

Merger Working Group 2015-2018 Work Plan

MISSION

The mission of the ICN Merger Working Group ("MWG") 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 multi-jurisdictional merger reviews.

ORGANISATION

During the period covered by this long-term planning document, the MWG will be chaired by three co-chairs. Each co-chair will serve a staggered three-year term, with one co-chair selected and another stepping down each year. The outgoing co-chair may, however, be selected for another term. Until the 2016 Annual conference, the MWG will be chaired by the Competition Bureau of Canada, the European Commission and the French Autorité de la Concurrence. Each year, the co-chairs of the MWG will agree on the organization of work and division of tasks for the coming year. The MWG includes representatives from 64 competition authorities from many geographic regions and stages of development. The MWG also includes representatives from the legal, economic, academic and business communities.

LONG TERM GOALS

In order to fulfil this mission, the MWG will seek to:

- (i) Promote greater international cooperation and convergence in merger review standards;
- (ii) Enable members to improve the quality of their merger review;
- (iii) Assist members in finding ways to avoid imposing unnecessary burdens on agencies and business; and
- (iv) Increase transparency in agency practice to minimise uncertainty and increase predictability in merger review.

2015-2018 STRATEGIC PLAN

When assessing future work over the next three years, the MWG will be guided by the following principles:

- (i) the MWG will pursue work in new areas that are in demand by ICN members;
- (ii) the MWG will take steps to ensure that its most highly valued and used work products are appropriately updated;
- (iii) the MWG will place a high priority on promoting familiarity, implementation, and use of its work product; and
- (iv) the MWG will prioritize each year a limited number of projects of great interest to its members, to avoid overburdening ICN members and NGAs participating in its work.

In prioritizing work each year, the MWG will endeavour to maintain a balance among different types of work. In the next three years, the MWG will place emphasis on new substantive areas of work in which ICN members have expressed particular interest, including:

- (i) developing guidance on international cooperation in merger enforcement;
- (ii) exploring potential updates to the 2005 Merger Remedies Review Report;
- (iii) continuing to increase the involvement of Members and NGAs in the activities of the MWG;
- (iv) conducting new work on investigative techniques, including work to supplement the Investigative Techniques Handbook with potential output including updates to Chapter 3 “Developing Reliable Evidence”;
- (v) conducting new work on emerging issues in merger review;
- (vi) updating the existing Recommended Practices (“RPs”) for Merger Notification and Review Procedures and for Merger Analysis, as well as developing additional RPs (such as on the analysis of remedies and cooperation); and,
- (vii) maintaining and periodically updating the merger templates.

To promote familiarity, implementation and use of MWG work product over the next three years, the MWG will emphasize:

- (i) ICN Merger Workshops, developed in coordination with host agencies;
- (ii) teleseminars/webinars, including possible training series of webinars on a dedicated topic;
- (iii) the MWG section of the ICN website;
- (iv) the self-assessment tools developed for MWG members to analyse their level of use and implementation of MWG’s RPs for Merger Notification, RPs for Merger Analysis, and Merger Guidelines Workbook.

The MWG will continue its efforts to involve additional ICN members in MWG activities, and to provide participating ICN members with ample opportunities to contribute to its work. The MWG strives to produce work of interest to merger case handlers, economists, lawyers, and policy officials. The MWG will continue to involve NGAs in MWG activities, and continue its efforts to encourage ICN members to invite broad and diverse NGA participation in MWG work.

The above principles and priorities will guide the MWG's selection of future projects, such as:

1. New work targeted to serving members' interests and needs:
 - Experience-sharing and/or updating materials in other areas of merger review (updating the 2005 Merger Remedies Review Report), the 2005 Implementation Report, the Investigative Techniques Handbook, Chapter 3 "Developing Reliable Evidence", the RP for merger notification thresholds, and possible broadening of topics covered by Chapter 4 and possible development of additional sub-sections to that Chapter and/or other materials.
 - Continuing encouraging members to fill the new version of the Merger Template, maintain and periodically update their merger template and web links to ensure efficient access to key information on members' merger review systems.
2. Work to promote familiarity, implementation, and use of MWG work product:
 - Implementing and disseminating the guidance work product on international cooperation in merger enforcement.
 - Assessing the level of use and implementation of MWG work product, with a particular focus on the RPs for Merger Notification and Review Procedures and the RPs for Merger Analysis, merger templates and the 2005 Implementation Report (with a view to assess the need for updates).
 - Organizing periodic workshops and teleseminars/webinars aimed at the staff level to facilitate inter-agency relationships, the exchange of experience and best practices, and to promote familiarity, use, and implementation of MWG work product.
 - Exploring ways in which the MWG can assist members in removing barriers to use and implementation of MWG work product.
3. Promote broad member and NGA involvement:
 - Targeting projects that attract expanded ICN members' participation in the MWG, including from economist and non-economist case handlers.
 - Stimulating increased NGA participation in MWG activities, and encouraging members to invite broad and diverse NGA participation.

