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## **ICN Work Products Catalogue – Advocacy and Implementation Network (AIN)**

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**INTERNATIONAL COMPETITION NETWORK**

# **ICN Work Products Catalogue**

**Advocacy and Implementation Network (AIN)**

**November 2011**

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# Introduction



Since the establishment of the International Competition Network (ICN) in 2001, the ICN has grown significantly from an organization of 16 competition agencies to one of 120 agencies. At the same time, it has produced a tremendous body of work including recommended practices, manuals, reports and templates in addition to events like teleseminars, webinars, workshops, and of course, annual conferences.

However, producing work products are not the goal in itself, but the midpoint in achieving the goal of improving and advocating for sound competition policy and its enforcement across the world. The value of its work products will further be enhanced through their use by member and non-member agencies. Creating a virtuous cycle of creation, implementation and evaluation of the ICN work products will be crucial for the continuous development and improvement of the ICN activity.

In September 2010, the Vice Chair for Advocacy and Implementation created the ICN Work Products Catalogue that lists work products by all Working Groups and by past projects to promote and advocate the use of ICN work products by competition authorities throughout the world. The catalogue includes the website links to these work products with brief introductions to their contents in an easy to view format. The catalogue aimed to help increased accessibility of the ICN products.

In the 2011 Annual Conference, “the ICN’s Vision for its Second Decade” was published. It sets the following four high-level goals: (1) encouraging the dissemination of competition experience and best practice; (2) formulating proposals for procedural and substantive convergence; (3) supporting competition advocacy; (4) facilitating effective international cooperation.

To further contribute to the convergence goal of the ICN through promoting and advocating for the use of ICN work products by competition authorities throughout the world, the Japan Fair Trade Commission in cooperation with the Advocacy and Implementation Network (AIN) revised the catalogue to add ICN work products created since its first publication. Through the distribution of the catalogue, we hope that the agencies acknowledge the usefulness of ICN work products, which will lead to achieve further convergence in the ICN’s Second Decade.

Best regards,

Kazuhiko Takeshima  
Chairman of the Japan Fair Trade Commission

November 2011

# Advocacy Working Group

## Work products created since 2008



### Market Studies Project

- [Market Studies Project Report \(2009\)](#)

This report analyzes 37 ICN members' market studies experience and practices relating to the definition and purpose, powers to conduct studies, their selection, processes, and outcomes, and measurement of the studies' impact.

- [Market Studies Information Store \(2010\)](#)

The Market Studies Information Store provides an online reference source of market studies conducted within the last five years by 34 participating ICN member agencies. The aim of the Market Studies Information Store is to help with: identifying issues for study, the cross-fertilization of ideas about market issues, identifying approaches to particular market problems and identifying ICN members who may be able to assist/advise further on their experience of conducting market studies in particular sectors.

- [Draft Market Studies Good Practice Handbook \(2010\)](#)

The draft handbook identifies good practices in conducting market studies that member agencies have found to be useful. Market Study topics covered: project management, stakeholder engagement, selection, information collection, outcomes, and evaluation. The draft handbook will be road tested during 2010-2011.

- [Report on the Road-Testing of the Draft Market Studies Good Practice Handbook \(2011\)](#)

The road-testing of the Market Studies Good Practice Handbook which was developed for 2010 was conducted with the help of two instruments. A questionnaire was sent to all ICN member agencies requesting them to rank the good practices identified in this handbook. Also, more detailed road-testing was conducted by individual members of the Advocacy Working Group. The Advocacy Working Group also road-tested the Market Studies Information Store to find out about usefulness and usage levels. A report of these road-testing exercises has been produced for conference.

# Advocacy Working Group

## Work products created since 2008



### Competition Advocacy Experience Sharing Project

- [Report on Assessment of ICN Members' Requirements and Recommendations on Further ICN Work on Competition Advocacy \(2009\)](#)

The Advocacy Working Group's Review & Update Project, based on a survey of 32 ICN members, prepared a report to: (1) identify ICN members' experiences with competition advocacy; (2) assess the extent to which existing ICN advocacy work product is used by members; and (3) make recommendations for additional work in the area.
- [Report and Summary of the presentations of the 2009-2010 ICN Competition Advocacy Teleseminars \(2010\)](#)

The report includes summaries of 5 teleseminar topics: Building Relationships between Competition Authorities and the Private Bar; Government Involvement in Markets; Advocacy: the Role of International Organizations; Competition in the Financial Markets: The Mexican Experience; Evaluation of Competition Authority Advocacy Efforts by Antitrust Authorities.
- [Toolkit for Effective Advocacy \(restored and updated in 2011\)](#)

The Advocacy Working Group restores and updates Competition Advocacy Toolkit which was developed in 2003, in order to facilitate the use of it. The AWG prepared a new part 1 focusing on the advocacy process and tools during 2010-2011. Part 1 is organized into 4 components: (1) identification of relevant competition advocacy issues; (2) engagement of key stakeholders; (3) implementation and monitoring of advocacy activity; (4) evaluating effectiveness of advocacy interventions.

