



INTERNATIONAL COMPETITION NETWORK

**ICN Statement of Achievements
2001-2013**

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Introduction

In October 2001, competition authorities from 14 jurisdictions launched the International Competition Network (ICN) as an international forum of enforcement authorities exclusively devoted to competition issues.

The ICN has grown considerably since then to include 128 agency members from 111 jurisdictions, making it the most extensive network of competition authorities worldwide. Within the ICN, member agencies work closely with their peers, as well as with non-governmental advisors (NGAs) from business and consumer groups, academia, the legal and economic professions, and international organizations such as the OECD and UNCTAD.

The mission of the ICN is to advocate the adoption of superior standards and procedures in competition policy around the world, formulate proposals for procedural and substantive convergence, and seek to facilitate effective international cooperation to the benefit of member agencies, consumers and economies worldwide.

In its first decade, the ICN has made great strides in advancing the network's mission, both in terms of the breadth and depth of its work products as well as the use and implementation of this work product by its members. The ICN's informal working methods, consisting of open discussion and mutual trust that lead to broad-based consensus, have proved highly effective in creating valuable work products that have been well received worldwide. Competition authorities of all ages and sizes benefit enormously from their participation in the ICN and the ICN work product. The ICN's work also influences a broader sphere of policymakers as well as legislators around the world.

Entering its second decade, the ICN used the opportunity of the tenth annual conference in The Hague to consider its goals and future. In a number of interviews and discussions, the network examined the ICN's strengths and improvements needed in order to maintain the network's exceptional momentum. Following this assessment, the ICN published a paper in May 2011 setting out a long-term vision and strategy for the ICN in its second decade. In his Vision Statement ICN Steering Group Chair Eduardo Pérez Motta outlined three areas of emphasis to help realize that vision:

- Enhanced member engagement
- Improved hands-on assistance to members

- Greater visibility for competition policy and principles

The ICN's remarkable body of work products is a tool for continuous improvements in antitrust enforcement and competition advocacy. As the network matures, the ICN increasingly focuses efforts on use and implementation of existing work product. To ensure the high quality, ICN members are highly aware of the implications of growing work load. Further self-assessment and implementation will help to maintain the high standards.

This Statement of Achievements provides an overview of the ICN's work organized according to the relevant working and project groups. Currently active groups include the Working Groups on Advocacy, Agency Effectiveness, Cartel, Merger, and Unilateral Conduct. Further areas of the ICN work are the Advocacy and Implementation Network Support Program, and the Blog & Bulletin Board. Formerly active Working Groups dealing with Antitrust Enforcement in Regulated Sectors, Capacity Building and Competition Policy Implementation, and Telecommunications Services will also be described for the sake of completeness.

Currently Active Working Groups

[Advocacy Working Group](#)

Recognizing the importance of competition advocacy, one of the ICN's first initiatives was the establishment of the Advocacy Working Group (AWG) in 2001. The mission of the AWG is to develop practical tools and guidance to improve the effectiveness of ICN members' competition advocacy activities.

The AWG's original mandate was to undertake projects with a view to recommending best practices and to provide information to members in support of their advocacy functions. This work took place from 2001 through 2003. In 2008, the AWG was reconvened and a revised work plan reflecting the needs of ICN members in sharing experience in competition advocacy and market studies, was approved by the Steering Group. In 2008-2009, the AWG engaged in a review and update of existing ICN advocacy work, and examined in greater detail members' experiences in conducting market studies as part of their advocacy efforts, with the goal of developing good practices for conducting studies.

The ICN Report on Advocacy, presented at the ICN's inaugural Annual Conference, defined competition advocacy in the following terms:

"Competition advocacy refers to those activities conducted by the competition authority related to the promotion of a competitive environment for economic activities by means of non-enforcement mechanisms, mainly through its relationships with other governmental entities and by increasing public awareness of the benefits of competition."

The ICN's work in the area of advocacy is intended to be particularly useful for competition agencies in developing or transition countries, where the competition and regulatory framework is relatively young. The original mandate of the AWG was to undertake projects with a view to identifying effective approaches and providing information to members in support of their advocacy functions. This work took place from 2001 to 2003. In 2003, an "Advocacy Toolkit" was produced, including elements on promotion mechanisms, educating decision makers, media relations, plain language, internal communications, websites, and research and consultation. A number of agencies have reported that the toolkit has influenced and improved their outreach activities.

In 2010-2011, Part 1 of the Advocacy Toolkit on Advocacy process and tools was updated to include recent examples of advocacy efforts by competition authorities and increase its practicality for ICN Membership, and the AWG conducted a road testing of the draft Market Studies Good Practice Handbook.

In 2011-2012, the Benefits Project was launched, whose goal is to raise the awareness of the benefits of competition to government and non-governmental stakeholders. The other main assignments of the AWG consisted in completing Part 2 of the Advocacy Toolkit focusing on communications and public relations, finalizing the Market Studies Good Practice Handbook in light of the road testing and commencing the process toward the organisation, in the next ICN year, of its first Workshop.

The Market Studies Good Practice Handbook, initially developed in 2010, highlights common approaches in conducting market studies and covers the different phases of such studies. A questionnaire was first sent to all ICN member agencies requesting them to rank the good practices identified in the draft Market Study Handbook. A more detailed road-testing was then conducted by individual members of the AWG. The road-testing of the Handbook produced very positive results, with almost all of the good practices cited in the Handbook having been rated at or above 4 out of 5 on

a scale of usefulness. The final version of the Handbook was presented at the Annual Conference in 2012.

