



attention to the functioning of the network. The next Chair, David Lewis (2009), focused on outreach to new and young agencies with the aim of engaging them more fully in ICN activities.

John Fingleton, ICN Chair from 2009 through 2012, brought to life the network's largest and most comprehensive internal review, entitling it "The ICN's Vision for its Second Decade."<sup>3</sup> Fingleton called upon the network to "take stock of what we have done, where we are going, and how we are getting there."<sup>4</sup> The ICN consulted members and non-governmental advisors to evaluate the ICN's strengths and identify improvements needed to maintain the network's momentum. From 2015 to 2016, then-current ICN Chair Andreas Mundt oversaw an initiative to affirm the network's Second Decade goals and track progress.<sup>5</sup> ICN members and NGAs were invited to provide feedback on their participation in the ICN, views on its work product and implementation, and ideas for the ICN's future.<sup>6</sup>

### **Second Decade Outcomes**

The Second Decade project produced significant outcomes for the network. Its recommendations led to several notable achievements and areas of growth. First, with all projects open to all members and input sought across the network, ICN's emphasis on inclusive participation resulted in increased member engagement in projects. Further, the ICN implemented a plan to rotate the leadership of its working groups that was aimed at encouraging involvement from a broader range of members. This has greatly increased the number of agencies which have led ICN working groups and projects and hosted events over the past decade. The network also has encouraged its members to pursue increased engagement with and from NGAs.

Two significant trends with respect to ICN work product grew out of Second Decade: (1) a commitment to reevaluate and revise prior work, and (2) the expansion of multidisciplinary and emerging topics across the network's agenda. Several flagship work products from the ICN's initial years were revised in the second decade, such as the ICN's first recommended practices on merger notification and review procedures.

Process and the ICN Framework for Competition Agency Procedures.<sup>10</sup> Both topics drew from experience across competition enforcement and policy areas, were showcased in ICN workshops and conferences, and led to significant ICN work product.

While the early days of ICN work were dominated by the identification and articulation of basic enforcement and agency practices, a new focus of work developed in the ICN's second decade: exploring emerging and unresolved topics of importance to the competition community. Examples of this type of "ICN 2.0" line of topics have included disruptive innovation, competition advocacy in an economic downturn, online vertical restraints, big data and collusion, digital platforms, cooperation tools, and the intersection of competition and data privacy. An important innovation in work formats also blossomed over the past decade with the creation of ICN's Training on Demand project, which produces video presentations on key ICN work topics.<sup>11</sup> Anchored by work on enforcement fundamentals, the addition of emerging policy issues has helped the ICN's agenda address the full range of issues member agencies and practitioners face.

### Third Decade

As the ICN approaches its 20th anniversary, it has focused its attention once again on the future of the network. At the 2020 Annual Conference,<sup>12</sup> the ICN recalled a tool from its past to help it look to the future, announcing its Third Decade initiative. Third Decade is a comprehensive, network-wide exercise to evaluate the rules, tools, topics, and working procedures that guide the network to ensure and enhance its effectiveness over the next decade. The project is led by the German Bundeskartellamt, the Dutch ACM, and the U.S. FTC. The project issued member and NGA surveys and is conducting discussion calls seeking network-wide input focused on participation, communication, work product and its implementation, the network's structure, and its advocacy voice. The results of the surveys and consultations will inform a report with recommendations for the network expected in time for the ICN's October 2021 annual conference.

Expectations for the Third Decade Project can be categorized into three groups: (1) widespread support to continue many of the ICN's working methods, (2) several ideas and practices that the ICN might expand, and (3) a few ideas where the network might break new ground.

### The Many Ways the ICN Is Working Well

Preliminary feedback from surveys to members and NGAs (the results of which will be finalized in the October 2021 report) indicates widespread satisfaction with the mission and working procedures of the ICN. Nearly all members are familiar with the scope of the ICN's work product, reporting that they use and distribute ICN work internally. Members support the informal structure and consensus-based working process of the ICN; the variety of types of ICN work, including prioritizing recommended practices; the ICN's engagement with other international organizations;

<sup>10</sup> ICN, Recommended Practices for Investigative Process (2019), <https://www.internationalcompetitionnetwork.org/portfolio/recommended-practices-for-investigative-process>; ICN, *ICN Framework for Competition Agency Procedures (CAP)*, <https://www.internationalcompetitionnetwork.org/frameworks/competition-agency-procedures>.

