

Cartel Working Group

2017 - 2020 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 hard core cartels directed at price fixing, bid rigging, market allocation and output restriction.

ORGANISATION

The CWG is co-chaired by the Directorate General for Competition of the European Commission, the South African Competition Commission (SACC) and the. and the Administrative Council for Economic Defense (CADE) Brazil. It consists of two sub-groups:

Subgroup 1: Legal Framework ('SG1') is co-chaired by the Hungarian Competition Authority (GVH) and the Turkish Competition Authority (TCA).

Subgroup 2: Enforcement Techniques ('SG2') is co-chaired by the Netherlands Authority for Consumers and Markets (ACM) and the Federal Anti-Monopoly Service of Russia (FAS).

SG1 and SG2 aim to improve the effectiveness of anti-cartel enforcement for the detection and punishment of hardcore cartel conduct by:

- examining legal and conceptual challenges of anti-cartel enforcement and policy;
- identifying and sharing specific investigative techniques;
- advancing the education and information sharing agenda of the CWG.

There are currently 63 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. In addition, NGAs from 33 jurisdictions participate in the work of the CWG.

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 hard core 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 ICN Conferences and Cartel Workshops, the ICN Newsletter, Enforcers and NGAs round table discussions (through webinars) and various ad-hoc papers, publications and conference calls.

2017 - 2020 STRATEGIC PLANS

The goal of the CWG for the period from 2017 to 2020 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, implementation, visibility and accessibility 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 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.

The CWG will ensure the continued high quality and usefulness of its output. To this end the CWG will continue to proactively seek the feedback from the ICN member agencies and NGAs and to conduct scoping studies on its existing work products. Such reassessment will aim to keep CWG work product relevant and encourage input from younger and new agencies.

In view of an overwhelmingly positive response from member agencies regarding the CWG's existing work, in the 2017 – 2020 period the CWG will continue organizing the annual Cartel Workshop, the Enforcer Round Table Discussions through webinars; as well as developing and updating its key work products, such as the Anti-Cartel Enforcement Manual, the Anti-Cartel Enforcement Templates and the ICN-liaison framework for the promotion of sharing of non-confidential information.

While specific topics and types of future work will be discussed among the membership and evaluated for each annual work plan, the CWG will continue its efforts in following six primary areas:

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

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. In addition, the CWG will work to cooperate with the ICN Advocacy Working Group for these purposes. To achieve this, the CWG will actively pursue the broadest possible involvement of agencies and NGAs in all kinds of its on-going

projects (webinars, papers, workshops) ensuring geographic balance and a good mix of new and experienced agencies.

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: efficient and effective leniency programmes, investigative tools and techniques for cartel detection (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.

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, such as investigations and leniency. The CWG will consider new topics for written products and roundtable discussions. Particular efforts will be made to deliver products targeted at newer anti-cartel enforcement agencies and to encourage the participation of such agencies in the CWG activities. 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 emphasize 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: enhancing the attractiveness 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, compliance programmes and public anti-cartel campaigns.

5. Strengthen 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

2017 - 2018 Projects

Pursuant to its Mission and Long-Term Work Plan the CWG SG1 will work on the following projects during the 2017 - 2018 ICN year:

1. Key elements for efficient and effective leniency programme and its application;
2. Webinars/call series on parental liability;
3. Webinars/call series on international cooperation to fight against cartels;
4. Webinars/call series on ex-officio investigations; and
5. Continuation of the Asia-Pacific friendly calls.

Responsible parties

The work will be co-ordinated by the SG1 co-chairs, the Hungarian Competition Authority and the Turkish Competition Authority.

Project 1 – “Key elements for efficient and effective leniency programme and its application”

Given the reality of different leniency systems among competition authorities at international level, there would still be the potential that multi-jurisdictional leniency applicants, in practice, would face difficulty/inconvenience/interference to a greater or lesser degree, because of conflicting requirements in system or demands from competition authorities, which could arise in parallel cartel investigations. The “Leniency Checklist,” CWG 2017 Project, is a starting point of this project. A survey asking for experiences of NGAs and agencies is a useful tool to dive into the subject.

Project 1 – Milestones

This product will build on members’ experience (including both NGAs and agencies). To survey this experience, a questionnaire will be sent to the CWG members requesting them to reply and give outstandingly good and extremely bad examples. Information about the project will be provided also on the 2017 Cartel Workshop. The final product i.e. the report with the results of the survey would be sent for adoption to the Steering Group before the 2018 ICN Annual Conference and then the adopted product would be presented at the annual conference.

