



The ICN's Agenda: What to Look For in 2013-2014

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Last month, the International Competition Network held its twelfth annual conference, hosted by Poland's Office of Competition and Consumer Protection in Warsaw. As the ICN's largest and only all-encompassing meeting of the year, the annual conference serves as a natural reflection point for recent accomplishments and anticipated future work within the network. ICN is a year-round endeavor, with its members and non-governmental advisor partners participating in a host of ongoing projects across the full range of competition law and policy topics. This update provides a sense of the inspiration for ICN's current agenda and an overview of the specific work it is likely to undertake over the coming year.

In addressing the 2013 annual conference, ICN Chair Eduardo Pérez Motta (Chair of Mexico's Federal Competition Commission) identified three priorities for the ICN this coming year: advocating for competition policy, developing best practices, and bolstering efforts to promote ICN work product.¹ Along with the Chair's remarks, the new 2013-2016 work plans for each of the ICN's five substantive working groups² provide a detailed look at the ICN's goals and work for the coming year. Further, the inspiration of much of today's ICN agenda is recognizable from the guidance set out in the 2011 ICN's Vision for its Second Decade. The Vision cited four high-level goals for ICN work to support 1) the dissemination of competition experience and best practices; 2) procedural and substantive convergence; 3) competition advocacy; and 4) international cooperation. Two years later, these goals are driving new ICN accomplishments and shaping its ongoing work.³

Two initiatives in particular – an expansion of the ICN's advocacy efforts and renewed attention to pursue opportunities for new, high-level ICN recommendations – are set to shape the coming year's work and potentially have a broader impact on ICN's future direction.

OVERARCHING THEME: REACHING OUT

Under Pérez Motta's leadership, and linked to the Second Decade's goals of disseminating competition experience and advocacy, the ICN has made a concerted effort to raise the ICN's external profile and promote its messages about the benefits of sound antitrust enforcement outside the network. This is a sign of a maturing network, confident in its mission and the consensus messages it has

¹ Mr. Perez Motta's remarks are available at: <http://internationalcompetitionnetwork.org/uploads/library/doc898.pdf>.

² Agency Effectiveness, Cartel, Competition Advocacy, Merger, and Unilateral Conduct.

³ The ICN's Vision for its Second Decade is available at: <http://www.internationalcompetitionnetwork.org/uploads/library/doc755.pdf>.

produced. A more active voice for the network is also embedded in several aspects of the ICN's work.

Support for Domestic Initiatives

Last year, the ICN Steering Group developed a process to assist ICN members when they seek external support for domestic reforms, complementing an existing "Advocacy and Implementation Network" within the ICN that promotes work product to new member agencies. Through formal comments or other forms of support to interested members, the ICN can provide an additional voice of support for competition law reforms consistent with ICN guidance.

Global Engagement

Pérez Motta has led the ICN in directing the network's voice towards broader audiences. The 2013 annual conference included a panel discussion on competition and its relevance to global economic policymakers. Representatives from the World Trade Organization, the World Bank, and the International Chamber of Commerce participated in the conference discussion. The OECD and UNCTAD were also represented at the conference, indicative of the increasing interaction between the ICN and its counterparts. During the past year, the OECD and ICN conducted a joint exercise to understand the successes and challenges of international enforcement cooperation in competition investigations, producing comprehensive reports on state of enforcement cooperation. They continue to coordinate on future cooperation-related work inspired by the reports.

Additional Target Audiences for ICN Work

The goal of developing a stronger voice for including competition principles in economic policymaking is also evident in an increasing body of ICN work product that seeks to inform audiences beyond competition agencies. The very nature of competition advocacy – conveying competition principles to non-competition audiences – lends itself to work directed beyond ICN member agencies. Recent and ongoing work within the Advocacy Working Group embraces the goal of informing others, most notably demonstrated by new draft guidance for conducting competition assessments of proposed laws and regulations. This guidance is a priority work product for 2013. Recent ICN reports and discussions on articulating the benefits of competition and nurturing a competition culture are structured around how to present messages to outside stakeholders.

The 2013 Special Project, focused on competition agency interaction with courts and judges, identifying practical ways to make agencies more effective before the judiciary, for example, in drafting and presenting agency decisions and arguments and the use of economic evidence before courts. The ICN recently began a dialogue on how best to interest and involve economists in the work of the ICN. Similarly, an “Academic Hubs Project” seeks to foster cooperation between academics and the ICN by mapping out academic hubs specialized in competition law and policy.

