

The ICN's Vision for its Second Decade

Speech, ICN Annual Conference 2011

By John Fingleton

Chief Executive, Office of Fair Trading

18 May 2011

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## **Introduction**

It gives me great pleasure to welcome you here today to the 10<sup>th</sup> Annual Conference of the International Competition Network. Although our first annual conference in Naples in 2002 was a smaller gathering, it set out an ambitious agenda for the ICN that I hope this conference will match and surpass for our second decade.

Huge thanks go to Henk Don and the Netherlands Competition Authority for all their hard work in organising this conference. The NMa has a hugely successful track record in competition enforcement and policy, and has made significant contributions to the leadership of ICN over the years. I would like specifically to pay tribute both to Pieter Kalbfleisch's energy and hard work for ICN and especially in hosting this event. His and Henk's enthusiasm and passion clearly reflect the values of the NMa's staff and their efforts have not gone unnoticed. If the early stages of this conference are anything to go by, they will certainly have been worthwhile.

For me – and I know for many of you as well – the ICN annual conference is a highlight of the calendar of competition events. As well as getting to meet and debate ideas with colleagues from around the world, we also benefit from the very diverse attendance that this conference attracts. Alongside competition authorities, we have representatives here from the private bar, academia, government, the press, international organisations, consumer bodies, think-tanks and consultancies.

The Hague has long been known as the 'legal capital of the world', so it is a particularly appropriate location to host the many distinguished legal minds in the audience here.

I would also like to echo Henk's comments welcoming our newest members – the Gambian Competition Commission, the Zimbabwean Competition & Tariff Commission and the Faroese Competition Authority – as well as the Namibian Competition Commission, which has also joined the ICN since our last Annual Conference. We are very glad to have you.

In fact, the ICN's membership has grown every single year since it was founded and that's something of which we should all be very proud. From a small group of initial founding jurisdictions, to the 103 that the ICN membership now represents, our unique characteristics have helped the ICN make a positive contribution to competition policy around the world. Our openness, our inclusiveness and our global scope remain crucial to the ICN's identity. Likewise, our tradition of welcoming participation from our non-governmental advisers means that we are able to get a wider perspective on our work.

A huge part of what the ICN achieves comes from the informal personal relationships that develop at this conference and in other ICN events: this gives real meaning to the term "network". As well as facilitating contacts between agency heads, staff in many of our agencies have found that along with practical guidance and experience-sharing, the ICN has also brought them invaluable connections. I will speak more about that in a few moments.

As you know, this year's conference is particularly significant as it marks the tenth anniversary of the ICN. A year ago, in Istanbul, we set ourselves the challenge of formulating a long-term vision to guide us through the next decade. And so, alongside a diverse programme of work, the ICN has spent some of the past year looking back over the past ten years and ahead to the next decade, both to remind ourselves of what it is that we want to achieve, and to plan how we are going to get there.

As part of the process of formulating the ICN's second decade vision, almost every single member of the ICN has been interviewed about its views on our work and future direction. We have solicited feedback from non-governmental advisers, through a questionnaire and discussions via conference call. Well over 70 NGAs contributed.

I would like to take this opportunity to thank everyone who has provided input. It's very important that our long-term vision is informed by the views of the whole membership and with such high levels of participation in the process, we can certainly say that that has been the case. I would also like to thank my colleagues on the Steering Group, and all the staff in

our agencies who devoted so much time enthusiastically to this undertaking.

The feedback you provided has been incorporated at all levels of the ICN – including the governance of the network, our working methods and the long- and short-term work plans for each of the Working Groups.

But before I go into that, I would like to take you through the feedback that you presented to us and to try to draw out some lessons from it. I would like to begin by looking members' views on the benefits of the ICN – what the ICN does for you.

**The ICN should foster the characteristics and strengths that make it unique**

In Istanbul, I said that celebrating our strengths and successes is a critical part of nurturing the network. In fact, it is the only way that we can understand the core elements of our future success. According to the member interviews that the Steering Group carried out, opportunities for networking and experience sharing are the biggest benefits arising from ICN membership. During 2010, ICN members from 87 different jurisdictions met in person at ICN events.

There is a range of other accomplishments that we can look to from the past decade and there are three in particular that I would like to highlight.

The ICN Anti-Cartel Enforcement Manual and the Recommended Practices on Dominance/Substantial Market Power Analysis Under Unilateral Conduct Laws have both been widely used by our members, either in training or in the design of their procedures.

And two-thirds of ICN members that told us about the changes made to their merger control regimes in the past few years cited our Recommended Practices on Merger Notification and Review Procedures as having influenced their reforms. That is a real and significant example of where the ICN has played a key role in the converging of enforcement practices.

That was the past decade. We also have a very impressive set of achievements over the past year. I cannot address everything right now, but there are a few highlights to mention.

