



ICN Agency Effectiveness Working Group 2015-2018 Work Plan

MISSION

The mission of the Agency Effectiveness Working Group (AEWG) is to identify key elements of a well-functioning competition agency and develop best practices for agency strategy, planning, operations, investigative tools and procedures.

ORGANIZATION

The Group comprises over 60 ICN members and also includes legal, economic, and academic NGAs from around the world. The Working Group leadership team for 2015-16 includes the Finnish Competition and Consumer Authority, the Competition Commission of India, the U.S. Federal Trade Commission, and the Norwegian Competition Authority. The Working Group holds periodic teleconferences with all members and NGAs.

LONG TERM GOALS

To achieve its mission, the Working Group strives to:

- provide a forum for sharing experiences and agency practices
- encourage agencies to evaluate their effectiveness, engage in strategic planning, set priorities, develop project delivery techniques and knowledge management systems, and improve their investigative processes
- help members improve the quality of agency operation and procedures
- develop guidance for running an effective agency and establishing an effective investigative process
- through the ICN Training on Demand project, develop online training modules on competition policy and enforcement issues that highlight ICN work product
- promote implementation of the Group's work product



Agency Effectiveness Working Group 2015-2018 STRATEGIC PLANS

Over the next three years, the AEWG will guide its work program based on the following considerations:

Goal: Foster consensus and develop agency guidance

The Working Group will pursue topics of relevance to the functioning of a competition agency, welcome widespread input from members and NGAs, identify and share agency experiences, and develop work product that provides useful guidance to member agencies. The AEWG has as its objective to provide competition agencies with ideas, tools, procedures and best practices that can help them enhance their effectiveness.

Goal: Create new work product that addresses the needs of ICN members.

New Working Group wide work will address timely issues of relevance across our membership. The Working Group has a range of work product formats to deliver value for ICN members, including comprehensive overviews of member practices on a specific topic as in the Agency Practice Manual chapters, ICN Training on Demand online training videos, consensus guidance recommendations such as those developed on Agency Investigative Process, and informative issues papers developed in the Working Group's R&D subgroup.

Goal: Promote implementation of existing work product

The Working Group will continue to promote, encourage implementation of, assess the use of, and consider feedback on its existing work. Work product that will be prioritized for implementation efforts includes the Agency Practice Manual, Investigative Process guidance, and ICN Training on Demand modules. Formats for promotion and implementation will include Working Group calls and webinars, workshops, and efforts to solicit feedback on and gauge the use of the work product.

Goal: Strong member and NGA participation

The Working Group will continue efforts to engage ICN members and NGAs through the development of new work product of value to Working Group participants; implementation efforts for existing work product; teleseminars, webinars and discussion calls on timely topics of interest; workshops; and other interaction. NGAs will remain an integral part of the AEWG's work, with all members encouraged to invite and involve active NGA participation.

Agency Effectiveness Working Group 2015-2016 ANNUAL PLAN

1. New Working Group Topics

Agency Ethics and Integrity

The contours and framework for the new project will be subject to Working Group discussion, including, for example, exploring:

- The overall framework, general rules and specific ethics regulations applicable to agency employees.
- Common ethical dilemmas that have occurred or instances where agency integrity has been challenged.
- How the authority works to ensure that employees comply with ethical regulations, take the right choices when ethical dilemmas occur, and ensure integrity.
- Select agency ethics officer interviews to determine issues of importance.

Agency Evaluation

Agencies face challenges in evaluating the effectiveness of their activities. A project on evaluation would include the appraisal of an agency's overall mission and results across enforcement and policy efforts, including efforts to benchmark performance with counterparts. This project would not include the assessment of the results of specific investigations. In considering work on this topic, the Working Group will recognize and assess existing work on evaluation developed in the OECD, the ICN and elsewhere.

A new priority work project would include an opportunity for member input and a significant written work product informed by the member input. As the Working Group develops timetables for new projects, it will take into account other ongoing work and structure tasks to match Working Group resources.

2. Research & Development

The Working Group will continue its informal "R&D" discussion group to scope potential new work topics for the WG and develop work product and events intended to inform the working group on timely issues (e.g., issues papers or seminars). R&D projects are volunteer-driven and not intended as WG output. The R&D work will help identify and inform work products for WG priority attention in future years. For 2015-16, the R&D group may include, but not be limited to, discussion of:

- An AEWG Workshop. Building on the successful ICN workshops addressing agency effectiveness issues in 2009, 2010, 2012, and 2014, the Working Group

will explore hosting one workshop during 2015-2016 that will address agency effectiveness topics covered by AEWG work, such as the Agency Manual line of topics that include strategic planning and knowledge management or other aspects of effective investigation.