The mission of the AWG as stated in the 2012-2013 work plan is “to undertake projects, to develop practical tools and guidance, and to facilitate experience sharing among ICN member agencies, in order to improve the effectiveness of ICN members’ advocacy activities in advocating the adoption of competition principles in government and promote the development of a competition culture within society.”

For this, the AWG places an emphasis on the active dialogue between agencies on best practices with regard to advocacy. The group holds a series of experience-sharing calls, which facilitate dialogue on and the exchange of best practices in a number of areas dealing with institutional and sectoral aspects of competition advocacy. In 2008-2011 the AWG conducted a series of experience-sharing teleseminars on a variety of topics related to planning and implementation of competition advocacy programmes and broader competition policy issues, including striking a balance between competition advocacy and enforcement activity as a means to achieve competition policy goals; competition advocacy in the time of economic crisis; the role of government in markets; competition advocacy with lawmakers; building relations between the competition authority and private bar; and evaluation of efficiency of competition advocacy efforts, as well as sector specific advocacy experience in such areas as transportation and finance. The teleseminars proved to be a popular form of experience-sharing and generally assembled a significant number of participants from ICN members and NGAs. In 2011-2012, as part of the Benefits Project, the AWG conducted a call series regarding how agencies explain the benefits of competition to a variety of stakeholders, including government, business, media and the general public. The teleseminars slides are available on the ICN AWG webpage to serve as a reference for ICN members planning advocacy efforts and market interventions.

In 2012-2013, based on the feedback received during the teleseminar series, the Benefits Project began work on the first chapter of a practical document on “Explaining the Benefits of Competition” dedicated to government and legislators, the draft of which will be presented at the 12th Annual conference in Warsaw.

The first Advocacy Workshop was held in Paris in October 2012. It addressed substantial policy issues – most notably regarding advocacy to Government – with a plenary session on “Competition impact assessment of legislation”. Besides sessions dedicated to the AWG Projects, the Workshop

was also keen to advance the ongoing project on “Working with Courts and Judges” led by the Polish Office of Competition and Consumer Protection. Discussions on “Advocacy and institutional reform” and “The role of the ICN in competition advocacy” explored how the ICN can act as an advocate within the network – in support of its members, and outside the network, advocating for competition in the international arena. Further discussions were held on subjects of special interest to NGAs with a session on “Advocacy: the role of NGAs”, as well as younger and more mature agencies with sessions on “The ABCs of advocacy” and “Advocacy and economics”.

Two other projects of the AWG were launched at the Advocacy Workshop: the Competition Culture Project and the Competition Assessment Project. The Competition Culture Project seeks to define competition culture, and learn how members interact with the constituent parts of a competition culture and what role each constituent plays or potentially could play. In 2012-2013, teleseminars were conducted to identify practical methods and techniques that help to promote competition culture among different constituents, such as government officials, the judiciary, the competition bar, academic centres, journalists, consumer and other NGOs, and associations. A status report will be presented at the 12th Annual conference in Warsaw.

The Competition Assessment Project covers draft and existing legislation, and seeks to address both process issues (i.e. how to be recognized by Government and Parliament as a source of expertise, how to trigger advocacy work on legislation and how to maximize the impact of competition assessment) and substantive practices (i.e. the analytical criteria agencies may use to analyze legislation, alternative and mitigation measures). A preliminary work product will be prepared and road-tested at the 12th Annual conference in Warsaw.

In 2010, the AWG created a platform for ongoing discussion and sharing views on advocacy and competition policy issues by means of launching a ‘Postings’ Section on its webpage. The Section complements the AWG’s ongoing projects and helps to solicit the ICN Membership views on competition advocacy issues.

Furthermore, an “ICN Information Store of Market Studies” was launched as an online resource for agencies. The information store provides, by sector, ICN member studies on a particular topic. Having first tested its use and usefulness in 2011-2012, the AWG updated the Market Studies Information Store in 2012-2013.

Agency Effectiveness Working Group

Recognizing that the manner in which a competition agency organizes its operations and conducts its investigations shapes the quality of its substantive work, the Agency Effectiveness Working Group (AEWG) was formed in 2009 when the Competition Policy Implementation Working Group's (CPI WG) title and focus were changed. The mission of the AEWG is to identify key elements of a well-functioning competition agency and develop best practices for agency strategy, planning, operations, and investigative tools and procedures. The AEWG's work examines a variety of factors that affect how competition agencies achieve their objectives in an efficient and effective way. Over 60 ICN member agencies have actively contributed to the work of the AEWG.

AEWG accomplishments have focused on four primary initiatives: the ICN Competition Agency Practice Manual, the ICN Curriculum Project, the Investigative Process Project, and agency leadership roundtables.

ICN Competition Agency Practice Manual

The Agency Practice Manual addresses a range of institutional and organizational subjects through chapters on strategic planning and prioritization, effective project delivery, effective knowledge management, and human resources management. Each chapter was informed by a survey of ICN member agencies and contains examples of best practices from many jurisdictions. Fifty-five ICN member agencies have provided input about their experiences for the Manual. Member agencies have used the practices and exemplars in the Manual as inspiration for the evaluation and reform of internal practices and working procedures.

- The Strategic Planning and Prioritization chapter addresses the objectives of strategic plans, the prerequisites of and constraints related to effective strategic planning, communication on strategic planning, and the use of prioritization criteria.
- The Effective Project Delivery chapter examines tools and techniques for optimal case management, internal quality control mechanisms and institutional solutions to ensure compliance with agency decisions.

