

## ICN Steering Group meeting, 29 June 2011

### Note from the Chair

23 June 2011

Dear colleagues

There are four items on the agenda for our meeting next week:

- (i) substantive topics/issues for Steering Group discussion during the 2011-12 ICN year;
- (ii) the approval of new ICN members;
- (iii) the evaluation of the 2011 ICN Annual Conference; and
- (iv) the approval of sponsors at side events for the 2011 ICN Cartel Workshop.

Should Steering Group members wish to raise any additional items for discussion, please inform the ICN Secretariat ([Secretariat.ICN@bc-cb.gc.ca](mailto:Secretariat.ICN@bc-cb.gc.ca)) by **Friday 24 June**.

#### **Substantive topics/issues for Steering Group discussion during the 2011-12 ICN year**

With the new ICN year underway, I would like to use this meeting to map out the substantive agenda for Steering Group meetings over the coming year. Last year, apart from the Second Decade Project and the ongoing projects of the Steering Group members responsible for advocacy and implementation, international cooperation, membership, outreach, and NGA liaison, we devoted a significant amount of time to operational issues such as the reform of the ICN's governance structure.

Having addressed these operational issues, the Steering Group has a useful role to play in considering future substantive topics for the ICN, particularly in the case of cross-cutting issues which are of relevance to more than one working group.

The Steering Group's mandate, set out in the ICN Operational Framework, includes (at paragraph 3.1(i)):

'[guiding] the work of the ICN, [identifying] subjects of potential interest to ICN members, and [considering] time-specific and ongoing project proposals led by Steering Group members, as well as projects to establish non-binding general guidelines or recommendations.'

The Second Decade Project revealed a number of interesting suggestions for future ICN work. Some of those suggestions have been taken forward by the working groups in their five-year plans, while others remain open. Please refer to the paper 'The ICN's Vision for its Second Decade', available on the ICN website at:

[www.internationalcompetitionnetwork.org/uploads/library/doc755.pdf](http://www.internationalcompetitionnetwork.org/uploads/library/doc755.pdf).

When we met in The Hague, Steering Group members put forward a number of suggestions, including:

- cooperation, identified as a key goal in the ICN's second decade (on which more below);
- working with courts/judges, including an appreciation of resources, prioritisation and the importance of economic analysis;
- issues related to procedural fairness; and
- the benefits of holding further ICN workshops on agency effectiveness.

I would like to focus first on enforcement cooperation. This topic was addressed in the ICN Roundtable on Enforcement Cooperation held in Washington, D.C. in March 2010. Participants discussed a number of aspects of inter-agency cooperation, ranging from informal contacts to more formal case cooperation. These included:

- informal contact with another agency
- sharing with another agency information regarding the status of your agency's investigation
- sharing with another agency the substantive theories of violation and harm your agency is investigating
- obtaining appropriate waivers and sharing business information and documents with another agency
- coordinating with another agency on the timing of review and decision
- coordinating with another agency on dawn raids/searches

- coordinating other aspects of investigations (e.g. joint interviews)
- remedy coordination.

Common constraints raised at the roundtable concerned the lack of contacts in other agencies and reticence among agency staff to share information without a waiver from the parties in question, even where the information sharing is permitted.

The roundtable identified cooperation-related issues for further consideration by ICN working groups, including: facilitating and promoting informal cooperation, and exchange of non-confidential materials, which may help to foster better inter-agency relations and indirectly promote future formal cooperation; developing tools to facilitate identification of agencies reviewing or investigating matters and case liaisons; promoting the exchange of experience and identifying and disseminating practical tips relevant to cooperation through the ICN blog and webinar programs; developing advocacy materials on the value of cooperation; and creating ICN guidance, such as investigational checklists and/or model cooperation agreements or confidentiality provisions, for use by ICN members.

I welcome Steering Group members' views on whether it would be useful to progress the thinking on these issues at the Steering Group level over the coming year. I would also like to invite suggestions for additional topics to be addressed in our forthcoming meetings. In due course we will need to identify Steering Group members to take the lead on particular topics.

### **Approval of new ICN members**

The Korea FTC, as Chair of the Membership Working Group, will lead a discussion on recent applications to join the ICN.

Recently, the Membership Working Group has received expressions of interest to join the ICN from three competition authorities—the Independent Consumer and Competition Commission of Papua New Guinea, the Malaysian Competition Commission, and the COMESA Competition Commission (of the Common Market for Eastern and Southern Africa (COMESA)).

The Membership WG has concluded that the abovementioned competition agencies meet the requirements to become a member of the ICN. The Independent Consumer and Competition Commission and Malaysian Competition Commission are national competition agencies of Papua New Guinea and Malaysia respectively, entrusted with the enforcement of their

competition laws. And the COMESA Competition Commission is a multinational competition agency entrusted with the enforcement of competition law of COMESA.

If all these authorities are approved, the ICN will have 120 members from 106 jurisdictions.

For more information, please refer to the detailed explanations and copies of competition laws circulated by the ICN Secretariat in advance of our meeting. If you have any comments, please contact Mr. Yongho SHIN (yhshin83@gmail.com, yhshin55@korea.kr).

### **Evaluation of the 2011 ICN Annual Conference**

The NMa will put forward a proposal that it complete a 'lessons learned' report on the recent ICN Annual Conference. The project will be based on the NMa's evaluation of the ICN conference and will cover issues raised at the Steering Group meeting in The Hague, such as the relationship between plenary and breakout sessions.

### **Approval of sponsors at side events for the 2011 ICN Cartel Workshop**

The European Commission DG Competition will invite Steering Group members to discuss the approval of sponsors at two side events to be organised on the margins of the 2011 ICN Cartel Workshop. Please refer to the separate note circulated by the Secretariat in advance of our meeting.

I look forward to seeing you next week.

Best regards

John