to present their stories at an ICN-World Bank Group event and be featured in a joint publication.

Implementation, dissemination and outreach

The AWG has undertaken various initiatives to disseminate and implement AWG work products. The AWG organized two teleseminars for the 2017-2018 period. The first teleseminar was held on October 5, which sought to present innovative tools used by competition agencies in their advocacy work. The second teleseminar was held on December 14 and focused on market studies in innovation-based and novel markets. The market studies teleseminar took a novel approach, using a hypothetical scenario based on the payment services market. The panelists discussed various issues raised by the hypothetical scenario which competition agencies may need to consider when conducting a market study in an innovation-based market. Breakout sessions at the ICN Annual Conference were designed to allow the discussion and implementation of AWG work product in small group discussions. As part of a continued constructive dialogue with the OECD on the topic of market studies, the AWG co-chairs invited the OECD Secretariat to participate in the webinar on market studies in innovative markets in December 2017.

Agency Effectiveness Working Group

The mission of the Agency Effectiveness Working Group ([AEWG](#)) is to identify key elements of an effective and efficient competition agency and develop best practices for agency strategy, planning, operations, and investigative tools and procedures. The AEWG's work explores a variety of factors that affect how competition agencies achieve their objectives in an efficient and effective way.

The Working Group leadership team for 2018-21 includes the Canadian Competition Bureau, the Competition Commission of India and the Swedish Competition Authority.

The AEWG has three areas of focus during 2018-2019:

1. Organizational design
2. The role of chief/senior economists for effective enforcement
3. Procedural fairness/due process and transparency

In addition, the AEWG has an ongoing activity on the [ICN's Training on Demand](#) (ITOD) project.

Organizational design

Competition agencies make and have control over various organizational design options. Decisions in this regard can have a significant impact on agency effectiveness. The goal of Organizational Design project is to present the range of internal organizational design choices agencies have implemented and explore different structural and non-structural mechanisms that can be implemented to offset or address the trade-offs that derive from different structures. Different structures and more fluid process choices, such as case selection and tools for internal scrutiny are correlated, and the interaction between them can have a strong impact on the outcomes in terms of agency effectiveness. The Organizational Design Report will be added as a new chapter of the AEWG's ICN Agency Practice Manual.

The Role of Chief/Senior Economists for Effective Enforcement

This project is focused on increasing the involvement of Chief/Senior Economists and NGAs within the ICN to further develop and emphasize the importance of economics in competition analysis.

Planned output of the project will be an examination and comparative overview on how economics and economists participate in agencies' internal investigative and decision making processes, as well as what economics-focused subject areas are of most interest and value to participants.

In 2016-2017, we conducted a survey of agencies to determine how economists participate within agencies and what economics-focused subject areas are of most interest and value to participants.

In 2018-2019, we will build off the results of that survey and feedback received from the AEWG to organize an Economist Workshop in which information and best practices are shared, case examples are discussed, and economists from agencies around the world can network to support the importance of economics in competition analysis. In addition, the AEWG plan to hold a series of teleseminars on related and relevant topics.

Procedural fairness/due process and transparency

For several years, the AEWG has been the home to some of the most innovative consensus-building work on due process in competition law enforcement anywhere. In 2015, the AEWG's multi-year project on competition agencies' investigative processes culminated with the ground-breaking accomplishment of the ICN guidance on investigative process: recommendations on investigative tools, transparency, engagement, and confidentiality that promote fair and informed enforcement. In 2017-18, the AEWG added to ICN's status as strong due process proponent with a successful trifecta of new work: 1) a statement of Guiding Principles for procedural fairness in competition law enforcement, 2) an addition to the ICN guidance recommendations addressing internal agency procedural checks and balances, and 3) a new work product format: an annotated version of the ICN guidance on investigative process with implementation tips.

In 2019, the procedural fairness work achieves ICN's highest level of recognition, by redesignating the Guidance as "Recommended Practices" or RPs. The refreshed text incorporates some changes appropriate for the RP format, with much of the original consensus Guidance text intact. The RPs provide a common framework of high-level procedural fairness practices that ICN members have agreed should inform and guide enforcement process. They serve as a universal frame of reference for appropriate enforcement process.

The ICN's 2019 accomplishment of Recommended Practices related to due process in competition law enforcement puts it at the forefront of international thinking and aspirational standard setting on these important topics. The AEWG thanks the dozens of agencies and non-governmental advisors that contributed to the due process work since 2015.

