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The International Competition Network: A Decennial Retrospective

BY IAN G. JOHN AND JOSHUA B. GRAY

THE YEAR 2011 MARKED TWO signal anniversaries in international antitrust enforcement cooperation: the 20th anniversary of the bilateral cooperation agreement between the United States and the European Union and the 10th anniversary of the International Competition Network (ICN). These two events framed a decade during which global antitrust cooperation passed from its adolescence to adulthood. With its earlier start, the North Atlantic relationship was the first to mature. The ICN followed a different course, and, in recent years, a majority of the world's competition authorities have committed substantial time and resources to ICN activities.

The ICN already has helped to shape global merger reporting and review practices, influenced cartel enforcement, and affected the frequency and character of international competition agency interactions. The ICN's broad membership encompasses most of the world's fastest growing economies. With few other recent examples of new organizations dedicated to international convergence and dialogue on issues of economic policy, the ICN's accomplishments, ambitions, and potential future influence are significant to those who believe that competitive markets are essential to growth and enhanced consumer welfare.

What Is the ICN?

On October 25, 2001, antitrust officials from fourteen jurisdictions—Australia, Canada, European Union, France, Germany, Israel, Italy, Japan, Korea, Mexico, South Africa, United Kingdom, United States and Zambia—launched the ICN. Today, the ICN has grown to approximately 120 member agencies from more than 100 countries. In the words of John Fingleton, now Chief Executive Officer of the U.K. Office of Fair Trading: "When [the ICN] started in 2001, we looked forward to creating a project-oriented, consensus-based, informal network of diverse antitrust agencies, small and large, mature and new, and from developed and developing countries."[1]

By design, the ICN differs from its predecessor international antitrust collaborations—the Competition Law and Policy Committee of the Organization for Economic Cooperation and Development (OECD),[2] the United Nations Conference on Trade and Development (UNCTAD), and the short-lived, now defunct Working Group on Competition Policy at the World Trade Organization (WTO)—in several ways. The ICN is voluntary because it does not generate binding rules; it is virtual because it has no secretariat, no bureaucracy, and no bricks-and-mortar presence; antitrust and competition agencies, not entire governments, are members; and participation by non-governmental advisors (NGAs), including members of the private bar, economists, legal academics, consumer groups, and corporations, is by invitation of the agency members and these NGAs often have made significant contributions to the ICN's work product.

In an often-repeated phrase, the ICN is "All Antitrust All the Time." Charles James, then U.S. Department of Justice Assistant Attorney General (AAG), may have coined this expression and explained its significance in these pages: "To avoid jurisdictional disputes with other government agencies and to differentiate the ICN from the OECD, WTO, and UNCTAD, the ICN would deal only with antitrust issues."[3] This narrow focus has been essential to the autonomy that James and other early supporters envisioned for the ICN. As Randy Tritell, Director of the Office of International Affairs at the Federal Trade Commission, commented: "There is a sense at the ICN that we are all antitrust technocrats, and we are careful to mind our knitting and stay within our area of expertise."

The ICN was conceived and constructed as a new type of framework for international collaboration on competition law and policy at a time when Columbia School of International and Public Affairs Professor Merit Janow recalls "there was a strong appetite for international interactions and cooperation." The ICN's "big tent" philosophy and informal structure side-stepped the issue of leadership or control by any one country or group. The ICN also reflects the prevailing ethos when it was created: The ICN is multilateral, process-oriented, pragmatic, and optimistic about the capability of new technologies to bring people together and enable them to build useful solutions at low marginal cost.

A steering committee composed of a Chair, two Vice Chairs, and representatives, all drawn from ICN member agencies, guides the ICN. Most ICN work takes place through email, conference calls, and in-person meetings of the ICN's constituent Working Groups. ICN members gather at annual conferences, where Working Groups present

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their work to the larger group and members decide on topics for future collaborative efforts.