- The Advocacy Working Group's Competition Advocacy Toolkit and new facility for posting competition advocacy materials on the ICN website
- The Agency Effectiveness Working Group's chapter on Effective Project Delivery

- The Cartel Working Group's discussion series on cartel awareness and outreach
- The Merger Working Group's assessment of the use and impact of its work products
- The Unilateral Conduct working group's first workbook chapter dealing with defining relevant markets and assessing dominance/substantial market power.

Feedback from the membership has also shaped the ICN's vision for the next ten years. Time prevents me from going into everything that is included in that vision. For that, I would point you towards the full vision paper we have produced, which is available now on the conference website and will soon be posted on the main ICN website for the wider world to see. But for now, I would like to take a few minutes to give you a summary of that vision.

**With a new vision, the ICN is well placed to translate its outputs into outcomes**

If we are going think about where we want to be ten years from now, we have to go back to first principles; to consider the outcomes that we are looking to achieve. Ultimately, we want to meet the challenges that are posed by competition in international markets and among interdependent economies. These challenges apply to all market participants, including businesses, governments and consumers.

In line with this, and with the feedback we have received over the past twelve months, we have formulated a new mission statement for the ICN:

*'to advocate the adoption of superior standards and procedures in competition enforcement and policy around the world, formulate proposals for procedural and substantive convergence, and seek to facilitate effective international cooperation to the benefit of member agencies, consumers and economies worldwide.'*

Not only has the wording been strengthened to underline the ICN's commitment to convergence and cooperation, but it also emphasises the importance of *superior* standards and the ICN's role in advocating those superior standards. This highlights the fact that the core of the ICN's purpose is about working together to improve the way we that we each carry out our functions. The new mission statement also reflects the outcome we are seeking to achieve through our work in the ICN, which is to bring benefits to consumers and economies worldwide, as well as to our members.

We have taken care to ensure that this mission informs our work at every level, throughout the Network. Crucially, the mission feeds into our key goals:

1. To encourage the dissemination of competition experience and best practices;
2. To formulate proposals for procedural and substantive convergence through a results-oriented agenda and structure;
3. To support competition advocacy; and
4. To facilitate effective international cooperation.

In order to make sure that the ICN is moving coherently in the right direction and in order to maintain our commitment to these goals, Working Groups have initiated a longer-term approach, creating five-year plans which will ensure continuity and a strategic approach to the ICN's overall portfolio of work. These long-term plans are given more definition by the annual work plans that each of the ICN working groups produce.

I believe that these changes that we have made to the working methods and structure of the ICN over the past year will make it possible for our mission to inform our work more directly.

So I have no doubts that this, together with a new vision means that the ICN is very well placed to make sure that its future outputs fulfil its goals.

But we have to ask ourselves, what do we need to do to make it happen?

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Firstly, we need to make sure that we have a relevant portfolio of work. Our work needs to be of interest to all our members. The ICN has always set out its store as a demand-driven organisation focussed on the needs of all its members and we should preserve that. The best way to make sure that we do is to have the broadest possible participation in our agenda-setting.

Secondly, the ICN's work products themselves have to be of use to our members and they need to be balanced. They have to reflect the wide range of experience within our network. Again, this requires broad participation and I would encourage all the authorities here to make their voices heard. To this end, a number of changes to the ICN's governance structures have been put into place over recent months and I will touch on these in a moment.

But above all, our work has to translate into real outcomes. This is the core of our vision for the second decade of the ICN. For many years now, working groups have put implementation and use of ICN work products at

the heart of their short- and long-term work plans. A lot of time has been spent, particularly in the Merger and Cartel Working Groups, in assessing the level of implementation so far and to address any barriers to implementation. The Advocacy and Implementation Network is also making great strides in its efforts to help members understand and use ICN work products and to promote and advertise ICN work products to a wider audience.

*Progress so far: putting the right governance structures in place*

During the past year, the ICN Steering Group, the working groups, the Secretariat and Vice-Chairs have taken steps to address each of these points – by encouraging wider participation and working to foster implementation. There have also been some changes to the governance structure. As the ICN grows, we need to make sure that it continues to be responsive to the needs of its membership, while at the same time achieving a strong sense of continuity over time. For this reason, we have created a new horizontal coordinator role, ably manned by the ACCC. The Horizontal Coordinator is responsible for promoting coherence amongst the working groups and maintaining continuity and fidelity to our mission.

Beyond that, the feedback that you gave suggested that members were chiefly concerned with access to – and participation in – the working groups.

In response to this, the Operational Framework Working Group has set out new arrangements, where each Working Group will now be chaired by three ICN members that serve staggered three year teams. This will allow a new agency to rotate into a co-chair position each year. The criteria for selecting new co-chairs have also been expanded in order to explicitly include considerations around the geographic and economic diversity of ICN members.