# Advocacy Working Group

## Work products created 2002-2003



- **Advocacy and Competition Policy (2002)**

The report presents a summary of the answers to the questionnaire among ICN members about their advocacy activities. It comprises four sections: 1) an introduction; 2) section setting out a conceptual framework for competition advocacy; 3) section presenting the results of the questionnaire and 4) conclusions.

- **Report on Advocacy Case Studies: Telecommunications, Energy, Airlines, and the Legal Profession (2003)**

This report includes submissions from 11 members describing advocacy efforts in four regulated sectors. Each chapter has an introductory section with an overview of the results of the country contributions and indicating the main sector-specific problems related with competition advocacy. After the introductory sections the full texts of the country contributions are included.

- **Report on Advocacy Provisions (2003)**

This report contains a collection of sample advocacy provisions from the laws and policies of 30 member jurisdictions.

- **Toolkit for Effective Advocacy (2003)**

An online toolkit identifies practical techniques on how to promote competition and enhance competition advocacy capabilities.

\*Note: The Advocacy Working Group's original mandate was to undertake projects with a view to recommending best practices and to provide information to members in support of their advocacy functions. This work took place from 2001 through 2003. For additional advocacy-related projects during 2004-2008, see the work products list of the Competition Policy Implementation Working Group. In 2008, the Advocacy Working Group was reconvened and a revised work plan reflecting developments in the field, including the increased use of market studies, was approved by the Steering Group.

# Agency Effectiveness WG

## Competition Agency Practice Manual



- **Chapter 1: Strategic Planning and Prioritisation (SPP) (2010)**

The chapter addresses, inter alia, the objectives of strategic plans, the prerequisites of and constraints related to effective strategic planning, internal processes and external consultations, communication on strategic planning, and the use of prioritisation criteria and the process of prioritisation.

- **Chapter 2: Effective Project Delivery (EPD) (2011)**

This draft chapter focuses on effective project delivery and consists of 4 sections: (1) introduction; (2) overview of EPD concepts; (3) EPD techniques in operation; (4) EPD case example.

- **Chapter 3: Effective Knowledge Management (EKM) (2011)**

This “summary” document gives analysis in the form of charts to the selected questionnaires with the purpose of gathering information from the ICN members regarding their understanding and implementation of knowledge management. This chapter on EKM is planned to be finalized for the ICN Annual Conference in 2012.

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### ***Forthcoming...***

- **Chapter 4: Ex-post evaluation**
- **Chapter 5: Human resource management**
- **Chapter 6: Communication and accountability**

\* Note: Competition Policy Implementation (CPI) Working Group was reorganized into the Agency Effectiveness Working Group in 2009. The mission of the Agency Effectiveness Working Group is to identify key elements that contribute to successful capacity building and competition policy implementation in developing and transition economies. The Working Group will examine a variety of factors determining the ability of competition agencies to achieve their objectives in an efficient and effective way.



# Agency Effectiveness WG

## Work products created in former CPI WG



- [Report on Agency Effectiveness \(2008\)](#)

This report is based on a survey examining operational and organizational characteristics of competition agencies that may be important for a successful competition policy implementation. The Report addresses defining objectives and priorities, agency resource allocation and decisions' effectiveness.
- [Report on the Agency Effectiveness Project, Second Phase: Effectiveness of Decisions \(2009\)](#)

The report examines authorities' institutional powers to obtain compliance with decisions imposing remedies and sanctions as well as long term effects of compliance. In addition, the report addresses ways agencies engage in self-assessment to review the effectiveness of their decisions.
- [Report on the 2009 Seminar on Competition Agency Effectiveness \(2009\)](#)

This report introduces the discussions that took place in the January 2009 seminar in Brussels devoted to competition agency effectiveness, highlighting the main points that were made and raising ideas for future ICN work in this area. The report is structured along the four main themes discussed during the workshop: (1) strategic planning and prioritization, (2) project delivery, (3) evaluation and accountability, and (4) communication.

### **ICN Seminar on Competition Agency Effectiveness**

Before the launch of the Agency Effectiveness Working Group, in January 2009, ICN hosted a high-level seminar in Brussels for competition agency heads and senior officials to hold frank discussions about strategy, project management, evaluation, and accountability and communication. At this seminar many ideas were exchanged and the merits of different organisational and planning tools used by the respective agencies were discussed.

### **ICN Agency Effectiveness Workshop**

A follow-up workshop for agency heads was held in London, in July 2010. This workshop explored in more depth the issues of culture, people and knowledge management, and leadership and succession. These issues are central to the development of talent and capability within competition authorities and to the sustained effectiveness of competition authorities.