- The Knowledge Management chapter examines the various ways in which competition agencies manage institutional knowledge. It presents a variety of activities, processes, and technologies that support institutional knowledge investment, acquisition, and management, with the goal of assisting competition agencies according to their needs and resources.
- The Human Resources Management chapter focuses on an area of paramount importance to the success of any competition agency: the quality and effectiveness of its people. The chapter examines challenges faced by competition agencies in hiring and retaining staff and the tools that agencies employ in maximizing the effectiveness of staff.

Investigative Process Project

In 2012, the AEWG began a multi-year project on competition agencies' investigative processes. The Investigative Process Project provides a forum to enhance ICN members' understanding of how different investigative processes and practices can contribute to enhancing the effectiveness of agencies' decision-making and ensuring effective protection of procedural rights. The Project addresses the investigative tools and procedures used by competition agencies within their legal frameworks. The Project's mandate calls for the group to gather information and share experiences regarding agencies' investigational procedures, and based on this work, consider developing ICN guidance or recommendations.

To date, the Project has examined two aspects of investigative process: investigative tools and agency transparency practices. The Project conducted stocktaking to identify existing work related to investigative tools and transparency and to survey member practices. The Project produced comprehensive overviews of the range of agencies' investigative tools and the ways in which agencies provide transparency during their investigations. The reports on tools and transparency offer insights into common agency practices that enhance the effectiveness and efficiency of their investigative processes.

[ICN Curriculum Project](#)

In 2010, under the auspices of the Vice Chair for Outreach, the ICN Curriculum Project was launched to create a comprehensive curriculum of online training materials as a virtual university on competition law and practice for competition agency officials. The project engages the skills and talents of ICN members and NGAs, particularly academics, to provide a valuable new resource to build capacity and to strengthen competition policy and enforcement.

The Curriculum Project has developed eleven modules addressing the following topics:

- The Origins and Aims of Competition Policy
- Major Characteristics of Competition Policy
- Market Definition
- Market Power
- Competitive Effects
- Leniency
- Predatory Pricing
- Handling Merger Investigations
- Competition Advocacy
- Challenges for Agencies in Developing Economies
- Planning and Conducting Investigations

Training modules, consisting of video lectures and accompanying materials from a diverse group of international academics and practitioners, provide an on-line educational center for competition authorities from around the world. The modules promote ICN work product and also incorporate ICN members' experiences.

Agency Leadership Roundtables

The AEWG has sponsored and organized a series of agency leadership roundtables on institutional issues. The first, held in Brussels in 2009, addressed strategic planning, project management, evaluation, accountability, and communication. AEWG held a follow-up seminar in London in 2010 addressing current challenges faced by competition agencies, agency culture, staff recruitment and development, and leadership and succession. In 2012, the third AEWG roundtable was hosted in Washington, addressing effective enforcement and quality of decision-making. These roundtables provide a forum for competition agency heads and senior officials to exchange ideas and discuss the merits of different organizational and planning tools used by ICN members across many jurisdictions.

[Cartel Working Group](#)

Many competition agencies have shifted their focus to fighting cartels and have made this a priority area of enforcement. Increasingly, competition

agencies have been taking the harmful effects of hard core cartels into account.

One of the Cartel Working Group's (CWG) initial reports found almost universal agreement on the definition of cartel conduct, its scope, and agency commitment to anti- cartel enforcement. Consumers benefit from competition through lower prices and better products and services. However, when competitors agree to forego competition for collusion, consumers lose these benefits. The competitive process works only when competitors set prices independently. Secret cartel agreements to fix prices, share markets, allocate customers or rig bids are a direct assault on the principles of competition and are universally recognized as the most egregious of all types of anticompetitive conduct.

The fight against cartels is a technically demanding task. First, cartelists are, by definition, secretive about their illicit behavior, and therefore agencies have to undertake great efforts to detect concealed cartels. Second, agencies need specific legal powers and practical skills to collect sufficient evidence to mount a viable case against, at times, uncooperative defendants. Third, in cartel enforcement, agencies operate sophisticated leniency programs to destabilize such conspiracies. Fourth, the investigation of international cartels can present jurisdictional challenges, both legal and practical. Finally, the growing trend to criminalize cartel behavior obliges many agencies to achieve a high standard of procedure and proof.

In the area of cartel enforcement, the main focus of the ICN has been to assist agencies in improving their operational and practical skills, and facilitating dialogue on important policy developments. In this vein, the CWG organizes the ICN Cartel Workshops, a continuation of the successful series of agency-led international cartel conferences that began in 1999 in Washington. This annual event provides a venue for agencies' anti-cartel enforcers to share experiences and best practices. ICN Cartel Workshop participants also discuss ways of strengthening international co-operation and coordination in the fight against cartels. The first workshop under ICN auspices took place in Sydney, Australia, in 2004, and included a special leniency workshop (the contents of which were made available on a DVD). The conclusions of the 2004 workshop on leniency have proven influential in the introduction and reshaping of many leniency programs. Subsequent workshops have been hosted in Seoul (2005), The Hague (2006), San Salvador (2007), Lisbon (2008), Cairo (2009), Yokohama (2010), Bruges (2011) and Panama (2012). At the 2012 workshop, participants explored enhancing the effectiveness of the fight against cartels. Approximately 130 participants from

more than 40 jurisdictions joined the workshop, including a number of Non-Governmental Advisors. The next workshop, to be hosted by the Competition Commission of South Africa, will be held in Cape Town, South Africa in October 2013. The upcoming workshop will focus on effective strategies to foster and improve the investigation of cartel conduct

The CWG work product offers a set of “Building Blocks for Effective Anti-Cartel Regimes,” which are intended to help agencies, especially those new to anti-cartel enforcement, in building their own anti-cartel strategy on a solid foundation. As a first step, in 2005, the CWG prepared three building blocks covering (i) a discussion of the appropriate scope of the term “hard core cartel”; (ii) a review of agencies’ experiences with setting up dedicated cartel units, and (iii) an analysis of effective sanctioning systems. At the 2006 ICN Annual Conference, the Working Group presented three more reports addressing inter-agency co-operation in cartel investigations, private enforcement of cartel rules, and obstruction of cartel investigations. In 2008, the CWG completed reports on negotiated settlements in cartel investigations and on setting fines for cartel violations.