<sup>11</sup> The ICN's most significant and prolific creative choice for alternative work formatting is its Training on Demand project, an idea initiated in 2010 and continuously led by the FTC, and which has flourished during the ICN's second decade. Training modules produced by academics and agencies, consisting of video lectures and accompanying ICN materials, provide an online interactive educational center for competition authorities from around the world. The American Bar Association's Antitrust Law Section has made financial contribu-



participation in the work of the network, especially the presence and degree of participation of young agencies, including in the governance structures, working groups, and various events. Ways to maintain and expand participation that have been identified by member feedback include an emphasis on widespread input into topic selection and diverse project leadership to instill a wider sense of ownership in the work of the network, sensitivities to time zone differences for the ICN's many discussion calls and events, and active ways to integrate new and younger members, like the Bridging Project.

The larger challenge in terms of participation in the ICN comes with NGAs. Although only competition agencies are members, the ICN welcomes the participation of all NGAs, including academics, in-house counsel, consumer groups, private practitioners, economic consultants, and representatives of international organizations. This partnership with NGAs is enshrined in the ICN's Operational Framework, noting the intention for "effective working relationships with Non-Governmental Advisors."<sup>14</sup> The Framework opens participation in ICN working groups and events to NGAs, who contribute to the discussions during projects, in seminars, and at conferences and workshops. In no other government competition fora do non-member experts play such an integral role and participate in day-to-day activities. According to survey feedback, today's active NGAs hail from only about one-third of the member jurisdictions, with a heavy tilt toward jurisdictions with more established competition regimes and private practitioners. As recognized in survey feedback, to accomplish its goal of reaching the whole of the global antitrust community, the ICN needs to encourage and assist its younger members in outreach and inclusion of NGAs in their jurisdictions. The ICN should affirm its encouragement for participation from a large, diverse set of NGAs from all perspectives.

As with any network, the ICN's work relies on effective communications. Hundreds of participants collaborate within working groups to create ICN work product and need effective ways to communicate to do so. Consensus building requires an informed membership and opportunities for all to participate in and contribute to the work. Communication among network participants also has a direct impact of facilitating broader cooperation among agencies. The relationships built over ICN projects and events carry over to bilateral case cooperation and policy exchanges in interaction outside of the network.

Stronger network communication is directly linked to participation levels, and it should be a priority for the ICN's Third Decade to increase information about ongoing work, as well as to provide opportunities for input or to serve as speakers at events. For the most part, information about ongoing work is disseminated by individual working groups, with an "insider" nature to information flow among working group participants. This decentralized process has been augmented recently with regular updates through a network-wide newsletter and more regular updates on a "news and events" page of the ICN website. This trend should continue if the ICN wants to increase participation. Over the past five years, the ICN also has made modest steps to add a Twitter account (@IntCompNetwork) and a YouTube channel.<sup>15</sup>

Given the recent challenges that agencies have faced over the past year during the pandemic, member feedback has emphasized a need and desire to strengthen the network's online and virtual interactions to continue to facilitate sharing. Though not standard practice today, ICN events should make more use of videos and broadcasts, in various formats, from lectures, discussions, or

<sup>14</sup> ICN, International Competition Network Operational Framework § 1(iii) (2012), <https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/07/ICNOperationalFramework.pdf>.

<sup>15</sup> ICN T I I . . D i , <https://www.youtube.com/user/ICNCurriculumProject>.

presentation of perspectives, to supplement and preserve discussions, with the ability to expand access and viewership and turn ephemeral events into institutional knowledge.

For a voluntary, non-binding network, promoting the use and implementation of its recommendations can be challenging. The ICN model relies on persuasion through common experiences rather than coercion. It leans on the consensus nature of its work, work that is envisioned, articulated, and approved by peers of the target audience. ICN work product carries influence not from obligation, but from its example and status as a resource derived from the application of lessons learned within the broader community.

