

Cartel Working Group

2018 - 2021 Work Plan

MISSION

The mandate of the Cartel Working Group (CWG) is to address the challenges of anti-cartel enforcement, including the prevention, detection, investigation and punishment of cartel conduct, both domestically and internationally, across the entire range of ICN members with differing levels of experience and resources. At the heart of antitrust enforcement is the battle against hard core cartels directed at price fixing, bid rigging, market allocation and output restriction.

ORGANISATION

The CWG is co-chaired by the Directorate General for Competition of the European Commission, the Administrative Council for Economic Defense (CADE) Brazil and the French Competition Authority (Autorité de la Concurrence). It consists of two sub-groups:

Subgroup 1: Legal Framework ('SG1') is co-chaired by the Hungarian Competition Authority (GVH) and the Turkish Competition Authority (TCA).

Subgroup 2: Enforcement Techniques ('SG2') is co-chaired by the Netherlands Authority for Consumers and Markets (ACM) and the Federal Anti-Monopoly Service of Russia (FAS).

During the 2018-2019 working year, Fiscalía Nacional Económica (FNE) Chile and Comisión Federal de Competencia Económica (COFECE) Mexico will be included in the workings of the ICN CWG as "project leads".

SG1 and SG2 aim to improve the effectiveness of anti-cartel enforcement for the detection and punishment of hardcore cartel conduct by:

- examining legal and conceptual challenges of anti-cartel enforcement and policy;
- identifying and sharing specific investigative techniques;
- advancing the education and information sharing agenda of the CWG.

There are currently 64 member agencies in the CWG divided across the two subgroups which range from large authorities with significant experience in cartel enforcement to smaller or younger agencies with limited experience and differing resources at their disposal. In addition, NGAs from 34 jurisdictions participate in the work of the CWG.

LONG TERM GOALS

The CWG members seek to address the continuous challenges of anti-cartel enforcement, including the prevention, detection, investigation and punishment of cartel conduct. Through their participation in the work of the CWG, the members strive to achieve the following outcomes:

- Share views on cartel detection challenges in the digital era and most effective enforcement tools in the fight against cartels (exchange of expertise between competition agencies with various levels of experience);
- Elaborate good practices in different areas of anti-cartel enforcement;
- Increase the awareness of new and developing competition agencies concerning the significance of the fight against hard core cartels;
- Provide assistance to newer anti-cartel enforcement agencies; and
- Encourage new members to join the organization as well as enhance the involvement of NGAs.

Relevant information on the main activities of the CWG is disseminated through the annual ICN Conferences and Cartel Workshops, the ICN Newsletter, Enforcers and NGAs round table discussions (through webinars) and various ad-hoc papers, publications and conference calls.

2018 - 2021 STRATEGIC PLANS

The goal of the CWG for the period from 2018 to 2021 is to contribute actively to the advancement of anti-cartel enforcement across the entire membership (irrespective of the level of experience or resources available), by advocating improved cooperation between member agencies; promoting the dissemination, implementation, visibility and accessibility of CWG work products; and encouraging broader engagement with the CWG's work, particularly from newer enforcement agencies and NGAs.

The CWG will strive to increase the number of its members and to offer a general discussion platform for both experienced and younger agencies in order to increase the cooperation between its members at both the management and working levels.

The CWG will endeavour to engage agencies new to anti-cartel enforcement in the work of the group. Every effort will be made to focus the work products on issues that are relevant to all member agencies, including new agencies. Younger agencies or groups of agencies with common interests are encouraged to actively participate in the discussion of such topics. The CWG will also work to encourage increased involvement of NGAs in the work of the group.

The CWG will ensure the continued high quality and usefulness of its output. To this end the CWG will continue to proactively seek the feedback from the ICN member agencies and NGAs and to conduct scoping studies on its existing work products. Such reassessment will aim to keep CWG work product relevant and encourage input from younger and new agencies.

