

The International Competition Network: Planning for the Second Decade

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INTRODUCTION

The ICN stands at the eve of its tenth birthday. When it started in 2001, we looked forward to creating a project-oriented, consensus-based, informal network of diverse antitrust agencies, small and large, mature and new, and from developed and developing countries. It is testimony to the commitment and efforts of everyone here in Istanbul, and those who preceded us at previous conferences, that this founding objective has not just been achieved but surpassed. Today, the ICN's membership stands at 112 agencies in 99 jurisdictions. In December 2009, a well-known U.S. antitrust organisation listed among the ten most positive antitrust developments of the last decade, "The ICN. Whatever expectations one had for the organization, the ICN far surpassed them." By any measure the ICN's progress in eight short years has been impressive.

Next year, in The Hague, we begin ICN's second decade: setting our 2020 vision. This year I want us to take stock of what we have done, where we are going, and how we are getting there.

1. First, only by recognising the strengths of the ICN, by acknowledging what we do well, we can understand the core elements of our future success. And celebrating that success is a critical part of nurturing the network.
2. Second, we must remind ourselves where we are going, what it is we wish to achieve. The ICN's mission, set out in 2001, provides an important goal and orientation for our work but, in the light of our achievements to date, we must ask if it sets the right direction for the second decade.
3. Third, I will spend the bulk of my remarks on examining how we get there. Last year, in Zurich, I outlined four priorities for the implementation of our mission and objectives. Over the past 12

¹ I would like to thank Sophie Mitchell and Ed Smith at the Office of Fair Trading for their help in preparing this speech.

months, these priorities have informed the approach the working groups have taken in order to develop the new strategic plans that underlie the annual work plan, about which you heard this morning.

In the breakout sessions, I want to invite your feedback on how we measure the ICN's success, on our mission and objectives, on the modes of governance and engagement in the ICN, and on the priorities for the ICN's future work.

Istanbul, on the boundary between Europe and Asia, provides a fantastic setting for this conference and I would like to give my wholehearted thanks to our hosts, and all those in the ICN, who have made this event possible. I also pay tribute to all those who have given so much of their time and resources over the past year to deliver the plans of our working groups.

WHAT HAVE WE DONE SO FAR? THE KEY ACHIEVEMENTS OF THE ICN

We talk about our success, but do we measure it, understand it fully, celebrate it appropriately? Apart from this, do we understand fully the causes of that success, so that we can build an even stronger platform for the future?

In looking forward to the work we need to do and improvements we need to make, we may risk being focused on the negative, on the gaps and differences, and not spend sufficient time on recognising the tremendous achievements of the past eight years. Positive appreciation is important for the morale of ICN and provides a critical stimulus to our positive engagement in future work.

As noted in this year's Statement of Achievements:

“The ICN's output, as well as the degree of membership engagement, has been impressive. Its informal working methods and aspirational, forward-looking approach to consensus building based upon open, multilateral dialogue have proved effective at creating work product as well as influencing outcomes. Mature and younger competition authorities have benefited in various ways from the ICN's work, and in a number of cases ICN recommendations have led to legislative change in jurisdictions of member agencies.”

Through collaboration and cooperation, ICN members and non-governmental advisers (NGAs) have produced a wealth of work products in areas such as mergers, cartels, competition advocacy and, more recently, unilateral conduct and agency effectiveness. Highlights are summarised in the Statement of Achievements. They include recommended practices in areas such as merger notification and procedures, which have been cited by nearly two-thirds of ICN members as having played a role in initiating or shaping their merger reforms; practical guidance, such as the celebrated Manual on Anti-

Cartel Enforcement Techniques; and workshops and teleseminars which allow members and NGAs to share and learn from their respective experience.

The benefits of our work should, however, be measured also in terms of outcomes rather than just outputs. By outcomes, I mean that we should measure how the work we do in ICN contributes positively to global competition, to the welfare and prosperity of our consumers, and to the performance, openness and growth of our economies.

