

CARTEL WORKING GROUP

2022 – 2025 WORKING GROUP STRUCTURE AND THREE-YEAR PLAN

MISSION

The mandate of the [Cartel Working Group \(CWG\)](#) is to address the challenges of anti-cartel enforcement, including the prevention, detection, investigation and punishment of cartel conduct. At the heart of antitrust enforcement is the battle against hard core cartels directed at price fixing, bid rigging, market allocation and output restriction.

ORGANISATION

The CWG is co-chaired by the Italian Competition Authority (AGCM), the the Fiscalía Nacional Económica (FNE) of Chile, and the U.S. Department of Justice, Antitrust Division (DOJ).

It consists of two sub-groups:

- Subgroup 1: Legal Framework ('SG1'), which addresses policy-level issues of hardcore cartel conduct and is led by the Turkish Competition Authority (TCA). Japan Fair Trade Commission (JFTC) and Hong Kong Competition Commission (HKCC) are project leaders for the organization of the Asian-Pacific friendly webinars.
- Subgroup 2: Enforcement Techniques ('SG2'), which focuses on the organization of the yearly Workshop, is co-chaired by the Netherlands Authority for Consumers and Markets (ACM) and the UK Competition and Markets Authority (CMA).

There are currently 69 member agencies in the CWG ranging from large authorities with significant experience in cartel enforcement to smaller or younger agencies with limited experience and differing resources at their disposal. In addition, NGAs from 39 jurisdictions participate in the work of the CWG.

LONG TERM GOALS

The CWG will strive to achieve the following goals:

1. boosting competition authorities' ability to detect, investigate and punish cartel conducts, including in a digital environment;

2. fostering convergence by sharing expertise among competition authorities and NGAs and identifying good practices in different areas of anti-cartel enforcement;
3. improving the ability to engage in international enforcement cooperation;
4. supporting inclusiveness by encouraging new members to join the CWG, assisting newer agencies, as well as enhancing the involvement of NGAs; and,
5. ensuring that existing CWG work products are updated and promoted in order to facilitate their implementation by ICN members and NGAs.

2022 – 2025 STRATEGIC PLANS

In planning its work for the three years (2022-2025), the CWG will focus on the following goals:

Strategic Goal on Developing CWG Members' Enforcement Techniques

Boosting competition authorities' ability to detect, investigate and prosecute cartels is a core mission of the CWG. Over the next 3 years, the CWG will implement a "Back to Basics" program that will focus on key challenges that cartel enforcers face in their day-to-day work, taking a practical, experiential-based approach to developing, or refining, enforcement techniques.

The program will include an interactive virtual roundtable and a series of experiential learning programs and complementary work product on the enforcement techniques related to leniency, dawn raids, ex-officio detection tools, managing big data document reviews, as well as other topics identified through the roundtable.

The program will also include a revision of the existing work, in line with the Third Decade recommendations, in order to ensure that existing CWG work products are relevant, updated and promoted in order to facilitate their use by CWG members.

Strategic Goal on International Cooperation

Improving effective enforcement cooperation between competition authorities has been a priority for the ICN for many years. The importance of this topic also emerged from the results of the ICN Third Decade Survey among the ICN members: 76% of respondents think that the ICN should pursue more work product devoted to tools that facilitate agency enforcement cooperation. The CWG will continue to promote the use of the [Guidance on Enhancing Cross-Border Leniency Cooperation](#) and other existing work-products; in cooperation with the AEWG, the CWG will seek to

create a Framework for Information on Data Analytics, to facilitate the exchange of experiences of digital experts.

Strategic Goal of Increasing Engagement with Younger and Smaller Agencies

As the ICN enters its third decade, the CWG believe it is important to acknowledge all of the work that the CWG has done in promoting convergence in cartel enforcement over the last 20 years. However, we also believe it is important to acknowledge that there is generation gap that exists between agencies with decades of experience in enforcement and leniency, and younger and smaller agencies in jurisdictions who may have only recently begun to implement cartel enforcement regimes. CWG's work should be designed to meet the needs of all member agencies, regardless of experience level.

The CWG will strive to achieve the above goals also through an increasing collaboration between CWG and other ICN Working Groups, following the recommendations made by the Horizontal Coordinator.

In line with the CWG's strategic goals, outlined below are CWG's proposed projects for 2022-2023 and projects to consider for 2023-2025.