# Cartel Working Group

## Anti-Cartel Enforcement Manual



- **[Chapter 1: Searches, Raids and Inspections \(2009\)](#)**

This chapter provides an overview of the search and seizure procedures of various ICN member agencies, and identifies some of the key practices that are common among competition agencies around the world. The chapter is divided into five parts: (1) Pre-search intelligence and preparation; (2) Search teams; (3) Entry; (4) Search in progress and (5) Post search.

- **[Chapter 2: Drafting and Implementing an Effective Leniency Program \(2009\)](#)**

The purpose of this document is to draw together key practices concerning the drafting and implementation of an effective leniency policy.

- **[Chapter 3: Digital Evidence Gathering \(2010\)](#)**

The aim of the chapter is to better understand the range of ICN member approaches to digital evidence gathering and to identify good practices and procedures for the use of digital evidence in the context of the investigation and adjudication or prosecution of cartels. The chapter is divided into three sections: (1) Resources for digital evidence gathering; (2) Elements of digital evidence gathering and (3) Legal issues concerning digital evidence gathering.

- **[Chapter 4: Cartel Case Initiation \(2010\)](#)**

This chapter draws together selected key practices used in the initiation of a cartel investigation, and identifies some strategies that may be applied in the detection stage and throughout the early development of a case. It will also highlight some of the more established practices useful to cartel case initiation. The chapter is divided into three parts: (1) Methods of detecting cartels; (2) Pre-investigatory phase of cartel allegations and (3) Decision to initiate a full scale investigation.

- **[Chapter 5: Investigative Strategy \(2008\)](#)**

This chapter is intended to be a reference tool for agencies that enables them to evaluate their own approaches and benchmark their experiences against those of their counterparts around the world. The chapter is divided into two parts: (1) Establishing the investigation strategy and (2) Evaluation of the investigation strategy.

- **[Chapter 6: Interviewing Techniques \(2008\)](#)**

The aim of the chapter is to be as inclusive as possible and provide information to ICN members for their own consideration and assessment in light of the legal principles that apply to them. The chapter is divided into three parts: (1) Pre-interview preparation; (2) Conducting the interview and (3) Post-interview evaluation and follow-up.

# Cartel Working Group

## Anti-Cartel Enforcement Manual



- **Chapter 7: Case Resolution (2011)**

This chapter is intended to give an overview of possible case resolution methods, ideas for new cases resolution methods, and some factors that agencies might consider when deciding how to resolve a specific cases.

- **Compilation of Good Practices from the Anti-Cartel Enforcement Manual (2011)**

This document summarizes the good practices identified in each chapter of the Anti-Cartel Enforcement Manual. This compilation of good practices reflects key practices of the competition agencies which formed the basis for the Chapters of the Anti-Cartel Enforcement Manual.

# Cartel Working Group

## Substantive Reports and other work products



- **[Report on Building Blocks for Effective Anti-Cartel Regimes \(2005\)](#)**

The report draws upon experience from member jurisdictions on three topics: 1) defining hard core cartel conduct, 2) the organizational arrangements that agencies can make to be well set up to prosecute cartels, and 3) effective penalties applied to cartel conduct.

- **[Trends and Developments in Cartel Enforcement \(2010\)](#)**

This presentation includes the results of a 2009-2010 survey of Cartel Working Group members on the trends and developments in cartel enforcement over the previous decade. Responses are received from members in 46 Jurisdictions. It identifies changes in competition laws; creation of new investigative powers; institutional changes in anti-cartel enforcement; perceived importance of cartel enforcement; and use of Anti-Cartel Enforcement Manual.

- **[Anti-Cartel Enforcement Templates \(revised as needed\)](#)**

These templates provide public access to information about ICN members' anti-cartel enforcement regimes. The Template also canvases a range of topics, including the process for filing a complaint, decision-making, sanctioning cartel conduct, investigative tools, leniency, rights of defendants and confidentiality.

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### ICN Cartel Workshop

In the cartel area, the main focus of the ICN so far has been on assisting agencies in honing their operational and practical skills. In this vein, the ICN's Cartel Working Group organizes the ICN Cartel Workshops, a continuation of the successful series of agency-led International Cartel Conferences that began in 1999. This annual event provides a venue for agencies' anti-cartel enforcers to share experiences and best practices.

