



International  
Competition  
Network

ICN CARTEL WORKING GROUP

## **LONG TERM WORK PLAN 2010 – 2014**

Draft of 17 March 2010

## *Table of Contents*

<u>I.Mission and Purpose.....</u>	<u>3</u>
<u>II.Structure.....</u>	<u>3</u>
<u>III.Goal.....</u>	<u>3</u>
<u>IV.Evaluation of the period 2004-2009.....</u>	<u>4</u>
<u>V.Overall goals for 2010-2014.....</u>	<u>5</u>
Proposed CWG Work Plan for 2010-2014.....	5
1.Promote familiarity with and use of past CWG work product.....	6
2.Expand existing work product.....	6
3.Develop new practical guidance and avenues for exchanging effective enforcement practices.....	6
4.Organize annual Cartel Workshops.....	6
5.Contribute to the broader work of the ICN.....	6
6.Strengthen CWG working procedures.....	6
<u>VI.Work Program for 2010-2011 (and completion of Work Program 2009-2010).....</u>	<u>7</u>
Completion for 2009-2010:.....	7
Year 2010-2011 (Summary of Annual Work Plan 2010-2011): .....	7
Annex I.....	9
Summary of survey results on the quality, accessibility, and usability of the CWG’s results/work products (February 2010).....	9
Annex II.....	12
Potential topics for consideration for future CWG work, including the Anti-Cartel Enforcement Manual, Cartel Workshops, Roundtable Discussions, and other written work product or discussions.....	12
A number of these topics are covered by or overlap with existing CWG work product, though it may make sense to revisit, update and/or augment such work to address previous gaps, include a wider range of participants or include new developments....	12

## I. Mission and Purpose

*The mandate of the Cartel Working Group<sup>1</sup> is to address the challenges of anti-cartel enforcement, including the prevention, detection, investigation and punishment of cartel conduct, both domestically and internationally, across the entire range of ICN members with differing levels of experience and resources. At the heart of antitrust enforcement is the battle against hardcore cartels directed at price fixing, bid rigging, market allocation and output restriction.*

## II. Structure

The Cartel Working Group ('CWG') is co-chaired by the European Commission and the Hungarian Competition Authority. It consists of two subgroups:

- *Subgroup 1* ('SG1') deals with the **general legal framework** and policy issues of anti-cartel enforcement and is co-chaired by the US DoJ and the Brazilian SDE.
- *Subgroup 2* ('SG2') deals with **enforcement techniques** and advances the educational and information sharing agenda of the CWG and is co-chaired by the Australian Competition and Consumer Commission and the Canadian Competition Bureau.

### *Membership:*

There are currently 50 member agencies in the CWG divided across the two subgroups which range from large authorities with significant experience of cartel enforcement to smaller or younger agencies with limited experience and differing levels of resources at their disposal.

## III. Goal

The overall goal, as defined by the CWG Mission, is achieved by the members addressing the continuous challenges of anti-cartel enforcement, including the prevention, detection, investigation and punishment of cartel conduct, through their participation in the work of the CWG. The members:

- share views on the most effective enforcement tools in the fight against cartels (exchange of expertise between competition agencies with various levels of experience);
- elaborate good/best practices in different areas of anti-cartel enforcement;
- increase the awareness of new and developing competition agencies concerning the significance of the fight against hardcore cartels;
- provide assistance to agencies new to anti-cartel enforcement; and
- encourage new members to join the cooperation as well as to enhance the involvement of NGAs.

---

<sup>1</sup> The wording of the mission statement has been updated on the basis of a survey conducted among the Cartel Working Group's members in February 2010. Previously the mission statement read as follows: "*The mandate of the Cartel working group is to address the challenges of anti-cartel enforcement, both domestically and internationally, across the entire range of ICN members and amongst agencies with differing levels of experience. At the heart of antitrust enforcement is the battle against hardcore cartels directed at price fixing, bid rigging, market sharing and market allocations.*"

Relevant information on the main activities of the CWG is disseminated through the annual Cartel Workshop, the drafting and updating of the various chapters of the Anti-Cartel Enforcement Manual and other written work products, the organisation of Enforcer Round Table Discussions by conference call, the Anti-Cartel Enforcement Templates and various ad-hoc papers and publications.