Historical Roots

The ICN reflects a fundamental change in the understanding of international antitrust law and competition policy that followed the end of the Cold War. After World War II, international questions within U.S. antitrust law concerned the extraterritorial application of U.S. antitrust laws to foreign actors. Harvard Law Professor Kingman Brewster described how a "[s]pecial postwar sensitivity to foreign attitudes derives from our need to keep other parts of the world allied with us at best, uncommitted to the Soviets at worst."[4] For Brewster, U.S. antitrust laws reflect "the belief in political and economic freedom" and when enforcing them "[w]e are to put into practice what we preach and to encourage those identified with us to prove by demonstration at home and abroad that the politics of democracy and the economics of capitalism will not be robbed of their promise by concentrations of private power and unproductive privilege."[5]

By this view, economic policymaking was part of a global contest of ideas, and antitrust, while auxiliary to the broader ideas of democracy and of freedom, embodied both values. Brewster famously proposed a multi-factor "jurisdictional rule of reason" blending substantive antitrust law with foreign policy that purported to require U.S. antitrust agencies and courts, in consultation with the State Department, to consider whether application of U.S. antitrust law to foreign conduct would help to contain Communism, bring prosperity to U.S. allies, or cause the United States to be perceived as a hegemonic bulldozer overturning the domestic economic policies of its trading partners.[6]

Barry Hawk, a founder of the Fordham Conference on International Antitrust Law & Policy, recalls that at the first annual meeting in 1974 "people were asking such questions as: Was the U.S. overreaching? Was the U.S. violating international laws? Those were the questions people cared about. Today, those issues are less important." Hawk reflects: "If you had told us in 1974 that there would still be an annual conference on international antitrust law some thirty seven years later, none of us would have believed you. It was impossible to foresee the importance of these questions. At the same time, none of us could have foreseen how the discussion shifted towards comparison of laws and the mechanics of cooperation."

Alden Abbott, a Deputy Director in the FTC's Office of International Affairs, traces the roots of the ICN back to the fall of the Berlin Wall, observing that officials in the George H.W. Bush administration, including AAG James Rill, "saw an opportunity for greater cooperation and for the U.S. to assume a teaching role using competition policy as a pathway to international development, including in the developing and former Communist world. Rill and the American Bar Association began to advocate for the adoption of competition laws and the creation of competition authorities." The result of these efforts, and of similar initiatives by the European Commission, was the beginning of an international dialogue on technocratic questions about how to break up monopolies and cartels, enforce competition norms, and foster trade and productivity growth. As more countries adopted competition laws, of course, the result was a proliferation of potentially conflicting laws and practices.

In 1999, AAG Joel Klein remarked that the time when "the United States stood almost alone in the world in our commitment to antitrust enforcement" has passed, and "the United States now has plenty of company in the antitrust enforcement business."[7] When Klein spoke, more than eighty countries had some type of competition law, more than fifty had merger notification requirements, and a growing number of jurisdictions were adopting leniency programs as part of their anti-cartel enforcement.[8] The surge in jurisdictions with merger control policies coincided with an historic merger wave within a growing global economy that produced more multinational transactions involving the United States, Canada, Latin America, Europe and Asia. A conspicuous trans-Atlantic disagreement regarding the antitrust analysis of Boeing's acquisition of the commercial aircraft assets of McDonnell-Douglas cast a shadow on the future of multi-jurisdictional reviews by showing that even one conflicting outcome could have unfortunate consequences.[9]

Intellectual Roots of the ICN—Trade Law Tensions

A few pioneers recognized that global markets and increasingly globalized trade inevitably would raise tensions among national antitrust and competition laws and enforcement agencies, and sought to develop doctrinal and institutional solutions. While the problem was clear and could be easily explained, no ready-made, single solution commanded broad support. Among many efforts to address these questions, a 1991 Report of the Special Committee on International Antitrust of the Antitrust Law Section of the ABA, chaired by Hawk, recommended a binding international agreement to repeal laws permitting export cartels, at least to the extent the statutes permitted conduct with effects in foreign markets that would be illegal domestically. In 1994, Professor F.M. Scherer's work titled *Competition Policies for an Integrated World Economy* recommended creating an International Competition Policy Office within the newly created WTO.[10]

