### 2010 ICN Cartel Workshop

**Day 1: Breakout Session on Cartel Awareness and Outreach**

**Moderators:** Abdulgani Gungordu, Turkish Competition Authority  
Scott Gregson, Australian Competition and Consumer Commission

**Discussion:** The moderators will ask participants to:

- discuss examples under each topic;
- identify positives and negatives of each and lessons learned;

**Examples:** The attached pages provide some examples of cartel awareness and outreach from around the world to assist discussion.

<table>
<thead>
<tr>
<th>Making and using public statements and media to raise awareness of anti-cartel enforcement</th>
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<tr>
<td>[Including education (internal and external education) and outreach programmes to raise awareness about anti-cartel laws and the harmful effects of cartels. To make sure that the values of competition are known throughout the society and to other policy makers]</td>
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<tr>
<th>Outreach strategies used to promote awareness and use of leniency programs</th>
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<td>[To encourage leniency applications through education and awareness campaigns.]</td>
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<tr>
<th>Outreach to businesses: giving business the tools to detect cartel conduct and encouraging businesses to bring cartel conduct to the agency</th>
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<tr>
<th>Working with the private sector to develop effective compliance programs</th>
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<th>Outreach initiatives with government procurement officials: training on detection</th>
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<th>Outreach to law enforcement: persuasive strategies to establish partnerships</th>
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<tr>
<th>Soliciting and using input from the business community and private bar on agency policy</th>
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Agency initiatives: a selection of examples for discussion

*Cartel awareness – public statements and advertising campaigns*

1. Brazil – cartel day

In October 2009 the second national Anti-Cartel Enforcement Day was held and attended by the Brazilian President Luiz Inácio Lula da Silva, Vice-President Jose Alencar and other important national and foreign authorities. The two-day event comprised advocacy actions in eight Brazilian airports, in which half-million brochures and materials were handed out to disseminate the competition culture. The idea of an Anti-Cartel Enforcement Day grew out the fact that the Brazilian citizens were generally not well informed about the harm caused by cartels and the importance of anti-cartel enforcement.

During the Anti-Cartel Enforcement Day, a nationwide campaign was launched via advertisements in the major four weekly magazines in Brazil and post cards were sent to key executives of 1000 companies in the country. The post cards read “companies that participate in cartels get dirty”. The main objective of the initiative was to prevent companies from engaging into cartel activity as well as to raise awareness of the evilness of cartel behaviour and the ways it affects the lives of consumers.

2. Australia – story about criminalising cartels

Since the introduction of criminalisation in Australia in July 2009, the ACCC’s Chairman, Graeme Samuel, has presented on numerous occasions at a range of public fora about Australia’s path to adopting criminal sanctions for cartel conduct. Below are some excerpts from a speech delivered to the Australian Corporate Lawyers Association in November 2009:

> “The criminalisation of cartels, which came into effect on 24 July this year, is our most significant competition reform in recent times.

The OECD recognises cartel conduct as extremely damaging and the most egregious form of antitrust violation. That is why it recommended that member countries have laws in place that effectively deter, detect and punish hard core cartel conduct.

A prime focus of our competition enforcement activity over recent years has been our declaration of war against cartels – secret collusive agreements between competitors to fix prices, rig markets, allocate markets between each other and collusively bid. These are simply theft by well dressed thieves carrying brief cases. Cartel operators are corporate fraudsters who defraud their customers and consumers.

The ACCC for many years has supported the criminalisation of cartel conduct and believes the parallel operation of a criminal cartel offence and civil prohibition...will allow for a proportionate response to cartel conduct.”
One of the reasons why the ACCC was so vocal in supporting the criminalisation of cartel conduct is its value as a deterrent. Whereas pecuniary penalties, no matter how large, may be regarded by some as merely a business cost, the risk of imprisonment alters the equation completely. No price can be given to the loss of one’s liberty and a conviction is a permanent stain on anyone’s resume.

It is expected that criminal penalties for cartel conduct will also provide the ACCC with greater opportunities to detect cartel conduct when it occurs. This is particularly so with the incentives under the ACCC’s Immunity Policy for Cartel Conduct, which provides immunity for the first cartelist to self report.

Additionally, the tools now available to investigate criminal activity will improve detection and the effective prosecution of cartels.

Until July this year, only civil penalties were available to prosecute cartel conduct. As a consequence, cartel operators did a simple calculation: “if I get caught I will simply have to pay a fine out of the money I have stolen and I get to keep the rest!”

Criminal penalties will apply to all serious cartels that are initiated or given effect after 24 July 2009. As a result Australia now has a dual criminal and civil cartel enforcement regime, which means that the most serious cartel conduct will be pursued criminally. In providing a gaol term for cartel behaviour, Australia has joined Canada, France, Germany, Ireland, Israel, Japan, South Korea, Mexico, Norway, Slovak Republic and the United Kingdom.