Many of the important contributions of the ICN to outcomes in markets will be long term or difficult to measure, and we should not hitch ourselves to any unrealistic empiricism as justification for the work we do. Nevertheless, where we can, the demonstration of improved outcomes is enormously positive. Often the best outcomes will be measurable reductions in duplicative burdens, better agency cooperation, or clearer standards. In many cases, the best outcomes may comprise simple stories.

This was brought home to me last September when I met Graeme Samuel of the Australian Competition and Consumer Commission. He had just learned that cartel officials from the ACCC and OFT had been in touch with one another to share technical know-how in relation to a type of horizontal behaviour in the context of ongoing investigations being conducted by both authorities. This contact happened naturally as a result of officials having met at an ICN cartel workshop, and neither of us was aware of it.

A useful taxonomy against which to think about success in terms of outcomes, rather than outputs, is to measure the ICN's success against the four objectives I suggested last year, namely helping ICN members to:

- address private anti-competitive behaviour;
- address disproportionate public restrictions on competition;
- reduce the instance of different or inconsistent substantive standards and policies that give rise to a risk of 'chilling' conduct that could be pro-competitive and ultimately beneficial to consumers; and
- remove duplicative and inconsistent procedures across national competition regimes that create additional burdens for business which are ultimately passed on to consumers.

Addressing private anti-competitive behaviour

In relation to the coordination of action against private anti-competitive behaviour, the ICN's broad membership and its promotion of effective and practical working relationships between members is particularly beneficial. The ICN has laid important foundations to support informal agency cooperation by forming trusted relationships between individuals in

competition agencies, particularly as a result of meeting at ICN events such as this annual conference and workshops. For cartels, mergers, and unilateral conduct, ICN workshops enable agency officials and others from across the globe to meet face to face and share their experiences and develop shared understanding and improved techniques.

Our collective ability to fight cartels, for example, has also been strengthened by the ICN's materials on leniency, which have been cited by a number of competition authorities as instrumental in developing or revising their leniency programmes. Equally good examples exist across our other work areas.

Addressing public restrictions on competition

The ICN has helped members to address public restrictions on competition through its work on advocacy. Advocacy reinforces the value of competition by educating citizens and policy makers and is especially useful in difficult economic times, when governments can come under pressure to relax or set aside competition policy in favour of other policy objectives, and for newer competition agencies.

To this end, in response to the recent economic downturn, ICN members worked together last year to develop some key messages on the role of competition policy in difficult economic times, for competition agencies to use in their domestic advocacy efforts. These noted the benefits of competition policy for the productivity (and therefore the growth prospects) of an economy, regardless of the position of that economy in the business cycle, and the fact that competition policy also enhances consumer welfare. Secondly, they noted that there are many reasons for policymakers to be wary of calls to relax competition policy in recession or during economic crisis. Relaxing, suspending, or eliminating competition policy can inadvertently harm consumers and producers by slowing, rather than promoting economic recovery: an effect that many economists attribute to the introduction of the U.S. National Industrial Recovery Act of 1933 following the Great Depression. Similar lessons follow from the experience of Japan in the 1990s. And thirdly, competition policy can usefully inform broader policy objectives. As governments design economic recovery measures, competition agencies can offer useful advice and insight on likely effects in the market and help ensure that the full benefits of competition are properly understood and taken into account in policy-making.

Reducing the instances of different or inconsistent substantive standards

The ICN has proven successful in developing international best practices in relation to substantive standards, as we have seen in the areas of mergers

and cartels, discussed above. Similarly, the ICN provides a forum to discuss differences, a 'marketplace for ideas'. The ICN has also provided part of the underlying infrastructure for many bilateral and regional improvements, as discussed below.

In my speech at last year's annual conference in Zurich and accompanying paper² I noted that the ICN should aim for convergence where it can be achieved, and 'informed divergence' – acknowledging the need for, and reasoning behind, potential differences in standards between jurisdictions – where appropriate. Often the divergence debate can lead to further convergence over time. There will inevitably be some areas where convergence is not possible, for example due to different domestic economic histories, development and priorities, all of which have an impact on the competition regime of a given country: but even here, identifying the nature and sources of divergence between different jurisdictions and understanding and respecting the divergent underlying rationale can offer agencies, business and consumers greater clarity and transparency.