- Teleseminars and Webinars. The WG will continue to host a limited number of teleseminars, webinars, or discussion calls with two goals in mind: 1) to explore emerging topics and/or 2) to promote implementation of the WG's existing work.
- The feasibility and scope of potential additions to the Agency Practice Manual, including the topics of New Tools and Procedures in Case Management, Agency Communication (how an agency communicates internally with staff), and Agency Organization (how agency structure and design choices can improve their effectiveness).
- Any organizational support needed for the group that is planning an ICN-sponsored gathering of agency and NGA economists.

3. Oversight of the ICN Training on Demand Project

The Working Group will continue its oversight and support of the ICN Training on Demand Project (ITOD). The ITOD is led by the US FTC and a project group of interested members, including representatives from each Working Group, and NGAs that volunteer to develop modules and contribute to overall project planning. The ITOD is a primary ICN tool for developing training materials for members on topics relevant to competition law enforcement and promoting implementation of ICN work product. The ITOD project will continue to draw upon the expertise and insights of interested ICN members and NGAs, including a mix of presenters that includes agency officials, academics, and experienced practitioners. The Project will also draw upon the insights of Working Groups, existing member training programs, and ICN work product to contribute to the development of new modules.

The ITOD project team will evaluate commitments and resources and will continue to work with interested members, NGAs, and Working Groups to develop new modules. The ITOD project team will develop, approve and guide future module topics and appropriate formats with its volunteer-driven model in mind.

The ITOD project team will seek feedback from users to evaluate the existing modules to ensure the project is meeting the expectations of its target audiences and to consider potential improvements as well as topics for new modules.

4. Promotion, Implementation and Evaluation of work

The AEWG will pursue opportunities to promote its existing work, solicit and consider feedback, and gauge its use and usefulness to members. Of particular relevance for 2015-2016 will be the promotion of the AEWG-developed Investigative Process guidance, a work product that addresses how enforcement tools and procedures can contribute to enhancing the effectiveness of agencies' investigative processes. The Working Group will welcome feedback on the use and relevance of the guidance for consideration for potential translation or adaptation of the guidance, or development of explanatory or complementary work in support of the guidance.

Based upon feedback to the annual plan and group discussion of project objectives, each work stream will produce specific plans to inform WG members and NGAs by September 2015.

How the AEWG evaluates the use and utility of its projects will vary. The success of the written work product can be measured by participating agencies and NGAs, reported use by agencies, and impact on member policies or practices. Seminars and workshops will be evaluated by participation levels and feedback.

NEW PROJECT 1

Title	Agency Ethics and Integrity
Description and Output	Study the ethics framework, rules and regulations applicable to competition agencies; develop a written, comparative, tip-oriented work product on basic ethics rules
Output Achieved	This is a new project.
Assessment of timing	June – January 2016
Entities/Persons Responsible	AEWG co-chairs, Swedish Competition Authority, NGAs, and additional volunteers. The project will include an open call for volunteers.
Implementation	TBD; intended as an informative work product
Evaluation	The project will include an opportunity for wide member and NGA input. The success will depend on interested participation.
Other learning	The project will be informed by existing international and member work on this topic.

NEW PROJECT 2

Title	Agency Evaluation
Description and Output	Study how agencies assess their performance across enforcement and policy efforts
Output Achieved	This is a new project.
Assessment of timing	September 2015 – February 2016
Entities/Persons Responsible	AEWG co-chairs. The project will include an open call for volunteers.
Implementation	TBD; intended as an informative work product
Evaluation	The project will include an opportunity for wide member and NGA input. The success will depend on interested participation.
Other learning	The project will be informed by existing international and member work on this topic, particularly at the OECD.

RESEARCH & DEVELOPMENT

Title	R&D Subgroup
Description and Output	Informal discussion group to scope potential new work topics for the WG and develop informative work products on timely issues. Output includes, but not limited to, seminars, workshop and conference discussions, and issue papers.
Output Achieved	For 2014-15: 1 seminar, 4 discussions, 1 issues paper
Assessment of timing	Ongoing throughout the year; ~1 call every other month
Entities/Persons Responsible	AEWG co-chairs; highly motivated member and NGA volunteers
Implementation	None; intended as an informative work product
Evaluation	The subgroup's tasks are evaluated by member and NGA feedback.
Other learning	This group is intended as a free-form, topic-development initiative based upon motivated volunteers. It does not seek to impose burdens on the wider WG.

