



International Competition Network

A STATEMENT OF MISSION AND ACHIEVEMENTS

UP UNTIL MAY-2005

INTRODUCTION

What is the ICN? Why was it created? What are its goals? How does it work? What has it achieved so far?

These are questions that are often asked about the ICN outside of the competition community. The purpose of this paper is to provide answers to these questions, and to clarify what this unique non-governmental international body, the ICN, is all about, focusing on the results achieved over the ICN's short four-year existence. As a results-oriented organisation, the ICN is pleased to be assessed on its concrete achievements, and recognizes the importance of publicising its accomplishments to a broader audience.

THE ICN : ITS GOALS AND WORKING METHODS

Competition agencies carry out two main functions: *enforcement* of the competition laws that apply in their jurisdiction, and *advocacy*, which involves promoting competition culture by influencing those outside the competition agency (in government and in the private sector) to implement pro-competitive policies and practices. The main goal of the ICN is quite simply to achieve better competition enforcement and better competition advocacy. Two main routes to this end are available: *convergence* in competition laws and practices, and *cooperation* between agencies. A further objective, which should also flow from better cooperation and convergence, is to facilitate the task of firms and their representatives in working with several competition agencies simultaneously, especially with regard to merger notifications. Antitrust enforcement at times may impose unnecessary costs and uncertainty on the business community and marketplace. The ICN works to promote sound and principled procedural and substantive standards that help minimize such burdens and leave pro-competitive, efficiency enhancing conduct free to flourish.

Two primary factors led to a realisation that a network such as the ICN was necessary. First, economic globalisation has resulted in an increasing number of investigations of mergers, cartels, and abuses of dominance that transgress jurisdictional boundaries. This involves two risks, that of sub-optimal enforcement, if agencies which each have a partial picture of the situation do not cooperate with each

other, and that of divergent outcomes, if different jurisdictions reach different conclusions about the same practice. Second, as more and more jurisdictions embrace a market economy the number of competition authorities around the globe is increasing. Over one hundred jurisdictions currently have a competition law, including many younger and smaller agencies, which greatly appreciate the opportunity to exchange of experience with longer-standing agencies. Although other international organisations include competition among their work, it was felt that there was a need for an organisation specialised in competition, and organised by and for competition agencies themselves.

Against this background, the ICN was launched on October 2001 by 14 founding jurisdictions. It is unique in many ways. It is the only international body devoted exclusively to competition issues. Members are not States or governments, but competition authorities, bodies entrusted with the enforcement of competition laws. Membership is voluntary and currently 90 such agencies are ICN members. There is no permanent secretariat, and no headquarters, which leads to the ICN often being described as a “virtual forum”. The ICN cooperates closely with and seeks input from existing international organizations (such as the OECD, WTO and UNCTAD) and is assisted by experts from outside competition authorities, for example from the legal and economic professions, consumer organisations, academia, etc., who take part in the work of the ICN by invitation.

The way we work in the ICN is also atypical. Our work takes place in project-oriented “working groups”, whose members conduct discussions primarily by e-mail and over the telephone. A “steering group”, whose members are senior officials of member agencies, oversees the work of the working groups. The steering group is currently chaired by Dr. Ulf Böge, President of Germany’s *Bundeskartellamt*. Each year, work plans are drawn up, and the resulting work products are presented in the annual ICN conference, the location of which varies from year to year. So far Annual Conferences have taken place in Naples, Italy (2002), Merida, Mexico (2003), and Seoul, Korea (2004). After the 2005 conference in Bonn (Germany), future conferences are scheduled for Cape Town, South Africa (2006), St. Petersburg, Russia (2007), Japan (2008) and Switzerland (2009). Apart from the annual conference, the ICN has also arranged ad hoc workshops to address practical enforcement and advocacy issues in an interactive manner.