#### History

2011 Bruges(Belgium)	2007 San Salvador (El Salvador)
2010 Yokohama (Japan)	2006 The Hague (Netherlands)
2009 Cairo (Egypt)	2005 Seoul (Korea)
2008 Lisbon (Portugal)	2004 Sydney (Australia)

# Cartel Working Group

## Substantive Reports and other work products



- [Report on Obstruction of Justice in Cartel Investigations \(2006\)](#)

This report presents an overview of the practice of prosecuting obstruction in anti-cartel investigations. It makes the case for the importance of prosecuting obstruction and presents practical ideas for members to prevent obstruction.
- [Cooperation Between Competition Agencies in Cartel Investigations \(2007\)](#)

The report on cooperation in cartel investigations identifies the types of cooperation possible in such investigations, based upon the results of a questionnaire sent to ICN members. The report also identifies possible ways to improve cooperation.
- [Interaction of Public and Private Enforcement in Cartel Cases \(2007\)](#)

The report gives an overview of the existing legal systems that provide for the private enforcement of competition rules and the basic role of private enforcement in such jurisdictions, and explores the interaction between public and private enforcement in cartel cases in more detail.
- [Cartel Settlements \(2008\)](#)

This report covers the key principles and practical benefits of cartel settlements, with an overview of practices in various member jurisdictions. It provides valuable insights into the types of cartel settlement systems currently in place and the issues faced by anti-cartel enforcers in designing and implementing cartel settlement systems.
- [Setting of Fines for Cartels in ICN Jurisdictions \(2008\)](#)

This report presents an overview of practices in various member jurisdictions with respect to cartel fines. The present report covers the fine-setting practice of 22 jurisdictions. It identifies the role of fines; key factors for the determination of fines; and recent evolution.

# Cartel Working Group

## Substantive Reports and other work products



- [Compilation of Cartel Awareness and Outreach \(2011\)](#)

The Cartel Working Group has collected examples of public messages and materials used by competition agencies in their own cartel-related outreach efforts in order to promote cartel awareness. The purpose of this collection is to share member experiences and ideas in raising awareness of the prevention, reporting and prosecution of anti-cartel conduct. The compilation is the world's largest collection of cartel awareness and outreach materials. The compilation contains materials from 65 jurisdictions in over 20 languages. The participation from 65 jurisdictions makes this the most widely representative working group project in the ICN's history.

\* Note: The mandate of the Cartel Working Group is to address the challenges of anti-cartel enforcement, both domestically and internationally, across the entire range of ICN members and amongst agencies with differing levels of experience. At the heart of antitrust enforcement is the battle against hardcore cartels directed at price fixing, bid rigging, market sharing and market allocations.

# Merger Working Group

## Recommended Practices



- **[Guiding Principles for Merger Notification & Review Procedure \(2002\)](#)**

The Notification & Procedures (N&P) subgroup developed eight Guiding Principles and thirteen Recommended Practices for merger notification and review procedures, which the ICN adopted at its annual conferences. The Guiding Principles address: (1) Sovereignty; (2) Transparency; (3) Non-discrimination on the basis of nationality; (4) Procedural fairness; (5) Efficient, timely, and effective review; (6) Coordination; (7) Convergence and (8) Protection of confidential information.

- **[Recommended Practices for Merger Notification & Review Procedures \(2002-2005\)](#)**

The Practices address: (1) nexus between the merger's effects and the reviewing jurisdiction; (2) clear and objective notification thresholds; (3) timing of merger notification; (4) merger review periods; (5) requirements for initial notification; (6) conduct of merger investigations; (7) procedural fairness; (8) transparency; (9) confidentiality; (10) interagency coordination; (11) remedies; (12) competition agency powers; and (13) review of merger control provisions.

- **[Recommended Practices For Merger Analysis \(2008-2010\)](#)**

The Merger Working Group has developed recommended practices for merger analysis which were adopted by the ICN at its annual conferences. The Practices address (1) the Legal Framework for Competition Merger Analysis; (2) Market Definition; (3) the Use of Market Shares: Thresholds & Presumptions; (4) Competitive Effects Analysis in Horizontal Merger Review: Overview; (5) Unilateral Effects; (6) Coordinated Effects; (7) Entry and Expansion; and (8) Failing Firm/Exiting Assets.

\* Note: The mission of the Merger Working Group is to promote the adoption of best practices in the design and operation of merger review regimes in order to: (i) enhance the effectiveness of each jurisdiction's merger review mechanisms; (ii) facilitate procedural and substantive convergence; and (iii) reduce the public and private time and cost of multijurisdictional merger reviews.

# Merger Working Group

## References for General Issues



- [Analytical Framework for Merger Control \(2002\)](#)

This discussion paper explores the framework within which mergers are assessed, including four exemplar papers from members.

- [Merger Notification and Procedures Template \(revised as needed\)](#)

To assist the Working Group in its efforts and to promote access to information on ICN members' merger review systems, the Merger Working Group has established links to merger-related materials on ICN members' websites. On these linked pages, members have posted materials that may include their current merger legislation, implementing rules and regulations, guidelines, and related materials. Members have also posted responses to a set of questions addressed to all member agencies (the "template") designed to highlight important features of their merger review systems, such as notification thresholds and review periods.

