MISSION

The mission of the ICN Merger Working Group (the “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 processes; (ii) facilitate procedural and substantive convergence; and (iii) reduce the public and private time and cost of multi-jurisdictional merger reviews.

To further fulfill its mission, the Working Group has identified the following overall goals for 2011-2016:

• promote greater international cooperation and convergence in merger review standards;
• enable members to improve the quality of their merger review;
• assist members in finding ways to avoid imposing unnecessary burdens on agencies and business; and
• increase transparency in agency practice to minimize uncertainty and increase predictability in merger review.

The Working Group recognizes that these goals are all interrelated. The projects identified in this work plan are designed to further these overall goals.

The Working Group includes representatives from competition authorities from many geographic regions and stages of development. The Working Group also includes representatives 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 Working Group co-chairs.

In 2010-2011, the Working Group conducted a comprehensive assessment of its existing work and the views of members and non-governmental advisors on future work. The results of that assessment guided the choice of work for 2011-2012, and continue to be taken into account by the Working Group in this and future work plans.

PROJECTS FOR 2012-2013

First Priorities:

• Project on Economic Analysis in Merger Review. The objective of this project is to promote better understanding of the role of economic analysis in merger review. During 2011-12, the Working Group conducted a series of discussions and exchanges of practical techniques in the
economic analysis of mergers. In 2012-13, the Working Group plans to build upon those discussions and use the lessons learned to update Chapter 4 of the 2005 *ICN Investigative Techniques Handbook for Merger Review* on “The Role of Economics and Economic Evidence in Merger Analysis.” An objective for the updated work product is to explore common practices in areas of economic analysis in merger review in a useful manner for both economist and non-economist merger case handlers.

**Projected Timeline:** During the summer and fall of 2012, the Working Group will evaluate the information shared during its discussion calls in 2011 and 2012 and assess whether additional information is needed to identify common issues and approaches in the economic analysis of mergers. The Working Group plans to consider the use of several working calls/webinars (perhaps via a ‘virtual workshop’) and/or soliciting written input to inform the drafting process. The Working Group will, as feasible, complete an updated written product on economic analysis by the 2013 annual conference.

- **Work to Promote Familiarity, Use, and Implementation of Working Group Work Product.** The Working Group will continue work to promote familiarity, use, and implementation of existing work product. For 2012-13, the Working Group will prioritize the following work:

  1) **Conduct Teleseminars/Webinars.** The Working Group plans to develop and conduct a limited number of teleseminars/webinars focused on current merger topics that are agreed upon by the group and that seek to promote familiarity, use, and implementation of the Working Group’s work product. In particular, the Working Group will consider the topic of international merger enforcement cooperation (see also below) for such discussions.

    **Projected Timeline:** It is anticipated that there will be approximately two or three of these teleseminars/webinars during the course of the ICN year.

  2) **Continue Efforts to Assess the Level of Use and Implementation of Working Group Work Product, with a Particular Emphasis on Implementation of the Recommended Practices.** The Working Group will continue its efforts to gather information on the use and implementation of its work product, and identify common challenges or particularly successful ways of work product use or implementation.

    **Projected Timeline:** Work will be ongoing over the long-term.
• **ICN Framework for Merger Review Cooperation.** During the 2011-2012 year, the Working Group considered a proposal from the Japan Fair Trade Commission to establish a framework for merger review cooperation among interested member agencies. Working Group members responded favorably to pursuing the idea. The non-binding framework is intended to facilitate effective and efficient cooperation between and among ICN member agencies reviewing the same merger through the identification of agency liaisons and possible approaches for information exchange among agency case teams.

**Projected Timeline:** Subject to approval at the 2012 annual conference, the Japan Fair Trade Commission will collect and maintain a contact list of liaison officers for the framework based on the information provided by member agencies. Prior to the 2013 annual conference, the Working Group will assess its use by members.

• **International Merger Enforcement Cooperation.** During 2012-2013, the Working Group will review its existing work product related to merger enforcement cooperation. Also, in connection with the ICN Steering Group’s project on international enforcement cooperation (and subject to approval of the project at the 2012 annual conference), the Working Group plans to evaluate the potential for additional international merger cooperation-related work.

**Projected Timeline:** To be determined. Initial consideration during the 2012-2013 year and during future work planning for 2013-2014.

Other Priorities:

• **Potential ICN Merger Workshop.** The Working Group plans to evaluate the feasibility of conducting a workshop (either live or virtual) during 2012 or 2013. In particular, the Working Group will consider whether the workshop can be used to complement the ongoing work on the role of economic analysis in merger review.

**Projected Timeline:** To be determined.

**Evaluation of work**

The Merger Working Group’s work continues to draw interest from many members and NGAs. The topic and proposals for this work plan are based on the Working Group’s 2010-2011 comprehensive self-evaluation and member preferences expressed during that exercise. The Working Group will seek input for written work product from interested members and NGAs and will seek views on the draft, including the expected use of the new chapter. Active interest in
drafting and shaping the new chapter will help measure its utility. As with past practice, the Working Group plans to evaluate any workshop’s success via participant feedback. In drafting next year’s work plan, the working group will assess the accomplishments of the 2012-2013 proposed projects and the participation and interest levels in those projects.
• **Guiding Principles and Recommended Practices for Merger Notification and Review Procedures.** 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.


