

# Merger Working Group (MWG)

## Short Form Work Plan

### Projects summary

Pursuant to 'Working Group structure and 3 year plan' the Merger Working Group will work on the following projects during the 2023-2024 ICN year.

- Project 1. Digital Mergers.
- Project 2. Update the ICN Recommended Practices with a new chapter on non-horizontal mergers.
- Project 3. Update the ICN Recommended Practices Chapter on Entry and expansion.
- Project 4 Update the ICN Recommended Practices Chapter on Unilateral Effects.
- Project 5 Update the ICN Recommended Practices Chapter on Coordinated Effects.
- Project 6 Series of webinars on investigative techniques.
- Project 7. Update the ICN Recommended Practices with a new chapter on counterfactual.

### Project 1. Digital Mergers (Led by KT and DG Comp)

The MWG hosted a series of webinars on the topic "Digital Mergers" in 2022 and 2023. This will be followed by an overall report to be prepared in 2023.

Topics include: (a) market definition (use of SSNIP, zero price, etc.); (b) competition analysis and theories of harm (network effects, tipping of the market, etc.); (c) use of empirical analysis/evidence (survey, GUPPI, etc.); and (d) remedies in digital markets.

The aim of the project is to share best practices among the ICN members on the covered topics, and to foster cooperation.

<b>Title</b>	<b>Digital Mergers</b>
Project Description	Share best practices on Digital Mergers.
Outcomes	Series of webinars on the topic "Digital Mergers" throughout the year, followed by webinar notes, and an overall report.
Contact Details	Norwegian KT ( <a href="mailto:icn.mergers@kt.no">icn.mergers@kt.no</a> ) and DG Comp ( <a href="mailto:COMP-ICN-MERGERS@ec.europa.eu">COMP-ICN-MERGERS@ec.europa.eu</a> )
Description of work/resources	MWG members, moderator and webinar speakers

Multi-year project?	Multi-year project
Facilitating effective enforcement cooperation	Sharing best practices among ICN members and foster cooperation.
Promoting sustainability	Digital innovations can foster sustainability across various sectors of the economy. The project promotes sustainability by facilitating effective enforcement of digital mergers by sharing best practices and thereby, ensuring that digital markets are competitive and innovations in the digital field are not reduced.
Use of existing ICN materials	New project
Method for evaluating and measuring success	Participation rate in webinars

<b>Milestones</b>	<b>Activity</b>
Sept/Oct 2022	Webinar on digital mergers and market definition
Nov/Dec 2022	Webinar on digital mergers and the competition analysis
Jan 2023	Webinar on digital mergers and the use of empirical analysis
Feb 2023	Webinar on remedies in digital markets
Feb/March 2023	Brief report on the webinars
2023	Presenting report to the Annual Conference
2023	Presenting report to SG before the Annual Conference

**Project 2. Update the ICN Recommended Practices with a new chapter on non-horizontal mergers (Led by DG Comp)**

The ICN Recommended Practices for Merger Analysis do not have a specific chapter addressing non-horizontal theories of harms. There is a notable gap in the ICN Recommended Practices for Merger Analysis as this topic is not specifically addressed. In recent years, there has been a considerable number of very prominent cases in which non-horizontal theories of harm have been assessed, notably in digital and other dynamic markets.

As follows, the MWG co-chairs intend to add a chapter on non-horizontal mergers with the latest practices from national competition authorities.