In **2022-2023**, the Working Group will seek to:

1. Complete the Horizontal Cooperation and Crisis Cartels at Times of Covid-19 project
2. Launch "Back to Basics" program focused on enforcement techniques
3. Organise the 2022 Cartel Workshop in Auckland, on 7-9 December 2022
4. Continue dissemination and promotion of existing work product, including:
 - a. Anti-Cartel Enforcement Templates
 - b. Recent CWG work product including the revised chapters 3, 4, and 5 of the Anti-Cartel Enforcement Manual and the Guidance on Cross-Border Leniency Cooperation

More details on this year's projects are included in the annual plan (see next section).

In **2023-2025**, the Working Group anticipates focusing on the following:

1. Continuation of the Back to Basics program on enforcement techniques including:

- a. Following the learnings from the webinar series on dawn raids/inspections, consider updating the existing [Chapter 1 of the Anti-Cartel Enforcement Manual](#) or creation of new guidance materials on this topic
- b. Following the learnings from the first year activities of the Back to Basics program, the CWG will launch a new project “Proactive Detection & Sanctions Toolkit” to create written work product focused on providing guidance to agencies on the legislation and tools needed to effectively detect and prosecute cartels. This written guidance could be a new chapter of the Anti-Cartel Enforcement Manual or a separate document. CWG envisions this including examples of complementary legislation for effective cartel prosecutions, such as obstruction legislation, and an overview and examples of legislation for detection tools outside the context of leniency and compulsory document requests, such as access to phone/email records, financial records, consensual recordings, surveillance, voluntary interview authority, etc.
- c. As a companion to “Proactive Detection & Sanctions Toolkit” project, host an agency-only webinar series related to project (Western Hemisphere and Asia-Pacific friendly time zone):
 - i. “Cornerstones of Leniency: Creating a Credible Threat of Detection” which will focus on proactive, ex-officio techniques for detecting cartels
 - ii. Webinar on legislative advocacy, where agency speakers will share lessons learned from seeking new legislation related to cartel enforcement
- d. Host a Cartel Webinar Series on topics related to electronic document review. The webinar series will focus on practical experiences of agencies, but also highlight relevant ICN work product including the Anti-Cartel Manual chapters related to digital evidence gathering that were recently updated. This webinar series would be an opportunity to collaborate with our colleagues in the Agency Effectiveness Working Group.
- e. Exploring increased cooperation on data analytics: following the creation of the Framework for Information on Data Analytics (see 2022-2023 workplan), the CWG will consider whether further collaboration is possible.

2. Consider updating existing work products on international cooperation, in coordination with the Special Group on International Cooperation:
 - a. [Leniency Waiver Template](#) (last update: 2014); and/or
 - b. [Charts Summarising Information Sharing Mechanisms](#) (last update: 2012); and/or
3. Disseminating and promoting the use of existing work products: continuing the activities under Project 3 of the 2022-2023 annual plan (see below).

CARTEL WORKING GROUP

ANNUAL PLAN 2022-2023

Pursuant to the working group structure and the three-year strategic goals outlined above, the Cartel Working Group will work on the following projects during the 2022-2023 ICN year:

Project 1: “Horizontal Cooperation and Crisis Cartels at time of Covid-19”

Project 2: “Back to Basics” program focused on enforcement techniques

Project 3: 2022 Cartel Workshop

Project 4: Dissemination, Implementation & Outreach

Project 1: Horizontal Cooperation and Crisis Cartels at time of Covid-19 (ON-GOING)

The objective of the project, started in 2020, is to share experience and discuss the main challenges and pressures that competition agencies face when assessing crisis cartels and horizontal coordination in the context of Covid-19 pandemic. At the annual conference 2021, the CWG an interim report on the project containing a written document collecting and highlighting the main features of competition authorities’ statements and guidance on cooperation aimed at tackling shortage and other disruptions in the supply chains during the Covid-19 emergency.

In 2021-2022, this document will be further enriched with a section on crisis cartels: the CWG will collect relevant past work of the ICN and other organizations, relevant case law in addressing policy and enforcement issues raised by crisis cartels in order to promote such work to the CWG, and in drawing lessons learnt from the past. The section on crisis cartels will also consider recent concerns about anticompetitive conducts in global or supranational supply chains, vis-à-vis rising prices of certain inputs and increasing costs of distribution.

