

# Discovering the ICN's Merger Working Group: a Global Network of Merger Review Regimes

**MWG Welcoming Teleseminar  
November 7, 2013**

# Role and Function of the MWG

- ▶ MWG was established in 2001 as one of ICN's first initiatives
- ▶ Mission of MWG is to promote adoption of best practices in design and operation of merger review regimes in order to:
  - Enhance effectiveness of each jurisdiction's merger review mechanisms
  - Facilitate procedural and substantive convergence
  - Reduce public and private time and cost of multi jurisdictional merger reviews

# Role and Function of the MWG

- ▶ MWG operates by consensus through its various Working Groups consisting of Members and Non-Governmental Advisors (NGAs) conducting discussions via teleconferences or e-mails
- ▶ MWG has developed recommended practices and practical guidance for design and operation of merger review systems on issues of merger notification, investigation and analysis

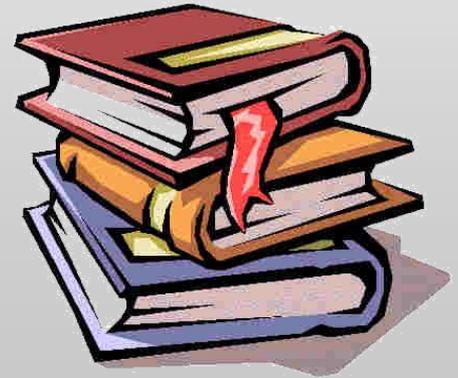
# Current Structure of MWG

- ▶ MWG includes representatives from 59 competition authorities and from the legal, economic, academic and business communities
- ▶ MWG is currently co-chaired by Italian Competition Authority, European Commission (DG Comp) and Competition Commission of India
- ▶ While assessing future work over next three years, MWG is guided by following principles:
  - MWG will pursue work in new areas that are in demand by members
  - MWG will take steps to ensure that its most highly valued and used work products are updated regularly
  - MWG will place a high priority on promoting familiarity, implementation, and use of its work products

# Past Work Products of the MWG (1)

## Recommendations, Workbooks, and Handbooks For Merger Notification & Review Procedures

- [Guiding Principles for Merger Notification & Review Procedure](#)
- [Recommended Practices for Merger Notification & Review Procedures](#)
- [ICN Merger Notification & Procedures Self-Assessment Tool](#)
- Notification & Procedure Reports:
  - [Model Confidentiality Waiver](#);
  - [Setting Notification Thresholds](#);
  - [Defining Merger Transactions](#);
  - [Notification Information Requirements](#);
  - [Merger Notification & Procedures Templates](#)



# ICN Guiding Principles

- Transparency
- Non-discrimination on the basis of nationality
- Sovereignty
- Procedural fairness
- Efficient, timely, and effective review
- Coordination
- Convergence
- Protection of confidential information

# Recommended Practices for Merger Notification & Review Procedures

- Jurisdictional nexus
- Objective notification thresholds
- Flexibility in the timing of notification
- Merger review periods
- Requirements for initial notification
- Conduct of merger investigations
- Procedural fairness
- Transparency
- Confidentiality
- Interagency coordination
- Review of merger review provisions
- Remedy procedures
- Agency powers

Available in [English](#), [French](#), and [Spanish](#).

## Past Work Products of the MWG (2)

### Recommendations, Workbooks, and Handbooks For Merger Analysis

- [Recommended Practices for Merger Analysis](#)
  - [ICN Merger Analysis Self Assessment Tool](#)
  - [Handbook on Investigative Techniques](#)
  - [Merger Guidelines Workbook](#)
  - [Merger Remedies Report](#)
- All work product is available on MWG website
  - A summary of key ICN work products, including the MWG's work, is available in the ICN Work Products Catalogue, available at:

<http://www.internationalcompetitionnetwork.org/uploads/library/doc904.pdf>

# Recommended Practices for Merger Analysis

- ▶ The Recommended Practices for Merger Analysis were adopted at the ICN's annual conferences in 2008–2010 and address:
  - 1) The Legal Framework for Competition Merger Analysis;
  - 2) Market Definition;
  - 3) The Use of Market Shares: Thresholds & Presumptions;
  - 4) Overview of Competitive Effects;
  - 5) Unilateral Effects Analysis;
  - 6) Coordinated Effects Analysis;
  - 7) Entry and Expansion; and
  - 8) Failing Firm/Exiting Assets.