The following year, Scherer's approach of piggy-backing competition issues on global trade law gained a strong endorsement in the report of the so-called Van Miert Experts Group, titled *Competition Policy in the New Trade Order: Strengthening International Cooperation and Rules*.[11] The Van Miert Experts, who may have been influenced by Western Europe's success in using competition policy as an affirmative means to open markets and promote trade, envisioned a multi-stage process that would start with principles of transparency, non-discrimination, and cooperation, and then advance to common principles of substantive law that could be enforced by the process of dispute resolution within the

WTO. As a first step, the Europeans proposed at a WTO ministerial conference in Singapore in 1996 a modest "competition discipline," which called for transparency, cooperation, and an enforceable anti-cartel rule.

The United States and much of the developing world resisted any extension of the jurisdiction of the WTO from purely governmentally imposed trade barriers (such as tariffs and quotas) to private arrangements that impeded foreign firms' access to domestic markets. The United States did not share the Europeans' optimism for an enforceable global antitrust law and was particularly skeptical about using WTO Dispute Resolution as a method of enforcement. AAG Klein characterized the proposal as a "multilateral antitrust code" that was "a bad idea."[12] Klein explained that it would be hard to reach agreement within the framework of the WTO on sound antitrust rules and, as a result, the lowest common denominator would prevail. Such minimal standards could end up being counter-productive by lending legitimacy to weak or ineffective competition laws. Klein also raised concern with the WTO "second-guessing the exercise of prosecutorial discretion and judicial decision-making" by national antitrust agencies and courts.

The International Competition Policy Advisory Committee

The practical problems resulting from a proliferation of antitrust regimes amidst a global merger wave, combined with dissatisfaction over the Europeans' trade law proposal, prompted U.S. officials to initiate a search for alternative solutions. Klein and Attorney General Janet Reno commissioned the International Competition Policy Advisory Committee (ICPAC) to study antitrust and competition policy in the context of economic globalization with a focus on issues of multi-jurisdictional merger review, the interface between trade and competition laws, and the future direction for cooperation among enforcement agencies. ICPAC was directed by Professor Janow, who recalls that the effort was "born of frictions—a growing number of international mergers, a specific recognition that jurisdictions may come out differently as the United States and the EU already had in Boeing/McDonnell-Douglas, and tension from the European proposal to bring a competition agenda to the WTO." Janow also recalls "a sense that the U.S. could become part of these changes and that the Europeans already were."

Following an unprecedented number of hearings and more than two years of regular open committee meetings, ICPAC issued its Report in February 2000.[13] As Janow highlights, "ICPAC's focus was on items that were practically achievable, and ICPAC did not want to tackle issues that would detract from our goals." Its Report was pragmatic and incremental, and many of its recommendations were adopted.

Mark Warner, Legal Counsel to the OECD Trade Directorate, wrote at the time that "the Report falls short" and predicted that "it is unlikely to give much of an impetus for a much broader U.S. engagement with respect to multilateral rule-making on competition and trade policy. Rather, the [ICPAC] Report is more likely to buttress the cautious approach taken in this area by the U.S. antitrust agencies to date."[14] With some disapproval, Warner characterized the message of the Report to be "that the big-picture issues will go away if only the mechanics of competition law enforcement is improved incrementally."[15]

There were understandable reasons for Warner's skepticism. The timing of the ICPAC Report following the Van Miert Experts' work five years earlier and coming immediately on the heels of U.S. resistance to the European WTO proposal could suggest the United States was taking a defensive position. Those, like Warner, looking for a broad vision of the future of international antitrust law enforcement, surely were disappointed. In this respect, the contrast with the Van Miert Experts report could not have been plainer.

ICPAC's practicality was reflected in the entire Report, including the "Preparing for the Future" chapter in which ICPAC called for the creation of a "Global Competition Initiative," where government officials, private firms, and non-governmental organizations could consult on antitrust matters. ICPAC recommended that this Global Competition Initiative be directed toward "greater convergence of competition law and analysis, common understanding, and common culture." ICPAC Committee member and New York University Professor Eleanor Fox describes the idea as a "bottom-up" approach.

