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**INTERNATIONAL ANTITRUST POLICY  
AND  
THE INTERNATIONAL COMPETITION NETWORK**

**An  
Address by**

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**to the**

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## **INTRODUCTION**

I would like to start by thanking Barry Hawk for inviting me here today to address a subject that is very dear to my heart: the International Competition Network (ICN).

As Chair of the ICN Steering Group, I can tell you that we have made tremendous progress since the ICN was launched during last year's Fordham Conference.

As we all know, the mere existence of the ICN is due to the vision and dedication of Jim Rill and his ICPAC colleagues such as Merit Janow, as well as the foresight of Joel Klein, Mario Monti, Alex Schaub and my co-panelists Tim and Charles. They should be commended for their respective roles in carrying forward this initiative.

The ICN is about finding solutions to the challenges of globalization. The problem is obvious: competition law is national but commerce is increasingly global.

The ICN's ultimate goal is to improve competition law enforcement and administration in the global marketplace to the benefit of consumers and businesses alike.

This morning, I would like to proceed as follows in addressing our progress to date:

- I - review the aims and features of the ICN;
- II - report on the Naples conference and its work products;
- III - describe the lessons learned; and
- IV - share our plans for the next conference in Mexico.

### **I AIMS AND FEATURES OF THE ICN**

Let me briefly review the features and aims of the ICN.

The ICN is primarily a network of competition practitioners from around the world,

from both the public and the private sectors. Membership is open to any national, regional or multi-national competition authority entrusted with the administration of a competition law.

The ICN's focus is competition and nothing else. As Tad Lipsky put it, "all competition all the time."

Private practitioners and international organizations can participate in planning and creating work products on the same footing as ICN Members. These NGAs (Non-Governmental Advisors) have a voice in all of the activities of the ICN, with the exception of internal decision making.

We focus on a few specific subjects at a time to develop pragmatic, workable solutions for issues of concern to both Members and NGAs.

The ICN has no infrastructure to speak of. We operate mainly through our Web site ([www.InternationalCompetitionNetwork.org](http://www.InternationalCompetitionNetwork.org)) and our Steering Group, which meets on a regular basis. There is no secretariat. The agenda is driven by ICN Members and the work product is created by Members and NGAs.

Our work is meant to complement that of other international fora like the OECD, WTO, UNCTAD, and World Bank. It is designed to fill a gap, not to overlap, or duplicate. Representatives of these organisations have met, and we inform each other of activities and endeavour to schedule them in such a way that there is no overlap.

Finally, the ICN is aspirational in nature. It makes best practice proposals. These practices are the product of the best minds in both the private and public sectors. While there is no obligation to adopt any of the best practices endorsed by the ICN, implementation will result from the persuasiveness of our work products, peer pressure among Members and the advocacy and support of NGAs.

When the ICN was launched, it began with Members from 14 jurisdictions. Today,

thanks to the efforts of the Membership Committee, chaired by Joseph Seon Hur of Korea, the ICN has 75 Member agencies from 65 jurisdictions. A total of 59 Members attended the Naples Conference.

That is quite an accomplishment, given that there are only approximately 90 competition authorities in the world. Clearly the ICN fills a need felt by most agencies. We hope that by the time of the Mexico conference, all competition authorities will be members.

## **II NAPLES CONFERENCE AND ITS WORK PRODUCTS**

The Naples conference was a great success. This is largely a result of the high quality of work products that were presented and the discussions that followed. Of course, we must also thank our conference host, Giuseppe Tesauro and the Italian Competition Authority, for all of their hard work, which clearly paid off.

### **(A) Inaugural conference in Naples**

Certainly, Naples was one of the most inclusive gatherings of antitrust officials ever. What was gratifying was seeing more than just the usual cast of characters in attendance. There were many new faces in the room representing agencies from around the world, and they were there as full Members, not observers or invited guests. They were entitled to participate on an equal basis with the so-called mature agencies, and I can assure you they did.

