

Cartel Working Group 2020 - 2023 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 fight against hard-core cartels directed at price fixing, bid rigging, market allocation and output restriction.

ORGANISATION

The CWG is co-chaired by the French Competition Authority (Autorité de la Concurrence), the Russian Federal Antimonopoly Service (FAS Russia) and the Italian Competition Authority (Autorita' Garante della Concorrenza e del Mercato).

It comprises 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 Fiscalía Nacional Económica of Chile.

SG1 and SG2 aim to improve the effectiveness of anti-cartel enforcement for the detection and punishment of hard-core 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 66 member agencies in the CWG, divided across the two sub-groups, 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

Through their participation in the work of the CWG, the CWG members seek to address the challenges of anti-cartel enforcement, and strive to achieve the following outcomes:

- Share views on the challenges of cartel detection in the digital era and on the most effective enforcement tools in the fight against cartels (exchange of expertise between competition agencies with various levels of experience);
- Identify good practices in different areas of anti-cartel enforcement;
- Raise the awareness by new and developing competition agencies of 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 activities of the CWG is disseminated through the ICN Annual Conference and Cartel Workshops, the ICN Newsletter, Enforcers and NGAs roundtable discussions through webinars and various ad-hoc papers, publications and conference calls.

STRATEGIC PLAN

The goal of the CWG 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 of relevance to all member agencies, including younger agencies, which 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 strive to 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, in order to maintain the relevance of the CWG work product.

In view of an overwhelmingly positive response from member agencies regarding the CWG's existing work, the CWG will continue organizing the annual Cartel Workshop, Roundtable 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 other work and topics will be discussed among the membership and evaluated for each annual work plan, the CWG will continue its efforts in the following 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. To achieve this, the CWG will actively pursue the broadest possible involvement of agencies and NGAs in all of its on-going projects, 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. 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 additional chapters would be useful, and whether other, additional good practice or guidance documents would benefit the ICN with respect to 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, e.g., 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

agencies and to encourage their participation in the CWG. 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 also explore the synergies of collaboration between the ICN and other international organisations, e.g., OECD.

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 Cartel 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 include: enhancing the attractiveness of leniency programmes, enforcement cooperation, the interaction of public and private enforcement, cartels detection, dual-track criminal and civil or administrative regimes, determining penalties, settlements, compliance programmes and public anti-cartel awareness campaigns.

5. Strengthen the inclusiveness of 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 and with other ICN Working Groups on issues of common interest, where appropriate.

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CWG SG1 2020-2021 work plan

Project 1: ICN Member Survey on Trends and Developments in Anti-Cartel Enforcement in the Second Decade of the ICN (2011-2020)

In 2010, a report based on an ICN Member Survey on Trends and Developments in Anti-Cartel Enforcement¹ was presented at the 9th ICN Annual Conference and received significant interest. As we start a new decade of ICN, it is considered that having a closer look at the cartel enforcement landscape in the last decade can be beneficial to improve our perspective and determine new trends in this area. The project aims to capture high-level changes in cartel enforcement from the previous ICN decade and to analyse progress made in the fight against cartels.

Project 1 will review these changes by conducting an “ICN Member Survey on Trends and Developments in Anti-Cartel Enforcement in the Second Decade of the ICN (2011-2020)”. This survey will be conducted in 2020. A final report based on the findings of the survey will be presented at the 2021 ICN Annual Conference.

Project 2: “Crisis Cartels and Horizontal Cooperation in the time of Covid-19”

This new project is intended to explore issues and challenges faced by competition agencies as a result of the Covid-19 outbreak, (i) when evaluating the so-called crisis cartels, i.e., cartels likely to be formed and which attempt to stabilise businesses and prevent exit from the markets hit by a severe downturn and (ii) when assessing any ex-ante temporary horizontal cooperation projects that are necessary to provide needed goods and services that might not be available

¹ https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/05/CWG_TrendsReport.pdf

otherwise (e.g., in the health sector). Overall, the objective of the project is to share experience and discuss the main challenges and pressures that competition agencies face when assessing crisis cartels and horizontal coordination.

In the first year, the project, in relation to crisis cartels, would a) engage in a stocktaking exercise of relevant past work of the CWG and other international organizations or produced by ICN members, b) seek some initial input from ICN members through the survey of Project 1 above, and c) organize one or more webinars to share experiences. For what concerns horizontal cooperation, the project would initially mainly be dealt through the organisation of one or two webinars.