Merger Working Group 2015-2018 Projects

Pursuant to its Mission and 2015-2018 work plan, the MWG will seek to achieve the following specific goals and outcomes:

1. Project on International Merger Enforcement Cooperation (Project 1). This project aims at developing practical guidance on cooperation among agencies in the review of multi-jurisdictional mergers. This will expand on the cooperation RP contained in the RPs for Merger Notification and Review Procedures. During 2013-2014, the MWG held a series of experience-sharing teleseminars dealing with procedural and substantive issues related to merger enforcement cooperation. The main take-aways and conclusions transpiring from these teleseminar series have been compiled in an Interim Report presented at a plenary session of the ICN 2014 Annual Conference in Marrakech, Morocco. Since then, based upon the ICN work products and the discussions during the plenaries and break-out sessions held at the Annual Conference, the MWG has developed a draft Outline of Principles which was circulated to and discussed with the whole ICN membership during a teleseminar in October 2014. The draft Outline of Principles, meant as an intermediate step towards the developing of the practical guidance work product, was discussed during the MWG Workshop held in New Delhi in December 2014.

The drafting of the envisaged practical guidance work product will be completed in 2015 and presented at the ICN 2015 Annual conference in Sydney.

2015-2016 will be dedicated to the road testing, implementation and dissemination of the guidance work product.

In addition, during 2015-2016, 2016-2017 and 2017-2018, the MWG will continue to encourage its members to participate in the ICN Framework for Merger Review Cooperation will evaluate potential ways to improve the Framework.

2. Project on Remedies in Merger Review (Project 2). During 2015-2016, the objective of this Project is to review existing work products and engage in fact finding with a view to updating the 2005 Merger Remedies Review Report and/or existing or new Recommended Practices. To that extent, the MWG aims at formulating a work product in the course of 2015-2016. Since 2005, new agencies have emerged, there have been new studies on merger remedies and various types of remedies have been implemented by agencies around the world which require a revisit of the understanding of the international competition community concerning effective and efficient remedies. In addition, this Project will benefit from the Project on International Merger Enforcement Cooperation as remedies in cross-border mergers are increasingly becoming a key area of cooperation and new challenges need to be addressed. For these purposes, 2014-2015 was devoted to a series of information-sharing teleseminars. The fundamental principles of appropriate and effective remedies have already been discussed in a teleseminar held on 25 September 2014. A second teleseminar on "Choice and Design of remedies" was held on 10 November 2015 and a third teleseminar on the "Implementation and the Monitoring of remedies" was held on 22 January 2015. These topics were also discussed during plenary and breakout sessions at the MWG conference in New Delhi in December 2014. The work product will be developed and open for comments during 2015-2016, including sessions at the upcoming Merger Workshop in Brussels. During 2016-2017, the MWG will implement,

road-test, and disseminate the work-product developed. Teleseminars may be held to discuss drafts of the work product and promote the final work product.

3. Dissemination and Implementation Project (Project 3). The objective of this Project is to promote familiarity, use and implementation of MWG work product. For 2015-2016, the MWG will prioritise the following work:

- a. Continue efforts to assess the level of use and implementation of the MWG's work product, in particular both sets of RPs. The MWG will identify common challenges and particularly successful uses of work product. The Implementation Project will focus particularly on the assessment of the need to update the 2005 Implementation Report and revisiting the content of the RPs. The outcome of this scoping exercise could then, as the case may be, feed into a new project to update the 2005 Implementation Report and revisiting the content of the RPs more broadly.
- b. Conduct a number of teleseminars/webinars (i) to discuss current merger topics, (ii) to assess the need for future/additional MWG work and (iii) to promote familiarity, use and implementation of the MWG's work product and merger templates. Potential topics will include a presentation/refresher by the co-chairs of the existing MWG work product, in particular the RPs and updated Chapter 4 of the Investigative Handbook, as well as discussions on other topical merger review issues. The MWG intends to discuss with membership in particular the interest for updating the Investigative Techniques Handbook (Chapter 3 "Developing Reliable Evidence").
- c. Promote the templates and the self-assessment tools, including (i) introducing both the Merger Analysis and Notifications and Procedures self-assessments on new member calls, (ii) coordinating with AIN to promote use of the self-assessment tools, (iii) identifying each year several volunteer members to take the self-assessments and discuss their findings and use of MWG work products in a webinar/teleseminar, (iv) using/discussing both self-assessments at a merger workshop, (v) assessing whether the N&P self-assessment could be updated.
- d. Continue to improve the MWG's web-based tools: The MWG will upload the new version of the MWG Merger templates and, as appropriate, continue to encourage member agencies to update where necessary its merger template (e.g., The contact details listed on the templates should correspond to the contact details provided in the context of the Framework for Merger Review Cooperation, etc.). The MWG will also continue to update and improve the MWG's page on the ICN website, including adding more materials from ICN Merger Workshops and teleseminars.

4. Outreach Project (Project 4). The MWG will promote broad member and NGA involvement. The MWG will identify key projects for the involvement of new and recently joined MWG members and encourage them to become part of at least one project team according to their preferences, needs and available resources. The MWG will consider repeating the 2014 experience of holding some teleseminars/webinars at different times to accommodate different time zones, and in different languages (French and Spanish), when feasible. The MWG will also support the implementation at working-group level of

the proposed "ICN Welcome Track" for agencies and NGAs that have recently joined the MWG. The MWG will also specifically include the "Outreach" Project as part of the 2015 MWG workshop planned in Brussels.

5. Merger Workshop (Project 5). The MWG will organize a workshop hosted by the European Commission in Brussels in 24-25 September 2015. As was done in 2014, the MWG will endeavour to use such a workshop to complement ongoing and/or future work of the MWG (such as for instance by discussing with members investigative techniques and practical skills next to discussing the analytical framework). The MWG will seek to engage in scoping the future projects on Remedies, Evidence in Merger Review, and Implementation in the context of the workshop.

SUMMARY 2015-2016 PROJECTS

In line with the above, the MWG will therefore implement the following projects in the course of 2015-2016 by means of priority:

- (i) Project on International Merger Enforcement Cooperation: presentation of practical guidance work product to the Annual Conference in Sydney followed by road testing post Annual Conference;
- (ii) Project on Remedies in Merger Review: review existing work products and engage in fact finding (possibly by collecting members' experiences) with a view to formulate a work product on updating the 2005 Merger Remedies Review Report and/or existing or new Recommended Practices.
- (iii) Dissemination and implementation project: assessing the use of the RPs and possible need for updates (e.g., Notifications and Procedures RPs); scoping of potential new project: updating of investigative Techniques Handbook;
- (iv) Outreach: Teleseminar/ webinar and workshop Breakout Session dedicated to outreach to newer MWG members;
- (v) MWG workshop.

POTENTIAL FUTURE PROJECTS

In addition to ongoing multi-year Projects, the MWG will place emphasis on the following projects for the ICN year 2015-2016 and 2016-2017:

Other Potential Projects

1. Project on Evidence in Merger Review. During 2015-2016, the MWG will commence assessing the membership interest for a review/taking-stock of existing work products, and possibly collection of members' experiences with a view to updating/supplementing in 2016-2017 or 2017-2018 the ICN Investigative Techniques Handbook for Merger Review. This could include updating Chapter 3 of the Handbook on "Developing Reliable Evidence" – particularly as regards gathering and assessing digital evidence.
2. Based on the work carried out in the context of the Implementation Project (Project 3), assess the need to review, refresh and add to the *Recommended Practices for Merger Analysis*, the *Recommended Practices for Merger Notification and Review Procedures*

and the *Merger Guidelines Workbook*. Topics to be considered could include efficiencies and evidence in merger cases.

