Cartel Working Group
2012-2015 Work Plan

MISSION

The mandate of the Cartel Working Group (CWG) is to address the challenges of anti-cartel enforcement, including the prevention, detection, investigation and punishment of cartel conduct, both domestically and internationally, across the entire range of ICN members with differing levels of experience and resources. At the heart of antitrust enforcement is the battle against hardcore cartels directed at price fixing, bid rigging, market allocation and output restriction.

ORGANISATION

The CWG is co-chaired by the Japan Fair Trade Commission, the German Bundeskartellamt and US DoJ\(^1\). It consists of two sub-groups:

- **Subgroup 1: Legal Framework** ('SG1') is co-chaired by the European Commission and the Colombian Superintendence. It addresses legal and conceptual challenges of anti-cartel enforcement. The focus of the subgroup is examining policy-level issues of the institutional and investigative framework for the detection and punishment of hard-core cartel conduct.

- **Subgroup 2: Enforcement Techniques** ('SG2') is co-chaired by the Canadian Competition Bureau and the Australian Competition and Consumer Commission. It aims to improve the effectiveness of anti-cartel enforcement by identifying and sharing specific investigative techniques and advancing the education and information sharing agenda of the CWG.

There are currently 53 member agencies in the CWG divided across the two subgroups which range from large authorities with significant experience of cartel enforcement to smaller or younger agencies with limited experience and differing resources at their disposal.

\(^1\) Since April 2012.
LONG TERM GOALS

The CWG seeks to address the continuous challenges of anti-cartel enforcement, including the prevention, detection, investigation and punishment of cartel conduct, through their participation in the work of the CWG. The members strive to achieve the following outcomes:

- Share views on the most effective enforcement tools in the fight against cartels (exchange of expertise between competition agencies with various levels of experience);
- Elaborate good/best practices in different areas of anti-cartel enforcement;
- Increase the awareness of new and developing competition agencies concerning the significance of the fight against hardcore cartels;
- Provide assistance to the agencies new to anti-cartel enforcement; and
- Encourage new members to join the cooperation as well as to enhance the involvement of NGAs.

Relevant information on the main activities of the CWG is disseminated through the annual Cartel Workshop, the drafting and updating of the various chapters of the Anti-Cartel Enforcement Manual and other written work products, the organisation of Enforcer Round Table Discussions by conference call, the Anti-Cartel Enforcement Templates and various ad-hoc papers, publications and conference calls.
2013 - 2016 STRATEGIC PLANS

The goal of the CWG for the period 2013 - 2016 is to actively contribute to the improvement of the anti-cartel enforcement across the whole membership (irrespective of the level of experience or resources available), by advocating improved cooperation between member agencies, promoting dissemination and implementation of CWG work products and encouraging broader engagement with the CWG's work, particularly by newer enforcement agencies and NGAs.

The CWG will strive to increase the number of its members, to offer a general discussion platform for both experienced and younger agencies to further the close cooperation between it members on both the management and case officer level. The CWG will also endeavour to engage agencies new to anti-cartel enforcement in the work of the group. Every effort will be made to focus the work products on issues that are relevant to all member agencies, including new agencies. Younger agencies or groups of agencies with common interests are encouraged to actively participate in the discussion and drafting of such topics. The CWG will provide the necessary framework to facilitate such participation. The CWG will also organise its activities in such ways as to achieve higher attractiveness for NGAs.

In view of the overwhelmingly positive response from the member agencies on the CWG's existing work, it is proposed that the CWG continue to develop its key work products also in the period 2013 – 2016 , i.e. the annual Cartel Workshop, the Enforcer Round Table Discussions, the Anti-Cartel Enforcement Manual and other reports, and the Anti-Cartel Enforcement Template. Through further development of these key work products the CWG will ensure the continued high quality, accessibility and usefulness of its output. In addition, these projects all relate to and support the ICN's Cooperation initiatives.

While specific topics and types of future work will be discussed among the membership and evaluated for each annual plan, the CWG has identified six primary areas for possible future initiatives.

1. Promote familiarity with, and use of, existing CWG work product

The CWG will evaluate the implementation and use of its work product by member agencies, seek to identify barriers to increased use, and encourage further
dissemination of existing work. This may include a discussion series on revisiting past work products (e.g. courses on the fundamentals of cartel enforcement by teleconference using existing work products such as Chapters of the Anti-Cartel Enforcement Manual). In addition, the CWG will work to cooperate with the ICN Advocacy and Information Network for these purposes.

