



**INTERNATIONAL COMPETITION NETWORK**

**Summary of ICN Work Product**

**Presented at the  
9<sup>th</sup> Annual Conference of the ICN**

**Istanbul, Turkey  
April 27-29, 2010**



Dear ICN Annual Conference participant,

On behalf of the ICN Steering Group, I would like to welcome you to the 9<sup>th</sup> Annual ICN Conference in the magnificent city of Istanbul.

During this year's annual conference we will have an opportunity to discuss the ICN's recent work and to discuss topical issues of common interest in panel discussions, structured debates and breakout sessions. I hope you will agree that this year's work, which includes new recommended practices, practical guidelines and handbooks, experience sharing teleseminars and workshops, as well as efforts better to engage our members, non-governmental advisers (NGAs) and other international organisations, shows the ICN at its best.

The ICN also does important work outside the scope of the formal projects carried out by the working groups and vice chairs. The network has continued to promote effective and practical working relationships, and to provide a forum for experience sharing among member agencies. In addition, the Steering Group developed a series of messages about the value and benefits of competition policy to economic stability and growth, both in the design of recovery measures and for the long term well being of our economies. These messages were intended to provide ICN members with support for domestic advocacy efforts, and help create a consistent voice internationally.

During the conference we would also like to hear the views of the global competition community on the future shape and direction of the network. To that end, the conference will include breakout sessions dedicated to planning for the ICN's second decade. In these sessions I hope to hear from agencies old and young, large and small, and our colleagues from the business, legal, academic, economic and consumer communities, on issues such as what the ICN is doing well, what it could be doing better, and what type of network it should aspire to be when the ICN's second decade begins in 2011.

This planning process has been started within the working groups, which have put a huge amount of work this year into preparing long term plans setting out the overall strategic goals of the working group over the next two to five years, in order to develop a bigger and bolder vision for the future and to consider what investments are needed now for future success.

By planning for the future it is hoped that the ICN will be in a position to realise more ambitious goals than can be achieved within a one- or two-year time frame, and facilitate both broader engagement of member agencies and NGAs and greater implementation and use of ICN materials.

I look forward to meeting many of you in Istanbul, and hope you enjoy the conference.

With best regards,

John Fingleton

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## **Section I: Advocacy Working Group**

### **Introduction**

The mission of the Advocacy Working Group (AWG) through 2009-10 was to develop practical tools and guidance to improve the effectiveness of ICN members' advocacy activities.

In March 2010, working group members agreed to add a reference to facilitating experience sharing between ICN member agencies to the mission statement, with the result that the new mission of the AWG is:

‘to develop practical tools and guidance, and to facilitate experience sharing between ICN member agencies, in order to improve the effectiveness of ICN members' advocacy activities’.

The working group is co-chaired by the United Kingdom's Office of Fair Trading and the Russian Federal Antimonopoly Service. In 2009-10, agencies from over 35 jurisdictions participated in the working group together with non-governmental advisers (NGAs) representing the legal, economic and academic communities, as well as consumer organisations.

The AWG engaged in two projects in 2009-10:

1. Competition Advocacy Experience Sharing Project (Subgroup 1)
2. Market Studies Project (Subgroup 2).

The work of these two projects is summarised below.

Following the Istanbul conference, the two subgroups will merge to work as one group for the purposes of better coordination, greater efficiency and obtaining synergies between the activities of the two subgroups.

### **Competition Advocacy Experience Sharing Project**

Between September 2009 and February 2010, the Experience Sharing Project organised five teleseminars addressing the following topics:

- *‘Building Relationships between Competition Authority and Private Bar: The Experience of Canada’*, presented by Sheridan Scott, a partner at Bennett Jones LLP and former Canadian Commissioner of Competition; Adam Fanaki, Acting Senior Deputy Commissioner of Competition, Mergers Branch with

the Competition Bureau Canada; and John Bodrug, partner at Davies Ward Phillips & Vineberg LLP and past Chair of the National Competition Law Section of the Canadian Bar Association.

