

Closing speech to International Competition Network (ICN) conference

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Introduction

I would like to start my remarks with three thank yous. First, a big thank you to Walter Stoffel and the Swiss Competition Commission for its superbly efficient planning and organisation of this conference, and for their warm and attentive hospitality. Our work would not be possible without this, and Zurich can add itself with great pride to the distinguished list of cities Naples, Merida, Bonn, Seoul, Cape Town, Moscow and Kyoto that have contributed to the ICN's success.

I would like especially to thank Sheridan Scott. Sheridan did a tremendous job chairing the ICN through its Steering Group and keeping our work on track and focussed. Sheridan's lasting legacy may well be the effort and drive she put into raising the profile of the ICN and articulating our achievements externally, something that is essential to our continued success.

When Sheridan stood down in January, Dave Lewis was the automatic choice. This is because Dave has been a leading light in the ICN since its inception, contributing both to the biggest intellectual debates and the hard work in the background with equal passion and commitment, whilst at the same time building an impressive agency and developing a relatively new regime. We owe a debt of gratitude to them. The outstanding quality of intellectual discussion at this conference is a tribute to very many people, but especially to the leadership of Dave and Sheridan and Walter and our Swiss hosts, and I would like to ask you to join me in thanking them.

In his introductory remarks to the first Annual Conference in Naples in 2002, Konrad von Finckenstein (the first ICN Chair) said that 'We are not here as a result of some treaty obligation, rather, it is a community of interest which draws us together.' He also highlighted a number of distinguishing features of the ICN:

- Inclusiveness
- Openness
- Joint work products
- Goal of soft convergence.

Eight years on, we remain drawn together by 'a community of interest', and inclusiveness, openness, joint work and convergence are still crucial to the ICN. We should all be very proud not only of the most recent work product presented and discussed here in Zurich, but also of the growing number of countries, agencies and NGAs participating in the work of the ICN and the Annual Conference over the years.

However, I share Dave Lewis' analysis, as outlined in his opening speech on Wednesday, that a number of complex and controversial questions now characterise the work of the ICN that are different from the concerns that prompted the establishment of the network in 2001. That 'community of interest' that brought us together in 2001 has evolved over time. And those distinguishing features of ICN cannot live in a 'vacuum' but need to reflect both the current needs of member agencies and the context in which we are living and working.

The Challenge of Globalisation

Over the past decades, competition policy has made great progress in opening markets to competition and improving consumer welfare. Technological innovation and liberalisation/deregulation mean that in the 21st century, it is likely that markets and businesses will continue to be increasingly international. Competition regulation, enforcement and advocacy, however, will remain predominately centred on domestic, national regimes and needs. The question of how national competition authorities should best work together to ensure that all consumers benefit from open competitive markets at the international level, as well as domestically, is central for competition policy in a globalised economy.

The ICN has grown to a position where it plays a crucial role in being part of the thread that binds together a patchwork of national competition agencies who, collectively, can achieve more than any of us individually.

This challenge of tackling cross-border, regional and global issues that come with globalisation is not unique to competition policy: we see it with the environment, financial services regulation, disease control and a host of other areas. Globalisation brings great benefits in terms of open markets and stronger competition. However, if we are to ensure that long term we continue to dismantle trade barriers and protectionism, and ensure that the benefits of international competition flow to final consumers, we must strive for the most effective system of dealing with competition issues that transcend national boundaries. This is true whether we look at this through any of the three lenses, economic, democratic and the rule of law, that Walter outlined in his welcoming address.

Ultimately, national agencies are accountable domestically and the change we bring about through what on Wednesday I called our four pillars of mergers, cartels, unilateral conduct and competition advocacy, must be achieved by each agency working within domestic legal and political processes. ICN work product can provide a hugely useful and supportive resource to enhance and facilitate each agency's ability to do that more effectively.

As we get ready to leave Zurich, I would like us to reflect on the future of the ICN and to outline what I see as the four main priorities going forward:

- Continuity
- Longer-term vision
- Governance and inclusiveness
- Agency effectiveness.

Continuity

The ICN has been very successful to date, we need to recognise this and build upon it. Where things are an important source of success, we should not seek to change them. Thus we should keep our virtual structure, our

inclusive and open approach, our working group structure. But we must make it work even better. Key issues here are:

- That we prioritise better. In this morning sessions, and elsewhere, people are brimming with new ideas for the ICN. We may risk, for all the best reasons, taking on more than we can collectively cope with and we need to focus our finite resources on the things that make the biggest impact.
- That we build institutional memory, so that we better capture learning and the cumulative effects of our efforts to inform the future. We cannot afford to re-invent the wheel and, with the inevitable turnover of staff, this is a significant risk.
- That in our implementation work, we focus more clearly on converting our excellent outputs, what Eleanor Fox this morning called the 'treasure trove', into tangible outcomes for consumers within each of our home countries.
- Finally, that we refine and articulate more clearly the benefits of our work, so we can deliver a simple narrative domestically that clearly demonstrates the benefits of the ICN for domestic consumers, both directly and indirectly, and that is consistent with what another agency head would say.

All of this I would describe as stable continuity, building on what we have learned to do well, and enhancing the effectiveness of the day-to-day bread and butter outputs and method of working that are part of the ICN's distinctive brand.

Longer-term vision

However, simply improving what we currently do as I have outlined, will not suffice. In *The Leopard*, Giuseppe Tomasi di Lampedusa says: 'If we want things to stay as they are, things will have to change'. The ICN must develop a bigger and bolder vision, and must innovate in what it

does. We are at an important juncture, and we must seize the opportunity that this offers.