In view of an overwhelmingly positive response from member agencies regarding the CWG's existing work, in the 2018 – 2021 period the CWG will continue organizing the annual Cartel Workshop, the Round Table Discussions through webinars; as well as developing and updating its key work products, such as the Anti-Cartel Enforcement Manual, the Anti-Cartel Enforcement Templates and the ICN-liaison framework for the promotion of sharing of non-confidential information.

While specific topics and types of future work will be discussed among the membership and evaluated for each annual work plan, the CWG will continue its efforts in following six primary areas:

1. Promote familiarity with, and use of, existing work product and projects

The CWG will evaluate the implementation and use of its work products by member agencies, identify barriers to increased use, and encourage further dissemination of existing work. In addition, the CWG will work to cooperate with

the ICN Advocacy Working Group for these purposes. To achieve this, the CWG will actively pursue the broadest possible involvement of agencies and NGAs in all kinds of its on-going projects (webinars, papers, workshops) ensuring geographic balance and a good mix of new and experienced agencies.

2. Expand existing work products

The CWG will revisit or update, as necessary, its existing work products which are of fundamental importance to members' anti-cartel enforcement practices and policies. Sample topics include the following: efficient and effective leniency programmes, investigative tools and techniques for cartel detection (e.g. enforcement cooperation, searches, interviewing, digital evidence gathering, etc.), sanctions, settlements and international cooperation. This may include updating Chapters of the Anti-Cartel Enforcement Manual, assessing whether there are additional chapters of the Anti-Cartel Enforcement Manual that members consider would be useful, and whether there are additional best practice or guidance documents that the ICN would benefit from in the context of anti-cartel enforcement.

3. Develop new practical guidance and avenues for exchanging effective enforcement practices

The CWG will continue to develop new practical guidance and experience sharing projects on important issues in anti-cartel enforcement, such as investigations and leniency. The CWG will consider new topics for written products and roundtable discussions. Particular efforts will be made to deliver products targeted at newer anti-cartel enforcement agencies and to encourage the participation of such agencies in the CWG activities. The CWG will be a forum for the discussion and evaluation of recent developments linked to the digital economy, emerging issues, and upcoming trends in the field of anti-cartel enforcement. To this end, the CWG will make additional relevant material accessible on the ICN website. The CWG will explore the synergies of collaboration between the ICN and other international organisations, such as the OECD. This may include the organisation of joint events.

4. Organise annual Cartel Workshops

The cartel workshops will present and discuss topics covered by CWG work products and significant emerging policy issues relevant to day-to-day enforcement techniques. Annual workshops will emphasize practical experience, and will include real life case examples and hypothetical scenarios. Workshop topics will be evaluated each year based on feedback to ensure relevance for, and participation from, a wide range of ICN members, including issues of particular interest to newer agencies. Examples of possible topics of annual

workshops include the following: enhancing the attractiveness of leniency programmes, enforcement cooperation, the interaction of public and private enforcement in deterring cartel conduct, detecting cartels outside of leniency programmes, dual-track criminal and civil or administrative regimes, determining penalties, settlements, compliance programmes and public anti-cartel campaigns.

5. Strengthen CWG working procedures

The CWG will:

- Encourage more ICN members to join the CWG and encourage increased levels of participation from members within the CWG;
- Explore new and creative ways to improve the accessibility of CWG updates and work product, including the consideration of the following:
 - Keeping the CWG page on the ICN website up-to-date;
 - Use of online discussions and webinars;
 - Use of online or electronic newsletters;
 - Use of the ICN blog;
 - Translation of CWG work products; and
 - Web-based training tools (i.e. workshop materials).
- Include work of interest to NGAs and projects amenable to NGA participation.

6. Contribute to the broader work of the ICN

The CWG will continue to participate in, and contribute to, the broader work of the ICN including, the Annual Conference and regular updates to the ICN website. The CWG will cooperate with the ICN horizontal coordinator in the planning of its events. Cooperation with other ICN Working Groups on issues of common interest will also be considered.