- *‘Government Involvement in Markets’*, presented by John Fingleton, Chief Executive of the UK Office of Fair Trading, and Chris Jenkins, Head of Competition Advocacy at the OFT.
- *‘Advocacy: The Role of International Organisations. An Example from the OECD’*, presented by Hilary Jennings, Head of Competition Outreach, OECD.
- *‘Competition in the Financial Markets: The Mexican Experience’*, presented by Ernesto Estrada, chief economist of the Mexican Federal Competition Commission (CFC).
- *‘Evaluation of Competition Advocacy Efforts by Antitrust Authorities: The Experience of the Canadian Competition Bureau and the U.S. Federal Trade Commission’*, presented by Chris Busutil, Director of Advocacy Coordination of the Canadian Competition Bureau, and James C. Cooper, Attorney Advisor to Commissioner William E. Kovacic, U.S. Federal Trade Commission.

The Experience Sharing Project group prepared a report summarising the major points of these presentations. The report and available slides of the presentations will be placed on the Advocacy page of the ICN website.

### **Market Studies Project**

Between August 2009 and April 2010, the Market Studies Project group prepared:

- a draft Market Studies Good Practice Handbook, and
- a Market Studies Information Store.

The draft Market Studies Good Practice Handbook outlines information and good practice for the process of conducting market studies, gathering together accumulated experience and learning of member agencies in relation to:

- project management of market studies
- stakeholder engagement
- selection of market studies
- information collection and analysis
- developing and securing outcomes and
- evaluation of market studies.

Thirteen members of the working group were formally involved in the drafting and peer review of the draft handbook. The draft handbook was additionally peer reviewed by non-governmental advisers representing the legal and academic communities and consumer organisations.

Given that market studies are conducted for a range of different purposes, using different powers and different processes, the draft Market Studies Good Practice Handbook is not intended to be prescriptive, or to press for increased convergence. It is hoped, however, that the draft Handbook will inform member authorities of practices that they can consider adopting or adapting, if they wish, to improve the quality and delivery of their market studies work.

The Market Studies Information Store provides an online reference source of market studies conducted within the last five years by 34 participating ICN member agencies. It will be available to consult on the ICN website. It is proposed to monitor its usage and update the Information Store on an annual basis.

It is hoped that the Market Studies Information Store will help with:

- identifying issues for study
- the cross-fertilisation of ideas about market issues
- identifying approaches to particular market problems
- identifying ICN members who may be able to assist/advise further on their experience of conducting market studies in particular sectors.

During 2010 to 2011, the draft Market Studies Good Practice Handbook will be road-tested by volunteer agencies that can assess and provide feedback on whether the Handbook has been helpful in either helping them set up a market studies regime and/or with their market studies work. There will be space on the ICN website to provide feedback and comments on both the draft Handbook and the Information Store.

## **Section II: Agency Effectiveness Working Group**

### **Introduction**

The mission of the Agency Effectiveness Working Group (AEWG) is to identify key elements that contribute to successful capacity building and competition policy implementation in developing and transition economies, within the primary focus of the AEWG, which is effectiveness of competition agencies.

The AEWG is given the mandate to examine a variety of factors determining the ability of competition agencies to achieve their objectives in an efficient and effective way.

The co-chairs of the AEWG are Brazil's Council for Economic Defence and the Turkish Competition Authority.

In 2009-2010, the AEWG started the development of the first two chapters of a 'Competition Agency Practice Manual'. The manual will look at a variety of factors determining the ability of competition agencies to achieve their objectives in an efficient and effective manner, drawing on successful common approaches ('good practices') as well as individual experiences. It will be a 'living document': revised and updated on a regular basis. The manual is intended to cover six themes:

- Strategic planning and prioritisation
- Effective project delivery
- Effective knowledge management
- Ex-post evaluation
- Human resource management
- Communication and accountability.

AEWG members were involved in two projects in 2009-10:

1. Strategic Planning and Prioritisation – project leader: European Commission DG-COMP;
2. Effective Project Delivery – project leaders: Mexican Federal Competition Commission, the Netherlands Competition Authority and the Competition Commission of Pakistan.

NGAs participated in these projects as peer reviewers.

## **Strategic Planning and Prioritisation**

The chapter on Strategic Planning and Prioritisation addresses, *inter alia*, the objectives of strategic plans, the prerequisites of and constraints related to effective strategic planning, internal processes and external consultations, communication on strategic planning, and the use of prioritisation criteria and the process of prioritisation.

The chapter identifies the following good practices relating to strategic planning and prioritisation. The following list reflects key practices common to many of the competition agencies. It does not purport to present all of the possible practices, nor does it necessarily recommend these practices over others, as such a choice will depend on the circumstances particular to any given situation. The list is meant to provide a concise summary of common and widely reported practices in the area of strategic planning and prioritisation.

