

## **Cartel Working Group**

### **2015-2018 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 Netherlands Authority for Consumers and Markets, the South African Competition Commission and the Superintendence of Industry and Commerce of Colombia. It consists of two sub-groups:

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

*Subgroup 2: Enforcement Techniques ('SG2')* is co-chaired by the Australian Competition and Consumer Commission and the Federal Anti-Monopoly Service of Russia. 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 58 member agencies in the CWG divided across the two subgroups which range from large authorities with significant experience in cartel enforcement to smaller or younger agencies with limited experience and differing resources at their disposal.

## **LONG TERM GOALS**

The CWG members seek 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 newer anti-cartel enforcement agencies; and
- Encourage new members to join the organization as well as 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 teleseminar, the Anti-Cartel Enforcement Templates and various ad-hoc papers, publications and conference calls.

## **2015 - 2018 STRATEGIC PLANS**

The goal of the CWG for the period from 2015 to 2018 is to contribute actively to the advancement of anti-cartel enforcement across the entire membership (irrespective of the level of experience or resources available), by advocating improved cooperation between member agencies; promoting the dissemination and implementation of CWG work products; and encouraging broader engagement with the CWG's work, particularly from newer enforcement agencies and NGAs.

The CWG will strive to increase the number of its members and to offer a general discussion platform for both experienced and younger agencies in order to increase the cooperation between its members at both the management and working levels.

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 of such topics. The CWG will also work to encourage increased involvement of NGAs in the work of the group.

In view of an overwhelmingly positive response from member agencies regarding the CWG's existing work, it is proposed that the CWG continue to develop its key work products in the 2015 – 2018 period, including organizing 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 work plan, the CWG has identified six primary areas for future initiatives.

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

The CWG will evaluate the implementation and use of its work products by member agencies, identify barriers to increased use, and encourage further dissemination of existing work. This may include a discussion series that revisits 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 Working Group for these purposes.

## **2. Expand existing work product**

The CWG will revisit or update, as necessary, its existing work products which are of fundamental importance to members' anti-cartel enforcement practices and policies. Sample topics include the following: leniency programmes, basic investigative tools and techniques (e.g. enforcement cooperation, searches, interviewing, digital evidence gathering, etc.), sanctions, settlements and international cooperation. This may include updating Chapters of the Anti-Cartel Enforcement Manual, assessing whether there are additional chapters of the Anti-Cartel Enforcement Manual that members consider would be useful, and whether there are additional best practice or guidance documents that the ICN would benefit from in the context of anti-cartel enforcement. Such reassessment will aim to keep CWG work product relevant and encourage input from younger and new 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 material accessible on 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.

## **4. Organise annual Cartel Workshops**

The cartel workshops will present and discuss topics covered by CWG work products and significant emerging policy issues relevant to day-to-day enforcement techniques. Annual workshops will emphasise practical experience, and will include real life case examples and hypothetical scenarios. Workshop topics will be evaluated each year based on feedback to ensure relevance for, and participation from, a wide range of ICN members, including issues of particular interest to newer agencies. Examples of possible topics of annual workshops include the following: 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. Strengthening CWG working procedures**

The CWG will:

- Encourage more ICN members to join the CWG and encourage increased levels of participation from 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:
  - Improving the CWG page on the ICN website;
  - Use of online discussions and webinars;
  - Periodic CWG updates (online or electronic newsletters);
  - 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, the Annual Conference, the ICN Curriculum Project and regular updates to the ICN website. The CWG will cooperate with the ICN horizontal coordinator in the planning of its events. Cooperation with other ICN Working Groups on issues of common interest will also be considered.

## **Cartel Working Group**

### **Sub Group 1**

### **Annual Plan**

#### **2015-2016 Projects**

Pursuant to its Mission and Long-Term Work Plan the CWG SG1 will work on the following projects during the 2015-2016 ICN year:

1. Compilation of a catalogue/menu on investigative powers for newer agencies;
2. Webinar/call series "Impact of private enforcement on public anti-cartel enforcement";
3. Webinar on increasing cartel deterrence through compliance programs; and
4. Continuation of the webinar series at Asia-Pacific friendly timing in collaboration with projects two and three (Asia-Pacific friendly calls).

#### **Responsible parties**

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

#### **Project 1: Compilation of a catalogue/menu on investigative powers for newer agencies**

This is the implementation of the idea that SG1 included in its work plan last year. This work product will take the form of a catalogue/menu of powers that administrative and criminal regimes should include in their legislation. The powers included in the catalogue would be presented to younger agencies as options.

#### **Project 1 – Milestones**

The plan is to have a first draft exchanged between the SG1 co-chairs beginning of June. This product will build on members' experience and on the SG1 webinar series' material of last year on investigative powers. NGAs may be also called to comment before finalizing the work product. The objective is to present it at the 2015 ICN CWG workshop in the autumn.

