

Ad hoc Expert Meeting on Competition Law and Policy:
Cross-border Cartels
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Issues and guidance in cross-border cartel investigations

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Highlights from the 2021 ICN-OECD Report

- **Convergence on substantive analysis of cartels**
 - They represent the most serious infringements of competition law worldwide
- **Cooperation in CBCs is increasing** and takes the form of sharing information about the status of investigations & theories of harm and exchange of public information
- However, there are **obstacles to international cooperation**
 - Legal limitations in exchanging evidence & providing investigative assistance
 - Divergencies in leniency policies, investigative powers, notion of confidential information and its protection
 - Lack of resources & expertise
 - Trust and reciprocity
 - Practical obstacles (e.g., language, time differences, timing)

Existing ICN Practical Guidance

- **The Anti-Cartel Enforcement Manual** ([link](#)):
 - Compilation of “**Good Practices**” from the Anti-Cartel Enforcement Manual ([link](#))
 - Chapter 5 on International Cooperation and Information Sharing ([link](#))
- **ICN Framework** for Promotion of Sharing Non-Confidential Information for Cartel Enforcement ([link](#))
- **Training Videos** on “Introduction to International Cooperation” ([link](#)) and “Building Regional Relationships” ([link](#))
- **The Guidance on Enhancing Cross-Border Leniency Cooperation** ([link](#))
- Link to ICN cooperation webpage:
<https://www.internationalcompetitionnetwork.org/working-groups/icn-operations/cooperation/>

Anti-cartel Enforcement Manual

- The Manual is a compilation of the investigative approaches used by ICN Members possessing differing levels of experience
- Each chapter explores techniques employed at various stages of anti-cartel enforcement and identifies approaches that have proven effective and successful
 - e.g.; searches & inspections, digital evidence gathering, cartel case initiation, investigative strategy, interviews techniques, cartel case resolution, international cooperation
- In particular, Chapter 5 focuses on international cooperation and information sharing in the context of cartels by addressing types of information, sharing mechanisms and challenges

Guidance on Enhancing Cross-Border Leniency Cooperation

- Leniency has been the most successful tool for detecting cartels, also at cross border level. However, the proliferation of leniency programs has been one factor of uncertainty for potential leniency applicants
 - Divergencies in leniency policies (e.g. individual vs. corporate leniency systems, administrative vs. criminal systems, scope and coverage of leniency regimes)
 - These divergencies has undermined the two principles behind leniency programs, transparency and predictability
 - Therefore, increasing demand for greater convergence in leniency policies in order to incentivise the cross-border leniency applications
- For these reasons, the ICN has developed a guidance on practical aspects such as the exchange of confidential information through waivers, the coordination in the pre-inspection and post-inspection stages

Possible ways forward

- Practical challenges to cooperation, in particular when cross-border leniencies are involved, can be addressed through experience sharing and capacity building activities, knowledge and use of existing guidance
- Legal limitations are the most difficult to overcome, requiring changes in domestic legislation
- Possible suggestions for future work:
 - Compiling the existing guidance from UNCTAD, ICN and OECD in a single user-friendly document
 - Continuing the experience sharing discussion on actual case studies leading to a compilation of lessons learnt
 - Exploring how cooperation in regional networks is working as a first step to address the legal limitations at international level

Thank you for your attention!

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