### *a) Strategic planning*

It is good practice:

1. to strategically plan the activities of an agency.
2. to have a mission statement that is clearly articulated, reflects the agency's legislative mandate, focuses on outcomes, and is consistent with the agency's resources.
3. to define strategic objectives that flow logically from the mission statement and identify goals that are to be achieved within a realistic time frame.
4. for an agency to consider how it will assess its progress towards reaching its strategic objectives.
5. in formulating a strategic plan, to consider constraints (e.g. legal, institutional, political, resource) that may impact the agency's selection of appropriate objectives.
6. if leadership sets the strategic objectives in consultation with management and staff.
7. to think about the duration of a strategic plan and how frequently the strategic planning exercise should take place.
8. for the leadership to communicate the strategy to management and staff.
9. to consider communicating the agency's strategy or key elements thereof externally.
10. to implement the strategy.

11. to evaluate the strategic plan on a regular basis.

*b) Prioritisation*

It is good practice:

1. to prioritise projects and to give careful consideration to the criteria for doing so.
2. to review periodically the priority status of projects.
3. to communicate priorities and, where possible, the factors that are considered in determining priorities, to management and staff.

**Effective Project Delivery (EPD)**

The EPD project consists of the examination of tools and techniques for optimal case management, exchange of good practices on internal quality control mechanisms and on institutional and organisational solutions ensuring compliance with agency decisions.

In 2009-10, the project group began drafting a chapter on EPD, covering, *inter alia*:

- The link between project management and the strategy planning process
- The need for project management in effective project delivery
- Step-by-step project management for competition authorities
- Monitoring and evaluation of projects
- Recommendations and conclusions for Efficient Project Delivery.

The EPD project will continue in 2010-2011 in order to finalise the chapter.

## **Section II: Cartel Working Group**

### **Introduction**

The ICN Cartel Working Group brings together antitrust enforcers to address the challenges of anti-cartel enforcement, enhancing the ability to shut down both domestic and international cartels. The Working Group aims to reduce obstacles that antitrust agencies face in cracking cartels through the examination of important legal and policy topics and the exchange of effective investigative techniques.

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 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.

### **Subgroup 1: Legal Framework**

#### *Enforcer Roundtable Calls*

Over the past year, SG1 held a series of substantive, experience sharing anti-cartel enforcer calls addressing issues related to the adoption and use of criminal sanctions for hard-core cartel conduct. The discussion series covered 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, and international coordination.

The seven call discussion series attracted unprecedented CWG participation. In total, 32 member agencies participated in the series of calls, with 15 contributing as speakers during the series. The calls averaged more than 50 participants from nearly 20 jurisdictions. In addition, the series included the first global joint member and NGA call for the CWG.

### *Survey on Enforcement Trends*

The 2009 ICN Cartel Workshop included a panel on trends in anti-cartel enforcement over the past decade. CWG members received a survey on significant developments to their anti-cartel laws, policies and practices. Forty-six agencies responded to the survey – the highest rate of participation in any CWG project to-date. The results of the survey on trends and developments in anti-cartel enforcement over the last ten years will be available on the ICN website.

### **Subgroup 2: Enforcement Techniques**

#### *Update to Anti-Cartel Enforcement Manual*

During 2009-2010, Subgroup 2 updated Chapter 3 “Digital Evidence Gathering” (originally published in 2006) and Chapter 4 “Cartel Case Initiation” (originally published in 2007) of the Anti-Cartel Enforcement Manual. The Chapters were updated by two drafting teams comprised of the following ICN member agencies:

Digital Evidence Gathering: Bundeskartellamt, Hungarian Competition Authority and Netherlands Competition Authority

Cartel Case Initiation: Australian Competition and Consumer Commission, Irish Competition Authority, New Zealand Commerce Commission and Competition Commission of Pakistan

Subgroup 2 members provided information on their digital evidence gathering and cartel case initiation practices in response to two surveys circulated by the drafting teams, as well as comments on both Chapters.

#### *Update to Anti-Cartel Enforcement Templates*

During 2009-2010, Subgroup 2 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.

Some ICN members have also provided links to related materials on their websites, including relevant legislation, implementing rules and regulations, guidelines and information about cases.

