



**INTERNATIONAL COMPETITION NETWORK**

# **ICN Work Products Catalogue**

**Advocacy and Implementation Network (AIN)**

**September 2013**

# Table of Contents

<b>Introduction</b> .....	2
<b>What is the ICN?</b> .....	3
<b>Current Working Groups</b>	
I <b>Advocacy Working Group</b> .....	4
II <b>Agency Effectiveness Working Group</b> .....	8
III <b>Cartel Working Group</b> .....	12
IV <b>Merger Working Group</b> .....	16
V <b>Unilateral Conduct Working Group</b> .....	22
VI <b>Annual Conference Special Project Reports</b> .....	25
VII <b>Others (ICN/OECD Joint Project)</b> .....	26
<b>Past Working Groups</b>	
I <b>Capacity Building / Competition Policy Implementation Working Group</b> .....	27
II <b>Antitrust Enforcement in Regulated Sectors Working Group</b> .....	29
III <b>Telecommunications Services Working Group</b> .....	30
<b>Contact Information</b> .....	31
<b>Index of ICN Work Products</b> .....	32

# Introduction

Since the establishment of the International Competition Network (ICN) in 2001, the ICN has grown significantly from an organization of 16 competition agencies to one of more than 120 agencies. At the same time, it has produced a tremendous body of work including recommended practices, manuals, reports and templates in addition to events like teleseminars, webinars, workshops, and of course, annual conferences.

However, producing work products is not the goal in itself, but the midpoint in achieving the goal of improving and advocating for sound competition policy and its enforcement across the world. The value of its work products will further be enhanced through their use by member and non-member agencies. Creating a virtuous cycle of creation, implementation and evaluation of the ICN work products will be crucial for the continuous development and improvement of the ICN activity.

In September 2011, the Vice Chair for Advocacy and Implementation has created the ICN Work Products Catalogue that lists work products by all Working Groups and by past projects to promote and advocate the use of ICN work products by competition authorities throughout the world. The catalogue includes the website links to these work products with brief introductions to their contents in an easy to view format. The catalogue aimed to help increased accessibility of the ICN products.

In the 2012 Annual Conference in Rio, the Chair of the ICN published “Vision Statement”. It sets the following three areas which the Chair plans to emphasize: (1) fostering enhanced member engagement; (2) improving direct assistance to members; (3) increasing the visibility of competition policy and principles in the domestic and international arena.

To further contribute to the goal of the ICN through promoting and advocating for the use of ICN work products by competition authorities throughout the world, the Japan Fair Trade Commission in cooperation with the Advocacy and Implementation Network (AIN) revised the catalogue to add ICN work products created since the 2012 Annual Conference. Through the distribution of the catalogue, we hope that the agencies acknowledge the usefulness of ICN work products, which will lead to achieve further convergence.

Best regards,

Japan Fair Trade Commission

September 2013

# What is the ICN?

- **[2010 Outreach Toolkit \(2010\)](#)**  
This material provides an introduction to the ICN and presents a general overview of the ICN and its Working groups.
- **[2001-2013 Statement of Achievement \(2013\)](#)**  
The Statement of Achievement provides an overview of the ICN's work achieved by the relevant working group and project groups during the past 12 years.
- **[The ICN's Vision for its Second Decade \(2011\)](#)**  
The purpose of this document is to build on the results of the consultation, as well as subsequent discussion and debates within the ICN, by setting out an overarching vision for the ICN to guide its work over the next ten years.
- **[Chair's Vision Statement \(2013\)](#)**  
This document describes the topics that Mr. Andreas Mundt, Chair of the ICN, will concentrate on during his tenure. While ensuring continuity with the projects of the former Chair, Mr. Eduardo Pérez-Motta, the Chair now plans to give attention to the three areas of focus, inclusiveness and implementation.
- **[Former Chair's Vision Statement \(2012\)](#)**  
This document shows the visions of the former Chair of the ICN, Mr. Eduardo Pérez Motta, for the ICN roadmap. The former Chair emphasizes the need for continuity of the ICN's Vision for its Second Decade and sets out three areas the former Chair plans to emphasize in this document: Enhanced member engagement; Improved hands-on assistance to members, and; Greater visibility for competition policy and principles.
- **[NGA Toolkit \(2011\)](#)**  
The purpose of the NGA Toolkit is to provide guidance to both NGAs and member agencies with a view to enhance NGA engagement in the ICN. The toolkit covers 4 main issues: (1) the role of an NGA; (2) the benefits of NGAs; (3) how to become an NGA; (4) how to engage as NGAs.

# Advocacy Working Group

## Market Studies Project

- **[Market Studies Good Practice Handbook \(2012\)](#)**  
This Handbook highlights common approaches in conducting market studies and covers the different phases of such a study. It is intended that this Handbook should apply broadly to different permutations of market study used internationally.
- **[Market Studies Information Store \(2010\)](#)**  
The Market Studies Information Store provides an online reference source of market studies conducted within the last five years by 34 participating ICN member agencies. The aim of the Market Studies Information Store is to help with: identifying issues for study, the cross-fertilization of ideas about market issues, identifying approaches to particular market problems and identifying ICN members who may be able to assist/advise further on their experience of conducting market studies in particular sectors.
- **[Market Studies Project Report \(2009\)](#)**  
This report analyzes 37 ICN members' market studies experience and practices relating to the definition and purpose, powers to conduct studies, their selection, processes, and outcomes, and measurement of the studies' impact.

\*Note: The Advocacy Working Group's original mandate was to undertake projects with a view to recommending best practices and to provide information to members in support of their advocacy functions. This work took place from 2001 through 2003. For additional advocacy-related projects during 2004-2008, see the work products list of the Competition Policy Implementation Working Group. In 2008, the Advocacy Working Group was reconvened and a revised work plan reflecting developments in the field, including the increased use of market studies, was approved by the Steering Group.

# Advocacy Working Group

## Competition Advocacy Experience Sharing Project

- **[Competition Advocacy Toolkit Part II \(2012\)](#)**

The Second Part of the Competition Advocacy Toolkit is intended to follow up its first Part by focusing mainly on promotion mechanisms of competition advocacy messages, including such means as media relations and competition agency web-site. It has the same structure and mode of presentation as Part 1 and the numbering of Components of Part 2 continues from Part 1. Part 2 includes four chapters dedicated respectively to: 1) Promotion Mechanisms/Types of Competition Advocacy Messages; 2) Media Relations; 3) Extending the Reach of Competition Advocacy Web-Site; and 4) Research and Consultation.

- **[Competition Advocacy Toolkit Part I \(2011\)](#)**

The Advocacy Working Group restores and updates Competition Advocacy Toolkit which was developed in 2003, in order to facilitate the use of it. The AWG prepared a new part 1 focusing on the advocacy process and tools during 2010-2011. Part 1 is organized into 4 components: (1) identification of relevant competition advocacy issues; (2) engagement of key stakeholders; (3) implementation and monitoring of advocacy activity; (4) evaluating effectiveness of advocacy interventions.

