

Trade and Investment

ICC Commission on Competition

Executive summary

Virtual Meeting of the ICC Commission on Competition

23 June 2020, 15h-16h45 CET, via Microsoft Teams

NEW COMPETITION WORKSTREAMS

- > **Covid-19 and Competition:** Follow-up paper to the ICC Call for Action Covid-19 and Competition on the new challenges arisen during the crisis and that business will have to address during the Covid rebuild
- > **Competition and Sustainability:** Led by Simon Holmes this working group will develop a discussion paper relevant for regulators, governments, companies and other ICC constituencies.
- > **EC consultation on ex ante regulation on digital platforms and possible new competition tool:** A response to the consultation will be prepared and submitted by 8 September 2020.
- > **DSA scene setter and Competition:** The Digital Economy Commission and the Competition Commission will continue to exchange on how best to coordinate input for the paper.

1. Introductory remarks

The meeting was co-chaired by Paul Lugard, Commission Chair, and Caroline Inthavisay, Deputy Director, Knowledge Solutions.

- The first virtual meeting of the Competition Commission had record breaking attendance (c. 95 participants from 22 countries – [see list of participants](#))
- The commission is looking to create a group of expert members from a number of jurisdictions who may be interested in working on specific, discrete matters rather than long projects.
- As a result members will be able to work on numerous projects regardless of their affiliation to a particular task force.

- It is hoped that this approach will inject more flexibility and fluidity in the working process more generally and enable the commission to be more efficient and agile in developing new work products.

2. ICC global campaign on Covid-19

Damien Bruckhard gave a brief overview of how ICC has responded to the coronavirus pandemic and noted that this work has taken place in three main stages:

- **Phase I** aimed to ensure governments and international organisations took measures that allowed for an **effective emergency response** to stem the spread of the disease and limit the economic damage. This led to a range of [publication of policy recommendations and tools for business](#) developed at short notice in numerous areas including trade policy, customs policy, tax, and force majeure in commercial contracts.

A global campaign called [Save Our SMEs](#) was launched to draw international attention on the particularly devastating impact the virus and associated economic downturn would have on MSMEs and the billions of workers that depend on them.

Mr Bruckhard spoke of the close collaboration between ICC and the World Health Organisation which helps to assess how businesses were responding to the crisis and provide insights for international and government health agencies about how to better protect and leverage the private sector in the fight against the pandemic.

- **Phase II** focused on a **safe reboot of the global economy**. ICC engaged in proactive advocacy to counter potential hurdles in the development of vaccines and medical treatment, raised awareness about the risks inherent in the production and distribution of counterfeit goods, and even provided practical guidance for SMEs on how to navigate growing cyber risks in the context of widespread remote working.
- **Phase III** seeks to ensure a **resilient rebuild of the global economy and associated governance frameworks**. Mr Bruckhard emphasised that never before has the urgency and importance of meaningful reform to multilateral governance been higher. A resilient rebuild phase implies shaping necessary reforms to enhance the resilience of business and key systems to external shocks.

Another important initiative is the rollout of the ICC AOK pass which is an app where individuals can securely and privately store their medical records that might be relevant to travel as governments open up again.

3. Follow-up paper to the ICC Call to Action on Covid-19 and Competition

Patrick Hubert started with a summary of the actions and the process that led to the publication of the [ICC Call to Action on Covid-19 and Competition](#). He noted that the first paper was very well-received and provided a set of recommendations aimed at governments and competition agencies calling for immediate measures to help companies weather

through the crisis and ensure business continuity. Mr Hubert then launched a discussion on the preparation of a follow-up paper which could address issues, more practical in nature, such as:

- Notification of state aid interventions
- Multiplication of foreign investment regimes
- Cooperation between competitors for the longer term
- Capacity building for companies to be better equipped for the Covid-19 rebuild
- Interface between competition review and foreign investment review
- Encouraging advocacy initiatives from competition agencies with their governments

Action item 1: Members interested in participating actively in the drafting of the second paper on Covid-19 and Competition are requested to inform the ICC secretariat.

4. Ad Hoc Working Group on Competition and Sustainability

Anne Riley explained that the Competition Commission will start a new project on the nexus between Competition and Sustainability reminding members that sustainability was one of the topics that members have elected at the last Paris meeting as being one of the next priorities for the commission. Ms Riley invited members to reflect on the specific issues that this project could address and send proposals to Caroline Inthavisay. Initial suggestions included out-of-market efficiencies, climate change, cooperation between competitors to achieve sustainable goals.

A working group will be created for this specific project and will be led by Simon Holmes.