3. Delineate the need and scope for future work on specific topics such as (i) merger review in regulated sectors, (ii) the role of efficiencies in merger analysis, and (iii) dealing with issues that arise relating to notification thresholds, failures to notify, incomplete notifications or non-compliance with remedies.
4. Explore the demand and available resources for translating more MWG work product and adding them to the MWG's website.
5. Explore ways of promoting existing MWG work through cooperation with other ICN working groups. Engage with co-chairs of other working groups and the Curriculum Project to identify areas of overlap and promote use of existing MWG RPs and other work product.
6. Explore the need to broaden the topics covered by Chapter 4 on Economic Analysis and possible development of additional sub-sections to that Chapter.
7. Explore ways of promoting existing MWG work through cooperation with other organizations: The objective of this project would be to identify and explore opportunities of the MWG to work with other stakeholders interested in promoting the adoption of best practices in the design and operation of merger review regimes, so as to help ICN members improve the quality of their merger review. Potential stakeholders to engage with could include regional networks, aid agencies, NGOs, law firms, consultancies and specialist competition forums. The MWG could explore what support these organisations could provide, such as joint projects, training courses using MWG work product, funding/personnel for training courses and regional conferences, etc. A possible output of this project could be a MWG working paper identifying stakeholders that the MWG could successfully work with and the opportunities that the MWG could pursue with them.

PROJECT 1

Title	International Merger Enforcement Cooperation
Description and output	Practical guidance work product on enforcement cooperation in mergers – expanding in particular on the RP X on interagency coordination contained in the RPs for Merger Notification and Review Procedures
Output achieved	<ul style="list-style-type: none"> - Practical Guidance work product - Teleseminars / Breakout Sessions at MWG workshop - Promotion and updating of the Framework for Merger Review Cooperation and other work product including the ICN Model Waiver of Confidentiality
Assessment of Timing	<p>September 2013: presentation to MWG of outline proposal for the compilation of merger cooperation experiences</p> <p>October 2013-January 2014: experience-sharing teleseminars</p> <p>April 2014: report on status of project at ICN Annual Conference</p> <p>July 2014: 'think-tank'/drafting group of contributing agencies and NGAs formed</p> <p>October 2014: draft Outline of Principles discussed and presented at a MWG teleseminar</p> <p>November 2014: Plenary + BOS on practical guidance at MWG Workshop in Delhi</p> <p>November 2014- April 2015: 'Think-tank'/drafting group + MWG discussions on draft Guidance document</p> <p>April/ May 2015: presentation and adoption of Practical Guidance on International Merger Enforcement Cooperation at Sydney Annual Conference</p> <p>2015/2016: promotion/dissemination road testing and implementation of the practical guidance work product</p> <p>September 2015: Plenary and BOS on practical guidance at MWG Workshop in Brussels</p>
Entities/Persons Responsible	<ul style="list-style-type: none"> - <u>Responsible co-chairs</u>: European Commission DG Competition - <u>Project leaders</u>: Maria Despott, Sylvie Maudhuit, Julia Brockhoff, Johannes Luebking
Implementation	<ul style="list-style-type: none"> - 2015/2016: promotion/dissemination, road testing and implementation of the Practical Guidance through Plenary and BOS sessions at the Annual Conference, teleseminars, Plenary and BOS sessions at Brussels MWG Workshop
Evaluation	<ul style="list-style-type: none"> - Timing and objective of project is being met
Other learning	<ul style="list-style-type: none"> - The establishment of a think-tank/drafting team of interested agencies to hold the pen on the project + reaching out to a variety of jurisdictions for input + discussions at the MWG Workshops has worked very well to bring forward this project and to include as many agencies + experiences as possible. The benefit of having the Framework for Merger Review Cooperation contributed to this exercise.

PROJECT 2

Title	Remedies in Merger Review
Description and Output	<ul style="list-style-type: none"> - Work product on remedies in mergers – in particular, expanding on the 2005 Merger Remedies Review report and potentially other MWG work products -
Output Achieved	<ul style="list-style-type: none"> - Three information sharing teleseminars - Plenary and breakout sessions at the Merger Workshop
Assessment of timing	<p>September 2014: presentation to MWG of outline proposal for updating/developing a work product on remedies</p> <p>September 2014-January 2015: experience-sharing teleseminars</p> <p>December 2014: Plenary and BOS on remedies at Merger Workshop in Delhi</p> <p>March 2015: interim report summarizing year of information shared by members at ICN Annual Conference</p> <p>May-September 2015: 'think-tank'/drafting group of contributing agencies and NGAs to be formed, draft work products created</p> <p>September 2015: Plenary and BOS on remedies at Merger Workshop in Brussels</p> <p>September 2015 – March 2016: 'think-tank'/drafting group create work product, drafts presented to MWG, consultations via teleseminars/emails</p> <p>April/ May 2016: presentation and adoption of Remedies work product at ICN Annual Conference</p> <p>2016/2017: promotion/dissemination road testing and implementation of the remedies work product</p> <p>-</p>
Entities/Persons Responsible	<ul style="list-style-type: none"> - <u>Responsible co-chairs</u>: Canadian Competition Bureau - <u>Project leaders</u>: Alexa Gendron-O'Donnell, Sultana Bennett, and Lourdes DaCosta
Implementation	<ul style="list-style-type: none"> - 2016/2017: promotion/dissemination, road testing and implementation of the work product, potentially including Plenary and BOS sessions at the Annual Conference, teleseminars, Plenary and BOS sessions at a Merger Workshop
Evaluation	<ul style="list-style-type: none"> - Timing and objective of project is on track
Other learning	<ul style="list-style-type: none"> - Case studies in the 2005 Report can be updated to reflect developments and 'lessons learned' as well as include developing agencies' experiences. Teleseminars and informal BOS at workshops provide good fora for agencies to share case experiences.