ICN Training on Demand Project

No ICN project has done more to promote ICN work across the full range of topics and deliver more entertainment value doing so, than the [ICN's Training on Demand](#) (ITOD) project. The mission of the ITOD is to create a comprehensive curriculum of training materials to serve as a virtual university on competition law and practice for competition

agency officials. The Project is led by the US FTC and a dedicated Project Group that includes representatives from each ICN Working Group and additional interested members and NGAs. The project engages the skills and talents of ICN members and NGAs, particularly academics, to provide a valuable new resource to build capacity and to strengthen competition policy and enforcement. Training modules, consisting of video lectures and accompanying ICN materials, provide an on-line educational centre for competition authorities and others in the competition community from around the world. The modules promote ICN work products and incorporate ICN members' experiences.

In 2018-19, the ITOD project created new modules on international cooperation and merger remedies. It also continues to improve its offerings of viewing formats, translations, and links to additional ICN work that enhance the usability and usefulness of the modules. The SG also approved a "certificate program" for the ITOD to recognize and incentivize comprehensive viewing. Agency staff that view complete series of modules can obtain a certificate to recognize the work.

Other AEWG Updates

Expert Calls

In its ongoing quest to provide compelling discussion topics, AEWG organize call series on engaging topics for member experience sharing and to scope potential topics for additional WG work.

Cartel Working Group

The ICN Cartel Working Group ([CWG](#)) brings together antitrust enforcers to address the challenges of anti-cartel enforcement, enhancing the ability to eliminate both domestic and international cartels. The CWG aims at reducing obstacles that antitrust agencies face in deterring and detecting cartels through the examination of important legal and policy issues and the exchange of effective investigative techniques. For the 2018-19 ICN year, the CWG was co-chaired by the DG Competition of the European Commission (DG Comp), the French Autorité de la Concurrence and the Brazilian Conselho Administrativo de Defesa Econômica (CADE).

The CWG consists of two subgroups:

- *Sub Group 1 (SG1): Legal Framework* addresses legal and conceptual challenges of anti-cartel enforcement. The focus of the subgroup is examining policy-level issues of the institutional and investigative framework for the detection and punishment of hard-core cartel conduct. In 2018-19 SG1 was co-chaired by the Turkish Competition Authority (Rekabet Kurumu) and the Hungarian Competition Authority (GVH).
- *Sub Group2 (SG2): Enforcement Techniques* aims at improving the effectiveness of anti-cartel enforcement by identifying and sharing specific investigative techniques and advancing the education and information sharing agenda of the CWG. In 2018-19 SG2 was co-chaired by the Netherlands Authority for Consumers and Markets (ACM) and the Russian Federal Antimonopoly Service (FAS).

SG1: Legal Framework

Good Practices for Incentivising Leniency Applications

SG1 completed the “Good Practices for Incentivising Leniency Applications” project. The project built on the findings of the project of the previous ICN year on “Key Elements for an Efficient and Effective Leniency Programme and its Application” which summarised the replies received in the autumn of 2017 from 34 competition agencies and 43 NGAs, which represented 19 jurisdictions. In 2018, a supplementary questionnaire was distributed to explore the interaction between competition enforcement and other regulatory intervention. This additional survey was answered by 29 Competition Agencies and 19 NGAs representing 13 jurisdictions. The findings of the project highlighted the interaction between leniency and private enforcement, leniency and individual sanctions and competition enforcement and other regulatory intervention and drew up numerous good practices for incentivising leniency applications.

Webinars

The SG1 webinars facilitate exchanges of experiences, sharing of ideas and knowledge about specific enforcement and policy efforts in other jurisdictions. Over the 2018-2019 working year, SG1 held five webinars on the topics of 1) Digital cases and algorithms; 2) Information sharing gateways and international assistance in information sharing; 3) Compliance; 4) Leniency incentives and disincentives; and 5) Cooperation between competition agencies and public procurement authorities. Three further webinars were organised with “Asia Pacific friendly” timing, one by the Hong Kong Competition Commission on the topic of 4) Leniency incentives and disincentives and two by the Japanese FTC on the topics of 1) Digital cases and algorithms and 5) Cooperation between competition agencies and public procurement authorities.