Fox recalls that she, Rill, Janow, and others "felt a strong need for a new type of forum for international cooperation based on real antitrust problems and informally discussed the concept of a virtual grass-roots organization at length." According to Janow, "The proposal itself was advanced fairly late in the life of the ICPAC process as we were thinking about the institutional arrangements that might make the most sense at that moment in history." Both Janow and Fox recall committee members discussing and exchanging memos covering numerous ideas for the new organization. "We were excited about it," says Fox, "and, after these discussions, we decided that it was probably best to move forward by advancing the concept and letting dialogue percolate as to exactly how to frame its contents and mission."

When the idea was first raised at a formal ICPAC session, it garnered widespread support. Reviewing the chapter today, it is easy to understand why. The recommendation was presented as a new vessel to be filled with content developed by participants in the future. In the words of the Report, the concept's "central ambition is to permit interested nations to start a process that can build over time."[16] ICPAC recognized "that countries may be prepared to cooperate in meaningful ways but are not necessarily prepared to be legally bound under international law" and also that "'peer' pressure is capable of advancing some liberalization and harmonization of practices even without binding legal instruments."[17] Citing a witness from the Polish Competition Development Center, ICPAC commented: "Officials from transition environments

. . . often remark that international agreements or consultations can be extremely important to 'lock in' a reform agenda or secure added legitimacy for market-based reforms that face domestic opposition."[18]

While ICPAC articulated a preliminary agenda, it did not provide an organizing structure, theory, or method for the new entity's work. ICPAC's eclectic and general agenda included the topics covered in most detail by the Report (e.g., merger control procedure harmonization, cartel enforcement) and others that were among the most difficult and intractable of the topics ICPAC considered (e.g., positive comity, mechanisms for mediating disagreements between jurisdictions).[19]

Hawk, who was present at the announcement of the creation of ICN at the 2001 Fordham conference, reflects that "a secret of the ICN's success was that it appeared attractive to different participants for different reasons." Agency lawyers interested in effective cartel enforcement, multinationals and their advisors interested in solving the merger notification thicket, internationalists concerned with convergence or harmonization, and new agencies in developing economies seeking technical support and legitimacy each had distinct, compelling reasons to participate.

According to Fox and Janow, the ICPAC members did not know whether their idea would be welcomed by their Report's primary audience—Klein and the leadership of the DOJ. Klein publicly announced his support for the initiative in September 2000, seven months after ICPAC submitted its Report. European Commissioner Mario Monti also expressed his support and urged that competition advocacy be a core pillar of the mission. Following the transition to a new U.S. administration, the new AAG James and the new FTC Chairman Tim Muris each strongly endorsed the ICN, which boosted the credibility of U.S. participation.

ICN's Initial Projects

Two urgent projects identified in the ICPAC Report—harmonizing merger notification procedures and increasing collaboration in anti-cartel enforcement—also were subjects of substantial prior work by the private sector, many antitrust agencies, and other international organizations, such as the OECD. An ICN Mergers Working Group (MWG) of fourteen antitrust agencies and thirty or more NGAs immediately set to work building upon this foundation to develop a set of best practices for merger reviews to harmonize multi-jurisdictional filings and procedures.[20] By the ICN's first annual meeting in 2002, the MWG had developed three Recommended Practices (RPs), each consisting of a statement and explanatory comments, concerning the nexus between the merger's effects and the reviewing jurisdiction, clear and objective notification thresholds, and timing of merger notification. Over the next three years, the MWG developed and promulgated ten more RPs on subjects ranging from confidentiality and transparency to remedies and agency powers.