In addition, the CWG has developed an Anti-Cartel Enforcement Manual. This Manual is a compilation of investigative approaches used by ICN members possessing differing levels of experience. Each chapter explores measures employed at various stages of anti-cartel enforcement and identifies good practices. Chapters exist on the following topics: 1) Searches, raids and inspections; 2) Drafting and implementing an effective leniency program; 3) Digital evidence gathering; 4) Cartel case initiation; 5) Investigative strategies; 6) Interviewing techniques; 7) Case resolution; 8) Awareness, outreach and compliance; and 9) International Cooperation and Information sharing. In 2010-2011 the good practices contained in the various Manual chapters were compiled into a single document, the Compilation of Good Practices.

The CWG has also facilitated periodic discussions of important policy issues related to cartel enforcement. Through a series of ‘roundtable’ discussion calls, members have been able to share practical expertise and exchange ideas on effective anti-cartel enforcement. The discussion call series’ have attracted unprecedented participation and large numbers of speakers. They have become the largest, longest-running and most participatory group discussions within the ICN, and have prompted numerous member-to-member exchanges on enforcement practices and policy issues. In 2009-2010, the Working Group’s discussion series explored the growing trend

of jurisdictions imposing sanctions on individuals and criminalizing cartel conduct.

In 2010-2011, the discussions were focused on the topic of cartel awareness and outreach. This call series was complemented by a collection of examples of public messages and materials used by ICN members in cartel-related outreach efforts. This information has received an overwhelmingly positive response from members, amounting to the world's largest compilation of cartel awareness and outreach materials. This collection is available through the ICN website.

In 2011-2012 the Cartel Working Group continued its call series with discussions on bid rigging. The series was well-received, and focused on issues specific to bid rigging, including prevention, detection, investigation, prosecution, sanctions, and training initiatives with procurement officials.

For 2012-13 the focus of the call series was the topic of leniency. The call series discussed fundamental questions, as well as problems, pitfalls and recurrent issues of leniency programs. The call discussion series was well-received, and attracted unprecedented CWG participation. In total, over 40 member agencies participated in the series of calls. The calls averaged more than 55 participants from nearly 20 jurisdictions and welcomed NGAs from 15 jurisdictions. The collection of presentations made at the calls is available through the ICN website.

In the framework of the call series project of SG1, , several Asia-Pacific Friendly calls were organised as an outreach effort to agencies that have difficulties in joining regular calls due to time differences. In 2011-2012 one call on bid rigging and in 2012-2013, two calls on leniency were organized For 2012-2013, the calls were designed to focus on leniency fundamentals and share the experiences of agencies in the region, which enabled lively and interactive discussion among participants.

The CWG has also assembled 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 mechanisms, the sanctioning of cartel conduct, investigative tools, leniency tools, the rights of defendants, and confidentiality concerns. To date, almost fifty ICN members have provided cartel templates for their respective jurisdictions. These templates continue to be revised and are available on the ICN website.

In 2011-12, the CWG undertook to prepare Charts Summarising Information Sharing Mechanisms. The purpose of this work product was to

facilitate international cooperation on anti-cartel enforcement and increase agency effectiveness. The Charts Summarising Information Sharing Mechanisms are intended to provide ICN Members with a practical summary of the ways in which they can share cartel-related information with each other. The CWG surveyed its members with a questionnaire. A summary of answers was presented for discussion at the Annual Conference in Rio de Janeiro in April 2012.

During 2012-2013, Subgroup 2 drafted a new Anti-Cartel Enforcement Manual chapter titled 'International Cooperation and Information Sharing.' This chapter built on the 2011 Subgroup 2 Charts summarizing information sharing mechanisms. The drafting team was comprised of five ICN member agencies: the Federal Anti-monopoly Service of Russia, the Italian Competition Authority, the European Commission, the Competition Commission of Pakistan and the Canadian Competition Bureau. The Chapter is to be presented at the Annual Conference in Warsaw in April 2013.

[Merger Working Group](#)

Founded in October 2001, the Merger Working Group (MWG) presented its first work product at the First Annual ICN Conference in Naples in September 2002: the first Recommended Practices on Merger Notification and Review Procedures. Today, ICN boasts of additional recommended practices in the area of notification and procedures (available also in Spanish and French) and new Recommended Practices in the area of substantive assessment of mergers. Moreover, over the years the MWG has prepared a large body of work product and organized many ICN activities, including ten annual ICN conference presentations, and nine multi-day ICN Merger Workshops. More recently, the MWG has also begun to conduct teleseminars on merger-related topics of interest to its membership.

In 2010, the Merger Working Group surveyed ICN members and non-governmental advisors for a comprehensive assessment of the use and impact of its existing work, and the needs of ICN members going forward. With one of the highest response rates for a Working Group project in ICN history, this project has produced a wealth of information that provides insights on the use and impact of its work product and will substantially impact Merger Working Group priorities and activities in the years to come.