• **Recommended Practices for Merger Analysis.** The Working Group, with input from non-governmental advisors, began work on developing Recommended Practices on substantive merger analysis issues in 2007-08. Since that time, the ICN has adopted eight Recommended Practices for Merger Analysis developed by the Working Group on: 1) the legal framework for competition merger analysis; 2) market definition, 3) the use of market shares, thresholds and presumptions; 4) competitive effects analysis in horizontal merger review; 5) unilateral effects; 6) coordinated effects; 7) entry and expansion, and 8) failing firm/existing assets. The Recommended Practices are available at: [http://www.internationalcompetitionnetwork.org/uploads/library/doc316.pdf](http://www.internationalcompetitionnetwork.org/uploads/library/doc316.pdf).

• **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/uploads/library/doc321.pdf](http://www.internationalcompetitionnetwork.org/uploads/library/doc321.pdf).

• **Handbook on Investigative Techniques for Merger Review.** The Handbook is designed to inform ICN members of the various tools and techniques used in merger investigation, 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 members carried out in 2003, and reflects agency practice. The remaining chapters discuss how to plan a merger investigation, developing reliable evidence in merger cases, economic and econometric analyses, 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/uploads/library/doc322.pdf](http://www.internationalcompetitionnetwork.org/uploads/library/doc322.pdf).

• **Merger Remedies Review Report.** The Working Group prepared a report that provides practical guidance and outlines key principles and the range of tools
• **Workshops on Investigative Techniques, Merger Notification and Procedures Issues, and Substantive Issues in Merger Analysis.** The Working Group 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 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.

In March 2006, the Merger Working Group held a two-day workshop in Washington, DC, to promote implementation of the Guiding Principles and Recommended Practices. In March 2008, the subgroup held a second workshop on notification and procedures issues in Brno, Czech Republic, hosted by the Czech and Slovak competition agencies. Workshop topics included setting notification thresholds, initial information requirements, review periods, remedies, and transparency, confidentiality, and procedural fairness.

In April 2007, the Working Group held an interactive workshop on substantial merger analysis issues 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. A regional workshop covering merger analysis and investigative techniques was also held in Pretoria in 2007.

In November 2010, the Working Group conducted a workshop in Rome, hosted by the Italian Competition Authority, covering investigative techniques, merger notification and procedures issues, and substantive issues in merger analysis. A regional workshop covering these topics was also held in Taipei in March 2009.

• **Comprehensive Assessment of the Merger Working Group’s Existing Work Product and Future Needs.** In 2010-11, the Working Group conducted a comprehensive assessment of the use and impact of its existing notification, analysis and investigative work product, potential barriers to work product use or implementation, as well as an evaluation of new areas of work that would assist members in making merger review more effective. The Working Group conducted a comprehensive survey of ICN members and Working Group NGAs to gather input for the assessment. The report outlining the Working Group’s conclusions based on the comprehensive assessment is available at: [http://www.internationalcompetitionnetwork.org/uploads/library/doc767.pdf](http://www.internationalcompetitionnetwork.org/uploads/library/doc767.pdf)

• **“Take-Home” Version of the Workshop on Substantive Issues in Merger Review.** The Working Group adapted the materials used in the April 2007 Substantive Issues in Merger Review workshop to enable competition
authorities to use the materials to conduct their own internal training. The workshop training materials aim to deepen participants’ acquaintance with specific analytical issues in merger review and promote the Merger Guidelines Workbook and the Merger Remedies Study.

- **Web Link and Template Projects.** To facilitate ready access to merger laws and key features of merger review systems, 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/working-groups/current/merger/templates.aspx.

- **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/uploads/library/doc324.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/uploads/library/doc325.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 framework. This paper is available at: http://www.internationalcompetitionnetwork.org/uploads/library/doc333.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 topics – coordinated effects, unilateral effects, market definition, efficiencies, and market entry.

- **Information Requirements for Merger Notification.** This paper aims to assist agencies in comparing the approaches to pre-merger notification among some ICN members, and to help agencies planning to introduce or revise their notification forms or requirements in conformity with the ICN N&P Recommended Practice on Initial Information Requirements. The paper summarizes the various categories of information ICN members seek in the initial notification of a merger and describes approaches and mechanisms for
flexibility that members use to obtain the information needed for merger review while minimizing unnecessary costs and burdens of notification, particularly for transactions that do not present material competitive concerns. This paper is available at: http://www.internationalcompetitionnetwork.org/uploads/library/doc328.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/uploads/library/doc327.pdf.

- **Setting Notification Thresholds.** Building on the Recommended Practice on Notification Thresholds, this paper explores 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. The paper is available at: http://www.internationalcompetitionnetwork.org/uploads/library/doc326.pdf.

- **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/uploads/library/doc330.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/uploads/library/doc331.pdf.