

ICN CARTELS WORKING GROUP

WORK PLAN 2007-2008¹

The ICN cartels working group is composed of two sub-groups, on the general framework and principles for the fight against cartels, and on enforcement techniques.

1. General Legal Framework Subgroup

Aim Of Subgroup 1

The General Legal Framework subgroup addresses the legal and conceptual challenges of anti-cartel enforcement. The focus of the subgroup is studying basic elements of effective detection, investigation, and punishment of hard-core cartel conduct.

Review Of Work During 2006 – 2007

The Subgroup enhanced its previous report on international cooperation with significant additional work on potential ways to enhance or promote cooperation in anti-cartel enforcement and examined corporate NGA views of its previous report on the interaction of public and private enforcement.

Proposed Projects for 2007 – 2008

Negotiated Settlements. This project will explore the role that settlements play in anti-cartel enforcement. Based upon input from members, the project will address the underlying principles and benefits of settlements and practical aspects of achieving them. The project will cover the practices of ICN members that negotiate criminal plea agreements, those that negotiate civil settlements, and those which have dual systems, where the competition authority works with another government agency to enforce its anti-cartel statutes. (Project Lead: USDOJ)

Determining Fines. This project will look at how corporate fines for hardcore cartels are determined, including the degree of transparency involved. The project could also review practical issues that jurisdictions have faced in setting fines (including obtaining appropriate data), based upon ICN member input. A report would summarize the findings and discuss issues and solutions that have been identified or adopted. (Project Lead: EC, DG Competition)

Working group members may be asked to contribute the relevant source information for the projects. Volunteers will be sought to assist in the drafting of the work product.

¹ Note that years start and end with ICN Annual Conferences.

2. Enforcement Techniques Sub-group²

Aim of Subgroup 2

The Enforcement Techniques Subgroup 2 aims to improve the effectiveness of anti-cartel enforcement by identifying and sharing specific investigative techniques and advancing the educative and information sharing agenda of the International Cartel Workshops.

Projects 2006-2007

Subgroup 2 undertook the following projects:

- Cartel Workshop hosted by the Netherlands Competition Authority in The Hague, Netherlands, November, 2006;
- Dissemination of materials from the 2006 Cartel Workshop;
- ICN anti-cartel enforcement manual chapter on cartel case initiation; and
- Completion of the Anti-Cartel Enforcement Template by additional ICN Members

Projects 2007 - 2008

2007 Cartel Workshop (San Salvador, El Salvador):

- Finalize agenda;
- Coordinate preparations with the host, El Salvador Superintendencia de Competencia;
- Provide oversight and feedback to the host;
- Identify host of 2008 Cartel Workshop; and
- Planning for 2008 Cartel Workshop.

Anti-Cartel Enforcement Manual:

- Draft Chapters on Investigative Strategy and Interviewing

Investigative Strategy

- Develop the theory of the case (relevant market, type of agreement or arrangement, participants, motivation, etc.)
- What evidence is required?
- Where is the evidence located? Is cooperation and coordination with other agencies useful/necessary to obtain evidence?
- What investigative tools are most effective to obtain the evidence required and at what stage of the investigation?

² This Workplan is intended to be a “living” document that will evolve over time to reflect the changing needs and priorities of the Members of Sub-group 2. The Workplan should be read in conjunction with the Workplan for Sub-group 1. Sub-group 2 will coordinate its work with Sub-group 1 as much as possible to ensure that there is no overlap and duplication.

- record production orders or subpoenas;
- oral examinations;
- interviews;
- searches, raids or inspections;
- wire-tapping;
- market inquiries;
- consultation of experts;
- other non-compulsive techniques

Interviewing

- Use and benefits of interviewing as a primary tool in investigating cartels
- Types of interviews
- Who to interview
- When to interview
- Format of the interview
- Preparing for the interview
- Legal issues
- Conducting the interview
- Recording the interview
- Using the results of the interview to advance cartel investigation and adjudication

Information Sources:

- Coordinate completion of the Anti-Cartel Enforcement Template by additional ICN Members

2007-2008 WORK PLAN: APPENDIX

2007 ICN Cartel Workshop in San Salvador, El Salvador

This year, the ICN Cartel Workshop will be hosted by the El Salvador Superintendencia de Competencia in San Salvador from October 30th to November 1st at the Radisson Plaza Hotel.

This will be the 4th annual Cartel Workshop hosted under ICN auspices and the 8th since the first international cartel workshop in the United States in 1999.

Each year's cartel workshop attracts an increasing number of participants from both experienced and younger agencies from enforcement jurisdictions spanning the globe. Last year's cartel workshop in The Hague attracted over 150 participants from 51 jurisdictions, a significant increase from the workshop in 2005. Participants reported that as cartel investigators they found the workshop content very practically oriented and relevant to their work. Participants also noted networking opportunities, interaction with colleagues, and the sharing of experiences, as another key benefit of the workshop. To quote some participants, the workshop was "impressive, efficient, smart and thoughtful", "extremely well organized", "pleasant, enjoyable, interesting" and the Netherlands Competition Authority "was truly professional and thought of everything". The Netherlands Competition Authority is to be congratulated for their efforts!

A formal agenda for the 2007 Cartel Workshop will not be finalized until after the Annual Conference in Moscow. The following provides a brief overview of the draft agenda:

This year's workshop will kick off with a hot topic's panel to discuss cutting-edge issues and challenges in anti-cartel enforcement that are of interest to many competition agencies. Topics under consideration include international coordination of leniency policies, use of evidence from leniency applicants, calculating volume of commerce and extradition.

The Workshop will continue to focus on the practical tools and approaches to building an effective case from the detection and investigation of a cartel to the adjudication and punishment of cartel members. Topics to be discussed include investigative interviewing, preparing for a search, raid and inspection, subpoenas and orders for oral examinations and production of information, determination of fines and negotiated settlements. Many of these topics complement the Cartel Working Group 2007-08 Work Plan and development of work products by Subgroup 1 (SG1) on determination of fines and negotiated settlements and new Anti-Cartel Enforcement Manual chapters by Subgroup 2 (SG2) on investigative strategy and investigative interviewing.

The workshop will use a hypothetical cartel case to provide the context for discussions about investigative strategy, as a factual backdrop for a mock oral fine submission to an adjudicator as well as the starting point for interview role-playing exercises.

In addition to the hypothetical case, the agenda will include a presentation of an actual cartel case, including elements, such as a search, raid or inspection, a subpoena or order for production of information, interviews, and cooperation with a foreign agency. The case study will serve as a basis for sharing ideas about the relative value of various approaches to anti-cartel enforcement and lessons learned.

Leniency continues to be a topic of interest for ICN Members, particularly those who have recently implement a leniency policy or those in the process of adopting and implementing a leniency policy. A session will be dedicated to exploring issues and challenges particular to those agencies.

There is a general agreement that participation by NGAs in the annual Cartel Workshop continue insofar as NGA participation advances workshop objectives and to the extent considered appropriate by Members.