Our transition to criminal penalties is of intense interest internationally. In the past, Australia was seen as the soft underbelly in international cartel operations. In relation to immunity and cooperation on investigations, cartel participants used to put dealing with Australian regulators as a second order priority, knowing that if prosecuted in Australia, the worst that could happen would be the payment of a fine – out of the ill-gotten gains from participation in the cartel.

The advent of criminal sanctions means those who engage in some of the most serious forms of theft from consumers and businesses, will be treated like the criminals they are. They may carry a briefcase rather than a gun, but if a business executive steals millions from consumers, he or she will be exposed to the same prospect of time behind bars.”

**Cartel awareness – cartel cases**

3. **South Africa – Tribunal statements in the bread cartel**

Complaints from bread distributors in the Western Cape in December 2006 led to an investigation by the South African Competition Commission into allegations that the major bread manufacturers, namely, Premier Foods¹, Tiger Brands, Foodcorp and Pioneer Foods were fixing bread prices.

In line with its increasing focus on contraventions of the Act affecting consumers directly and where it can have meaningful impact, the Commission expedited the investigation of the bread price fixing complaint and referred the matter against Tiger Brands, Foodcorp and Pioneer Foods to the Competition Tribunal. Tiger and Foodcorp settled their cases, admitted the conduct and paid administrative penalties.

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¹ Premier Foods was granted leniency in exchange for its cooperation with the Commission.
The Commission proceeded with the case against Pioneer and asked the Tribunal to impose a penalty of 10% of the Pioneer group turnover for 2006.

Following a hearing, the Tribunal found that Pioneer had indeed colluded with fellow bakeries to fix the selling price of bread and to allocate markets amongst themselves. In its finding, the Tribunal noted that cartels are the most egregious offences in competition law, that poor consumers were particularly affected and that, absent mitigating factors, cartels deserved the maximum penalty provided in law. The Tribunal also concluded that Pioneers defence was premised on manifest falsehoods. The Tribunal then imposed a penalty of R195 million, being 10% of Pioneer Foods baking division’s turnover for 2006, rather than its group turnover.

4. Australia – judicial statements from the Visy cartel case

In 2007, the Federal Court of Australia handed down record penalties in the Visy cartel case for contraventions of the prohibitions against price-fixing and market-sharing. Among the frequently cited statements made by the judge presiding in the matter, Justice Heerey, was the following in which he summarised the effect of a serious cartel:

“Every day every man, woman and child in Australia would use or consume something that at some stage has been transported in a cardboard box. The cartel in this case therefore had the potential for the widest possible effect.

Price fixing and market sharing are not offences committed by accident, or in a fit of passion. The law, and the way it is enforced, should convey to those disposed to engage in cartel behaviour that the consequences of discovery are likely to outweigh the benefits, and by a large margin.

Critical to any anti-cartel regime is the level of penalty for individual contraveners. We tend to overlook the fact that corporations are constructs of the law; they only exist and possess rights and liabilities as a consequence of the law. Heavy penalties are indeed appropriate for corporations, but it is only individuals who can engage in the conduct which enables corporations to fix prices and share markets.

Many countries with free market economies have recognised this reality by enacting laws which make cartel conduct by individuals subject to criminal sanctions, including imprisonment. In the United States this happened as long ago as 1890 with the Sherman Act 15 U.S.C. More recently, as shown by the Organisation for Economic Co-operation and Development report Hard Core Cartels – Third Report on the Implementation of the 1998 Recommendation, Paris, 2006, the following countries have laws providing for terms of imprisonment for cartel conduct: Canada, France, Germany, Ireland, Israel, Japan, South Korea, Mexico, Norway, Slovak Republic and the United Kingdom.”

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2 The Commission asked the appeal court to reverse the Tribunal’s finding on the penalty and impose a penalty of 10% of Pioneer’s group turnover, which would amount to approximately R1.5 billion. Pioneer cross-appealed against some of the tribunal’s findings and, in late September 2010, the Commission decided to withdraw its appeal.
Cartel awareness – film

5. Singapore – screening of The Informant!

CCS Exclusive Movie Premiere of "The Informant" (November 2009)

The CCS organised an exclusive movie premiere of "The Informant!" in collaboration with Warner Brothers and Kinokuniya. The movie premiere was an innovative way to illustrate more vividly - in an entertaining, engaging and illuminating afternoon - how the Commission’s work can potentially help businesses stay competitive through uncovering cartels or price-fixing conspiracies. Minister of State for Trade and Industry, and Manpower, Mr Lee Yi Shyan was a special guest at the screening.