2. Expand existing work product

The CWG will revisit, and augment or update as necessary, topics covered by its existing work of fundamental importance to members’ anti-cartel enforcement practices and policies. Sample topics include: leniency programmes, basic investigative tools and techniques (e.g. enforcement cooperation, searches, interviewing, digital evidence gathering), sanctions, settlements and international cooperation. This may include updating Chapters of the Anti-Cartel Enforcement Manual. Such reassessment will aim to keep CWG work product relevant and encourage input from younger and new member agencies.

3. Develop new practical guidance and avenues for exchanging effective enforcement practices

The CWG will continue to develop new practical guidance and experience sharing projects on important issues in anti-cartel enforcement. The CWG will consider new work product topics for the Anti-Cartel Enforcement Manual, other written work products and roundtable discussions. Particular efforts will be made to encourage the participation of younger agencies. The CWG will be a forum for the discussion and evaluation of recent developments, emerging issues, and upcoming trends in the field of anti-cartel enforcement. To this end, the CWG will make additional relevant materials accessible from the ICN website. The CWG will explore the synergies of collaboration between the ICN and other international organisations, such as the OECD. This may include the organisation of joint events etcetera.

4. Organise annual Cartel Workshops

The workshops will present and discuss topics covered by CWG work product and significant emerging policy questions and issues relevant to day-to-day enforcement techniques. Annual workshops will emphasise the practical and include scenarios or hypotheticals. Workshop topics will be evaluated each year based upon feedback to ensure relevance for, and participation from, a wide range of ICN members, including issues of particular interest to newer agencies. Illustrative topics for annual workshops include: implementation of leniency programmes, enforcement
cooperation, the interaction of public and private enforcement in deterring cartel conduct, detecting cartels outside of leniency programmes, dual-track criminal and civil/administrative regimes, determining penalties, settlements and compliance programmes.

5. *Strengthen CWG working procedures*

The CWG will:

- Encourage more ICN members to join the CWG and encourage increased levels of participation form members within the CWG;

- Explore new and creative ways to improve the accessibility of CWG updates and work product, including the consideration of the following:
  - Improvements to the CWG area on the ICN website;
  - Use of online discussions and webinars;
  - Periodic CWG updates (online or electronic newsletter);
  - Use of the ICN blog;
  - Translation of CWG work products; and
  - Web-based training tools (i.e. workshop materials).

- Include work of interest to NGAs and projects amenable to NGA participation.

6. *Contribute to the broader work of the ICN*

The CWG will continue to participate in, and contribute to, the broader work of the ICN including, for example, the Annual Conference, the ICN Curriculum Project and by way of enhancements to the ICN website. Cooperation with other ICN Working Groups on issues of common interest will be considered. The CWG will work to cooperate with the ICN Advocacy and Information Network for these purposes.
Cartel Working Group

Sub Group 1

Annual Plan

2013-2014 Projects

Pursuant to its Mission and Long-Term Work Plan the CWG SG1 will, with the objective of fostering cooperation between agencies, work on the following projects during the 2013-2014 ICN year:

1. Common leniency waiver template for international cartel investigations

2. Discussion call series on the type of conduct that should be investigated as a cartel

3. Discussion call series on settlement instruments and the challenges they bring for cooperation between agencies

1. Common leniency waiver template for international cartel investigations

Cooperation between agencies in the framework of the ICN Cartel Working Group shall aim at the creation of work products bringing added value in international cartel investigations. In this context, a common leniency waiver template will be of great use for both competition agencies and leniency.

Deliverable

A common leniency waiver template

Outcomes

A common leniency waiver will:

- Provide transparency as to agencies expectations for leniency waivers in international cartel investigations;
- Reduce disincentives for leniency applicants;
- Increase predictability for companies.
Responsible parties

The work will be co-ordinated by the SG1 co-chairs, the European Commission, Directorate General for Competition and the Columbian Superintendence and carried out by a drafting team.

