

ICN Framework on Competition Agency Procedures



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Fair and effective procedures are essential to sound competition law enforcement and can increase opportunities for international cooperation.

The International Competition Network (“ICN”) has recognized the importance of fair and effective procedures and published various work products reflecting the broad consensus among its members. Following the desire expressed by several competition agencies to further cooperate on fundamental principles of fair and effective procedures, the ICN Steering Group encourages the worldwide implementation of such principles.

Recognizing the success of the ICN frameworks in the field of merger review and cartel enforcement, the ICN Steering Group establishes a Framework on Competition Agency Procedures building on principles fully consistent with existing ICN work products and making use of the ICN infrastructure to maximize visibility and impact while minimizing the administrative burden for participants operating in different legal regimes and enforcement systems and within different resource constraints.

The ICN Steering Group invites all competition agencies that are willing to adhere to the principles and to cooperate with each other with regard to the implementation of the principles to participate in the Framework.

1. Framework Participation

- a) The ICN Steering Group establishes the Framework on Competition Agency Procedures (“Framework”).
- b) A Participant in the Framework can be any national or multinational competition agency entrusted with the enforcement of Competition Law(s) or a competition agency of a customs territory entrusted with the enforcement of Competition Law(s) throughout the customs territory, whether or not an ICN member. This Framework relates solely to its Participants and does not cover, engage, or commit other government entities, or their procedures, beyond the Participants.
- c) The Framework establishes fundamental principles of fair and effective procedures that are fully consistent with existing ICN work products (“**Principles**”).

- d) All ICN members and other competition agencies that are willing to adhere to the Principles and to participate in the Cooperation Process and in the Review Process are welcome and encouraged to participate and contribute.
- e) Agencies entrusted with the enforcement of Competition Laws that do not meet the definition of Participant or lack the legal capacity to join this Framework as a Participant can participate in the Framework by submitting a special side letter declaring adherence to the Principles and participation in the Cooperation and Review Processes.
- f) The Framework is co-chaired by three Participants (“Co-chairs”) who will be confirmed by consensus of the Participants for three-year terms.
- g) Participants join the Framework by submitting a registration form to the Co-Chairs. They may terminate their participation by a notification in writing addressed to the Co-Chairs.
- h) The Co-Chairs will publish a list of Participants on the ICN website.
- i) By registering as a Participant, each Participant agrees that it intends, in good faith, to adhere to this Framework to the extent consistent with applicable laws. The Framework is non-binding. Participation in the Framework does not create any legally binding rights or obligations upon the Participants nor upon the legal subjects of their proceedings.
- j) Any Participant may indicate to the Co-Chairs that its Competition Laws and Procedural Rules prevent it from applying one or more of the Principles, as a limitation on its participation. Participants may, at any time, withdraw their limitations.
- k) The ICN Chair and the ICN Secretariat may attend meetings of the Framework on an ex officio basis to report to the ICN Steering Group on consistency with ICN work and activities.

2. Cooperation Process

- a) Participants agree to cooperate with regard to the implementation of the Framework.
- b) The Co-Chairs, or one Participant on behalf of the Co-Chairs, will create and maintain a contact list of liaison officers for this Framework based on information provided by the Participants, and will make it available to Participants.
- c) Participants may communicate directly with each other regarding issues of Competition Law procedure related to this Framework.
- d) Any Participant may request that another Participant engage in a dialogue regarding any issue of Competition Law procedure that is material to this Framework. Requests for dialogues are limited to Participants; participation in the Framework does not create

rights in third parties to obligate or require a Participant to request a dialogue. A dialogue will only be undertaken for matters that fall within the responsibility of the requested Participant, although Participants may raise broader issues related to Competition Law investigation and enforcement for information purposes.