<b>Title</b>	<b>Updating the ICN Recommended Practices with a chapter on Non-horizontal mergers</b>
Project Description	Add a chapter on non-horizontal mergers with the latest practices from national competition authorities.
Outcomes	New chapter on the ICN Recommended Practices on non-horizontal mergers.
Contact Details	DG Comp (COMP-ICN-MERGERS@ec.europa.eu)
Description of work/resources	Drafting team, MWG members, moderators, and webinar speakers
Multi-year project?	Multi-year project
Facilitating effective enforcement cooperation	Sharing best practices among ICN members and foster cooperation.
Promoting sustainability	Adding a chapter on non-horizontal mergers will allow authorities to share best practices in non-horizontal theories of harm, which, often include assessments of digital or other dynamic and innovative markets, including on sustainability aspects.
Use of existing ICN materials	ICN Recommended Practices for Merger Analysis
Method for evaluating and measuring success	Participation rate in webinars, member feedback on the survey

<b>Milestones</b>	<b>Activity</b>
October 2022	Forming a working group
October 2022 – May 2023	Survey to ICN members. Drafting a chapter on non-horizontal mergers based on experience of working group members and input from survey and webinars
March 2023	Webinar on non-horizontal theories of harm and competition analysis
April 2023	Webinar on empirical analysis/evidence on non-horizontal mergers
May 2023	Webinar on remedies on non-horizontal mergers
May 2023	Invitation for comments/views preparing consultation on draft chapter ('preliminary consultation')

June 2023	Circulation of draft chapter for comments from the MWG members ('first consultation')
October 2023	MWG Co-Chairs review the responses to the first consultation and prepare a summary of the comments/views received to be presented at the 2023 ICN Annual Conference.
November 2023	Update draft chapter
December 2023	Circulation of the updated draft chapter for comments from the MWG members ('second consultation')
January 2024	Finalization of the chapter
2024	Presentation of the new chapter at the 2024 ICN Annual Conference or Merger Workshop.

### **Project 3. Update of the ICN Recommended Practices Chapter on Entry and expansion (Led by the CMA and KT)**

The MWG co-chairs intend to update the chapter on entry and expansion of the ICN recommended practices for merger analysis, last updated in April 2008, with more recent practice from national competition authorities. The project is ongoing and are led by the former co-chair CMA and current co-chair KT.

<b>Title</b>	<b>Updating the ICN Recommended Practice Chapter on Entry and expansion</b>
Project Description	Update the chapter of the ICN recommended practices for merger analysis.
Outcomes	Chapter updated.
Contact Details	Norwegian KT ( <a href="mailto:icn.mergers@kt.no">icn.mergers@kt.no</a> ) and UK CMA ( <a href="mailto:ICN.mergers@cma.gov.uk">ICN.mergers@cma.gov.uk</a> )
Description of work/resources	Drafting team, MWG members, moderator and speakers at the annual ICN conference
Multi-year project?	Multi-year project
Facilitating effective enforcement cooperation	Updating/sharing recent practice from national competition authorities and to foster cooperation
Promoting sustainability	Project contributes to efficient merger control, which in turn promote competitive markets, innovation, and sustainability
Use of existing ICN materials	ICN Recommended Practice for merger analysis
Method for evaluating and measuring success	Member feedback in the consultations

<b>Milestones</b>	<b>Activity</b>
January/February 2022	Formation of a working group/ preparing proposals for updates to be published for consultation
March 2022	Circulation of the draft revised chapter for comments from MWG members ('First consultation').
April 2022	MWG Co-Chairs review the responses to the first consultation and prepare a summary of the comments/views received to be presented at the ICN Annual Conference in Berlin.
4-6 May 2022	Draft revised chapter and summary of responses to the first consultation are presented during a break-out session at the ICN Annual Conference.
May 2022	MWG Co-Chairs incorporate comments to the draft revised chapter and prepare a second draft revised chapter.
October 2022	Circulation of second draft revised chapter for comments ('Second consultation').
June/July 2023	Present the draft revised chapter for the MWG members at a webinar for a final discussion
October 2023	Finalisation and presentation of the revised chapter at the 2023 ICN Annual Conference

#### **Project 4. Update of the ICN Recommended Practices Chapter on Unilateral Effects on horizontal mergers (Led by DG Comp)**

The MWG co-chairs intend to update the chapter on unilateral effects of the ICN recommended practices for merger analysis, last updated in June 2009, with more recent practice from national competition authorities, regarding the effects of mergers on innovation and dynamic markets.

