
The International Competition Network: A Virtual Reality

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Locating the country on a map is difficult, the language is foreign, but the questions and frustrations are familiar: how to decipher one or more poorly-formulated laws to determine if and when a merger should be notified in any of the nearly seventy jurisdictions with merger rules, how to avoid unnecessary delays to closing in jurisdictions in which the merger does not raise competitive concerns, *etc.* The oft-revered globalization of markets has brought with it business challenges, but also promising new solutions. In the antitrust world, one such solution is the International Competition Network (“ICN”), a nascent, virtual network of public and private competition practitioners dedicated to addressing these and other competition-related issues through project-oriented working groups.

As enthusiastic ICN participants since the network’s inception, we have written this article to share our interest in and excitement about the ICN with a wider audience—to provide readers with a better idea as to what the ICN does, how it does it, and where it’s headed. The article first provides general background on the ICN, describing the network’s formation, structure, and development,

and highlighting key projects and work product realized to date. The second section provides an insider’s perspective into the ICN, examining how one subgroup, the ICN’s Merger Notification and Procedures subgroup, has employed the ICN’s flexible, inclusive working style to achieve increased understanding and transparency of competition rules, and develop consensus and convergence toward internationally-agreed best practice. The article’s concluding section then looks to the future, examining current and prospective ICN projects and identifying institutional considerations to further the ICN’s continued success.

All Competition All the Time

Founded in October 2001, the ICN is a unique international body devoted exclusively to competition policy and its enforcement. The ICN was established as a virtual network of competition practitioners from around the globe focused on improving worldwide antitrust cooperation and promoting greater procedural and substantive convergence among antitrust authorities based on sound competition principles.¹ Competition agency members

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¹ The idea for the ICN was derived in large part from recommendations of the International Competition Policy Advisory Committee (ICPAC), a group formed in 1997 by then U.S. Attorney General Janet Reno and Assistant Attorney General for Antitrust Joel Klein. ICPAC, which was co-chaired by James F. Rill and Paula Stern, and counted Merit E. Janow as its Execu-

work hand-in-hand with non-governmental experts, including private practitioners, representatives of international organizations, industry and consumer associations and academics (“non-governmental advisors” or “NGAs”), in project-oriented working groups. The network’s virtual nature provides for flexible working arrangements, *e.g.*, informal working groups communicating via conference calls and e-mail discussion groups, in which participants discuss and complete projects without the delays experienced in more formal settings. The ICN does not have a permanent secretariat, and is supported by its participants, who contribute on a voluntary basis. Once a year, the ICN holds a conference, providing opportunities to discuss work product face-to-face, liaise with competition colleagues, and determine future work to be addressed over the coming year.

The ICN has aptly been described as being bound by a community of interests rather than by treaty.² The ICN does not exercise any

rule-making function. Its work product and practices are non-binding, and individual competition authorities and jurisdictions decide whether and how to implement the ICN’s work. Still, the ICN’s work has received considerable support and acceptance from governments and practitioners, alike. This is due in large part to the network’s structure, which promotes the interplay of public and private sector participation and expertise in the development of the ICN’s projects, resulting in a final work product that benefits from the input of all stakeholders. In this way, competition authorities and the private bar speak with one voice as they advocate adoption and implementation of ICN products. This overall approach has proved effective, as jurisdictions have implemented ICN principles and relied on ICN work product to a striking degree. Success is also demonstrated by increased interest in the ICN, which has seen its membership grow from 16 agencies representing 14 jurisdictions to 85 agencies representing 76 jurisdictions.