ICN experience sharing teleseminars are an ideal forum in which to further our understanding of areas of international divergence. The Unilateral Conduct Working Group recently conducted a teleseminar on the topic of excessive pricing, with a discussion between agency speakers with different points of view along with a private sector perspective followed by questions from the audience. The group received positive feedback indicating that the programme enhanced people's understanding of the different approaches.

Many sources of divergence may be outside the scope of the agency. For example, agencies may be closer in their approaches than their respective courts, or government policy may set wider policy objectives (e.g., industrial policy). Here, as in other areas, developing an informed understanding of the underlying differences is important in building communication and trust, even where those differences cannot easily be resolved.

Reducing the burden of duplicative and inconsistent procedures

With a view to reducing the burden of duplicative and inconsistent procedures, the ICN has had some remarkable success in reducing the costs and burdens of multijurisdictional merger review, by creating and promoting the Recommended Practices for Merger Notification Procedures. For instance, a number of agencies have cited the ICN Recommended Practices as being

² J. Fingleton, 'Competition agencies and global markets: the challenges ahead', June 2009, available at: www.offt.gov.uk/shared_offt/speeches/2009/spe0909paper.pdf.

influential in changes they have made to their domestic merger notification thresholds such that only mergers having an impact in the jurisdiction in question are reviewable, consistent with the ICN Recommended Practice on Nexus to the Reviewing Jurisdiction.

The intangible benefits of the network: trust, openness and mutual understanding

Above all, by providing a forum for officials from competition agencies around the world to work closely together and share ideas and practice, the ICN can enhance trust and communication between competition agencies in different countries, creating a platform for mutual influence and support. Through the ICN we can all benefit from subtle and explicit sharing and learning, implicit cooperation and alignment that we may not always notice.

In many ways, ICN provides a type of backbone or infrastructure on which so many other bilateral and multilateral initiatives rest. The conversations at this conference, at our dinners and other social events, have led and will continue to lead to new friendships, understandings and trust on which better communication and many new initiatives will be built. In this sense, ICN is like the fibre that makes the internet work. Because so many of these benefits are intangible, and some are very long-term, not ascribable to any one meeting or event, it is important that we describe and value them so as to ensure that we nurture the network appropriately. Some can best be captured by stories and anecdotes that we realise have more general application.

From late 2008, competition policy in many countries came under threat from governments' responses to the financial crisis and economic downturn. As a result, most of us were engaged in renewed domestic advocacy for strong competition policy. By early 2009, many of us were sharing speeches, experiences and arguments, all of which contributed to more effective advocacy.

Long before we came together formally within the network to produce the shared platform for advocacy that I described above, we were working together informally. I have little doubt that the network provided a good part of the platform for that important and productive informal communication. As a result, each of us engaged in more effective and more agile domestic competition advocacy, a good result for consumers.

It is this kind of real example of the benefits of participating in the ICN that we should try to capture more regularly in order better to measure and articulate the ICN's successes in terms of outcomes rather than simply outputs: to show how our work in the network cascades down to make for more effective

domestic outcomes, ensuring that consumers benefit from open, competitive markets at the international level as well as domestically.

In the breakout sessions we would like to invite participants to provide specific examples of instances where the ICN's work has had a material impact on consumers in their country.

WHERE ARE WE GOING? THE ICN'S MISSION AND VISION

The Memorandum on the Establishment and Operation of the International Competition Network³ describes the ICN as:

'a project-oriented, consensus-based, informal network of antitrust agencies from developed and developing countries that will address antitrust enforcement and policy issues of common interest and formulate proposals for procedural and substantive convergence through a results-oriented agenda and structure.'

A key element of the ICN's mission, as set out in the Memorandum, is to 'encourage the dissemination of antitrust experience and best practices, promote the advocacy role of antitrust agencies and seek to facilitate international cooperation'.

Last year, in an attempt to flesh this out, I suggested we might think of ICN's work as achieving the four objectives described above, namely to:

- address private anti-competitive behaviour;
- address disproportionate public restrictions on competition;
- reduce the instance of different or inconsistent substantive standards; and
- remove duplicative and inconsistent procedures across national competition regimes.