Cartel Working Group

Sub Group 1

Annual Plan

2018 - 2019 Projects

Pursuant to its Mission and Long-Term Work Plan the CWG SG1 will work on the following projects during the 2018 - 2019 ICN year:

1. Steps towards a more efficient and effective leniency programme and its application;
2. Webinars/call series on five topics:
 - a. Digital cartels and algorithms;
 - b. Information sharing gateways and international assistance in information sharing;
 - c. Compliance;
 - d. Leniency incentives and disincentives;
 - e. Cooperation between competition agencies and public procurement authorities;
3. Continuation of the Asia-Pacific friendly calls.

Responsible parties

The work will be co-ordinated by the SG1 co-chairs, the Hungarian Competition Authority and the Turkish Competition Authority.

Project 1 – “Conclusions for more efficient and effective leniency programmes and their application”

In 2017-2018 SG1 carried-out a fact-finding survey on leniency. Replies were received from 33 competition authorities, as well as from NGAs (43 in total from 19 different jurisdictions). The preliminary findings of the survey were delivered to the CWG Co-Chairs in March 2018.

Project 1 will build on the findings of the 2017-2018 survey. It will identify incentives and disincentives for undertakings to apply for leniency focusing on multijurisdictional cartel cases in order to draw conclusions with a view to help:

- agencies to design better leniency programs;
- businesses to apply for leniency in situations of cross-border competition law violations.

Project 1 – Milestones

May 2018	Exchange of views at CWG co-chairs level on the working methods of the project and composition of project team.
June-July 2018	In-depth analysis of the findings of the 2017-18 leniency survey and possible design of good practices. Assessment whether existing ICN material on leniency requires revision in view of operational conclusions drawn from the above analysis Possible preparation of additional questionnaire to complement the survey and distribution to the WG members (if necessary)
September 2018	Preparation of a first outline of operational conclusions/ suggestions. Webinar on "Leniency incentives and disincentives"
October 2018	Presentation of the project at the Cartel Workshop
October 2018 – February 2019	Processing input and comments, drafting of report and possibly good practices / recommendations. Editing of the March 2018 report to make it suitable for publication in May 2019
March - April	Revise the draft report and finalization of the project
May 2019	Presentation of the final product at the 2019 Annual Conference in Cartagena.

Project 2 – Webinars/call series on five topics

SG1 plans to organise five webinars on various cartel related topics.

Project 2/a – Leniency incentives and disincentives

Building to some extent on the project of the 2017-2018 ICN year on leniency ("Survey on the key elements for an efficient and effective leniency programme and its application") and subsequent CWG discussions on the topic (at the New Delhi Annual Conference), the webinar aims to further explore incentives and disincentives for leniency applications from the viewpoint of competition agencies and NGAs.

Project 2/a – Milestones

June 2018	Elaboration of suggested discussion topics for the webinar
July 2018	Identification speakers, moderator and finalisation of the programme
September 2018	Organisation of the webinar

Potential date of the webinar: 19 September 2018.

Project 2/b – Information sharing gateways and international assistance in information sharing

As the world gets more globalized, so does the need to share information between the competition agencies to fight against cartels. This webinar intends to explore how competition agencies which have “information gateway” provisions in their laws use them to exchange confidential information with other jurisdictions and how useful “information gateway” provisions are. This webinar is planned to be organized as an agency only webinar.

Project 2/b – Milestones

June 2018	Determining the topics for the webinar
October 2018	Identification speakers, moderator and finalisation of the programme
November 2018	Organisation of the webinar

Potential dates of the webinar: 14 or 21 November 2018.

Project 2/c – Compliance

Compliance programmes are an essential tool to prevent cartel behaviour. The webinar intends to discuss how competition agencies could foster the compliance endeavours of undertakings and may also consider which role, if any, compliance programmes might play in fine calculation.

Project 2/c – Milestones

September 2018	Determining the topics for the webinar
October-November 2018	Identification speakers, moderator and finalisation of the programme

December 2018	Organisation of the webinar
---------------	-----------------------------

Potential dates of the webinar: 5 or 12 December 2018.