Necessary steps

The necessary steps include:

- Determining the divergent requirements with which the leniency applicants are confronted when asked for a waiver from competition authorities;
- Coordination of phone call discussions and written consultations with SG1 membership on the wording of a common leniency waiver;
- Produce a draft of a common leniency waiver;
- Seeking feedback from the membership;
- Finalisation of the template.

Implementation and Evaluation

Promote and recommend the use of the final product in cartel investigations. The CWG evaluates the success of all its products as to their impact on member practices and the use of the work product and material for policy, training, reference and other purposes.

Common leniency waiver — Milestones

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<tr>
<th>Date</th>
<th>Description</th>
<th>Responsible Party</th>
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<tbody>
<tr>
<td>May – November 2013</td>
<td>Exploratory discussions with agencies and NGAs including break-out session(s) dedicated to the topic at the 2013 Cartel Workshop</td>
<td>EC, CS, drafting team</td>
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<tr>
<td>December 2013</td>
<td>Circulate a draft proposal</td>
<td>EC, CS, drafting team</td>
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<tr>
<td>February 2014</td>
<td>Finalise the common leniency waiver</td>
<td>EC, CS, drafting team</td>
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<tr>
<td>April 2014</td>
<td>Present work product at ICN Annual Conference</td>
<td>EC, CS, drafting team</td>
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2. Discussion call series on the type of conduct that should be investigated as a cartel

With the flourishing of cartel enforcement regimes around the globe in recent years, and the variety of enforcement regimes there is a need to explore and discuss the legislative framework and practices of competition agencies as to the types of conduct qualifying and being investigated as a cartel.

Deliverable

Two to three phone calls discussing the issue in the period September 2013 – January 2014.

Outcomes

CWG SG1 will:

- Share experience on relatively 'new' types of cartel cases (e.g. exchange of information 'cartels'; hub-and-spoke cartels, signalling, etc.);
- Discuss underlying theories and investigation practices;
- Provide advice to new and developing competition authorities;
- Upload PowerPoint presentations and underlying material from the call series on the CWG ICN webpage

Responsible parties

The work will be co-ordinated by the SG1 co-chairs, the European Commission, Directorate General for Competition and the Columbian Superintendence.

Necessary steps

The necessary steps include:

- Determining themes for the different sessions and establishing the programme of the call series
- Identifying speakers and coordination of the presentation;
- Organising 2-3 phone call discussions;
- Presenting the results of the call series at the 2014 ICN Annual Conference or 2014 Cartel Workshop

Implementation and Evaluation
The call series is important for training and outreach purposes for officials from established, new and developed agencies. The Annual Cartel Workshop may be an important venue to ensure that the highlights/best practices of the call series are brought to the attention of a broad number of CWG members. The CWG evaluates the success of all its products as to their impact on member practices and the use of the work product and material for policy, training, reference and other purposes.

Discussion call series – Milestones

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<tr>
<th>Date</th>
<th>Description</th>
<th>Responsible Party</th>
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<tbody>
<tr>
<td>May-July 2013</td>
<td>Determine themes and draft overall programme for the call series</td>
<td>EC, CS</td>
</tr>
<tr>
<td>August - September 2013</td>
<td>Identify speakers and finalise programme</td>
<td>EC, CS</td>
</tr>
<tr>
<td>October 2013 – January 2014</td>
<td>Organise 2-3 call series discussions</td>
<td>EC, CS</td>
</tr>
<tr>
<td>February-March 2013</td>
<td>Updating CWG ICN webpage with material</td>
<td>EC, CS</td>
</tr>
<tr>
<td>October 2014</td>
<td>Presentation of highlights at the Cartel Workshop</td>
<td>EC, CS</td>
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3. Discussion call series on settlement instruments and the challenges they bring for cooperation between agencies

Over the recent years, settlement or other alternative case resolution instruments have been adopted by many agencies. They proved to work well in practice and the call series would offer a good opportunity to exchange experiences/best practices as well as to explore and address the challenges for cooperation between agencies using the settlement instrument.

Deliverable

Two to three phone call discussions focused on the issue in the period November 2013 – March 2014, possibly followed by another 2-3 phone call discussions on the topic (if deemed useful) during the first half of the 2014-2015 ICN year.