Templates can be found on the ICN website at:  
[www.internationalcompetitionnetwork.org/working-groups/current/cartel/templates.aspx](http://www.internationalcompetitionnetwork.org/working-groups/current/cartel/templates.aspx).

### *Cartel Workshop*

The Egyptian Competition Authority hosted the 2009 Cartel Workshop in Cairo on 27-29 October 2009. Through a series of plenary and break-out sessions, case presentations and discussion of a hypothetical case, participants reflected on lessons from the last decade of anti-cartel enforcement, addressed current challenges and tackled emerging issues in anti-cartel enforcement. On Day 1, participants examined lessons learned from past cartel investigations and analysed a case study of successful investigative strategies and techniques. Day 1 also included discussions on international cooperation in information sharing, agency cooperation to fight multi-national/regional cartels and settlements. On Day 2 participants discussed various case studies, cartel detection with and without the use of leniency programs as well as a hypothetical case involving the use of formal powers such as searches, raids and inspections. On Day 3, participants explored emerging issues in cartel enforcement including digital evidence gathering, outreach activities and private actions.

## **Section IV: Merger Working Group**

### **Introduction**

The mission of the ICN Merger Working Group is to promote the adoption of best practices in the design and operation of merger review regimes in order to: (i) enhance the effectiveness of each jurisdiction's merger review mechanisms; (ii) facilitate procedural and substantive convergence; and (iii) reduce the public and private time and cost of multi-jurisdictional merger reviews. The U.S. Department of Justice, Antitrust Division, and the Irish Competition Authority co-chair the MWG.

### **2009-2010 Summary of Work**

During the past year, the MWG developed and approved two proposed **Recommended Practices for Merger Analysis** (RPs) for adoption by members at the 2010 annual conference, covering: market definition in merger cases and failing firm analysis. The RPs are set out below. As in previous years, the RPs were developed in the course of many Working Group calls and with broad NGA input. These new recommended practices follow six Recommended Practices for Merger Analysis adopted in 2008 and 2009 on: 1) the legal framework for competition merger analysis; 2) the use of market shares, thresholds and presumptions; 3) entry and expansion; 4) competitive effects analysis in horizontal merger review; 5) unilateral effects; and 6) coordinated effects.

This year, the MWG held its first two teleseminars, which were open to all members and NGAs. The calls covered remedies in merger cases and implementation of the Recommended Practices for Merger Notification and Review Procedures. Twelve jurisdictions contributed to the success of the teleseminars as speakers. Both calls attracted a large and diverse audience of members and NGAs.

### **2010 Proposed Recommended Practices for Merger Analysis on Market Definition and Failing Firm/Exiting Assets**

*(presented without accompanying MWG comments; please see conference materials for a complete version)*

#### VII. Market Definition

- A. Agencies generally should assess the competitive effects of a merger within economically meaningful markets. A relevant market consists

of a product or group of products and a geographic area in which it is produced or sold that could be subject to an exercise of market power.

- B. The “hypothetical monopolist” or “SSNIP” test is an appropriate test to determine the relevant market(s) in which to analyse the competitive effects of a merger.
- C. In applying the SSNIP test to identify a relevant product market, agencies generally should identify a product or group of products for which a hypothetical, profit-maximizing monopolist would impose profitably at least a SSNIP, assuming the terms of sale of all other products were held constant.
- D. In applying the SSNIP test to identify a relevant geographic market, agencies generally should identify an area in which a hypothetical profit-maximizing monopolist would impose profitably at least a SSNIP, assuming the terms of sale of all products at all other locations were held constant.
- E. Where a hypothetical monopolist would profitably discriminate in prices charged to particular groups of customers or in particular geographic areas, agencies should consider whether a narrower relevant market, consisting of a product or group of products sold to certain groups of customers or in particular geographic areas, is appropriate.
- F. Agencies should consider the potential for supply-side substitution, and whether to include as participants in the relevant market not only all firms that currently produce or sell in the relevant market, but also firms that likely would, in response to a SSNIP in the relevant market, produce or sell in the relevant market within a short time frame and without incurring significant sunk costs.

#### VIII. Failing Firm/Exiting Assets

- A. A merger is not likely to create or enhance market power if one of the merging parties is likely to fail and its assets are likely to exit the market in the imminent future. In cases where the merging parties assert that a merger is unlikely to harm competition because one of the merging firms is failing, agencies should carefully assess the appropriate counterfactual in which to analyse the competitive effects of the merger.