As anticipated, the ICN's non-binding RPs were robust and specific, because the ICN's voluntary model permitted work product that aspired to best practices. As chronicled by FTC lawyers Maria Coppola and Cynthia Lagdameo, the RPs have influenced many ICN member jurisdictions with merger control laws to reform their practices.[21] While still a work in progress, adoption of the RPs has been successful because many ICN member agencies recognized the legitimacy and efficiency that comes from being aligned with a global standard and had the power to change their rules and procedures without legislation. The RPs also were crafted to protect the sovereign interest in reviewing mergers that realistically could affect a country's domestic economy, so the RPs are not likely to be viewed as impinging upon national authority. General Electric Vice President and Senior Competition Counsel Ronald Stern, who from the start was an active participant in the MWG, says that the RPs established a global benchmark with a broadly constructive influence, which is evident in the recent and ongoing dialogue the international antitrust community has had with India and China regarding their new merger control laws.

The ICN anti-cartel enforcement project also built upon a foundation of existing work. In 1999, the U.S. Antitrust Division convened an International Cartel Workshop in Washington D.C., which was followed by annual meetings in other countries. In 2004, at the third ICN annual conference in Seoul, the ICN created a Cartel Working Group (CWG) to build on the efforts of the Cartel Workshop. Conscious of substantial differences in domestic laws, the CWG, rather than developing RPs, sought to create guidelines for effective enforcement regimes and to identify superior practices. One widely used work product, *The Anti-Cartel Enforcement Manual*, compiles ICN members' investigative and enforcement techniques. The *Manual*, which is frequently updated with new experiences, is used as a reference source and as a method of benchmarking agency practices.

Both the MWG and the CWG first addressed practical problems that lend themselves to technical solutions on matters that either are not contested or are subjects of emerging global consensus, such as anti-cartel policy. There also were strong constituencies for reforms both within the government agencies and in the private sector. Substantial resources were brought to the projects, resulting in the swift production of high quality, useful work product. Recalling the early years of the ICN during his chairmanship of the FTC, Tim Muris comments that the clarity of, and consensus around, the goals for these early projects was a very good thing. The ICN's strong start established its credibility and built trust among its growing number of participants. And while Professor Fox agrees that the success of these initial projects established momentum for the ICN, she also describes them as the "low hanging fruit" because they were easy to see and easy to reach.

Second Stage Projects Raise New Challenges

The ICN's two major second stage projects—the Unilateral Conduct Working Group (UCWG) and the Agency

Effectiveness Working Group—illustrate the ICN's broadening ambitions and some of the challenges raised by the ICN's new goals. The UCWG sought to tackle perhaps the most unsettled area of substantive law even within jurisdictions with mature antitrust or competition laws, and the Agency Effectiveness Working Group focused on operational issues uniquely suited to the ICN's broad membership, but which remain difficult to resolve in the context of the ICN's narrow—antitrust-only—scope and purely voluntary model.

The ICN launched the UCWG at its fifth annual conference in 2006. The idea of tackling unilateral conduct and monopolization had been proposed the previous year, but encountered initial opposition from participants who had misgivings about a project encompassing such a difficult topic. Nevertheless, the UCWG has produced a rich and diverse work product, using a descriptive and comparative approach to reporting on unsettled issues, which differs from the methods of either the MWG or CWG.

The UCWG began its work by surveying the membership on their respective practices concerning the objectives of unilateral conduct laws, the assessment of dominance or market power, and the treatment of state-created monopolies. The topics were likely to be useful to younger antitrust agencies and appeared to be more amenable to consensus. A report issued in 2007 offers a comparative portrait of the goals that guide thirty-three national competition regimes and a roadmap to various antitrust approaches to governmentally created or enforced economic power.[22] While intended as a starting point for practical discussion, the document is useful to any reader interested in placing national laws into a global context. Younger competition agencies rank the UCWG report on the treatment of state-created monopolies as among the most useful of the ICN's work products.[23]