Outcomes

CWG SG1 will:

- Share experiences/best practices;

- Promote work products of the CWG, namely the 2008 CWG report on "Cartel Settlements" and Chapter 7 of Anti-cartel Enforcement Manual: "Case resolution";
• Provide advice to new and developing competition authorities;
• Explore possibilities for cooperation between agencies on settlement of multijurisdictional investigations
• Updates and revise the existing work products if appropriate

**Responsible parties**

The work will be co-ordinated by the SG1 co-chairs, the European Commission, Directorate General for Competition and the Columbian Superintendence.

**Necessary steps**

The necessary steps include:

• Determining themes for the different sessions and establishing the programme of the call series;
• Identifying speakers and coordination of the presentation;
• Organising 2-3 phone call discussions;
• Presenting the results of the call series at the 2014 ICN Annual Conference or 2014 Cartel Workshop;
• Determining the need for a follow-up call series during the 2014-2015 ICN year;
• Determine the need to update/revise the CWG work products on the topic

**Implementation and Evaluation**

Exchange experiences and best practices. Promote the existing work product to new and developed agencies and encourage implementation. The CWG evaluates the success of all its products as to their impact on member practices and the use of the work product and material for policy, training, reference and other purposes.

**Discussion call series on settlement instrument s— Milestones**

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<tr>
<td>October 2013 – January 2014</td>
<td>Organise 2-3 call series discussions</td>
<td>EC, CS</td>
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<tr>
<td>February-March 2013</td>
<td>Updating CWG ICN webpage with material if needed</td>
<td>EC, CS</td>
</tr>
<tr>
<td>October 2014</td>
<td>Presentation of highlights at the Cartel Workshop</td>
<td>EC, CS</td>
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2013-2014 Projects

Pursuant to its Mission and Long-Term Work Plan the CWG SG2 will work on the following projects during the 2013-2014 ICN year:

1. Organise the Annual ICN Cartel Workshop

2. Update the Anti-Cartel Enforcement Manual Chapter on Drafting and Implementing an Effective Leniency Programme

3. Update the Anti-Cartel Enforcement Manual Chapter on Digital Evidence Gathering

4. Update the Anti-Cartel Enforcement Templates, complete new templates

5. Update and maintain charts summarising information sharing mechanisms of members

6. Update, along the new findings under items 2-3 above, the document of "Compilation of Good Practices from the Anti-Cartel Enforcement Manual"

1. ICN Cartel Workshop

The Cartel Workshop brings together competition agencies with a diversity of experiences from a variety of regions to discuss anti-cartel enforcement issues.

Deliverable

The 2013 Cartel Workshop will occur in Cape Town South Africa in October 2013.

Outcomes

The 2013 Cartel Workshop will:

- Discuss investigative techniques;
- Discuss means to improve cooperation in cartel investigations;
- Highlight existing work product;
- Encourage the implementation of ICN best practice; and

Focus on developing agencies.
**Responsible parties**

Preparation for the workshop will be co-ordinated by the SG2 co-chairs, the Canadian Competition Bureau and the Australian Competition and Consumer Commission, and the host organisation, the Competition Commission of South Africa.

**Necessary steps**

The necessary steps include:

- Determining a theme for the workshop;
- Selection of appropriate venue;
- Creation of an agenda;
- Coordination of presentations by relevant organisations;
- Managing registration; and
- Receiving and evaluating feedback.

**Implementation**

The workshop is an important venue to promote existing CWG work product and encourage implementation of best practice outlined therein.

**Evaluation**

The SG2 Co-chairs will report on the progress of the preparations for the annual conference at the monthly CWG SG2 teleconferences.

Participants will be asked to complete feedback forms on the value of the workshop after participation. The Co-Chairs will evaluate the feedback and report to the SG2 and Steering Group on the value and efficacy of the workshop and provide views as to how future workshops can be improved.

**ICN workshop – Milestones**

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<th>Date</th>
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<td>Determine theme</td>
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<tr>
<td>[DATE]</td>
<td>Select appropriate venue</td>
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<tr>
<td>[DATE]</td>
<td>Draft agenda</td>
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<tr>
<td>[DATE]</td>
<td>Coordination of presentations</td>
<td>SACC, CCB, ACCC</td>
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</tbody>
</table>
2. Update of Anti-Cartel Enforcement Manual on Drafting and Implementing an Effective Leniency Programme

The Anti-Cartel Enforcement Manual Chapter on Drafting and Implementing an Effective Leniency Programme (Leniency Chapter) was written in 2009. The Chapter compiles best practice for the drafting and implementation of a leniency programme. Its target audience is new and developing agencies.