<b>Title</b>	<b>Updating the ICN Recommended Practices with a chapter on unilateral effects on horizontal mergers</b>
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Project Description	Update the chapter on unilateral effects on horizontal mergers with the latest practices from national competition authorities, regarding the effects of mergers on innovation and dynamic markets.
Outcomes	Chapter updated.
Contact Details	DG Comp (COMP-ICN-MERGERS@ec.europa.eu)
Description of work/ resources	Drafting team, MWG members, moderators and webinar speakers
Multi-year project?	Multi-year project
Facilitating effective enforcement cooperation	Sharing best practices among ICN members and foster cooperation.
Promoting sustainability	Adding the chapter will allow authorities to share best practices in unilateral-horizontal theories of harm, which, often include assessments of digital or other dynamic and innovative markets, including on sustainability aspects.
Use of existing ICN materials	ICN Recommended Practices for Merger Analysis
Method for evaluating and measuring success	Participation rate in webinars, member feedback in the consultations

<b>Milestones</b>	<b>Activity</b>
October 2023 – May 2024	Updating the chapter on unilateral effects on horizontal mergers based on experience of MWG members and input from webinars
March 2024	Webinar on unilateral horizontal theories of harm and competition analysis
May 2024	Webinar on empirical analysis/evidence in horizontal mergers
June 2024	Webinar on remedies in horizontal mergers
July 2024	Circulation of draft chapter for comments from the MWG members ('first consultation')
TBA	MWG Co-Chairs review the responses to the first consultation and prepare a summary of the comments/views received to be presented at the 2024 Merger Workshop or webinar.
November 2024	Update draft chapter
December 2024	Circulation of the updated draft chapter for comments from the MWG members ('second consultation')

January-April 2025	Finalisation of the chapter
2025	Presentation of the new chapter at the 2025 ICN Annual Conference or Merger Workshop.

**Project 5. Update of the ICN Recommended Practices Chapter on Coordinated Effects on horizontal mergers (Led by DG Comp)**

The MWG co-chairs intend to update the chapter on coordinated effects of the ICN recommended practices for merger analysis, last updated in June 2009, with more recent practice from national competition authorities, in particular regarding the effects of mergers on innovation and dynamic markets.

<b>Title</b>	<b>Updating the ICN Recommended Practices with a chapter on coordinated effects on horizontal mergers</b>
Project Description	Update the chapter on coordinated effects on horizontal mergers with the latest practices from national competition authorities, regarding the effects of mergers on innovation and dynamic markets.
Outcomes	Chapter updated.
Contact Details	DG Comp (COMP-ICN-MERGERS@ec.europa.eu)
Description of work/resources	Drafting team, MWG members, moderators and webinar speakers
Multi-year project?	Multi-year project
Facilitating effective enforcement cooperation	Sharing best practices among ICN members and foster cooperation.
Promoting sustainability	Adding the chapter will allow authorities to share best practices in coordinated-horizontal theories of harm, which, often include assessments of digital or other dynamic and innovative markets, including on sustainability aspects.
Use of existing materials	ICN Recommended Practices for Merger Analysis
Method for evaluating and measuring success	Participation rate in webinars, member feedback in the consultations

<b>Milestones</b>	<b>Activity</b>
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October 2023 – May 2024	Updating the chapter on unilateral effects on horizontal mergers based on experience of MWG members and input from webinars
April 2024	Webinar on coordinated horizontal theories of harm and competition analysis
July 2024	Circulation of draft chapter for comments from the MWG members ('first consultation')
	MWG Co-Chairs review the responses to the first consultation and prepare a summary of the comments/views received to be presented at the 2024 Merger Workshop or webinar.
November – December 2024	Update draft chapter and re-circulate to members for comments on 2 <sup>nd</sup> draft
January-April 2025	Finalization of the chapter
2025	Presentation of the new chapter at the 2025 ICN Annual Conference or Merger Workshop.