Virtual Network, Real Accomplishments

In less than three years, ICN members and NGAs have produced a series of practical recommendations, handbooks and other tools for improving the way in which competition agencies perform their duties. We provide, below, a brief overview of the work product completed to date in each of the major substantive areas addressed by the ICN—mergers, competition policy implementation (including advocacy and capacity building work), and antitrust enforcement in regulated sectors. We also discuss how this work has led to greater understanding and transparency and increased con-

tive Director, relied on the testimony and written contributions of participants from around the globe. Its final report, which was issued in February 2000, included an important recommendation for the creation of a "Global Competition Initiative," a venue in which government officials, private practitioners and non-governmental organizations would be able to consult on antitrust matters. See ICPAC Final Report, at Chapter 6, "Preparing for the Future," available at <http://www.usdoj.gov/atr/icpac/finalreport.htm>. Shortly thereafter, this recommendation was endorsed by both the EC’s Mario Monti and US officials, in particular Joel Klein, and gained further support following a meeting of over forty senior competition officials and practitioners convened by the International Bar Association in February 2001 to examine this proposal. Top antitrust officials from 14 jurisdictions launched the ICN in October 2001.

² Address by Konrad von Finckenstein, “Recent Developments in the International Competition Network,” at Competition Law Hands On In Antitrust Heaven: Current Global Issues and Dilemmas, New York February

6, 2003, available at <http://www.international-competitionnetwork.org/news/feb62003.html>.

vergence toward best practices, relying on the example of the Merger Notification and Procedures (“N&P”) subgroup, addressed in Section II.

The ICN’s Merger Working Group was established, as one of the ICN’s first working groups, to address the challenges of merger review in a multi-jurisdictional context. The Working Group focuses on three areas of merger review—notification and procedures, investigative techniques and the analytical framework—and has produced a range of materials and tutorials aimed at enhancing the effectiveness of merger review, while limiting the cost and burden of and the risk of substantive and procedural conflict in multi-jurisdictional merger review. Notable among the group’s accomplishments is the development and adoption of Guiding Principles and Recommended Practices for Merger Notification and Review, described more fully in the following section, which have prompted at least twelve countries to make major changes to their merger regimes.³ In addition, the Investigative Techniques subgroup has developed a handbook describing methods and tools

³ The Guiding Principles and Recommended Practices are available at <http://www.internationalcompetitionnetwork.org/notification.html>. See discussion, *infra*, for examples of implementation. Additional efforts aimed at compliance with these materials are under way. For example, on May 28, 2004, the Chairman of the Australian Competition and Consumer Commission stated that the agency planned an overhaul of their merger regime based on the ICN’s Recommended Practices and Guiding Principles, noting “[w]e acknowledge our own practices must measure up to the world’s best practice, as spelled out in the ICN recommendations. To that end we are in the process of developing additional guidelines that address the ICN recommendations.” See Graeme Samuel “Australian Competition Policy and World’s Best Practice,” available at <http://www.accc.gov.au/content/item.phtml?itemId=510720&nodeId=file40bbfadec8e1e&fn=AICD.pdf>.

for investigating mergers, including chapters on methods for gathering reliable evidence, effective planning of a merger investigation, the use of economists and the evaluation of economic evidence, and a chapter providing the private sector perspective on the use of such tools.⁴ This group also held its first two-day workshop for staff lawyers and economists, in which these tools and techniques, as well as their advantages and disadvantages, were discussed, and has planned a second workshop for later this year.⁵ Major accomplishments of the Merger Analytical Framework subgroup include the completion of a discussion paper on substantive tests employed by various merger regimes, and a comparative review of the treatment of market definition, unilateral effects, coordinated effects, barriers to entry and efficiencies in merger guidelines.⁶

Support for new antitrust agencies also is an important part of the ICN’s work, and the ICN has produced a wealth of materials aimed at increasing the institutional capacity and strengthening the performance of new agencies. In the area of advocacy, the ICN has prepared a report on competition advocacy, including a compendium of advocacy provisions from various competition laws, that has been translated into Spanish, French and German. This report and the competition advocacy toolkit, which identifies practical tech-

⁴ The investigative techniques for merger review materials are available at <http://www.internationalcompetitionnetwork.org/investigativetechniques.html>.

