



**ICN Steering Group Meeting
December 14, 2011**

From 8:00 to 9:00 am (Ottawa time)

Attendees:

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

Apologies:

- Brazilian Secretariat for Economic Monitoring
- Brazilian Secretariat of Economic Law of Ministry of Justice

Draft Minutes

1. Approval of Draft Agenda and Previous Minutes

The meeting agenda was approved.

SG members were asked to send any comments on the draft minutes of the November 16 SG call to the ICN Secretariat (ICN.Secretariat@cb-bc.gc.ca) by December 23, 2011.

2. Working with courts and judges

Project leaders (TDLC and UOKiK) presented a paper which sought to summarise some of the key issues that SG members raised in previous discussions and group them into a small number of high-level themes. Members were asked to consider the suitability of the following starting points for future ICN work on this topic:

1. **Judicial review** - challenges and lessons learned in presenting NCAs decisions in courts;
2. **Interaction with the judiciary out of the courtroom** - e.g. engaging judges in consultation processes while drafting soft law;
3. **Economic analysis** – presenting economic evidence to the judiciary.

SG members raised the following points:

- ICN work on this topic should be agency-focused, identifying practical ways that agencies can improve the way that they work with the judiciary, rather than ways of changing judicial behaviour.
- ICN work under item 1 (Judicial review) might include:
 - Tips to ensure that agency decisions are drafted in a way that is helpful for judges (e.g., how to articulate arguments, use of plain language, avoiding misinterpretation, etc.)
 - Experience sharing regarding the usefulness of guidelines on the calculation of penalties.
- ICN work under item 2 (Interaction with the judiciary out of the courtroom) may not be suitable given judicial independence and the need for agencies to keep an appropriate distance from judges outside the courtroom. However, the ICN may wish to consider opening attendance of ICN events, such as the Annual Conference, to judges.
- ICN work under item 3 (Economic analysis) might include:
 - How to present economic analysis effectively to courts (drawing on previous work done by the OECD in this area).
 - The relationship between quantitative and qualitative economic analysis, and how these relate to the legal burden of proof.
- While past discussions have largely focused on the issues that arise when an agency is before the court and a direct party to the decision (e.g., in the context of judicial review or prosecuting a case), there is a second category of issues that arise when the agency is not

a direct party to the decision (e.g., in the context of private enforcement where an agency may act as an *amicus curiae*, or where courts request access to documents submitted by leniency applicants). The project might consider these and other issues that arise under this second type of interaction with courts and judges.

Project leaders agreed to flesh out these ideas in greater detail in consultation with SG members over the next 4-6 weeks and to produce a draft ‘issues paper’ for discussion at the SG meeting in February.

3. NGA Liaison

The Autorité de la Concurrence provided an NGA Liaison update on behalf of Bruno Lasserre.

Recent activities of the NGA Liaison include:

- Updating the NGA Toolkit in light of feedback received from NGAs at the 2011 Annual Conference.
- Circulating an ICN update to NGAs and ICN members in November.
- Leading a discussion on NGA engagement on a WG Chairs call in November (i.e., how to promote inclusiveness and diversity of NGAs in the Working Groups).
- Holding an NGA conference call in December where NGAs provided feedback on past ICN annual conferences as well as suggestions for improving future conferences.

SG members approved the updated NGA Toolkit.

4. International Cooperation

Mexico FCC provided an update on the ICN-World Bank collaboration project on “Competition in transportation services.”

Since SG approved the project in February 2010, the project team has carried out a number of stocktaking activities assessing competition in the transport sector. The stocktaking exercise consisted of reviewing previous market studies in the haulage industry, meeting with representatives from various competition authorities, and conducting a survey of ICN members with questions aimed at diagnosing competition and regulatory barriers in the transportation sector.

A draft report on the information gathered through these stocktaking activities will be circulated to SG members in February 2012. The draft report will not contain policy recommendations, but the plan is to develop such recommendations throughout 2012 as a second phase of the project.

Mexico FCC offered to come back to SG at a later date to share their experience working on this project and present lessons learned for future collaboration projects.

As a co-chair of the Agency Effectiveness Working Group, Mexico FCC also noted that there will be an agency effectiveness workshop for agency heads held in Washington, DC on March 27, 2012 (on the margins of the ABA spring meetings).

5. 2012 Annual Conference

CADE provided an update on the planning of the 2012 ICN Annual Conference on behalf of the Brazilian Competition Policy System (BCPS) and the Annual Conference Planning Committee (ACPC). The following points were raised:

- BCPS has received a directive from the Brazilian government forbidding use of public funds for conference social events. Consequently, BCPS is pursuing non-public funding from the entities provisionally approved by the SG on May 4, 2011.¹
- ACPC is also considering the possibility of charging a fee for social events to the extent that non-public funding does not cover the full cost of the events.

CADE invited SG members to consider the idea of charging fees for social events, and offered to come back to SG in January/February to discuss this idea further when the level and sources of non-public funding are known. They also invited WG co-chairs to further consider the format of their conference sessions, and to bring suggestions to ACPC.

The Chair thanked BCPS and the rest of the ACPC, including the ICN Secretariat, for their hard work in organising the annual conference.

6. Other business

There was no other business.

¹The SG approved funding from the Brazilian Bar Association, Brazil's National Confederation Industry, and Brazil's Ministry of Foreign Affairs, as long as there would not be any perception of conflict of interest (per section 8.1(ii) of the Operational Framework).

7. Future Meetings of the Steering Group

- Wednesday, January 18, 2012 (conference call)
[NOTE: Due to a scheduling conflict the January 18 conference call was subsequently rescheduled to January 25.]
- 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)