Overall, the results indicate a high degree of satisfaction with the MWG and its impressive array of accomplishments. Over 90% of the responding agencies indicated that they have used MWG work product, and the vast

majority indicated plans to continue to use MWG work in the future. Thirty two members identified the Recommended Practices for Merger Notification and Review Procedures as contributing to change in their merger regimes; likewise, twenty-five members reported that the Recommended Practices for Merger Analysis have contributed to change.

ICN Merger Workshops and Teleseminars

The MWG has organized nine ICN Merger Workshops: hosted in Washington (2002), Brussels (2004), Washington (2006), Dublin (2007), Pretoria (2007), Brno (2008), Taipei (2009), Rome (2010), and, more recently, Bogotá (2012). These workshops have highlighted MWG work on notification and procedures, investigative techniques, and merger analysis. The MWG's workshops were the first within the ICN to use comprehensive, real-world styled hypotheticals throughout multi-day training exercises for investigators. Many member agencies have adapted and used the merger workshop materials in their own internal training. The 2012 Merger Workshop included discussions and merger practice sessions on the use of economic analysis and evidence in merger review. The workshop was hosted by the Colombian Competition Authority in Bogotá, Colombia, and was attended by approximately 105 agency representatives and NGAs from 39 jurisdictions.

Since 2010, the MWG has started a series of teleseminars on topics of interest to the MWG members. The objective of teleseminars is twofold. First, they are a marketing tool for promoting the MWG work products among its members: in some cases, teleseminars were introduced by a short presentation of MWG work products related to the teleseminar topics. Second, teleseminars provide a forum for experience sharing so that ICN members identify shared standards and techniques as well as areas of difference. In this sense, teleseminars provide inputs to the MWG for updating its work products since the latter are intended to be dynamic, revised periodically to reflect the continuous experimentation at domestic level.

In 2012-2013, the MWG organized three teleseminars on the issues agencies face when reviewing or updating their merger laws, procedures and guidance. Representatives of various long-established and younger competition authorities around the world were invited to share their experiences in carrying out the revision process and using ICN standards to advocate or target their reforms.

Merger Notification and Procedures

In its first year (2001-2002), the ICN adopted a set of Guiding Principles for agencies developing and revising merger regimes. The Guiding Principles outline eight precepts on which merger regimes should be based: sovereignty; transparency; non-discrimination on the basis of nationality; procedural fairness; efficient, timely and effective review; coordination; convergence; and protection of confidential information. The ICN has also adopted a set of Recommended Practices for Merger Notification and Review Procedures ("N&P Recommended Practices"). The N&P Recommended Practices aim to facilitate convergence toward best practices in the procedural aspects of merger review. The N&P Recommended Practices are designed to accommodate different legal traditions and stages of development. Adherence to these Principles and Practices has brought, and continues to bring, greater consistency, efficiency, and effectiveness to the multijurisdictional merger review process, benefiting agencies, merging parties, and consumers across the globe.

Since the N&P Recommended Practices were first adopted, many ICN member jurisdictions with merger control provisions have made or planned changes that bring their merger regimes into greater conformity with the N&P Recommended Practices. As of 2011, over half of the ICN member jurisdictions with merger laws had done so or are planning conforming revisions. Nearly two-thirds of ICN members that have made such changes have cited the N&P Recommended Practices as having played a role in initiating or shaping their merger reforms. ICN members' use of these Recommended Practices is usually either as a benchmark to review their own practices or as a means of support for reform or both.

Comparing their systems to the Recommended Practices has allowed agencies to evaluate and identify specific areas for improvement. For example, the Czech, Swedish, and Finish agencies have relied on the Recommended Practices in designing reforms to merger thresholds. Other agencies, such as in Colombia and Costa Rica, have relied on the Recommended Practice on review periods to formulate reforms to their procedures. The Recommended Practices also appear to influence non-members. For example, when a draft Chinese antimonopoly bill was circulated, many agencies and bar associations urged the Chinese government to adopt merger rules consistent with the ICN Practices. Changes in successive drafts of the antimonopoly law reflected many of these comments. In other cases, such as India and the Slovak Republic, bar

associations and business groups have used the Recommended Practices to highlight for the agency or legislature areas of the merger regime that would benefit from reform. Written comments from bar associations, business groups, or other agencies on proposed laws or amendments often use the Recommended Practices to suggest areas for reform.

ICN members have also used the Recommended Practices as a stamp of legitimacy for changes the agency wanted to make. Agencies have used the Recommended Practices to convince the legislative body of the soundness of proposed reforms, because they conform to international standards. For example, in Germany, the Practices are cited in official documents for the legislature as a rationale for change. In Ireland, the Competition Authority cited the ICN Recommended Practices in a consultation document on proposed reforms, saying the reforms would make the Irish regime consistent with international standards. Many other agencies, such as those in Belgium, Brazil, Finland, Mexico and Portugal have used the Recommended Practices to promote their reforms with the legislature: for instance, in May 2012, Brazil has introduced a drastic overhaul to its merger regime which now envisages, in line with the ICN practices, a pre-merger notification regime, with a fast track system for non-problematic mergers and new notification thresholds. These and other agencies (e.g., Zambian Competition Commission) have used the Recommended Practices to build support with the private sector as well, by showing how proposed changes would measure up to best practice. The Recommended Practices often appear in agency press releases or speeches announcing change. For example, the 2003 EU merger reforms eliminating the definitive agreement requirement and the filing deadline explicitly referenced the ICN Recommended Practice on timing of notification. In 2004 the Australian Competition and Consumer Commission introduced indicative timelines for informal merger reviews, and in the press release explained that these changes were underpinned by the Recommended Practices.