PROJECT 3

Title	Dissemination and Implementation
Description and Output	<ul style="list-style-type: none"> - Objective is to promote familiarity, use and implementation of MWG work product(s). - Promotion of templates and the self-assessment tools - Improving MWG's web-based tools
Output achieved	<ul style="list-style-type: none"> - Teleseminar(s)/ webinar(s) to promote familiarity, use and implementation of the MWG International Merger Enforcement Cooperation Guidance - Teleseminar(s)/ webinar(s) conducted to discuss current merger topics and assess need for future/ additional MWG work <ul style="list-style-type: none"> o Assessment of need to update the 2005 Implementation report and revisiting the content of the RPs o Assessment of interest to update the Investigative Techniques Handbook (chapter 3: "Developing Reliable Evidence") - Update of Merger Templates
Assessment of timing	<ul style="list-style-type: none"> - April/ May 2015: presentation of MWG International Merger Enforcement Cooperation Project to Annual Conference - 2015/2016: Teleseminar(s)/ webinar(s) to promote familiarity, use and implementation of MWG work product(s) (including the International Merger Enforcement Cooperation Guidance) - 2015/2016: scoping exercises (via teleseminars) of need to update existing work product such as the RPs and Investigative Techniques Handbook - September 2015: MWG Workshop in Brussels - April 2016: reporting to Annual Conference on outcome scoping exercise of possible new work product/ updating existing work products
Entities/Persons Responsible	<ul style="list-style-type: none"> - <u>Merger Templates</u>: European Commission DG Competition; Italian Competition Authority; Polish Competition Authority; + volunteering agencies and NGAs - <u>Teleseminars/ webinars</u>: French Autorité de la concurrence / Canadian Competition Bureau/ European Commission DG Competition + volunteering agencies and NGAs
Implementation	<ul style="list-style-type: none"> - <i>See under ("assessment of timing")</i>
Evaluation	<p>A number of agencies have already updated their Merger Templates under the current exercise. This will be a continuous exercise</p>
Other learning	<p>MWG workshops and teleseminar(s)/ webinar(s) are privileged tools for dissemination and implementation (including evaluation of need to update existing work products)</p>

PROJECT 4

Title	Outreach
Description and Output	<ul style="list-style-type: none"> - Promote broad member and NGA involvement in the activities of the ICN MWG
Output Achieved	<ul style="list-style-type: none"> - Teleseminar/ webinar and Plenary + BOS at MWG Workshop
Assessment of timing	<ul style="list-style-type: none"> - November 2014: MWG Workshop in Delhi - April/ May 2015: BOS dedicated to outreach during Annual Conference in Sydney - Teleseminar(s)/ webinar planned in 2015/2016 - September 2015: MWG Workshop in Brussels
Entities/Persons Responsible	<ul style="list-style-type: none"> - <u>Responsible co-chairs</u>: French Autorité de la concurrence - <u>Project leaders</u>: Sophie-Anne Descoubès/ Marianne Faessel (French Autorité de la concurrence)/ Sylvie Maudhuit (EC DG Comp)/ Alexa Gendron-O'Donnell (Canadian Competition Bureau)
Implementation	<ul style="list-style-type: none"> - Promotion and Updating of the Framework for Merger Review Cooperation - Support proposed "ICN Welcome Track" at WG level for agencies and NGAs that have recently joined the MWG
Evaluation	<ul style="list-style-type: none"> - MWG will identify key projects for involvement of new and recently joined MWG members and encourage them to become part of at least one project team according to their preferences, needs and available resources
Other learning	<ul style="list-style-type: none"> - Teleseminars/ webinars are most effective if possibility to alternative with different languages (French and Spanish for instance) and at different time zones