

Entering the ICN's Third Decade

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Virtual, global, informal, no hierarchies, no headquarters – the ICN's structure is so innovative, so up-to-date, it is hard to believe that we are celebrating the network's 20th anniversary. The ICN is specialised, aspirational, consensus-based, diverse, inclusive, member-driven and welcoming to new members. This has provided the basis for 20 years of successful multilateral cooperation which is key for an effective and efficient implementation of competition law in our integrated and globalised world. This closeness between competition agencies that form the ICN would have been hard to imagine 20 years ago, and it was by no means clear at the beginning that we would get to where we are now. It was a bold step by competition agencies to take things into their own hands after the attempt to bring competition into the WTO had failed. On 25 October 2001, antitrust officials from 14 jurisdictions launched the ICN as a network of agencies where agency representatives act as experts, not as representatives of governments. This is one of the factors that allows the ICN to follow ambitious, future oriented projects which are not restricted by the current practice of the agencies involved. Together with non-governmental advisers (NGAs), which were involved from the beginning, ICN members have created a growing encyclopaedia of best practices, practical recommendations and other tools which are meant to be used and have a practical impact as international gold standard.

Today the ICN counts 140 member agencies. We have achieved a lot. Now we are entering the ICN's third decade and it is time to look ahead. What are the key topics for the ICN today? What is the future position of the ICN in multilateral cooperation in antitrust law? Five priorities stand out:

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Ready for the future: Digitalisation and sustainability

Digitalisation has been a hot topic for some time now and it will remain key for competition agencies and the ICN. Digital technology is transforming the global economy, new services are rapidly changing existing industries, and the pandemic further accelerated this development which has a direct impact on competition law enforcement and policy. Jurisdictions handled the challenge differently. The ICN recognised the supranational issues early and provided its members with useful tools. As all working groups conduct projects touching on digital issues, the new Vice Chair for Digital Co-ordination will ensure the overarching co-ordination of projects and discussions on competition in the digital economy within the ICN.

Sustainability is the second topic which will lead to a major transformation of industries and business models and will require our greatest attention. This is not just about whether environmental concerns can be taken into account, it is about advocating for competition to be part of the solution. Sustainability and competition go hand in hand.

With an open mind: Competition, consumer and data

Competition law is not an island, and particularly in the digital sector enforcers have to consider the interaction with other areas of law. The Bundeskartellamt's Facebook case illustrates the importance of understanding data as a competition parameter. The ICN Steering Group project "Competition law enforcement at the intersection between competition, consumer protection, and privacy" addresses this increased complexity. As natural as the project seems today, it has come a long way. Is the project in line with the ICN's credo "Competition all the time"? Steering Group members have answered this question differently. Ultimately, all have agreed that the ICN will remain the Competition Network, with an open mind and wide view, always from the perspective of competition law enforcers, of course.

Keeping core areas of activity

The digital economy puts abuse control into the spotlight – which some say is the Mount Everest of competition law. But cartel prosecution and merger control remain core areas of activity. This is true for the work of competition authorities and therefore also for the ICN as a hub for the exchange of experience and knowledge. The ICN was founded, among other things, as a reaction to the growing number of multi-jurisdictional transactions, reviewed by an equally growing number of competition authorities. This challenge remains. And when it comes to large digital companies, effective merger control is the most powerful tool we have.

On solid ground: The rule of law

From the start the ICN has offered its members tools to ensure fair and effective agency investigative procedures for sound enforcement by transforming international consensus into a series of projects and work products that serve as international benchmarks. The first set of principles on procedures was presented by the Merger Working Group as early as September 2002, at the first Annual Conference in Naples. Procedures have also been addressed by other working groups and in 2011 the ICN Steering Group set course for a long-term project addressing the investigative processes of competition agencies across areas of substantive law which ultimately produced Recommended Practices for Investigative Process. In 2019, the ICN took its work on investigative process to the next level by introducing a new tool, the ICN Framework on Competition Agency Procedures (ICN CAP), which combined a catalogue of principles and implementation instruments. While the ICN CAP is non-binding and participation does not establish any rights or obligations, it nevertheless goes beyond the traditional voluntary ICN approach as it creates a certain commitment – another step on the ICN’s way to promote international standards. The ICN work also fed into the parallel workstream of the OECD Competition Committee, resulting in the recent adoption of the OECD Recommendation on Transparency and Procedural Fairness in Competition Law Enforcement, another successful example of joining forces with other international fora.

Impact: ICN in practice

The ICN meets its own high aspirations by providing authorities around the world with a comprehensive encyclopaedia of best practices, practical recommendations and other tools which serve as guidelines for agencies, advocacy tools for proposals to legislators as emphasized by the yearly Advocacy Contest organised together with the World Bank Group, and practical training material for case handlers. Capacity building remains a focus. We recently had to transform the classic ICN workshops into virtual events due to the pandemic, and despite the difficulties the network succeeded in bringing together members and NGAs and offered training and a forum for interaction and exchange as most recently at the Promotion & Implementation skills workshop with 200 participants from over 60 jurisdictions. Bringing together younger and more experienced ICN members also proved to be a successful approach as illustrated by the ICN Bridging Project. Cooperation between competition agencies will continue to play a crucial role when enforcers have to deal with global business models. The ICN has dedicated a special project group to fostering cooperation between

competition agencies, again coordinated with the OECD, and ensures close cooperation between international organisations, including UNCTAD, via liaisons.

Looking back at 20 successful years, the last of which has been particularly difficult, it is obvious that the ICN can rely on a solid foundation. The virtual structure works and the connection between members is strong. Familiarity and trust built as a result of the multilateral cooperation in the ICN and the global standards established in our work products are the basis for answers to the questions raised by global developments. Together, we are well equipped to enter the ICN's third decade.