- B. In assessing claims that a merger will not harm competition because one of the merging parties is failing, agencies should determine whether: (a) the firm is unable to meet its financial obligations in the imminent future; (b) there would be no serious prospect of reorganising the business; (c) there would be no credible less anticompetitive alternative outcome than the merger in question; and (d) the firm and its assets would exit the market in the imminent future absent the merger.
  
- C. In assessing claims that a merger will not harm competition because a division of a firm is failing, agencies may assess whether the following conditions are met: (a) the division has a negative cash flow on an operating basis; (b) the division and its assets would exit the market in the imminent future absent the merger; and, (c) there is no reasonable less anticompetitive alternative outcome.

## **Section V: Unilateral Conduct Working Group**

### **Introduction**

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 addressing anticompetitive unilateral conduct of dominant firms and firms with substantial market power, facilitate greater understanding of the issues involved in analysing unilateral conduct, and promote convergence and sound enforcement of laws governing unilateral conduct. The Working Group is co-chaired by the U.S. Federal Trade Commission and the German Bundeskartellamt.

During the last year, the UCWG continued its work on the analysis of unilateral conduct by examining a dominant firm's refusal to deal with a rival and margin squeeze practices. The report is based on responses to a questionnaire submitted by competition agencies and NGAs from 43 jurisdictions. The questionnaire and responses are available on the ICN website.<sup>1</sup>

The Working Group also held two successful webinars, each with more than 100 participants from around the world. The first dealt with excessive pricing, and the second with remedies in unilateral conduct cases. Recordings of both programs are posted on the ICN website.<sup>2</sup>

### **Report on the Analysis of Refusal to Deal with a Rival under Unilateral Conduct Laws**

Most responding agencies stated that their competition laws do not specifically define a refusal to deal. The agencies define refusal to deal much like the questionnaire did — as the unconditional refusal by a dominant firm (or a firm with substantial market power) to deal with a rival, including in particular refusals to license intellectual property rights or to grant access to an essential facility. Several agencies define a refusal to deal more broadly to include refusals to deal with non-rivals or refer to a wider range of practices than those discussed in the Report.

Most agencies noted that a refusal to deal need not consist of an outright refusal. These agencies also recognise “constructive” refusals to deal, which are generally characterised by the dominant firm's offering to supply its rival on allegedly unreasonable terms, such as extremely high prices, degraded service, or reduced

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<sup>1</sup> Available at: [www.internationalcompetitionnetwork.org/working-groups/current/unilateral/questionnaires-responses/refusal-deal.aspx](http://www.internationalcompetitionnetwork.org/working-groups/current/unilateral/questionnaires-responses/refusal-deal.aspx).

<sup>2</sup> Available at: [www.internationalcompetitionnetwork.org/working-groups/current/unilateral/workshops-teleseminars.aspx](http://www.internationalcompetitionnetwork.org/working-groups/current/unilateral/workshops-teleseminars.aspx).

technical interoperability. Most agencies also recognise “margin squeeze” as a potential antitrust violation, which occurs when a dominant firm charges a price for an input in an upstream market that, compared to the price it charges for the final good using the input in the downstream market, does not allow a rival in the downstream market to compete effectively.

During the last ten years, a competition law violation based on a refusal to deal or margin squeeze theory was found in approximately 150 cases in the reporting jurisdictions, and no violation was found in at least twice as many investigations. Several responses stated that firms, whether dominant or not, generally should be able to contract with parties of their choice.

### *Analysis of Refusal to Deal*

To prove a violation in most jurisdictions, it is necessary to show that the refusal leads to market foreclosure of one or more firms that compete in a downstream market with the firm that refuses to supply, thus eliminating effective competition. Most responses specified that a refusal to deal is unlawful only if it is not objectively justified. Many jurisdictions emphasised that “constructive” refusal cases are heavily fact-dependent, making it difficult to draw general evaluative criteria.

### *Essential Facilities*

In virtually all jurisdictions, the issue of “essential facilities” arises when an undertaking that controls a facility refuses to grant access to other undertakings, allegedly to gain a competitive advantage in another market. The principal common elements of an essential facility identified in the responses are: (1) access to the facility must be essential to reach customers; and (2) replication or duplication of the facility must be impossible or not reasonably feasible.