Project 2/d – Digital cartels and algorithms

Big data and its combination with technologically advanced tools (like pricing algorithms) are relatively new phenomena for competition agencies worldwide. The webinar aims to exchange views and experiences of competition agencies and NGAs on these novel issues and to map how different competition agencies deal with "digital cartels" and algorithms at the level of detection, investigation, assessment and prosecution.

Project 2/d – Milestones

October 2018	Determining the topics for the webinar
November-December 2018	Identification speakers, moderator and finalisation of the programme
January 2019	Organisation of the webinar

Potential dates of the webinar: 16 or 23 January 2019.

Project 2/e – Cooperation between competition agencies and public procurement authorities

Competition Authorities need to collaborate with other authorities in their jurisdictions in order to better fight against cartels. This is particularly true if the cartel involves bid rigging in public procurements. This webinar intends to explore how public procurement bodies and competition agencies engage to improve the competitive nature of the public tenders and what kind of results these engagements have produced. This webinar is planned to be organized as an agency only webinar.

Project 2/e – Milestones

November 2018	Determining the topics for the webinar
December 2018 – January 2019	Identification speakers, moderator and finalisation of the programme
February 2019	Organisation of the webinar

Potential dates of the webinar: 6 or 13 February 2019.

Project 3 – Continuation of the Asia-Pacific friendly calls

CWG SG1 will organise two webinars at the time friendly to ICN member agencies and NGAs in the Asia-Pacific region in collaboration with the project two, three or four.

The webinars will consist of replay of some presentations of the projects 2/a-e in order to facilitate the discussion by member agencies and NGAs in the Asia-Pacific region. Presentations replayed will be selected in consideration of the interest of the Asia-Pacific region.

Project 3 – Milestones

Two calls in the period March and April 2019.

January-February 2019	Determining the topics for the different sessions and establishing the program of the call series
February 2019	Identification speakers, moderator and finalisation of the programme
March and April 2019	Organisation of the two webinars

Potential dates of the two webinars: 13 or 20 March 2019 and 10 or 17 April 2019.

Cartel Working Group

Sub Group 2

Annual Plan

2018 - 2019 Projects

In line with the CWG mission and long-term work plan goals, the CWG SG2 will work on the following projects during the 2018 - 2019 ICN year:

1. Completing the chapter of the Anti-Cartel Enforcement Manual "Development of Private Anti-Cartel Enforcement";
2. The 2018 Cartel Workshop (Israel);
3. Implementation
 - a. "ICN framework for the promotion of the sharing of non-confidential information"
 - b. Completion of the "Anti-Cartel Enforcement Template" updates; and
4. Big Data and Cartels.

Project 1: Anti-Cartel Enforcement Manual Chapter on "Development of Private Anti-Cartel Enforcement"

Based on the results of the 2016 Scoping Study that was conducted in order to identify topics to be addressed in the Anti-Cartel Enforcement Manual as well as on ICN's Second Decade Report, in 2017 CWG SG 2 proceeded to a two year project on drafting a Chapter on "Development of Private Anti-Cartel Enforcement." The Chapter will examine the experience of private enforcement in jurisdictions passing more advanced or earlier stages of development of their anti-cartel regimes.

It will contain sections on the following topics:

- Interaction between public and private enforcement
- Interaction between competition authorities and courts
- Limits to disclosure of evidence – protection from discovery
- Limits to the liability of the immunity recipient
- Elements to consider when promoting private enforcement
- Collective redress mechanisms
- Quantification of harm
- Passing-On

In 2018-19 the project team will build upon the work done in 2017 and inputs from the ICN Conference in Delhi in order to submit the Chapter by the next ICN

conference in Cartagena (Colombia). The major aspects of the Chapter will be referred to and discussed at the 2018 Cartel Workshop in Israel.