⁵ See <http://www.internationalcompetitionnetwork.org/news/nov21222002.html> for press release summarizing the 2002 workshop events. The next investigative techniques workshop is scheduled for October 19-20, 2004.

⁶ The analytical framework for merger review materials are available at <http://www.internationalcompetitionnetwork.org/analytical.html>.

niques for promoting competition and is maintained on the ICN's website, are widely used by new agencies and as part of technical assistance programs. In the area of technical assistance, the ICN recently held a workshop that brought together donors, providers and recipients of such assistance to identify specific methods for improving dialogue and cooperation in this area, and identified areas for further review and assessment. A separate project, which commenced last year, is dedicated to examining technical assistance projects to determine which models are most effective at the various stages of a competition agency's development, and whether the impact of an assistance program can be measured.

Last year the ICN expanded its project groups to include a working group on antitrust enforcement in regulated industries (the "AERS Working Group"). For the annual conference in April 2004 this group prepared an initial report examining the effects regulation can have on the application of antitrust law; antitrust enforcement experiences in regulated sectors; and, the interaction between antitrust authorities and regulatory agencies.⁷

More generally, the ICN helps to facilitate the work of its member agencies and that of interested practitioners in practical ways, *e.g.*, by making general and specific agency contact lists available on the ICN's website.⁸ Its an-

nual conferences, which represent unprecedented gatherings of antitrust officials, practitioners and academics, have served as important fora for members and advisors to liaise and exchange views with colleagues from around the world and to learn from one another's experiences.⁹

This brief overview of selected projects demonstrates that in a short time the ICN has made significant contributions to antitrust policy and enforcement. Yet, this overview provides a limited perspective as to the importance of the ICN to its participants and to the goals of international antitrust convergence. Focusing more specifically on the work of a single ICN subgroup, the N&P subgroup, in which both authors are active participants, provides a better understanding of how the ICN can promote and has achieved consensus and convergence.

Achieving Consensus and Convergence: Experiences from the N&P Subgroup

As its name implies, the N&P subgroup addresses procedural aspects of merger notifications and review, such as the scope of information requests and the timing of merger notification and review. Its mission includes improving the effectiveness of merger review

⁷ The report on antitrust enforcement in regulated sectors is available at http://www.internationalcompetitionnetwork.org/seoul/aers_intro_seoul.pdf, http://www.internationalcompetitionnetwork.org/seoul/aers_ch1_seoul.pdf, http://www.internationalcompetitionnetwork.org/seoul/aers_ch2_seoul.pdf, and http://www.internationalcompetitionnetwork.org/seoul/aers_ch3_seoul.pdf.

⁸ See *e.g.*, http://www.internationalcompetitionnetwork.org/icn_m

[embership_list.pdf](#) and http://www.internationalcompetitionnetwork.org/its_contacts.pdf.

⁹ The first annual conference, in Naples, Italy, brought together representatives of 59 agencies and 50 NGAs. At the second annual conference, 123 representatives from 52 agencies and 101 NGAs, observers, and special guests gathered in Merida, Mexico. In April 2004, representatives of 59 antitrust agencies from 49 jurisdictions, and 96 NGAs, observers, and special guests traveled to Seoul, Korea, to attend the third annual conference.

regimes, reducing unnecessary costs and burdens, and facilitating procedural convergence. As with all ICN activities, subgroup participation is voluntary. The group currently enjoys the active participation of thirteen competition agencies, one inter-governmental organization (OECD), and a dedicated group of non-governmental advisors representing major bar and business organizations, and comprising leading practitioners and academics from around the world. Like its non-governmental advisors, agency participants bring a vast array of views to bear based on their experience, coming from both new and established merger regimes, mandatory and voluntary notification systems, and suspensive and non-suspensive merger review systems.