#### *NGA participation*

There is a general acknowledgement amongst the CWG member agencies that exchanges of views with and participation of NGAs and other enforcing authorities, including public prosecutors/judges and academics, are invaluable to the work of the CWG.

The benefits of greater formal and informal opportunities for exchanges with NGAs include improved, more open and better informed dialogue on competition policy and enforcement issues. Within the ICN, NGAs identify new projects by bringing relevant issues to the attention of enforcement authorities. NGAs can produce and/or offer important comments on work product to help ensure that the document reflects and addresses the practical issues faced by consumers, business and the private bar. NGAs can also contribute to the policy dialogue at conferences and workshops; of particular benefit is the ability to discuss emerging policy issues before views have become entrenched. NGAs can help disseminate ICN work product and promote its use by engaging in outreach and advocacy efforts using ICN work product. NGA participation also supports the development of cooperative relationships between NGAs and member agencies as well as among NGAs themselves, which further promotes cooperation and policy convergence and creates synergies in furthering the objectives of the CWG.

The CWG will therefore strive to include and engage NGAs in a broad range of its work, including the Annual Conference, the annual Cartel Workshop, as well as in selected conference calls and written work product of relevance to NGAs (e.g., relevant sections of the Anti-Cartel Enforcement Manual).

### **IV. Evaluation of the period 2004-2009**

Since its inclusion in the ICN in 2004, the CWG has concluded the following projects;

- **Annual Cartel Workshops:** 2004: Sydney, Australia; 2005: Seoul, South Korea; 2006: The Hague, The Netherlands; 2007: San Salvador, El Salvador; 2008: Lisbon, Portugal; 2009: Cairo, Egypt.
- **Anti-Cartel Enforcement Manual:**
  - *Chapter 1:* Searches, raids and inspections (2005, revision 2009);
  - *Chapter 2:* Drafting and implementing an effective leniency program (2005, revision 2009);
  - *Chapter 3:* Digital evidence gathering (2006, to be revised in 2010);
  - *Chapter 4:* Cartel case initiation (2007, to be revised in 2010);
  - *Chapter 5:* Investigative strategy (2008);
  - *Chapter 6:* Interviewing techniques (2008).
- **Enforcer Round Table Discussions:** Topics included the benefits of criminal sanctions beyond deterrence, such as the availability of enhanced investigative tools; key issues to consider during the legislative process; building relationships with public prosecutors;

interaction with other stakeholders; and ensuring the possibility of criminal sanctions as additional incentive to apply for leniency.

- **Papers/Publications:** Defining hardcore cartel conduct, effective institutions, effective penalties (2005); Obstruction of justice in cartel investigations (2006); Co-operation between competition agencies in cartel investigations (2006 & 2007); Interaction of public and private enforcement in cartel cases (2006 & 2007); Cartel settlements (2008); Setting of fines for cartels in ICN jurisdictions (2008).
- **Anti-Cartel Enforcement Template** (2005 completion/updating since then): The Anti-Cartel Enforcement Template provides information about the cartel regimes of ICN member jurisdictions (covering the substantive rules on cartels, enforcement institutions, procedural rules, including leniency programs and fining policies, investigative tools, rights of defence, etc.). In the period 2005-2009 just about all CWG members completed the template.

## V. Overall goals for 2010-2014

The CWG surveyed its members regarding the quality, accessibility, and usability of past work product and ideas for future work. The results of the survey (see Annex I) helped inform this plan.

The overall goal of the CWG for the period 2010-2014 is to actively contribute to the improvement of anti-cartel enforcement across the whole membership (irrespective of the level of experience in anti-cartel enforcement and resources available), by promoting dissemination and implementation of the work products and encouraging broader member and NGA engagement in the CWG's work.

The CWG will strive to increase the number of its members, to offer a general discussion platform for both experienced and younger agencies and further the close cooperation between its members on both the management and case officer level. The CWG will also endeavor to engage agencies new to anti-cartel enforcement in the work of the group. Every effort should be made to focus the work products on issues that are relevant to all member agencies, including new agencies. Younger agencies are encouraged to actively participate in the discussion and drafting of such topics. The CWG will also endeavor to organize its activities in such ways as to achieve higher attractiveness for NGAs, including academics.

