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**Speech at the Cartel Working Group plenary session  
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*Check Against Delivery  
Seul le texte prononcé fait foi  
Es gilt das gesprochene Wort*

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## SLIDE 1

Ladies and Gentlemen,

It is an honour for me to be here in Cape Town today to present the cartels working group plenary session. But first, I would like to thank and congratulate our host agencies. The South African Competition Commission and Tribunal have achieved huge progress in their short existence, and this conference today is an expression of that achievement.

This conference completes the second year of existence of the ICN cartel working group, co-chaired by the Hungarian competition agency and the EU. As last year, the working group has produced a significant number of work products this year, which are all on your conference CD-ROM, and some of which are available on paper for those who wish to take one.

Before presenting to you the achievements of the WG over the last year, and the panels which will follow, I would just like to set this session in context with a word about the significance of cartels, and the role of the cartel WG in the ICN.

## SLIDE 2

In terms of the harm which they do, cartels are the worst form of anti-competitive practice which competition agencies are called upon to tackle, and this is reflected in the fact that the highest sanctions are normally reserved for cartels, including criminal sanctions in some jurisdictions. Studies have indicated that the "cartel markup" can be as high as 25% of the price or even more for international cartels, and even if we reduce those figures somewhat out of caution, it still represents a significant harm to consumers.

Eliminating cartels is a part of global economic governance, and also directly benefits consumers (and also many businesses which can also be victims of cartels). For the general public, breaking up cartels is the clearest and most easily understood achievement of a competition agency.

Therefore, no competition agency can do its job fully unless it has the tools and the ability to successfully investigate and sanction cartels. A genuine competition culture cannot exist as long as cartels flourish with impunity, since advocacy alone, without successful enforcement, is little more than bluff. By extension, any international organisation which is focussing on competition cannot fully achieve its ambitions unless it helps its members in some way to tackle cartels better and more effectively.

That is why the ICN decided two years ago to create the cartels Working Group, with its two subgroups, on the general framework for the fight against cartels (co-chaired by the US DoJ and the Brazilian SDE), and on enforcement techniques (co-chaired by the Canadian Competition Bureau and the Australian Competition and Consumer Commission).

## SLIDE 3

As for what the cartel working group is about, I can illustrate it by a quotation from the "famous" ICN achievements paper or "hymn sheet":

*"The main goal of the ICN is quite simply to achieve better competition enforcement and better competition advocacy. Two main routes to this end are available: convergence in competition laws and practices, and co-operation between agencies."*

We have to learn more about each other's cartel regimes and enforcement practices, not only because it's interesting, but because this gives us ideas for improving our own rules and institutional structures and investigation techniques.

Then, this greater knowledge can contribute to some degree of convergence between jurisdictions. More and more jurisdictions adopting leniency programmes is an example of this. A degree of convergence is also in the interest of companies and their representatives. But it goes without saying that convergence does not mean harmonisation.

Finally, better appreciation of the circumstances and procedural framework in which different agencies operate can make it easier to co-operate between ourselves, by giving us ideas for overcoming any problems or barriers which might exist.

We try to achieve all this face-to-face, in the annual ICN cartel workshop and in the cartel sessions at the annual ICN conference, and we try to achieve it through the various written works which the WG produces.

#### **SLIDE 4**

Talking of work products, this year, subgroup 1 has focussed on three topics related to the general framework for tackling cartels, namely:

- Interaction between public and private enforcement in cartel cases (with the German Bundeskartellamt in the lead). This particular topic will be the subject of a panel in a few moments, and then of several break-out sessions later.
- Obstruction of justice in cartel cases (project led by the US DoJ). There will be a break-out session on this too.
- Co-operation between competition agencies in cartel cases (project led by my own agency, DG Competition of the European Commission). That subject will not be treated in more detail at this conference, as we intend to have further work to report on at next year's conference.

Let me take the opportunity to say how crucial these subjects are for our anti-cartel activity. I will take private enforcement first.

Private enforcement (including civil actions for damages before the courts) is very prominent in one or two jurisdictions, and has potential to play a key role in other competition regimes too, if certain issues can be tackled, particularly regarding its interaction with public enforcement. The European Union has made the promotion of private enforcement one of its current priorities, as it is frankly underdeveloped in Europe. Private enforcement is important for compensation of victims of cartels, but also for sanctioning of cartels, given that it is difficult for fines imposed by public authorities to reach (let alone exceed) the levels of the excess profits gained by cartelists.

As for obstruction of justice, it is a major problem in cartel investigations, and I am sure we can all think of instances we know of where it went unpunished. Even jurisdictions which have the tools to tackle obstruction often do not use them, and this swings the balance further in favour of cartelists.

On co-operation, given the international cross-border nature of many cartels, co-operation between agencies is essential to tackle them effectively. There are many tools to do so, but none of them is ideal, and many factors make the level of co-operation sub-optimal. Improving and facilitating co-operation is something we all need to work at.

## SLIDE 5

Turning to the output of subgroup 2, high on the list of achievements over the last year is the 2005 ICN cartel workshop in Seoul, hosted by the Korea Fair Trade Commission, which was attended by around a hundred delegates from 34 agencies. The cartels workshop is one of the key events in the ICN year. Topics covered by the 2005 workshop included: effective institutions; detecting cartels without a leniency applicant, obstruction of investigations, co-operation between agencies in cartel investigations; and a one-day specialised workshop on forensic information technology.

A number of key themes emerged at the Seoul workshop (some of which will be the basis for today's discussions). For example, it is important:

- to be tough on recidivist cartelists in sanctioning policy,
- to put resources into detecting cartels without leniency applicants (even if the jurisdiction has a leniency programme),
- to take action against obstruction of investigations where there is evidence of it, in particular in cases where the obstruction was successful in preventing the main investigation from progressing, and
- to build up digital evidence gathering capacity.

The ICN cartels enforcement manual is also growing, with an extension and revision of the chapter on leniency which was prepared last year, and a new chapter on digital evidence gathering. Digital evidence gathering is another burning subject, as more and more of the evidence against cartels is found in digital form, and agencies need to be highly technically competent when it comes to collecting and analysing it. My own agency is currently on a learning curve in this area, and has just made resources available for the creation of a specialist digital evidence gathering team.

The "cartel templates", on the analogy of the existing "merger templates", are a comprehensive statement of the laws, rules and procedures in each jurisdiction applicable to cartels (including leniency programmes). So far almost 50 agencies have filled in a template. They are on agencies' own websites, with a link available on the ICN website. We hope that they will prove very useful to agencies and NGAs alike

## SLIDE 6

In a moment we will have our two panels, as I have said, on private enforcement, and digital evidence gathering. Both panels will include ample time for floor debate, and in addition there will be an opportunity to continue the discussion in smaller groups in the break-out sessions.

Let me urge delegates to play an active part in the upcoming debates. The aim is not just for the panellists to speak, it is for everybody to have the chance to express their view.

Also more generally, let me appeal to more agencies to become actively involved in the cartel working group over the course of the year, to contribute their own ideas and experiences for tackling cartels, in one of the working groups, or in the 2006 ICN cartels workshop in the Netherlands in November. So far, in the first two years of the WG's existence, we have only scratched the surface of all the cartel-related issues which exist.

To achieve our goals, we need a constant supply of fresh ideas, especially from younger agencies with less history of investigating cartels.

On that note, let me pass the floor to our first panel. Thank you.