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Prescription for the International Competition Network

The last year has witnessed a remarkable change in thinking amongst antitrust authorities as to the nature, and the manner of addressing issues arising from the near geometric growth of national antitrust regimes. What is new (and notable, given previously held views to the contrary in the U.S. agencies) is the widespread acceptance that the time has come for a multilateral initiative to complement existing bilateral agreements and institutional arrangements to address necessary convergence of multiplying processes.

The IBA's international meeting at Ditchley Park this February acted as a springboard to this conclusion¹. The event saw more than 40 of the world's senior competition law officials and professionals, acting in an individual capacity, discuss the concept and role of such a forum. The resulting consensus set the stage for the formal launch at Fordham University last month of what is now to be called the *International Competition Network* ("ICN")².

Particularly good news is the fact that the ICN will be project-driven, concerned with real world problems and consensus-based. With membership open to national and multi-national competition agencies, it will seek advice and input from the private sector, non-governmental organizations, consumer group, lawyers (and their institutions), economists and academics.

For its first project the ICN will focus on substantive and procedural issues arising from the proliferation of merger review regimes. "Everyone will benefit from simplified and predictable

¹ Convened and hosted by the International Bar Association, with support from Fordham University and the ABA's Antitrust Section, Ditchley drew participants from Australia, Belgium, Brazil, Canada, the European Union, Finland, France, Germany, Hungary, Israel, Japan, Italy, Mexico, the Netherlands, South Africa, Spain, Switzerland, the United Kingdom, the United States and Turkey.

² ICN, Press Release and Backgrounder, 25 October 2001, New York City

reviews”, notes Konrad von Finckenstein, Commissioner of Canada’s Competition Bureau and chair of the interim ICN Steering Group.³

Given the acuteness of concern with the current divergent approach to multi jurisdictional merger review, (not least because it is now common for the parties to a larger international transaction to face filings in 20, 30, 40 or more jurisdictions), the ICN is to be applauded for tackling this issue at the outset of its mandate. The project presents the business community with its first real opportunity to address the practical problems associated with divergent multi agency merger review processes. To succeed, the agency’s “merger review customers” must make input to the work of the ICN merger task force a top priority

The following action points would seem worth consideration:

- Transparency and information sharing should be the 1st order of the day. Many will be prepared to contribute to the work of the ICN, but they need to know what is planned, and how and to whom to make input.
- The early, and preferably centralised, publication of papers defining/refining thinking on the ICN’s scope, objectives, mandate, governance and make-up is desirable. Comment from any interested party should be sought and encouraged.
- The establishment by the ICN of an interactive website to facilitate communication and awareness of the ICN’s proposed activity is an obvious priority.
- As regards the merger project, the ICN merger task force should ensure the early publication of the objectives, mandate, work plan and time frame for the work contemplated. Issues which might be addressed include:
 - Best Practices for the Design of Merger Review Regimes⁴
 - Best Practices for Merger Review Agencies⁵

³ Ibid.

⁴ See McDavid, Proger, Reynolds, Rowley and Campbell, Best Practices for the Review of International Merger, October 2001

⁵ Ibid

- Best Practices for Merging Parties⁶
 - Use of Peer Review by Merger Review Agencies
 - Possibilities associated with a Common Form /Process Filing Treaty.
- Definition of the input sought from and the roles to be played by the private sector, non-governmental organization, legal institutions and others to the work of the merger task force is required. Until the ICN's own website is established, the IBA's soon to be launched global competition website is one natural host for this information, the ABA's antitrust website another. Affected businesses should individually be prepared to make time and resources available to the project to complement the work of the bar and other groups.
 - The ICN's funding needs (generally and project specific) and alternatives should be aired. Agency officials might be surprised at the potential interest in the private sector to assist a global initiative of this sort. And there are sure to be ways to avoid concerns about "agenda capture".
 - In addition to the two projects that have been announced (Merger Process Convergence and Competition Advocacy), other obvious areas for "working group" or "project" activity should be identified. Two further candidate topics suggest themselves – "Cartel Enforcement" and "Co-operation and Information Exchanges".
 - It is not too early for the ICN leadership to invite all who have an interest to become "members" or "participants in" those working groups/task forces they would like. It is also not too early to invite volunteers to prepare papers, comments or other inputs as they consider useful. Ultimately, the working groups will need to establish their priorities, agenda and time frames, but they will likely be well served by having ready-made material from which to draw.
 - Finally, a number of professional, business and non-governmental institutions have volunteered to facilitate meetings and provide such other services as may be necessary to

⁶ Ibid

move the ICN forward (i.e., translating concept to reality). None of these organizations will have any interest in challenging the core leadership role if the competition agencies intend to assume in the ICN. However, they do have important administrative back up and a vital interest in seeing that the work of the ICN proceeds efficiently and with necessary support. Given the infrastructure of these organizations, further thought might be given as to how they might help (e.g., conference administration and planning), including the planned Capri meeting this coming summer.