

*Proposed Work Plan
ICN Cartels Working Group
General Framework Subgroup*

Projects 2004 – 2005

Subgroup Aims:

The General Framework subgroup will address the legal and conceptual challenges of anti-cartel enforcement. In the course of its work, the subgroup will strive to 1) build on, and proceed beyond, the work undertaken in other forums; and 2) respond to the interests and needs of agencies new to cartel enforcement.

Organizational Tasks:

- Solicit expressions of interest in participating in work of subgroup.
- Identify subgroup participants and schedule first conference.
- Prepare and circulate revised list of proposed topics and proposed 2004/2005 workplan for comments and discussion.
- Finalize work plan and discuss subgroup contributions needed.

Goals For 2004/2005:

- Select 2 or 3 related topics for study and collect and analyze work already undertaken by other multilateral organizations and ICN members; draft discussion papers and identify common elements in effective anti-cartel regimes; seek to identify guiding principles or recommended practices on these subjects, if possible; and finalize by 2005 ICN Conference in Germany in June 2005.

2004-2005 Subgroup Projects:

Define scope of work and possible work product that might consolidate and build upon materials and work undertaken by other international organization, particularly the OECD and WTO. Initial topics might include:

- Scope Of Hard Core Cartel Definition – review and consolidate work already undertaken in this regard; discussion of theoretical, policy, economic, and practical underpinnings of various definitions; build consensus on focused definition of conduct that all agree should be penalized. This project will provide a logical starting point and common understanding for all subsequent work of the subgroup.

- The Building Blocks of an Effective Anti-Cartel Program – As the first project seeks to define conduct to be punished, the second project will explore the basic elements of effective enforcement programs. The project would seek to identify common elements of effective regimes. The project could include an agreed statement of goals to be achieved by competition law enforcement authorities in investigating and punishing cartel conduct and develop communication approaches to provide support for cartel laws, particularly in developing younger economies. The two basic concepts of an effective regime within the project include a study of:
 - Effective Institutions – evaluate the types of organizations and organizational structure that are best suited to the investigation and penalization of cartel conduct; in particular, institutions empowered to investigate, prosecute, and punish cartel conduct; and
 - Effective Penalties – review experience in different jurisdictions; consolidate and analyze prior work on effective penalties against cartel conduct; discuss ways that conduct identified in cartel definition can be punished.

Goals For 2005/2006

- Identify additional priority topics. Continue work to develop discussion paper and guiding principles and/or recommended practices with respect to those topics.

Possible Future Topics:

- Quantifying, To The Extent Possible, The Harmful Effects Of Cartels - review and consolidate work already undertaken in this regard; prepare tips for using data on harm to inform consumers, businesses, politicians, and international organizations of the need for and benefits of aggressive anti-cartel enforcement.
- Procedural Fairness – identify the various institutional and procedural safeguards to ensure fairness to subjects and third parties in the investigation of and proceedings against cartels, including non-discrimination, standard of proof, double jeopardy, etc.
- Sufficiency Of Investigative Powers To Detect Cartel Conduct – discuss and evaluate the need for competition law enforcement authorities to have various investigative powers based on characteristics of cartel conduct; assess the sufficiency of various investigative techniques, especially leniency programs.
- Exchange Of Information – consolidate the work already done in this area by other multilateral organization, particularly the OECD; assess the need for information exchange between competition law enforcement authorities and the

need for, and methods of, ensuring protection of confidential information; review and assess the effectiveness of mechanisms and protections contained in existing statutes, agreements, and treaties providing for the exchange of sensitive evidence between enforcement authorities.

- Transparency In Enforcement Regimes - collect information on transparency and predictability in the statutes, guidelines, and application of enforcement regimes; assess the value in compliance and cooperation achieved through transparency in enforcement regimes.
- Compliance Programs – assess role of compliance programs in detecting and deterring cartel conduct and develop examples of provisions common to successful programs.
- Interaction Of Public And Private Enforcement – develop and compile information on the extent to which private enforcement currently exist, assess its role in deterring cartel conduct, the extent to which it may complement or conflict with public enforcement, its effect on leniency programs.