"The Informant!" is a corporate satire that narrates the real life story of a senior executive of a major U.S. business who turns whistleblower against his employer to reveal the price-fixing conspiracy with their major competitors worldwide. This conspiracy was worth several hundred million dollars and it turned out to be the largest price-fixing case in history at that time that in turn led to the uncovering of other cartels.

Cartel awareness – children


The Secretariat for Economic Law (SDE) and Economic Defense Administration Council CADE commissioned a comic book for children, featuring the characters from the country’s most popular comic book series, telling the story of a cartel among lemonade stands. The idea was to introduce concepts of business ethics exploring the example of a lemonade cartel and targeting the future leaders and business people of the country, children. Experiences conducted in environmental education proved that children also educate parents. Not only do children grow up with these ideas in mind, but they also bring them home to discuss with their parents what they have learned.

Learning about leniency – novel approaches

7. Norway – leniency advertising campaign

Surveys conducted on behalf of the Norwegian Competition Authority showed that business managers were not sufficiently aware of the Authority’s leniency programme. The Competition Authority therefore initiated several information campaigns about the programme. In 2009 one of these campaigns on the Airport Express Train showed both that cooperation among competitors can be penalised and that there are ways to extract oneself from such cooperation.

Over the past year the Authority has been working on spreading the message about the risks of illegal collusive tendering and the opportunities for leniency by giving a number of talks at its own seminars, and as guests at other seminars.
8. Sweden – short film about leniency

In March 2010, the Swedish Competition Authority released a short film "Be the first to tell - a film about leniency" showing how to leave a cartel. The film was launched and distributed through various channels, including the Competition Authority’s own website.

The Authority is employing new approaches to make the opportunities available under the law more widely known. The film supplements other information initiatives focusing on the competition rules.

9. Brazil – leniency brochure

In 2009, the SDE published three new issues of its full colour Brochures and Folders Series including an English language brochure on “Fighting Cartels and Leniency Programme” (jointly with CADE). The purpose of the brochure was to give transparency to the Brazilian Leniency Programme, considering the increasing number of foreign leniency applicants.

Outreach to businesses and the private bar

10. US – publications to make business outreach programs more effective

Brochure

In the United States, government attorneys provide brochures to public procurement officials and government investigators to make outreach programs more effective. These documents explain the antitrust laws and what procurement officials and investigators should look for to determine if bid rigging or other procurement violations are occurring.

Newsletter

Offices within the Antitrust Division publish newsletters which discuss certain cases which have been prosecuted during the previous year and various issues of importance to public procurement officials, government investigators, and others. For example, a newsletter published by the Chicago Field Office in 2006 was distributed to about 1,700 recipients, including federal, state, and local public procurement officials and government investigators.
11. Korea – information sessions for companies to develop effective compliance

In July 2010, the Korea Fair Trade Commission (KFTC) held an information session on prevention of international cartels for more than 80 executives from local subsidiaries of about 30 Korean companies such as Samsung, LG, SK and Hyundai Heavy Industries in Shanghai, China.

The information session, which was the third after those held in Europe (Frankfurt) and China (Beijing) in April and July this year, was an education program co-arranged by the KFTC, the Korea Fair Competition Federation and Korea Trade-Investment Promotion Agency (KOTRA) to prevent Korean companies’ involvement in international cartel and ensure full compliance with competition laws of foreign countries.

Recently, Korean companies were the target of antitrust enforcement by foreign competition authorities with their involvement in international cartel conspiracy which subjected them to sanctions including financial penalty of around two trillion won. This proves an urgent need for an education program to prevent Korean companies with overseas business presence from being involved in international cartel.

12. Canada - “collaboration initiative” with the private bar

When the amendments to the Canadian Competition Act were introduced in March 2010, the Competition Bureau moved quickly to establish contact with stakeholders and their counsel. The Bureau consulted widely with businesspeople, consumer groups, academics, and lawyers across the country, and acted to provide clear, detailed guidance on the amendments and how the Bureau would enforce them.

The Bureau published final *Competitor Collaboration Guidelines* in late 2009. The Guidelines articulate a number of types of agreements which are taken off the table as possible subjects of criminal investigation. The Guidelines provide for whole categories of agreements to not be examined – as a matter of enforcement policy – under section 45, including, for example, dual distribution agreements and franchise agreements, provided, of course, that the agreement is not merely a sham for a true conspiracy. If such agreements are considered at all, they will be considered under section 90.1.

To assist business as much as possible during the transition year, companies were given an opportunity to apply for transitional advisory opinions at no cost, so as to determine whether existing agreements and arrangements were in violation of the new civil or criminal provisions. The Bureau received a total of six requests for opinions during this period.