The conference program addressed the issues of Advocacy and Merger Review. We presented a balanced program that would appeal to agencies from both developing and developed nations. Many of the Member agencies represented in Naples came from jurisdictions that either do not have mandatory merger notification systems or merger laws at all. Naples thus provided an excellent learning opportunity for those who are considering establishing or revising merger laws. They heard first-hand from their peers the best

practices which they could adopt. At the same time, Members from developed nations found out how crucial the advocacy role is for young agencies and how the Network can lend a hand in this regard.

In addition to the excellent turn out by Members, there were approximately fifty NGAs from around the world who came to the conference. We could have welcomed many more but for space constraints. NGAs participate in the ICN in their capacity as representatives of relevant international organizations (e.g., World Bank, OECD, UNCTAD) or private associations (e.g., Canadian Bar Association, American Bar Association, etc.), or in their personal capacity based on their individual expertise in the field of antitrust. We will be exploring ways to widen the circle of NGA participants, including greater and more diverse participation next year in Mérida.

I strongly encourage those NGAs who are willing to play an active role in volunteering their time and efforts to the development of ICN work products to become involved by contacting the relevant Chairs of the working groups and indicating their desire to participate. Contact information is available on the ICN Web site.

### **(B) Joint Work Products Endorsed**

The ICN's most tangible achievement to date is that Members and NGAs collaborated to produce four very thoughtful, practical, and detailed work products. Only eleven months after the launch of the ICN, Members agreed on eight guiding principles for merger review and three detailed recommended practices for merger notification procedures. They also endorsed the Advocacy & Competition Policy Report and the discussion paper on the Analytical Framework for Merger Review.

By international standards, this agreement was reached at the speed of light.

Fernando Sanchez Ugarte of the Mexican Federal Competition Commission provided great leadership for the group on Competition Advocacy, and Bill Kolasky of the US Department of Justice Antitrust Division provided equally strong leadership for the

working group on Multijurisdictional Merger Review. Bill's group had three subgroups: Merger Notification and Procedures led by Randy Tritell of the US Federal Trade Commission, Analytical Framework of Merger Review led by John Vickers of the UK Office of Fair Trading, and Investigative Techniques in Merger Review led by Menachem Pearlman of the Israeli Antitrust Authority. As a result of their efforts, four top-notch work products were endorsed by the Network in Naples.

Let me just say a few words about each of the work products, and remind you that they, and many of the speeches from Naples, are available on the Web site. The official report from the conference will also be posted in the coming weeks.

### **(i) COMPETITION ADVOCACY WORKING GROUP**

The first work product that I would like to discuss is the Advocacy & Competition Policy Report prepared by the Advocacy Working Group. The Advocacy Report addresses a number of key topics, including the role of advocacy, political influences on advocacy efforts, advocacy in developing countries, institutional settings which can promote or hinder advocacy, and the international dimensions of advocacy.

The Advocacy Report synthesizes 53 questionnaire responses received from Members and is useful as a quick snapshot of how ICN Members focus their advocacy efforts.

The Report was published as a handy blue booklet and it has turned out to be a best seller, particularly among new competition agencies. Again, if we measure the quality of our work by the demand for it, this qualifies as a runaway hit.

### **(ii) MULTIJURISDICTIONAL MERGER REVIEW WORKING GROUP**

#### **(a) Subgroup on Notification and Procedures**

##### *(1) Guiding Principles*

The Notification and Procedures subgroup proposed eight guiding principles around which a merger review regime should be built:

- 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 are intended to make the merger review process more efficient and effective, as well as reduce delay and the investigative burden on merging firms. ICN Members whole-heartedly endorsed these guiding principles.

#### *(II) Recommended Practices*

The Notification and Procedures subgroup also developed a set of Recommended Practices for Merger Notification Procedures. These Practices address three areas:

- (1) sufficient nexus between the transaction's effects and the reviewing jurisdiction;
- (2) clear and objective notification thresholds; and
- (3) flexibility in the timing of merger notification.

These are the three areas that were identified by public and private sector representatives as the most pressing. The format consists of a short statement of the practice, followed by explanatory commentary by the subgroup.

Again, as a measure of the quality of the ICN's work product, I am pleased to report that Members endorsed the Recommended Practices, with the understanding that one of

the sub-principles on jurisdictional nexus would be discussed further during the course of this year's work.