SG 2: Enforcement Techniques

Anti-Cartel Enforcement Manual Chapter on “Development of Private Anti-Cartel Enforcement”

The SG 2 Co-Chairs together with a drafting team of agency officials and NGAs from nine jurisdictions completed the Manual’s new Chapter on “Development of Private Anti-Cartel Enforcement.” The new Chapter includes sections on the interplay between private and public enforcement (including the role of courts), limits to disclosure of evidence and to liability, institutional preconditions for development of private anti-cartel enforcement, collective redress mechanisms, quantification of harm and other cornerstone issues related to development of private anti-cartel enforcement.

ICN Cartel Workshop 2018

The Cartel workshop in Tel Aviv, Israel from 15 – 18 October 2018 was highly successful. There were over 200 ICN members from 45 jurisdictions in attendance. The Israel Antitrust Authority was assisted by the Netherlands ACM and the European Commission and the Russian authority in the preparations. The IAA's team put together an excellent three-day programme under the title: ‘How to crack a cartel step by step’. The workshop was organised using a themed approach; intelligence first, followed by investigation and finishing with legal deterrence on day 3. These themes dovetailed very well with the topics we focus on within the Cartel Working Group. One of the more innovative aspects of this year’s Cartel workshop is that the hosting authority kindly providing us access to a practical exercise. This ran parallel to the regular sessions and provided the opportunity to get some real hands-on training in the work of interviewing and investigation.

Further development of a framework for the promotion of sharing of non-confidential information

During 2018-19, SG2 continued to develop and implement a framework for the promotion of sharing of non-confidential information. This framework is intended to assist competition agencies in knowing how to, and whom to, contact in international counterpart agencies when seeking non-confidential information. As of February 2018, more than 50% of CWG members had registered their participation. The CWG will continue to support and promote the Framework in 2018 - 19.

Update to Anti-Cartel Enforcement Templates

During 2017-18, SG2 continued the process of updating the Anti-Cartel Enforcement Templates, which provide public access to information about ICN members' anti-cartel enforcement regimes. The templates cover a range of topics, including the process for filing a complaint, decision-making, sanctioning cartel conduct, investigative tools, leniency, rights of defendants and confidentiality. Currently 34 templates are uploaded on the ICN website. In the past ICN year, two new templates were added and five existing templates were updated.

Big data and cartels: The impact of digitalization in cartel enforcement

This project involves drafting a scoping paper on current relevant issues based on the activities the CWG work stream conducted in 2018-2019. The project may lead to the update of one or several chapters of the Anti-cartel enforcement manual in the work year 2019-2020. The scoping paper aims at identifying the main challenges raised by big data in cartel enforcement. The first part of the paper analyzes data as a vehicle for collusion, and the second part focuses on data as a tool for cartel detection.

Merger Working Group

The Merger Working Group ([MWG](#)) is ICN's oldest and most accomplished working group. Its collaborative work promotes effective merger review and facilitates procedural and substantive convergence. For 2018-2019, the Japan Fair Trade Commission, the UK CMA, and the U.S. FTC led the MWG, with participation from over 60 member agencies and scores of non-governmental advisers from 36 jurisdictions.

2018-19 was another active year for the MWG, with the awaited policy workshop in November 2018 after two training-style workshops in 2017; the comparative case studies of vertical mergers following the member survey in 2017-2018; new enforcement cooperation tools to promote ICN Framework for Merger Review Cooperation based on members' survey; and a successful, well-attended regional seminar series on retail mergers.

Vertical Mergers

In 2018-19, the MWG, led by the CMA, continued the work started in 2017-18 about vertical merger analysis. Building on the ICN Vertical Mergers Survey Report produced in 2018 - which provided a comparison of NCAs' guidelines and practices in vertical merger analysis - the MWG conducted a comparative study of the assessment of three multijurisdictional vertical mergers (Essilor/Luxottica, Broadcom/Brocade and Ticketmaster/Live Nation) by different NCAs. The MWG reported the results of this analysis and the main findings were that: (i) in addition to the generally established theories of harm based on input and customer foreclosure, information sharing was a common source of vertical concerns in these mergers; (ii) it appears that most NCAs follow the ability, incentive and effect framework, even if not explicitly outlined as such in the decision; and (iii) consistent with the findings of the ICN's 2018 survey, behavioral remedies seem to be attractive to NCAs faced with vertical theories of harm. By facilitating the understanding of the approaches taken by different NCAs in the assessment of vertical theories of harm, this study may promote further cooperation in the future.