Following the globalisation of businesses and economies and the increase in the number of jurisdictions with merger control, there has been a continuous rise of the number of multi-jurisdictional merger filings. This led the MWG to support the establishment in 2012 of a Framework for Merger Review Cooperation among interested member agencies. The voluntary Framework is intended to facilitate effective and efficient cooperation between and among ICN member agencies reviewing the same mergers. The Framework provides contact details of agency liaison officers and facilitates information

exchange among agency case teams. As of December 2012, 51 competition authorities have joined this Framework.

Merger Investigation and Analysis

The Merger Working Group has also produced important work on the analytical framework and investigative techniques for merger review, including the substantive standards for prohibiting mergers, the criteria for applying those standards, and the tools and techniques used for developing reliable evidence. The ICN has adopted the MWG's Recommended Practices for Merger Analysis on (1) the legal framework for competition merger analysis, (2) market definition, (3) the use of market shares, thresholds and presumptions, (4) competitive effects analysis in horizontal merger review, (5) unilateral effects, (6) coordinated effects, (7) entry and expansion, and (8) failing firm / exiting assets. According to the 2011 MWG comprehensive assessment report, over 90% of responding agencies were familiar with the Recommended Practices for Merger Analysis, and 85% of responding agencies reported using the RPs, for example, in considering merger review laws, regulations, guidelines, policies or procedures, or during merger reviews. To monitor and promote implementation of the Recommended Practices, the MWG developed self-assessment tools to help agencies identify divergences from ICN Recommended Practices.

In addition to the Recommended Practices for Merger Analysis, the MWG has developed an extensive range of work related to investigation and analysis, notably including the ICN Merger Guidelines Workbook (2006), the ICN Handbook on Investigative Techniques for Merger Review (2005) and a Report on Merger Remedies Review (2005). These practical guidance work products scored consistently high in 2011 MWG comprehensive assessment report with respect to member familiarity and use. They were cited by several members as contributing to change in their merger regimes and ranked just behind the Recommended Practices in merger-related work product that agencies plan to continue to use in the future.

The Workbook serves as a checklist of topics that the authors of new or revised merger guidelines may wish to cover, with an explanation as to why those topics have value in merger assessment and suggestions as to how those topics might be assessed in practice. The Workbook covers the key factors commonly used to evaluate mergers, including market definition, concentration, competitive effects, entry, and efficiencies. The Handbook is

designed to inform ICN members of the various tools and techniques used in merger investigation, to help members organize and use their tools more effectively, and to provide for an effective process for the evaluation of evidence. Its format makes it available for immediate use by all agency staff directly involved in the investigation of merger cases. Thus, it has directly inspired internal staff instructions for investigating mergers in many agencies – thirty two agencies have reported using the Handbook. The Merger Remedies Report provides practical guidance and outlines key principles on available tools and their use in merger remedies. It is based on and illustrated by remedy practice in a variety of jurisdictions. A number of agencies cited the Report as contributing to their approach to merger remedies.

The 2011 MWG comprehensive assessment report contains suggested topics for future work within the working group. At the top of member preferences was work on economic issues. In 2012-13, the MWG updated Chapter 4 of the ICN Investigative Techniques Handbook for Merger Review on “The Role of Economics and Economic Evidence in Merger Analysis”, with the aim of (i) strengthening the Chapter 4 by providing more concrete guidance on the practical use of quantitative techniques in the investigation; and (ii) updating and broadening the scope of the Chapter 4. This work was coordinated by the MWG co-chairs under the inputs of a drafting team composed of the German Bundeskartellamt, the UK OFT, the Taiwan FTC, the US FTC, the Canada Competition Bureau, the Italian Antitrust Authority, the European Commission and the South Africa Competition Commission. The updated Chapter 4 reviews the specific economic tools typically used for assessments of horizontal mergers, also by means of illustrated by actual case studies. In particular, it shows the types of economic analysis that can be conducted at different stages of the merger investigation, although it is not a comprehensive and exhaustive list of tools. It concludes by giving some guidance on the necessary requirements that any quantitative economic analysis should foresee. The work benefited from face-to-face discussions and experience sharing among ICN members gathered at the Bogotá Workshop and from the teleseminar call series organized in the previous ICN year 2011-2012.

[Unilateral Conduct Working Group](#)

The **Unilateral Conduct Working Group (Working Group)** was established in May 2006, at the Fifth Annual ICN Conference. Its primary objectives are to examine the challenges involved in analyzing unilateral

conduct of dominant firms and firms with substantial market power, to facilitate greater understanding of the issues involved in analyzing unilateral conduct, and to promote convergence and sound enforcement of law and policy governing unilateral conduct.

In the first phase of its work, the Working Group studied the objectives of unilateral conduct laws and approaches to the assessment of dominance/substantial market power and the treatment of state-created monopolies. Based on this study and subsequent report, the UCWG developed UC Recommended Practices on Dominance/Substantial Market Power Analysis under unilateral conduct laws and on State-Created Monopolies Analysis.

The UC Recommended Practices on Dominance/Substantial Market Power Analysis address: (1) using a sound analytical framework firmly grounded in economic principles in determining whether dominance/substantial market power exists; (2) assessment criteria, including market shares, conditions of entry and expansion, that affect the durability of market power, and, where appropriate, other criteria such as buyer power, economies of scale and scope/network effects, and access to upstream markets/vertical integration); (3) dominance/substantive market power analysis in small and/or isolated economies; and (4) transparency. The UC Recommended Practices on State-Created Monopolies Analysis address: (1) the enforcement role of competition agencies; (2) the advocacy role of competition authorities during the liberalization and privatization process; and (3) effective competition advocacy instruments.