- **[Report on Assessment of ICN Members' Requirements and Recommendations on Further ICN Work on Competition Advocacy \(2009\)](#)**

The Advocacy Working Group's Review & Update Project, based on a survey of 32 ICN members, prepared a report to: (1) identify ICN members' experiences with competition advocacy; (2) assess the extent to which existing ICN advocacy work product is used by members; and (3) make recommendations for additional work in the area.

# Advocacy Working Group

## Project on Explaining the Benefits of Competition

- **Descriptive Outline of the Chapter (and Annex) on Explaining the Benefit of Competition to Government and Legislators (2013)**

This Chapter has the objective of setting out particular means and messages for competition agencies when approaching governmental and legislative bodies. It tackles a variety of situations and dimensions, including advocating the principles and benefits of competition, raising awareness of the importance of competition and competition-friendly policies, communicating the need for legislative or institutional reform. It draws on various means of communication, formal and informal, direct and indirect of communicating with government and legislators.

- **[Interim Report on the Explaining the Benefits of Competition Project Advocacy \(2012\)](#)**

The AWG project on Raising Awareness of the Benefits of Competition seeks to provide ICN members with knowledge, strategies and arguments for explaining the benefits of competition to support their competition advocacy efforts with governmental and non-governmental stakeholders. This project includes an experience sharing teleseminars and a survey that sought to take stock of how agencies explain the benefits of competition as well as evaluate their competition interventions. The result of these activities are collated in this report which aims to present the results of the Benefits Project for the 2011-2012 ICN year, and propose recommendations for AWG work in the 2012-2013 ICN year.

# Advocacy Working Group

## Other work products

- [Report on Advocacy Case Studies: Telecommunications, Energy, Airlines, and the Legal Profession \(2003\)](#)

This report includes submissions from 11 members describing advocacy efforts in four regulated sectors. Each chapter has an introductory section with an overview of the results of the country contributions and indicating the main sector-specific problems related with competition advocacy. After the introductory sections the full texts of the country contributions are included.
- **Report on Advocacy Provisions (2003)**

This report contains a collection of sample advocacy provisions from the laws and policies of 30 member jurisdictions.
- [Advocacy and Competition Policy \(2002\)](#)

The report presents a summary of the answers to the questionnaire among ICN members about their advocacy activities. It comprises four sections: 1) an introduction; 2) section setting out a conceptual framework for competition advocacy; 3) section presenting the results of the questionnaire and 4) conclusions.



# Agency Effectiveness WG

## Competition Agency Practice Manual

- **[Chapter 1: Strategic Planning and Prioritisation \(SPP\) \(2010\)](#)**  
The chapter addresses, inter alia, the objectives of strategic plans, the prerequisites of and constraints related to effective strategic planning, internal processes and external consultations, communication on strategic planning, and the use of prioritization criteria and the process of prioritization.
- **[Chapter 2: Effective Project Delivery \(EPD\) \(2012\)](#)**  
The EPD chapter examines tools and techniques for optimal case management, and contains good practices on internal quality control mechanisms and on institutional and organizational solutions to ensure compliance with agency decisions.
- **[Chapter 3: Effective Knowledge Management \(EKM\) \(2013\)](#)**  
This chapter serves as a guide to a variety of activities, processes, and technologies necessary to support an EKM system that will assist different competition agencies, according to their needs and resources. The chapter will help agencies manage their knowledge assets in order to improve performance.
- **[Chapter 4: Human Resources Management \(HRM\) \(2013\)](#)**  
This chapter focuses on an area of paramount importance to the success of any competition agency: the quality and effectiveness of its people. This chapter was informed by member survey and reflects illustrative practices from many jurisdictions.

\* Note: The mission of the Agency Effectiveness Working Group is to identify key elements of a well-functioning competition agency and develop best practices for agency strategy, planning, implementation, operations, and investigative tools and procedures.

# Agency Effectiveness WG

## Investigative Process

- [Investigative Tools Report \(2013\)](#)

The report identifies the powers and tools that competition agencies need to conduct effective and efficient investigations by stocktaking ICN members' experience and information on enforcement tools.

- [Competition Agency Transparency Practices Report \(2013\)](#)

This report identifies common ways competition agencies are transparent about their work, both generally and within the context of specific investigations.

- [Report on the Agency Effectiveness Project, Second Phase: Effectiveness of Decisions \(2009\)](#)

The report examines authorities' institutional powers to obtain compliance with decisions imposing remedies and sanctions as well as long term effects of compliance. In addition, the report addresses ways agencies engage in self-assessment to review the effectiveness of their decisions.

- [Report on the 2009 Seminar on Competition Agency Effectiveness \(2009\)](#)

This report introduces the discussions that took place in the January 2009 seminar in Brussels devoted to competition agency effectiveness, highlighting the main points that were made and raising ideas for future ICN work in this area. The report is structured along the four main themes discussed during the workshop: (1) strategic planning and prioritization, (2) project delivery, (3) evaluation and accountability, and (4) communication.

- [Report on Agency Effectiveness \(2008\)](#)

This report is based on a survey examining operational and organizational characteristics of competition agencies that may be important for a successful competition policy implementation. The Report addresses defining objectives and priorities, agency resource allocation and decisions' effectiveness.

# Agency Effectiveness WG

## Training Materials for Competition Agency Officials

### Curriculum Project

The mission of the ICN Curriculum Project is to create a comprehensive curriculum of training materials to serve as a virtual university on competition law and practice for competition agency officials. Training modules, consisting of video lectures and accompanying materials, will provide an on-line interactive educational center for competition authorities from around the world.

### ~ Modules ~

Series I (Competition Policy Fundamentals);

Module I-1: [The Origins and Aims of Competition Policy](#)

This module explores the development and content of competition policy systems. The presentation provides an overview of the history of competition law and describes the purposes, goals, and key elements of competition laws.

Module I-2: [Major Characteristics of Competition Policy](#)

This module covers the basic characteristics of competition policy systems, including the institutional features and choices that affect the enforcement of competition law. Presentations by agency experts highlight both the diversity and unifying elements of competition law systems around the world.

Module I-3: [Market Definition](#)

This module explores the role and importance of market definition in competition law investigations, including key elements such as the SSNIP analysis and the information that agencies evaluate to determine antitrust markets.

Module I-4: [Market Power](#)

This module addresses the concept of market power, central to the analysis of competition law investigations in unilateral conduct and mergers. The video includes an overview of practical techniques and the analytical tools that agencies use to determine if a firm has market power.

Module I-5: [Competitive Effects](#)

This module covers the law and economics of competitive effects and presents the elements of an effects-based approach to competition law enforcement. The video includes a hypothetical study of a loyalty rebates scenario to illustrate the principles of an effects-based approach.

Module I-6: [Developing Countries and Competition](#)

This module addresses problems specific to competition agencies in developing countries, such as lack of resources and inadequate support for competition policy elsewhere in government or in civil society. It features two scenarios illustrating common problems and comments from past and present agency heads.

# Agency Effectiveness WG

## ~ Modules ~

Series II (Horizontal Restraints);

Module II-2: [Leniency](#)

This module introduces the concept of leniency programs for anti-cartel enforcement. The module presents the cornerstones and benefits of an effective leniency program, the procedural aspects of a leniency program, and how leniency interacts with sanctions in a cartel enforcement action.