It is important to stress that the ICN does not seek any “top down” harmonisation of competition law and policies throughout the world. It not only lacks the competence to do so, but more fundamentally takes the view that any attempt at wholesale harmonisation would do injustice to the great diversity of the economic, institutional, legal and cultural settings prevalent in the home jurisdictions of its member agencies. This diversity is an important source of inspiration when comparing various solutions to competition issues developed in one or the other jurisdiction. If and when such a comparison helps to identify the most convincing approach, it is up to each individual agency to consider whether its home jurisdiction might benefit from following such benchmarks.

A variety of different kinds of products and outputs are produced by the various ICN working groups, including recommended practices (so far only in the merger field), case-handling and enforcement manuals, reports, templates on legislation and rules in different jurisdictions, databases and toolkits (sometimes online), and workshops, not to mention the stimulating debates at the annual conference. But these work products are not achievements in themselves, but only intermediate steps towards achieving the goal of improved enforcement and advocacy. In order to become achievements, the work products must influence changes for the better in the real world. These could be for example: a change to an element of the competition law or procedures in an ICN member jurisdiction, influenced by an ICN recommended practice or other work product; better detection and sanctioning of restrictions of competition by a member agency, thanks to sharing the experiences of other agencies in the ICN; improved cooperation between agencies, thanks to sharing in ICN events; facilitation of the work of case-handlers, and of undertakings and their representatives, thanks to convergence in practices inspired by the ICN; better targeted and more effective capacity building measures, helped by the work the ICN has done in this field.

The rest of this report gives examples of some of the output and products of the ICN, and of some achievements of the types noted above, which are in whole or in part due to ICN work. Inevitably, since the ICN has chosen to tackle in detail the subject of mergers right from its inception, and some other aspects of anti-trust enforcement only later, the greatest number of concrete achievements are in the merger field. But examples exist in all areas of ICN work. As more and more work products are generated, and as the ICN starts to focus on implementation, this can only increase. The examples in this report are structured around the current and past ICN working groups: mergers, cartels, advocacy, regulated sectors, capacity building, and consumer outreach.

THE CONTROL OF MULTI-JURISDICTIONAL MERGERS

The Mission of the Mergers Working Group

The overall purpose of the ICN's Merger Working Group is to promote movement toward best practices in the design and operation of merger review systems. This has involved a comprehensive dialogue on the general approach that should be taken with regard to the substantive assessment of the possible competition concerns that mergers and acquisitions may involve, as well as on the practical means that should best be employed to carry out this assessment. At the same time, the Working Group has sought to define the main features that an optimal merger control system should possess. This dialogue has resulted in a number of concrete achievements emerging from the Working Group, as detailed below.

The Notification and Procedures Subgroup

The most important project undertaken by the Notification and Procedures subgroup to date consists in the development of a set of **Guiding Principles** and

Recommended Practices for merger notification and review procedures. The ambition is basically three-fold: to enhance each jurisdiction's effectiveness in carrying out its merger control task; to reduce the public and private burden of multi-jurisdictional merger control; and to facilitate convergence of approach.

The first annual ICN conference adopted Guiding Principles around which a merger regime should be built. These principles relate to:

- *Sovereignty.*
- *Transparency.*
- *Non-discrimination on the basis of nationality.*
- *Procedural fairness.*
- *Efficient, timely, and effective review.*
- *Coordination.*
- *Convergence.*
- *Protection of confidential information.*

At the 2nd and 3rd annual ICN conferences held in Merida and Seoul respectively, a comprehensive set of best practice recommendations ("Recommended Practices" or "RPs") have been adopted. It is expected that these will be complemented by a further two RPs at the 4th annual conference to be held in Bonn. The RPs articulate a detailed ICN consensus on sound merger processes that agencies can use as a benchmark for measuring the quality of their own practices. To date the (eleven) Recommended Practices cover the following areas:

- 1) Nexus between the transaction's effects and the reviewing jurisdiction;
- 2) Notification thresholds;
- 3) Timing of notification;
- 4) Review Periods (i.e., the duration of investigations);
- 5) Requirements for Initial Notification (i.e., what information notifying parties are required to provide to agencies "up front");
- 6) Conduct of merger investigations;
- 7) Procedural fairness;
- 8) Transparency (e.g., how an agency communicates its procedures and the reasons for its enforcement action/non-action);
- 9) Confidentiality;
- 10) Interagency co-operation.
- 11) Review of Merger Control Provisions (i.e., periodic review of merger control legislation, procedures etc);

The two further Recommended Practices to be adopted in Bonn address:

- 12) Remedies; and
- 13) Competition Agency Powers.