In view of the overwhelmingly positive response from the member agencies on the CWG's existing work, it is proposed that the CWG continue to develop its key work products also in the period 2010-2014, i.e. the annual Cartel Workshop, the Enforcer Round Table Discussions, the Anti-Cartel Enforcement Manual and other reports, and the Anti-Cartel Enforcement Template. Through the further development of these key work products, the CWG will ensure the continued high quality, accessibility and usefulness of its output.

### **Proposed CWG Work Plan for 2010-2014**

While specific topics and types of future work will be discussed among the membership and reevaluated for each annual plan, the CWG has identified six primary areas for possible future initiatives. An indicative list of specific topics that may be considered in the annual plans can be found in Annex II.

1. Promote familiarity with and use of past CWG work product

The CWG will evaluate the implementation and use of its work product by member agencies, seek to identify barriers to increased use, and encourage further dissemination of existing work.

2. Expand existing work product

The CWG will revisit and possibly augment or update, as appropriate, topics covered by its existing work of fundamental importance to members' anti-cartel enforcement practices and policies. Sample topics include: leniency programs, basic investigative tools and techniques (e.g., searches, interviewing, digital evidence gathering), sanctions, settlements and international cooperation. Such reassessment will aim to keep CWG work product relevant and encourage input from younger and new member agencies.

3. Develop new practical guidance and avenues for exchanging effective enforcement practices

The CWG will continue to develop new practical guidance and experience sharing projects on important issues in anti-cartel enforcement. The CWG will consider new work product topics for the Anti-Cartel Enforcement Manual, other written work products, and roundtable discussions. Possible topics may include: cartel awareness and outreach efforts, case resolution, and compliance programs. The CWG should strive to be a forum for the discussion and evaluation of recent developments, emerging issues, and upcoming trends in the field of anti-cartel enforcement.

4. Organize annual Cartel Workshops

The workshops will aim to present and discuss topics covered by CWG work product as well as significant emerging policy questions and issues of relevance to day-to-day enforcement techniques. Annual workshops should emphasize the practical and may include training scenarios or hypotheticals. Workshop topics should be reevaluated each year based upon feedback to ensure relevance for and participation from a wide range of ICN members. Illustrative topics for annual workshops include: implementation of leniency programs, the interaction of public and private enforcement in deterring cartel conduct, detecting cartels without leniency programs, dual-track criminal and civil/administrative regimes, the inability to pay fines, determining penalties, settlements, and compliance programs.

5. Contribute to the broader work of the ICN

The CWG will continue to participate in, and contribute to, the broader work of the ICN including, for example, the Annual Conference and by way of enhancements to the ICN website.

6. Strengthen CWG working procedures

The CWG will strive to:

- encourage more ICN members to join the CWG and encourage increased levels of participation from members within the CWG.
- explore new and creative ways to improve the accessibility of CWG updates and work product, including the consideration of: improvement to the CWG area on the ICN's website; possible use of online discussions; periodic CWG updates (online or electronic

newsletter); the translation of certain CWG work products; and web-based training tools (i.e., workshop materials).

- include work of interest to NGAs and projects that are amenable to NGA participation.

## **VI. Work Program for 2010-2011 (and completion of Work Program 2009-2010)**

### **Completion for 2009-2010:**

#### *Subgroup 1: Legal Framework*

- **Enforcer roundtable discussions in the form of series of telephone call conferences:** Telephone conferences which cover a varied range of issues, including considerations in drafting criminal cartel legislation, leniency for individuals, incentives to apply for corporate leniency, building relationships with criminal prosecutors, importance of criminal sanctions, due process considerations that are inherent to the introduction of criminal sanctions

#### *Subgroup 2: Enforcement Techniques*

- **Updating the Anti-Cartel Enforcement Manual Chapter on Digital Evidence Gathering**
- **Updating the Anti-Cartel Enforcement Manual Chapter on Cartel Case Initiation**
- **Organizing the annual ICN Cartel Workshop**
  - Coordinated preparations for the 2009 ICN Cartel Workshop which took place from 27-29 October 2009 in Cairo, Egypt. The theme for the Workshop was "highlight the past, share the present and shape the future".
  - Preparatory steps for the 2010 ICN Cartel Workshop to take place from 5-7 October 2010 in Yokohama, Japan.
  - Identify the host for the 2011 ICN Cartel Workshop.
- **Updating the Anti-Cartel Enforcement Templates, completion of new Templates**

### **Year 2010-2011 (Summary of Annual Work Plan 2010-2011):**

#### *Subgroup 1: Legal Framework*

- **Project on cartel awareness/outreach:** The objective of the project is to share member experiences with and ideas for successful cartel awareness programs within their respective jurisdictions. The project will aim to review and evaluate member practices in areas such as: collaboration with other agencies (particularly procurement agencies), effective public messages, innovative outreach efforts and partnership initiatives with the private bar and business community.

