
Intergovernmental Group of Experts on Competition Law and Policy

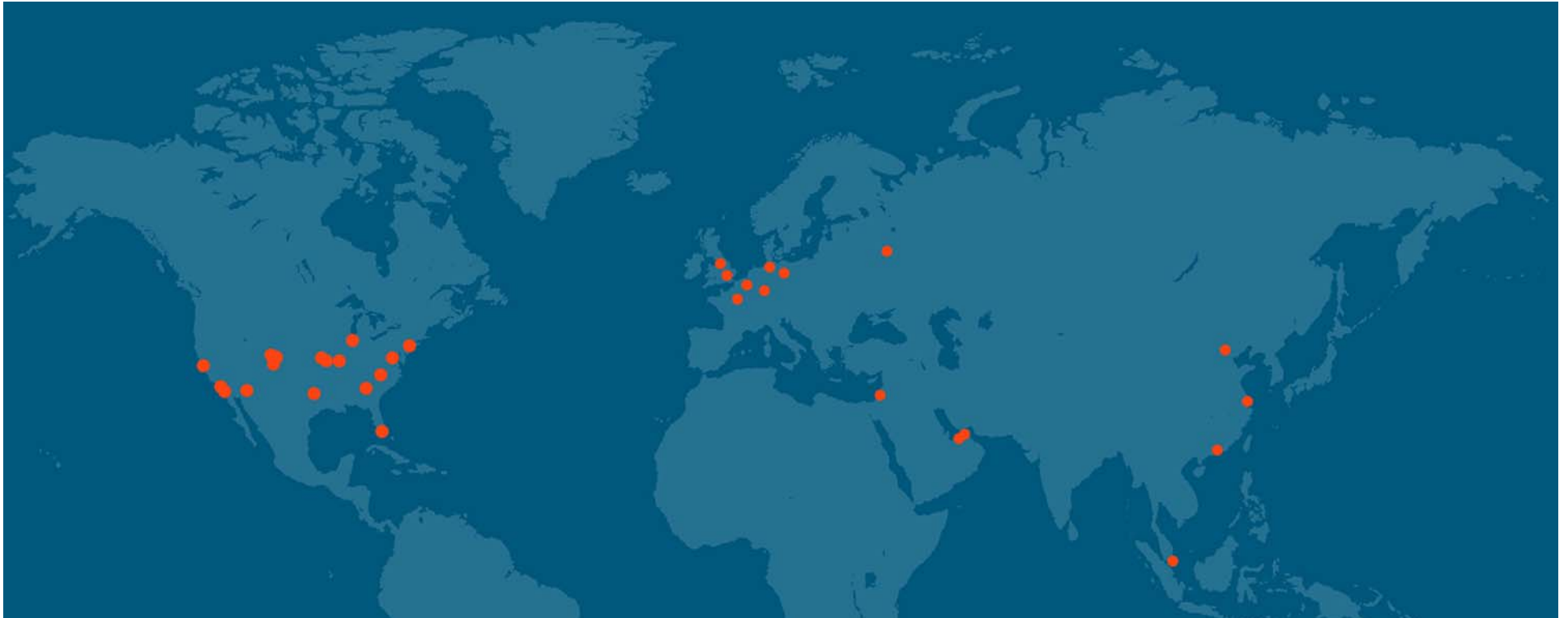
17th Session
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Room XVII, Palais des Nations, Geneva

Wednesday, 11 July 2017
Afternoon Session

Agenda Item 3e. Report of the discussion group on international cooperation

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International Cooperation in Competition Investigations: a Private Sector Contribution

17th Session of the Intergovernmental Group of Experts on Competition Law and Policy

July 11, 2018



International Cooperation

- Informal and formal cooperation is gaining traction
- Agencies that have not participated yet have not missed the boat – the area is still relatively new and developing worldwide
- The work of UNCTAD, ICN and OECD in this area has been extensive over the past few years
- But more can be done to remove obstacles and address other issues:
 - Awareness, Trust and Confidence
 - Effectiveness and procedural fairness when cooperation is appropriate and efficient

The FAS and COFECE Proposals

- The work done at UNCTAD via the Russian FAS Proposal (the Toolkit) and the Mexican COFECE Proposal significantly move things forward to assist in particular younger agencies looking to cooperate
- I see the two proposals as important and complementary
 - The COFECE Proposal -> Substantive/Practical
 - Addressing issues related to awareness, know-how, trust, contacts/network
 - The FAS Proposal -> Procedural
 - Providing a concrete framework for cooperation