- [Report on Conclusions Resulting from 2010-11 Merger Working Group Comprehensive Assessment \(2011\)](#)

The comprehensive assessment includes, among other things, an examination of the use and impact of existing MWG work product and other activities. It also includes potential barriers to the use and implementation of MWG work product and ways in which MWG participation and performance might be improved. In addition, an important aspect of the assessment has involved obtaining input on future areas of work that may assist members in making the merger review process more effective.

### ICN Merger Workshop

The Merger Working Group has held seven workshops highlighting its notification & procedures, investigative techniques and merger analysis work.

#### History

2010 Rome (Italy)	2007 Dublin (Ireland)
2009 Taipei (Taiwan)	2006 Washington D.C. (US)
2008 Brno (Czech)	2004 Brussels (Belgium)
2007 Pretoria (South Africa)	2002 Washington D.C. (US)



# Merger Working Group

## References for Substantive Issues



- [Merger Guidelines Workbook \(2006\)](#)

The Workbook includes a checklist of topics that the authors of new or revised merger guidelines may wish to cover, with an explanation as to why those topics have value in merger assessment and suggestions as to how those topics might be assessed in practice.

- [Merger Remedies Review Report \(2005\)](#)

The Report provides practical guidance and outlines key principles and the range of tools in the use of merger remedies. The report is based on and illustrated by remedy practices in a variety of jurisdictions.

- [Handbook on Investigative Techniques for Merger Review \(2005\)](#)

The Handbook is designed to inform ICN members of the various tools and techniques used in merger review, to help members organize and use their tools more efficiently, and to provide for an effective process for the evaluation of evidence. The first chapter summarizes the findings of a survey of ICN members carried out in 2003, and reflects agency practice. The remaining chapters discuss topics such as how to plan a merger investigation, developing reliable evidence in merger cases, economic and econometric analyses, and the benefits of including economists in merger review, and a private sector perspective on merger review.

### ICN Merger Teleseminar

Since 2009, the Merger Working Group held four teleseminars. These calls attracted a large and diverse audience of members and NGAs. Speakers of each teleseminar from various jurisdictions contributed to the success of the teleseminar.

#### History

February 2010	Remedies in Merger Cases	<a href="#">Related Content</a>
April 2010	Implementation of the Recommended Practices for Merger Notifications and Review Procedures	<a href="#">Related Content</a>
January 2011	Merger Guidelines Developments in the UK and the U.S.	<a href="#">Presentation by the U.K.</a> <a href="#">Presentation by the U.S.</a>
June 2011	Non-Horizontal Effects in Merger Control: The Experience of the European Commission	<a href="#">Related Content</a>

# Merger Working Group

## References for Notification & Procedures (N&P)



- [Information Requirements for Merger Notifications \(2009\)](#)

This paper aims to assist agencies in comparing the approaches to pre-merger notification among some ICN members, and to help agencies planning to introduce or revise their notification forms or requirements in conformity with the ICN N&P Recommended Practice on Initial Information Requirements.
- [Setting Notification Thresholds for Merger Review \(2008\)](#)

Building on the Recommended Practice on Notification Thresholds, this paper explores the various approaches used to set notification thresholds and members' recent experience with threshold revisions. The objective of the project is to provide guidance to agencies that plan to adopt or revise thresholds, in order to promote thresholds that are clear, understandable and easily administrable.
- [Defining Merger Transactions for Purposes of Merger Review \(2007\)](#)

Building on the Transparency Recommended Practice, this paper explores the various approaches jurisdictions have adopted to define the types of transactions that are potentially subject to notification and/or review.
- [Implementation Handbook \(2006\)](#)

To facilitate further implementation of the Guiding Principles and Recommended Practices, the N&P subgroup created a handbook containing examples of legislative provisions, guides, statements and notices, and press releases that conform to selected Principles and Practices.

# Merger Working Group

## References for Notification & Procedures (N&P)



- [Model Confidentiality Waiver \(2005\)](#)

The N&P subgroup developed a model form that merging parties and competition agencies can use to facilitate waivers of confidentiality protection for information that parties submit in the merger review process. The subgroup prepared an accompanying paper discussing the rationale for, content of, and use of waivers, along with illustrative agency waiver forms.

- [Merger Notification Filing Fees \(2005\)](#)

This Report provides a comprehensive description of different types of filing fee systems and their rationales and also discusses issues for jurisdictions to consider in connection with the introduction and/or review of a filing fee system. It is intended to be of particular benefit to jurisdictions considering changes to their merger filing fee system or that may consider such changes in the future.

- [Implementation of the ICN Recommended Practices for Merger Notification and Review Procedures \(2005\)](#)

To facilitate implementation of the Guiding Principles and Recommended Practices, the N&P subgroup gathered data on members' experiences with implementation and prepared a report identifying challenges agencies face in implementing the Practices and how they addressed these challenges.