### *Intellectual Property, Regulated Industries, and State-Created Monopolies*

Several agencies explained that they generally treat refusals to license intellectual property in the same way they treat other refusals to deal. Similarly, most agencies explained that they do not use a different standard to evaluate refusals to deal by participants in a regulated industry. Many of those agencies noted, however, that the terms of regulation, particularly with respect to access, may be taken into account in analysing the lawfulness of the refusal.

### Margin Squeeze

Many authorities generally use the same or very similar criteria to those that they apply to actual refusals. Some agencies stated that they apply the “equally efficient competitor test,” meaning that there may be a violation if the dominant firm’s price could drive equally efficient competitors from the market.

### Remedies

Approximately half of the responding agencies stated that access to the refused good could be mandated and that cease and desist orders were available. Some responding agencies can impose fines, and several have authority to seek criminal sanctions although only one agency has done so. A few jurisdictions noted their ability to impose structural measures to restore competition, but only one agency reported imposing such a remedy.

## **Section VI: Vice Chair and NGA Liaison Reports**

### **Vice Chair for Advocacy and Implementation**

Mandate: The Vice Chair for Advocacy and Implementation (VC A&I) is responsible for developing and, with Steering Group approval, implementing a work plan to promote and advocate for the use of ICN work product by competition authorities throughout the world.

#### *2009-2010 Projects and Activities*

1. Engage Advocacy and Implementation Network (AIN): The VC A&I held bi-monthly teleconferences since October 2009. In the conference calls, the VCA&I and AIN members exchanged information on competition law and policy developments in the ICN member jurisdictions, particularly younger agencies. VCA&I and AIN members also discussed potential participating agencies of the support program and the implementation of the support program. Upon agreement of AIN members, “Support System” was renamed “AIN Support Program” (AISUP) in October 2009 and its operational framework was amended accordingly.
2. Promote the AIN Support Program (AISUP): The VC A&I promoted the AISUP in various ways. The VCA&I has drafted a webpage for AISUP, with support of AIN members. The VCA&I and AIN members also created a new registration form for the applying jurisdictions for the AISUP. The article to disseminate the AISUP was posted on the ICN weblog by the VC Outreach on February 24, 2010. The VCA&I has drafted a flyer providing information on the AISUP which is available on the ICN website. The flyer was also distributed at various fora such as the ICN Cartel Workshop, ASEAN Expert Group on Competition Workshop, and OECD Global Forum.
3. Manage the AISUP: For the Vietnam Competition Authority (VCA), a support program team composed of Australia, Brazil, Japan, and the United States carried out an in-country seminar as well as three teleseminars on a variety of topics in 2009. The Japan Fair Trade Commission (JFTC) and the VCA agreed to continue the program and formulated a plan of holding teleseminars on cartels beginning from April 2010. The German Bundeskartellamt has conducted the program with the Zambia Competition Commission (ZCC) on a case by case basis. The agencies have held a teleseminar and ad hoc meetings. The Russian FAS formulated an advisory assistance work plan for the Mongolian Authority for Fair Competition and Consumer Protection (AFCCP) and provided a two-

days training to AFCCP staff members. Currently FAS is reviewing the draft new Mongolian competition law. In addition, AIN members approved initiating new support programs for Kazakhstan, Kyrgyzstan and Moldova, proposed by the FAS.

4. Build awareness of ICN work product: At several opportunities such as, Japan International Cooperation Agency training, Asian Development Bank Conference on Competition Policy Development in Southeast Asia and APEC's Competition Policy and Law Group – APEC Business Advisory Council Dialogue, officials from AIN member countries introduced ICN activities including AISUP and ICN work products.

### **Vice Chair for International Coordination**

Mandate: The Vice Chair for International Coordination is responsible for developing, in consultation with the Vice Chair for Outreach and the Vice Chair for Advocacy and Implementation, and implementing with the Steering Group's approval, a work plan to coordinate the work of the ICN with that of other international organisations in a way that meets the needs of ICN members in terms of outreach, advocacy, and implementation.