June 2017	Preparation of first draft and exchanges on it among the project team and coordinate with the project team of SG2 project 1.
July 2017	Finalisation of the questionnaire, recruitment of SG1 work team members
31 July	Circulation of the Questionnaire (deadline for the completion is 15 September)
28 August	Reminder: requesting again the completion of the questionnaire
October 2017	Presentation on the Cartel Workshop
October 2017 – mid January 2018	Processing of replies, drafting of the report
January – February 2018	Revise the draft report and finalization
March 2018	Presentation of the final product at the 2018 Annual Conference

Project 2 – Webinars/calls series on parental liability

One or two webinars/calls will give the opportunity for sharing various issues on parental liability, such as legal basis, objectives, and actual cases. Update on “Setting of Fines for Cartels in ICN jurisdictions (2008)”, CWG 2017 Project, shows that quite a few number of member competition authorities replied that the fines could be extended to the parent of wholly owned subsidiaries that had committed the infringements. Input/participation from NGAs is strongly welcome, which will help deepen our understanding about relationships with corporate compliance.

Project 2 – Milestones

- One seminar on general issues of parental liability, like definition and legal interpretation of parental liability, imputation of subsidiaries’ conducts, calculation of turnovers, treatment of ‘intermediate’ companies and JVs; responsibility of equity funds, succession, consequences of parental liability.

One seminar on specific issues of parental liability, like leniency-related questions, role of ‘ <i>ne bis in idem</i> ’ June 2017	Elaboration of suggested discussion topics for the “Project 2” webinars
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July 2017	Identification speakers and finalisation of the programme
September and November	Organisation of the two webinars

Potential dates of the webinars: 20 September and 15 November.

Project 3 – Webinars/call series on international cooperation to fight against cartels (agencies only webinar!)

CWG SG1 organises one webinar relating to multi-jurisdictional cooperation. While some member agencies have accumulated experiences in various investigative stages (from covert to overt), obviously others do not. This webinar/call will enable us to share recent developments in the subject, such as sharing confidential/non-confidential information, and international comity to avoid under/over deterrence, to the extent that is possible given confidentiality rules.

Project 3 – Milestones

June 2017	Determining the topics for webinar
October 2017	Identification speakers and finalisation of the programme
December 2017	Organisation of the webinar

Potential date of the webinar: 13 December.

Project 4 – Webinars/call series on ex-officio investigations (agencies only webinar!)

Leniency programmes are a very successful tool for detecting hard-core cartels, but ex-officio investigations are equally important. This webinar/call explores the effectiveness of ex-officio investigations, also in view of new technological developments such as artificial intelligence and price algorithms which can be used for collusion. The objective is to address challenges and needs for efficient ex-officio strategies including analytical tools to fight against such types of cartels.

Project 4 – Milestones

June 2017	Determining the topics of the webinar
November 2017	Identification speakers and finalisation of the programme
January 2018	Organisation of the webinar

Potential date of the webinar: 24 January 2018.

Project 5 – Continuation of the Asia-Pacific friendly calls

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

The webinars will consist of replay of some presentations of the projects two, three or four in order to facilitate the discussion by member agencies and NGAs in the Asia-Pacific region. Presentations replayed will be selected in consideration of the interest of the Asia-Pacific region.

Project 5 – Milestones

Two calls in the period February – March 2018.

December 2017 - January 2018	Determining the topics for the different sessions and establishing the program of the call series
January 2018	Identification speakers and finalisation of the programme
February-March 2018	Organisation of the two webinars

Potential dates of the two webinars: 14 February 2018 and 7 March 2018.

Cartel Working Group

Sub Group 2

Annual Plan

2017 - 2018 Projects

Pursuant to its Mission and Long-Term Work Plan the CWG SG2 will work on the following projects during the 2017 - 2018 ICN year:

Project 1: “Anti-Cartel Enforcement Manual” [new chapter on private enforcement]

Project 2: The 2017 Cartel Workshop (Canada)

Project 3: Implementation

- ICN framework for the promotion of the sharing of non-confidential information (ICN liaison)
- Completion of the “Anti-Cartel Enforcement Template” updates

Responsible parties

The work program will be co-ordinated by the SG2 co-chairs, the Federal Anti-Monopoly Service, Russia and the Netherlands Authority for Consumers and Markets. Volunteers will be sought from the SG2 membership to assist with project 1, while the Hungarian and Japanese competition authorities will maintain their close engagement with projects 3 and 4. A small group of competition authorities drawn from the CWG Co-Chairs have volunteered to assist with project 2 (South Africa, Brazil, DG Comp, Canada and the Netherlands ACM).