A Way Forward – Discussion Group 2018/19

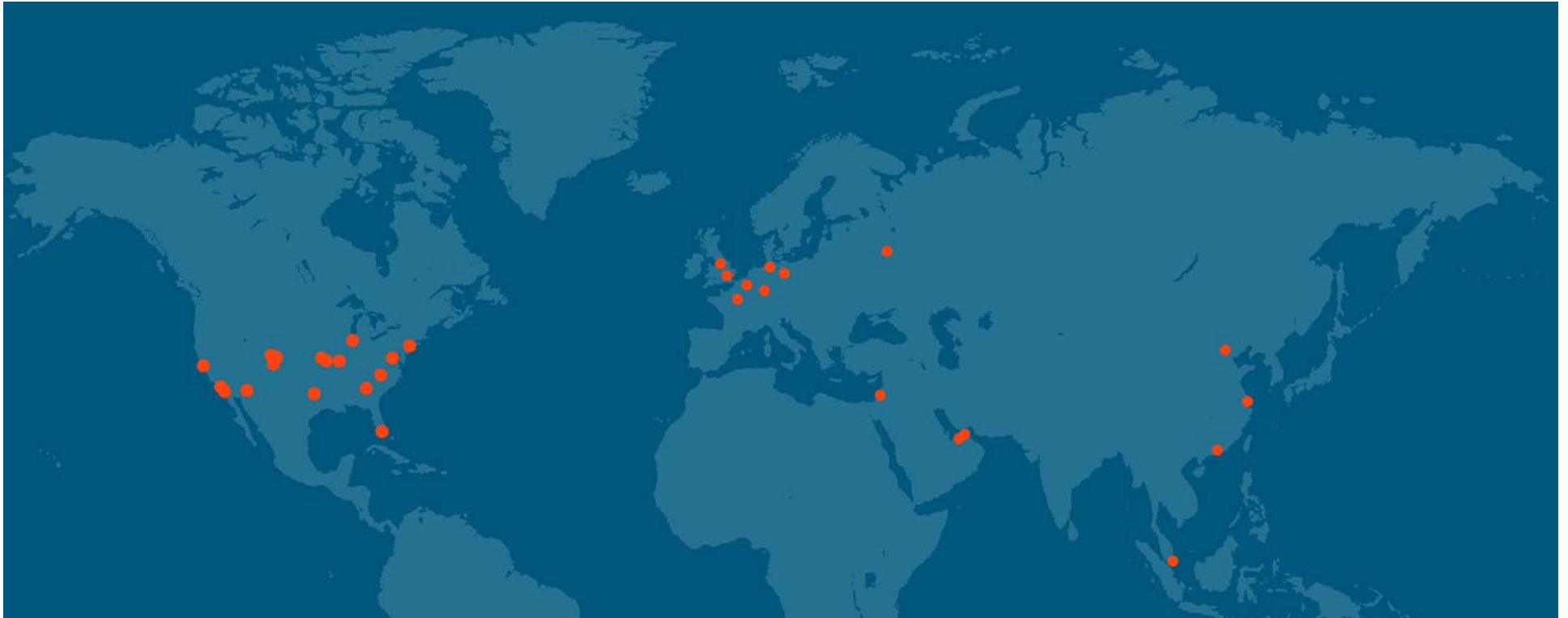
- My suggestion is to merge the two Proposals into a form of “*Practical Guide*” focussed on key issues and steps relevant to younger agencies
- Including sections on:
 - Substance – “*What is it?*”: formal and informal cooperation types; what other agencies do (to promote convergence/understanding); information exchange; contacts/network (COFECE)
 - Procedure – “*How to do it*”: for those ready to engage (FAS Toolkit)
- UNCTAD Obstacles Survey – use the results to guide the *Practical Guide*

Two additional suggestions

- In addition to the points brought out in the COFECE/FAS Proposals and UNCTAD Obstacles Survey, from a private sector perspective, consider including sections on:
 - Fairness and Due Process: to ensure the rights of those being investigated or participating in an investigation are respected and protected throughout cooperation
 - Waivers of confidential information: a key tool, focussing on how to create a “waiver friendly” environment by promoting trust/confidence with the business community/private bar – see my 2014 IGE contribution on this subject
http://unctad.org/meetings/en/Contribution/CCPB_IGE2014_R_TInfCoop_Anderson_en.pdf

The Five “Cs” of Cooperation

- No matter how you do it, keep in mind these guiding principles when creating cooperation policy/structures
 - Contacts – who to call
 - Confidence – understanding what it is/how to do it
 - Confidentiality – protect confidential information
 - Cash-constraints – make it practical and do-able
 - Convergence – harmonized regimes cooperate better, seek out and adopt international best practices



Thanks!

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This document provides a general summary only and is not intended to be comprehensive. Specific legal advice should always be sought in relation to the particular facts of a given situation.

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