There are four areas of concern with a system that relies on a network of national competition agencies to ensure that markets that transcend national borders work to the benefit of domestic consumers in every country. These are:

- a) Private anti-competitive behaviour such as cartels, abuse of unilateral market power, anti-competitive mergers and other private restrictions on competition.
- b) Public restrictions on competition such as statutory entry barriers, regulatory capture and protectionism that threaten significant consumer and wider economic harm, and Federal Counsellor Doris Leuthard's appeal to us Wednesday to tackle protectionism is a reminder of how much is expected of us in this regard.
- c) 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.
- d) Inconsistent and duplicative procedures across national competition regimes that create additional burdens for business which are ultimately passed on to consumers.

Eleanor Fox referred this morning to gaps and overlaps. To a large extent, the first two are gaps, and the second two are overlaps. While, as Dave Lewis noted in his opening speech, the original motivation of the ICN was perhaps driven more by the overlaps, over time, we have made direct or indirect progress on all four. In particular, we have tackled the third and fourth issues of burdens and inconsistency with great vigour, probably most visibly in the area of mergers. Our work on advocacy and market studies has been relevant to public restrictions on competition, an increasingly important area of activity over the past eight years. And much of the work we do in the ICN builds the trust and deeper mutual understanding that is an essential platform for cooperation in cases.

Despite these important positives, I believe the ICN now needs to have a full debate about its objectives and the relative importance of dealing with

the gaps and overlaps. The ICN has understandably proceeded to date looking at what it can achieve in the following two years, and then done what it said it will do. That was a wise and necessary way to start. Building on this success, we now need to develop a longer-term vision for the future. There are things we can only achieve over 10-20 years, and these need investments now. Such a vision would then be a touchstone for our prioritisation, a central part of our narrative about how our shared work benefits consumers, and a basis against which to define our long-term success and evaluate our performance.

This vision should not be founded on the holy-grail of convergence but rather 'convergence and informed divergence'. Where convergence is not possible, identifying the nature and sources of divergence and understanding and respecting the divergent underlying rationale appears to be an appropriately pluralist objective for an international network. Informed divergence offers agencies, business and consumers greater clarity and transparency than focussing solely on a convergence that is not possible. Bill Kovacic this morning rightly stressed the need for interoperability as part of this agenda.

The first step in developing a longer-term vision for the ICN must be a debate about the objectives of our network. How should we prioritise between gaps in enforcement against international cartels and tackling protectionism as opposed to dealing with issues of differing standards and duplicative burdens that come from overlaps? Should we only focus on what is feasible in the short-term? How should we best respond to Dave Lewis' challenge to 'all competition, all of the time'? How do we address the interface between competition and other policies (trade, the environment etc) and changing circumstances in business and world trade?

Governance and inclusiveness

A third priority for the ICN relates to governance and inclusiveness. As Dave Lewis pointed out, the ICN has been successful in including and giving a voice to weaker, newer and less-resourced members, but we need to rise to the challenge that he has set and work harder to ensure that the ICN continues to enable the fullest possible engagement of all its

members, and that its work responds to the needs of newer agencies and those in smaller economies that are still finding their feet.

If the ICN continues to succeed, it will do so because of the impact it has on individual agencies and countries that, because of international learning, do things differently. However, with that impact will come greater scrutiny, and we need to be above reproach in terms of our own governance. Good governance is the twin of inclusiveness: we must ensure that our work not only meets the needs of agencies, but that it ultimately serves the interests of consumers in each of our jurisdictions.

Agency effectiveness

Finally, I would like to say something about agency effectiveness. How we run our agencies is a cornerstone for everything else we do. Running our organisations well makes us more efficient in driving competition for consumers and our economies. It improves the selection of what cases and studies we do, our ability to attract talented individuals to work with us, the quality of our decision making and helps to ensure we deliver tangible positive outcomes in markets.

Running an agency effectively must be done in the context of best-practice domestically, and many of us will look first to best-practice in other agencies within our own jurisdictions. However, there are things that are very specific to running a competition agency and increasingly we look to our international peers as an important source of learning. For many of us, the best stimulus to examination of our own performance and self-improvement comes from international peer pressure. This is an area where more mature agencies can benefit from recently established regimes and fresh minds in new agencies, just as new agencies can benefit from the experience of established agencies.

Agency effectiveness has grown naturally and organically within the ICN. In January of this year, DG Competition hosted a first ICN workshop for agency heads on agency effectiveness. Feedback from this event has been universally positive, and there is considerable demand from agencies large and small, new and old, for more work of this kind. That we now have an agency effectiveness working group reflects the central relevance of this topic.

Agency effectiveness is a key building block in rising to meet the challenge of national agencies tackling international markets. For that reason, it is a central input to enabling the ICN to add value longer-term. Agency effectiveness is important for the ICN, not just because of the direct domestic benefits but because it enables us to improve our interaction with the ICN, in the learning we take from it, the intellectual contributions we make to it, and in enhancing our capacity for effective cooperation with others.

Conclusion

In a relatively short period, the ICN has had a positive transformational effect on international competition policy in many ways, and has improved the ability of competition agencies across the world to deliver better outcomes for their consumers. We must not rest complacently on that success, but instead challenge ourselves to do better. That requires the right balance between continuity and gradual improvement and innovation and change. In formulating our longer-term vision and planning for the ICN's second decade, we need to imagine a different and better world in which consumers and business are better protected from anti-competitive harm whether public or private, and where the individual and collective efforts we undertake to achieve that do not impose such burdens on business that we end up harming consumers in other ways.