Merger Seminar Series

The MWG, led by the CMA, has organised a number of regional calls to discuss how competition authorities approach certain aspects of retail merger assessments, ie the most recent developments, main types of evidence used, the tools for assessing a large number of local areas and the assessment of online and offline restraints. To that end, four calls were held in different regions with three to five authorities participating in each call listed below.

- Africa: the Competition Commission of South Africa (Chair) and the competition authorities of Botswana, Mauritius, Zambia and Kenya.
- Australasia: the Japanese FTC (chair) and the competition authorities of Australia, Singapore and the Philippines.
- Europe: the UK Competition and Markets Authority (chair) and the competition authorities of France, Norway, Poland and Portugal
- Americas: the US FTC (chair) and the competition authorities of Canada and Brazil.

Enforcement Cooperation Tools

To further promote international cooperation in merger review reflecting the creation of [Practical Guide to International Enforcement Cooperation in Mergers](#) in 2015-2016 and the revision of languages for [Recommended Practices](#) on interagency enforcement cooperation in 2017-2018, the MWG considered ways to further promote enforcement cooperation in 2018-2019.

As an international cooperation tool, the MWG maintains the Framework for Merger Review Cooperation (“Merger Cooperation Framework”) since 2012. The MWG conducted a survey for gathering experiences of using the Framework and exploring improvements. The results of the survey suggest that promoting how to register and how to use the Framework could raise the awareness and increase the use of it. Based on the survey results, the MWG created three cooperation tools; a “Flyer” for raising members’ awareness of the Framework, practical document on “Types of Information” that can be exchanged in the merger review cooperation, and “Information Request Form” for improving user friendliness in making initial contacts.

2018 Merger Workshop

The MWG organizes the longest running and most innovative series of training and policy discussion workshops. The fifteenth workshop took place in November 2018 in Tokyo under the theme [“Merger Review in the 2020s: Do Digitalization and Globalization Change the Analysis?”](#), hosted by Japan Fair Trade Commission (“JFTC”) and over 200 participants from about 40 jurisdictions attended. During the workshop, representatives of each jurisdiction shared many case examples related to the theme and introduced how they were dealing with recent challenges in the digitalized and globalized economy.

Framework for Merger Review Cooperation

In addition to the new tools mentioned above, the MWG continues to maintain the [Merger Cooperation Framework](#). The Framework provides contact details of agency

liaison officers to facilitate information exchange between cooperating agency case teams. The JFTC administers the Framework. As of April 2019, 59 competition authorities have joined the Framework. Based on the results of the survey and the creation of the new tools, the MWG will continue to maintain and further promote it.

Unilateral Conduct Working Group

The Unilateral Conduct Working Group ([UCWG](#)) was established at the fifth annual ICN conference in May 2006. Its primary objectives are to examine the challenges involved in analyzing unilateral conduct of dominant firms and firms with substantial market power, facilitate greater understanding of the issues involved in analyzing unilateral conduct, and promote convergence and sound enforcement of laws governing unilateral conduct. For the 2018-2019 ICN year, the Australian Competition and Consumer Commission, the Italian Competition Authority and the South African Competition Commission co-chaired the UCWG.

Vertical Restraints Project

In 2016 the UCWG established a project examining the effects on competition of vertical restraints. This multi-year project seeks to promote increased understanding where differences in standards arise, and facilitate convergence wherever possible. In 2017 and 2018, the UCWG developed a series of hypothetical vertical restraint scenarios which were examined for their possible effect on competition and potential resulting efficiencies. A project group of ICN members and NGAs provided individual/jurisdictional-specific responses for each of the hypothetical scenarios. This has allowed the UCWG to highlight commonalities and divergent factors in the assessment of the vertical restraints scenarios around the world.

At the 2019 Annual Conference in Cartagena, the UCWG will present the findings from the assessments of the hypothetical scenarios, and will draw out some of the more controversial issues in a debate style break out session. Building on the discussions at the 2019 Annual Conference, in 2019-2020 the UCWG will look to finalise the project by producing guidance material for agencies to assist in dealing with vertical restraints. This could include a combination of webinars, online training modules, or a workbook chapter.