June 2015	Finalising a first draft
July 2015	Draft discussed with the membership (participation of the NGAs to be determined)
Autumn 2015	Presentation at the Cartel Workshop

## **Project 2: Webinar/call series "Impact of private enforcement on public anti-cartel enforcement"**

CWG SG1 will organise a series of webinars that will add to the international dialogue on introducing private enforcement in a way that does not undermine public enforcement and does not create any negative international spill-overs. The focus will be on considering the need of amending national legislation and establishing international cooperation in order to safeguard the effectiveness of leniency and settlement programs, e.g. in cases where there are disclosure requirements/obligations (e.g. following Court orders) affecting investigations in different jurisdictions.

- Objectives of public and private enforcement, balancing public and private enforcement so that the two do not negatively impact each other (e.g. special rules regarding leniency, settlement)
- Main features of private enforcement systems – for example special discovery rules, how is access to evidence set up, possibility for individual or collective claims or both, etc.
- Role of competition authorities in private enforcement – publication of their decisions, follow-on actions, rules on disclosure, role in the national court proceedings for damages and in which way.

### **Project 2 – Milestones**

Two to three phone calls discussing the issue in the period September - December 2015.

May-June 2015	Determining the topics for the different sessions and establishing the programme of the call series
July 2015	Identify speakers and finalise programme
September-December 2015	Organise 2-3 call series discussions
January 2016	Updating CWG ICN webpage with material
Autumn 2016	Presentation of highlights at the Cartel Workshop

### **Project 3: Webinars on increasing cartel deterrence through compliance programs**

The webinars will give the opportunity for an open discussion among agencies and NGAs on incorporating deterrence mechanisms such as efficient compliance programs into the arsenal of effective cartel enforcement against the backdrop of activated cartel investigations in the world. How could compliance programs lead to the detection of cartels and prompt leniency applications? How should agencies impose conditions for promoting compliance on enterprises in the process of issuing orders and/or concluding a settlement? However SG1 is not bound to produce a written work product in the next ICN year.

#### **Project 3 – Milestones**

Webinars discussing the issue in the period January - March 2015.

October/November 2015	Determining the topic and establishing the programme of the call
December 2015	Identify speakers and finalise programme
January – March 2016	Organise the webinar
April 2016	Updating CWG ICN webpage with material
Autumn 2016	Presentation of highlights at the Cartel Workshop

### **Project 4: Continuation of the Asia-Pacific friendly calls**

CWG SG1 will organise a series of webinars at the time friendly to ICN member agencies and NGAs in the Asia-Pacific region in collaboration with the project two and three.

The webinar series will consist of replay of some presentations of the other two projects and discussion to complement the two projects by facilitating participations in the discussion by member agencies and NGAs in the Asia-Pacific region. Presentations replayed will be selected among those of the project two and three in consideration of the situation of the Asia-Pacific region.

#### **Project 4 – Milestones**

Two calls in the period March-May 2016.

January 2016	Determining the topics for the different sessions and establishing the programme of the call series
February 2016	Identify speakers and finalise programme
March 2016	Organise the call series discussions
June 2016	Updating CWG ICN webpage with material
Autumn 2016	Presentation of highlights at the Cartel Workshop



## **Cartel Working Group**

### **Sub-Group 2**

#### **Annual Plan**

#### **2015-2016 Projects**

Pursuant to its Mission and Long-Term Work Plan the CWG will work on the following projects during the 2015-2016 ICN year.

1. Establishing an ICN framework for the promotion of the sharing of non-confidential information
2. The 2015 Cartel Workshop
3. The continued maintenance of the Anti-Cartel Template and Information Sharing Mechanisms documents

#### **Project 1: Establishing a framework for the promotion of the sharing of non-confidential information**

The long-term goal of the Cartel Working Group (CWG) is to contribute actively to the improvement of the anti-cartel enforcement across the whole membership by advocating improved cooperation between member agencies.

The CWG notes that the OECD/ICN Questionnaire on International Enforcement Cooperation (2013)<sup>1</sup> indicated that approximately half of the respondents stated that they had not yet cooperated on any investigations.

This suggests that further steps are necessary to assist competition agencies in knowing how to, and whom to, contact in international counterpart agencies.

The CWG recognises that enhancing information exchange and cooperation also relies upon, at least in part, establishing strong agency to agency and person to person relationships.

For example, the exchange of confidential, or otherwise sensitive, information is more likely between agencies that have a strong track record of cooperation, trust and reciprocity.