Adherence to these principles and practices is bringing more consistency to the merger review process and making the process more efficient and effective, while at the same time reducing delay and the investigative burden on merging firms. As of May 2005, several ICN member jurisdictions had made or proposed changes that would bring their merger regimes into closer conformity with the Recommended Practice, and many more ICN members were considering making changes to bring their laws into closer conformity. This pattern is expected to continue.

To take one example, some of the recent reforms of the EU's merger control system were influenced by the RPs. The EC Merger Regulation (the basic merger control law) now provides for the possibility to notify a merger on the basis of good faith intent (a letter of intent or a Memorandum of Understanding, for example) rather than only on the basis of a binding agreement as was previously the case. Moreover, the old deadline (7 days) for filing a notification following the conclusion of such a binding agreement has been abolished. The recent EU reforms also include revised filing forms, and in particular a new shortened version which can be used when a proposed transaction is unlikely to give rise to competition concerns; this form is considerably less burdensome than the usual one. These changes are all in clear conformity with the Recommended Practices.

Another illustration of how implementation of the ICN recommendations at the national level has improved the merger review process can be found in Brazil. The Brazilian agencies have used the Recommended Practices and other best practices as benchmarks for the comprehensive reform of their merger review regime. With respect to the ICN's recommendation on nexus to the reviewing jurisdiction, the Brazilian competition agency CADE had until January 2005 interpreted the merger notification threshold based on sales to refer to the worldwide turnover. However, earlier this year, CADE decided to reconsider its earlier interpretation and establish that the turnover threshold applies exclusively to sales/assets within Brazil, and thus to limit its jurisdiction to reviewing mergers that actually had impact in the country. Another major improvement in Brazil is the substantial reduction of the review period in the past two years. Similarly, Brazil instituted an informal "fast track" or "simplified procedure" review for mergers that do not raise substantive concerns. In 2003, use of this procedure reduced the average length of the review period by 86 days, from approximately 340 to 260 days (for all mergers). Currently, approximately 50% of all merger cases are reviewed pursuant to the simplified procedure. CADE also has an expedited procedure for issuing decisions in those cases, where these mergers precede all the others in the tribunal docket.

In Poland, the Office for Competition and Consumer Protection eliminated both the market share notification exemption and the seven-day filing deadline for

notification. These changes reflect increased conformity with the Recommended Practices on Notification Thresholds and Timing of Notification.

In keeping with the Recommended Practice on Transparency, the U.S. DOJ's Antitrust Division and the Federal Trade Commission have made significant efforts to increase transparency in merger review by issuing in appropriate cases public statements upon closing of investigations. In a substantial departure from past practice, the U.S. agencies now may offer a reasoned explanation for clearance decisions that set a precedent or represent a shift in enforcement policy or practice. For the Bonn conference, the Subgroup also is, among other things, studying merger filing fees and some practical measures it can recommend with a view to enhancing inter-agency cooperation, notably by providing a model "waiver of confidentiality" designed to facilitate the exchange of confidential information. The Subgroup will also continue to promote conformity with the Recommended Practices and gather data on agencies' experiences with the RPs.

Work instrumental to convergence also is conducted in two other merger subgroups, which focus on the analytical framework for mergers and investigative techniques.

The Analytical Framework Subgroup

The Analytical Framework Subgroup is focusing on the general analytical framework for merger review, including the substantive standards for analysing the competitive impact of mergers and the criteria for applying those standards.