The UCWG next sought to develop RPs for assessing market power, although the discussion soon came to a stalemate over the status of a presumption of market power based on durable high market shares and barriers to entry, and over the propriety and definition of safe harbors. According to participants Cynthia Lagdameo and Andrew Heimert of the FTC's office of International Affairs, the draft RPs "faced several obstacles, leading to extended debate and the possibility of an impasse among Members that nearly led to the abandonment of the project."[24] Participants from mature jurisdictions believed that only an "all factors" analysis of market power was appropriate, and participants from newer jurisdictions felt that some type of analytical shortcut was needed to facilitate enforcement. Yet, even within mature jurisdictions, including the U.S. agencies, some participants were sympathetic to the argument that a reasonably truncated rule could be appropriate, and saw the combination of durable high market share and high barriers to entry as a sensible approach. The resulting RP reflects elements of each view: "Market shares of the firm under investigation and its existing competitors, including their development during the past years, should be used as an indication or starting point for the dominance/substantial market power analysis."[25]

While using market shares as an "indication" is a nod to those seeking a presumption, the Comments reflect a preference for a structured, multi-factor approach. For example, Comment 2 notes that because market shares fail to reflect "market dynamics, they should be put into perspective by consideration of other factors, such as potential entry," and Comment 3 asks whether "market shares have been or could be maintained over a significant period of time."[26] The related issues of durability and barriers to entry, thus, are described as the most prominent of factors beyond market shares that agencies should consider.

The RPs for assessing unilateral market power are stated at a high level of generality and could be interpreted to be consistent with a range of actual practices in specific cases. In this way, the RPs seem useful as a teaching tool at least as much as legal guidelines. Similarly, the UCWG's developing *Unilateral Conduct Workbook* has a plainly educational purpose;[27] it may become a source for additional RPs or continue as a forum for comparison and instruction.

In 2009, the ICN created the Agency Effectiveness Working Group (AEWG) to develop methods for appraisal of competition agency practices and to suggest ways to improve agency operations. In 2010, the AEWG released the first chapter of an *Agency Effectiveness Handbook* covering issues of strategic planning and prioritization. The *Handbook* is intended to "look at a variety of factors determining the ability of competition agencies to achieve their objectives in an efficient and effective manner, drawing on successful common approaches . . . as well as individual experiences."[28]

As the AEWG increases its activity and visibility, it moves the ICN from its initial focus on procedural and substantive rules to broader issues of institutional design, personnel, training, accountability, management, exercise of enforcement discretion, and influence within a national government. From a different perspective, the AEWG is building a richer definition of success that is based on performance and that reflects the goals and benefits of competition policy. Fingleton and others invoke this developing theme when they speak of "taking responsibility for outcomes." The recently launched ICN University initiative to develop training materials for competition agency staff on a wide array of topics is further evidence of the ICN's increasing focus on education and training.[29]

Fingleton, who currently chairs the ICN steering committee, recognizes that "[a]s part of any rebalancing of its priorities, the ICN must also focus on building up agency effectiveness—without an effective regime domestically, there is limited ability to assist in international efforts at enforcement."[30] Fingleton sees broader institutional effectiveness as essential to having a coalition of agencies capable of reaching more ambitious goals: "Developing agency effectiveness and influence will be key. In the coming years, national agencies will need to engage in discussion and innovative thinking in

terms of their ability to cooperate, to take cases where foreign consumer welfare harm arises, to engage in advocacy and to develop further their ability to influence national governments and legislative bodies."[31]

Decennial Appraisal in Light of ICPAC's Proposal

The ICPAC Report set out a series of topics and a process for addressing them though a new global network. With flexibility and pragmatism as its hallmarks, the ICN took on several ICPAC challenges directly, and thereby became an umbrella for several related and aligned projects. The constituencies for the projects differed as their subject matters concerned different NGAs, different agencies, and different lawyers and economists within agencies. Each Working Group set its own objectives, and developed work product and methods of cooperation to meet them.

Some issues ICPAC identified as ripe for consideration—"negative spillovers such as export cartels," "market blocking private and government restraints," and other topics at the intersection of antitrust and trade—were sacrificed at the outset in favor of the ICN's "All Antitrust All the Time" mantra. Likewise, ICPAC's suggestion of "some dispute mediation" involving an "experts panel" or similar mechanism for "sovereign competition policy disputes," fell by the wayside. The exclusive focus on competition issues allowed the ICN to succeed by setting achievable goals and avoiding questions that may have brought unwanted attention from other policy makers and thereby derailed the network before it had a chance to get rolling.

