

The ICN in 2012: 12 Reasons to Pay Attention

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After nearly 12 years, the International Competition Network has made its mark as a key player in reforming competition enforcement and policy. In that time, the ICN produced an impressive range of consensus work in virtually every aspect of global competition, and its recommendations proved vital to legal and policy reformers in ICN member jurisdictions.

With an eye toward another productive decade, ICN published the 2011 Vision for ICN's Second Decade and Steering Group Chair Eduardo Pérez Motta's 2012 Roadmap for his tenure. The ICN work plans for 2012-13 put the high level goals proposed in those documents into action, and the following twelve factors are advancing those goals towards reality.

New Faces

1. *The Steering Group has a new Chair.* In April 2012, Eduardo Pérez Motta, President of the Mexican *Comisión Federal de Competencia*, was selected as the ICN Steering Group's seventh Chair. Pérez Motta brings a wealth of domestic competition enforcement experience, familiarity with the workings of international organizations and networks, and active participation within the ICN to his new role. Vice Chair Andreas Mundt, President of the *Bundeskartellamt*, will assist working groups in assessing accomplishments and future work planning. Vice Chair Bruno Lasserre, President of the French *Autorité de la Concurrence*, coordinates efforts for member and non-governmental advisor engagement. Vice Chair Kazuhiko Takeshima, Chairman of the Japan Fair Trade Commission, leads efforts to promote the implementation of ICN work product.

2. *New Working Group Co-Chairs.* The ICN recently introduced a scheduled rotation system for its working group leadership positions. Nine of the current fifteen co-chairs of the ICN's core substantive working groups – Advocacy, Agency Effectiveness, Cartel, Merger, and Unilateral Conduct – are new to their positions for 2012-13, including several first time chairs. This rotation of co-chairs aims to bolster member inclusion and introduce fresh perspectives to each group's work.

New Vision

Pérez Motta prepared a Roadmap² for his tenure as Steering Group Chair, which sets out three areas of emphasis.

3. *Greater member engagement.* The ICN is the most extensive network of competition agencies, with 123 agency members from 108 jurisdictions. Citing recent efforts to create an ICN work product catalogue,³ the ICNBlog,⁴ regular NGA liaison updates, and various outreach efforts to

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² My Roadmap as ICN Chair, Eduardo Pérez Motta, available at: <http://www.internationalcompetitionnetwork.org/uploads/library/doc792.pdf>.

³ ICN Work Products Catalogue, available at: <http://www.internationalcompetitionnetwork.org/uploads/library/doc770.pdf>.

introduce new members to the work of the ICN, Pérez Motta committed the ICN to efforts “to pave the way as much as possible for every member agency, young or mature, big or small, to fruitfully participate in ICN work” and to ensure that the ICN’s work is relevant to all of its membership.

4. *Enhanced assistance to members.* Pérez Motta’s roadmap envisions a more active role for the ICN in supporting members that seek assistance on specific competition policy initiatives, “...for example when advocating improvements to their legislation – or indeed, when resisting regressions to their regimes.” An underlying assumption of the ICN’s convergence mission is that competition enforcement and advocacy at the domestic level is strengthened by learning from international counterparts. Pérez Motta’s roadmap calls for active ICN support for member efforts to consider, adopt, and conform to ICN recommendations and other ICN guidance.

5. *Greater visibility for competition policies and principles.* Pérez Motta’s vision is to draw from the common mission and purpose of member agencies and the ICN’s extensive foundation of consensus work product to craft messages on the importance of competition principles to inform broader policy debate at the national and international level. In 2009, the ICN Steering Group developed messages to support its members’ advocacy efforts with a document entitled *The Case for Competition Policy in Difficult Economic Times*.⁵ The roadmap introduces the idea of similar high-level work on important competition policy issues to supplement efforts by ICN members to influence the formulation of competition-friendly policy in domestic and international agendas.

New Work Topics

In 2012-13, the ICN begins three new, multiyear projects on investigative process,⁶ international enforcement cooperation,⁷ and interaction with courts.⁸ Each project is recognized as a “cross-cutting” project that will draw experience from multiple competition enforcement and policy areas. All three projects aim to build upon existing work by the ICN and others and to develop ICN guidance.

6. *Investigative Process.* This project aims to explore “how different investigative processes and practices can contribute to enhancing the effectiveness of agencies’ decision-making and ensuring effective protection of procedural rights.” The project will address the enforcement tools available to agencies and the efficacy and fairness of the procedures used to conduct investigations within existing legal frameworks.

⁴ <http://www.icnblog.org/>.

⁵ The Case for Competition Policy in Difficult Economic Times, available at: <http://www.internationalcompetitionnetwork.org/uploads/library/doc818.pdf>.