The focus for SG1 will be on advocacy and outreach related specifically to cartel issues. That focus is different from, although it can be complementary to, any work carried out in the Advocacy Working Group of the ICN. In so far as necessary, the programs of both the Cartel Working Group and Advocacy Working Group will be aligned.

*Subgroup 2: Enforcement Techniques*

- **New Chapter for the Anti-Cartel Enforcement Manual on Case Resolution**
  - This would cover the range of actions and outcomes in matters under investigation, including but not limited to alternative case resolutions, settlements and prosecution.
- **Develop a Compilation of Good Practices based on the Anti-Cartel Enforcement Manual**
  - This would be a collection of the most important “good practices” identified in the Anti-Cartel Enforcement Manual over the past six years. The Good Practices Summary will be uploaded to the ICN website with a reference and/or link to the full Anti-Cartel Enforcement Manual. The Summary will be updated to reflect changes and additions to good practices in the Cartel Enforcement Manual.
- **Panel discussion replicating interesting 2010 Cartel Workshop panel(s) via teleconference**
  - Telephone conference(s) which present the same panel(s) as are presented at the 2010 Cartel Workshop and/or updates to these panel(s).
- **Organize the annual ICN Cartel Workshop**
  - Coordinate preparations for the 2010 ICN Cartel Workshop to take place from 5-7 October 2010 in Yokohama, Japan. The proposed theme for the Workshop is "the efficient detection, investigation and punishment of cartel conduct – making the best use of agency resources".
  - During the 2010 Workshop, participants will consider the latest methods, tools and systems for enhancing efficiency, and hear case studies from anti-cartel enforcers on how make the best use of agency resources. See Annex III for the complete 2010 Workshop description
  - Plan for the 2011 ICN Cartel Workshop.
  - Identify the hosts for the 2012 and 2013 ICN Cartel Workshops.
- **Update the Anti-Cartel Enforcement Templates, complete new Templates**
  - As the rules governing anti-cartel enforcement are constantly evolving, the Anti-Cartel Enforcement Templates that summarise the main features of each jurisdiction's rules and procedures (originally compiled in 2005) need to be further updated. It is also necessary to complete Templates for new ICN members.

## **Annex I**

### **Summary of survey results on the quality, accessibility, and usability of the CWG's results/work products (February 2010)**

A survey was carried out with the CWG membership in February 2010 to inform the development of the CWG's long term plan. 22 respondents gave extensive input.

There is general agreement within the CWG on the overall adequacy of the current set of work products, i.e. the annual Cartel Workshop, the Anti-Cartel Enforcement Manual and other reports, the Enforcer Round Table Discussions and the Anti-Cartel Enforcement Templates. These work products, which require a substantial amount of work and resources from the member agencies to organise, create and maintain, are deemed to be of high quality and very useful in the daily work of the member agencies.

The summary below is meant to be a recap of comments received, without particular classification. Their mention does also not imply an agreement in the CWG on the topic.

#### *Annual Cartel Workshop*

The Cartel Workshops have gathered wide participation across the ICN membership for this annual three-day event. For example, more than 170 participants from over 60 agencies attended the 2009 Cartel Workshop in Cairo, Egypt. The 2008 Cartel Workshop in Lisbon, Portugal, attracted over 160 participants from over 35 agencies.

The informal setting of the workshops has provided an opportunity for anti-cartel experts at all levels, from case officers to management, to engage not only in fruitful face-to-face exchanges of ideas and experiences aimed at increasing the effectiveness of the member agencies' respective enforcement activities but also in establishing the personal contacts needed for furthering the cooperation between the agencies. The attractiveness of the Cartel Workshop should be maintained by ensuring the relevance of the Workshop agenda and by maintaining the high level that the past Workshops have offered in terms of debates and discussions.