In the 2007-08 ICN year, the Working Group began to study how members analyzed specific types of unilateral conduct, including predatory pricing (2008), exclusive dealing/single branding (2008), tying and bundled discounting (2009), single product loyalty discounts and rebates (2009), and refusal to deal with rivals including margin squeeze and refusal to provide access to essential facilities (2010). For each type of conduct, the Working Group gathered information through questionnaires on agencies' approaches to assessing the conduct and the criteria used to distinguish pro-competitive from anti-competitive conduct. The relevant reports were adopted at the annual conferences; the underlying responses are available on the ICN website.

Based on the previous work, the Working Group began developing a Unilateral Conduct Workbook. The first Chapter adopted at the 2011 Annual ICN Conference was Chapter 3 of the workbook dealing with the assessment of dominance/substantial market power. The next two chapters drafted in the

2011-2012 ICN year were the first Chapter of the workbook on Objectives of Unilateral Conduct Laws and the Chapter on Predatory Pricing. The Chapter on Objectives of Unilateral Conduct Laws provides a foundation to the following Chapters that deal with specific types of unilateral conduct. By describing the objectives and principles underlying unilateral conduct laws, the Chapter attempts to increase awareness and understanding among competition law enforcers of the rationale for their intervention. The workbook Chapter on Predatory Pricing complements the 2008 Report by providing practical guidance on conducting a predatory pricing investigation, including the use of price-cost tests, the data that might be useful for such an investigation, and how information and evidence that an authority has collected may be interpreted. Both chapters were presented at the Annual ICN Conference 2012 in Rio.

The chapter on Exclusive Dealing seeks to complement the 2008 Single Branding/Exclusive Dealing Report by providing guidance on conducting an exclusive dealing investigation, including the nature of exclusive dealing arrangements, assessment of anti-competitive effects of the arrangements, and possible justifications and defences that could be put forward by the parties. The chapter on Exclusive Dealing is to be presented at the Annual ICN Conference in 2013 in Warsaw. A chapter on loyalty rebates and discounts will be drafted in 2013-2014.

To explore in greater depth the issues raised in the conduct reports and UC Recommended Practices and to promote their implementation, the Working Group held workshops in Washington, D.C. in 2009 and in Brussels in 2010, followed by a regional workshop in Singapore in 2012 which focused on the topic of exclusive dealing. The workshops have been complemented by webinars designed to increase mutual understanding of different approaches. These programs enable members to delve into discrete issues of mutual concern, identify commonalities and differences in agencies' approaches, and better understand the relative advantages and drawbacks of different policies. The Working Group has now organized a total of ten such events, including webinars on Objectives of Unilateral Conduct Laws, Price-Cost Tests, Abuses in the Energy sector including the relationship between regulators and antitrust agencies, Price Discrimination, Enforcement Cooperation in Unilateral Conduct, and the Role of Intent. Due to the success of these events, the Group intends to continue the webinar series and organize another workshop on exclusive dealing in 2013-2014.

The work products of the working group have been well received and continue to have an impact in academia as well as in practice. Today many

agencies around the world are using the UC Recommended Practices and conduct reports to help analyze cases or as a reference guide. One member reported that it cited ICN work product in an abuse of dominance case and that the court had looked favorably that the member's approach comported with those of other jurisdictions referenced in the ICN report.

Several other members use the Group's work product for training, to benchmark their practices against those of other agencies or as reference material for speeches and meetings at international level. The work products of the working group also found their way into text-books dealing with international antitrust matters. One academic reported that many working group materials have been referenced throughout the author's text-book and one developed hypothetical case included in its entirety.

Some members have used the working group's hypothetical case studies on loyalty discounts and rebates as well as on margin squeeze for training purposes. These have been both in-house staff training and technical assistance missions, like capacity training in the course of assistance for younger competition agencies. Also NGAs used the materials for in-house training purposes. Several academics have utilized the hypothetical case studies as a teaching tool in their class room, reporting large success and appreciation by the students.

Other Active Projects

[Advocacy and Implementation Network](#)

The Advocacy and Implementation Network (AIN), which is composed of the Co-Chairs of each Working Group and other interested member agencies, was formed in 2007 to promote the use of ICN work products and keep informed of relevant legislative and policy developments of other jurisdictions.

In 2012, the role of the AIN has been updated with some new ones to further promote ICN work products for younger agencies in order to accommodate a concern over whether current AIN/AISUP framework is working well though the need for assistance generally seems to grow. The updated activities of the AIN approved by the SG are; (i) Preparing the introductory kit to new/younger agencies of the ICN; (ii) Enhancement of AIN membership; (iii) Collecting the information about the capacity building and taking advantage of other capacity building opportunities by other

organizations, and; (iv) Reviewing and commenting on the draft laws, regulations and guidelines under the SG and AISUP framework.

As for preparing the introductory kit, it is developed by the AIN to make the new/younger agencies more familiar with the ICN. The introductory kit is composed of the renewed ICN Work Products Catalogue and AISUP Flyer.

As for enhancement of AIN membership, in addition to the agencies, NGAs from the AIN member jurisdictions are now invited to join the AIN. The AIN-NGAs are expected to cooperate in the technical assistance activities of the AIN through AIN member agencies which recommended them.

As for collecting the information about the capacity building and taking advantage of other capacity building opportunities by other organizations, the AIN now cooperates with other international organizations such as the OECD and UNCTAD to promote and implement the ICN work products by sending speakers to their capacity building events. As a part of the activities on cooperation with other international organizations, the JFTC dispatched their officials to present the ICN work products on anti-cartel enforcement created by the Cartel Working Group to the OECD Korea Policy Centre Competition Programme Workshop on practice and procedure in competition cases held on March 6-8.