*(III) Web links and Templates*

This subgroup also requested that Member agencies create web links to the ICN Web site containing information about their own merger control regimes so as to enhance the transparency of merger review processes. Members were also asked to complete a common "template" with information about their merger regimes. As a result, practitioners should have available to them answers from Member agencies to a series of commonly asked questions about merger notifications and procedures.

This information will be posted on the ICN Web site as it becomes available, creating a one-stop-shop for merger review information.

**(b) Subgroup on the Analytical Framework of Merger Review**

The Analytical Framework subgroup presented a very engaging discussion paper on the objectives of analytical frameworks for merger review. As Commissioner Monti noted when introducing John's panel in Naples, "the paper asks all the right questions in examining the purpose of merger control."

It considers both economic and public-interest goals pursued in ICN jurisdictions, presents suggestions as to which merger transactions should be reviewed, and discusses how qualifying mergers should be assessed. The paper does not provide recommendations, since it was only meant to flesh out the appropriate issues that should be considered when looking at merger control systems.

As part of its project, questionnaires were sent to Members and an annex has now been compiled which details the analytical framework in place in each ICN Member's jurisdiction. This information can also be found on the ICN Web site.

### **(c) Subgroup on Investigative Techniques in Merger Review**

The subgroup on Investigative Techniques in Merger Review has been busy planning a workshop in Washington, D.C. that will be held November 21-22. The purpose of the workshop is for competition officials to share best practices in merger investigations and reviews.

## **III LESSONS LEARNED**

### **(A) Naples Feedback**

Evaluation forms filled out by delegates indicate that the conference was a great success, but that we need to consider the following:

- more room for substantive discussion;
- more break out sessions;
- more time for networking;
- better geographic balance among NGAs; and
- maintain the proportions between NGAs and agencies.

For Mexico, the Conference Planning Committee will try to take all of these comments into account.

### **(B) Accomplishments**

The ICN model works. Bringing together competition agencies from around the world on an equal basis has created a unique dynamic. Not being constrained by formal, enforceable obligations has fostered a remarkably productive exchange of ideas between agencies.

The close involvement of NGAs in practically all activities, except internal decision making, means that they play an active role in the shaping of the ICN's work product. This

interplay of private and public sector expertise in the work of the ICN has led to a richer and better product.

It also makes buy-in from ICN Members' key constituencies more likely.

Naples also represented a tremendous opportunity for networking. Many Members were not shy about asking questions. Members felt that they were contributing to competition law writ large as part of an international competition community. Members from developing countries knew that they were there not as invited guests or as observers, but as full Members. The NGAs, on the other hand, knew that they were playing more than a cameo role where they could only provide limited input. They knew that they were integral participants in shaping the work product of the ICN. This created a buzz in the room that I have never witnessed at any other international conference.

### **(C) Challenges**

Not surprisingly, the ICN is not without its challenges. Indeed, some internal issues must be addressed concerning its institutional structure and fundraising.

#### **(i) Institutional Issues**

Our initial views on the ICN's institutional character were to keep the ICN as virtual as possible, without a legal status or participant costs, in order to maximize participation by Members, encourage a free exchange of ideas, and avoid becoming a bureaucracy-driven international organization.

This informal, project-driven character will continue to be our foundation and define the nature of the ICN. We are bound by a community of interests rather than by treaty, relying on a high level of goodwill and cooperation amongst Members and partners.

Until the Naples conference, the institutional structure of the ICN had been defined by its Operational Framework which provides for, among other things, its membership criteria, the scope and powers of the Steering Group and Working Groups, non-

governmental participation, and issues related to the planning of the annual conferences and language. It also prescribes that all secretarial functions rotate with the Chair of the Steering Group.

While the Operational Framework was endorsed in Naples, in order to improve the institutional character, Canada and Italy will co-chair a working group to review the Operational Framework. In response to a call for participants in this working group, expressions of interest came from eighteen other Members.

The group will look at two main issues:

The first is how to constitute the next steering group at the conference in Mexico. We will need to develop a process that balances transparency and simplicity, and ensures appropriate geographic representation on the steering group.