2018 Unilateral Conduct Workshop

The Competition Commission of South Africa hosted the seventh ICN Unilateral Conduct Workshop in Stellenbosch on 1-2 November 2018. Over 162 delegates participated in the Workshop, representing 33 jurisdictions. The event focused on two key themes: how should competition agencies deal with excessive pricing (if at all), and applying the ICN recommended practices to different types of unilateral conduct, namely predatory pricing, exclusive dealing, and loyalty discounts/rebates. The Workshop also offered practical, hands-on breakout sessions, based on hypothetical scenarios relating to these themes. The relevant materials can be found here: <http://icnuniconductsa18.co.za/>

Webinars

The Working Group held three webinars, the first looking at how to address competition issues (namely unilateral conduct) in highly regulated industries. The second webinar examined old and new challenges in the assessment of dominance, while the final webinar for the year looked at unilateral conduct and intellectual property/standard-essential patents.

Section II: Steering Group Initiatives

In the last ICN year 2018/2019 the ICN Steering Group focused on:

- ICN Framework on Competition Agency Procedures (CAP);
- Communication, including a new website, social media and the ICN newsletter;
- Engagement particularly of younger agencies and from different world regions;
- Implementation through the Advocacy and Implementation Network and
- NGA engagement.

ICN Framework on Competition Agency Procedures (CAP)

On April 3, 2019, the ICN Steering Group members approved the ICN Framework on Competition Agency Procedures (CAP). The CAP is an “opt-in” framework, open to all competition agencies, aimed as an implementation tool to advance basic fairness principles among all competition authorities. While the CAP is inspired by ICN members and is supported by its resources, its implementation structure allows for additional cooperation among participants and is open to competition agencies that are not ICN members as well.

The creation of the CAP, bringing together prior consensus principles and new implementation tools, illustrates the close collaboration within the international competition community and the level of support, confidence and trust placed in the ICN.

The ICN has long recognized the importance of fair and effective procedures. Its 2003 and 2004 Recommended Practices for transparency and procedural fairness during merger review were the first international consensus principles on the topic. In 2015, the ICN approved its agency Guidance on Investigative Process. In 2018, three additional, procedural fairness related work products followed, and at the 2019 ICN Annual Conference, the ICN will present Recommended Practices for Investigative Process.

The CAP distills basic principles on procedural fairness, which reflect a broad consensus among competition agencies. The CAP adds a cooperation process whereby participating agencies can engage in dialogues to better understand each other’s processes. The framework also includes transparency provisions allowing participants to publish their procedural rules. The CAP also borrows its “opt-in framework” concept from prior ICN frameworks that promote enforcement cooperation in cartels and mergers. This extends similar, additional cooperation assurances among participating competition agencies to sound agency process principles.

Vice-Chair for Communications

During the 2018-19 ICN year, the ICN Vice-Chair for Communications, Mr. Toh Han Li, Chief Executive of the Competition and Consumer Commission of Singapore (CCCS), initiated a study to examine the participation of ICN Members at ICN events. The objective of the study was to support the ICN Steering Group's and Working Groups' efforts in increasing engagement with ICN members in jurisdictions that are less represented in ICN events, and to enable ICN members in these jurisdictions to benefit more from ICN events. The study was based on data collected on event participation of 4 ICN Annual Conferences and 15 ICN Workshops between Jan 2015 and Mar 2019. It also drew from insights gained from the ICN second decade survey to better understand participation rates at ICN events. The findings of this study will be shared with the ICN Steering Group and the Work Group Co-chairs. The ICN Vice-Chair for Communications also plans to conduct a survey among ICN members to look into ways of increasing participation at ICN events and how to further enhance communication channels within ICN.

To reach out to the ASEAN region and encourage greater participation in ICN activities, the Vice-Chair for Communications also partnered the ICN's Promotion and Implementation team to organise the ICN workshop on business compliance in Singapore in Oct 2018.

Vice-Chair for Young Agencies and Regional Diversity

During the 2018-19 ICN year, the Vice-Chair for Young Agencies and Regional Diversity, Ms. Alejandra Palacios Prieto, Chairwoman of the Mexican Federal Economic Competition Commission (COFECE) proposed updating the ICN Report published in 2006 entitled *Lessons to be Learnt from Experiences of Young Competition Agencies*¹. Understanding the challenges authorities' face in their first years of competition enforcement and advocacy and the actions carried out to address them allows to identify trends which may be replicated by other jurisdictions.

