

International Competition Network update

Maria Coppola Tineo

US Federal Trade Commission, International Antitrust Division¹

October 2006 marks the fifth anniversary of the establishment of the International Competition Network (ICN), an international body devoted exclusively to competition policy and its enforcement. During the past five years, the ICN has established momentum that shows no signs of abating, as it continues to expand its membership, improve participation and broaden its agenda. The antitrust agencies of the Americas play a prominent role in the organisation, representing 20 of the ICN's 99 members. The hemisphere is particularly well-represented in the leadership of the ICN. The Canadian Competition Bureau and the Mexican Comisión Federal de Competencia (CFC) chaired the ICN from 2001 to 2004, and today more than half of the chairs of the working groups or subgroups are from the Americas.

During the past year, the ICN has delivered substantial, concrete results, many of which were presented at the annual conference hosted by the South African competition authorities in May 2006. The conference was attended by approximately 300 representatives from almost 70 antitrust agencies as well as competition experts from international organisations and the legal, business, consumer and academic communities. A quarter of the participants were from the Americas, including representatives from 14 agencies.² At the conference, ICN members adopted suggested best practices for antitrust enforcement in the telecommunications sector, shared the successes of the ICN's anti-cartel work, and highlighted the significant progress member jurisdictions have made in implementing ICN recommendations and work product. Among other notable implementation successes, the president of the CFC, Eduardo Perez Motta, emphasised the importance of ICN work product in formulating and building support for the new Mexican competition law, particularly in the areas of mergers and cartels.

At the conference, the ICN established a new Unilateral Conduct Working Group (UCWG). The ICN demonstrates significant maturity as it takes up the challenge of addressing this complex subject. The UCWG, co-chaired by the US Federal Trade Commission (FTC) and the German Federal Cartel Office, promises to deepen understanding of the foundations of existing policy and to promote consensus on sound analytical concepts and techniques in this area. The Working Group's subgroup on objectives, co-chaired by the CFC and the FTC, will begin its work by collecting materials and conducting a stock-taking exercise on the objectives of unilateral conduct laws and policies. The subgroup on assessing market power will similarly review existing materials and survey ICN members to determine, inter alia, how members define dominance and market power, the criteria used to assess it, and the link between the definition and assessment and the objectives of unilateral conduct laws. Both inquiries will result in reports that aim to assist in developing a consensus on objectives for unilateral conduct analysis and on criteria for assessing market power.

The annual conference also highlighted the recent work of four ICN working groups, which focus on mergers, cartels, antitrust enforcement in the telecommunications sector and competition policy implementation. The Merger Working Group (MWG),

chaired by the US Department of Justice (DoJ), presented a merger guidelines workbook, designed to be a practical guide for analysing the competition effects of mergers, and an Implementation Handbook. The handbook is intended to facilitate implementation of the Recommended Practices for Merger Notification and Review Procedures, containing examples of legislative text and rules that conform to these Practices. The MWG announced its work plan for the coming year, including a project that will explore prospects for substantive convergence and planning one or more workshops, possibly in Latin America.

This past year's anti-cartel work included an examination of issues raised by the obstruction of cartel investigations, an evaluation of electronic evidence-gathering techniques, development of tips for an effective leniency programme, and a review of the interaction of private and public enforcement. The Cartel Working Group also held an enforcers' workshop to share experiences and investigative techniques in November 2005, attended by enforcers from 35 jurisdictions. Another enforcer workshop will be held in November 2006 in The Hague. A number of agencies from the Americas will attend the workshop, including the subgroup chairs from DoJ, Brazil's SDE and the Canadian Competition Bureau. The working group is also preparing new chapters for the manual on case initiation and investigative strategy, and undertaking a project on cooperation in cartel investigations.

A working group devoted to examining antitrust enforcement in telecommunications, co-chaired by the Canadian Competition Bureau, presented a report that focused on the enforcement and advocacy role of antitrust authorities in the sector. The working group assessed such issues as the impact of technological advances on enforcement, impediments to competition, and the interaction of antitrust agencies and sector-specific regulators. The group also developed suggested best practices for competition agencies for effective enforcement and advocacy in the sector.

The Competition Policy Implementation (CPI) Working Group, co-chaired by Brazil's CADE, addressed ICN initiatives to assist newer antitrust agencies in developing economies. Panelists from Barbados, Brazil, Canada, Peru, the United States and elsewhere presented reports on assessing technical assistance programmes, business outreach programmes, lessons learned by new agencies, the relationship between antitrust authorities and the judiciary, and a pilot consultation and partnering programme among ICN members. The agencies of the Americas are well represented in the CPI Working Group leadership: the Fair Trading Commission of Barbados, Brazil's CADE and the Chile's Competition Tribunal are CPI subgroup chairs. Work for the coming year will include a continuation of the consultation and partnering programme, which makes the expertise of more experienced ICN members more readily available to less experienced agencies. Participants for this project from the Americas are the agencies in Barbados, Canada, Peru and the United States.

In five years, the ICN has had great success in building consensus and convergence towards sound competition principles across the global antitrust community. The antitrust agencies of the Americas continue to play an essential role in these efforts,

witnessed by achievements thus far as well as the active participation of the youngest agency in the hemisphere, the Superintendencia de Competencia of El Salvador. The energy of the past years suggests that similar accomplishments can be anticipated in the year to come.

Notes

- 1 The views expressed herein are those of the author and do not necessarily reflect the views of the Federal Trade Commission or any individual commissioner.
- 2 The attending agencies from the Americas included: Argentina's Comisión Nacional de Defensa de la Competencia, Fair Trading Commission of Barbados, Brazil's Administrative Council for Economic Defense and Secretariat of Economic Law in Brazil, Canadian Competition Bureau, Canadian Competition Tribunal, Tribunal de Defensa de la Libre Competencia of Chile, Chile's National Economic Prosecutor's Office, Superintendencia de Competencia of El Salvador, Jamaica Fair Trading Commission, Comisión Federal de Competencia of Mexico, Peru's Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual, US Department of Justice, and US Federal Trade Commission.