The group's working style incorporates the ICN's emphasis on flexibility and collaboration between public and private sector participants. Together, via weekly conference calls, e-mails and occasional face-to-face meetings, the group has worked to develop, draft and review each subgroup project. NGA participation and input is crucial to the group's success.¹⁰ In keeping with the ICN's overall approach, the group has focused its efforts on result-oriented projects, notably: increasing accessibility of information on merger review systems worldwide via the group's weblink and template projects; developing Guiding Principles and Recommended Practices for merger notification and review; and promoting

¹⁰ One example of this is demonstrated by the process for developing Recommended Practices, whereby a core group of NGAs draft the Practices for discussion and comment by agency participants. Once progress has been made on the drafts in this manner, the draft Practices are re-circulated to the larger group of non-governmental advisors for comment, which then is fed into the agency discussion.

implementation of the group's work once adopted.¹¹

Subgroup Projects: Reducing the Burden of Multi-jurisdictional Merger Review

Early on, the subgroup noted that information on differing merger regimes was not readily accessible and developed two projects aimed at increasing the transparency of the ICN members' merger rules, resulting in the weblink and template projects. These projects provide a single webpage resource where interested persons can access such merger-related information.¹² For the weblinks project, each ICN member with a merger regime was asked to create a webpage compiling the jurisdiction's merger laws, regulations and related materials. These pages, which are created and maintained by the respective member agencies, are then linked to a single ICN internet page, from which anyone interested in international merger review can access the materials. Similarly, the template project also helps

¹¹ The working group also has prepared a report on the costs and burdens associated with multi-jurisdictional merger review, as background reference for its work. This report reviews and describes existing literature on the subject and provides anecdotal evidence of such costs and burdens. The report's concluding section describes the working group's initiatives aimed at reducing or eliminating "unnecessary" costs without impeding effective merger review, focusing on the development of Recommended Practices for Merger Notification and Review, which it believes can significantly help to reduce such unnecessary costs and burdens if implemented by competition agencies worldwide. The report is available from the subgroup's webpage at <http://www.internationalcompetitionnetwork.org/notification.html>.

¹² These projects can be accessed through a single website address, <http://www.internationalcompetitionnetwork.org/mergercontrollaws.html>.

to fill the transparency gap identified by the subgroup. For this project, members were requested to provide information on key aspects of their merger review regimes following a standard template. These responses are posted on a single ICN internet page along with the weblinks, allowing interested parties to find information on significant elements of each participating member's merger regime (e.g., notification thresholds) and to examine how each element is treated across jurisdictions. These are ongoing projects, which so far include links to merger pages and templates for more than 55 jurisdictions. The working group has expanded these projects to include non-ICN member merger information as well, aiming to make this a truly comprehensive resource.

As one of its initial projects, the subgroup also developed a set of Guiding Principles for Merger Notification and Review, to provide a "roadmap" for agencies developing and revising merger regimes. These principles outline eight principles on which merger regimes should be based: sovereignty, transparency, non-discrimination on the basis of nationality, procedural fairness, efficient, timely and effective review, coordination, convergence, and protection of confidential information. These Guiding Principles were adopted at the first annual ICN conference, in September 2002.¹³

During its first year, the subgroup also entered into a more long-term Recommended Practices project. The Practices address priority areas related to merger notification procedures, as identified by public and private sector representatives, and intend to facilitate convergence

toward best practices in merger review. Over the course of three years, the group has developed eleven such Practices, producing three to four Practices for each annual conference. All of the Practices prepared by the subgroup have been adopted by the ICN.¹⁴ The Practices address: (1) sufficient nexus between the merger's effects and the reviewing jurisdiction; (2) clear and objective notification thresholds; (3) flexibility in the 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; and (11) review of merger control provisions. The Practices are designed to accommodate different legal traditions and stages of development, and consist of short, "black letter" statements followed by explanatory comments, which can be updated or expanded as necessary.