Project 3: Webinars on anti-cartel legislation and enforcement topics:

1. Leniency perspectives from the private bar

Over the past years, ICN CWG SG1 has devoted a particular attention to these topics through projects such as 'Good practices for incentivising leniency applications'. CWG SG1 developed a guidance for cross-border leniency coordination ('Guidance on Enhancing Cross-Border Leniency Cooperation'). In this context the webinar provides a new angle to the previous work. It intends to discuss from NGA perspective the factors that go into making the decision to come in for leniency, why a client might decide against it, and also what factors go into the decision to grant or not grant waivers to jurisdictions to speak to one another.

2. Damages claims in cartel cases - II

In 2019-2020, the webinar held on "*Damages Claims in Cartel Cases*" received great interest from the membership, therefore a follow-up session will be organised. This webinar will continue to address critical issues relating to damages claims following on anti-cartel decisions by competition agencies. The webinar will discuss such questions as the eligibility to claim damages, the impact of damage claims on leniency, and other enforcement and procedural issues.

3. How to detect and assess bidding cartels - II (Agency Only)

During the 2019-2020 ICN year, CWG SG1 webinar on '*How to detect and assess bidding cartels*' attracted a large number of speakers and participants. It focused on detection methods successfully used by agencies and discussed the specificities of tender markets and tender design (e.g., procurement process, goods and services procured, availability of procurement data) and their effect on the assessment. SG1 will organise a follow-up webinar to allow agencies further share their expertise and experience in relation to the detection and the assessment of bidding cartels.

4. Hub-and-spoke cartel cases

A growing number of cartels feature both horizontal and vertical elements. In these cartel cases, communication and coordination between competitors are achieved through indirect exchanges *via* a vertically related supplier or retailer. In this context, this webinar will provide an opportunity to share experiences of such atypical cartels.

5. Compliance II

In 2018, the webinar on '*Compliance in Cartel Cases*' received great interest from the membership, therefore a follow-up session will be organised. It will aim at exploring recent experiences of competition agencies with compliance programmes; such as: consideration given to compliance programmes when setting the amount of a fine for anti-competitive behaviour, audits relating to the effective implementation of compliance programmes, compliance outreach activities, as well as the benefits of compliance programmes for the competition agencies.

6. Crisis Cartels and Horizontal Cooperation in the time of Covid-19

In 2020, the CWG will organise one or more webinars to share experience and discuss the main challenges and pressures that competition agencies will face in the coming months when assessing crisis cartels and horizontal coordination.

Project 3: Continuation of the Asia-Pacific friendly calls

The webinars (two or three) will be the replay of any webinars in Project 2.

CWG SG2 2020 - 2021 work plan

Project 1: Big data and Cartels Project

In the context of a growing digital world, SG2 launched a work stream on the impact of digitalization in cartel enforcement, i.e. the "Big data and Cartels" Project". The first step consisted in producing a Scoping Paper meant to outline the main aspects of the potential role of data as a vehicle for collusion and as a tool for detection. After collecting existing knowledge on the subject, the CWG moved to drafting the Scoping Paper within a project team. The first draft Scoping Paper was circulated prior to the 2019 ICN Annual conference in Cartagena. The issues at stake were discussed at the 2019 Cartel Workshop in Brazil. The Scoping

Paper was then further reviewed and expanded, through the input of a number of agencies and NGAs gathered along several rounds of consultations.

The Scoping paper was completed and approved by the Steering Group in May 2020.

On that basis, in 2020-2021, the CWG will consider revising and / or updating one or more chapters of the Anti-cartel enforcement manual on “Digital evidence gathering” or “Investigative strategy” in line with the content and findings of the Scoping Paper.

Project 2: The 2021 Cartel Workshop (Portugal)

The 2021 Annual Cartel Workshop will take place in Portugal. The CWG Membership in cooperation with the Portuguese host will determine the theme and agenda of the 2021 Workshop. Dates of the workshop are to be determined yet, subject to the situation stemming from the Covid-19 pandemic.

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 is 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 experience of information exchanges.

In 2020-2021, 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 the Framework.
- Maintain the database of current contacts for participating agencies.
- Encourage the sharing of experience in using the Framework to support its implementation by demonstrating its benefits to the membership.
- Promote the use of the Framework by sending periodical reminders to CWG Members about the 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 20209 and in line with the ICN policy on social media.

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

In 2020-21, the SG 2 will continue to update and promote the Anti-Cartel Enforcement Template. The Templates provide information on legislation in force in ICN members' jurisdictions concerning anti-cartel enforcement. They also provide information for businesses participating in cartel activities or incurring damage from such activities about the applicable rules in order to enable them to file for leniency or file a complaint in one or more jurisdictions.

In 2020-21, SG 2 will:

- Encourage the completion or revision of the Template by ICN members
- Update the relevant section of the ICN website
- Circulate relevant materials