To date, the Subgroup has produced 2 main "products":

A comprehensive "issues" paper on the general substantive standards used for analysing mergers (*i.e.*, competition standards, notably 'substantial lessening of competition' and 'creation or strengthening of a dominant position', as well as 'public interest'-type standards). This paper formed the basis of a panel discussion at the first annual ICN Conference in Naples.

A comprehensive study by outside experts on the merger control enforcement guidelines of a number of jurisdictions. Five papers were produced, on: (i) market definition, (ii) unilateral effects, (iii) coordinated effects, (iv) barriers to entry and expansion, and (v) efficiencies. This study was presented to the 2004 Seoul Conference, together with an overview paper drawing some conclusions from the studies and setting out a number of proposals for the Subgroup's future activities.

At Seoul, the following 2 projects were agreed upon:

- **Guidelines "checklist"**

The end product will be a concise reference document that can be used by jurisdictions as a "user friendly" practical manual which firstly discusses key issues in merger control guideline production. It will go on to look at

the application of a framework for assessment and how different aspects should be taken into consideration.

- **Remedies review project**

This project consists in a review of remedies in merger cases. The review aims to provide a practical guide to the choice, design and implementation of merger remedies. It seeks to achieve this by summarising key principles and practices, and then illustrating the major critical elements through case studies.

It is expected that these documents will enhance the ability of competition agencies to focus their enforcement activities on intervening in relation to mergers likely to give rise to real, significant competition concerns, and to be in a position to identify the remedial measures that are most likely to prove effective in redressing any such concerns.

The Investigative Techniques Subgroup

The work of the Investigative Techniques Subgroup focuses on the investigation process and the investigation tools to be applied in merger control. It complements the other two subgroups with its emphasis on the practical elements of a merger procedure. The subgroup's achievements are twofold.

First, it developed a **Handbook on Investigative Techniques for Merger Review**. In several chapters, this Handbook provides an overview of the investigation tools available and addresses the core issues in the investigative process: planning the investigation, developing reliable evidence, and the role of economists and economic evidence. It also includes a private sector perspective on tools and techniques used in merger investigation.

This Handbook is designed to help young competition authorities and legislators in the process of introducing merger control, as well as helping mature enforcers to shape their investigation tools and practice on the basis of international best practice. Its format makes it a suitable *vademecum*, available for immediate use by all agency staff directly involved in the investigation of merger cases. This is illustrated by the fact that the Handbook has directly inspired internal staff instructions for the investigation of mergers in several agencies.

The Australian Competition & Consumer Commission (ACCC) has achieved improved results through the application of the principles and guidance in the Handbook. One example involved a proposed merger between two of the three major integrated cement companies in Australia. Faced with a well-presented case by the merging parties, the ACCC's staff used the practical techniques in the Handbook. In planning the investigation, the ACCC developed a full case plan based on the suggested criteria. The ACCC also considered the suggested actions provided in the chapter on developing reliable evidence from merging parties and from market participants. The market evidence was then placed in the context of the

expert economic evidence, following the advice provided in the manual. The ACCC considers that this case highlights the effectiveness of the techniques identified and discussed in the manual, and that it provides a strong endorsement of the benefits of applying the investigative techniques in a focused manner along the lines of those developed in the ICN manual.

Second, the subgroup organised two workshops on investigation techniques. These workshops were targeted at working level staff directly involved in merger investigations. Both workshops were based on a hypothetical case to illustrate the issues discussed in real world examples. The first workshop in Washington in 2002 discussed and prepared the topics developed in the Handbook. The second workshop in Brussels in 2004 was run as a case study event. Participants from jurisdictions around the world as well as private competition law practitioners worked in small groups in a highly interactive and hands-on manner through a merger case and discussed all issues relevant in a merger investigation. The innovative concept of such a practical approach at an international event proved highly successful in soliciting active participation and focusing on issues relevant to daily enforcement practice.

The impact of this workshop went well beyond the event itself and its direct participants. Several agencies such as that of Israel and the European Commission used the workshop material for training their own staff, and thus contributed to the adoption of international best practices in merger investigations. As members continue to compare, identify, and promote better merger investigative practices across jurisdictions, the benefits of more effective and efficient merger review will be realized.