Series III (Dominant Firm Conduct);

Module III-2: [Predatory Pricing](#)

This module presents the competition enforcement topic of predatory pricing by a dominant firm. Experts discuss the basic elements and economics of a predatory pricing theory and discuss a hypothetical case.

Series IV (Mergers);

Module IV-1: [Handling Merger Investigations](#)

This module address competition agency merger investigation, drawing upon concepts from the modules on market definition and market power in the merger context. The video uses a hypothetical merger to demonstrate the practical techniques agencies use to investigate a merger, including how to plan a merger investigation and how to obtain and evaluate relevant evidence.

Series VI (Investigational Techniques);

Module VI -1: [Planning & Conducting Investigations](#)

This module presents the fundamental steps of conducting an investigation of potential competition law violations. The steps discussed include developing a theory of the case, identifying sources of information, interviewing witnesses, requesting documents and data, organizing and assessing evidence, and determining whether there is a violation.

# Cartel Working Group

## Anti-Cartel Enforcement Manual

- **[Chapter 1: Searches, Raids and Inspections \(2009\)](#)**  
This chapter provides an overview of the search and seizure procedures of various ICN member agencies, and identifies some of the key practices that are common among competition agencies around the world. The chapter is divided into five parts: (1) Pre-search intelligence and preparation; (2) Search teams; (3) Entry; (4) Search in progress and (5) Post search.
- **[Chapter 2: Drafting and Implementing an Effective Leniency Program \(2009\)](#)**  
The purpose of this document is to draw together key practices concerning the drafting and implementation of an effective leniency policy.
- **[Chapter 3: Digital Evidence Gathering \(2010\)](#)**  
The aim of the chapter is to better understand the range of ICN member approaches to digital evidence gathering and to identify good practices and procedures for the use of digital evidence in the context of the investigation and adjudication or prosecution of cartels. The chapter is divided into three sections: (1) Resources for digital evidence gathering; (2) Elements of digital evidence gathering and (3) Legal issues concerning digital evidence gathering.
- **[Chapter 4: Cartel Case Initiation \(2010\)](#)**  
This chapter draws together selected key practices used in the initiation of a cartel investigation, and identifies some strategies that may be applied in the detection stage and throughout the early development of a case. It will also highlight some of the more established practices useful to cartel case initiation. The chapter is divided into three parts: (1) Methods of detecting cartels; (2) Pre-investigatory phase of cartel allegations and (3) Decision to initiate a full scale investigation.
- **[Chapter 5: Investigative Strategy \(2008\)](#)**  
This chapter is intended to be a reference tool for agencies that enables them to evaluate their own approaches and benchmark their experiences against those of their counterparts around the world. The chapter is divided into two parts: (1) Establishing the investigation strategy and (2) Evaluation of the investigation strategy.

\* Note: The mandate of the Cartel Working Group is to address the challenges of anti-cartel enforcement, both domestically and internationally, across the entire range of ICN members and amongst agencies with differing levels of experience. At the heart of antitrust enforcement is the battle against hardcore cartels directed at price fixing, bid rigging, market sharing and market allocations.

# Cartel Working Group

- **[Chapter 6: Interviewing Techniques \(2008\)](#)**  
The aim of the chapter is to be as inclusive as possible and provide information to ICN members for their own consideration and assessment in light of the legal principles that apply to them. The chapter is divided into three parts: (1) Pre-interview preparation; (2) Conducting the interview and (3) Post-interview evaluation and follow-up.
- **[Chapter 7: Case Resolution \(2011\)](#)**  
This chapter is intended to give an overview of possible case resolution methods, ideas for new cases resolution methods, and some factors that agencies might consider when deciding how to resolve a specific cases.
- **[Chapter 8: Cartel Awareness, Outreach and Compliance \(2012\)](#)**  
This chapter is intended to be a reference for competition agencies that are seeking new methods of cartel awareness, outreach and compliance, and is not intended to be a comprehensive guide. Therefore, the sections on Cartel Awareness, Outreach and Compliance can be read independently and do not necessarily build on each other.
- **[Chapter 9: International Cooperation and Information Sharing \(2013\)](#)**  
This chapter is intended to be a reference for competition agencies that are undertaking international cooperation or information sharing in the course of anti-cartel investigations, and is not intended to be a comprehensive guide.
- **[Compilation of Good Practices from the Anti-Cartel Enforcement Manual \(2011\)](#)**  
This document summarizes the good practices identified in each chapter of the Anti-Cartel Enforcement Manual. This compilation of good practices reflects key practices of the competition agencies which formed the basis for the Chapters of the Anti-Cartel Enforcement Manual.

# Cartel Working Group

## Substantive Reports and other work products

- ☆ **[Anti-Cartel Enforcement Templates \(revised as needed\)](#)**

These templates provide public access to information about ICN members' anti-cartel enforcement regimes. The Template also canvases a range of topics, including the process for filing a complaint, decision-making, sanctioning cartel conduct, investigative tools, leniency, rights of defendants and confidentiality.
- **[Charts Summarising Information Sharing Mechanisms \(2012\)](#)**

This chart summarizes the mechanisms to share information obtained in relation to, and during, cartel investigations with other agencies. This would cover mechanisms including informal cooperation, cooperation agreements, and provisions of national legislation and confidentiality waivers, amongst others.
- **[Compilation of Cartel Awareness and Outreach \(2011\)](#)**

The Cartel Working Group has collected examples of public messages and materials used by competition agencies in their own cartel-related outreach efforts in order to promote cartel awareness. The purpose of this collection is to share member experiences and ideas in raising awareness of the prevention, reporting and prosecution of anti-cartel conduct. The compilation is the world's largest collection of cartel awareness and outreach materials. The compilation contains materials from 65 jurisdictions in over 20 languages. The participation from 65 jurisdictions makes this the most widely representative working group project in the ICN's history.
- **[Trends and Developments in Cartel Enforcement \(2010\)](#)**

This presentation includes the results of a 2009-2010 survey of Cartel Working Group members on the trends and developments in cartel enforcement over the previous decade. Responses are received from members in 46 Jurisdictions. It identifies changes in competition laws; creation of new investigative powers; institutional changes in anti-cartel enforcement; perceived importance of cartel enforcement; and use of Anti-Cartel Enforcement Manual.

☆: Work Products to be promoted for Implementation in 2013-2014

# Cartel Working Group

- **[Cartel Settlements \(2008\)](#)**

This report covers the key principles and practical benefits of cartel settlements, with an overview of practices in various member jurisdictions. It provides valuable insights into the types of cartel settlement systems currently in place and the issues faced by anti-cartel enforcers in designing and implementing cartel settlement systems.

- **[Setting of Fines for Cartels in ICN Jurisdictions \(2008\)](#)**

This report presents an overview of practices in various member jurisdictions with respect to cartel fines. The present report covers the fine-setting practice of 22 jurisdictions. It identifies the role of fines; key factors for the determination of fines; and recent evolution.

- **[Cooperation Between Competition Agencies in Cartel Investigations \(2007\)](#)**

The report on cooperation in cartel investigations identifies the types of cooperation possible in such investigations, based upon the results of a questionnaire sent to ICN members. The report also identifies possible ways to improve cooperation.