Project 1: Development of a new chapter on private anti-cartel enforcement (including its interaction with leniency programs) for the “Anti-Cartel Enforcement Manual”

The Anti-Cartel Enforcement Manual is a compilation of the investigative approaches used by ICN Members possessing differing levels of experience. Each chapter explores techniques employed at various stages of anti-cartel enforcement and identifies approaches that have proven effective and successful.

The Manual includes practical discussions and tips based on member agency practices covering the following topics, organised by chapter: Searches, Raids and Inspections (2009); Drafting and Implementing an Effective Leniency Policy (2014); Digital Evidence Gathering (2014); Cartel Case Initiation (2010); Investigative

Strategy (2008); Interviewing Techniques (2008); Cartel Case Resolution (2011); Cartel Awareness, Outreach & Compliance (2012); International Cooperation and Information Sharing (2013); Relationships between Competition Agencies & Public Procurement Bodies (2015).

In 2017, following the scoping study in 2016 for new or revised content of the Anti-Cartel Enforcement Manual, SG2 proposes to write a new chapter on private anti-cartel enforcement (including its interaction with leniency programs).

Project 1 – Milestones

June 2017	Seek volunteer participants from SG2 members and NGAs and coordinate with the project team of SG1 project 1. Cooperate with SG1 on questionnaire.
July – August 2017	Develop a draft outline of the chapter. Report to SG2 membership and CWG co-chairs. Circulate draft outline to SG membership and request input on draft outline. Liaise with SG1 on questionnaire.
Sept – October 2017	Allocate drafting tasks to volunteer participants. Process replies to questionnaire.
November 2017	Collate drafts and report to SG2 membership.
December 2017 – February 2018	If possible, finalise draft for submission to ICN Steering Group. In the event that the drafting of the chapter raises topics that require further discussion, SG 2 will not submit to the ICN SG prior to the Annual conference. Instead, SG 2 will make use of the Annual conference to resolve remaining issues and finalise the chapter in the 2018-2019 ICN year.

Project 2: 2017 ICN Cartel Workshop (Canada)

The 2017 Annual Cartel Workshop will take place in Canada from 4 - 6 October 2017 at the Fairmont Chateau Laurier, Ottawa, Ontario, Canada. The theme of the 2017 workshop is Combatting Cartels in Public Procurement. Within this theme SG2 will offer sessions exploring, for example:

- detection, investigation and deterrence;
- debarment from public procurement processes;

- cartel prevention and detection training for public procurement officials; and
- screening of public procurement data

The Workshop will be used to highlight existing CWG work products, including the Anti-Cartel Enforcement Manual. Preparations for the Workshop will be coordinated by the SG2 Co-Chairs in partnership with the Canadian Competition Bureau. A small group of competition authorities drawn from the CWG Co-Chairs have also volunteered to assist with project 2.

Project 2 – Milestones

June – August 2017	Formation of the workshop agenda, including the allocation of speakers.
June – September 2017	Logistics management (venue, website, materials etc.).
August - September	Presenters and Moderators to prepare and submit material for Workshop.
4 – 6 October 2016	2017 ICN Cartel Workshop.
November 2017	Feedback and review process.

Project 3: Implement the ICN framework for the promotion of the sharing of non-confidential information ("ICN liaison")

In 2015 the ICN CWG SG2 commenced work to establish a framework for the promotion of the sharing of non-confidential information to give agencies ‘a place to start’ in building stronger relationships and sharing information. The framework was designed to foster a “pick up the phone relationship” for improved cooperation for effective cartel enforcement by supporting member agencies to gain more experiences of information exchanges.

Project 3 – Milestones

2017-18 ICN year	<p>Encourage participation, maintain currency of registrar of participating agencies and encourage use of request procedure.</p> <ul style="list-style-type: none"> • Regular circulation of updated registrar for use by SG2 members and participating agencies • Promote during member calls, including through sharing experiences of the framework in application • Circulate relevant materials and implementation stories (where known)
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Project 4: Completion of the Anti-Cartel Enforcement Template update project

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 constant updating. It is also necessary for new ICN members to complete Templates. In late 2015 the SG 2 Co-Chairs undertook to ensure that Anti-Cartel Enforcement Templates were updated or completed by SG 2 members. This project is ongoing in 2017. The SG 2 Co-Chairs will continue to encourage members to complete or update their templates and see that they are published to the Cartel Working Group page on the ICN website.

Project 4 – Milestones

2017-18 ICN year	<p>Encourage completion of updated template by members, maintain currency of website.</p> <ul style="list-style-type: none"> • Promotion during member calls as required • Circulate relevant materials
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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
2015	Cartagena, Colombia
2016	Madrid, Spain

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](#)