

**INTERNATIONAL COMPETITION NETWORK  
MERGER WORKING GROUP  
2007-2008 WORK PLAN**

**MISSION**

The mission of the ICN Merger Working Group is to promote the adoption of best practices in the design and operation of merger review regimes in order to: (i) enhance the effectiveness of each jurisdiction's merger review mechanisms; (ii) facilitate procedural and substantive convergence; and (iii) reduce the public and private time and cost of multijurisdictional merger reviews.

The Working Group has made great strides in advancing this mission. A description of work completed in the following areas is attached as Annex A:

- merger notification and review procedures; and
- the analytical framework and investigative techniques for merger review, including the substantive standards for reviewing mergers, the criteria for applying those standards, and the tools and techniques used for developing reliable evidence.

The Working Group is led by the U.S. Department of Justice, Antitrust Division (contacts: Gerald Masoudi, [gerald.masoudi@usdoj.gov](mailto:gerald.masoudi@usdoj.gov), and Paul O'Brien, [paul.e.obrien@usdoj.gov](mailto:paul.e.obrien@usdoj.gov)). The working group includes representatives from antitrust authorities from many geographic regions and stages of development. The working group also includes representatives from the OECD and from the legal, economic, academic and business communities. ICN members and non-governmental advisors interested in participating in the projects described below are encouraged to contact the project leaders.

**PROJECTS FOR 2007-2008**

- **Convergence on Substantive Merger Review Issues**, led by Gerald F. Masoudi (contact: Paul E. O'Brien at [paul.e.obrien@usdoj.gov](mailto:paul.e.obrien@usdoj.gov)).

The working group will begin a project to develop recommendations on substantive merger issues. Drawing on the analytical points from the Merger Guidelines Workbook and those common to ICN members' own guidelines, among other sources, working group members and non-governmental advisors will develop a set of initial recommendations on three topics: 1) a comprehensive legal framework for addressing anticompetitive mergers; 2) the use of market shares, presumptions and safe harbors; and 3) market entry and expansion. These recommendations will be discussed, and, if agreed to by the Working Group, submitted for adoption at the 2008 ICN Annual Conference in Kyoto. After completing that work, the working group will identify additional areas for possible recommendations to be developed in the year following the 2008 conference.

- **Implementation of Guiding Principles and Recommended Practices for Merger Notification and Review Procedures**, led by Maria Coppola Tineo, U.S. Federal Trade Commission (contact: Maria Coppola Tineo at [mtineo@ftc.gov](mailto:mtineo@ftc.gov)).
  - Setting Notification Thresholds. Building on the Recommended Practice on

Notification Thresholds, this project will explore, *inter alia*, the various approaches used to set notification thresholds and members' recent experiences with threshold revisions. The objective of the project is to provide guidance to agencies that plan to adopt or revise thresholds, in order to promote thresholds that are clear, understandable and easily administrable.

- Continue to promote conformity with the Guiding Principles and Recommended Practices, including through (i) work with competition agencies to assist implementation efforts; (ii) discussion of the Recommended Practices at merger workshops and on conference panels, and through speeches and articles; (iii) dissemination of the Practices through international organizations involved in competition activities; and (iv) encouragement of private sector advocacy. Create presentation materials for use at conferences and workshops.
- Invite ICN members to contact the Working Group with questions regarding the conformity of their merger review systems with the Recommended Practices; work with members and non-members developing new merger review laws or regulations.
- **Create a “Take-Home” Version of the Workshop on Substantive Issues in Merger Review**, led by John Evans, Irish Competition Authority (contacts: John Evans, [je@tca.ie](mailto:je@tca.ie), and Michele Pacillo, [mip@tca.ie](mailto:mip@tca.ie)). Adapt the materials used in the April 2007 Substantive Issues in Merger Review workshop to enable antitrust authorities around the world to use the materials to conduct their own internal training exercises. The workshop training materials will deepen participants' acquaintance with specific analytical issues in merger review and promote the Merger Guidelines Workbook, the Merger Remedies Study, and the Recommended Practice on Remedies.
- **Regional and In-House Workshops on Investigative Techniques**. (Contact: Paul O'Brien at [paul.e.obrien@usdoj.gov](mailto:paul.e.obrien@usdoj.gov)). Hold one or more regional workshops modeled on the Investigative Techniques workshop held in Brussels (2004) and Washington (2002). By holding the workshops regionally, the Working Group will facilitate use of the Investigative Techniques Handbook by staff lawyers and economists around the world and familiarize participants with the tools and techniques used in merger review. Promote use of the Investigative Techniques “take-home” version by ICN members for use in in-house training sessions.
- **Web links and Templates**. (Contact: Maria Coppola Tineo, [mtineo@ftc.gov](mailto:mtineo@ftc.gov)). Encourage and work with members to keep up-to-date links to national merger review laws and related materials, and to responses to the template of questions about the merger review system.

