

## **ICN Steering Group call, 8 September 2010**

### **Note from the Chair 2 September 2010**

Dear colleagues

During our next call on 8 September, we will continue our discussion of the feedback we have received on the ICN's second decade. The aim is to start developing a plan for making the necessary adjustments to the ICN's structure and agenda to reflect the feedback received, with a view to preparing a coherent long-term plan for the ICN in time for the Hague annual conference. In order to guide our discussion, I have set out below an updated summary of the feedback received from ICN member agencies. I have added some suggestions for how we might take the various areas of feedback forward. These are in italics.

I will also ask Bruno Lasserre and Bill Kovacic to report on the feedback received from NGAs during the NGA conference call which they will lead on 3 September.

The other main item on our agenda is NGA engagement. Bruno Lasserre will lead a discussion on how to achieve broader NGA engagement in practice. Please refer to the separate note which Bruno will circulate shortly.

#### **Suggested outputs from the next Steering Group call**

During our call I would like us to agree on groups of issues arising from the feedback which we need to address, and a list of actions for taking those issues forward. The areas of feedback which we may need to address are summarised below, while members' comments on the benefits of participating in the ICN are summarised in the attached diagram.

The feedback can be grouped under two broad headings: what the ICN does, and how the network operates.

## What the ICN does

### *Feedback received*

#### (a) High level goals of the ICN

There is broad support among ICN members for the ICN continuing to pursue the same high level goals as set out in the original Memorandum on the Establishment and Operation of the ICN. According to the Memorandum, the ICN would “address antitrust enforcement and policy issues of common interest and formulate proposals for procedural and substantive convergence” and “encourage the dissemination of antitrust experience and best practices, promote the advocacy role of antitrust agencies and seek to facilitate international cooperation”.

Feedback indicates that we should:

1. Continue to aim for convergence. There is a consistently strong desire for convergence from agencies of different types and sizes, often recognising that convergence may take a long time. One member commented that “ten years on, the ICN should be able to look back and say that it reached convergence on two or three areas.” Some members also pointed out that there are differences between jurisdictions’ judicial systems which mean that convergence in every respect is unrealistic, and that comparative work is also useful.
2. Continue to encourage the dissemination of antitrust experience. Members emphasised the importance of best practice work; experience sharing fora such as workshops, teleseminars and the annual conference; and the ICN curriculum project. Members also suggested that some of the meetings (workshops, teleseminars, breakout sessions at the annual conference) could be tailored specifically to groups of agencies with common interests, such as smaller or younger agencies or agencies in developing or small economies. One respondent suggested that we should have a ‘two-speed ICN’, with a focus on practical work accompanied by discussions of more complex / sophisticated substantive issues.

3. Continue to support agencies' advocacy efforts. Many agencies, particularly those in developing countries and younger agencies, expressed a desire for more ICN work on competition advocacy, with suggestions including:

- how to explain the benefits of competition (see further the various comments from ICN members that they would like the ICN to do some work on evaluation, under 'new work' below)
- education initiatives in schools/colleges
- relationship with the press/communications
- specific challenges to competition policy (e.g. economic downturn)
- political economy
- sector-specific advocacy/market studies.

4. Continue to facilitate international cooperation. Members emphasised the huge value they gain from the networking and relationship building opportunities that ICN provides. They also put forward ideas for specific work products aimed at cooperation, such as:

- ICN work aimed at discussing effective international cooperation on cases
- databases of cases
- mechanisms to facilitate information exchange between different agencies for conduct affecting multiple jurisdictions (particularly cartels /unilateral conduct)
- case 'alerts' for cases involving conduct affecting multiple jurisdictions
- an ICN project to develop a process for achieving a global response on international cartels, and a multilateral cooperation agreement for international anti-cartel enforcement
- online discussion forums on the ICN website.

Other goals for the ICN suggested by members included “effective enforcement”; providing a forum for debate; networking/relationship building (identified by two-thirds of members as a key benefit of participation in the ICN); and training (particularly for younger agencies – see further below). A number of agencies commented that ICN’s practical focus should continue.

*This suggests that we do not need to make any fundamental changes to the ICN’s mission, but instead need to ensure that the network is delivering on each of these goals through the work of the working groups. This may require a change of emphasis in some areas and some new initiatives in others.*

(b) New work

Members put forward a broad range of ideas for new work:

- There is considerable demand for more ICN work focused on training and educating agency staff, with many positive comments about the ICN curriculum project. A number of younger agencies and agencies in developing countries said that they would like the ICN to engage in capacity building work to assist younger agencies, and to facilitate bilateral technical assistance / mentoring relationships between mature and young agencies.
- Around one-tenth of respondents suggested that the ICN conduct work on evaluating/assessing the impact of competition enforcement efforts on consumer welfare (partly for use as an advocacy tool). *This may be a useful project for the Advocacy Working Group to take forward.*
- A number of agencies were interested in the ICN doing more sector-specific work, e.g. banking, insurance, telecoms; while one respondent commented that sectoral issues are best left to the OECD.
- Two agencies commented that the ICN should work more closely with the judiciary / engage in outreach to judges (e.g. regarding an economics-based approach to substantive competition assessment).