TRAINING ON DEMAND

Title	ICN Training on Demand
Description and Output	Online training videos. Individual module topics are determined by volunteers and Project Team (including WG) consultations. ~3-5 modules/year.
Output Achieved	15 ICN modules; 9 member and NGA modules
Assessment of timing	Ongoing throughout the year; ~1 call every other month for Project Team.
Entities/Persons Responsible	ITOD Project Team, with representatives from each WG. Individual modules led by highly motivated member and NGA volunteers.
Implementation	The ITOD is a primary ICN tool for developing training materials for members on topics relevant to competition law enforcement and promoting implementation of ICN work product.
Evaluation	The modules are evaluated by user feedback. Website use statistics are also monitored.
Other learning	This group is intended as a free-form, topic-development initiative based upon motivated volunteers. It does not seek to impose burdens on the wider WG.

INVESTIGATIVE PROCESS

Title	Agency Investigative Process
Description and Output	Project addressed how enforcement tools and procedures enhance the effectiveness of agencies' investigative processes.
Output Achieved	ICN Guidance on Investigative Process
Assessment of timing	Select opportunities to promote Guidance during 2015-16
Entities/Persons Responsible	AEWG co-chairs
Implementation	This project concluded with the 2015 Guidance; intended for promotional activities in 2015-2016
Evaluation	The WG will seek opportunities for member and NGA feedback on the Guidance.
Other learning	

ICN TRAINING ON DEMAND LIST OF POTENTIAL MODULES

(As of June 2015)

This is a list, derived from one that we compiled at the outset of the project, of potential modules. It has been reorganized to follow the categories used on the ICN website, and indicates which are completed and underway. *Potential models in italics.*

COMPETITION POLICY FUNDAMENTALS

- **Origins and Aims of Competition Policy (COMPLETED 2011)**
- **Major Characteristics of Competition Policy (COMPLETED 2011)**
- **Market Definition (COMPLETED 2011)**
- **Market Power (COMPLETED 2011)**
- **Competitive Effects (COMPLETED 2012)**
- **Developing Countries and Competition (COMPLETED 2013)**
- *The economics of antitrust*
- *Efficiencies (could also be handled separately as mergers and single firm conduct modules)*

Short-Form Presentations

- Economics of Dominance (COMPLETED 2014)

HORIZONTAL RESTRAINTS¹

- **Introduction to Cartels (COMPLETED 2015)**
- **Leniency programs (COMPLETED 2012)**
- *Assessing anticompetitive agreements (i.e., per se, rule of reason, vertical, JV)*
- *Use of covert techniques to uncover hard core cartels*
- *Assessing anticompetitive harm*
- *Vertical Agreements*
- *Joint ventures*
- *Information Exchanges and Invitations to Collude*
- *Bid Rigging Cases*
- *Settlements*

Short-Form Presentations

- Proving an agreement (COMPLETED 2015)

DOMINANT FIRM CONDUCT

- *Introduction – when is single-firm conduct anticompetitive*
- **Predatory pricing (COMPLETED 2012)**
- **Exclusive dealing (COMPLETED 2014)**
- *Assessing dominance (including cellophane fallacy)*

¹ We may need to retitle this category, if we are going to include vertical agreements.

- *Tying*
- *Refusals to deal and essential facilities*
- *Economics of exclusion*
- *Bundled discounts*
- *Remedies*

Short-Form Presentations

- Resale Price Maintenance (COMPLETED 2014)
- Territorial Exclusivity (COMPLETED 2014)
- Predatory Pricing (case study) (2015)

MERGERS

- **Handling Merger Investigations (COMPLETED 2012)**
- *Theories of anticompetitive harm*
- *Market shares and concentration*
- *Applying the SSNIP test*
- *Critical loss analysis*
- *Entry*
- *Failing Firms*

Short-Form Presentations

- Unilateral Effects (2015)
- Remedies (2015)

COMPETITION ADVOCACY

- **Competition Advocacy (COMPLETED 2013)**
- *Building alliances with regulators*
- *Sector specific modules, e.g., Telecommunications, Electricity, Energy, Railroads, Airlines/airports, Financial Services*

Short-Form Presentations

- Market Inquiries (COMPLETED 2014)

INVESTIGATIVE TECHNIQUES

- **Planning and Conducting Investigations (COMPLETED 2013)**
- **Conducting Interviews (COMPLETED 2015)**
- *Document requests and organization*
- *Questionnaires and interrogatories*
- *Using economic evidence*
- *Agency transparency*
- *Conducting dawn raids*
- *Electronically stored information*
- *Writing the investigational report*

- *Presenting the case to the decision maker*

Short-Form Presentations

- Protecting confidential information (COMPLETED 2014)

SPECIAL TOPICS²

- **Introduction to ITOD (2015)**
- Agency Effectiveness (Planned for 2016)
- *Network Industries*
- *Enforcement Cooperation*
- *Competition in times of economic crisis*
- *Competition and consumer protection*
- *Monitoring compliance with orders*

² Not determined yet how these will be categorized.