## ANNEX A

### NOTIFICATION AND PROCEDURES SUBGROUP REVIEW OF WORK FROM INCEPTION THROUGH 2007 ANNUAL CONFERENCE

- **Guiding Principles and Recommended Practices.** The subgroup has developed eight Guiding Principles and thirteen Recommended Practices for merger notification and review, which the ICN has adopted at its annual conferences. The Principles and Practices are available at:  
<http://www.internationalcompetitionnetwork.org/index.php/en/publication/294>
- **Implementation Report.** To facilitate implementation of the Guiding Principles and Recommended Practices, the subgroup gathered data on members' experiences with implementation and prepared a report identifying challenges agencies face in implementing the Practices and how they addressed these challenges. These materials are available at:  
[http://www.internationalcompetitionnetwork.org/media/archive0611/050505Merger\\_NP\\_ImplementationRpt.pdf](http://www.internationalcompetitionnetwork.org/media/archive0611/050505Merger_NP_ImplementationRpt.pdf)
- **Implementation Handbook.** To facilitate further implementation of the Guiding Principles and Recommended Practices, the subgroup created a handbook containing examples of legislative provisions, guides, statements and notices, and press releases that conform to selected Principles and Practices. The handbook is available at:  
[http://www.internationalcompetitionnetwork.org/media/library/conference\\_5th\\_capetown\\_2006/ImplementationHandbookApril2006.pdf](http://www.internationalcompetitionnetwork.org/media/library/conference_5th_capetown_2006/ImplementationHandbookApril2006.pdf)
- **Defining Merger Transactions for Purposes of Merger Review.** Building on the Transparency Recommended Practice, this paper explores the various approaches jurisdictions have adopted to define the types of transactions that are potentially subject to notification and/or review. This paper is available at:  
[http://www.internationalcompetitionnetwork.org/media/library/conference\\_6th\\_moscow\\_2007/23ReportonDefiningMergerTransactionsforPurposesofMergerReview.pdf](http://www.internationalcompetitionnetwork.org/media/library/conference_6th_moscow_2007/23ReportonDefiningMergerTransactionsforPurposesofMergerReview.pdf)
- **Workshop on Merger Notification and Procedures.** In March 2006, the subgroup held a two-day workshop to promote implementation of the Guiding Principles and Recommended Practices. Topics included setting notification thresholds, initial information requirements, review periods, and transparency, confidentiality, and procedural fairness.
- **Web Link and Template Projects.** To facilitate ready access to merger laws and key features of merger review systems worldwide, the subgroup established links to national merger review laws and related materials, and to responses to a template of questions the subgroup developed about the merger review system. These materials are available at:  
<http://www.internationalcompetitionnetwork.org/index.php/en/publication/293>
- **Model Confidentiality Waiver.** The subgroup developed a model form that merging parties and competition agencies can use to facilitate waivers of

confidentiality protection for information that parties submit in the merger review process. The subgroup prepared an accompanying paper discussing the rationale for, content of, and use of waivers, along with illustrative agency waiver forms. These materials are available at:

<http://www.internationalcompetitionnetwork.org/media/archive0611/NPWaiversFinal.pdf>

- **Comparative Study of Merger Notification Filing Fee Systems**. The subgroup studied merger notification filing fee systems worldwide and prepared a report discussing the various types of filing fee regimes. This report is available at: [http://www.internationalcompetitionnetwork.org/media/archive0611/filing\\_fees\\_report.pdf](http://www.internationalcompetitionnetwork.org/media/archive0611/filing_fees_report.pdf)
- **Costs and Burdens Report**. The subgroup prepared a report on the costs and burdens of multijurisdictional merger review based on available studies and anecdotal information. The report is available at: <http://www.internationalcompetitionnetwork.org/media/archive0611/costburd.pdf>