I think that these changes will make it easier for a wider variety of members to really get involved in the ‘bread and butter’ work of the ICN and to open up the network, bringing fresh ideas and perspectives into the core of the ICN.

We have also taken steps to make communication within the ICN easier. Because, while we are here face-to-face now, the majority of the ICN’s work is done virtually, by email or telephone. Some working groups are experimenting with hosting webinars – online interactive seminars. The 2010 Unilateral Conduct workshop in Brussels was broadcast live online. The Cartel Working Group held a ‘Pacific friendly’ conference call to help address the challenges posed by differing time zones.

As well as working to make our internal communications more effective, we have also made the network more transparent, with the minutes and other key documents from Steering Group meetings being posted regularly on the ICN website. We want our decision-making to be open, to our members and to other stakeholders.

All this means that the ICN is in good shape to face the next decade. I have spoken so far about the kind of approach we need in order to fulfil our aims. Now I would like to turn to our actual outputs and to what is on the agenda in terms of our tangible work.

*What remains: work plans and outputs for the future*

- Encouraging the dissemination of competition experience and best practices

Our first goal is to encourage the dissemination of competition experience and best practices.

So we are going to continue to put together high-quality workshops and teleseminars that inform staff about the experiences of other authorities and provoke debates about the lessons that can be learned and the best approaches to new problems.

We are going to carry on publishing world-class guidelines, handbooks, reports and manuals. We are going to continue to compile interesting cases and useful techniques so that our case-teams can reap the benefits of ICN membership. Now, a special mention is needed here for the ICN Curriculum Project, which Dave Lewis and Bill Kovacic are going to tell you more about in a few minutes. I will not try to steal their thunder, but I will say that the Curriculum Project is a very exciting new piece of work from the ICN and I would encourage you all to make use of it.

We have got a really strong body of work behind us in terms of experience-sharing and this aspect of the ICN's work is going to stay at the heart of our vision for the next ten years.

- Formulating proposals for procedural and substantive convergence

Our second goal, set when the ICN was formed, takes this one step further. The second goal is to formulate proposals for procedural and substantive convergence.

Creating new recommended practices is one of the best ways that the ICN can work towards convergence and we will be seeking opportunities to do just that. Our plans for the next five years already include new

recommended practices for unilateral conduct and new practical guidance for effective merger review.

Convergence is so important because it is the main way in which we can address the inconsistent substantive standards and approaches that – as we all know – can run the risk of chilling potentially pro-competitive conduct. If, in the long-term, we are to ensure that the benefits of international competition flow to end consumers, we must strive for the most effective system for dealing with competition issues that transcend national boundaries, while fully protecting domestic consumers.

Tim Muris<sup>1</sup> and Bill Kovacic<sup>2</sup> have described three stages in the path to convergence. The first is decentralised implementation and experimentation within agencies. The second is experience-sharing and consensus-building internationally, through the identification of best practices. And the final phase is where individual jurisdictions actually opt-in to the consensus norms that result.

The role of the ICN here might be seen as bringing each of these a little closer. The personal connections that the ICN creates, as well as the knowledge that is exchanged within the network helps to shape agencies' experimentation and to ensure that the lessons learnt from them are learnt by colleagues all over the world. The ICN also makes it easier to convert decentralised experimentation into superior standards by facilitating the experience-sharing and consensus-building processes and our work products help solidify those consensus into norms. ICN recommended practices command a degree of authority which can be useful for agencies hoping to adopt those norms. Indeed, in varying ways, this process may be as challenging for established regimes as for emerging ones.

- Supporting competition advocacy

Our third goal is to support competition advocacy. You said that you see the ICN's advocacy work as one of the key benefits of the network. And you were keen for the ICN to do more work in this area. The Advocacy Working Group has responded by putting together an exciting programme of future work, with projects planned on raising awareness of the benefits of competition, building a competition culture, and providing guidance for government bodies on considering the competitive effects of their market

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<sup>1</sup> See Timothy J Muris, Competition Agencies in a Market-Based Global Economy (Brussels, 23 July 2002) (prepared remarks at the Annual Lecture of the European Foreign Affairs Review), available at [www.ftc.gov/speeches/muris/020723brussels.shtm](http://www.ftc.gov/speeches/muris/020723brussels.shtm).

<sup>2</sup> See William E Kovacic, Extraterritoriality, Institutions, and Convergence in International Competition Policy (a paper based upon a presentation given at the annual meeting of the American Society of International Law, Washington, DC, 5 April 2003), available at [www.ftc.gov/speeches/other/031210kovacic.pdf](http://www.ftc.gov/speeches/other/031210kovacic.pdf).



interventions. We also need to ensure that ICN's work product is, by appropriate means, made available to governments considering making changes to competition law.