- e) Participants will engage in a dialogue in good faith, according full and sympathetic consideration to the issues raised, in a mutually convenient manner compatible with their respective laws and in light of the need to effectively enforce such laws. Unless otherwise agreed by the Participants involved, the dialogue will be kept confidential.
- f) Participants will discuss the issues raised in general terms. To facilitate the dialogue, Participants are encouraged to discuss procedural issues related to a relevant Investigation or Enforcement Proceeding and to share relevant information in accordance with applicable law. There is no obligation to disclose confidential information.
- g) Any measures taken by the requested Participant as a result of the dialogue are within the discretion of that Participant.

3. Review Process

- a) Each Participant will publish or submit to the Co-Chairs, no later than 6 months from adherence to this Framework, a Template with information regarding its Competition Law investigation and enforcement procedures. The Template will highlight important features relevant for the implementation of this Framework and explain limitations (Section 1 j), if applicable; it may include links or other references to related materials such as relevant legislation, implementing rules and regulations, and guidelines. Participants will update their Templates reflecting significant changes as they relate to this Framework, as needed.
- b) The Co-Chairs will make the Templates publicly available on the ICN website.
- c) The Participants may convene dedicated sessions at the ICN Annual Conference to review the implementation and functioning of the Framework, to advocate for the implementation of the Principles, or make proposals to modify the Principles. Such sessions will be convened at least every four years. The Framework may report on general trends, but will not identify individual Participants without consent.

Annex: Principles

a) Definitions

- i. “Administrative Proceeding” means the decision-making process, following an Investigation, by a competition authority in its capacity as the decision maker, to determine whether to impose a prohibition, remedy, or sanction pursuant to applicable Competition Laws.
- ii. “Competition Law(s)” means laws in relation to cartels and other anticompetitive agreements, unilateral conduct or monopolistic practices, and merger control.
- iii. “Enforcement Proceeding” means an Administrative or Judicial Proceeding, as applicable.
- iv. “Investigation” means an inquiry, review, or investigative activity conducted by a Participant pursuant to applicable Competition Laws; market studies, sector inquiries, or similar assessments of general market conditions are not considered an Investigation.
- v. “Judicial Proceeding” means a proceeding, following an Investigation, brought by a competition authority or by a public prosecutor on referral from a competition authority, before an independent adjudicative body, such as a court or tribunal, requesting that a prohibition, remedy, or sanction be imposed pursuant to applicable Competition Laws.
- vi. “Person” means a natural person or an entity constituted or organized under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association, or similar organization.
- vii. “Procedural Rules” means binding norms governing the conduct of an Investigation or Enforcement Proceeding, as applicable.

b) Non-Discrimination

Each Participant will ensure that its investigation and enforcement policies and Procedural Rules afford Persons of another jurisdiction treatment no less favorable than Persons of its jurisdiction in like circumstances.

c) Transparency and Predictability

- i. Each Participant will ensure that Competition Laws and regulations that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.

- ii. Each Participant with the authority to adopt Procedural Rules will have in place such rules applicable to Investigations and Enforcement Proceedings in its jurisdiction.
- iii. Each Participant will ensure that Procedural Rules that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.
- iv. Each Participant will follow applicable Procedural Rules in conducting Investigations and in participating in Enforcement Proceedings in its jurisdiction.
- v. Each Participant is encouraged to have publicly available guidance or other statements, clarifying or explaining its Investigations and Enforcement Proceedings, as appropriate.

d) Investigative Process

- i. Participants will inform any Person that is the subject of an Investigation as soon as practical and legally permissible of that Investigation, according to the status and specific needs (e.g., forensic considerations) of the Investigation. This information will include the legal basis for the Investigation and the conduct or action under Investigation.
- ii. Participants will provide any Person that has been informed that it is the subject of an Investigation, or that has notified a merger or other transaction or conduct, with reasonable opportunities for meaningful and timely engagement on significant and relevant factual, legal, economic, and procedural issues, according to the status and specific needs of the Investigation.
- iii. Participants will focus investigative requests on information that they deem may be relevant to the competition issues under review as part of the Investigation. Participants will provide reasonable time for Persons to respond to requests during Investigations, considering the needs to conduct informed Investigations and avoid unnecessary delay.

e) Timing of Investigations and Enforcement Proceedings

Each Participant will endeavor to conclude its Investigations and aspects of Enforcement Proceedings under its control within a reasonable time period, taking into account the nature and complexity of the case.

f) Confidentiality

- i. Each Participant will have publicly available rules, policies, or guidance regarding the identification and treatment of confidential information.