- **[Interaction of Public and Private Enforcement in Cartel Cases \(2007\)](#)**

The report gives an overview of the existing legal systems that provide for the private enforcement of competition rules and the basic role of private enforcement in such jurisdictions, and explores the interaction between public and private enforcement in cartel cases in more detail.

- **[Report on Obstruction of Justice in Cartel Investigations \(2006\)](#)**

This report presents an overview of the practice of prosecuting obstruction in anti-cartel investigations. It makes the case for the importance of prosecuting obstruction and presents practical ideas for members to prevent obstruction.

- **[Report on Building Blocks for Effective Anti-Cartel Regimes \(2005\)](#)**

The report draws upon experience from member jurisdictions on three topics: 1) defining hard core cartel conduct, 2) the organizational arrangements that agencies can make to be well set up to prosecute cartels, and 3) effective penalties applied to cartel conduct.



# Merger Working Group

## Recommended Practices and Guiding Principles

- ★ **Recommended Practices For Merger Analysis (2008-2010)**

The Merger Working Group has developed recommended practices for merger analysis which were adopted by the ICN at its annual conferences. The Practices address (1) the Legal Framework for Competition Merger Analysis; (2) Market Definition; (3) the Use of Market Shares: Thresholds & Presumptions; (4) Competitive Effects Analysis in Horizontal Merger Review: Overview; (5) Unilateral Effects; (6) Coordinated Effects; (7) Entry and Expansion; and (8) Failing Firm/Exiting Assets.
  
- ★ **ICN Merger Analysis Self-Assessment Tool (2013)**

The objectives of the tool is for ICN members to use to analyse their merger analysis practices, based on the Recommended Practices for Merger Analysis and Merger Guidelines Workbook.
  
- ★ **Recommended Practices for Merger Notification & Review Procedures (2002-2005)**

The Practices address: (1) nexus between the merger's effects and the reviewing jurisdiction; (2) clear and objective notification thresholds; (3) timing of merger notification; (4) merger review periods; (5) requirements for initial notification; (6) conduct of merger investigations; (7) procedural fairness; (8) transparency; (9) confidentiality; (10) interagency coordination; (11) remedies; (12) competition agency powers; and (13) review of merger control provisions.
  
- ★ **ICN Merger Notification and Procedures Self-Assessment Tool (2011)**

The objectives of the tool is for ICN members to use to analyse their merger notification and procedure practices, based on the Recommended Practices for Merger Notification and Review Procedures and other work products.
  
- **Guiding Principles for Merger Notification & Review Procedure (2002)**

The Notification & Procedures (N&P) subgroup developed eight Guiding Principles and thirteen Recommended Practices for merger notification and review procedures, which the ICN adopted at its annual conferences. The Guiding Principles address: (1) Sovereignty; (2) Transparency; (3) Non-discrimination on the basis of nationality; (4) Procedural fairness; (5) Efficient, timely, and effective review; (6) Coordination; (7) Convergence and (8) Protection of confidential information.

\* Note: The mission of the Merger Working Group is to promote the adoption of best practices in the design and operation of merger review regimes in order to: (i) enhance the effectiveness of each jurisdiction's merger review mechanisms; (ii) facilitate procedural and substantive convergence; and (iii) reduce the public and private time and cost of multijurisdictional merger reviews.

# Merger Working Group

## Resources for General Merger Issues

☆ [Merger Notification and Procedures Template \(revised as needed\)](#)

To assist the Working Group in its efforts and to promote access to information on ICN members' merger review systems, the Merger Working Group has established links to merger-related materials on ICN members' websites. On these linked pages, members have posted materials that may include their current merger legislation, implementing rules and regulations, guidelines, and related materials. Members have also posted responses to a set of questions addressed to all member agencies (the "template") designed to highlight important features of their merger review systems, such as notification thresholds and review periods.

☆ [ICN's Framework for Merger Review Cooperation \(2012\)](#)

The non-binding framework is intended to facilitate effective and efficient cooperation between and among ICN member agencies by identifying each agency's liaison officers and possible ways to exchange information. The framework includes (i) creating the contact list of liaison officers who are in charge of the contact person in the participating agencies, and (ii) the ways to contact and exchange information with other relevant agencies.

• [Report on Conclusions Resulting from 2010-11 Merger Working Group Comprehensive Assessment \(2011\)](#)

The comprehensive assessment includes, among other things, an examination of the use and impact of existing MWG work product and other activities. It also includes potential barriers to the use and implementation of MWG work product and ways in which MWG participation and performance might be improved. In addition, an important aspect of the assessment has involved obtaining input on future areas of work that may assist members in making the merger review process more effective.

[☆: Work Products to be promoted for Implementation in 2013-2014](#)

# Merger Working Group

## Resources for Substantive Merger Issues

- [Handbook on Investigative Techniques for Merger Review \(2005\)](#)

The Handbook is designed to inform ICN members of the various tools and techniques used in merger review, to help members organize and use their tools more efficiently, and to provide for an effective process for the evaluation of evidence. The first chapter summarizes the findings of a survey of ICN members carried out in 2003, and reflects agency practice. The remaining chapters discuss topics such as how to plan a merger investigation, developing reliable evidence in merger cases, economic and econometric analyses, and the benefits of including economists in merger review, and a private sector perspective on merger review.

- [★ Chapter 4 of Handbook on Investigative Techniques for Merger Review \(2013\)](#)

The MWG revised Chapter 4 of the ICN Investigative Techniques Handbook for Merger Review on “The Role of Economics and Economic Evidence in Merger Analysis”, with the aim of (i) strengthening the Chapter 4 by providing more concrete guidance on the practical use of quantitative techniques in the investigation; and (ii) updating and broadening the scope of the Chapter 4. The new Chapter 4 reviews the specific economic tools typically used for assessments of horizontal mergers, also by means of illustrated by actual case studies.

- [Merger Guidelines Workbook \(2006\)](#)

The Workbook includes a checklist of topics that the authors of new or revised merger guidelines may wish to cover, with an explanation as to why those topics have value in merger assessment and suggestions as to how those topics might be assessed in practice.

- [Report on Merger Guidelines: Overview Chapter \(2004\)](#)

Merger Guidelines Workbook follows on from the ‘ICN Project on Merger Guidelines’. This is the Overview chapter of a report from the ICN merger working group on a project of merger guidelines for the 3rd ICN annual conference.

- [Report on Merger Guidelines and Market Definition \(2004\)](#)

This Chapter in a report on merger guidelines discusses the treatment of market definition in the merger guidelines of twelve jurisdictions

[★: Work Products to be promoted for Implementation in 2013-2014](#)

# Merger Working Group

- **[Report on Merger Guidelines and Unilateral Effects \(2004\)](#)**

This Chapter in a report on merger guidelines deals with horizontal unilateral effects, analyses the use of safe-harbors, describes an approach for the appraisal of horizontal mergers falling outside any strong safe-harbors, and discusses the estimation of market shares and market concentration.

- **[Report on Merger Guidelines and Coordinated Effects Analysis \(2004\)](#)**

This Chapter in a report on merger guidelines discusses the analysis of potential coordinated interaction.

- **[Report on Merger Guidelines and Barriers To Entry And Expansion \(2004\)](#)**

This Chapter in a report on merger guidelines discusses assessment of market entry and expansion and its implication on the market under the issue of barriers to entry.