In 2009, ICN members worked together to develop key messages on the role of competition policy in difficult economic times for agencies to use in their domestic advocacy efforts. The feedback received from you since then suggests that there might be scope for the ICN to issue high-level resolutions on certain competition policy issues or hot topics in future. Of course this could only be done with the consensus of the full membership, but the fact that the Advocacy Working Group's long-term plan envisages the ICN being a forum for the identification and discussion of important policy issues and hot topics in competition advocacy represents an important strengthening of the ICN's voice and of its impact as an organisation.

- Facilitating effective international cooperation

The ICN's fourth goal is to facilitate effective international cooperation. I have already talked about the importance of personal relationships for the ICN itself and for the work done by each of our agencies. But looking to the future, we will build on those personal relationships, strengthen them and broaden the ways in which relationships formed through the ICN can result in cooperation on the ground. Over the past year it has become clear that many of you would like the ICN to carry out work focused on substantive enforcement cooperation. Some working groups are already planning to do so and the US FTC and DOJ hosted a roundtable in Washington, DC, on this topic earlier this year. We will also consider the range of different forms that cooperation can take. We will continue to promote informal cooperation and the exchange of non-confidential materials, as well as the sharing of practical know-how and tips. But there is now scope for the ICN to produce model cooperation agreements and build on our previous work on the model merger confidentiality waiver in order to facilitate closer case cooperation.

So if these are the four goals that explain how we will achieve our mission, we should also ask: where do we want to be in relation to that mission a decade from now?

We want to have made significant progress in convergence and cooperation in those areas where the differences between standards and procedures between jurisdictions are currently relatively small. I have already discussed new recommended practices, practical guidance and the importance of implementation. Beyond this, in those areas where there is a greater degree of divergence, there is nonetheless an opportunity for the ICN to play a role in promoting understanding and transparency.

Many of these areas are at the first stage of the convergence process I described earlier. Different jurisdictions are experimenting with different ways of working. So the ICN can begin to lay the foundations for future convergence by moving us all onto the second stage – experience-sharing and consensus-building. Through our normal working methods, such as teleseminars or workshops, we can begin to identify best practices and to bring the goal of convergence that much closer. Greater transparency is key to this process: only if we understand fully the reasons for the current differences can we engage in a meaningful dialogue.

I believe that these four goals, together with the right approach to convergence and informed divergence, have the potential decisively to influence the evolution of international competition policy over the next ten years.

Above all, when the ICN is looking to its *third* decade and evaluating its second, we would hope for it to be able to say that it has made a clear and substantial difference to consumers worldwide. To me, the ICN looks very well placed to do that. But it will depend on all of us.

### **Ask not what the ICN can do for you...**

As a 'virtual' network, the ICN cannot act by itself. The ICN's best work is done when it helps competition agencies to enforce better. So while the network prospers through our participation, so do our agencies, their reputations and the wellbeing of the consumers that we are responsible for defending.

So I would like to encourage you all – whether you are brand new to the ICN, or whether you are an old hand – to participate as fully as you possibly can. There are many ways to get involved. There are avenues for all agencies, regardless of capacity, to contribute to our work.

And I would like to take this opportunity to address those authorities that occupy leadership roles – Vice-Chairs, Steering Group members and working group co-chairs – to really focus on facilitating the maximum participation possible.

And this applies in the shorter term as well. Over the next three days, we all have a great opportunity to meet old friends and to make new ones. And if you are lucky enough to have old friends here, introduce them to one another, and to your new ones. This really is an opportunity for us all, but you can only get out what you put in. So I hope that this year, the level of participation will be the highest we have seen so far and that the range and diversity of contributions will be the broadest we have yet had.

Finally, it is essential that all of the knowledge and the insight and the ideas that we gain from the next three days are utilised. A few days in The Hague among such wonderful company might be very pleasant for us, but the maximum benefit can only be extracted from it if we follow up on all this once we return to our offices. How will we communicate the key messages we have picked up on? How will we circulate key bits of information? How will we share the contacts we make? These are all crucial questions if we are to really get the full value out of this conference.

## **Conclusion**

Our vision for the next ten years confirms and builds on our direction of travel and the excellence of our work product. We have identified advocacy, capacity building and implementation as three key areas where we have more to do. And we have endorsed convergence and informed dialogue around differences in approaches as a core goal. Ultimately, our work must bring benefits to all our consumers and economies.

Overall, we have a great deal that we can look back on with pride. The ICN is an extraordinary organisation. It makes an exceptional contribution to the development of competition policy and enforcement globally. And as we face the future, I think we have a lot to look forward to. We have a strong and effective internal structure. We have an engaged membership and an exciting body of work for the next few years. Most importantly of all, we have a bold and clear long-term vision. I am incredibly positive about what we can achieve over the next decade. So let's get to work.