Because of the variety of participants at the Cartel Workshops, ranging from heads of cartel units or agencies, working level investigators and international generalists, the CWG recognises the challenge in designing programs that will be of interest to everyone. It is suggested that this challenge be addressed by considering concurrent breakout sessions with different topics (or covering different aspects/depth of the same topic depending on the audience e.g., basic and more technical sessions), or by organising a half-day basic course for newer cartel investigators before the Workshop officially begins. Also the possibility of organising technical assistance days where more experienced agencies would volunteer to advise other agencies on certain topics (could have blocks of time assigned for one-on-one sessions) may be explored.

#### *Anti-Cartel Enforcement Manual*

The Anti-Cartel Enforcement Manual provides both the more experienced and younger agencies a guidance/reference document, the value of which has been deemed highly useful by the member agencies. The practical style of the Manual makes it a valuable guidance document for the member agencies' daily work. Continued efforts should be made to ensure that the topics of the Manual chapters remain relevant, updated, and easily available to the member agencies' staff. By ensuring that the latest versions of the documents are available on the ICN website, this general accessibility can be ensured most efficiently.

*Enforcer Round Table Discussions – Telephone Conferences*

In the ICN years of 2008-2009 and 2009-2010, the substantive discussion call series format that SG1 has followed has been highly appreciated and has proven to be successful. While in earlier years the calls only attracted limited participation from approx. 8-12 jurisdictions, the series of calls in 2008-2009 and 2009-2010 have drawn wide participation, routinely attracting more than double the number of jurisdictions, and 30-60 participants, including many investigative staff that typically would not all have the possibility to be present at e.g. the Cartel Workshop. Also, the discussion format has allowed SG1 to expand the number and diversity of jurisdictions that take an active role in the discussion, with 15 presenters over the course of the year. It is therefore recommended that the CWG continue the substantive discussion call format in the future, and possibly widen it to SG2 topics.

While the SG1 call series has in the recent past been focused on topics related to the criminalization of cartels, there is scope for a wider array of topics to be dealt with within this forum.

*Anti-Cartel Enforcement Templates*

The value and usefulness of the Anti-Cartel Enforcement Templates has been confirmed by the member agencies. The CWG and subgroup co-chairs have in the ICN year 2009-2010 encouraged all members to either create or update their existing Templates. There is support for this work to continue and member agencies should be invited to ensure that their respective Templates are continuously kept updated and available. The Templates remain useful to the members if they are easily accessible and continue providing updated information on the most important features of the member agencies' anti-cartel enforcement systems.

In view of the considerable work that is required to update the Templates, short form and long form options could be introduced.

*Target Audience/Availability/Efficient Dissemination*

The work products of the CWG are primarily targeted at the member agencies and their staff and the respondents to the survey show that the CWG is satisfied that the work products are reaching the right audience. To ensure awareness of the CWG's work and the dissemination of the results of the group's work, the CWG has distributed written materials mainly by email (separate mailing lists for SG1 and SG2), at the annual Cartel Workshop and by uploading the finalized work products on the ICN website.

Continued efforts should be made to encourage wide dissemination of the CWG's work not only to the actual participants to the CWG conference calls and members of electronic mailing lists, but also more widely within the member agencies. The efficient use and further development of the ICN website and its section for the CWG should therefore be encouraged. By uploading the approved work products on the ICN website a wider audience, including non-member agencies and NGAs, can be easily reached.

A constraining factor for an efficient dissemination of the CWG's work products are the limited resources that a number of agencies have at their disposal for participating in the CWG's work. With regard to the Cartel Workshops, not every member agency can attend and it is therefore suggested that presentations be transcribed or videotaped so that additional members could benefit from them. Smaller, regional workshops of shorter duration (in addition to the annual Cartel Workshops) could also be considered. In doing so account should be taken of the fact that certain agencies may speak less freely if their words are recorded.

Taking into account the resource constraints of member agencies similar telephone conferences to those organised by SG1 (i.e. the Enforcer Round Table Discussions) could also be organised by SG2 on topics of common interest, e.g. a drafting team could present a new/updated Manual chapter or interesting/highly rated panels from the Cartel Workshop or Annual Conference could be recreated for those who were not able to attend). The lack of resources may, however, prevent an agency to participate also in many telephone conferences. Where feasible, making free telephone calls available for those agencies whose international calls are limited was suggested.

