

Merger Working Group 2016-2019 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

As from the 2016 Annual Conference, the MWG will be chaired by the Competition Bureau of Canada, the United States Federal Trade Commission and the French Autorité de la Concurrence. The MWG includes representatives from over 60 competition authorities from many geographic regions and stages of development. The MWG also includes non-governmental advisors (NGAs) who are 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, practices, and outcomes;
- (ii) Enable members to improve the quality of their merger review;
- (iii) Assist members to avoid imposing unnecessary burdens on agencies and business; and
- (iv) Encourage transparency in agency practice to increase predictability in merger review.

2016-2019 STRATEGIC PLAN

When assessing 2016-2019 future work, 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; and
- (iii) the MWG will place a high priority on promoting familiarity, implementation, and use of its work products.

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

- (i) updating the existing Recommended Practices (RPs) for Merger Notification and Review Procedures and for Merger Analysis, as well as developing possible additional RPs (such as on the analysis of remedies and cooperation);
- (ii) 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”;
- (iii) Merger Remedies Project (third year of three year project): road testing of the 2016 Merger Remedies Guide;
- (iv) promotion and implementation of MWG work products, including the Practical Guide to International Merger Enforcement Cooperation;
- (v) continuing outreach and capacity building towards members and NGAs; and
- (vi) assessing the use, maintaining, and periodically updating the merger templates.

To promote familiarity, implementation and use of MWG work product, the MWG will emphasize:

- (i) teleseminars/webinars, including possible training series of webinars on a dedicated topic(s);
- (ii) the MWG section of the ICN website;
- (iii) ICN annual conference sessions and merger workshops;
- (iv) contributing to the preparation of merger-related ITOD modules; and
- (v) the self-assessment tools developed for members to analyse their level of use and implementation of the RPs for Merger Notification and for Merger Analysis.

The MWG will continue its efforts to involve additional ICN members in its activities, and to provide participating members with 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 its activities and encourage ICN members to invite broad and diverse NGA participation in MWG work.

Merger Working Group 2016-2017 Projects

Pursuant to its Mission, the MWG will carry out the following Projects:

1. Assessment of use and update of RPs for Merger Notification and Review Procedures and RPs for Merger Analysis (Project 1)

The MWG will assess the level of use and implementation of the MWG's sets of RPs, including revisiting implementation efforts and the content of the RPs. The outcome of this exercise could then, as the case may be, lead to updating the MWG's implementation work and/or revising the content of the RPs.

2. New work on Investigative Techniques (Project 2)

The MWG will examine interest in updating the Investigative Techniques Handbook (specifically Chapter 3 "Developing Reliable Evidence"). This focus on investigative techniques could include teleseminars/webinars, workshop content, and/or experience sharing written work, including a revision of the Handbook. This project aims to examine both the needs of legal and economic analysis during merger investigation.

3. Remedies Project (last year of three year project): road-testing (Project 3). In 2016, the MWG issued the Merger Remedies Guide. During 2016-2017, the MWG will implement, road-test, and disseminate the Guide. Teleseminars may be held to promote the Guide and discuss its use through practical examples or case studies. It will complement Project 1 in assessing the need to revisit RPs relating to remedies.

3. Dissemination and Implementation Project (Project 4). The objective of this Project is to promote familiarity, use and implementation of MWG work product. For 2016-2017, the MWG will prioritise the following work:

- a. Promotion and implementation of the MWG's **Practical Guide to International Merger Enforcement Cooperation**. The Practical Guide provides practical guidance on cooperation among agencies in the review of multi-jurisdictional mergers. It expands on the cooperation RP contained in the RPs for Merger Notification and Review Procedures. Implementation work related to the Practical Guide may include, for example, studying impediments to waivers (e.g., legal barriers, developing trust, confidentiality concerns, etc.), ways to promote use of waivers, and identifying the type of information regularly exchanged.
- b. Encourage MWG members to participate in the ICN Framework for Merger Review Cooperation. The MWG will evaluate its use and potential ways to improve the Framework.
- c. Promotion of the MWG's self-assessment tools for implementation of the RPs via coordination with the AIN and MWG opportunities (webinars/teleseminars and sessions during annual conferences and workshops) to discuss the findings of the self-assessment tools and use of MWG work products.

- d. The MWG will continue to update and improve the MWG's page on the ICN website, including adding more materials from ICN merger workshops and teleseminars. The MWG will upload any new versions of the MWG Merger templates and, as appropriate, continue to encourage member agencies to update their templates (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 contribute to the preparation of merger-related ITOD modules.

5. Outreach Project (Project 5). The MWG will promote inclusion and encourage widespread member and NGA participation. In response to the Steering Group call for specific actions, 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 also support the implementation at Working Group level of the "ICN Welcome Track" for recently joined or less active agencies and NGAs and promote the goal of broader MWG participation across Working Group activities, including breakout sessions at annual conferences and merger workshops.