THE FIGHT AGAINST CARTELS

Virtually all competition agencies around the world consider the fight against cartels as their foremost enforcement priority. The harmful effects of hard core cartels are well understood. Consumers benefit from competition through lower prices and better products and services. When competitors agree to forego competition for collusion, consumers lose these benefits. The competitive process works only when competitors set prices independently. Secret cartel agreements to fix prices, share markets, allocate customers or rig bids are a direct assault on the principles of competition and are universally recognized as the most egregious of all types of anticompetitive conduct.

However, the fight against cartels is a technically demanding task. First of all, cartelists are by definition secretive about their illicit behaviour, and therefore agencies have to undertake great efforts to detect concealed cartels. Secondly, agencies need extraordinary legal powers and practical skills to collect sufficient evidence to mount a viable case against sometimes uncooperative defendants. Thirdly, only in the cartel area do agencies have to operate sophisticated leniency programmes to destabilise such conspiracies. Fourthly, the investigation of international cartels tests the limits of agencies' jurisdictional reach. Last but not

least, the growing trend to criminalise cartel behaviour obliges many agencies to work to a particularly high standard of procedure and proof.

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 organises the **ICN Cartel Workshops**, a continuation of the successful series of agency-led International Cartel Conferences that began in 1999. The first workshop under ICN auspices took place in Sydney, Australia, in November 2004. This annual event (the 2005 ICN Cartel Workshop will be hosted in Seoul, Korea) provides a venue for agencies' leading anti-cartel enforcers to share experiences and best practices. The ICN Cartel Workshops also discuss ways of strengthening international cooperation and coordination in the fight against cartels.

In addition, in 2004 the ICN hosted a special **Leniency Workshop**. That event discussed how agencies can offer incentives to cartel members who come forward in return for full immunity or a reduction in fines. During the workshop, it was argued that effective leniency programs depend on the transparency of the incentives offered, and that leniency will become an effective tool to uncover cartels only when accompanied by a sufficiently deterring enforcement and, in particular, sanctioning policy. As a special feature of the ICN Leniency Workshop, a number of invited representatives from the private defence bar offered a demonstration simulating the legal and practical challenges associated with applying for leniency in several jurisdictions simultaneously. A summary of the workshop will be made available to agencies in a DVD. The conclusions of the Workshop on Leniency have proven influential in the shaping of many leniency programs which agencies are currently considering either to introduce or to review.

In the medium term, the ICN Cartel Working Group envisages to offer a set of "**building blocks for effective anti-cartel regimes**" that are intended to help agencies, especially those new to anti-cartel enforcement, in building their own anti-cartel strategy on a solid foundation. As a first step in this direction, the Cartel Working Group is preparing a first batch of three such building blocks for the Bonn conference, offering (i) a discussion of the appropriate scope of the term "hard core cartel"; (ii) a review of agencies' experiences with setting up dedicated cartel units, and (iii) an analysis of effective sanctioning systems. More such building blocks, *inter alia* on inter-agency cooperation, as well as the interaction of public and private enforcement, are envisaged.

In addition, the Cartel Working Group will in Bonn present the first two chapters of a new **Manual on Anti-Cartel Enforcement Techniques**. These two chapters are based on the experiences of the leading anti-cartel enforcement agencies, and deal with, respectively, the organisation of searches and raids to gather evidence, and with effective leniency programs. The main conclusions of these chapters will also be condensed in a collection of "**Good Practices**". These are merely illustrative and can thus not be relied upon as a benchmark when measuring agencies' level of compliance with the ICN's recommendations. More chapters, for example on IT forensics, are foreseen for the coming years.

Finally, the ICN Cartel Working Group has drawn up a **Template on Anti-Cartel Enforcement** which, once completed by member agencies, will give a unique, standardized overview over the main features of the vast majority of the anti-cartel enforcement regimes in existence today. It will provide agency representatives as well as companies and their advisors readily available access to otherwise scattered information, and will prove particularly useful when these parties are confronted with questions on anti-cartel enforcement and policy.