In the past year, the Mexican competition authority, COFECE, has been in charge of this project. The target population was identified as those competition authorities with less than 15 years of experience. A questionnaire was designed to follow-up on the findings of the 2006 report and sent to both young agencies and authorities that participated in the 2006 exercise. The aim was to detect possible improvements as well as potential persistence of the challenges faced. COFECE received 27 answers from jurisdictions in Europe, Latin America and the Caribbean, Asia, and Africa.

¹ ICN, *Lessons to be Learnt from Experiences of Young Competition Agencies*, 2006. Available at: <https://www.internationalcompetitionnetwork.org/portfolio/lessons-learned-from-the-experience-of-young-competition-agencies/>

Through this report, the most prevalent challenges identified by the emerging agencies are presented. Each challenge is displayed while sharing specific experiences of the individual jurisdictions. After identifying challenges, the various measures adopted by the responding agencies are shown. The report then attempts to raise the usefulness of various approaches in the handling of these challenges and the success of these actions. ICN products are intended to be inclusive, reflecting the diversity of our membership and the different sizes and stages of development of the economies in which we operate. In some areas, differences are greater due to different domestic economic histories, development, and priorities. Identifying the nature and sources of apparent divergence, would ease a longer implementation and consensus-building process for some of the more challenging issues.

This report thus becomes part of the reflection of the diversity that makes up the ICN. Our gratitude goes out to our colleagues at the different competition authorities who contributed their time and effort to the preparation of this report. Without their collaboration this report would have not been possible.

Vice-Chair Palacios is committed to fostering spaces for the discussion and sharing of recommended and best practice as this contributes to the harmonization of processes, legal frameworks and ultimately enhances international cooperation. Since the appointment of Ms. Palacios as Vice-Chair in 2016, some of the strategies implemented included the organization of special sessions focused on the experiences of the young agencies at the Annual Conferences of Porto in 2017 and in Delhi in 2018. During these sessions, common solution alternatives to the challenges faced by young authorities were discussed. For the third year in a row, in the framework of the ICN Annual Conference, COFECE organized the session dedicated to Younger Agencies seeking to make of it a forum for young agencies to fruitfully engage in discussions and share common experiences to overcome their challenges. The session showcases the challenges faced by the agencies with the objective of identifying how they were met and open a dialogue that furthers the working relationships among agencies. It is noteworthy that the ICN Training on Demand holds a great many elements that younger agencies may find useful in their paths, which leaves as no surprise that it is presented in the special session for younger agencies by younger agencies.

Vice-Chair Palacios continues to promote strengthening ties between the ICN and other international organizations such as the World Bank and the Inter-American Development Bank, especially in capacity building activities regarding financial assistance, outreach matters, capacity building efforts, as well as the promotion of ICN work products and best practices.

Implementation

Promotion, awareness, and encoring implementation of ICN work product is vital to the network. The first goal mentioned in the ICN’s mission statement is “to advocate the adoption of superior standards and procedures in competition policy around the world.” ICN Chair Mundt has emphasized 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.”

To support ICN’s work and its impact, the ICN has a dedicated “Promotion and Implementation” (P&I) group co-chaired by Portugal’s AdC, the US FTC, Mexico’s COFECE, and joined by Working Group chairs and other interested members.

The P&I group promotes ICN work and implementation initiatives in a variety of ways.

- The JFTC produces an annual “Work Product Catalog” to raise awareness of ICN’s core consensus work product across its various working groups.
- The P&I coordinates with working group chairs to provide implementation assistance to members interested in learning more about ICN work product on specific topics.
- The P&I group makes an annual request to members for stories about how members use ICN work product, to help document ICN’s impact and inspire members with implementation ideas from their peers. The results of the 2018-19 request will be compiled with stories from prior years in a collection of ICN achievements.
- The P&I group organized an implementation panel for the annual conference to showcase how members make use of ICN work.
- The P&I group is assisting with the ICN’s website update, new twitter account, and newsletter to raise awareness about new and existing ICN work.
- The P&I group oversees ICN’s Training on Demand project of creating online training videos on competition law and policy topics using ICN work product.

The P&I group aims to develop further initiatives to assist working groups in promoting the implementation of work product among members as well as raising awareness of ICN work product, engaging the wider ICN membership and non-governmental advisors.

NGA engagement

NGA engagement is a founding pillar of the ICN.