# Investigative Techniques Handbook for Merger Review

- Chapter 1: Investigation Tools Overview
- Chapter 2: Planning a Merger Investigation
- Chapter 3: Developing Reliable Evidence
- Chapter 4: [The Role of Economists and Economic Evidence](#)  
(updated in April 2013!)
- Chapter 5: A Private Sector Perspective

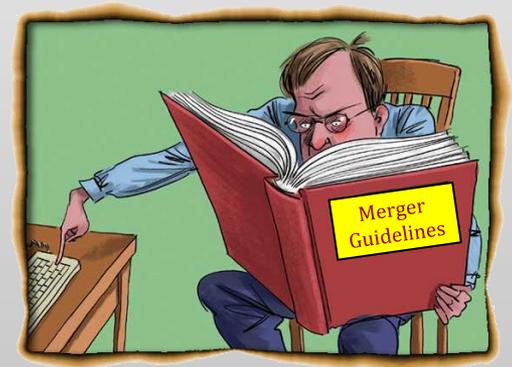
# Chapter 4: The Role of Economists and Economic Evidence

## Highlights:

1. The role of economist/economics in planning merger investigation
2. The economist's toolbox: qualitative evidence and quantitative methods
  - Price correlation and time-series analysis
  - Diversion ratios
  - Upward Price Pressures
  - Natural events / shock analysis
  - Demand estimation
3. Requirements for a solid quantitative analysis
4. Glossary, further resources & case studies

# Merger Guidelines Workbook

- A detailed analytical framework, with key questions an investigating competition authority will wish to address when evaluating a merger's competitive impact.
- It is a practical manual to further build upon the understanding of the key questions which need to be addressed in the merger review process.
- Identifies common approaches to problems and elicits best practices in formulating an analytical framework for the competition assessment of mergers.



# Merger Guidelines Workbook Contents

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# Merger Remedies Review Project

- This report provides a practical guide to the choice, design, period and implementation of merger remedies.
- It achieves this by summarizing key principles and practices employed by a wide cross-section of ICN members and then illustrating significant issues through case studies.

# Merger Remedies Review Project Contents

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<b>Part 3 – Choice and Design of Remedies</b> General considerations; The merger remedies universe; Structural remedies – divestitures; Factors affecting the design of divestitures; Structural remedies – intellectual property; Behavioural remedies; Circumstances where behavioural remedies may be appropriate; Packages of behavioural remedies	<b>6</b>
<b>Part 4 – Implementing and Monitoring Remedies</b> Effective implementation; Use of trustees; Monitoring Arbitration and Dispute Resolution; Post implementation modification	<b>14</b>

# Self-assessments

- Yes-or-no questions linked to each Recommended Practice
- Taking the self-assessments help you understand how merger notification and analysis in your jurisdiction compares to the Recommended Practices
  - [Notification and Procedures Self-assessment](#)
  - [Merger Analysis Self-assessment](#)
- These self-assessments can help you use the RPs as a benchmark and identify areas for improvement.

# ICN Curriculum Project

- A comprehensive curriculum of competition law training materials for competition agency staff and officials
  - The Training modules consisting of video lectures and accompanying materials from a diverse group of international academics and practitioners, provides an on-line interactive educational centre for competition authorities from around the world.
  - Modules cover: competition policy fundamentals, horizontal restraints, dominant firm conduct, mergers, competition advocacy, and investigational techniques. More modules are developed each year.
- **Series IV Mergers**
  - **Module IV-1: Handling Merger Investigations**
  - This module addresses competition agency merger investigation, drawing upon concepts from the modules on market definition and market power in the merger context. The video uses a hypothetical merger to demonstrate the practical techniques agencies use to investigate a merger, including how to plan a merger investigation and how to obtain and evaluate relevant evidence.

