

Merger Working Group
Subgroup on Merger Notification and Procedures

Opening Presentation

Randolph W. Tritell
U.S. Federal Trade Commission

ICN Third Annual Conference

Seoul, Korea
April 21-22, 2004

It is a great pleasure for me to appear before you for the third time to present the work of the subgroup on Merger Notification and Procedures.

Before going further, especially for those who were in Merida and heard me stumble through attempts at pronouncing various Mexican proverbs in Spanish, I should know better than to try to do the same in Korean, but I may be unwise enough to try just a few!

Our subgroup focuses on the procedural aspects of merger review. To many, that does not sound like an exciting subject. But it certainly is a key issue for the more than seventy competition agencies who face the often daunting task of performing a legal and economic analysis, under tight deadlines, of whether mergers of firms that might be based thousands of miles away would be likely to cause anticompetitive effects in their domestic markets. And no less so for the many NGAs who have had the experience of needing the approval of five, ten, or more competition agencies around the world in order to be able to move forward with a merger transaction. So I think it is clear that we all have an important stake in a well-functioning multi-jurisdictional merger review system.

Our subgroup's mission is to make that system work more effectively and efficiently. During today's program, we will present our work on the projects we have undertaken to further this goal.

Let me first take present the subgroup. We have thirteen active agency members, which are diverse in geography and development levels. The OECD provides important input based on its expertise in merger review issues.

We are also very grateful for the valuable contributions of a wide group of non-governmental advisors who shared with us their expertise, their experience, and most importantly their time. We have been very fortunate to assemble such a highly talented and dedicated group of officials, practitioners, and academics, and we extend our thanks to all of them. I would like to express my particular gratitude to my FTC and DOJ colleagues who have worked patiently and tirelessly with me during the course of the year – from the Department of Justice, Ed Hand, Cynthia Lagdameo, and Paul O’Brien, and from the Federal Trade Commission, Elizabeth Kraus and Maria Coppola.

I didn’t think these few words of thanks would be sufficient, but fortunately, I did come across a Korean proverb that made me feel a bit better:

“Mal han matie chonnyang pito paknunda”

“A big debt is repaid with only a few words”

Accomplishing our work would not have been possible if we had the talent and efforts of only a few of us, or just the agencies, or just NGAs – it worked only because it was a truly joint effort. In this sense, we took our inspiration from a Korean proverb,

“Padkchijangdo matulmyon nata”

“A high stack of paper feels light when lifted together”

Our program will be in four parts. First, I will provide a brief update on our work. We will then have an interactive panel discussion about our four new Recommended Practices for Merger Notification Procedures. Following the panel, I will discuss ICN members’ implementation of the Recommended Practices. Finally, we will have a question and answer and discussion session. There will, of course, be much more opportunity for questions and detailed discussion during the break-out sessions this afternoon.

Our work program consists of: weblinks and templates; cost and burdens study; recommended practices; monitoring and implementation.

The weblinks and templates projects are intended to increase the transparency of the world’s merger review systems and provide a one-stop resource on the world’s merger laws. The weblinks are links from the ICN website to the merger laws, regulations, guidelines, and agency practices of ICN members. The templates are agency responses to a set of questions that elicit the key features of the jurisdiction’s merger review system. I am pleased to report that from the ICN webpage you can now access links to the merger laws and materials of 55 jurisdictions, and templates completed by 56 jurisdictions, in both cases representing the overwhelming majority of ICN members, and

indeed of all jurisdictions with merger laws. To my knowledge, this is one of the most comprehensive resources in the world on national merger laws.

I thank all the jurisdictions who contributed to this project. I hope they will also benefit from using it, so they can benefit from the Korean proverb:

“Toiro chuko mairo patnunda”

“Give a little, receive a bundle”

We have also updated our background paper on the costs and burdens of merger notification and review. The paper will soon be posted on the ICN website.

Our main project was the development of new recommended practices. At our last annual conference, the ICN adopted the first seven Recommended Practices. These are now available on the ICN website in French and in Spanish. This year, we are proposing the adoption of four new Practices. Our panel will be discussing their substance in a few moments. I would just like to say a few words about the process.

From last September through this past February, the subgroup met by conference call almost every week for two hours. We worked from drafts prepared by NGAs; I would like to extend special thanks to our drafters – Joe Winterscheid of the US, Gabriel Castaneda from Mexico, and Gerwin van Gerven and Jonas Koponen who practice in Brussels. Each draft was discussed in great detail, resulting in new drafts, new discussion, and yet another draft, until we arrived at a consensus. No concept, Practice, Comment, or even comma was accepted without serious thought, debate, and refinement.

Our goal is to promote best practice – that is, not necessarily practice that reflects any particular system, but that well serves the needs of an effective and efficient multi-jurisdictional merger review system. The Practices are designed to accommodate different legal traditions – common law and civil law - and different levels of development. It is expected that not all jurisdictions will currently conform to the Recommended Practices. Rather, they are aspirational, setting out benchmarks that jurisdictions can adopt as and when they best see fit.

At this point, I will turn the program over to Mark Pearson, General Manager for Mergers of the Australian Competition and Consumer Commission, who will chair our panel on the four new Recommended Practices.