Action item 2: Members interested to join the working group are requested to notify the ICC Secretariat.

5. Court Proceedings in Antitrust Damages Actions

François Brunet noted that while there has been significant progress made on the draft ICC Compendium on Antitrust Damages Actions, the main priority for the Task Force Leadership Team at present is to review the final contributions for quality control and consistency. Mr Brunet stressed that given the substantial amount of work involved in the review of the 19 country overviews and related collections of key judgements, the publication of the compendium is envisaged for September/October, at which time a discussion on the launch event and subsequent promotion at national level will be conducted.

6. Compliance & Advocacy

Anne Riley reported that the discussions on a joint compliance publication by Concurrences and ICC have been quite fruitful. The publication will be co-edited by Ms Riley, Anny Tubbs and Andreas Stephan and cover issues ranging from the behavioural aspect of antitrust compliance to a comparison with anti-bribery and anti-corruption. The joint publication will be released in 2021 and members could be solicited to contribute.

7. Cartels and Leniency

Marcin Trepka reported that the Third Edition of the ICC Leniency Manual is in its final stage: the new contributions are currently under review and are expected to go to production in the fall. The [ICC Leniency Manual](#) is the third practical tool for business developed by the ICC Competition Commission and was designed as a user-guide on the leniency application process in key jurisdictions from the very initial contact with the competition agency to its final decision. The First Edition was published in 2016 and was promoted during the ICN Annual Conference in Singapore. The Leniency Manual is a living document that is updated every two years with nearly 15 new jurisdictions per edition. The Third Edition will feature over 40 countries including countries from Africa and will go live before year end.

8. ICN

Caroline Inthavisay announced that the ICC/IBA Pre-ICN Forum 2020 will be a virtual event this year and will take place on the margin of the virtual ICC Annual Conference scheduled to kick off on 14 September. ICC and IBA have exchanged some initial thoughts on a new date and programme as well as the best format and platform to use. An updated Save-the-Date for Pre-ICN 2020 will be circulated as soon as a date is confirmed.

Cal Goldman and Anne Riley gave a report on the work of the [ICN working groups](#) and encouraged ICC members to contribute the ICN special projects. Mr Goldman said that this year the ICN will be looking at Competition Law Enforcement at the Intersection between Competition, Consumer Protection and Privacy.

9. Competition in the digital age

- Paul Lugard introduced the consultation launched by the EC which entails an inception impact assessment of ex ante regulation of digital platforms and a public consultation on a possible new competition tool running in parallel. The public consultation will close on 8 September. More details on the EC consultation are available [here](#).

The application of competition rules in digital markets remains an important issue for the commission. The Commission Leadership is reflecting on how best to contribute to the current debates bearing in mind that the complexity and the sensitivity associated with the topic could make it difficult to come up with a clear position within the Competition membership. In the meantime, it was agreed that the Competition Commission will prepare a response to the EC consultation.

Action item 3: A working group will be created to draft a response on the EC new competition tool. A call for interest to join the group will be circulated shortly.

- Charly Gordon briefed members on the genesis and purpose of the [draft Digital Services Act scene setter](#) prepared by the Digital Economy Commission. The Digital Services Act (DSA) emerged from EC's "Shaping Europe's digital future" campaign and could reshape the EU business environment and the single market while adding new responsibilities and constraints on companies.

While its scope and scale remain uncertain, the DSA is reported to be the vehicle that the EC has chosen to implement new competition rules.

Mr Gordon emphasized that the DSA paper's main objectives is (i) to inform members, and (ii) to provide an opportunity for members to engage directly with policy makers. To that end, Mr Gordon mentioned that ICC will organize a virtual roundtable discussion with the E-commerce and Platforms Unit of the Directorates-General for Communications Networks, Content and Technology at the European Commission to take place on 16 July 2020 (invitation to follow).

It was agreed that the commission will contribute to the DSA paper from a competition perspective.

10. Due Process

Jennifer Patterson conveyed that the Due Process Task Force's strategy regarding the due process paper remains a redraft of the document into two separate papers: one to focus on key aspects of the EU competition procedure, and the second on the judiciary. It was suggested that the ICC could be aligned with the ICN Framework for Competition Agency Procedure (CAP).

11. Any other business

Zhan Hao reported on recent developments on Chinese competition law enforcement and shared some interesting ideas on how the ICC Competition Commission could contribute to some of the draft legislations and various initiatives taking place in China. More details are provided in the presentation [slides](#).

Cecil Chung spoke briefly about developments in Korea and suggested that the actions taken by the Competition Commission with regards to the EC consultations could also be applied to similar endeavours in Korea.