

2007–2009



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ICN Steering Group Chair:
2007-2009

It was my great honour to chair the Steering Committee of the International Competition Network (ICN) from 2007-2009. During its first five years or so the ICN was largely led by established and experienced anti-trust agencies, drawn from its founding members, who focused initially on developing recommended practices relating to bread-and-butter merger review procedures, cartel enforcement, and advocacy—issues that generally enjoyed consensus among its members. However, during that time the ICN's membership was changing significantly, reflecting the development of new market economies around the world, with newly created antitrust agencies. By 2007, the ICN had quadrupled in size to more than 60 antitrust agencies, opening the door to a new period in its existence, with a new set of issues.

Inclusion: From a Few Agencies to Many

As the number and diversity of its members increased, the ICN needed to find ways to involve a wider range of agencies in setting the agenda for the organisation and in playing an active role in its activities. Without this inclusion, the ICN feared that it would run the risk of undermining its credibility as a representative and relevant organization. An obvious first step to address this challenge was for the ICN to broaden the composition of its leadership, including the Steering Committee and Working Groups. However, the newer agencies often lacked the resources and experience to take on responsibilities of participating in the Steering Group. To combat this challenge, the ICN enacted two changes.

First, beginning in 2007, the three ICN Vice-chairs each took on responsibility for three priority areas - Outreach, Advocacy and Implementation and International Coordination - and each was assisted by a separate member of the Steering Committee. This division allowed the sharing of responsibility and created an opening for

newer agencies to participate. Second, the Steering Group actively sought out representatives from newer agencies to co-chair the Working Groups along with a member from a more experienced agency. This pairing provided newer agencies with leadership opportunities without requiring them to bear the entire resource burden that often accompanies a Chair's responsibilities.

Having focused on recommended practices around merger review and cartel enforcement in its initial years, the ICN was interested in exploring new areas like unilateral conduct. However, the growing diversity in membership presented challenges to finding consensus and it therefore decided to proceed somewhat cautiously, by focusing only on defining key terms relating to this topic rather than on the development of recommended practices. In this way it was possible to discover where potential areas of convergence might lie and ultimately develop shared definitions and concepts. Some agencies were also interested in exploring areas that were particularly relevant to their own unique circumstances; however, there was some concern that this approach might increase the likelihood of diverging views and would devote ongoing resources to topics that were less likely to result in a consensus around recommended practices. The ICN therefore decided that the host of each annual conference could select a "special project" that could draw on members' resources and expertise and result in useful information; meanwhile, the topic would not represent an ongoing area of work with recommended practices.

As the number of countries represented by the ICN grew, new day-to-day challenges cropped up. The arrival of newer, less experienced members increased the demand for information, expertise, and focused discussions on work-related issues. The ICN's growth in membership from different countries also raised language issues with respect to the ICN's work product. In its initial years, the ICN produced work product only in English, in accordance with its operational framework. In response to the ICN's growing diversity in membership, a number of ICN members stepped up to the challenge and volunteered to translate various ICN work product into Chinese, French, and Spanish among other languages.

Implementing Recommended Practices

The ICN's initial focus on merger review and cartel enforcement resulted in considerable consensus around recommended practices for a wide range of procedural and substantive issues. However, by the end of the ICN's initial phase, it had received criticism from the private bar for its inability to implement many of the recommended practices. Tackling the challenge of implementation was an important focus of our work from 2007-2009. First, the ICN leadership developed strategies to persuade countries to adopt the ICN's recommended practices. The Vice-chair Advocacy and Implementation, assisted by another member of the Steering Group, was mandated to find new

and different ways to encourage implementation of recommended practices. The ICN also became more proactive in its attempts to establish its recommended practices as the standard against which legislators would measure legislative change around the world. During my tenure, the ICN participated in legislative reviews in India and Chile. Finally, the ICN developed strategies to persuade other agencies to adopt the ICN's recommended practices. It increased pressure on its members, particularly with respect to changes within their purview. For example, the ICN embarked on a project aimed at increasing members' self-assessment of how well they complied with the recommended practices.

Building a Complementary, Supportive Relationship with the OECD

A third challenge that the ICN faced during its initial phase was differentiating its role from that of the Competition Committee of the Organisation for Economic Co-operation and Development (OECD) and developing a good working relationship. There was some early concern that the attention of OECD members would be diverted away from the Competition Committee and non-members would be discouraged from participating in OECD outreach events. However, by 2007 their relative strengths were coming into sharper focus, leading to fruitful discussions about the ways the ICN and the OECD's Competition Committee could complement each other's role and could work in partnership. In 2009 there were also examples of joint projects, such as, partnering to provide technical assistance to Eastern Europe using materials that the ICN developed.

Conclusion

The ICN began its life as a network of 15 competition agencies from 14 jurisdictions and is now the most extensive network of competition authorities worldwide. In its early stage, the ICN was led by representatives of its founding members, who focused on areas where convergence was most likely. These tended to relate to issues associated with merger review, cartels and advocacy. As the ICN grew in size, it began to face a new set of challenges, which arose in part from the growing diversity of members who were not content to sit on the sidelines and desired to play an active role in the organization. The years 2007-2009 thus marked a form of transition as the ICN found new ways to increase the participation of these less experienced agencies and to prepare the way for attacking more controversial and multi-dimensional issues. It also marked a shift towards a more proactive approach to encouraging implementation of its recommended practices and towards a more harmonious relationship with the OECD. All these steps formed some of the important building blocks for the strong foundation on which the ICN now stands.