



**ICN Steering Group Meeting
October 19, 2011**

From 08:10 to 09:40 (Paris time)

Attendees:

- Australian Competition and Consumer Commission
- Autorità Garante della Concorrenza e del Mercato
- Autorité de la concurrence
- Brazilian Administrative Council for Economic Defense (CADE)
- Brazilian Secretariat for Economic Monitoring
- Brazilian Secretariat of Economic Law of Ministry of Justice
- Bundeskartellamt
- Competition Bureau Canada
- European Commission DG Competition (EC DGCOMP)
- Japan Fair Trade Commission (JFTC)
- Korea Fair Trade Commission (KFTC)
- Mexico Federal Competition Commission
- Netherlands Competition Authority
- Polish Office of Competition and Consumer Protection (UOKiK)
- Russian Federal Antimonopoly Service
- South African Competition Commission
- Turkish Competition Authority (TCA)
- United Kingdom Office of Fair Trading
- United States Department of Justice (US DOJ)
- United States Federal Trade Commission
- Tribunal de Defensa de la Libre Competencia (TDLC)

Apologies:

- Barbados Fair Trading Commission

Draft Minutes

1. Approval of Draft Agenda and Previous Minutes

An update from the ICN-OECD Liaison was added to the agenda under 'other business' and the agenda was subsequently approved.

SG members were asked to send any comments on the draft minutes of the September 28, 2011, SG call to the ICN Secretariat (ICN.Secretariat@cb-bc.gc.ca) by October 26, 2011.

2. Steering Group Substantive Topics

Working with courts and judges

The leaders of the SG project on working with courts and judges (TDLC and UOKiK) presented their proposed work plan. SG members made the following suggestions:

- ICN is not an appropriate body for normative discussions relating to institutional frameworks and judicial review procedures. ICN should instead focus on practical issues, taking the diverse institutional settings of its members as given.
- The project might consider how various dialogues affect how agencies work with courts and judges:
 - Interaction between judges in different countries: e.g, recognizing existing networks such as the Association of European Competition Law Judges.
 - Domestic interaction between agencies and courts/judges: e.g, dialogue between agencies and their domestic judges or senior law clerks (appreciating relevant boundaries).
 - International interaction between agencies and courts/judges: e.g., through ICN. To this end, the project might consider the main barriers to judges participating in ICN events, such as funding, language, and judicial independence.
- The project could identify the most important problems that agencies face in working with courts and judges, as well as the things that are working well. This could help answer the question, “What does good look like, and what are the incremental steps to get there?”

Project leaders proposed conducting a high-level SG-focused questionnaire as part of the ‘scoping exercise’ for the project.

Enforcement Cooperation

The US DOJ and TCA introduced the JFTC to discuss a proposal for a merger enforcement cooperation framework within the ICN. Project leaders noted that while both the ICN and OECD have made tremendous progress on “soft” cooperation, that there is still room for improvements in “hard” cooperation on actual cases. To this end, the project leaders proposed that the project focus on practical constraints to cooperation based on the actual experience of members.

SG members agreed that the enforcement cooperation project should focus on practical issues, and that OECD was better placed to focus on institutional issues. SG members also noted that the project should differentiate between cooperation in cartel, merger, and unilateral conduct cases. For example cooperation in the cartel context involves issues relating to timing, leniency, data protection and confidentiality; whereas cooperation in the merger context deals with issues relating to waivers, remedies, etc. It was noted that the Cartel Working Group is currently developing a chart which will summarize all of the information sharing mechanisms of its members.

The JFTC presented its proposal to establish an ICN Cooperative Framework for Merger Review to facilitate cooperation among agencies reviewing cross-border mergers. The JFTC proposed that participation in the framework would be voluntary and that cooperation within the framework would be based on, e.g., principles of reciprocity, compliance to confidentiality obligations imposed by domestic legislations or international agreements, restriction on the use of the information for other purposes, etc. SG members noted that there are many existing bi-laterals for merger cooperation amongst the larger or more established agencies, but that the framework could still facilitate multi-lateral cooperation or benefit smaller and/or newer agencies. It was suggested that the framework could also benefit from looking at existing models of regional cooperation and trying to promote more cooperation in other parts of the world. It was also suggested that the Merger Working Group take the detailed consideration of a merger cooperation framework forward.

The Chair proposed that project leaders engage with the Merger, Cartel and Unilateral Conduct Working Groups to collect issues that are general and bring them back to SG. The SG could then discuss whether the issues are of a practical nature more appropriate for ICN substantive work, or whether they are institutional issues which the OECD may be better placed to consider.

3. Working Group Progress Reports

Working Group co-chairs circulated written progress reports to SG members in advance of the meeting. SG members raised the following points:

- The EC DGCOMP was thanked for hosting an excellent and well-attended Cartel Workshop in Bruges.
- The Merger Working Group was complimented for its work on promoting the accessibility and implementation of its work product. In the context of the Merger

Working Group's work on economic analysis, it was noted that it would be useful to see some further work on the important issue of "data availability."

- SG members noted that Working Groups should ensure that they do not pose too great a burden on respondents when issuing questionnaires/surveys.
- It was suggested that Working Group co-chairs learn from the good work that other Working Groups are doing.

4. New ICN membership application

The KFTC, as Chair of the Membership Working Group, asked SG members to consider the application of a prospective ICN member. The application raised a general question of whether the SG should approve a prospective member whose competition legislation has not yet been enacted into law. SG members agreed that in such cases applicants should be encouraged to make use of public ICN resources as well as the technical support offered through the Advocacy and Implementation Network Support Program (AISUP), but that they would not be considered for ICN membership until their competition law is enacted.

5. Operational Framework

The revised Operational Framework was approved by SG members subject to a comment made by a SG member which would be discussed offline.

The Operational Framework Working Group informed SG members that it would be considering potential updates to the *ICN Travel Funding Guidelines* over the coming months and is aiming to have a revised document for SG approval by January, and thereby having a final document by February.

6. 2012 ICN Annual Conference

CADE provided an update on planning of the 2012 ICN Annual Conference. The conference will be held in Rio de Janeiro, Brazil, from April 17-20 at the Royal Tulip hotel (www.royaltulipriodejaneiro.com). The conference website has been launched and the address is www.icn-rio.org.

7. 2013 ICN Annual Conference

UOKiK announced that the 2013 ICN Annual Conference in Warsaw, Poland has been tentatively scheduled for April 23-26, 2013. The Chair asked SG members to inform UOKiK if the tentative dates conflict with any other major international fora.

8. Other business

Update from ICN-OECD liaison

Mr. Philip Collins, the ICN-OECD Liaison, provided a brief update to SG members. He noted that potential overlaps between ICN work and proposed OECD work were identified at the OECD Competition Committee Bureau meeting the previous evening. Mr. Collins agreed with the position expressed by SG members that ICN should focus on practical issues; whereas OECD should utilise its government-based membership and broader remit to focus on wider issues and influence policy makers. Mr Collins suggested that the SG consider between now and February what substantive issues can be addressed by ICN and what issues may merit consideration by OECD.

9. Future Meetings of the Steering Group

- Wednesday, November 16, 2011 (conference call)
- Wednesday, December 14, 2011 (conference call)
- Wednesday, January 18, 2012 (conference call)
- Wednesday, February 15, 2012 (on the margins of the OECD)
- Wednesday, March 14, 2012 (conference call)
- Monday, March 26, 2012 (conference call)
- Wednesday, April 4, 2012 (conference call, if necessary)