All modules available at:

[http://www.internationalcompetitionnetwork.org/about/steering-group/outreach/  
icncurriculum.aspx](http://www.internationalcompetitionnetwork.org/about/steering-group/outreach/icncurriculum.aspx)

# Work Plan of ICN MWG: 2013–2016

- ▶ Pursuant to its Mission and 2013–2016 Work Plan, MWG will seek to achieve following specific goals and outcomes in the 2013–2014 ICN year, in order of priority
  
- ▶ Project on Economic Analysis in Merger Review
  - International Merger Enforcement Cooperation
  - Work to Promote Familiarity, Use, and Implementation of MWG Work Products
  - Expanding Member and NGA Participation
  - Potential Merger Workshop
  
- ▶ As part of its strategic plan for 2013 –2016, the MWG will continue its efforts to involve additional ICN members in the MWG activities, and to provide participating ICN members with opportunities to contribute to its work.

# Work Plan of ICN MWG: 2013–2016

- ▶ The “Expanding Member and NGA Participation” project of the ICN has been specifically designed to promote broad member and NGA involvement.
- ▶ The MWG will identify key projects for the involvement of newer agencies who have joined recently and encourage them to become part of at least one project team according to their preferences, needs and available resources.
- ▶ MWG will also place emphasis on following projects for ICN years 2014-15 and 2015-16:
  - ✓ Assess need to review, refresh and add to Recommended Practices for Merger Analysis, Merger Notification and Review Procedures and the Merger Guidelines Workbook

# Work Plan of ICN MWG: 2013–2016

- ✓ Conduct new work on investigative techniques including work to supplement ICN Investigative Techniques Handbook for Merger Review
- ✓ Delineate need and scope for future work on specific topics
- ✓ Explore demand and available resources for translating more MWG work product and adding them to MWG's Website
- ✓ Promote self-assessment tools
- ✓ Explore ways of promoting existing MWG work through cooperation with other organizations

## ▶ 2013–2014 schedule:

- 17.10.2013 – International Cooperation Project
- 24.10.2013 – Economic Analysis Project
- 07.11.2013 – Welcoming New Members
- 14.11.2013 – International Cooperation Project
- 12.12.2013 – Economic Analysis Project
- 16.01.2014 – International cooperation Project
- 13.02.2014 – Presentation of key work products
- 20.02.2014 – Presentation of key work products
- 27.02.2014 – Presentation of key work products
- 20.03.2014 – Economic Analysis Project

# Expanding Member Participation: Outreach Project

## ▶ Outcome/Output:

- ▶ Bilateral "outreach" to new MWG Members, via phone calls and emails
- ▶ Encourage new Members to take active part in MWG projects alongside more experience Members
- ▶ Active use of the proposed "ICN Welcome Track" to assist new Members in merger control enforcement
- ▶ Establish Competition Commission of India as "nodal point" for sharing experience about difficulties by new regimes in course of implementation of merger control
- ▶ Arrange teleseminars for new Members to exchange their views and experiences

# Expanding NGA Participation: Outreach Project

- Benefit from NGA experience as stakeholders and from their work with newer competition authorities
- Use NGAs to reach out to potential new Members and NGAs
- Widen profile of MWG NGAs by recruiting in-house lawyers and economists from private consultancies

# How to get involved

- ✓ Volunteer to work on joint projects
- ✓ Participate in teleseminars
- ✓ Use MWG work products to conduct training programs for case handlers and stakeholders
- ✓ Identify stakeholders, including NGA attorneys and economists with whom the MWG can work on future projects
- ✓ Fill out a merger template

# Contact the MWG Co-chairs

- The Merger Working Group is co-chaired by:
  - The Italian Competition Authority:  
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[combination@cci.gov.in](mailto:combination@cci.gov.in)



International  
Competition  
Network

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**Thank You**