- **[Report on Merger Guidelines and Efficiencies \(2004\)](#)**

This Chapter in a report on merger guidelines reviews the approaches of competition authorities in twelve different jurisdictions with respect to merger efficiencies.

- **[Merger Remedies Review Report \(2005\)](#)**

The Report provides practical guidance and outlines key principles and the range of tools in the use of merger remedies. The report is based on and illustrated by remedy practices in a variety of jurisdictions.

# Merger Working Group

## Resources for Notification & Procedures (N&P)

- [Information Requirements for Merger Notifications \(2009\)](#)

This paper aims to assist agencies in comparing the approaches to pre-merger notification among some ICN members, and to help agencies planning to introduce or revise their notification forms or requirements in conformity with the ICN N&P Recommended Practice on Initial Information Requirements.
- [Setting Notification Thresholds for Merger Review \(2008\)](#)

Building on the Recommended Practice on Notification Thresholds, this paper explores the various approaches used to set notification thresholds and members' recent experience with threshold revisions. The objective of the project is to provide guidance to agencies that plan to adopt or revise thresholds, in order to promote thresholds that are clear, understandable and easily administrable.
- [Defining Merger Transactions for Purposes of Merger Review \(2007\)](#)

Building on the Transparency Recommended Practice, this paper explores the various approaches jurisdictions have adopted to define the types of transactions that are potentially subject to notification and/or review.
- [Implementation Handbook \(2006\)](#)

To facilitate further implementation of the Guiding Principles and Recommended Practices, the N&P subgroup created a handbook containing examples of legislative provisions, guides, statements and notices, and press releases that conform to selected Principles and Practices.

# Merger Working Group

- **[Model Confidentiality Waiver \(2005\)](#)**

The N&P subgroup developed a model form that merging parties and competition agencies can use to facilitate waivers of confidentiality protection for information that parties submit in the merger review process. The subgroup prepared an accompanying paper discussing the rationale for, content of, and use of waivers, along with illustrative agency waiver forms.
- **[Merger Notification Filing Fees \(2005\)](#)**

This Report provides a comprehensive description of different types of filing fee systems and their rationales and also discusses issues for jurisdictions to consider in connection with the introduction and/or review of a filing fee system. It is intended to be of particular benefit to jurisdictions considering changes to their merger filing fee system or that may consider such changes in the future.
- **[Implementation of the ICN Recommended Practices for Merger Notification and Review Procedures \(2005\)](#)**

To facilitate implementation of the Guiding Principles and Recommended Practices, the N&P subgroup gathered data on members' experiences with implementation and prepared a report identifying challenges agencies face in implementing the Practices and how they addressed these challenges.
- **[Report on the Costs and Burdens of Multijurisdictional Merger Review \(2004\)](#)**

The N&P subgroup issued a report on the costs and burdens of multijurisdictional merger review based on available studies and anecdotal information. The Report discusses the general costs and burdens of multijurisdictional merger review; reviews unnecessary costs; and describes the subgroup's initiatives aimed at reducing or eliminating these costs.
- **[Analytical Framework for Merger Control \(2002\)](#)**

This discussion paper explores the framework within which mergers are assessed, including four exemplar papers from members.

# Unilateral Conduct WG

## Recommended Practices

- **[Recommended Practices for Dominance/Substantial Market Power Analysis \(2008\)](#)**

Based on the Assessment of Dominance/Substantial Market Power Report, the Working Group developed recommended practices to assist agencies with the assessment of dominance/substantial market power. The Practices address: (1) general framework; (2) assessment criteria (market shares, market share safe harbors/indicators, entry analysis, further criteria); (3) dominance/substantial market power assessment in small and/or isolated economies; and (4) transparency.

- ☆ **[Recommended Practices on State Created Monopolies \(2008\)](#)**

Based on the Assessment of Dominance/Substantial Market Power Report, the Working Group developed recommended practices to assist agencies with the application of unilateral conduct rules to state-created monopolies. The Practices address: (1) enforcement role of competition authority; (2) advocacy role of competition authorities during the liberalization and privatization process; and (3) effective competition advocacy instruments.

\* Note: The Unilateral Conduct Working Group's primary objectives are to examine the challenges involved in analyzing unilateral conduct of dominant firms and firms with substantial market power, facilitate greater understanding of the issues involved in analyzing unilateral conduct, and to promote greater convergence and sound enforcement of laws governing unilateral conduct.

☆: Work Products to be promoted for Implementation in 2013-2014

# Unilateral Conduct WG

## Unilateral Conduct Workbook

- **[Chapter 1: The Objectives and Principles of Unilateral Conduct Laws \(2012\)](#)**

This chapter provides a foundation to the following chapters that deal with specific types of unilateral conduct. By describing the objectives and principles underlying unilateral conduct laws, this chapter attempts to increase awareness and understanding among competition law enforcers of the rationale for their intervention.
- ☆ **[Chapter 3: Assessment of Dominance \(2011\)](#)**

This chapter seeks to complement the two existing ICN work products on dominance by discussing how to apply the concept of “dominance” in practice, and particularly, how to use various types of evidence to determine whether a firm is “dominant” or not.
- **[Chapter 4: Predatory Pricing Analysis \(2012\)](#)**

This chapter provides specific guidance on the topic of predatory pricing. It reports the responses of 24 ICN Members and 6 non-governmental advisors to a UCWG questionnaire and takes into account the approaches of competition agencies from around the world. This chapter complements that report by providing practical guidance on conducting a predatory pricing investigation.
- ☆ **[Chapter 5: Exclusive Dealing \(2013\)](#)**

This chapter complements the ICN report on Single Branding/Exclusive Dealing in 2008 by providing guidance on conducting an exclusive dealing investigation, including the nature of exclusive dealing arrangements, assessment of anti-competitive effects of the arrangements, and possible justifications and defences that could be put forward by the parties.

☆: Work Products to be promoted for Implementation in 2013-2014



# Unilateral Conduct WG

## Substantive Reports

- [Report on the Analysis of Refusal to Deal with a Rival \(2010\)](#)

This paper is based on the responses of agencies and NGAs from 43 jurisdictions to a UCWG questionnaire. The report broadly addresses the analysis of actual and constructive refusals to deal; evaluating essential facilities; refusal to deal involving intellectual property, regulated industries, and state-created monopolies; margin squeeze; justifications and defenses; and remedies.
- [Report on Tying and Bundled Discounting \(2009\)](#)

This paper is based on the responses of agencies and NGAs covering 35 jurisdictions to a UCWG questionnaire. The responses broadly identify the following elements used in the assessment of tying and bundled discounting under unilateral conduct rules: definition of tying and bundled discounting; anti-competitive effects; intent; and justifications and defenses.
- [Report on the Analysis of Loyalty Discounts and Rebates \(2009\)](#)

This paper is based on the responses of agencies and NGAs covering 34 jurisdictions to a UCWG questionnaire. The responses broadly identify the following elements used in the assessment of loyalty discounts and rebates under unilateral conduct rules: the role of price-cost tests; the role of foreclosure analysis; presumptions and safe harbors; intent; and justifications and defenses.
- [Report on Single Branding/Exclusive Dealing \(2008\)](#)

