Romanian Competition Council

ICN Annual Conference
Bonn, 2005

Participation in ICN’s panel:
“ICN participation: expectations of and challenges for younger competition authorities”

Question: What new forms of cooperation could the ICN build between its member agencies?

Dear colleagues,

First of all, I would like to say I am glad and honoured to be here today to take part in the debates and support the participation in ICN of agencies from developing and transition economies.

What do the new agencies from developing and transition economies hope to gain from their membership of the ICN?

The answer could be very simple: “The most appropriate solution for a specific situation from a diversity of options”.

This involves that ICN should:
- Not only But also answer to all questions raised by these countries through the setting up of a permanent group of specialists from different experienced agencies that eventually have also granted them technical assistance and have information about the real situation of the countries in discussion;

A very important aspect where I believe cooperation is needed concerns merger regulation. Quite often the large economies with extensive international trade do not have the concentrated market structures which are characteristic of smaller economies or those in the early stages of liberalisation. There may be attempts by the merger parties to establish a momentum of approvals from larger economies before approaching the regulatory agencies of the smaller economies and those who are fairly new to competition and merger law and policy.

So how can competition authorities cooperate to address this issue and appropriately balance facilitation of global mergers, while in the same time protecting consumers against anti-competitive behavior and the negative effects of over consolidation?

Well, in these circumstances cross-border cooperation in reviewing mergers should be discussed, encouraged and further deepened and work-sharing arrangements should be developed, as follows:
Agencies can:

- Compare notes on matters such as market definition and barriers to entry in the industry under investigation.
- They can also assist each other with basic information collection from domestic public sources. For many smaller competition authorities resource constraints and the increasing technological complexity of some industries mean this is a valuable tool. However, the insights of investigations and decision makers in other jurisdictions are merely a point of reference given local market circumstances, judicial precedents and legislation.

There are a variety of possibilities for further enhancing international co-operation between agencies in the consideration of mergers, including:

- the sharing of confidential information;
- the provision of technical assistance;
- increased exchange of views on the same or similar issues;
- increased notification between agencies of cases which are of concern to other agencies;
- implementing mechanisms whereby authorities can agree on jurisdiction.

The cooperation is certainly the basic instrument of ICN’s activity. In one form or another, agencies of developed countries have faced the current problems of the agencies from the developing countries.

Perhaps more workshops, more direct contacts of experts from different parts of the world may add more interest for everybody.

Perhaps our dialog should be more flexible, allowing the flow of information where it is needed and requested. But again, I repeat it is important to stay close, to have joint contributions and convergence on the agenda and work of ICN.

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As regards our own experience, the Romanian Competition Council had a fruitful cooperation both within the bilateral relations with other competition authorities as well as with DG Comp, through:

- Concluding Cooperation Protocols
- participating at and organizing conferences and seminars;
- bilateral working visits
- short term, medium term and long term missions of experts
- exchange of information
- a Twinning Project is on-going with Germany on State aid and with Italy on Antitrust
- Pre-consultation mechanism with DG Comp. This cooperation proved essential for improving the quality of our decisions. In order to increase the effectiveness of this action, we took the following steps:
  - Direct contact is kept between CC inspectors and DG Comp experts
All comments received from the DG Comp experts are discussed with our own staff in internal meetings, as well as with state aid grantors within the monthly meetings of the Inter-ministerial Working Group.

RCC personnel is specialized on type of activity for a higher degree of professionalism

Initiating activities within the relation with DG Comp for professional training

Altogether, these actions within the framework of international cooperation proved to be a valuable asset in our daily activity, by improving the quality of our work altogether.

Question: What new topics could be addressed by the ICN?

Reflecting over the activity of ICN, I may say that very important work has been done on enforcement, mergers and advocacy.

Nevertheless, in case of agencies from developing and transition economies,

I believe that ICN should tackle more specific topics for the agencies from developing and transition economies in accordance with their experience, circumstances and history, as follows:

- **liberalization of markets** (energy, telecommunications, post, etc), since most often competition is limited by regulatory protection of markets. Therefore, there is a need for liberalization of the markets accompanied by full application of the competition rules, and it would prove an interesting subject to see how various jurisdictions have tackled this issue.

- **cooperation between sector regulators and competition agencies.** In regulated sectors, issues involving anti-competitive conduct and mergers will arise periodically. Questions on the terms on which interconnection is provided by the dominant firm to other firms often arise with networks such as telecommunications.

Where a sector regulator has exclusive powers to deal with competition issues in the sector, but there is a competition authority, the authority can play an important role in encouraging the regulator to use these powers in a pro-competitive way. If there is no such guidance, sector-regulators are at risk of ‘regulatory capture’, that is, of giving priority to the interests of the regulated sector rather than the economy as a whole, a stance that may introduce distortions into the economy.

- Taking into consideration the relatively short experience of the authorities from developing and transition countries, the **most efficient structure of a competition authority (including the staff policy)** could be also a very interesting topic to be debated in the work of ICN. It is very interesting to know more about the allocation of human resources – “important” cases
versus “minor” cases; how agencies “protect” themselves of the minor cases and the cases that do not fall under the law.

How can these topics be approached? Well, in terms of ICN structure that could be translated in workshops as they proved to be more efficient in gathering experts from agencies involved in activity of ICN.

In addition, new agencies could be interested in topics related to investigative techniques, such as:

- dawn raids
- computer forensics
- surveillance techniques
- interviewing techniques
- preventing the destruction of evidence

It is very important, in our views, to keep the Advocacy topic on the agenda of ICN since as a general rule it is easier to prevent than to fight against some anticompetitive practices already implemented.

I am sure that the experience of the agencies from developed countries could be very useful in this field and the elaboration of an inventory of advocacy methods as well.

As a topic for ICN’s agenda, we also sustain the point of view expressed by the South African authority and suggest taking into consideration the promotion of SMEs’ access on international markets as it is important to support them in order to survive and to face the dominant undertakings on the market.

Apart from the above mentioned topics, we may approach other technical issues related to the communication with the market, such as:

- Sources and ways of obtaining information regarding markets
- Ways in which the competition authority publicizes its decisions and points of view, the modifications brought to the legislation and the measures taken on discouraging the use of anticompetitive practices;

There is still a very sensitive aspect that I would like to emphasise:

It is obvious that there are differences among the agencies participating in the ICN’s activity not only related to their degree of economic development but also related to other aspects, such as the experience gained on its own national market. But, what I very much appreciate and that I think it is important for ICN is the unique voice that has been heard until now - the convergence of the view points in specific topics of competition, irrespective of the national or regional development of the agencies involved.
What I really want to stress here is that it is definitively important to bring more agencies from developing countries in the work of ICN, but it is even more important not to split the activity of ICN on competition topics for developing and transition countries and competition topics for developed countries. We should stay as closer as possible so that the competition voice will have an international resonance.