### **Project 6. Investigative Techniques in Merger Reviews (Led by KT)**

The MWG will host a series of webinars on the topic "Investigative techniques in merger review" in 2023 and 2024. This will be followed by a summary report to be prepared in 2024.

Topics include: (a) review of parties' and third parties' internal documents; (b) the use of quantitative methods (e.g. survey design and analysis, price pressure, etc.); (c) efficiencies (e.g. assessment, obtaining reliable evidence, etc.).

The aim of the project is to share best practices among the ICN members on investigative techniques used in merger control, and to foster cooperation.

<b>Title</b>	<b>Digital Mergers</b>
Project Description	Share best practices on investigative techniques.
Outcomes	Series of webinars on the topic "Investigative Techniques in Merger Reviews" throughout the year, followed by a summary report.
Contact Details	Norwegian KT (icn.mergers@kt.no)
Description of work/resources	MWG members, moderator, and webinar speakers



Multi-year project?	Multi-year project
Facilitating effective enforcement cooperation	Sharing best practices among ICN members and foster cooperation.
Promoting sustainability	The project promotes sustainability by facilitating effective enforcement by sharing best practices and thereby, ensuring that markets are competitive, and innovations are not reduced.
Use of existing ICN materials	New project
Method for evaluating and measuring success	Participation rate in webinars

<b>Milestones</b>	<b>Activity</b>
Nov/Dec 2023	Webinar on the 1. topic
Jan/Feb 2024	Webinar on the 2. topic
March/April 2024	Webinar on the 3. topic
May/June 2024	Summary report

**Project 7. Updating the ICN Recommended Practices with a new Chapter on Counterfactual (Lead by UK CMA).**

The analysis of whether a merger is likely to harm competition involves a comparison of the prospects for competition with the merger against the competitive situation without the merger. The latter is called the ‘counterfactual’. The counterfactual is an analytical tool used in answering the question of whether the merger may raise competition concerns. In recent years, counterfactual analysis has become increasingly relevant due to the more frequent consideration by national competition authorities of dynamic counterfactual situations, especially in relation to evolving markets.

Whilst the 2006 ICN Merger Guidelines Workbook has a specific section on the counterfactual analysis, there is a notable gap in the ICN Recommended Practices for Merger Analysis, where this topic is not specifically addressed (except in relation to failing firm scenarios).

In light of this, the MWG Co-Chairs intend to add a new chapter on Counterfactual reflecting the latest best practices from national competition authorities.

<b>Title</b>	<b>Updating the ICN Recommended Practices for Merger Analysis ('RP') with a new Chapter on Counterfactual</b>
Project Description	Add a new RP Chapter on Counterfactual reflecting the latest best practice from national competition authorities
Outcomes	New Chapter on Counterfactual to be included in the ICN Recommended Practices for Merger Analysis
Contact details	UK Competition and Markets Authority <a href="mailto:icn.mergers@cma.gov.uk">icn.mergers@cma.gov.uk</a>
Description of work/resources	Working group/drafting team, MWG members, moderator and webinar speakers
Multi-year project?	Yes
Facilitating effective enforcement cooperation	Sharing best practices among ICN members and fostering cooperation
Promoting sustainability	Project contributes to effective merger control, which in turn promotes competitive markets, innovation, and sustainability
Method for evaluating and measuring success	Member feedback throughout the project (e.g., in response to the survey and consultations)