With regard to the SG1 Enforcer Round Table Discussions, it is suggested that a written record/audio recording of the discussions be considered for further dissemination among the member agencies, as appropriate. Also the creation of a separate "Good/Best Practices" document which would gather together the good/best practices contained in the Anti-Cartel Enforcement Manual chapters and the production of a periodically distributed (electronic) newsletter informing member agencies and interested third parties of the recent and future work of the CWG should be considered.

As regards the target audience of the CWG events, the chairs of the CWG and its two subgroups could continue to encourage agencies to involve, as far as possible, their case handlers (and not only their international relations representatives) in the workshops, telephone conferences and working group meetings.

For the long term plan horizon, in the Cartel Workshop panels and annual projects, it is recommended to focus on issues that are relevant to new agencies, such as awareness/outreach efforts and encouraging such agencies to help lead the discussion and drafting on such topics.

To assess the reach of the work products, the possibility to collect ICN website statistics (number of downloads, frequency of website visits, most visited items, etc.) should be explored.

#### *Language and geographical barriers*

As a result of the global scope of the CWG's work, language and geographical difficulties are inevitable. However, every effort should be made to minimize the difficulties that language and geography may create.

In order to attract the widest possible participation to the annual Cartel Workshops, and especially the participation of younger agencies, the CWG should continue to strive for a geographical balance between regions in which the Workshops are organised.

The working language of the ICN is English. It is recognised that while the work products are only available in English this may limit their use by some members. A solution could be contemplated to solicit volunteers to translate certain publications (an executive summary thereof) into other languages (e.g. French and Spanish).

Also all telephone conferences are conducted in English, i.e. a language which is not the first language of many members. Due to time-zone differences it is also difficult to find a time during the day which would be suitable for all agencies willing to attend. Technical problems are also common and some agencies have limited resources at their disposal for long international telephone calls. It is therefore suggested that the use of an online discussion forum as a complementary means of communicating the work of SG1 and SG2 should be tested once the technology becomes available on the ICN website.

## **Annex II**

**Potential topics for consideration for future CWG work, including the Anti-Cartel Enforcement Manual, Cartel Workshops, Roundtable Discussions, and other written work product or discussions.**

**A number of these topics are covered by or overlap with existing CWG work product, though it may make sense to revisit, update and/or augment such work to address previous gaps, include a wider range of participants or include new developments.**

- ***Interaction of public and private enforcement** including developing and compiling information on the extent to which private enforcement currently exists, assessing its role in deterring cartel conduct, the extent to which it may complement or conflict with public enforcement, and its effect on leniency programs.*
- ***Procedural fairness** including identifying the various institutional and procedural safeguards to ensure fairness to subjects and third parties in the investigation of and proceedings against cartels, including non-discrimination, standard of proof, double jeopardy, etc.*
- ***Detecting cartels without leniency/immunity**, including educational initiatives/outreach with procurement agencies.*
- ***Case handling for investigators**, including identifying good practices for case handling.*
- ***Sufficiency of investigative powers to detect cartel conduct**, including discussing and evaluating the need for competition law enforcement authorities to have various investigative powers based on characteristics of cartel conduct; and assess the sufficiency of various investigative techniques, especially leniency programs.*
- ***Dual-track criminal and civil/administrative cartel regimes** including training required; issues agencies face when moving from civil/administrative to criminal cartel regimes; critical differences in criminal versus civil investigations, indicators of when to conduct dual track investigations and when to transfer an investigation (when and how), pitfalls in chain of evidence management and meeting the criminal standard burden of proof; effective liaison between competition authorities and public prosecutors.*
- ***Implementing leniency/immunity programs** including how to make the most of leniency/immunity policies and how leniency/immunity is managed in multi-jurisdictional cartel investigations.*
- ***Inability to pay fines claims** (when are companies required to pay fines?).*
- ***Case resolution** including setting / determining penalties in different regimes and the relationship between penalties and deterrence; settlements; the interaction of public and private enforcement.*
- ***Exchange of information** including consolidating the work already done in this area by other multilateral organizations, particularly the OECD; assess the need for information exchange between competition law enforcement authorities and the need for, and methods of, ensuring protection of confidential information; review and assess the effectiveness of*