Contact details: Italy’s AGCM and US DOJ

Project 2: “Back to Basics” program focused on enforcement techniques (NEW)

This project will focus on key challenges that cartel enforcers face in their day-to-day work, taking a practical, experiential-based approach to developing, or refining,

enforcement techniques. The Back to Basic program will include the following activities:

a) Identification of the most challenging issues in enforcement techniques and gaps in existing work products (Fall 2022)

As part of the “Back to Basics” program, CWG will host an agency-only virtual roundtable discussion between CWG members (Fall 2022) about the most challenging issues facing agencies in their work, with a focus on younger and smaller agencies. The focus of the roundtable would be to identify areas where ICN CWG can be most helpful for its members. Some of the questions for discussion could include:

- What do agencies see as the biggest challenge to bringing cases
- What are agencies’ biggest resource limitation
- What do case handlers struggle with the most
- What enforcement techniques are used most often? What areas needs the most improvement? What techniques would agencies like to learn more about?

The goal would be to identify gaps in the existing work products and additional areas of common interest that will inform CWG’s projects and strategic plan.

Contact Details: CWG Co-Chairs

b) Cartel Webinar Series on Dawn Raids/Inspections (Early Spring 2023)

During 2022-2023, CWG will organize a series of in-depth webinars on the practicalities of conducting dawn raids/inspections.

Contact Details: UK CMA and Chile FNE

c) Virtual Leniency Workshop (April/May 2023)

As part of the “Back to Basics” program, CWG plans to partner with the ICN Promotion & Implementation Team and the ICN Bridging Project to organize a virtual workshop on working with leniency applicants for new competition agency staff (less than 5 years experience) in late spring of 2023. The virtual workshop will include a mix of lecture style presentations from experienced case handlers and interactive breakout sessions with a hypothetical case exercise on topics including:

- Leniency applicant cooperation

- Working with leniency defense counsel
- Interviewing leniency applicants
- How to build trust
- Working with other domestic prosecutors/law enforcement
- International cooperation issues

The workshop will aim to include mock interview exercises with role players, as well as breakout rooms for Spanish speakers. In line with the CWG's ongoing Dissemination, Implementation, and Outreach project, the workshop will highlight relevant ICN CWG work product and ICN Training on Demand materials.

Contact Details: US DOJ

d) Creation of a Framework for Information Sharing on Data Analytics

Many competition agencies around the globe are increasingly working on the development of data analytics tools for detection of cartels. CWG proposes to create a Framework for Information Sharing on Data Analytics, similar to the existing Framework for Sharing Non-Confidential Information. This new framework would create a contact list of data scientists and investigators working on bid screening and other types of data analytics tools within agencies, to increase collaboration on this topic between CWG member agencies. CWG plans to partner with the AEWG on this effort.

Contact Details: [TBD]

Project 3: 2022 Cartel Workshop (December 2022)

New Zealand Commerce Commission will host the 2022 Cartel Workshop from 7 to 9 December, focused on the theme of "Responding to a Changing World." The CWG will be working with New Zealand to shape the agenda.

Contact Details: Chile FNE

Project 4 - Dissemination, Implementation & Outreach (ONGOING)

The CWG will continue to make efforts to encourage more ICN members to join the CWG and increase the level of participation from members and NGAs within the CWG. It will improve the accessibility of CWG updates and work product,

including the consideration of the following: keeping the CWG page on the ICN website up-to-date, including with respect to the ICN calendar of (CWG) events; uploading webinar materials and recordings; translating CWG work products.

The CWG will identify key existing work products to be disseminated and promoted within its members. In particular, during 2023-2024, the CWG will concentrate its efforts on the following work products:

- The [Anti-Cartel Enforcement Template](#): the CWG co-chairs will develop a plan for promoting this transparency tool among its members and ensuring that it is regularly updated and accessible on the ICN website.
- The [Guidance on Enhancing Cross-Border Leniency Cooperation](#): the CWG will disseminate the use of this work product in the activities of the Back to Basics Program (Project 2) and at the 2022 Cartel Workshop in New Zealand (Project 3).
- The [ICN Anti-Cartel Enforcement Manual](#) and all the work products related to [Leniency](#) will be promoted in the activities under Projects 2 and 3.

Contact details: CWG co-chairs