Is this the right mission for the ICN to pursue in its second decade? If you were tasked with writing the ICN's mission statement today, would you change the mission above; would you add anything else? Do these objectives correctly capture what we are trying to achieve, and do they enable us fully to measure and capture our success? We look forward to hearing your ideas in the breakout sessions.

³ Available at: www.internationalcompetitionnetwork.org/uploads/library/doc579.pdf.

HOW ARE WE GOING TO GET THERE? THE ICN'S STRENGTHS AND OBJECTIVES

Last year, I outlined what I saw as the four main priorities for implementing the ICN's mission and achieving its objectives:

- Continuity: this is about understanding clearly the causes of our success and retaining and nurturing them.
- Governance and inclusiveness: the ICN must continue to develop its model of governance to ensure that its work addresses the needs of competition agencies and serves the interests of consumers in each member jurisdiction.
- Agency effectiveness: a key input to improved competition policy implementation and coordination across both established and new agencies.
- Longer-term vision: the ICN should build on its success and address future challenges through the development of an innovative and focused long-term vision.

Continuity

By recognising the strengths of the ICN, by acknowledging what we do well, we can understand and nurture the core elements of our future success.

First, the fact that the ICN is dedicated exclusively to competition policy and has a membership that represents competition agencies rather than governments gives the ICN considerable flexibility in determining both its current work and its future direction.

Second, as a virtual, project oriented organisation the ICN has proven to be a cost-effective way of providing better outcomes through cooperation and shared understanding.

Third, the ICN benefits from the input of a broad community of stakeholders, including a very broad membership of agencies and the participation of NGAs, which brings solidity to its work and promotes the interplay of public and private sector expertise and experience in the development of the ICN's projects.

The effectiveness of the ICN is measured, in large part, by members' use of and reliance on its work product to achieve interoperability to support cooperation, capacity building to enable learning, and convergence around common standards. The ICN Steering Group has therefore dedicated a significant amount of time this year to discussing how we can better capture and promote the implementation and dissemination of our work product. In

order for this to happen, it is important to ensure that the work of the network continues to be of a high quality.

Implementation and dissemination of ICN work product

A key element of ensuring continuity is that we ensure that we fully explore the benefits of the work we have already done before we set off on doing more work. Otherwise, we risk creating a huge volume of work products which get lost or forgotten, resulting in a waste of the resources that we put into creating them. Going beyond the mere creation of work product, and carrying it through to assessing how it is used, helps us to measure our success. It also provides us with valuable insights which help us to create more useful work products in future.

There is therefore general consensus that implementation and use of the ICN's existing work product should be better incorporated into the ICN's work as a central theme.

This can be achieved by:

- prioritising better and focusing on the things that make the biggest impact;
- building institutional memory, to better capture learning and the cumulative effects of the ICN's efforts to inform the future;
- having a clearer focus on converting the ICN's outputs into tangible outcomes for consumers within members' home countries; and
- refining and articulating more clearly the benefits of the ICN's work in order to demonstrate the benefits of the ICN for domestic consumers in members' jurisdictions, both directly and indirectly.

When Steering Group members discussed this issue earlier this year, they supported the idea of doing further work to identify barriers to implementation and dealing with these in a systematic way, while stressing that any implementation review must not cut across the voluntary, non-binding nature of the ICN's activity. How can we take this forward in practice?

- First, working groups have incorporated dissemination, implementation and use of work product into their long-term strategic plans.
- Second, we can look at members' conformity with a particular ICN work product, or members' use of a particular ICN work product, in order better to assess barriers to implementation across all ICN work products. At least four categories of barriers exist:
 - Accessibility: work product is not user friendly (e.g., language, complexity).

- Relevance: projects are not driven by the demands of the wider membership.
- Legislation: amendments are required for conformity.
- Prioritisation: implementation requires expensive long-term investments.
- Third, the working groups will incorporate a focus on implementation in future workshops.