**Deliverable**

The Leniency Chapter will be updated to ensure that it reflects CWG views on best practice. The updating of the Leniency Chapter will take place from July 2013 to March 2014 for presentation at the 2014 cartel conference.

**Outcomes**

CWG SG2 will:

- Update the Leniency Chapter to ensure it reflects CWG views on best practice;

- Ensure the Leniency Chapter provides the highest quality advice to new and developing agencies; and

- Encourage implementation of Leniency Chapter recommendations.

**Responsible parties**

CWG SG2 Co-chair, the ACCC will take the lead in updating the Leniency Chapter in consultation with the CCB and CWG members and the ICN Steering Group.

** Necessary steps**

The necessary steps include:

- Identifying necessary changes;

- Assembling a drafting team

- Drafting changes;

- Seeking feedback from SG2 members;

- Making necessary revisions

- Seeking feedback from [Steering Group?]
• Finalisation of revised Leniency Chapter
• Presenting revised Leniency Chapter at 2014 Cartel Conference

**Implementation and Evaluation**

The Cartel Workshop is an important venue to promote existing CWG work product and encourage implementation of best practice outlined therein. The presentation of the revised Leniency Chapter at the workshop will ensure that the changes are brought to the attention of a broad number of CWG members.

The CWG evaluates the success of all written work product from its impact on member practices and the use of the work product and material for policy, training, reference and other purposes.

**Leniency Chapter Update – Milestones**

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<td>[DATE]</td>
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<td>[DATE]</td>
<td>Draft changes</td>
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<td>ICN Steering Group</td>
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<td>Finalisation of revisions</td>
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3. Update of Anti-Cartel Enforcement Manual on Digital Evidence Gathering

The Anti-Cartel Enforcement Manual Chapter on Digital Evidence Gathering (Digital Evidence Chapter) was written in 2010. The Chapter compiles best practice for the gathering of digital evidence.

Deliverable

The Digital Evidence Chapter will be updated to ensure that it reflects CWG views on best practice. The updating of the Digital Evidence Chapter will take place from July 2013 to March 2014 for presentation at the 2014 cartel conference.

Outcomes

CWG SG2 will:

- Update the Digital Evidence Chapter to ensure it reflects CWG views on best practice;
- Ensure the Digital Evidence Chapter provides the highest quality advice to all ICN members; and
- Encourage implementation of Digital Evidence Chapter recommendations.

Responsible parties

CWG SG2 Co-chair, the CCB will take the lead in updating the Digital Evidence Chapter in consultation with the ACCC and CWG members and the ICN Steering Group.

Necessary steps

The necessary steps include:

- Identifying necessary changes;
- Assembling a drafting team
- Drafting changes;
- Seeking feedback from SG2 members;
- Making necessary revisions
- Seeking feedback from [Steering Group?]
- Finalisation of revised Digital Evidence Chapter
- Presenting revised Digital Evidence Chapter at 2014 Cartel Conference
Implementation and Evaluation

The Cartel Workshop is an important venue to promote existing CWG work product and encourage implementation of best practice outlined therein. The presentation of the revised Digital Evidence Chapter at the workshop will ensure that the changes are brought to the attention of a broad number of CWG members.

The CWG evaluates the success of all written work product from its impact on member practices and the use of the work product and material for policy, training, reference and other purposes.

Digital Evidence Chapter Update – Milestones

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4. Anti-Cartel Enforcement Template Update

The anti-cartel enforcement templates summarise the features of each jurisdiction’s rules and procedures and were first compiled in 2005.

Deliverable

If there have been any changes to the domestic rules and procedures of member jurisdictions the templates need to be updated. New members need to complete a template.

Outcomes

The Anti-Cartel Enforcement Templates promote access to information about ICN members’ anti-cartel enforcement regimes.

Responsible parties

Each member is responsible for maintaining accurate and up-to-date anti-cartel enforcement templates. The SG2 Co-chairs will encourage existing and new members to update or complete a template. The SG2 Co-chairs will ensure that new and updated templates are uploaded to the ICN website.