ICPAC's aspiration to "multilateralize and deepen positive comity" fell into a middle ground. The ICN has not sought to develop a broader legal framework for positive comity or aspired to become a global version of the European Competition Network with its federal structure headed by the European Commission. Yet, increased comity of a sort has evolved as a result of the ICN's activities. The ICN has sought to deepen informal ties among agencies and their staffs, which do what they can to help each other within the limitations of existing domestic laws. Paul Lugard, an NGA to the ICN for the Netherlands Competition Authority, observes that "many of the remaining barriers to closer cooperation are beyond the reach of competition agencies alone, which are limited by laws often unrelated to competition policy." For example, confidentiality laws are typically set by statute, enforced by courts, and, understandably, protected as essential to the integrity of a country's legal system. The ICN antitrust-only mission and membership make such barriers within national legal systems difficult to overcome.

Conclusion

For its first decade, the ICN has been a patchwork as much as a network. Several national agencies aligned themselves with the ICN goals or benefited from ICN support. For example, Eduardo Pérez Motta, whose tenure at the Mexican Federal Competition Commission has been characterized by consequential cases and an ability to stand up to other agencies within the government as well to powerful private actors, believes that the ICN "has resulted in substantial improvements in the effectiveness of the Mexican" Federal Competition Commission.[32]

Other countries with increasingly active competition agencies that also have participated in ICN Working Groups, include Ireland, South Korea, and South Africa. Canada merits special mention for its contributions during the ICN's critical early years, providing two Chairs, Konrad Von Finckenstein and Sheridan Scott, and handling a large administrative workload. Similarly, the U.S. agencies deserve credit for their role in the ICN's success. Consistency of U.S. bi-partisan support during a period of contentious U.S. domestic politics, shifting U.S. foreign policies, and disagreement regarding domestic antitrust policy, both between the agencies and between administrations, has proven the dedication of the U.S. agencies to the ICN's projects. The U.S. agencies have facilitated the ICN's goals without demanding that all of the ICN's recommendations follow U.S. antitrust policy to the letter and notwithstanding the fact that some ICN work reflects the strong influence of a European model.

A detailed look at the effectiveness and influence of the ICN awaits further development in the second installment, which will address the future of the ICN. ■

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1 John Fingleton, The International Competition Network: Planning for the Second Decade, Remarks at the ICN's 9th Annual Conference 1 (Apr. 27–29, 2010), *available at* http://www.icn-istanbul.org/Upload/Materials/Others/The%20International%20Competition%20Network_John%20Fingleton.pdf.

2 For a detailed comparison of the ICN and the OECD Competition Committee, see Frédéric Jenny, The International Competition Network and the OECD European Committee: Differences, Similarities and Complementarities, *in* THE INTERNATIONAL COMPETITION NETWORK AT TEN: ORIGINS, ACCOMPLISHMENTS AND ASPIRATIONS 93 (Paul Lugard ed., 2011) [hereinafter THE ICN AT TEN].

3 Charles A. James, *U.S. Enforcement Agency Perspectives on the International Competition Network*, ANTITRUST, Fall 2001, at 36, 36.

4 KINGMAN BREWSTER, JR., ANTITRUST AND AMERICAN BUSINESS ABROAD 9 (1958).

5 *Id.*

6 *Id.* at 446–48.

7 Joel I. Klein, *A Reality Check on Antitrust Rules in the World Trade Organization, and a Practical Way Forward on International Antitrust*, *in* ORG. FOR ECON. CO-OPERATION & DEV., TRADE AND COMPETITION POLICIES: EXPLORING THE WAYS FORWARD 37, 38 (1999).