The work of the Vice Chairs, discussed earlier today, is also designed to assist with implementation of ICN work product, in particular:

- The Advocacy and Implementation Network Support Program, whose purpose is to assist ICN member agencies in implementing and using ICN work product.
- The proposed ICN University project, led by the Vice Chair for Outreach.
- The work being done by the Vice Chair for International Coordination in identifying a set of key ICN work products for use in technical assistance and translating those materials into Spanish and French, in the first instance, so as to make them accessible to a broader constituency of the global competition community.

Quality control

It is essential to the credibility of the ICN's work product, which translates into the value we provide to our members and the competition community, that the work produced throughout the ICN continues to be of high quality. Steering Group members and working group chairs have been discussing how to maintain this quality throughout working groups' outputs and activities through effective project planning to ensure that projects are aligned with the strategic objectives of the working group, and of the ICN as a whole, and that the process allows for the participation and input of a broad constituency of member agencies and NGAs.

Governance and inclusiveness

Recognising that the ICN's broad membership and participation of NGAs are among its core strengths, it is imperative that the network should operate in an inclusive manner. We also need to ensure that the ICN's governance structure enables us to make the best use of the resources that we put into the network.

Inclusiveness and diversity are a key element of the quality control initiative described above. Steering Group members have also been working on broadening NGA participation in the ICN, described further below. And with

this conference we will start a review of the current governance structure to ensure that it allows us to make the most of the network's strengths in future.

NGA engagement

NGAs are a critical part of our success, and broadening NGA participation in the future will be critical to the ICN's continuation. Past studies and focus groups carried out in the ICN have consistently suggested a clear consensus in the ICN community that we need to engage NGAs from diverse backgrounds and geographic distribution to participate more actively in the ICN, in order for the network to benefit from a wide spectrum of views and interests.

To that end, Bruno Lasserre, in his role as NGA Liaison, and Bill Kovacic, in his role as Vice Chair for Outreach, have been looking at ways of better engaging NGAs in the ICN, with a new NGA-dedicated page on the ICN website; a new quarterly update to inform the ICN community, including NGAs, of recent developments and activities in the ICN; and better information for both NGAs and agencies on the how NGAs can get involved.

Agency effectiveness

Improving the effectiveness of our agencies – through better strategic planning, better stakeholder engagement and bringing the best out of our people – gives rise to tangible benefits to competition and consumers in our home jurisdictions. To that end, we now have a dedicated working group to take forward the ICN's work on agency effectiveness, with a new Agency Effectiveness Handbook in production and a second ICN agency effectiveness workshop for agency heads due to take place this Summer. These workshops allow agency heads to discuss key issues in the development of their organisations in an informal and collegiate setting.

Longer-term vision

The work on developing a more innovative and focused vision for the ICN has begun this year with the working groups, as the core of the network. This morning the working groups presented their strategic plans, which reflect the key objectives of the ICN. Those strategic plans have in turn informed the work plans of the working groups for next year, which we will hear about on the final day of this conference.

It may be easiest to describe how all these fit together with a diagram:



Our task over the next year, beginning with this conference, is to work back up from the strategic plans of the working groups to develop an overarching mission and strategic vision for the ICN as a whole. Today we would like to hear your ideas.

PLANNING AHEAD

The ultimate question for today's breakout sessions is: what do we want the ICN to have achieved ten years after the Hague annual conference?

This morning's presentations are a key input to this session. You have seen the strategic plans of the working groups, heard about work of the vice chairs, and about the work of ICN with other organisations.

We are approaching the question of what we want to achieve over the next decade in a structured way:

- Does ICN have the right mission?
- Are our objectives capable of describing what we wish to achieve and how we would measure success?
- Is it useful to have strategic plans for the working groups to make the link between the longer-term vision and the annual work plans?

In this context, we will be discussing fundamental questions such as: is the ICN addressing the right topics and is it striking the right balance between convergence and divergence? Does the ICN provide value for money; is the input/output ratio correct? Is the current structure of the network fit for purpose? And what do you see as the ICN's 2020 vision?

Your comments will feed into the work of the ICN Steering Group over the coming year, with a view to developing an innovative and focused vision for the ICN's second decade.

I look forward to a stimulating debate.