Necessary steps

This is an ongoing project run by the GVH (the Hungarian Competition Authority).

- Existing members to update template as needed and provide to the GVH for upload to the ICN website; and
- New members to complete a template as soon as practicable after joining the ICN and provide to the GVH for publication on the ICN website.

Anti-Cartel Enforcement Templates – Milestones

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<tr>
<th>Date</th>
<th>Description</th>
<th>Responsible Party</th>
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<tr>
<td>As needed</td>
<td>Members to maintain template</td>
<td>Existing ICN members</td>
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<tr>
<td>As needed</td>
<td>New members to complete template</td>
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<tr>
<td>As needed</td>
<td>Upload of template to ICN website</td>
<td>GVH</td>
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5. Information Sharing Mechanisms Charts

In 2011, SG2 Members were asked to provide charts summarising the mechanisms available to each agency to share information obtained in relation to cartel investigations with other anti-cartel enforcement agencies. These mechanisms included informal cooperation, cooperation agreements, provisions of national legislation and confidentiality waivers.

**Deliverable**

A number of SG2 Members have yet to provide and/or authorise the publication of information sharing mechanisms chart. All charts will be published on the ICN website.

**Outcomes**

The information sharing mechanisms chart promotes cooperation by providing access to information about ICN members’ information sharing mechanisms.

**Responsible parties**

Each member is responsible for completing the information sharing mechanisms chart and authorising its publication on the ICN website. Each member is responsible for maintaining accurate and up-to-date information sharing mechanisms charts. The SG2 Co-chairs will encourage existing and new members to complete and authorise the publication of a chart. The SG2 Co-chairs will ensure that new and updated charts are uploaded to the ICN website.

**Necessary steps**

This is an ongoing project.

- Existing members to provide a chart to SG2 Co-chairs and authorise its publication on the ICN website; and

- New members to complete a chart to SG2 Co-chairs as soon as practicable after joining the ICN and authorise its publication on the ICN website.

**Anti-Cartel Enforcement Templates – Milestones**

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<th>Date</th>
<th>Description</th>
<th>Responsible Party</th>
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<tr>
<td>[DATE]</td>
<td>Members to provide and authorise publication of chart</td>
<td>Existing SG2 members</td>
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<td>As needed</td>
<td>New members to complete and authorise publication of chart</td>
<td>New SG2 members</td>
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<tr>
<td>As needed</td>
<td>Members to update chart</td>
<td>Existing SG2 members</td>
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<tr>
<td>As needed</td>
<td>Publication of chart on ICN website</td>
<td>SG2 Co-chairs</td>
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6. Update, along the new findings under items 2-3 above, the document of "Compilation of Good Practices from the Anti-Cartel Enforcement Manual"

The compilation of recommended practices and good practices has to be gradually updated in the light of new developments in order to have, at any time, up-to-date list of recommendations / good practices on the ICN website.

Update of "Good Practices" Compilation – Milestones

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PAST PROJECTS

Since inclusion in the ICN in 2004, the CWG has completed a large number of projects including the following:

**Annual Cartel Workshops:** 2004 Sydney, Australia; 2005 Seoul, South Korea; 2006 The Hague, The Netherlands; 2007 San Salvador, El Salvador; 2008 Lisbon, Portugal; 2009 Cairo, Egypt; 2010 Yokohama, Japan; 2011 Bruges, Belgium; 2012 Panama City, Panama.

**Anti-Cartel Enforcement Manual:**

1. **Searches, Raids and Inspections** (2009)
2. **Drafting and Implementing an Effective Leniency Program** (2009)
4. **Cartel Case Initiation** (2010)
7. **Cartel Case Resolution** (2011)
8. **Cartel Awareness, Outreach & Compliance** (2012)

**Compilation of all Good Practices in the Manual:** This compilation of good practices reflects key practices common to many of the competition agencies which forms the basis of the Chapters of the Anti-Cartel Enforcement Manual.

**Anti-Cartel Enforcement Templates** (2005 – ongoing): The templates provide information about the cartel regimes of ICN member jurisdictions (covering substantive rules on cartels, enforcement institutions, procedural rules, including leniency programmes and fining policies, investigative tools, rights of defence etc).

[Click here for a complete list of Cartel work products](#)