#### *2009- 2010 Projects and Activities*

1. Database of regional networks and technical assistance donors and providers. In order to maintain closer contact with international organisations, the Vice Chair for International Coordination sent last March a letter and a questionnaire to 21 organisations to identify potential areas for collaborative efforts. The responses to the questionnaires will be used to produce a report that will include a general background on the events, technical assistance and projects conducted by multilateral organisation over the last five years related to competition; and all the information about technical assistance and competition related studies planned for 2010.
2. ICN materials for technical assistance. The Vice Chair for International Coordination is working with the Vice Chair for Outreach to identify ICN's work products that are particularly suitable for use in the provision of technical assistance and prepare a template package for the providers. This package will highlight existing ICN materials that can be used in training sessions to competition agencies. The materials included in the package are planned to be translated into Spanish and French.

3. Joint projects. The Vice Chair for International Coordination has coordinated the work of the ICN with the following international organisations:
- i. World Bank Group-ICN: Launched a pilot collaboration whereby the ICN will support the World Bank in a competition assessment of the haulage industry in the East African Community, through sharing ICN members' expertise in competition advocacy, market studies and proposals for the removal of anticompetitive regulation. The project is currently being developed by a task force comprised of World Bank Group experts and members from the Zambia Competition Commission, Kenya's Monopolies and Prices Commission, U.K. Office of Fair Trading, U.S. Department of Justice, U.S. Federal Trade Commission, South African Competition Commission, French Competition Authority, Swiss Competition Commission, and Mexican Federal Competition Commission (CFC).
  - ii. UNCTAD-ICN: Launched an outreach project aimed at supporting competition authorities from developing and least developed countries to effectively participate in the ICN, in order to enhance a competition culture and thereby contributing to economic development. The main activities of this project involve: translation of main ICN materials into French and Spanish; facilitating the participation of experts from agencies from least developed and developing countries in the ICN working groups; support of UNCTAD training courses and workshops by ICN experts; and possible organisation of joint training events.
  - iii. APEC-ICN: The Vice Chair for International Coordination promoted collaboration with APEC in order to establish closer links between our organizations. In February 2010, an ICN member for the Merger Working Group participated in APEC's 2010 Round Table with ABAC on Procedural Fairness in Competition Cases, in Hiroshima, Japan. Further collaboration between both organisations is expected to take place in 2010.

### **Vice Chair for Outreach**

Mandate: The Vice Chair for Outreach is responsible for developing and, with Steering Group approval, implementing a work plan to engage ICN member agencies and NGAs from ICN member jurisdictions in the activities of the ICN (e.g., workshops, working groups, annual conferences), to encourage use of ICN work products and adoption of ICN best practices, and to ensure that the diversity of views and interests of ICN members are represented.

## *2009-2010 Projects and Activities*

1. Outreach Toolkit. The Vice Chair for Outreach prepared a slide presentation introducing the viewer to the ICN. Together with other “welcome” materials such as the ICN’s statement of achievements, this presentation can serve as an introduction to the ICN for new members, new members’ staff, or new NGAs. The presentation includes an overview of the ICN’s mission, membership, achievements, projects, etc. as well as more detailed presentations on the activities of the current Working Groups.
2. ICNBlog. The Vice Chair for Outreach created and maintains an ICN weblog, “ICNBlog,” [www.icnblog.org](http://www.icnblog.org), posting frequently about ICN events and work product, as well as about member news. For example, the blog has posted announcements of upcoming workshops and teleseminars, profiled ICN work product, and helped publicise working group initiatives. The blog features “Web Wednesdays” postings, which profile an aspect of members’ websites, including, for example, compilations of agencies’ leniency contacts and how agencies receive public complaints. The blog has a dedicated e-mail address for members and other readers to propose submissions. Readership has grown exponentially, with over 700 unique visitors each month, drawing from over 75 jurisdictions. In April, the ICNBlog began offering an e-mail service, allowing individuals to sign up to receive a notice with the titles of new blog entries.
3. Outreach Study. In order to devise a longer term strategy for broader engagement of ICN members and NGAs, the Vice Chair for Outreach conducted a four part outreach study.
  - i. First, the Vice Chair for Outreach prepared a literature survey and highlights of the academic literature that discusses the development of international policy networks and considers how different approaches to governance influence the effectiveness of these networks. In the year ahead, the outreach activities of the ICN might include efforts to relate this literature to its own work.
  - ii. Second, the Vice Chair for Outreach studied the experience of other international networks whose core membership consists of government bodies (e.g., APEC, IOSCO, IAIS) and how they interact with non-members. These findings were presented to the ICN Steering Group and shared with the NGA Liaison to inform a review of ICN’s NGA policy.
  - iii. Third, the Vice Chair for Outreach, together with the NGA Liaison, expanded relationships with academic institutions and academics. This

will be expanded by the Vice Chair for Outreach in the pilot project described below.