The second concerns the lack of any kind of institutional form or formal mechanism, in short the absence of even a minimal infrastructure. Such a minimal infrastructure is needed to co-ordinate the work of the working groups, assist in the annual conference planning and provide for smooth transitions when there are changes of leadership. It is also needed so that the ICN can raise and disburse funds to support its ongoing activities.

## **(ii) Fundraising Issues**

This work on institutional issues will be closely tied to the work of the Fundraising Committee, which is so ably chaired by Bill Kovacic of the US FTC. Seventeen Members requested financial assistance to attend the Naples conference and, with Bill's assistance, funding was found for twelve.

I would like to thank those Members who were able to provide this funding.

This situation illustrates that we will need to develop a long-term funding strategy in order to be more successful in the future. No matter how well attended our conferences are, if every Member who wishes to attend cannot do so merely because we have not been

able to come up with the necessary funding arrangements, we cannot consider the ICN to be 100% inclusive and truly global in practice.

The Steering Group will consider options presented by the working groups on the Operational Framework and Fundraising in order to present its conclusions to the Members by the Mexico conference.

## **IV FUTURE WORK**

The next conference will take place in Mérida, Mexico June 23 to 25<sup>th</sup>. The work programs to get us to Mérida were confirmed at the Naples conference. Here are the highlights:

### **(A) Advocacy Working Group**

The Advocacy Working Group has created subgroups to address the following four areas:

1. Develop an on-line information resource centre featuring easily accessible data for Members;
2. Compile model advocacy provisions, and possibly develop a model statute;
3. Compile studies that reflect the experiences of Member agencies in undertaking major sectoral reform, analysing how competition advocacy can improve the process; and
4. Develop a “toolkit” on practical techniques for building a competition culture.

### **(B) Multijurisdictional Merger Review Working Group**

#### *(i) Subgroup on Merger Notification and Procedures*

1. Continue to work on its web links and template projects;

2. Produce additional recommended practices;
3. Promote the guiding principles and recommended practices, e.g., suggest to Members and NGAs that they include reference to them in papers and speeches; work with capacity-building organizations to have them included in development materials; and
4. Members of the sub-group will lead by example in reviewing their own systems and measures for consistency with the principles and practices.

*(ii) Subgroup on Analytical Framework of Merger Review*

1. Compile and analyse existing merger guidelines in order to identify similarities and differences;
2. Consider developing model merger guidelines; and
3. Undertake a small-scale project examining how efficiencies are treated around the world.

*(iii) Subgroup on Investigative Techniques in Merger Review*

1. Host workshop on investigative techniques in Washington, DC on November 21-22, 2002;
2. Develop an investigative techniques manual.

**(C) Capacity Building and Competition Policy Implementation Working Group**

This new working group, established at Naples, will examine issues involved with Capacity Building and Competition Policy Implementation. Philip Lowe of the EU and David Lewis of South Africa will co-chair this group. The mission of this group includes:

1. Building the case for effective competition in developing countries;
2. Advocating the need for independent competition authorities and methodologies for building the institutions necessary to support the competition mission;
3. Considering whether regional institutions should be encouraged;
4. Considering how to bring the competition message to the business community and civil society;
5. Considering how the authority might attract sufficient funding and staffing;  
and
6. Developing methodologies useful to national authorities at each stage of their development.

I strongly encourage any of you who are interested in participating in these working groups to contact the respective chairs and offer your assistance. Contact information is available on the ICN Web site.

## **V CONCLUSION**

The ICN is off to a great start.

It is up to all of us to ensure that we do not lose momentum or focus. The ICN must retain its key characteristics of inclusiveness, informality and relevance to all competition players.

It is the goal of the ICN to persuade agencies and their governments to bring about convergence through the strength of its ideas. However, the ICN will not be striking a working group to focus on implementation.

Rather, it is anticipated that when agencies see ideas that have been recognized as

optimal practices by antitrust experts from around the world, they will naturally want to see that their own national regimes reflect these practices and principles.

NGAs will play a vital role in advocating adoption of such practices and marshalling support for their implementation. Only through such a concerted effort will the goal of soft convergence be achieved.

Again, I encourage all of you here today to get involved in ICN working groups. With your assistance, the ICN's second year will be even more successful than its first.

Thank you.