Implementation of the Recommended Practices: Promoting Change

Together with the Guiding Principles, the Recommended Practices are viewed as the heart of the subgroup's work. Implementation of these practices, by member and non-member agencies alike, promises to facilitate notification and review of cross-border mergers. Accordingly, the subgroup has focused considerable time and energy on ensuring successful implementation of these materials by members as well as non-members considering the adoption of merger control rules.

Based on the subgroup's informal monitoring of changes to merger laws and agency prac-

¹³ The Guiding Principles for Merger Notification and Review are available at <http://www.internationalcompetitionnetwork.org/guidingprinciples.html>.

¹⁴ The Recommended Practices for Merger Notification Procedures are available at <http://www.internationalcompetitionnetwork.org/mnprepractices.pdf>.

tice, agencies appear to be implementing the Practices at an impressive rate. The group has identified at least sixteen members, representing twenty-five percent of ICN jurisdictions with merger review systems, that have revised their merger laws or submitted legislative changes to their governments within the past year to increase conformity with the Recommended Practices.¹⁵ For example, the European Commission recently eliminated its seven-day merger notification deadline, in an effort to conform to the ICN's Recommended Practice on timing of notification.¹⁶ Similarly, Korea recently amended its merger law to include a jurisdictional nexus requirement to ensure that at least two merging firms meet sales thresholds on the Korean market, bringing it into compliance with the Practice on jurisdictional nexus.¹⁷ Moreover, in response to the Recommended Practice on objective notification thresholds, Romania and the Slovak Republic abolished their market share thresholds, and the Brazilian agencies have submitted a proposal to the legislature to do the same.¹⁸

¹⁵ See "Monitoring and Implementation of the Recommended Practices for Merger Notification Procedures," Randolph W. Tritell, speech presented at the Third Annual ICN Conference in Seoul, Korea, available at <http://www.internationalcompetitionnetwork.org/seoul/040421tritellslides.pdf>.

¹⁶ See "Commission welcomes agreement on new Merger Regulation," EC press release IP/03/1621 of 27 November 2003, available at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/03/1621&format=HTML&aged=1&language=EN&guiLanguage=en>.

¹⁷ See "The KFTC Introduces Notification Thresholds on Overseas M&A," KFTC press release of May 2, 2003, available at <http://ftc.go.kr/data/hwp/merger.doc>.

¹⁸ See e.g., "Monitoring and Implementation of the Recommended Practices for Merger Notification Procedures," Randolph W. Tritell, slides presented at the Third Annual ICN Conference in Seoul, Korea, available at

As part of the subgroup's informal monitoring project, N&P members have also established contact with non-ICN members that are in the process of establishing merger regimes, to encourage them to consider the Principles and Practices in drafting their merger laws and regulations. Based on these initiatives, even non-members, such as Serbia, have drafted their merger regulations to improve conformity with these ICN materials.¹⁹ In addition, individual member representatives and non-governmental advisors have entered into a variety of activities aimed at promoting conformity with the Principles and Practices, delivering speeches, writing articles, contacting competition agencies, and disseminating these ma-

<http://www.internationalcompetitionnetwork.org/seoul/040421tritellslides.pdf>. Other jurisdictions, such as the United States and Mexico, have changed agency practice to conform to the Recommended Practices. The U.S. agencies, for example, have taken steps to increase the transparency of their decisions not to challenge mergers that entail second stage investigations by issuing public explanatory statements of their analyses in selected cases. See, e.g. "The Merger Review Working Group: Fulfilling the Promise of the International Competition Network," Makan Delrahim, speech presented at the Third Annual ICN Conference in Seoul, Korea, available at <http://www.internationalcompetitionnetwork.org/seoul/delrahim.pdf>. The Mexican Federal Competition Commission has addressed the Practice on requirements for initial notification by substantially reducing the number of formal requests for information. See, e.g. "The International Competition Network," Fernando Sanchez Ugarte, slides presented at the 2004 Annual Conference Board Meeting in New York, March 4, 2004, available at <http://www.internationalcompetitionnetwork.org/040304ugarte.pdf>.