This paper is based on the responses of agencies and NGAs covering 33 jurisdictions to a UCWG questionnaire. The responses broadly identify the following elements used in the assessment of exclusive dealing under unilateral conduct rules: the existence of a dominant position or substantial market power; existence of an exclusive dealing arrangement according to the statutory provisions or case law; anti-competitive effects; and justifications and defenses.
- [Report on Predatory Pricing \(2008\)](#)

This paper is based on the responses of agencies and NGAs covering 35 jurisdictions to a UCWG questionnaire. The responses broadly identify the following elements used in the assessment of predatory pricing under unilateral conduct rules: below-cost pricing, recoupment of losses; competitive effects; predatory intent; and justifications and defenses.
- [Report on the Objectives of Unilateral Conduct Laws, Assessment of Dominance/Substantial Market Power, and State-Created Monopolies \(2007\)](#)

This paper is based on the responses of agencies and non-governmental advisors (NGAs) covering 35 jurisdictions to a UCWG questionnaire. The report consists of three chapters, which address: 1) the Objectives of Unilateral Conduct Laws; 2) the Assessment of Dominance/Substantial Market Power; and 3) State-Created Monopolies.

# Annual Conference Special Project Reports

- [\*\*Working with Courts and Judges \(2013\)\*\*](#)  
For the 2013 Annual Conference, the Polish Office of Competition and Consumer Protection examined the relationship between national competition agencies and judiciary in order to find the most realistic ways in which the cooperation can be improved. Based on responses to the extensive questionnaire submitted by 45 ICN members two documents were prepared: collective information and executive summary.
- [\*\*Report on Competition Enforcement and Consumer Welfare \(2011\)\*\*](#)  
For the 2011 Annual Conference, the Netherlands Competition Authority examined the role of consumer welfare in competition enforcement across the global competition community and drafted a report based on the responses to a questionnaire completed by 57 competition authorities and 19 non-governmental advisors to competition authorities.
- [\*\*Interface between Competition Policy and other Public Policies \(2010\)\*\*](#)  
For the 2010 Annual Conference, the Turkish Competition Authority examined the interface between competition policy and other public policies and prepared a summary report based on the responses to a questionnaire completed by competition authorities from 33 jurisdictions.
- [\*\*Competition Law in Small Economies \(2009\)\*\*](#)  
For the 2009 Annual Conference, the Swiss Competition Commission, joined by the Israeli Antitrust Authority, examined competition law in small economies and drafted a report that describes responses to a questionnaire on the ways in which the size of an economy may affect the crafting, implementation or interpretation of competition law.
- [\*\*Abuse of a Superior Bargaining Position \(2008\)\*\*](#)  
For the 2008 Annual Conference, the Japan Fair Trade Commission led a 15 member task force to examine the treatment of an abuse of a superior bargaining position and prepared a summary report comparing legal frameworks and enforcement activities of such regulations in the jurisdictions that employ them.

# Cooperation (ICN/OECD Joint Project)

- [ICN Report on OECD/ICN Questionnaire on International Enforcement Cooperation \(2013\)](#)

This ICN report complements a report prepared by the OECD Secretariat. The OECD report discusses Questionnaire results on a broad range of topics, examining the experiences and limitations of competition agencies with international cooperation in case-related activities, as well as several OECD-specific questions. This ICN report focuses specifically on the ICN portion of the Questionnaire. The goal of the ICN-specific questions was to ascertain ICN members' views on the usefulness of existing ICN cooperation-related work, and on ICN members' needs and priorities for future ICN cooperation-related work. 57 competition agencies of ICN members has responded to the Questionnaire.

\* Note: In April 2012, the ICN approved a Steering Group project on international enforcement cooperation. At roughly the same time, the Competition Committee of the Organization for Economic Cooperation and Development (OECD) agreed to begin its own study on cooperation. The ICN and the OECD conducted a joint survey to gauge the successes and weaknesses of current cooperation frameworks, and to seek members' view on possible future work.

# Capacity Building / Competition Policy Implementation WG (2003-2007)

- **[Competition and the Judiciary 2nd Phase Report - Case Studies \(2007\)](#)**  
This paper analyzes the role of the judiciary and its interaction with competition authorities in the implementation of competition policy. Seven jurisdictions provided case studies for the report.
- **[Findings Related to Technical Assistance for Newer Competition Agencies \(2007\)](#)**  
This document summarizes the findings of the working group's study of what constitutes effective technical assistance. The findings include lessons learned about the design of a technical assistance program, the mix of activities employed, the absorptive capacity of the agency, and the types of advisors used.
- **[An Assessment of Institutional Machinery: Methods Used in Competition \(2007\)](#)**  
This paper examines experience with the design of the institutional machinery of competition policy to derive insights about techniques for implementation.
- **[Lessons Learned from the Experience of Young Competition Agencies \(2006\)](#)**  
This paper identifies the type of challenges young agencies experience and the measures young agencies have applied to address the challenges.
- **[Business Outreach by ICN members: Challenges and Case Studies \(2006\)](#)**  
This report presents a range of activities undertaken by ICN member agencies to reach out to and engage businesses and business representative organizations and explore some of the challenges they faced in delivering these activities.
- **[Report on Competition and the Judiciary \(2006\)](#)**  
Competition goals, instruments and benefits are not always understood by society. To address the challenges faced by courts and competition agencies alike, the WG undertook a study on the relationship between competition agencies and the judiciary.

\* Note: The Capacity Building / Competition Policy Implementation's work identified key elements that contribute to successful capacity building and competition policy implementation in developing transition economies.

# Capacity Building / Competition Policy Implementation WG (2003-2007)

- **[Competition Advocacy in Regulated Sectors: Competition Advocacy Review – Case Studies on Regulated Sectors \(2005\)](#)**  
This report helps identify the different ways that competition agencies interact with regulators and how they go about their competition advocacy work using specific case studies.
- **[Consumer Outreach and Effect of Institutional Structure \(2005\)](#)**  
This report presents case studies of successful and unsuccessful consumer outreach and provides a brief discussion of the advantages and disadvantages of linking competition and consumer protection enforcement functions in a single agency.
- **[Assessing Technical Assistance: Examining the Foundations of Successful Assistance \(2005\)](#)**  
This paper seeks to answer three questions: 1) how the technical assistance needs of a developing or transition country competition agency can best be assessed; 2) which models of technical assistance work best at the various stages of an agency's development; and 3) if the impact of technical assistance can be measured, and if so, how it should be done.
- **[Competition Advocacy in Regulated Sectors: Examples of Success \(2004\)](#)**  
This report examines competition advocacy efforts in regulated sectors in member jurisdictions (with an emphasis on developing and transition economies) and provides several case studies and accompanying analyses, highlighting successful experiences and strategies.
- **[Capacity Building and Technical Assistance: Building Credible Competition Authorities in Developing and Transition Economies \(2003\)](#)**  
The report sets out examples of successful technical assistance and examines the circumstances in which different types of assistance are appropriate. It addresses how to build a case for competition law and policy in developing and transition economies; how to tackle the challenges that agencies in these countries have to confront; and how to enhance the effectiveness of technical assistance for capacity building.