- [Report on the Costs and Burdens of Multijurisdictional Merger Review \(2004\)](#)

The N&P subgroup issued a report on the costs and burdens of multijurisdictional merger review based on available studies and anecdotal information. The Report discusses the general costs and burdens of multijurisdictional merger review; reviews unnecessary costs; and describes the subgroup's initiatives aimed at reducing or eliminating these costs.

# Unilateral Conduct WG

## Recommended Practices



- **[Recommended Practices for Dominance/Substantial Market Power Analysis \(2008\)](#)**  
Based on the Assessment of Dominance/Substantial Market Power Report, the Working Group developed recommended practices to assist agencies with the assessment of dominance/substantial market power. The Practices address: (1) general framework; (2) assessment criteria (market shares, market share safe harbors/indicators, entry analysis, further criteria); (3) dominance/substantial market power assessment in small and/or isolated economies; and (4) transparency.
- **[Recommended Practices on State Created Monopolies \(2008\)](#)**  
Based on the Assessment of Dominance/Substantial Market Power Report, the Working Group developed recommended practices to assist agencies with the application of unilateral conduct rules to state-created monopolies. The Practices address: (1) enforcement role of competition authority; (2) advocacy role of competition authorities during the liberalization and privatization process; and (3) effective competition advocacy instruments.

\* Note: The Unilateral Conduct Working Group's primary objectives are to examine the challenges involved in analyzing unilateral conduct of dominant firms and firms with substantial market power, facilitate greater understanding of the issues involved in analyzing unilateral conduct, and to promote greater convergence and sound enforcement of laws governing unilateral conduct.

### ICN Unilateral Conduct Workshop

Building on the success of the March 2009 workshop in Washington, D.C. on implementing the Recommended Practices and evaluating unilateral conduct, the Working Group organized its second global workshop in December 2010 in Brussels, Belgium. Over 150 delegates from 53 jurisdictions attended the workshop and a [webcast](#) of the plenary sessions was followed by agency officials and NGAs around the world.

### ICN Unilateral Conduct Webinar

Since 2009, the Working Group has organized six teleseminars on excessive pricing (November 2009), remedies in unilateral conduct cases (March 2010), unilateral conduct in the pharmaceutical industry (November 2010), differential pricing (March 2011), the use of price cost tests in unilateral conduct cases (July 2011) and abuse of dominance in the energy sector – the European Experience (November 2011). [Recordings](#) of the programs are posted on the ICN website.

# Unilateral Conduct WG

## References for Substantive Issues



- [Report on the Objectives of Unilateral Conduct Laws, Assessment of Dominance/Substantial Market Power, and State-Created Monopolies \(2007\)](#)  
This paper is based on the responses of agencies and non-governmental advisors (NGAs) covering 35 jurisdictions to a UCWG questionnaire. The report consists of three chapters, which address: 1) the Objectives of Unilateral Conduct Laws; 2) the Assessment of Dominance/Substantial Market Power; and 3) State-Created Monopolies.
- [Report on Single Branding/Exclusive Dealing \(2008\)](#)  
This paper is based on the responses of agencies and NGAs covering 33 jurisdictions to a UCWG questionnaire. The responses broadly identify the following elements used in the assessment of exclusive dealing under unilateral conduct rules: the existence of a dominant position or substantial market power; existence of an exclusive dealing arrangement according to the statutory provisions or case law; anti-competitive effects; and justifications and defenses.
- [Report on Predatory Pricing \(2008\)](#)  
This paper is based on the responses of agencies and NGAs covering 35 jurisdictions to a UCWG questionnaire. The responses broadly identify the following elements used in the assessment of predatory pricing under unilateral conduct rules: below-cost pricing, recoupment of losses; competitive effects; predatory intent; and justifications and defenses.
- [Report on Tying and Bundled Discounting \(2009\)](#)  
This paper is based on the responses of agencies and NGAs covering 35 jurisdictions to a UCWG questionnaire. The responses broadly identify the following elements used in the assessment of tying and bundled discounting under unilateral conduct rules: definition of tying and bundled discounting; anti-competitive effects; intent; and justifications and defenses.
- [Report on the Analysis of Loyalty Discounts and Rebates \(2009\)](#)  
This paper is based on the responses of agencies and NGAs covering 34 jurisdictions to a UCWG questionnaire. The responses broadly identify the following elements used in the assessment of loyalty discounts and rebates under unilateral conduct rules: the role of price-cost tests; the role of foreclosure analysis; presumptions and safe harbors; intent; and justifications and defenses.
- [Report on the Analysis of Refusal to Deal with a Rival \(2010\)](#)  
This paper is based on the responses of agencies and NGAs from 43 jurisdictions to a UCWG questionnaire. The report broadly addresses the analysis of actual and constructive refusals to deal; evaluating essential facilities; refusal to deal involving intellectual property, regulated industries, and state-created monopolies; margin squeeze; justifications and defenses; and remedies.