CAPACITY BUILDING

For the ICN as a network composed of both younger and mature agencies, it is self-evident that the support for capacity building has been a major issue since the inaugural Annual Conference in Naples. It is, however, important to clarify that the ICN is not itself a donor agency and does not have a budget for technical assistance.

This being said, the merger, cartel and outreach workshops that the ICN has organised in various parts of the world for agency staff are generally appreciated as first-class training events. They allow participants to get a handle on advanced issues of competition law and policy from a practical perspective. Organised by peers with long-standing experience in enforcement and advocacy, these workshops provide a unique opportunity for staff, especially from younger agencies, to acquaint themselves with concepts and tools employed elsewhere.

To deepen its understanding of the underlying capacity building issues, the ICN began with an intensive stock-taking exercise. Agencies' experiences are summarised in a report "Capacity Building and Technical Assistance", which the ICN presented at the Merida Annual Conference in 2003. The report sets out examples of successful types of technical assistance and examines the circumstances in which different types of assistance are more, or less, appropriate. Notably, it concludes with a useful "checklist of issues" that donor bodies and competition agencies should consider when designing new assistance projects.

As a follow-up to that work, an **ICN Workshop on Capacity Building**, entitled "Strengthening Co-operation with Donor Bodies", was held in Paris on 11 February 2004. The purpose of that event was to bring together the three communities that are vital to the success of any major technical assistance project in the competition field: the national and multinational donors of assistance, the competition agencies which are beneficiaries of assistance as well as the more mature agencies which give advice based on their expertise in competition policy. The main issue addressed by the workshop was to identify ways of improving access to as well as the quality and speed of assistance in this field. This event not only helped to raise awareness on competition policy among the community of donors, but also led to a number of operational conclusions. One of these is that potential recipients are often well-advised to channel their requests for assistance through the local representations of donors, rather than addressing themselves directly to donors' headquarters.

For the Bonn conference, the work on capacity building is focusing on identifying elements that make for a successful programme of technical assistance that will

enable a developing competition agency to more effectively implement competition policy. Despite the importance of capacity and the level of resources being committed to it by various multilateral and bilateral donors, there has been very little systematic work done to examine what comprises a successful technical assistance programme. To this end, the Subgroup conducted a rigorous, objective survey to better understand what has worked well and what has not for developing agencies at various levels of development. The survey elicited detailed and quantitative information from agencies that have received technical assistance to allow for a meaningful and objective comparison of the effectiveness of various forms of technical assistance. The survey results will be released in Bonn, and preliminary conclusions and suggestions for future research will be identified. The survey data also will be posted on the ICN website. It is hoped that this effort will make it easier for recipients to request, and for providers and donors of technical assistance to supply, assistance that will be of the greatest possible value to developing competition agencies. An online inventory of technical assistance projects and donor contact information has also been prepared as a tool to help donors coordinate with each other.

CONSUMER OUTREACH

A new area of ICN activity launched at the Seoul conference in 2004 is the interface between competition enforcement and consumer/citizen outreach. Outputs include, *inter alia*: a written report that draws together and analyses case studies of successful and unsuccessful consumer outreach, a video of various methods competition authorities have used to reach consumers including print, television and radio coverage of competition matters from around the world, and a brief exploration of the advantages and disadvantages of linking competition and consumer protection enforcement functions in a single agency. In February 2005 the first ICN event in this field was held in Paris, a workshop on consumer outreach. It brought together media professionals from the agencies as well as from the private sector to discuss how best to communicate the often technically complex competition message to a wider audience.

COMPETITION ADVOCACY

The **ICN Report on Advocacy**, presented at the ICN's inaugural Annual Conference in Naples, defined competition advocacy in the following terms:

Competition advocacy refers to those activities conducted by the competition authority related to the promotion of a competitive environment for economic activities by means of non-enforcement mechanisms, mainly through its relationships with other governmental entities and by increasing public awareness of the benefits of competition.