- A number of agencies suggested work on economic analysis (including the use of econometrics) / effects-based approaches to substantive assessment.
- Other suggestions for new work included:
  - public procurement and bid-rigging
  - state aid
  - unilateral conduct: exploitative practices e.g. excessive pricing
  - a focus on economic development / pro-poor initiatives (fundamental to developing countries)
  - more work on small /transition economies
  - merger control in multijurisdictional transactions
  - the substantive test in merger control (e.g. SLC, SIEC)
  - management of agencies
  - procedural innovation
  - settlements/commitments procedures
  - sanctions
  - consumer welfare v total welfare standards
  - methodologies to undertake quick, credible and inexpensive empirical research, e.g. eliciting consumer views
  - complimentary issues e.g. trade liberalisation
  - nationalisation/reverse demonopolisation (perceived as an increasing trend).

One respondent noted that the ICN clarify the difference between “recommended practices”; “best practices”, “good practices” etc.

***List of suggested actions and responsibility for taking forward***

*Set out below is a suggested list of actions to address the feedback received, and the groups that could be responsible for taking those actions forward. I welcome your comments on whether these action points are correct, as well as any additional suggestions.*

<b><i>Action point</i></b>	<b><i>Responsibility</i></b>
<i>More best practices</i>	<i>Working groups</i>

<i>More workshops and teleseminars</i>	<i>Working groups</i>
<i>Meetings tailored to specific interest groups</i>	<i>Annual Conference Planning Committee / working groups</i>
<i>Future work on advocacy</i>	<i>Advocacy Working Group</i>
<i>Mechanisms to facilitate cooperation</i>	<i>Working groups (databases on cases, information exchange mechanisms) Secretariat and working group chairs (online discussion forums, alerts)</i>
<i>New work</i>	<i>Working groups</i>
<i>Other?</i>	

### **How the ICN operates**

We asked members how we can ensure that we achieve the right level of inclusiveness and accountability across the ICN. *Based on the feedback summarised below I suggest that there is no need to change our existing work structures dramatically, but rather that it is a case of fine-tuning our existing structures and procedures in order to strengthen them.*

#### ***Feedback received***

##### (a) Inclusiveness

A number of members suggested that the ICN's agenda and working groups could be more inclusive. Several commented that the ICN should pay more attention in agenda setting to the needs of younger/smaller agencies and/or agencies in small or developing economies, while on the other hand there were various comments from younger/smaller agencies that the ICN's agenda is well balanced, is very useful for smaller/younger agencies, and that the agenda reflects their needs.

A number of smaller/younger agency members felt they have adequate opportunity to be involved in the ICN and take a leadership role should they choose to do so, one small and new agency noting that "you get out of [ICN] what you put into it. Participation may take some effort, but the rewards are there for those that participate."

Specific suggestions included:

- Creating an advisory council of (e.g.) younger agencies. *(Should such an advisory council work with the Steering Group or the working groups, or both?)*
- More guidance on how written best practices could be put into practice, e.g. through the AISUP or in workshops.
- ICN providing training, e.g. through the ICN curriculum project (see also 'new work' above).
- Suggestions that there should be more diversity in working group discussions / work products; that working groups should encourage free debate on future work and ideas before circulating draft work plans; and that efforts should be made to encourage a broader range of agencies to speak on working group calls (e.g. by doing a 'tour de table').
- Finding ways to avoid the cost of international telephone calls and the timing of ICN calls (a particular problem for agencies in the eastern part of the world) operating as a barrier to participation in ICN calls, e.g. offering toll-free numbers; webinars; posting recordings/minutes of teleseminars/calls on the ICN website.
- Addressing language barriers through: translating ICN work products into different languages; having calls/meetings for specific language groups; and/or having some working subgroups for specific language groups. *The translation of ICN work products is already underway thanks to the efforts of the Mexican CFC, Chilean FNE, Autorité de la concurrence and other agencies to translate key ICN work products into Spanish and French; there is also demand from a number of agencies for translation of ICN work products into Russian.*
- About one-tenth of responding agencies were in favour of having regional platforms to address regional interests.
- A number of members suggested calls/meetings (e.g. breakout sessions at workshops/conferences) tailored to specific interest

groups, e.g. markets at a similar stage of development / particular languages/regions.

Other suggestions included:

- A survey of ICN members' needs as to future topics etc.
- A few members suggested reducing the annual workload of the working groups, which can create a barrier to participation for less well-resourced agencies; while a number of others (including smaller agencies) noted that the ICN is not taking on too much and tackles a good range of subjects.
- The IDRC conferences prior to ICN annual conferences are welcome; could previous topics covered in IDRC conferences be bundled and offered as ICN work product to developing countries?
- There should be clearer information on the different ways to get involved in the work of the working groups and the resource implications that the different options entail.
- The cost of attending workshops was highlighted as a barrier to participation by some agencies. Suggestions to address this issue included webcasting workshops (one member suggested enabling active participation by videoconference) or trying to arrange some ICN events to take place just before or after (and proximate to) other international competition events such as the OECD Global Forum.
- There were several comments and questions regarding the availability of ICN funding for attendance at ICN events, which suggested that the 'rules' for obtaining funding could usefully be clarified.