¹⁹ See "Monitoring and Implementation of the Recommended Practices for Merger Notification Procedures," Randolph W. Tritell, speech presented at the Third Annual ICN Conference in Seoul, Korea, available at <http://www.internationalcompetitionnetwork.org/seoul/040421tritellslides.pdf>.

terials via technical assistance missions.²⁰ Through these activities, the subgroup has seen its work develop from non-binding recommendations to more generally-accepted, international best practices. The subgroup will continue these efforts, and, in preparation for the fourth annual conference, has identified additional projects to address over the coming year.

Working Toward the Future

Preparing for the ICN's Fourth Annual Conference in Bonn

In preparation for the 2005 conference, the N&P subgroup also intends to develop two new Recommended Practices on merger remedies and enforcement powers. In addition, the subgroup has started work on three additional projects: development of one or more model waivers of confidentiality for materials submitted in connection with merger review, a comparative study of merger filing fees, and a more in-depth project on implementation of the subgroup's Guiding Principles and Recommended Practices identifying challenges faced and successes achieved by agencies. The implementation project will be a key tool in preparing for a subgroup workshop, scheduled for the autumn of 2005, which also will aim at promoting greater understanding and

implementation of the Guiding Principles and Recommended Practices.

Other groups have equally ambitious agendas for the coming year. With respect to the remaining merger-related subgroups, and building on its previous merger guidelines study, the Analytical Framework subgroup has begun preparing a "checklist" of topics that should be addressed by merger guidelines. This subgroup also will conduct a review of selected merger remedies, in an effort to produce a practical guide on remedies that will outline principles and tools used by agencies to secure effective merger remedies and provide examples of remedial decrees employed in a variety of jurisdictions. Following its 2004 merger workshop, scheduled for October, the Investigative Techniques subgroup will supplement existing chapters of its handbook to complete a manual on investigative techniques for merger review, which will be made publicly-available.

In the capacity building arena, the working group will complete a groundbreaking study on the effectiveness of technical assistance. Results from this study, the first of its kind in the competition field, will be presented at the Bonn conference. The same group will create a comprehensive internet-based resource for technical assistance-related issues that will list ongoing and future technical assistance programs, provide a series of papers prepared by ICN members and advisors, and maintain a list of resource persons at major donor and provider institutions. The group's projects also include a study of methods employed by various agencies to improve the stature of competition authorities with consumers. Similarly, the AERS Working Group will review examples of interactions between competition authorities and selected sectoral regulators to identify successful experiences.

Finally, the new Cartels working group, established this past April at the ICN's third annual conference, also has a number of major pro-

²⁰ An example of the dedication of advisors to promoting conformity with the Recommended Practices includes the Merger Streamlining Group's extensive reports on implementation of the Practices. *See, e.g.*, "Implementation of the International Competition Network's Recommended Practices for Merger Notification Procedures: Final Report," A. Neil Campbell and J. William Rowley, *Business Law International* Vol.5 No.1, January 2004, available at http://www.mcmillanbinch.com/Upload/Publication/Rowley_Campbell_Implementation_Business_Law_Journal_0104.pdf.

jects on its pre-conference plate. In general, this working group will address the challenges of anti-cartel enforcement, both domestically and internationally, across the range of experience levels of the ICN member agencies. The working group's General Framework subgroup will evaluate differing definitions of hard-core cartels in an effort to build consensus around a single definition of the type of conduct that should be penalized. This subgroup also will attempt to quantify the harmful effects of cartels and develop a statement of the major goals for effective anti-cartel enforcement. The Cartel Enforcement subgroup will develop the content of the upcoming international cartel conference, scheduled for November, which is to focus on enhancing effective anti-cartel enforcement through the identification and sharing of investigative practices and techniques among member agencies and will provide a two-day workshop on leniency programs in tandem with this conference. The subgroup will also develop a manual for agencies, the first chapters of which will address evidence gathering and leniency programs as well as other materials dedicated to providing practical, hands-on information for agencies.