**MERGER INVESTIGATION & ANALYSIS SUBGROUP**  
**REVIEW OF WORK THROUGH 2007 ANNUAL CONFERENCE**

- **Merger Guidelines Workbook.** The subgroup prepared a checklist of topics that the authors of new or revised merger guidelines may wish to cover, with an explanation as to why those topics have value in merger assessment and suggestions as to how those topics might be assessed in practice. The workbook is available at:  
[http://www.internationalcompetitionnetwork.org/media/library/conference\\_5th\\_capetown\\_2006/ICNMergerGuidelinesWorkbook.pdf](http://www.internationalcompetitionnetwork.org/media/library/conference_5th_capetown_2006/ICNMergerGuidelinesWorkbook.pdf)
- **The Analytical Framework for Merger Review.** The subgroup produced a series of papers intended to serve as a baseline for comparing and contrasting substantive merger tests (substantial lessening of competition, dominance, public interest) for merger review. The subgroup then created a discussion paper examining basic issues involved in choosing a particular substantive framework. These papers are available at:  
[http://www.internationalcompetitionnetwork.org/media/library/conference\\_1st\\_naples\\_2002/afsguk.pdf](http://www.internationalcompetitionnetwork.org/media/library/conference_1st_naples_2002/afsguk.pdf)
- **Analysis of Merger Guidelines.** The subgroup worked with multinational teams of non-governmental advisors to prepare a set of analytical papers that describe the methodologies of a dozen members through analyzing their existing or proposed merger guidelines. The papers describe how these jurisdictions deal with five important topics -- coordinated effects, unilateral effects, market definition, efficiencies, and market entry. These papers are available at:  
[http://www.internationalcompetitionnetwork.org/media/library/conference\\_3rd\\_seoul\\_2004/amg\\_chap1\\_overview.pdf](http://www.internationalcompetitionnetwork.org/media/library/conference_3rd_seoul_2004/amg_chap1_overview.pdf)
- **Merger Remedies Review Report.** The subgroup prepared a report that provides practical guidance and outlines key principles and the range of tools in the use of merger remedies. The report is based on and illustrated by remedy practice in a variety of jurisdictions. It is available at:  
[http://www.internationalcompetitionnetwork.org/media/library/conference\\_4th\\_bonn\\_2005/Remedies\\_Study.pdf](http://www.internationalcompetitionnetwork.org/media/library/conference_4th_bonn_2005/Remedies_Study.pdf)
- **Substantive Issues in Merger Review Workshop.** In April 2007, the subgroup held an interactive workshop for staff lawyers and economists in Dublin designed to promote greater understanding of the ICN's *Merger Guidelines Workbook* and *Remedies Report*. Using a hypothetical merger case, role playing, plenary and breakout sessions, the workshop encouraged the exchange of practical experience among members.
- **Handbook on Investigative Techniques for Merger Review.** The Handbook is designed to inform ICN members of the various tools and techniques used in merger review, to help members organize and use their tools more efficiently, and to provide for an effective process for the evaluation of evidence. The first chapter summarizes the findings of a survey of ICN members carried out in 2003, and reflects agency practice. The remaining chapters discuss topics such as how to plan a merger investigation, developing reliable evidence in merger cases, economic and econometric

analyses, and the benefits of including economists in merger review, and a private sector perspective on merger review. The Handbook is available at:  
[http://www.internationalcompetitionnetwork.org/media/library/conference\\_4th\\_bonn\\_2005/Investigative\\_Techniques\\_Handbook.pdf](http://www.internationalcompetitionnetwork.org/media/library/conference_4th_bonn_2005/Investigative_Techniques_Handbook.pdf)

- **Investigative Techniques Workshops**. The subgroup held two International Merger Workshops for staff lawyers and economists, in Washington, DC, in November 2002 and in Brussels in October 2004. At the workshops, members learned about the different practices, tools and techniques used around the world to investigate mergers, and gained a better understanding of their advantages and disadvantages. The materials from the workshop have been compiled to enable agencies to conduct in-house investigative techniques training sessions. These materials are available at:  
<http://www.internationalcompetitionnetwork.org/index.php/en/working-groups/mergers/investigation-and-analysis>.