# Antitrust Enforcement in Regulated Sectors WG (2004-2005)

- **[An Increasing Role for Competition in the Regulation of Banks \(2005\)](#)**  
This paper reviews the recent history of banking regulation. It discusses the market failures banking is exposed to, their macroeconomic consequences, and common regulatory instruments introduced to address them. The report also examines the impact of recent liberalizations on market power in banking and competition issues.
- **[Best Practices: An Increasing Role for Competition in the Regulation of Banks \(2005\)](#)**  
These best practices are aimed at achieving a more competitive and more efficient banking industry through more extensive liberalization, appropriately designed regulatory institutions, a rigorous application of antitrust rules and competition advocacy.
- **[Interrelations Between Antitrust and Regulatory Authorities \(2005\)](#)**  
This report discusses the interrelation between antitrust and regulatory authorities, based on information supplied by a number of ICN member jurisdictions.
- **[Limits and Constraints Facing Antitrust Authorities Intervening in Regulated Sectors \(2004\)](#)**  
This report investigates the legal instruments developed by the different systems to ensure the prevalence of antitrust laws when in conflict with regulatory measures; and discusses when antitrust laws should prevail over conflicting norms.
- **[Enforcement Experience in Regulated Sectors \(2004\)](#)**  
The report analysed the influence of sector specific regulations on the enforcement activity of competition authorities and examined different categories of relationships between competition law enforcement and sectoral regulations and to illustrate the specificities of competition law enforcement in each category by looking at specific cases.
- **[Interrelations Between Antitrust and Regulatory Authorities \(2004\)](#)**  
The subgroup undertook studies about the division of labour between regulators and antitrust authorities with a focus on their degree of cooperation. The purpose of this interim report is to present the results of the subgroup's work.

\* Note: The Antitrust Enforcement in Regulated Sectors WG described the limits and constraints facing antitrust authorities intervening in regulated sectors as well as the enforcement experience in regulated sectors, and examined the relations between antitrust authorities and sector regulators.

# Telecommunications Services Working Group (2005-2006)

- **[Report on Telecommunication Services \(2006\)](#)**

This report surveys competition policy in the telecommunications sector. Main areas of focus include technological advances, impediments to competition, and the interface between the competition authority and the sector-specific regulator. The report also contains examples of jurisprudence concerning anticompetitive activities in the telecommunications sector, as well as a selection of developing country case studies.

- **[The Role for Competition in the Telecommunications Services Sector: Suggested Best Practices \(2006\)](#)**

The suggested best practices are a set of valuable lessons learned with respect to promoting and maintaining competition in the telecommunications sector.

# Contact Information

If you wish to know the details of the Work Products created by each Working Group, please do not hesitate to contact the corresponding contact persons. Regarding the support program for learning from ICN work products, please contact the JFTC in cooperation with Advocacy & Implementation Network. We welcome any questions.

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# Index of ICN Work Products

## (1) Recommended Practices and Other Guidance

### Recommended Practices

Recommended Practices are the highest profile work of the ICN and non-binding aspirational statements that reflect international consensus. They represent sound analytical and procedural approaches and provide detailed commentary to assist members in reducing the recommendations to practice.

<a href="#"><u>·Recommended Practices For Merger Analysis (2008-2010)</u></a>	16
<a href="#"><u>·Recommended Practices for Merger Notification &amp; Review Procedures (2002-2005)</u></a>	16
<a href="#"><u>·Recommended Practices for Dominance/Substantial Market Power Analysis (2008)</u></a>	22
<a href="#"><u>·Recommended Practices on State Created Monopolies (2008)</u></a>	22

### Other Guidance

<a href="#"><u>·ICN Model Confidentiality Waiver in Merger Investigations (2005)</u></a>	21
<a href="#"><u>·Guiding Principles for Merger Notification &amp; Review Procedure (2002)</u></a>	16
<a href="#"><u>·Best Practices: An Increasing Role for Competition in the Regulation of Banks (2005)</u></a>	29
<a href="#"><u>·The Role for Competition in the Telecommunications Services Sector: Suggested Best Practices (2006)</u></a>	30

## (2) Practical Enforcement Tools

*(e.g. Handbooks, Workbooks, and Manuals)*

Practical Enforcement Tools reflect different approaches used by ICN members. They are generally considered to be practices that work well in the jurisdictions where they are applied. They reflect good practice, and cannot necessarily be recommended for adoption by other ICN members.

### <Advocacy WG>

<a href="#"><u>·Market Studies Good Practice Handbook (2012)</u></a>	4
<a href="#"><u>·Competition Advocacy Toolkit Part II (2012)</u></a>	5
<a href="#"><u>·Competition Advocacy Toolkit Part I (2011)</u></a>	5

### <Agency Effectiveness WG>

<a href="#"><u>·Competition Agency Practice Manual (updated in 2013)</u></a>	8
--	---

### <Cartel WG>

<a href="#"><u>·Anti-Cartel Enforcement Manual (updated in 2013)</u></a>	12
--	----

### <Merger WG>

<a href="#"><u>·Chapter 4 of Handbook on Investigative Techniques for Merger Review (2013)</u></a>	18
<a href="#"><u>·ICN's Framework for Merger Review Cooperation (2012)</u></a>	17
<a href="#"><u>·Handbook on Investigative Techniques for Merger Review (2005)</u></a>	18
<a href="#"><u>·Merger Guidelines Workbook (2006)</u></a>	18

### <Unilateral Conduct WG>

<a href="#"><u>·Unilateral Conduct Workbook</u></a>	23
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# Index of ICN Work Products

## (3) Informative and Comparative Reports and Templates

Comparative Reports reflects general procedures and practices which competition agencies apply in investigating antitrust violations and reviewing mergers. Comparative Reports is a report which outlines such procedures and practices in a comprehensive manner.

### <Advocacy WG>

• <b>Descriptive Outline of the Chapter (and Annex) on Explaining the Benefit of Competition to Government and Legislators (2013)</b> .....	6
• <b><u><a href="#">Interim Report on the Explaining the Benefits of Competition Project Advocacy (2012)</a></u></b> .....	6
• <b><u><a href="#">Market Studies Information Store (2010)</a></u></b> .....	4
• <b><u><a href="#">Market Studies Project Report (2009)</a></u></b> .....	4
• <b><u><a href="#">Report on Assessment of ICN Members' Requirements and Recommendations on Further ICN Work on Competition Advocacy (2009)</a></u></b> .....	5
• <b><u><a href="#">Report on Advocacy Case Studies: Telecommunications, Energy, Airlines, and the Legal Profession (2003)</a></u></b> .....	7
• <b>Report on Advocacy Provisions (2003)</b> .....	7
• <b><u><a href="#">Advocacy and Competition Policy (2002)</a></u></b> .....	7

### <Agency Effectiveness WG>

• <b><u><a href="#">Investigative Tools Report (2013)</a></u></b> .....	9
• <b><u><a href="#">Competition Agency Transparency Practice Report (2013)</a></u></b> .....	9
• <b><u><a href="#">Report on the Agency Effectiveness Project, Second Phase: Effectiveness of Decisions (2009)</a></u></b> .....	9
• <b><u><a href="#">Report on the 2009 Seminar on Competition Agency Effectiveness (2009)</a></u></b> .....	9
• <b><u><a href="#">Report on Agency Effectiveness (2008)</a></u></b> .....	9