[The ICN Work Product Catalogue](#) which provides an overview of the available ICN work products was distributed at various capacity building events. This catalogue was updated and reorganized in 2012 to reflect all work products submitted to the Rio annual conference and make it more familiar with new ICN members and younger agencies.

In order to support the ICN's overall mission, the "Support System" was established in 2008 and renamed the "[Advocacy and Implementation Network Support Program](#)" (AISUP) in 2009. AISUP acts as the central coordinator of ICN expertise to complement the project-oriented nature of the network's activity. Through this program, ICN members can seek advice about specific ICN work products or receive assistance on how ICN recommendations and other guidance documents might be implemented within their jurisdiction.

The technical assistance program through AISUP has been implemented to recipient agencies of India, Kazakhstan, Kyrgyzstan, Moldova, Mongolia and Zambia by supporting agencies of French Autorité de la concurrence, Russian FAS and German Bundeskartellamt with the cooperation of other agencies. In addition, the interest in receiving the AISUP assistance was shown from Tanzania in 2012. After careful consideration

among the AIN members, Portuguese Competition Authority, Italian Competition Authority and Mexican Federal Competition Commission kindly accepted to support Tanzania and it was agreed that these three agencies work with coalition to provide AISUP assistance for Tanzania.

ICN Blog & Bulletin Board

In November 2009, the ICN launched an online ICN Blog & Bulletin Board. The ICN Blog serves as a virtual bulletin board for updates and highlights about ICN events, ICN work product, member agency enforcement efforts, and the international competition community at large. The ICN Blog's audience has grown substantially, with over 10000 visits each month during 2012-2013. The US FTC manages the ICN Blog at www.icnblog.org.

Examples of ICN Blog postings include:

- frequent spotlights on existing ICN work products,
- a series dedicated to competition advocacy that coincided with the ICN Advocacy Workshop,
- ICN newsletters, conference and workshop updates, notice of ICN-wide calls, special outreach efforts to non-governmental advisers,
- 'Monopolization Monday' and 'Merger Monday' themed updates,
- innovative competition awareness and outreach efforts from member agencies,
- a series of posts on explaining competition to children, and
- policy developments, speeches, working papers, and enforcement news from over 80 member jurisdictions.

Formerly active Working Groups

[Antitrust Enforcement in Regulated Sectors](#)

Two past ICN working groups were dedicated to sector specific issues. From 2003 to 2005, the Antitrust Enforcement in Regulated Sectors Working Group explored the legal and practical aspects of the relations between antitrust agencies and sectoral regulators. In its 2004 report, this Working Group presented the Annual Conference with valuable examples from enforcement practice, emphasizing that when establishing or re-evaluating a

regulatory framework, it is crucial that the decision on the division of labor between regulators and antitrust authorities take into account efficiency considerations, and that, irrespective of the institutional set-up, co-operation and information sharing (both formal and informal) between antitrust authorities and regulators are very important, both for achieving more pro-competitive regulation and an antitrust enforcement practice that is more in line with sectoral specifics. In preparation for the 2005 conference, the work focused on two subjects: the antitrust and regulatory challenges faced by the ongoing competition-oriented reform in the banking industry, and a report on interrelation between antitrust and regulatory authorities, based on information supplied by a number of ICN member jurisdictions.

[Capacity Building and Competition Policy Implementation](#)

The Capacity Building and Competition Policy Implementation Working Group (first CBCPI WG, later CPI WG, currently AEWG) was established in 2002 to assess those elements that have contributed to successful capacity building and competition policy implementation in developing and transition economies. The support for capacity building has been a key priority since the inaugural ICN Annual Conference. The group focused on the effectiveness of technical assistance, enhancing the standing of competition authorities with consumers and competition advocacy in regulated sectors.

To deepen its understanding of the underlying capacity building issues, the ICN began with an intensive stock-taking exercise. Agencies' experiences were summarized in a comprehensive report on "Capacity Building and Technical Assistance", which the ICN presented at the 2003 Annual Conference. The report sets out examples of successful types of technical assistance and examines the circumstances in which different types of assistance are more, or less, appropriate. Notably, it concludes with a useful "checklist of issues," which donor bodies and competition agencies should consider when designing new assistance projects.

The ICN has built further on the foundation laid in 2003 by focusing on identifying which elements make for a successful program of technical assistance that will enable a developing competition agency to more effectively implement competition policy. Other notable work product of the group includes a consumer outreach toolkit, reports on agency effectiveness, competition agencies and the judiciary, business outreach, and advocacy.

These work products have encouraged younger member agencies to focus on capacity building as a strategic factor when promoting sound competition policy and increasing the overall effectiveness of the agency.

For example the Mexican CFC has established strong and formal relationships with the judiciary, sectoral regulators and local governments, by conducting various activities to increase the understanding of the work and overall economic benefits of the Mexican CFC's work.

[Telecommunications Services](#)

Following up on the work on regulated sectors, for the 2005-2006 year, the ICN decided to look at the telecommunications sector, by creating a Telecommunications Services Working Group, with the overall purpose of providing insight into the role of competition authorities with respect to their enforcement and advocacy efforts in the rapidly evolving telecommunications sector.

In particular, the working group sought to examine how technology is affecting competition in this sector and the challenges that such technological innovation presents for competition authorities. In order to achieve its purpose, the working group produced a comprehensive report on antitrust enforcement issues in the telecommunications sector, including experience and examples from members, and a set of suggested best practices for the role of competition in the sector.