The feedback indicates relatively little demand for membership of the Steering Group to be broadened. Three members commented that younger agencies and agencies in developing countries should be better represented on the Steering Group, while another (not a Steering Group member) commented that provided the Steering Group's decisions were reflected at working group level and vice versa, the focus on broadening participation in decision-making should centre on the working groups.

### *Implications for the Steering Group*

*Based on the feedback I propose that the Steering Group's primary focus should be on delivering continuity and effective governance, while diversity and inclusiveness are best achieved through the working groups. See the comments on accessibility and transparency as regards the Steering Group below.*

### *Implications for the working groups*

*The working groups are best placed to consider how to enhance and broaden participation in the day-to-day work and in engagement on future planning within their own groups, but there is a distinct benefit to be gained in the different groups working together to pool their thoughts and aim to achieve a consistent approach where possible. The working group chairs' meetings which began in Istanbul seem to be the most appropriate forum for taking this initiative forward in the first instance and report back to the Steering Group by December or January.*

#### (b) Communications

Many members' criticisms centred on communications, including: overlaps in the scheduling of working group calls; out-of-date e-mail distribution lists; some teleseminars suffer from poor line quality; some working group calls are too long and difficult to follow.

A number of members praised the new website, noting that the ICN blog and the provision of contact details for working group chairs etc. contribute to increased transparency. A small number of members found the website difficult to navigate, and one suggested that there should be a special introductory page for new ICN members with information on how to get involved in the different workstreams, and with all the contact details in one place.

There was also a suggestion that the ICN blog could be used more as a means of communicating ICN events, member events etc.

*The overall suggestion is that we need to be better at communicating with members, but this is mainly about making better use of the existing mechanisms (such as the ICN events calendar, webinars) rather than developing new ones.*

(c) Accountability/transparency

A number of members thought the ICN could be more accessible / responsive: see the comments above. Two members suggested that the ICN needs a clear direction.

One member commented that the Steering Group should share more information regarding its discussions, while one suggested that there is no need for greater transparency as regards its work.

One member suggested that there should be more rotation of Steering Group members, and two members commented that the elections to the Steering Group should be more clearly advertised and more transparent.

*We previously discussed how the Steering Group can be made more accountable and transparent, and this also comes through in the member feedback particularly as regards rotation/election of Steering Group members. Following the member consultation, I suggest this should be the main focus of our discussion of Steering Group governance when we meet in October.*

(d) ICN annual conferences

The most frequent criticism of the ICN was that the annual conference needed much more time dedicated to breakout sessions and less to plenary sessions, with a greater focus on interactive/open discussions and case studies. There were also positive comments that ICN conferences have become increasingly diverse over time, with a more frank exchange of views from a broader range of agencies.

A number of members suggested more diversity of speakers on individual panels, and a limit on the number of panels on which an individual speaker would sit.

Other suggestions for future annual conferences included:

- audience Q&A in plenary sessions
- smaller panels in plenary sessions
- the conferences should be smaller/tighter events with less festivities, in order to keep costs down

- one member commented that there should be more time for strategic discussions rather than working group reports, while another welcomed the introduction of working group reports on current/future work on the first day of the conference.

***List of actions and responsibility for taking forward***

*Set out below is a suggested list of actions to address the feedback received, and the groups that could be responsible for taking those actions forward. I welcome your comments on whether these action points are correct, as well as any additional suggestions.*

<b><i>Action point</i></b>	<b><i>Responsibility</i></b>
<i>Advisory council(s) of groups of agencies + regional platforms</i>	<i>Steering Group (October governance discussion)</i>
<i>Guidance on putting written work products into practice</i>	<i>AIN / working groups</i>
<i>ICN providing training</i>	<i>VC Outreach / working groups</i>
<i>Clarification re: different ways to get involved in working groups</i>	<i>Working groups</i>
<i>Diversity in working group discussions/ work products; calls/meetings for different language groups or specific interest groups</i>	<i>Working groups</i>
<i>Finding ways to make workshops more accessible</i>	<i>Working groups</i>
<i>Ensure ICN's annual workload isn't too high</i>	<i>Horizontal Coordinator / working groups</i>
<i>Address language barriers</i>	<i>VC International Coordination / working groups</i>
<i>Clarify funding 'rules'</i>	<i>Secretariat</i>
<i>Communications</i>	<i>Horizontal Coordinator / working groups / VC Outreach</i>
<i>Steering Group accountability/ transparency</i>	<i>Steering Group (October governance discussion)</i>
<i>Annual conferences</i>	<i>Annual Conference Planning Committee</i>

<i>Other?</i>	
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I look forward to speaking to you on the 8<sup>th</sup>.

Best regards

John