

THE ROLE OF NON-GOVERNMENTAL ADVISORS IN ICN

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Dear Colleagues

It is a great pleasure for me to address this distinguished conference today.

As you will know, the European Commission was charged earlier this year with the mission to reflect on the role that representatives of other international bodies, as well as non-governmental advisors, should play in the ICN. Under the able chairmanship of my predecessor, Alex Schaub, this “NGA Working Group”, as it is often referred to in the jargon, has presented a number of proposals. These proposals were eventually adopted by the Interim Steering Group, and then incorporated into the ICN Operational Framework, as it stands today. With our well-defined mission completed, this NGA Working Group was eventually dissolved, as it should be the case for a project-driven initiative. I would like to use today’s occasion to brief you on the main conclusions of our work, and invite you to reflect on a number of further perspectives.

At the outset, it may be useful to recall that the active contribution of non-governmental advisors to the work done under the ICN umbrella has been one of its main features ever since its beginning. It seems to have been clear to ICN’s “Founding Fathers” - if I may call them this way – that only by incorporating all available expertise into its work, this initiative would stand to become a success. The importance that we attach to the active contribution of such advisors in ICN’s proceedings is already well reflected in the “Memorandum” on its establishment.

The mandate of our former working group was thus to find concrete answers to a number of very practical, but nonetheless somewhat sensitive questions:

- Firstly, how would the contribution of the private sector be integrated in ICN’s work on its projects?
- Secondly, the relationship between the ICN and other international bodies working the same field, namely the WTO, OECD and UNCTAD, needed some clarification.
- Last not least, we were asked to devise a proper mechanism to determine which individuals, chosen as representatives of the relevant private constituencies, or in a personal capacity, to invite to the Annual Conferences.

Let me start with the role of advisors in the Working Groups. We felt it important to provide for the greatest possible openness, in order to have maximum access to expertise held outside the boundaries of our agencies. Therefore, one of the principles now established is that each ICN Member may seek information and expertise from non-governmental advisors of their own choice. Moreover, based on the belief that

each Working Group knows best which kind of support to solicit, we decided that Chairs of the Working Groups may invite the assistance of any expert on any issue falling within the remit of that group. As a European, I am tempted to say that this approach is not only very flexible, but also seems inspired by the principle of subsidiarity.

Secondly, as for ICN's relation with other international bodies working in the same field, they need some clarification. After the launch of ICN, it was obviously the new kid on the block, and elder ones were asking what it was up to. However, a management-level exchange of views with representatives of the WTO, UNCTAD as well as the OECD held in June in Paris helped to calm the scene. There is now a much better mutual understanding of the respective activities of each body, and the insight has grown that these bodies all have their distinctive compositions, missions, competencies and strengths. It is now also understood that every effort will be made to coordinate our respective agendas, both in terms of substance and of timing. With our mutual resources being scarce, nobody has any desire to duplicate work. Rather, each body stands to benefit a lot from the work carried out in the other *fora*. I think that our good working relation with these bodies has amply been demonstrated by the active participation of representatives of these international bodies in our discussions over the last two days. I have found this constructive dialogue most encouraging.

Finally turning to the issue of invitations to the Annual Conference, we always expected that demand would exceed offer. Naturally, our offer of places is defined by the capacity limitations of the conference venue. In retrospect, this expectation was vindicated. There were many experts who would have liked to attend today's event, and who would have been perfectly qualified to do so, in particular in light of their active contributions to ICN's working groups.

What then was the proposed solution to this quagmire? In view of the sensitivity of the issue, it was felt that only the ICN Steering Group was the appropriate body to propose to the Host Agency which individuals to invite. More concretely, non-Member participation in the Annual Conference was broken down into the following three categories of participants:

- As for representatives of other international bodies working in the same field, the Steering Group would ask these bodies to designate themselves their representatives in the Annual Conferences.
- Similarly, anti-trust experts from associations of the consumer, legal and business constituencies would be designated by these associations, upon invitation by the Steering Group. This was the case with the ICC, Consumer International, as well as the IBA.
- Finally, other anti-trust experts would be selected directly by the Steering Group on the basis of their individual expertise and authority, in particular from the academic community. To this effect, the Working Groups were invited to indicate to the Steering Group suitable individuals.

I should also point out that there was consensus that non-governmental participation in the Annual Conference should be representative of ICN's geographic spread.

I think that it is fair to say that in retrospect, this mechanism has worked rather well. I have seen an impressive representation especially of the legal and economic professions, and I think we all have appreciated their contributions during the last two days.

Concluding my remarks, I would like to share a few reflections with you, not least in light of the preparations of this conference, and my impressions of the last two days.

- First of all, the ICN may want to reconsider how best to tap further into the expertise of the academic community. As far as I am concerned, I would be delighted to see a higher level of participation from academia in the next Annual Conference. But we will have to resolve two issues in this respect: for one thing, a number of academics may reasonably expect to get some kind of financial support to enable them to come to the conference, which may often entail long-distance travel. Moreover, and in contrast to the legal profession, for example, academics are not centrally organised, so one will need to establish some kind of contact list.
- As a second reflection, coming back to the issue of the geographic balance, I would in particular like to invite our colleagues in developing and transition economies to encourage experts from their jurisdictions to get involved in ICN.
- Thirdly, I note that in several jurisdictions there is a continuously rising number of qualified volunteers who would like to get involved in ICN's working groups, and take part in the substantive discussions. As such, this is of course a very encouraging trend. However, one may become concerned that if a working group gets too large, it may become difficult to manage for the chair of the group. What can we do if this scenario were ever to materialise? One possibility that I could envisage would be to ask the competition agencies represented in the relevant working groups to collect the contributions of the outside experts of their respective regions. The collected contributions could then be fed into the discussions at the level of the working group by the agency.
- As my last reflection, I would like to touch upon our relations with the outermost groups of persons following with interest the work of ICN. I am referring to the number of enquiries which several of our agencies, and among them DG Competition, receive from academics, students, practitioners, or citizens in general. What can we do with these enquiries? As not everybody can be invited to sit at the table of ICN's working groups, I am asking myself whether it may be a good idea to set up an internet-based discussion forum on international anti-trust issues. I would see such a virtual forum as very much in line with ICN's overall virtual structure. As far as I can see, such a forum would be reasonably affordable to set up via the ICN web-site. It would also be demand-driven, so not requiring a heavy input in terms of agencies' human resources, although some kind of monitoring would be commendable. Such a tool would not only allow us to direct the day-to-day enquiries to a specific activity, but it may also reveal, once in a while, an interesting thought that may be relevant to our discussions.

I will be happy to discuss these issues with you further. With these reflections, I note that my time is up, and thank you very much for your attention.