# Unilateral Conduct WG

## Unilateral Conduct Workbook



- [Chapter 3: Assessment of Dominance \(2011\)](#)

This chapter seeks to complement the two existing ICN work products on dominance by discussing how to apply the concept of “dominance” in practice, and particularly, how to use various types of evidence to determine whether a firm is “dominant” or not.

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### *Forthcoming...*

**Chapter on The Objectives and Principles of Unilateral Conduct Laws**

**Chapter on Price Predation**

# Annual Conference Special Project Reports



- **[Abuse of a Superior Bargaining Position \(2008\)](#)**  
For the 2008 Annual Conference, the Japan Fair Trade Commission led a 15 member task force to examine the treatment of an abuse of a superior bargaining position and prepared a summary report comparing legal frameworks and enforcement activities of such regulations in the jurisdictions that employ them.
- **[Competition Law in Small Economies \(2009\)](#)**  
For the 2009 Annual Conference, the Swiss Competition Commission, joined by the Israeli Antitrust Authority, examined competition law in small economies and drafted a report that describes responses to a questionnaire on the ways in which the size of an economy may affect the crafting, implementation or interpretation of competition law.
- **[Interface between Competition Policy and other Public Policies \(2010\)](#)**  
For the 2010 Annual Conference, the Turkish Competition Authority examined the interface between competition policy and other public policies and prepared a summary report based on the responses to a questionnaire completed by competition authorities from 33 jurisdictions.
- **[Report on Competition Enforcement and Consumer Welfare \(2011\)](#)**  
For the 2011 Annual Conference, the Netherlands Competition Authority examined the role of consumer welfare in competition enforcement across the global competition community and drafted a report based on the responses to a questionnaire completed by 57 competition authorities and 19 non-governmental advisors to competition authorities.

\* Note: The ICN Annual Conference was first held in Naples, Italy in 2002. Then, it has been held in Merida, Mexico (2003); Seoul, Korea (2004); Bonn, Germany (2005); Capetown, South Africa (2006); Moscow, Russia (2007); Kyoto, Japan (2008); Zurich, Switzerland (2009); Istanbul, Turkey (2010); and the Hague, the Netherlands (2011). The 11th Annual Conference will be held in April 2012 in Rio de Janeiro, Brazil.

## What is the ICN?

- [2010 Outreach Toolkit \(2010\)](#)

This material provides an introduction to the ICN and presents a general overview of the ICN and its Working groups.

- [2011 Statement of Achievement \(2011\)](#)

The Statement of Achievement provides an overview of the ICN's work achieved by the relevant working group and project groups during its first decade.

- [The ICN's Vision for its Second Decade \(2011\)](#)

The purpose of this document is to build on the results of the consultation, as well as subsequent discussion and debates within the ICN, by setting out an overarching vision for the ICN to guide its work over the next ten years.

- [NGA Toolkit \(2011\)](#)

The purpose of the NGA Toolkit is to provide guidance to both NGAs and member agencies with a view to enhance NGA engagement in the ICN. The toolkit covers 4 main issues: (1) the role of an NGA; (2) the benefits of NGAs; (3) how to become an NGA; (4) how to engage as NGAs.

## ICN Curriculum Project

The mission of the ICN Curriculum Project is to create a comprehensive curriculum of training materials to serve as a virtual university on competition law and practice for competition agency officials. Training modules, consisting of video lectures and accompanying materials, will provide an on-line interactive educational center for competition authorities from around the world.

## Current Modules

The first four modules were released at the 2011 Annual Conference: (1) [The Origins and Aims of Competition Policy](#); (2) [Major Characteristics of Competition Policy](#); (3) [Market Definition](#); (4) [Market Power](#).



# Capacity Building / Competition Policy Implementation WG (2003-2007)



- **Capacity Building and Technical Assistance: Building Credible Competition Authorities in Developing and Transition Economies (2003)**  
The report sets out examples of successful technical assistance and examines the circumstances in which different types of assistance are appropriate. It addresses how to build a case for competition law and policy in developing and transition economies; how to tackle the challenges that agencies in these countries have to confront; and how to enhance the effectiveness of technical assistance for capacity building.
- **Competition Advocacy in Regulated Sectors: Examples of Success (2004)**  
This report examines competition advocacy efforts in regulated sectors in member jurisdictions (with an emphasis on developing and transition economies) and provide several case studies and accompanying analyses, highlighting successful experiences and strategies.
- **Competition Advocacy in Regulated Sectors: Competition Advocacy Review – Case Studies on Regulated Sectors (2005)**  
This report helps identify the different ways that competition agencies interact with regulators and how they go about their competition advocacy work using specific case studies.
- **Consumer Outreach and Effect of Institutional Structure (2005)**  
This report presents case studies of successful and unsuccessful consumer outreach and provides a brief discussion of the advantages and disadvantages of linking competition and consumer protection enforcement functions in a single agency.
- **Assessing Technical Assistance: Examining the Foundations of Successful Assistance (2005)**  
This paper seeks to answer three questions: 1) how the technical assistance needs of a developing or transition country competition agency can best be assessed; 2) which models of technical assistance work best at the various stages of an agency's development; and 3) if the impact of technical assistance can be measured, and if so, how it should be done.