Merger Workshop: The MWG intends to organize workshops in the period 2016-2019 and will use them to complement ongoing and/or future work of the MWG as well as advance the MWG's implementation and outreach agendas. The MWG will examine the benefits of an institutionalized annual ICN merger workshop.

SUMMARY 2016-2017 PROJECTS

The MWG will pursue the following Projects in the course of 2016-2017 by means of priority:

- (i) New project on assessment, use and possible update of the RPs for Merger Notification and Review Procedures and RPs for Merger Analysis;
- (ii) New project on Investigative Techniques: review existing Chapter 3 on "Developing Reliable Evidence" in view of possible need for updates;
- (iii) Ongoing project on Remedies in Merger Review: implementation, road-testing, and dissemination phase of the 2016 Merger Remedies Guide;
- (iv) Ongoing project on dissemination and implementation: promote the implementation of the MWG's work products, notably the recent work on remedies and cooperation, the self-assessment tools, and participation in the ICN Framework for Merger Review Cooperation; and
- (v) Ongoing Outreach Project: promote broader member and NGA participation.

PROJECT 1

Title	Assessment of use and update of RPs for Merger Notification and Review Procedures and RPs for Merger Analysis
Description and output	The aim is to assess the level of use and implementation of the MWG's sets of Recommended Practices.
Output achieved	The outcome of this exercise could, as the case may be, lead to updating the MWG's implementation progress and examples and/or revising the content of the RPs
Assessment of Timing	Multi-year project with initial set of results for 2017 annual conference
Entities/Persons Responsible	- US FTC;
Implementation	- This project is focused on implementation of the Merger RPs.
Evaluation	- New project.
Other learning	- Based on updating existing ICN RPs.

PROJECT 2

Title	New work on Investigative Techniques
Description and Output	Assessment of the interest to update the Investigative Techniques handbook (specifically Chapter 3 "Developing Reliable Evidence").
Output Achieved	Depending on the outcome of the assessment, the output may include teleseminars/ webinars, workshop content, and/or experience sharing written work, including a revision of the Handbook
Assessment of timing	TDB after initial scoping and group interest; will result in seminars for 2016-17 and possibly new written work. May be extended into 2017-18 as a two-year project.
Entities/Persons Responsible	TBD
Implementation	2016-2017: teleseminars/ webinars
Evaluation	New project.
Other learning	

PROJECT 3

Title	Remedies in Merger Review
Description and Output	- Road-testing and implementation of the Merger Remedies Guide
Output Achieved	- 2 – 3 teleseminars - workshop/ annual conference content
Assessment of timing	2016/2017 is the third and last year of a three year project which will be dedicated to the promotion/dissemination, road testing and implementation of the Merger Remedies Guide
Entities/Persons Responsible	- <u>Responsible co-chairs</u> : Canadian Competition Bureau - <u>Project leaders</u> : Alexa Gendron-O'Donnell, Sultana Bennett, and Lourdes DaCosta
Implementation	- 2016/2017: promotion/dissemination, road testing and implementation of the work product, potentially including plenary and breakout sessions at the annual conference, teleseminars, and merger workshop sessions
Evaluation	- Timing and objective of project is on track
Other learning	-

PROJECT 4

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). - Encouraging MWG members to participate in ICN Framework for Merger Review Cooperation - Promotion of templates and the self-assessment tools - Improving MWG's web-based tools
Output achieved	<ul style="list-style-type: none"> - Teleseminar/ webinar series to promote familiarity, use and implementation of the MWG International Merger Enforcement Cooperation Guidance and other work products - Assessment of use and possible update of Merger Templates
Assessment of timing	<ul style="list-style-type: none"> - 2016/2017: Teleseminar(s)/ webinar(s) to promote familiarity, use and implementation of MWG work product(s), including the Practical Guide to International Merger Enforcement Cooperation - 2016/2017: MWG Workshop
Entities/Persons Responsible	<ul style="list-style-type: none"> - <u>Merger Templates</u>: volunteering agencies and NGAs - <u>Teleseminars/ webinars</u>: French Autorité de la concurrence / Canadian Competition Bureau/ US FTC + 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 5

Title	Outreach
Description and Output	<ul style="list-style-type: none"> - Promote inclusion and encourage widespread member and NGA participation.
Output Achieved	<ul style="list-style-type: none"> - Key projects to involve new and recently joined MWG members - Implementation of "ICN Welcome Track" at MWG level - Workshop/ Annual Conference content;
Assessment of timing	<ul style="list-style-type: none"> - Year round exercise
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)/ Alexa Gendron-O'Donnell /Sultana Bennett (Canadian Competition Bureau)/ Paul O'Brien (US FTC)
Implementation	<ul style="list-style-type: none"> - Implementation of "ICN Welcome Track" at WG level for agencies and NGAs that have recently joined the MWG - Teleseminar(s)/ Webinar(s) - Possible work product translations - workshop/ annual conference content
Evaluation	<ul style="list-style-type: none"> - MWG will encourage new and recently joined MWG members 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"> - Possible teleseminars/ webinars in French or Spanish and at different time zones