*mechanisms and protections contained in existing statutes, agreements, and treaties providing for the exchange of sensitive evidence between enforcement authorities.*

- **Compliance programs** including assessing the role of compliance programs in detecting and deterring cartel conduct and develop examples of provisions common to successful programs.
- **Cartel prevention and awareness** including advocacy/outreach and its role in cartel enforcement programs, types of activities, measuring effectiveness, examples, corporate compliance programs and training.
- **Methods for measuring the impact of cartel enforcement.** A comparison of methods used to assess the bearing of enforcement actions, to increase awareness of the need for anti-cartel enforcement.
- **Global/regional cartels – enforcement/divergence/convergence** including perspectives on detecting, investigating and punishing global/regional cartels and the benefits and challenges to cooperation.
- **Deterrence - what works, what more should be done** including the roles of public messaging, detection and sanctioning.
- **Compensation for victims of cartels** including private rights of action, standing and remedies in domestic and global cartels.
- **Educating the judiciary about anti-cartel enforcement** including the harm caused by cartels, proving the elements of cartel offences (as distinct from other offences) and determining penalties.
- **Industry/sector case studies (e.g. construction, public procurement)** including analysis of the relevant markets, players and indicators of cartel conduct.
- **Use of forensic IT in cartel investigations** including electronic tools used to detect, gather, analyse and present electronic evidence of cartel conduct.

Further deliverables considered:

- **Conference call series within SG2** on topics of common interest, e.g. a drafting team could present a new/updated Manual chapter or interesting/highly rated panels from the Cartel Workshop/Annual Conference could be recreated for those who were not able to attend.
- **Good/Best Practices document** gathering together the good/best practices contained in the Anti-Cartel Enforcement Manual chapters (with reference to the original Anti-Cartel Enforcement Manual chapters in which additional background explanations to the good/best practices can be found).
- **Electronic newsletter** periodically distributed to member agencies and interested third parties to inform of the recent and future work of the CWG.
- **Register of cooperation agreements**
- **Competition for the best/most effective cartel outreach/advocacy project** to be created, and judged and awarded at the Cartel Workshop (on an annual or bi-annual basis). The purpose of this is to demonstrate the various approaches (in lieu of best practice) so that other agencies can adopt/adapt. Also, agencies can nominate themselves as coaches/mentors for younger and smaller agencies.
- **Survey on implementation/utilization** of the CWG's work products by member agencies.
- **Competition for the best/most effective implementation/utilization** of the CWG's work products by member agencies (presented, judged and awarded at the Cartel Workshop (on an annual or bi-annual basis).

## **Annex III**

### **The 2010 ICN Cartel Workshop**

#### **The efficient detection, investigation and punishment of cartel conduct – making the best use of agency resources**

*The Japan Fair Trade Commission (JFTC) invites you to the 2010 International Competition Network (ICN) Cartel Workshop where anti-cartel enforcers from around the world will discuss how to make the best use of agency resources to efficiently detect, investigate and punish cartel conduct.*

*The Workshop will take place in Yokohama, Japan, from October 5 to 7, 2010. It will be the 7<sup>th</sup> annual workshop hosted under ICN auspices, and is a continuation of the series of agency-led conferences that began in 1999.*

*During the three-day Workshop, participants will consider the latest methods, tools and systems for enhancing efficiency, and hear case studies from anti-cartel enforcers on how to make the best use of agency resources. Economical ways of detecting cartels will be examined, including through domestic and international cooperation and leniency/immunity programs, as well as the selection and prioritisation of cases. Participants will also discuss the investigative phase, and consider issues such as developing an effective investigative strategy and resourceful approaches to evidence gathering and building a case, including electronic techniques. Participants will explore the efficient resolution of cases, including prosecution in both civil and criminal contexts, building relationships with prosecutors and the role of alternative case resolution.*

*Selected topics will complement the Cartel Working Group's work products from 2009-2010, including the Conference Call Series on criminal sanctions for hard core cartels and the updated Anti-Cartel Enforcement Manual Chapters on digital evidence gathering and cartel case initiation.*

*The JFTC hopes that all ICN members will accept this invitation to participate in the 2010 ICN Cartel Workshop and use this opportunity to meet with international counterparts, learn from others and share anti-cartel enforcement experiences. We look forward to welcoming you to Yokohama in October, 2010!*