

ICN CARTELS WORKING GROUP

WORK PLAN 2006-2007¹

The ICN cartels working group is composed of two sub-groups, on the general framework and principles for the fight against cartels, and on enforcement techniques.

1. General Framework Sub-group

Aim Of Subgroup 1

The General Framework subgroup addresses the legal and conceptual challenges of the shared commitment to fighting international cartels. The focus of the subgroup is studying the basic elements of effective institutional frameworks used to detect, investigate, and punish hard-core cartel conduct.

Review Of Work During 2005 – 2006

The Subgroup prepared three reports for submission to the 2006 annual conference, on the following subjects:

- Obstruction of justice in cartel investigations;
- Interaction of public and private enforcement in cartel cases; and
- Co-operation between competition agencies in cartel investigations.

Proposed Projects for 2006 – 2007

The Subgroup will evaluate member response to its 2005-2006 reports for possible follow-up editing or expansion, or training opportunities, and proposes to pursue the work on two of its projects carried out over the last year, as described below:

Interaction of Public and Private Enforcement – The 2006 report on the Interaction of Public and Private Enforcement compiled information provided by competition authorities and NGAs on the extent to which private enforcement currently exists and may complement or conflict with public enforcement. The subgroup proposes to extend the project by obtaining the views of companies, as their point of view is a further important aspect in assessing the current role of private enforcement. (Project Lead: Bundeskartellamt)

International Cooperation/Exchange Of Information – This project, launched at the 2005 conference in Bonn, and envisaged as lasting two years, has been assessing the current forms of cooperation and coordination among agencies in cartel investigations, and the issues involved in information exchange. In the first stage of the project, a report was submitted to the 2006 conference reviewing cooperation mechanisms contained in existing statutes, agreements, and treaties. As a subsequent stage following on from the

¹ Note that years start and end with ICN Annual Conferences.

stage 1 report, the project proposes to analyze and comment on a number of potential ways to enhance or promote cooperation in anti-cartel enforcement, and present to the 2007 conference a supplement to its report. (Project Lead: EC, DG Competition)

2. Enforcement Techniques Sub-group²

Aim of Subgroup 2

The Enforcement Techniques Subgroup 2 aims to improve the effectiveness of anti-cartel enforcement by identifying and sharing specific investigative techniques and advancing the educative and information sharing agenda of the International Cartel Workshops.

Review Of Work During 2005 – 2006

Subgroup 2 undertook the following projects:

- Cartel Workshop hosted by the Korea Fair Trade Commission in Seoul, Korea, November, 2005
- Dissemination of Materials from the 2005 Cartel Workshop
- Chapters on Chapters on Electronic Evidence Gathering and Good Practices for Leniency Programs for the Anti-Cartel Enforcement Manual;
- Completion of the Anti-Cartel Enforcement Template by ICN Members; and
- Updating the Web page.

Proposed Projects for 2006 – 2007

2006 Cartel Workshop (The Hague, Netherlands) (See attached):

- Finalize Agenda;
- Coordinate preparations with Host, Netherlands Competition Authority;
- Provide oversight and feedback to the Host;
- Identify future hosts of Cartel Workshops; and
- Planning for 2007 Cartel Workshop.

Anti-Cartel Enforcement Manual:

- Adjust existing chapters (Electronic Evidence Gathering and Leniency) as required in light of any feedback from ICN Members at the Annual Conference in Cape Town
- Draft Chapters on Case Initiation and Investigative Strategy

² This Workplan is intended to be a “living” document that will evolve over time to reflect the changing needs and priorities of the Members of Sub-group 2. The Workplan should be read in conjunction with the Workplan for Sub-group 1. Sub-group 2 will coordinate its work with Sub-group 1 as much as possible to ensure that there is no overlap and duplication.

Case Initiation

- Methods for detecting cartels and launching an investigation, including complaint, leniency applicant, studies, economics or other intelligence, informants and whistleblowers
- Case selection criteria and prioritization, including agency-wide priorities and objectives
- Preliminary examination
- Verification of information/evidence

Investigative Strategy

- Develop the theory of the case (relevant market, type of agreement or arrangement, participants, motivation, etc.)
- What evidence is required?
- Where is the evidence located? Is cooperation and coordination with other agencies useful/necessary to obtain evidence?
- What investigative tools should be used to obtain the evidence and at what stage of the investigation? Tools include:
 - record production orders or subpoenas;
 - oral examinations;
 - interviews;
 - searches, raids or inspections;
 - wire-tapping;
 - market inquiries;
 - consultation of experts;
 - other non-compulsive techniques

Information Sources:

- Coordinate responses to the Anti-Cartel Enforcement Template by ICN Members who have not yet completed the Template
- Provide links on the SG2 web page to ICN member web pages where information about new cartel policy initiatives, legislative amendments and case developments are described

2006-2007 WORK PLAN: APPENDIX

2006 ICN Cartel Workshop in The Hague, Netherlands

This year, the ICN Cartels Conference will be hosted by the Netherlands Competition Authority in The Hague from November 13-16 at the Steigenberger Kurhaus Hotel.

This will be the 3rd ICN Cartel Workshop and 7th since the first international cartel workshop in the United States in 1999.

A formal agenda for this conference will not be finalized until after the Annual Conference in Cape Town. The following provides a brief overview of the format and issues that will be discussed.

Subgroup 2's work in 2006-07 will focus on issues relating to case initiation, development of the theory of a case and the development and implementation of an investigative strategy. The workshop will use a hypothetical cartel case as a basis for practically exploring these issues in the context of an investigation. Following the cartel workshop and leading up to the 2007 ICN Annual Conference, SG2 will work on incorporating these topics into the Anti-Cartel Enforcement Manual.

In addition to the hypothetical case, the agenda will include presentations of actual cartel cases by experienced and less-experienced agencies. The presentations will include a general overview of the facts of the case, the investigative steps taken, the outcome and the lessons learned. The case studies will serve as a basis for sharing ideas about the relative value of various approaches to cartel enforcement and lessons learned.

Specific enforcement topics to be addressed throughout the workshop will include, bid rigging, trade associations, interviewing techniques and dealing with witnesses, and searches, raids and inspections.

In response to feedback from the last workshop in Seoul, the 2006 workshop will also feature a session dedicated to the consideration of issues relating to cartels in developing countries.

Although Cartel Workshops are typically open only to investigators from ICN member agencies, there is an interest among ICN members in being able to discuss some cartel-related issues with NGAs. The Leniency Workshop in Sydney in 2004 serves as a good model for bringing together cartel investigators and NGAs with significant experience in relation to cartel enforcement. Planning for this year's cartel workshop will draw on the Sydney model, as appropriate, with a view to including a limited number of sessions to provide a forum for investigators to discuss issues (to be determined) with invited NGAs.