- ii. Each Participant will protect from unlawful disclosure all confidential information obtained or used by the Participant during Investigations and Enforcement Proceedings.
- iii. Each Participant will take into consideration both the interests of the Persons concerned and of the public in fair, effective, and transparent enforcement regarding the disclosure of confidential information during an Enforcement Proceeding.

g) Conflicts of Interest

Officials, including decision makers, of the Participants will be objective and impartial and will not have material personal or financial conflicts of interest in the Investigations and Enforcement Proceedings in which they participate or oversee. Each Participant is encouraged to have rules, policies, or guidelines regarding the identification and prevention or handling of such conflicts.

h) Notice and Opportunity to Defend

- i. Each Participant will provide Persons subject to an Enforcement Proceeding timely notice of the alleged violations or claims against them, if not otherwise notified by another governmental entity. To allow for the preparation of an adequate defense, parties should be informed of facts and relevant legal and economic reasoning relied upon by the Participant to support such allegations or claims.
- ii. Each Participant will provide Persons subject to a contested Enforcement Proceeding with reasonable and timely access to the information related to the matter in the Participant's possession that is necessary to prepare an adequate defense, in accordance with the requirements of applicable administrative, civil, or criminal procedures and subject to applicable legal exceptions.
- iii. Each Participant will provide Persons subject to an Administrative Proceeding with reasonable opportunities to defend, including the opportunity to be heard and to present, respond to, and challenge evidence.

i) Representation by Legal Counsel and Privilege

- i. No Participant will deny, without due cause, the request of a Person to be represented by qualified legal counsel of its choosing.
- ii. Each Participant will provide a Person a reasonable opportunity to present views regarding substantive and procedural issues via counsel in accordance with applicable law. Notwithstanding the foregoing, Persons may be required to provide direct evidence.

- iii. Each Participant will recognize applicable privileges in accordance with legal norms in its jurisdiction governing legal privileges, including privileges for lawful confidential communications between Persons and their legal counsel relating to the solicitation or rendering of legal advice. Each Participant is encouraged to have rules, policies, or guidelines on the treatment of privileged information.

j) Decisions in Writing

- i. Each Participant in charge of issuing decisions or orders will issue in writing its final decisions or orders in which it finds a violation of, or imposes a prohibition, remedy, or sanction under applicable Competition Laws. Such final decisions or orders will set out the findings of fact and conclusions of law on which they are based, as well as describe any remedies or sanctions. Each Participant will ensure that all final decisions are publicly available, subject to confidentiality rules and applicable legal exceptions.
- ii. Each Participant will ensure that all commitments it accepts to resolve competition concerns are in writing. Subject to confidentiality rules and applicable legal exceptions, each Participant will (i) make public the commitments it accepts, and (1) describe the basis for the competition concerns or (2) reference public materials in which those concerns are expressed, or (ii) provide a summary explanation of the commitments and the reasons for them.

k) Independent Review

No Participant will impose on a Person a prohibition, remedy, or sanction in a contested Enforcement Proceeding for violation of applicable Competition Laws unless there is an opportunity for the Person to seek review by an independent, impartial adjudicative body (e.g. court, tribunal, or appellate body).

l) Additional Standards

Participants may maintain or adopt additional standards¹ consistent with providing effective and fair procedures in Competition Law investigation and enforcement.

¹ The ICN Recommended Practices for Investigative Process serve as a resource for agency consideration of additional consensus procedural standards and agency practices.