### <Cartel WG>

• <b><u><a href="#">Anti-Cartel Enforcement Templates (revised as needed)</a></u></b> .....	14
• <b><u><a href="#">Charts Summarising Information Sharing Mechanisms (2012)</a></u></b> .....	14
• <b><u><a href="#">Compilation of Cartel Awareness and Outreach (2011)</a></u></b> .....	14
• <b><u><a href="#">Trends and Developments in Cartel Enforcement (2010)</a></u></b> .....	14
• <b><u><a href="#">Cartel Settlements (2008)</a></u></b> .....	15
• <b><u><a href="#">Setting of Fines for Cartels in ICN Jurisdictions (2008)</a></u></b> .....	15
• <b><u><a href="#">Cooperation Between Competition Agencies in Cartel Investigations (2007)</a></u></b> .....	15
• <b><u><a href="#">Interaction of Public and Private Enforcement in Cartel Cases (2007)</a></u></b> .....	15
• <b><u><a href="#">Report on Obstruction of Justice in Cartel Investigations (2006)</a></u></b> .....	15
• <b><u><a href="#">Report on Building Blocks for Effective Anti-Cartel Regimes (2005)</a></u></b> .....	15

### <Merger WG>

• <b><u><a href="#">Merger Notification and Procedures Template (revised as needed)</a></u></b> .....	17
• <b><u><a href="#">ICN Merger Analysis Self-Assessment Tool (2013)</a></u></b> .....	16
• <b><u><a href="#">ICN Merger Notification and Procedures Self-Assessment Tool (2011)</a></u></b> .....	16
• <b><u><a href="#">Report on Conclusions Resulting from 2010-11 Merger Working Group Comprehensive Assessment (2011)</a></u></b> .....	17

# Index of ICN Work Products

<a href="#"><u>·Information Requirements for Merger Notifications (2009)</u></a>	20
<a href="#"><u>·Setting Notification Thresholds for Merger Review (2008)</u></a>	20
<a href="#"><u>·Defining Merger Transactions for Purposes of Merger Review (2007)</u></a>	20
<a href="#"><u>·Merger Remedies Review Report (2005)</u></a>	19
<a href="#"><u>·Merger Notification Filing Fees (2005)</u></a>	21
<a href="#"><u>·Implementation of the ICN Recommended Practices for Merger Notification and Review Procedures (2005)</u></a>	21
<a href="#"><u>·Report on Merger Guidelines: Overview Chapter (2004)</u></a>	18
<a href="#"><u>·Report on Merger Guidelines and Market Definition (2004)</u></a>	18
<a href="#"><u>·Report on Merger Guidelines and Unilateral Effects (2004)</u></a>	19
<a href="#"><u>·Report on Merger Guidelines and Coordinated Effects Analysis (2004)</u></a>	19
<a href="#"><u>·Report on Merger Guidelines and Barriers To Entry And Expansion (2004)</u></a>	19
<a href="#"><u>·Report on Merger Guidelines and Efficiencies (2004)</u></a>	19
<a href="#"><u>·Report on the Costs and Burdens of Multijurisdictional Merger Review (2004)</u></a>	21
<a href="#"><u>·Analytical Framework for Merger Control (2002)</u></a>	21
<b>&lt;Unilateral Conduct WG&gt;</b>	
<a href="#"><u>·Report on the Analysis of Refusal to Deal with a Rival (2010)</u></a>	24
<a href="#"><u>·Report on Tying and Bundled Discounting (2009)</u></a>	24
<a href="#"><u>·Report on the Analysis of Loyalty Discounts and Rebates (2009)</u></a>	24
<a href="#"><u>·Report on Single Branding/Exclusive Dealing (2008)</u></a>	24
<a href="#"><u>·Report on Predatory Pricing (2008)</u></a>	24
<a href="#"><u>·Report on the Objectives of Unilateral Conduct Laws, Assessment of Dominance/Substantial Market Power, and State-Created Monopolies (2007)</u></a>	24
<b>&lt;Capacity Building/Competition Policy Implementation WG&gt;</b>	
<a href="#"><u>·Competition and the Judiciary 2nd Phase Report - Case Studies (2007)</u></a>	27
<a href="#"><u>·Findings Related to Technical Assistance for Newer Competition Agencies (2007)</u></a>	27
<a href="#"><u>·An Assessment of Institutional Machinery: Methods Used in Competition (2007)</u></a>	27
<a href="#"><u>·Lessons Learned from the Experience of Young Competition Agencies (2006)</u></a>	27
<a href="#"><u>·Business Outreach by ICN members: Challenges and Case Studies (2006)</u></a>	27
<a href="#"><u>·Report on Competition and the Judiciary (2006)</u></a>	27
<a href="#"><u>·Competition Advocacy in Regulated Sectors: Competition Advocacy Review – Case Studies on Regulated Sectors (2005)</u></a>	28
<a href="#"><u>·Consumer Outreach and Effect of Institutional Structure (2005)</u></a>	28
<a href="#"><u>·Assessing Technical Assistance: Examining the Foundations of Successful Assistance (2005)</u></a>	28
<a href="#"><u>·Competition Advocacy in Regulated Sectors: Examples of Success (2004)</u></a>	28
<a href="#"><u>·Capacity Building and Technical Assistance: Building Credible Competition Authorities in Developing and Transition Economies (2003)</u></a>	28
<b>&lt;Antitrust Enforcement in Regulated Sectors WG&gt;</b>	
<a href="#"><u>·An Increasing Role for Competition in the Regulation of Banks (2005)</u></a>	29
<a href="#"><u>·Interrelations Between Antitrust and Regulatory Authorities (2005)</u></a>	29
<a href="#"><u>·Limits and Constraints Facing Antitrust Authorities Intervening in Regulated Sectors (2004)</u></a>	29

# Index of ICN Work Products

<a href="#"><u>·Enforcement Experience in Regulated Sectors (2004)</u></a>	29
<a href="#"><u>·Interrelations Between Antitrust and Regulatory Authorities (interim report) (2004)</u></a>	29
<b>&lt;Telecommunications Services WG&gt;</b>	
<a href="#"><u>·Report on Telecommunication Services (2006)</u></a>	30
<b>&lt; Annual Conference Special Project Reports&gt;</b>	
<a href="#"><u>·Working with Courts and Judges (2013)</u></a>	25
<a href="#"><u>·Report on Competition Enforcement and Consumer Welfare (2011)</u></a>	25
<a href="#"><u>·Interface between Competition Policy and other Public Policies (2010)</u></a>	25
<a href="#"><u>·Competition Law in Small Economies (2009)</u></a>	25
<a href="#"><u>·Abuse of a Superior Bargaining Position (2008)</u></a>	25
<b>&lt;Cooperation (ICN/OECD Joint Project) &gt;</b>	
<a href="#"><u>·ICN Report on OECD/ICN Questionnaire on International Enforcement Cooperation (2013)</u></a>	26
<b>(4) Training Materials</b>	
<a href="#"><u>·ICN Curriculum Modules</u></a>	10