# Capacity Building / Competition Policy Implementation WG (2003-2007)



- **[Lessons Learned from the Experience of Young Competition Agencies \(2006\)](#)**  
This paper identifies the type of challenges young agencies experience and the measures young agencies have applied to address the challenges.
- **[Business Outreach by ICN members: Challenges and Case Studies \(2006\)](#)**  
This report presents a range of activities undertaken by ICN member agencies to reach out to and engage businesses and business representative organizations and explore some of the challenges they faced in delivering these activities.
- **[Report on Competition and the Judiciary \(2006\)](#)**  
Competition goals, instruments and benefits are not always understood by society. To address the challenges faced by courts and competition agencies alike, the WG undertook a study on the relationship between competition agencies and the judiciary.
- **[Competition and the Judiciary 2nd Phase Report - Case Studies \(2007\)](#)**  
This paper analyzes the role of the judiciary and its interaction with competition authorities in the implementation of competition policy. Seven jurisdictions provided case studies for the report.
- **[Findings Related to Technical Assistance for Newer Competition Agencies \(2007\)](#)**  
This document summarizes the findings of the working group's study of what constitutes effective technical assistance. The findings include lessons learned about the design of a technical assistance program, the mix of activities employed, the absorptive capacity of the agency, and the types of advisors used.
- **[An Assessment of Institutional Machinery: Methods Used in Competition \(2007\)](#)**  
This paper examines experience with the design of the institutional machinery of competition policy to derive insights about techniques for implementation.

\* Note: The Capacity Building / Competition Policy Implementation's work identified key elements that contribute to successful capacity building and competition policy implementation in developing transition economies.

# Antitrust Enforcement in Regulated Sectors WG (2004-2005)



- **[Limits and Constraints Facing Antitrust Authorities Intervening in Regulated Sectors \(2004\)](#)**

This report investigates the legal instruments developed by the different systems to ensure the prevalence of antitrust laws when in conflict with regulatory measures; and discusses when antitrust laws should prevail over conflicting norms.
- **[Enforcement Experience in Regulated Sectors \(2004\)](#)**

The report analysed the influence of sector specific regulations on the enforcement activity of competition authorities and examined different categories of relationships between competition law enforcement and sectoral regulations and to illustrate the specificities of competition law enforcement in each category by looking at specific cases.
- **[Interrelations Between Antitrust and Regulatory Authorities \(2004\)](#)**

The subgroup undertook studies about the division of labour between regulators and antitrust authorities with a focus on their degree of cooperation. The purpose of this interim report is to present the results of the subgroup's work.
- **[An Increasing Role for Competition in the Regulation of Banks \(2005\)](#)**

This paper reviews the recent history of banking regulation. It discusses the market failures banking is exposed to, their macroeconomic consequences, and common regulatory instruments introduced to address them. The report also examines the impact of recent liberalizations on market power in banking and competition issues.
- **[Best Practices: An Increasing Role for Competition in the Regulation of Banks \(2005\)](#)**

These best practices are aimed at achieving a more competitive and more efficient banking industry through more extensive liberalization, appropriately designed regulatory institutions, a rigorous application of antitrust rules and competition advocacy.
- **[Interrelations Between Antitrust and Regulatory Authorities \(2005\)](#)**

This report discusses the interrelation between antitrust and regulatory authorities, based on information supplied by a number of ICN member jurisdictions.

\* Note: The Antitrust Enforcement in Regulated Sectors WG described the limits and constraints facing antitrust authorities intervening in regulated sectors as well as the enforcement experience in regulated sectors, and examined the relations between antitrust authorities and sector regulators.

# Telecommunications Services Working Group (2005-2006)



- [Report on Telecommunication Services \(2006\)](#)

This report surveys competition policy in the telecommunications sector. Main areas of focus include technological advances, impediments to competition, and the interface between the competition authority and the sector-specific regulator. The report also contains examples of jurisprudence concerning anticompetitive activities in the telecommunications sector, as well as a selection of developing country case studies.

- [The Role for Competition in the Telecommunications Services Sector: Suggested Best Practices \(2006\)](#)

The suggested best practices are a set of valuable lessons learned with respect to promoting and maintaining competition in the telecommunications sector.

# Contact Information



If you wish to know the details of the Work Products created by each Working Group, please do not hesitate to contact the corresponding contact persons. Regarding the support program for learning from ICN work products, please contact the JFTC in cooperation with Advocacy & Implementation Network. We welcome any questions.

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