The delivery of the Bonn work products will make important contributions to the international competition arena for agencies, practitioners and other interested parties that will rival or even exceed those of the preceding ICN annual conferences. As with ICN materials generally, documents prepared for the conference will be made available to the public on the ICN's website, so that the information can be disseminated widely.

Maintaining Success: Institutional Considerations

The ICN has established momentum that shows no sign of abating, as it continues to expand its membership, improve its existing participation, and broaden its agenda. In three years, the ICN has delivered substantial, con-

crete results to strengthen competition law enforcement and policy in the global marketplace. It has successfully weathered a change of its initial leadership, and even early skeptics are now dedicated ICN participants. These achievements are all the more remarkable because they have been accomplished without the infrastructure normally associated with international institutions. The network's flexibility and inclusive participation can and should serve as a model for others.

Yet the ICN cannot rest on its laurels. In particular, with increased membership of agencies from developing jurisdictions, the ICN must ensure opportunities for all agencies to participate in its work, including attendance at annual conferences and various workshops.²¹ To date, the ICN has relied on the goodwill and dedication of its members and advisors, including the ABA, to fund such participation. With the ICN's success, however, the number of members requiring financial support and the number of events in which their participation is requested has increased, and the network's heretofore successful *ad hoc* funding approach has shown signs of fragility. Recognizing this, the ICN is in the process of examining alternative funding mechanisms, aimed at retaining

²¹ According to the ICN's Chair, 40 percent of ICN members are from low income countries, and an additional 31 percent are from middle income countries. See "The International Competition Network," Fernando Sanchez Ugarte, slides presented at the 2004 Annual Conference Board Meeting in New York, March 4, 2004, available at <http://www.internationalcompetitionnetwork.org/040304ugarte.pdf>. Furthermore, a significant number of jurisdictions, primarily from developing economies, plan to establish competition law-policy systems in the coming years. William Kovacic (2001), "Institutional Foundations for Economic Legal Reform in Transition Economies: The Case of Competition Policy and Antitrust Enforcement", 77 Chi.-Kent. L. Rev. 265: 266. Many of these new agencies are likely to join the ICN.

sufficient flexibility for members, while ensuring available funds to finance more extensive member participation in ICN events. Options under review include providing for suggested minimum contributions, conference fees and/or the adoption of a minimal corporate structure to facilitate the collection and distribution of funds. Of course, the membership is cautious that implementation of any such options be adopted without jeopardizing the flexible nature that is the ICN's hallmark.

Similarly, in an effort to enhance opportunities for participation, we expect that the ICN will continue to foster additional avenues for non-agency participants within the network. In this light, the ICN opened participation in annual conference breakout discussion sessions, which had previously been restricted to representatives of member jurisdictions, to NGAs in 2004. Over the coming years, it is likely that NGAs will play an increasingly prominent role within many of the ICN's working groups, including a leading role in a number of upcoming projects, and this should be welcomed.

Even with additional NGA input, and the excitement and energy surrounding the ICN and its activities, the ICN's membership must be careful not to overextend available resources,

particularly those of new agencies with limited staff. Once a project has reached its natural conclusion, the relevant working group should be dissolved so that important resources can be made available for new projects. This will help the network to maintain its nimble and flexible approach, which differentiates it from other institutions.

These institutional growing pains are similar to those experienced by any nascent organization. The ICN has already proved itself adaptable, incorporating a fourfold increase in membership and expanding its substantive agenda, all while maintaining its novel institutional characteristics that make it so successful: its virtual and inclusive nature. Meeting the above challenges, while difficult, will serve to strengthen the very elements that have driven its success. In less than three years, the ICN has exceeded even the most optimistic expectations, and working toward the future we anticipate similar accomplishments.