Since its inception, the ICN has attracted competent, eager, engaged NGA partners that have shared in its accomplishments. NGAs help draft and refine ICN work products, inform ICN discussions, and raise awareness of the ICN’s work. The ICN’s relationship with

its NGAs has lived up to the “high level of goodwill and cooperation” cited in the aspirations of ICN’s Operational Framework. Still, many ICN member agencies do not invite NGAs into the ICN’s work or events. A high percentage of active NGAs come from a small number of jurisdictions. The ICN has aspired to broaden its NGA participation and perspectives for many years.

The 2016 Second Decade review exercise was the occasion to solicit views from NGAs across the ICN. Over 60 NGAs responded to a survey addressing NGA participation in the network, ICN work product and its implementation, and ideas for the future of the ICN. NGA views were detailed in the June 2016 “Future of the ICN” Report. The Second Decade evaluation of NGA participation in the network revealed a beneficial, collaborative relationship with those who are active. This interaction should be strengthened and expanded under the same guiding principles that have served the ICN well to date.

A group of ten NGAs prepared a follow-on discussion paper on NGA engagement and suggestions for improvement. A paper on the “ICN approach to NGA participation” informed by the NGA survey responses, as well as this follow-on discussion paper was then prepared by the Change Committee and was approved by the Steering Group in December 2016.

The paper recommends that the ICN:

- Continue to affirm the value that NGAs bring to the ICN and continue to pursue engagement with NGAs through ICN work; and
- Maintain an open, welcoming, lightly structured framework for NGA participation, using the following principles and aims as a guide.

To do so, the paper proposes the following additional steps to improve NGA engagement:

- Reconfirm the role of ICN NGA Liaison by a Steering Group member;
- Encourage all members and working groups to expand the number and variety (by type and geography) of NGAs;
- Encourage NGAs to help disseminate and promote ICN work;
- Consider NGAs as a target audience for the ICN’s new communication tools: the renewed website, the ICN newsletter, and social media efforts;
- Encourage members and working groups to organize regular opportunities to inform NGAs of ongoing work and opportunities for NGA participation;
- Promote open and inclusive NGA participation, alongside members, in the virtual aspects of ICN work;
- Encourage discussion-friendly formats and topics at ICN events that promote open dialogue and encourage NGAs to share their perspectives;

Isabelle de Silva, President of the French Autorité, and entrusted with the role of ICN NGA Liaison, will continue to work towards greater NGA engagement. She will, among other initiatives, carry on the tradition – established since the 10th ICN Annual Conference in

The Hague – of hosting a dedicated breakout session on NGA engagement at ICN Annual Conferences. The 2019 ICN Annual Conference in Cartagena will therefore offer an NGA engagement breakout session that will address the many benefits of NGA engagement, from both NGAs' and agencies' viewpoints, through a discussion led by two NGAs and two agencies – of which the Autorité – reflecting the diversity of the ICN membership. It will aim to encourage agencies, young or mature, to enroll NGAs to work beside them in the ICN, to underscore the interest of acting as an NGA in the ICN, and overall to address the possible challenges of establishing a mutually beneficial interaction between NGAs and member agencies.

Section III: Operational Working Groups

Operational Framework Working Group

The Operational Framework Working Group ([OFWG](#)) was established at the first ICN Annual Conference in Naples, Italy in September 2002. The mission of the OFWG is to provide recommendations on operational and governance issues of the ICN to the SG. In 2018-2019, the Canadian Competition Bureau and the Colombian Superintendencia de Industria y Comercio chaired the OFWG and no activity was registered.

Membership Working Group

The Membership Working Group, co-chaired by the Korea Fair Trade Commission and the Comisión Nacional de los Mercados y la Competencia of Spain, was established at the first ICN Annual Conference in September 2002. Its main purpose is to accept applications for ICN membership from competition agencies around the world, examine them under the criteria for membership set out in the Operational Framework of the ICN and refer the case to the SG for the members' review and consensus.

Since the 2014 ICN Annual Conference, the Membership Working Group has reviewed applications for entry to the ICN and the SG approved the following new ICN members:

- Competition Agency, Georgia;
- Competition and Consumer Protection Authority, Ethiopia;
- Competition and Consumer Protection Tribunal, Zambia;
- Fair Trading Commission, Trinidad & Tobago;
- Competition Protection Authority, Kuwait;
- Committee of the Protection of Competition and Prohibition of Monopolistic Practices, Qatar;
- Competition Commission, Philippines;
- Competition and Consumer Affairs Commission, Guyana;
- Competition Authority, French Polynesia;
- Curacao Competition Authority;
- Competition Regulation Committee of the Government, United Arab Emirates;
- Bangladesh Competition Commission;
- Competition Authority, New-Caledonia.