The ICN's work in the area of advocacy is intended to be particularly useful for competition agencies in developing or transition countries, where the competition and regulatory framework is relatively young. In 2003, an "**advocacy toolkit**" was produced, including elements on promotion mechanisms, educating decision

makers, media relations, plain language, internal communications, websites, and research and consultation. A number of agencies have reported that the toolkit has influenced and improved their outreach activities. Furthermore, an “**ICN advocacy information centre**” exists as an online resource for agencies. A detailed report on advocacy produced in 2002 by the then advocacy working group explores the issues involved in advocacy in great detail.

Competition advocacy is often particularly necessary in regulated sectors, where competition agencies co-exist with specialised regulators. For the 2004 annual conference in Seoul, a number of examples of successful **advocacy in regulated sectors** were presented. Other agencies used these case studies to enhance the quality and effectiveness of their own work. Further case studies are under preparation for Bonn. One example of the use of such examples is that a draft law in one jurisdiction included an obligation to publish the opinion of the competition agency in regulatory reforms; this was under the influence of the competition authority which in turn was inspired by examples from other jurisdictions via the ICN.

ANTITRUST ENFORCEMENT IN REGULATED SECTORS

Not only must competition agencies exercise advocacy in regulated sectors, they must also enforce the competition rules. In 2003, the ICN established a working group on antitrust enforcement in regulated sectors to explore the legal and practical aspects of the relations between antitrust agencies and sectoral regulators. In many jurisdictions, but in particular in developing countries, the relationship between antitrust enforcement and regulation, as well as the practical allocation of work between competition agencies and sectoral regulators, is still subject to debate. While regulation and antitrust enforcement can be complementary (each pursuing a distinct general interest objective), in some circumstances regulation may be a functional substitute for antitrust intervention, with regulation operating as specific *ex ante* indications to regulated companies, and antitrust often as *ex post* law enforcement based on the application of general legal provisions.

In particular, the working group’s 2004 report emphasized that antitrust enforcement (unless there is a specific exclusion), is possible when there is a restriction of competition which falls under the prohibition of the antitrust law and this restriction may be attributed to an autonomous decision of a firm, i.e. it is not mandated by regulation. However in some jurisdictions antitrust rules may also be applied when the anticompetitive regulation is not in the general interest and it delegates the power to implement its provisions to the regulated firms themselves. The working group, in its extensive 2004 report presented at the Annual Conference in Seoul, provided some examples taken from US and EU enforcement practice.

Finally, when establishing or re-evaluating a regulatory framework, it is crucial that the decision on the division of labour between regulators and antitrust authorities take into consideration efficiency considerations. Based on the experience of a number of ICN members, the 2004 report highlighted that, irrespective of the institutional set-up, cooperation and information sharing (both formal and informal) between antitrust authorities and regulators are very important, both for achieving a

more pro-competitive regulation and an antitrust enforcement practice more in line with sectoral specifics.

For the 2005 Bonn conference the work on antitrust enforcement in regulated sectors has focussed on two subjects: the antitrust and regulatory challenges faced by the ongoing competition-oriented reform in the banking industry, and a report on interrelation between antitrust and regulatory authorities, based on information supplied by a number of ICN member jurisdictions.

CONCLUSION

We in the ICN are very proud of what this network has achieved in less than four years of existence. The ICN's output, in terms of the various work products mentioned in this document, has been impressive. Established and less-established competition authorities have benefited in various ways from the ICN's work, and in a number of cases ICN recommendations have led to legislative change in jurisdictions of member agencies, as described above.

Now the ICN increasingly is focusing on "implementation", that is, checking the effectiveness, usefulness and influence of its work, with the aim of making sure that the network can best achieve its goal of better competition enforcement and advocacy through improved cooperation and convergence. In this way we hope to increase the impact and profile of the ICN, including outside the community of competition agencies. We intend to make the next four years of the ICN even more productive and effective than the first four years.