GUIDE TO 2013-2014 WORK: ENFORCEMENT FUNDAMENTALS AND ICN GUIDANCE

Work for and by ICN members and non-governmental advisor partners remains the core of ICN’s mission, and that is reflected in the anticipated slate of work product for 2013-2014 that corresponds to Second Decade goals of experience sharing, convergence, and cooperation.

Fundamentals

Responding to the needs of member agencies, a significant amount of ICN work product addresses basic enforcement approaches and policy issues that agency face. This work examines routine investigative practices and skills for basic insights that can be improved, implemented, or adapted as desired. Topics and projects that the ICN will pursue in the coming year follow.

ICN’s Curriculum Project is an ongoing effort to develop a comprehensive curriculum of training materials to serve as an online educational center on competition law and practice for competition agency officials. Eleven training modules, consisting of video lectures and accompanying materials, have been produced on fundamental competition law topics such as the characteristics of competition policy, market definition, market power, leniency, and competitive effects – and more are in development. As more modules are created, the project is adapting its structure to pursue innovative formats and present a wider range of available content.

The Advocacy Working Group has ongoing projects to identify and articulate the benefits of competition to non-competition audiences and to examine how agencies interact with the constituent parts or stakeholders of a competition culture.

The Cartel Working Group plans a series of substantive discussions of the types of behavior and agreements among competitors that constitute cartel conduct worthy

of agency investigation and prosecution. The working group also plans to examine the principles and practical workings of cartel settlements in various jurisdictions.

The Unilateral Conduct Working Group is developing a practical guide to identifying and investigating loyalty rebates and discounts that may have anti-competitive effects.

The ICN's Investigative Process project is set to address competition agency confidentiality rules that are implicated during investigations and the roles that third parties play in investigations. The project provides a forum for members and non-governmental advisors to discuss how competition agencies conduct investigations, with a view to improving the effectiveness of agency processes and decision-making.

This year, the Merger Working Group will study the processes for international enforcement cooperation in merger investigations and its implications for agencies and parties.

As in past years, various ICN working groups are planning workshops to highlight their existing work and provide a forum for discussion of enforcement techniques and emerging policy issues. The Cartel and Unilateral Conduct Working Groups are planning workshops for autumn 2013.

Guidance

Inspired by more structured and strategic planning of future work within working groups, a sizable portion of the ICN's work occurs in multi-phase projects pursued in over two or three years. This phased approach allows the network to identify and compare agency approaches to an issue, to discuss and debate these approaches, and as appropriate, to develop consensus principles as ICN guidance.

In past years, the ICN has produced notable Recommended Practices on merger notification procedures, merger analysis, and the assessment of dominance. Indeed, the ICN's Vision for its Second Decade recounts that members view ICN recommendations as the ICN's main achievements. The 2013-2016 ICN work plans identify several topics under consideration for the development of guidance, and may serve as preview of future ICN recommendations.

The Competition Assessment Project is developing guidance on the analytical criteria that government agencies can use to analyze draft and existing legislation for impact on competition. On the topic of international enforcement cooperation,

the Merger and Cartel Working Groups will both examine common aspects of enforcement cooperation in their respective areas, with an eye towards effective practices that might serve as guidance; for example, common approaches to waivers in the leniency context. The investigative process project seeks to identify common practices related to the investigative tools and procedures used by competition agencies. Similarly, the work of the Unilateral Conduct Working Group provides insight into common issues involved in analyzing unilateral conduct and promotes convergence around sound enforcement approaches. The efforts related to investigative process and unilateral conduct are producing results that may serve as the basis for the consideration of guidance.

THE YEAR AHEAD

ICN remains an active network supported by the participation of scores of member agencies and hundreds of interested non-governmental advisors from around the world. For 2013-2014, there are over fifteen distinct work streams – often with several facets – plus planned workshops and periodic teleseminars and webinars on a variety of topics.

The 2011 Second Decade Vision statement established the framework for the ICN's current agenda. Steering Group Chair Pérez Motta's priorities have extended the ICN's vision to new audiences and its working groups continue to undertake ambitious projects responsive to the needs of its member agencies. The development of ICN's voice as an advocate for competition principles and the renewed attention to pursuing ICN consensus recommendations that give content to that voice are noteworthy efforts worth watching over the course of the coming year.