- iv. Finally, the Vice Chair for Outreach prepared a detailed questionnaire for ICN members and NGAs about the future direction for the network. This questionnaire will serve as the basis for the “Planning for the ICN’s Second Decade” breakout session at the 2010 annual conference in Istanbul.
4. ICN University. The Vice Chair for Outreach proposed a new ICN project to create a comprehensive curriculum of training materials that could serve as a virtual university on competition law and practice for competition agency officials. These materials will take the form of electronic teaching modules consisting of a combination of lecture, slides, and test questions, accompanied by written materials and suggested reading. Relevant ICN work product will be integrated with each module to the extent available. Partnering with academics from around the globe, a small group of ICN members will conduct a pilot project in 2010-11; assuming it is generally well-received, the project will be refined and expanded.

## **NGA Liaison**

Mandate: The mandate of the NGA Liaison is to better engage NGAs from diverse backgrounds and geographic distribution to participate more actively in the ICN, so that the network can benefit from a wide spectrum of views and interests.

### *2009-2010 Projects and Activities*

The priority of the NGA Liaison for 2009-2010 was to take stock of the current NGA community involved in the ICN in order to consider potential policy changes for the future.

1. Study of the profile of NGAs participating in the ICN. Based on information submitted by the working groups, a study of NGAs participating in the ICN has shown that (1) some three quarters of NGAs are located in North America and Europe, and (2) the vast majority of NGAs are from law firms and relatively few are from academic or consumer organisations. There was a clear consensus in favour of enhancing NGA engagement, in particular by broadening the profile of NGAs as well as their geographic spread.
2. NGA page on the ICN website. A new NGA-dedicated webpage on the ICN’s website, created in September 2009, is available at: [www.internationalcompetitionnetwork.org/media/library/NGAs\\_role.pdf](http://www.internationalcompetitionnetwork.org/media/library/NGAs_role.pdf).

3. Written guidance to members on NGA participation in the activities of the ICN. In order to clarify the procedures for selection and participation in the ICN, written guidance to members on NGA participation has been prepared.
4. ICN quarterly update. In December 2009 and March 2010, **ICN quarterly updates** were sent to the whole ICN community providing brief updates of the ICN activity for the last three months, and also posted on the ICNBlog at [www.icnblog.org](http://www.icnblog.org).
5. Study of non-governmental actors' involvement in other governmental networks. A study identifying how other organizations interact with non-members was presented to Steering Group members and will serve as a background document for reviewing current NGA policy.

## **2009-2010 ICN Projects**

### **Advocacy Working Group**

Competition Advocacy Experience Sharing Project teleseminar series  
Draft Market Studies Good Practice Handbook  
Market Studies Information Store

### **Agency Effectiveness Working Group**

Strategic Planning and Prioritisation handbook chapter  
Draft Effective Project Delivery handbook chapter

### **Cartel Working Group**

Call series on criminal sanctions for hard-core cartel conduct  
Review & update of digital evidence gathering and cartel case initiation chapters  
Update to Anti-Cartel Enforcement Templates  
Cairo Workshop

### **Merger Working Group**

Recommended Practices for Merger Analysis: Market Definition and Failing Firm/Exiting Assets

### **Unilateral Conduct Working Group**

Report on Analysis of Refusal to Deal with a Rival under Unilateral Conduct Laws  
Webinars on excessive pricing and remedies in unilateral conduct cases

### **Special Project: Interface between Competition Policy and other Public Policies**

Report on Interface between Competition Policy and other Public Policies

### **Annual Conference Planning Committee**

### **Website Project**

New ICN website

### **Vice Chair Advocacy & Implementation**

Advocacy and Implementation Network  
Promotion and management of AIN Support Program  
Building awareness of ICN work product

### **Vice Chair International Coordination**

[Compatibility matrix  
World Bank East African haulage project] – *to be completed*

**Vice Chair Outreach**

Outreach Toolkit

ICNBlog

Outreach study

ICN University proposal

**NGA Liaison**

Study of the profile of NGAs participating in the ICN

NGA page on the ICN website

Written guidance to members on NGA participation in the activities of the ICN

ICN quarterly update

**Other working groups**

Membership

Operational Framework, including funding