⁶ Investigative Process Project, Issues Paper and Mandate, available at: <http://www.internationalcompetitionnetwork.org/uploads/library/doc799.pdf>.

⁷ International Enforcement Cooperation Project, available at: <http://www.internationalcompetitionnetwork.org/uploads/library/doc794.pdf>.

⁸ Project on Working with Courts and Judges, available at: <http://www.internationalcompetitionnetwork.org/uploads/library/doc796.pdf>.

7. *International Enforcement Cooperation*. This project will “assess member agencies” needs with respect to international enforcement cooperation” and explore “goals, and methods, for enhanced cooperation” in the future. It expects to produce “practical recommendations for competition agencies and businesses in the field of international enforcement cooperation.” The project will be coordinated with a parallel project on international cooperation at the OECD.

8. *Working with Courts and Judges*. The third project will identify and discuss practical ways that competition agencies can improve their interaction with courts and judges. The project proposal includes the specific topics of how agencies present their decisions or pleadings in court and the presentation of economic evidence to judges.

More Interaction

9. *Meetings of ICN members and non-governmental advisors*. In its first decade, the ICN organized annual conferences and over 20 workshops on specific enforcement and policy topics. The plans for 2012-13 continue this rich tradition of bringing together member agencies and non-governmental advisors for such dialogue: the ICN will organize workshops in Singapore (Unilateral Conduct); Panama (Cartels); France (Advocacy); Colombia (Mergers); and the Polish Office of Competition and Consumer Protection will host the 2013 annual conference.

10. *Substantive discussion via virtual seminars*. The 2012-13 ICN work plans anticipate an unprecedented level of substantive discussion in working groups. Approximately 20 teleseminars or webinars are planned for the year across the range of ongoing ICN work on such topics such as leniency, mergers, knowledge management, enforcement tools and procedures, unilateral conduct, and competition advocacy. These seminars provide an opportunity for experience sharing and substantive discussion of timely topics.

11. *ICN Curriculum*.⁹ The ICN Curriculum Project was launched in 2010 to create a comprehensive set of online training materials on competition law and practice for competition agencies. This new resource is the result of collaboration between interested members and non-governmental advisors, particularly academics. The Curriculum Project has prepared eight modules on the aims and characteristics of competition policy, market definition, market power, leniency programs, predatory pricing, competitive effects, and merger analysis. Additional modules are in the works on topics such as competition advocacy, challenges facing developing agencies, and investigative techniques.

12. *Questions for the ICN’s Second Decade*. In 2010-11, Steering Group Chair John Fingleton led a network-wide effort to examine the benefits of ICN participation and identify any needed improvements. The consultations resulted in a paper that established a long-term vision and strategy for the ICN.¹⁰ The vision identified four “high-level goals” for the ICN in its second decade: (i) Encourage the dissemination of competition experience and best practices; (ii)

⁹ ICN Curriculum Project modules are available at: <http://www.internationalcompetitionnetwork.org/about/steering-group/outreach/icncurriculum.aspx>.

¹⁰ The ICN’s Vision for its Second Decade, available at: <http://www.internationalcompetitionnetwork.org/uploads/library/doc755.pdf>

Formulate proposals for procedural and substantive convergence through a results-oriented agenda and structure; (iii) Support competition advocacy; and (iv) Facilitate effective international cooperation.”

These four goals are a frame of reference for ICN’s success for the next ten years. Will the ICN continue to foster dialogue and the exchange of experience on important topics in competition law and policy? Will the ICN promote implementation of its work and encourage convergence in order to expand the real world impact of its recommendations? Is there a demand for a more visible role for the ICN in a global competition dialogue, and if so, will the ICN embrace and strengthen its role as advocate for competition principles? Will the ICN provide meaningful guidance to support member needs for effective international enforcement cooperation and facilitate enhanced cooperation in the future?

Recognizing and addressing the evolving needs of its members is an ever-present challenge for the ICN. As such, the ICN needs to remain open to adapting and improving how it chooses its priorities and performs its work. The 2011 Second Decade and 2012 Roadmap exercises evidence openness to self-evaluation via regular discussion and strategic planning. Inspired by feedback from across the ICN membership during the Second Decade project and the new Chair’s Roadmap, several new initiatives that will shape the ICN’s accomplishments over the coming years are beginning to take shape in 2012-13. Many of the changes and new projects are well-tailored to advance the Second Decade’s four goals and answer the related questions they pose. Combined with the continued practical-minded work on core enforcement and policy topics in the established ICN working groups, the initiatives that the ICN is undertaking in 2012-13 are worthy of the attention of ICN member agencies, non-governmental advisors, and the broader competition community.