The new and successive members noted above help make the total number of the ICN membership mark **139 agencies from 126 jurisdictions as of 29 April 2019.**

Table 1: Overview of Working Groups Achievements 2018-2019

| Advocacy Working Group | Remarks /Updates |
|---|--|
| Report on ICN Members’ Recent Experiences (2015-2018) in Conducting Competition Advocacy in Digital Markets | |
| Prepared guiding questions for Members to write up their Advocacy Strategy and Program case-study, and working to garner more support and submissions. | |
| ICN – World Bank Competition Advocacy Contest 2018-2019 edition | |
| A teleseminar on advocacy and digital markets (September 27, 2018), on competition assessment (December 13, 2018), advocacy and digital markets (September 27, 2018) | |
| An ICN Advocacy Workshop in Kyiv, Ukraine on 28 February – 1 March 2019, with the title “Competition Advocacy: from Barriers to Prosperity”. More than 100 participants from more than 60 competition agencies and NGAs attended the 2-day workshop. | |
| Agency Effectiveness Working Group | Remarks /Updates |
| New ICN Guiding Principles for procedural fairness Recommendations on internal agency procedural checks and balances Implementation tips for good process | <i>New section of the ICN Guidance on Investigative Process</i> |
| The Report on agency effectiveness through organizational design | |
| The Role of Chief/Senior Economists for Effective Enforcement | |
| ICN Training on Demand Project ICN: modules on International Cooperation and Merger Remedies | |
| Cartel Working Group | Remarks /Updates |
| Sub Group 1 Good Practices for Incentivising Leniency Applications | <i>The project is finalized and sent for the approval of the Steering Committee</i> |
| Webinars on: 1) Digital cases and algorithms; 2) Information sharing gateways and international assistance in information sharing; 3) Compliance; 4) Leniency incentives and disincentives and 5) Cooperation between competition agencies and public procurement authorities, Asia Pacific friendly timed calls in the topics of 4) Leniency incentives and disincentives, 1) Digital cases and algorithms and 5) Cooperation between competition agencies and public procurement authorities | <i>Each webinar was attended by more than 50 participants and the presentations, which were permitted, were uploaded to the ICN Website.</i> |
| Sub Group 2 Annual ICN Cartel Workshop, hosted by the Antitrust Authority of Israel in Tel Aviv in October 2018 | |

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| Completion of the new Chapter on “Development of Private Anti-Cartel Enforcement” of the Anti-Cartel Enforcement Manual | |
| Framework for the promotion of the sharing of non-confidential information | |
| Anti-Cartel Enforcement Template Update | |
| Merger Working Group | Remarks /Updates |
| Vertical Mergers Project: comprehensive agency survey and think piece on the economics of vertical merger assessment | <i>The project continues in the 2018-2019 ICN year</i> |
| Seminar series on the framework for analyzing innovation in merger review and experiences of evaluating the effects on innovation in recent cases | |
| Enforcement Cooperation Tools Project: survey on the Merger Cooperation Framework, flyer and information request form for the Framework, types of information which can be exchanged | <i>The MWG will continue to maintain and promote the Merger Cooperation Framework.</i> |
| 2018 MWG Workshop (November 2018), hosted by Japan Fair Trade Commission; focused on the role of merger review in the digitalized and globalized economy and the challenges. Link: https://www.jftc.go.jp/en/int_relations/icnmergerworkshop2018.html | <i>The MWG will organize the next workshop in 2019-2020.</i> |
| Unilateral Conduct Working Group | Remarks /Updates |
| 2018 Unilateral Conduct Workshop | http://icnuniconductsa18.co.za/ |
| Vertical Restraints Project <i>Report to steering group on the findings from the assessment of two hypothetical scenarios</i> | <i>The project continues in the 2019-2020 ICN year, with the Working Group looking to produce guidance material as a means of finishing the project.</i> |
| Webinars on: <ul style="list-style-type: none"> • Competition in highly regulated industries • Old and new challenges in the assessment of dominance • Unilateral conduct and intellectual property/standard-essential patents | |