

Proposal for CPI SG3 Work Plan 2006-2007

The 2006-2007 Work Plan for the CPI Sub-Group 3 (“SG3”) will continue with the survey on the relationship between the competition authorities and the judiciary started by SG3 after the 2005 Bonn conference. Taking into account the results already presented to the Cape Town Conference (hereinafter, the “Cape Town Report”), and the positive feedback obtained from participants in the breakout session held during the Conference, SG3 will start a research based on case studies in order to survey the actual measures taken by five or six selected competition agencies regarding the judiciary. At the end of the survey, SG3 expects to report and list the specific advantages or disadvantages observed in such countries in relation to the agencies’ perception and actual interaction with the judiciary, mainly based on the actions, measures or shortfalls that may be identified from such selected agencies’ experience. The sub-group will be co-chaired by the Brazilian Administrative Council for the Economic Defense (CADE) and the Chilean Free Competition Tribunal (TDLC).

Background: The proposal for SG3 is to continue developing the relationship between competition authority and the judiciary.

Since the judiciary plays a role in competition matters in all jurisdictions, having a judiciary that understands competition policy’s concepts, goals and instruments is of great importance. What is identified by the results of the Cape Town Report is the urgency to bring the judiciary closer to the technical analysis necessary on competition cases, especially in developing countries. This is an opportunity for competition authorities to improve their relationship with the judiciary, and an important field for technical assistance providers.

Competition authorities seem to address these issues and are organizing seminars and joint workshops with the judiciary, which are important steps for institutional strengthening. However, the results of these actions are still to be evaluated, depending on what has been achieved and what is still to be done by competition agencies in order to strengthen their relationship with the judiciary.

Additionally, it may be stated that, following the conclusions set forth in the Cape Town Report, irrespective of the legal tradition and development level, the judiciary seems to shape competition policy results. This shows that the report of CBCPI Working Group in 2003 was correct to identify the judiciary as an important stakeholder to be addressed in the ICN studies.

Future work of SG3 would then be oriented:

- (i) to address the challenges faced by jurisdictions with new competition laws in terms of their relationship with the judiciary. In developing countries the benefits of competition are not always understood and people, including judges, are accustomed to government intervention and price control, not to

competition. These types of issues are challenges for agencies and courts alike. Studies on specific cases of how the relationship between the competition agencies and the judiciary is actually managed could be useful to help all agencies in dealing with these unique problems, and

- (ii) to identify actions, measures or shortfalls from the selected agencies' experience and report about the tools that, according to such experience, would be useful to the competition authorities in order to increase both the scope and the quality of their relationship with the judiciary.

Approach: To achieve these goals, SG3 will work in establishing a methodology (based on specific-oriented questionnaires, interviews and research visits) for the purposes of surveying the experience of no more than six cases, taken only from those agencies that may volunteer to be surveyed.

As of the date of this draft proposal (May 5, 2006) SG3 has been approached by at least four countries interested in being surveyed¹.

The idea of these case studies is to analyze three types of experience: (i) one or two countries that have already achieved some progress on the issue and/or have been provided with technical assistance on the matter; (ii) one or two countries that have taken minor measures regarding the issue; (iii) one or two countries that may be aware of the importance of the subject and are willing to design and perform a policy towards the judiciary.

At the end of the study, and based on the experiences of the representative countries surveyed, SG3 will be able to design and present a general map of the actions, measures, tools and shortfalls observed in such countries regarding the relationship between competition agencies and the judiciary.

SG3 believes that such report may be useful to other agencies, and especially to developing countries agencies, in order to increase and strengthen such relationship.

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¹ Brazil, Canada (Competition Tribunal), Chile and Turkey.