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<sup>1</sup> [http://icnwarsaw2013.org/docs/icn\\_oecd\\_icn\\_report.pdf](http://icnwarsaw2013.org/docs/icn_oecd_icn_report.pdf)

This can represent a significant ‘barrier to entry’ for international cooperation. The ICN CWG SG2 will establish a framework for the promotion of the sharing of non-confidential information (hereinafter “the framework”) in order to give agencies ‘a place to start’ in building stronger relationships. The ICN CWG SG2 will work to implement the framework across the CWG membership by promoting its use among members, ensuring the framework remains up to date, monitoring its effectiveness over time and making any necessary modifications to the framework in order to maximize its utility.

The framework will be designed to foster a “pick up the phone relationship” for improved cooperation for effective anti-cartel enforcement by supporting member agencies to gain more experiences of information exchanges.

### **Project 1 – Milestones**

Prepare and maintain a template ‘request procedure’ document to ensure both the requestor and requestee understand expectations and the type of information that can be requested using this framework.

Prepare and maintain a template ‘liaison information form’ setting out the initial contact point(s) for completing agencies.

May / June 2015	Initial conference call to discuss project scope and identify drafting team for request procedure document
June 2015 – August 2015	Drafting of request procedure document and liaison information form template
August 2015	ICN member consideration of draft documents
September 2015	Amendment of documents by drafting team on the basis of member comments
October 2015	ICN member consideration of draft documents
November 2015	Drafting team to finalise draft documents
November 2015	Consideration of documents by Steering Group
December 2015	Distribution of liaison information form template to members for completion
January 2016 onward	Maintenance of liaison information database, monitoring of effectiveness and making any necessary changes



## **Project 2: ICN Cartel Workshop 2015**

The 2015 Annual Cartel Workshop will take place in Colombia in October 2015. The 2015 Workshop will examine effective strategies to investigate cartel conduct. The Workshop will also be used to highlight existing CWG work products, including the Anti-Cartel Enforcement Manual.

Preparations for the Workshop will be coordinated by the SG 2 Co-Chairs, in partnership with the host organization.

Steps for planning the conference will include determining a theme for the Workshop; selecting and arranging a venue; creating an agenda for the Workshop; coordinating and organizing presentations from a variety of agencies; managing registration, etc. The projected timeline for this project is from May 2015 to October 2015.

The Annual Cartel Workshop brings together competition agencies with a diversity of experiences from a variety of regions. Because of this, the Workshop is an important venue to promote existing CWG work products, and to encourage implementation of the strategies and best practices outlined in many of these work products.

The ICN Cartel Workshop continues to draw members from many jurisdictions that have an active interest in presenting and discussion timely enforcement issues. Subgroup 2 co-chairs and workshop hosts assess the workshops via evaluation forms and review the feedback made by participants for future workshops.

### **Project 2 – Milestones**

May 2015	Seek ideas for topics for Cartel Workshop
May 2015	Create draft agenda for Workshop
June 2015	Seek interest from CWG members in speaking at the Workshop
July 2015	Circulate final agenda with speakers
July 2015 – September 2015	Presenters and Moderators to prepare material for Workshop
September 2015	Agenda with speakers to be made available on Workshop website
August – September 2015	Presenters and Moderators to submit material for printing and Workshop website

### **Project 3: Update the Anti-Cartel Enforcement Templates, Complete New Templates**

As the rules governing anti-cartel enforcement are constantly evolving, the Anti-Cartel Enforcement Templates that summarise the main features of each jurisdiction's rules and procedures (originally compiled in 2005) require updating. It is also necessary for new ICN members to complete Templates.

As a result, the SG 2 Co-Chairs have undertaken to ensure that Anti-Cartel Enforcement Templates are updated or completed by SG 2 members.

This project is ongoing. Members have been asked on a number of occasions to update or create templates as required. The SG 2 Co-Chairs will continue to encourage members to complete or update their templates.

#### **Project 3 – Milestones**

Completed new and existing templates will be uploaded to the ICN website on an ongoing basis.

As needed	Members to update template
As needed	New members to complete a template
As needed	Template to be uploaded to the ICN website

## PAST PROJECTS

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

### Annual Cartel Workshops:

Year	Location
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
2013	Cape Town, South Africa
2014	Taipei, Taiwan

### Anti-Cartel Enforcement Manual:

1. Searches, Raids and Inspections (2009)
2. Drafting and Implementing an Effective Leniency Policy (2014)
3. Digital Evidence Gathering (2014)
4. Cartel Case Initiation (2010)
5. Investigative Strategy (2008)
6. Interviewing Techniques (2008)
7. Cartel Case Resolution (2011)
8. Cartel Awareness, Outreach & Compliance (2012)



9. International Cooperation and Information Sharing (2013)

10. Relationships between Competition Authorities and Public Procurement Bodies (2015)

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