8 *Id.*

9 The U.S. Federal Trade Commission and the European Commission reached divergent conclusions in their respective reviews of Boeing's acquisition of McDonnell-Douglas. The FTC allowed the transaction without conditions. The Competition Commission first threatened to block the transaction, and, following reported intervention by the U.S. President, Secretary of State, and other senior officials, ultimately allowed the transaction to proceed with a remedy. *See Interview with Thomas L. Boeder and Benjamin S. Sharp, Attorneys for Boeing*, ANTITRUST, Fall 1997, at 5.

10 F.M. SCHERER, COMPETITION POLICIES FOR AN INTEGRATED WORLD ECONOMY (1994).

[11] European Comm'n, Competition Policy in the New Trade Order: Strengthening International Cooperation and Rules, COM (95) 359 final (Dec. 7, 1995). For a history of the Van Miert Experts report and its role in setting the stage for the ICN, see Eleanor M. Fox, *Linked-In: Antitrust and the Virtues of a Virtual Network*, 43 Int'l Law. 151 (2009), *reprinted in* The ICN at Ten, *supra* note 2, at 105, 110–17.

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[13] Int'l Competition Pol'y Advisory Comm., Report to the Attorney Gen. and Asst. Attorney Gen. for Antitrust, Final Report (2000) [hereinafter ICPAC Report], *available at* http://justice.gov/atr/icpac/finalreport.html.

[14] Mark A.A. Warner, *International Competition Policy After ICPAC: Where Next?*, Antitrust, Summer 2000, at 46, 46.

[15] *Id.* at 51.

[16] ICPAC Report, *supra* note 13, at 282.

[17] *Id.* at 284.

[18] *Id.*

[19] *Id.* at 284–85.

[20] Maria Coppola & Cynthia Lagdameo, *Taking Stock and Taking Root: A Closer Look at Implementation of the ICN Recommended Practices for Merger Notification & Review Procedures*, *in* The ICN at Ten, *supra* note 2, at 297, 298–301.

[21] *Id.* at 304–06.

[22] Unilateral Conduct Working Grp., Report on the Objectives of Unilateral Conduct Laws, Assessment of Dominance/Substantial Market Power, and State-Created Monopolies (2007), *available at* http://www.internationalcompetitionnetwork.org/uploads/library/doc353.pdf.

[23] Unilateral Conduct Working Grp., State-Created Monopolies Analysis Pursuant to Unilateral Conduct Laws (2007), *available at* http://www.internationalcompetitionnetwork.org/uploads/library/doc318.pdf.

[24] Cynthia Lewis Lagdameo & Andrew J. Heimert, *The Unilateral Conduct Working Group*, *in* The ICN at Ten, *supra* note 2, at 287, 289.

[25] Unilateral Conduct Working Grp., Dominance/Substantial Market Power Analysis Pursuant to Unilateral Conduct Laws 3 (2008), *available at* http://www.internationalcompetitionnetwork.org/uploads/library/doc317.pdf.

[26] *Id.*

[27] A chapter covering methods used to define relevant markets and assess the existence of dominance was presented at the 2011 annual conference. *See* Unilateral Conduct Working Grp., Unilateral Conduct Workbook Chapter 3: Assessment of Dominance (2011), *available at* http://www.internationalcompetitionnetwork.org/uploads/library/doc752.pdf.

[28] Agency Effectiveness Working Grp., Agency Effectiveness Handbook, ch. 1, at 4 (2010), *available at* http://www.internationalcompetitionnetwork.org/uploads/library/doc744.pdf.

[29] The ICN University is also known as the ICN Curriculum Project; its materials can be found at http://www.internationalcompetitionnetwork.org/about/steering-group/outreach/icncurriculum.aspx.

[30] John Fingleton, *Competition Agencies and Global Markets: The Challenges Ahead*, *in* The ICN at Ten, *supra* note 2, at 173, 200.

[31] *Id.* at 201.

[32] Eduardo Pérez Motta, *The Role of the International Competition Network (ICN) in the Promotion of Competition in Developing Countries: The Case of Mexico*, *in* The ICN at Ten, *supra* note 2, at 217, 226.