Commenting on the collaborative initiative in a speech to the Canadian Bar Association Competition Law Conference in May 2010, the Bureau’s Commissioner of Competition, Melanie Aitken stated that: “It is fair to say that there was certainly some wariness among members of the Bar during those first few months following the passage of the amendments. I believe that the dialogue we have established, along with clear guidance on our enforcement approach, has done a great deal to allay that initial uneasiness. I hasten to say that we could not have produced such thorough, responsive guidelines without the Bar’s contributions.”
**Educating public procurement officials**

13. Ireland – booklet and road show aimed at procurement officials

*Booklet on 'The Detection and Prevention of Collusive Tendering'*

In December 2009, the Irish Competition Authority published an information booklet entitled "The Detection and Prevention of Collusive Tendering". The booklet contains important information for people working in public procurement. It highlights some of the tell-tale signs of bid-rigging and how to report it. The booklet also details steps that can be taken during the tender process to help prevent collusive tendering occurring.

Although aimed at procurement officials working in the public sector, this booklet assists all businesses who put projects out to tender and those who bid for such projects. The publication of this booklet is part of a larger initiative aimed at raising awareness of the harm caused by anti-competitive conduct and in particular bid-rigging/collusive tendering.

*Bid-Rigging Road Show*

Since the end of 2008, the Irish Competition Authority has been meeting public procurement officials at the occasion of procurement training. A module was designed by the Competition Authority to compliment the procurement training and create awareness among public procurers of the risk and the attendant harm to the public purse that can be caused by bid-rigging. The purpose is also to educate public procurers on the role of the Competition Authority in investigating suspected bid-rigging. Procurers are informed of the pitfalls to avoid in tender design and what to look out for in submitted tenders. The attendees include representatives from County Councils (municipal administrators), Government Departments, State Agencies, Semi-State Bodies, Universities and other public bodies.

14. Canada – targeted presentations on bid-rigging

During 2009/2010 staff of the Canadian Competition Bureau delivered fifty targeted bid-rigging presentations to government departments and agencies at the federal, provincial and municipal levels. Staff are educating tendering authorities and others involved in procurement to detect and prevent big-rigging. These outreach presentations have had concrete effects: a number of ongoing investigations were brought to the Bureau’s attention by public procurement officers who attended the sessions and learned to recognize the tell-tale signs of bid-rigging. When dealing with persons determined to break the law, officials are now better able to detect bid-rigging activity, and we have the resources to crack down on them.
15. El Salvador – public procurement manual

As part of its competition advocacy activities, the Competition Superintendence (CS) prepared a manual containing basic information to provide officials directly involved in governmental purchases with the necessary tools to identify alert signals of possible bid rigging. Simultaneously, the CS is carrying out a permanent program of presentations where the institution’s personnel explain with more detail the contents of the manual. It contains topics such as: what is bid rigging, the different ways this practice may be disguised and the detail of various conducts that might suggest the existence of bid rigging amongst participants in a public tender.

16. Australia – public procurement guide

Shortly before the introduction of criminal sanctions for cartel conduct in Australia in July 2009, the ACCC released a procurement guide to assist public officials detect possible collusion amongst suppliers.

The guide gives examples of cartels that have been detected and the methods they used to deceive their customers. It contains anti-collusion tender clauses as well as a purchaser’s checklist, giving specific guidance on when officials may need to contact the ACCC to investigate suspicious behaviour.

17. New Zealand – guidelines and fact sheets to assist purchasers

The Commerce Commission has released three related resources to assist purchasers in both the public and private sectors in recognising and deterring bid rigging. Guidelines and two accompanying fact sheets give purchasers information about how potential bid rigging can be spotted and reported. There are also tips on how tender processes can be designed so that bid rigging can be prevented.
18. Brazil – brochure and guidelines for public procurement officials

In 2008, SDE launched a brochure on preventing and fighting bid rigging, especially designed to procurement agents and authorities. It explains what bid rigging is, the antitrust laws, suspicious behaviour and bidding patterns, and how to contact the competition authority.

The document is based on OECD documents, such as the *Roundtable Report: Public Procurement – The Role of Competition Authorities in Promoting Competition (2007)*. It also presents some relevant tips on how design procurement processes in order to enhance competition and minimise the risks of bid rigging.

In July 2009, Secretariat for Economic Law (SDE) released its Guidelines for the Analysis of Complaints Involving Public Procurement, together with a recommended Model Certificate of Independent Bid Determination (CIBD), in order to help procurement agents fight bid rigging in public procurement and to encourage them to take steps to reduce the risk of collusion in the procurement process.

The Guidelines clarify the limits of the application of Brazilian competition law in public procurement proceedings, and also indicate how the Secretariat will analyse cases of anticompetitive conduct by bidders, such as bid rigging, facilitating practices by trade associations and some kinds of bid consortia. CIBDs, will assist procurement agents to increase deterrence of bid rigging.