Project 1 – Milestones

May 2018	Review input from Delhi conference
June – July 2018	Collate drafts and comments
July – September 2018	Finalise draft and report to SG2 membership
October 2018	SG 2 will make use of the Workshop to present the chapter in the 2018-2019 ICN year.
November 2018 – March 2019	Prepare the final version of the Chapter with inputs and comments received at the workshop and further from the SG 2 members taken into account.

Project 2: 2017 ICN Cartel Workshop (Israel)

The 2018 Annual Cartel Workshop will take place in Israel from 16-18 October 2018 in Tel Aviv (location subject to final confirmation). The theme of the 2018 workshop will be "How to crack a cartel step by step!". Within this theme SG2 will offer sessions exploring, for example:

- intelligence (including digital evidence gathered prior to overt investigation)
- investigations (including building investigation capabilities)
- legal enforcement (including how to prepare a case for court in the era of big data)

The Workshop will also be used to highlight and support the implementation of existing CWG work products, including the SG1 Leniency project and the SG2 Anti-cartel enforcement manual chapter on private anti-cartel enforcement. Preparations for the Workshop will be coordinated by the SG 2 Co-Chairs in partnership with the Israeli Competition Authority. The projected timeline for this project is from March 2018 to November 2018.

Project 2 – Milestones

April - June 2018	Formation of the workshop agenda, including the allocation of speakers.
-------------------	---

June – September 2018	Logistics management (venue, website, materials, registration etc.)
August - September	Presenters and Moderators to prepare and submit material for Workshop
16 – 18 October 2018	2018 ICN Cartel Workshop
November 2018	Feedback and review process

Project 3: Implementation

(a) The ICN framework for the promotion of the sharing of non-confidential information ("ICN liaison")

In 2015 the ICN CWG SG 2 commenced work to establish a framework for the promotion of the sharing of non-confidential information to give agencies 'a place to start' in building stronger relationships and sharing information. The framework was designed to foster a "pick up the phone relationship" for improved cooperation for effective cartel enforcement and for information gathering related to other agencies' enforcement by supporting member agencies to gain more experiences of information exchanges.

In 2018-19 SG 2 will:

- Maintain and encourage use of the framework's 'request procedure' document to ensure both the requestor and requestee understand expectations and the type of information that can be requested using this framework.
- Maintain the database of current contact officers for participating agencies.
- Encourage the sharing of experience in using the framework to help support its implementation by demonstrating its benefits to the membership.
- Promote the use of the Framework by sending periodical reminders to CWG Members about possibilities of information exchange it provides.
- Promote further use of the Framework in the form of publicity material, such as flyers, at the ICN cartel workshop in 2018 and in line with the ICN policy on social media.

(b) Continuation of the Anti-Cartel Enforcement Template update project

In late 2015 the SG 2 Co-Chairs undertook a project to update the Anti-Cartel Enforcement Templates. This project was continued in 2016 and 2017. In 2018-

19 the SG 2 will continue the updating and promotion of templates. The templates provide information for the ICN member competition agencies and NGAs about each other's legislation concerning hard core cartels. They also supply information for businesses participating in cartel activities about the rules applicable to them and enable businesses which suffer from cartel activity to get information about the possibilities of lodging a complaint in one or more jurisdictions.

In 2018-19 SG 2 will:

- Encourage completion of updated template by members, maintain currency of website.
- Promote the submission and use of the Templates during member calls as required.
- Circulate relevant materials.

Project 4: Big Data and Cartels

In the context of a growing digital world, SG2 launches a new work stream on the impact of digitalization in cartel enforcement, referred to as the "Big data and Cartels" Project. It is envisaged - as a first step - to produce a scoping paper based on various sources, including the 2018 Cartel Workshop and two SG1 webinars on "Digital cartels and algorithms" and "Cooperation between competition agencies and public procurement authorities" planned for 2018-2019. Depending on the findings of the scoping work, the Project may lead - at a later stage - to the update of one or several chapters of the Anti-cartel enforcement manual on "Digital evidence gathering" or "Investigative strategy". The SG 2 co-chairs will be assisted in this project by the Chilean authority and by the French authority (which will work mainly on the scoping of the project).