Current ICN Chair Mundt has explained that “to ensure that the ICN and its work products matter, we need to make our high-quality products available to everyone and continue our efforts to promote their implementation.”<sup>16</sup> Anecdotal evidence points to a significant impact from the ICN’s work. Approximately four out of five member agencies report using ICN work product to inspire changes to their guidelines, rules, practices, or training. Yet, this immense impact has come even without consistent and focused support within the network. A few self-assessment materials exist for ICN work, and occasional workshops and seminars promote existing work, but annual work plans and events tend to focus on new work discussion and creation. A more dedicated implementation focus to tie these efforts together is evolving within the ICN. Recently, a dedicated “Promotion and Implementation” team was created within the network to support working groups and

property and competition, innovation and addressing technological change, competition in an economic recovery, non-cartel horizontal agreements, compliance, and both environmental and social sustainability.

Developing existing work into new work formats has also been suggested, particularly with respect to expanding the ICN's set of recommended practices or training video options to cover more topics. For recommended practices, the ICN has room to explore many unilateral conduct and cartel topics. Expect the ICN to attempt to increase understanding and disseminate advice on best practices by identifying new topics that are important and relevant to its members and reframing them to the international context.

can have,<sup>20</sup> they are far outnumbered by the times that agencies and governments have pursued reforms without using the ICN as a resource or sounding board. Facing calls for reform to address the challenges of enforcement in digital markets, perhaps the coming years will be a time and opportunity for the ICN to play the role of critical friend and pursue more direct advocacy assistance to its members. The ICN can do more systematic advocacy assistance by identifying reform



“Competition During and After the COVID-19 Pandemic.”<sup>26</sup> Both initiatives articulate basic, common considerations for competition law enforcement in times of crisis.

The catalyst for these messages were two once-in-a-generation (or longer) events—the “Great Recession” and a global pandemic. While these critical situations brought unique urgency to the messaging, there are certainly occasions where the ICN’s voice can add value to more normal or regular competition debates. The process of using the ICN to voice a shared perspective can be difficult because of the need to accommodate different preferences through consensus building. However, when the network is able to do so, it can be a very powerful voice embodying nearly all of the enforcement community in ways not possible in other venues. The ICN should consider using its learning in crafting and issuing the two previous statements and look for more regular opportunities to advocate for policies that promote competition in international bodies, the media, and elsewhere.

Today, there are calls to relax antitrust standards and defer to industrial policies, calls to augment enforcement with regulation, questions regarding the value of global institutions, debates about non-competition goals and national champion policies, and doubts as to whether agencies can keep up with dynamic changes in the economy and new technologies. While the ICN has helped identify and define international competition principles for its members; legislators, courts, and policymakers will continue to play a part in shaping, and perhaps redefining, competition policy and mandates for enforcement agencies. Over the next decade, perhaps the most intriguing, ambitious, and uncertain question for the ICN will involve the choice whether to strengthen its voice in broader global economic policy discussions.

## Conclusion

The ICN is not a forum for nostalgia. Approaching its 20th anniversary, the network will use the occasion primarily to look to its future. The purpose and value of the network remains as strong today as it was 20 years ago. New challenges and opportunities await the ICN over the next decade. Its tradition of self-assessment will help prepare the network and propel it forward. Its value as a forum for the exchange of experiences among the agency community, its willingness to engage with academic and private sector NGAs, and its bold mission to foster convergence should all serve the network well.

As voiced by its membership through the Third Decade Project, the ICN is entering its next decade with a focus on the need for robust participation and implementation efforts, ideas for operational improvements to communications and working processes, and a confidence to address new and emerging global competition issues. The ICN’s first 20 years also have set the stage for the ICN to serve as a global competition advocate. The ICN’s Third Decade project and recommendations should articulate these ideas and objectives to provide a roadmap to continued network success. ●

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<sup>26</sup> ICN Statement on Competition During and After the COVID-19 Pandemic (Apr. 8, 2020), <https://www.internationalcompetitionnetwork.org/featured/statement-competition-and-covid19> (affirming the importance of maintaining competition for economies in crisis, urging vigilance with respect to anticompetitive conduct, and promoting competition as a guiding principle for economic recovery efforts).