<b>Milestones</b>	<b>Activity</b>
Nov - Dec 2023	Forming a working group ('WG').
Jan 2024	WG to prepare survey for MWG Members.
Feb - Mar 2024	Survey to MWG Members.
Apr 2024 - Jun 2024	Drafting the new RP Chapter on Counterfactual based on experience of MWG members and input from survey.
Summer 2024	Circulation of a first draft Chapter for comments from MWG Members ('First Consultation').
Sept - Oct 2024	Review of the responses to the First Consultation.
Oct 2024	Discussion of the comments/views received in response to the First Consultation at the 2024 ICN Annual Conference (during a break-out session), or at a webinar.
Nov - Dec 2024	Update of the Chapter based on comments received at the Annual Conference/webinar and in response to the First Consultation.
Jan 2025	Circulation of the updated draft Chapter for comments from the MWG members ('Second Consultation').
Feb - Apr 2025	Review of the comments received in response to the Second Consultation and further update of the Chapter.
Mar - Apr 2025	Presentation of key amendments and comments at the ICN MWG Workshop (if one takes place).
May 2025	Final discussion of the draft chapter at the 2025 ICN Annual Conference
June - Sept 2025	Finalization of the Chapter.
Sept 2025	Presentation to SG for approval.

## Past Projects

The MWG has pursued work in broad categories: merger evaluation, digital mergers, updating existing work products, notification and review, investigative techniques, analytical frameworks, cooperation, and other policy issues. From year to year, the MWG work focuses on different categories, with the intent to cycle through all aspects of merger enforcement on a regular basis.

For example: in 2016 completed work on remedies analysis, 2017-18 revisions to ICN’s Recommended Practices on notification and review, and 2018-2019 comparative study on vertical merger analysis as well as 2019 enforcement cooperation tools.

In 2019-2020 the MWG focused on a comparative survey and report on conglomerate mergers, a comparative survey and report on procedural infringements and a series of global webinars on digital mergers and on sound decision making. In 2020-2021 the MGW worked on a comparative survey and report on joint ventures, a regional webinar series on the impact of COVID-19 to the competition authorities’ merger review processes, a webinar series on merger remedies, and the update of the merger notification and procedures template.

Following this previous work in 2021-2022 the MGW organised a series of webinars on ex post merger review, hosted the 2022 ICN Merger Workshop in Brazil, began the update of the ICN Recommended Practices Chapter on Entry and expansion, and started a multi-year comparative survey and report on Control of data, market power, and potential competition in merger reviews. In 2022-2023, the MWG continued working on the update of the ICN Recommended Practices Chapter on Entry and expansion and the report on Control of data, market power, and potential competition in merger review. The MWG also started the update of the ICN Recommended Practices with a new chapter on non-horizontal mergers and the project “Digital Mergers” consisting in a series of webinars on the topic "Digital Mergers" followed by webinar notes, and an overall report.

<b>Title</b>	<b>Update the ICN Recommended Practices Chapter on Entry and expansion</b>
Description and output	Update the ICN Recommended practices chapter on entry and expansion.
Outcomes achieved	Draft updated chapter and circulated for comments.
Assessment of timing	December 2021 – June 2022
Implementation	Draft chapter.
Evaluation	The project is not completed.
Other learning	

<b>Title</b>	<b>Control of personal data, market power, and potential competition in merger reviews</b>
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Description and output	The comparative survey questionnaire was outlined in March 2022 and the survey was circulated to MWG members in May 2022.
Outcomes achieved	Draft questionnaire developed and circulated to MWG members. A webinar promoted in October 2022. A breakout session promoted during the ICN Annual Conference 2023 in Barcelona.
Assessment of timing	March 2022 – April 2023
Implementation	Project focused on survey and report, not implementation.
Evaluation	Member feedback on experiences.
Other learning	More time to receive comments from MWG members.

<b>Title</b>	<b>Ex-post merger evaluation</b>
Description and output	A series of webinars and an overall report about ex-post merger evaluation.
Outcomes achieved	2 webinars and a report.
Assessment of timing	February 2022 – May 2022
Implementation	The report will be shared with ICN Members.
Evaluation	Participation rate in both webinars.
Other learning	

<b>Title</b>	<b>2022 ICN Merger Workshop</b>
Description and output	Host the hybrid ICN Merger Workshop in Brazil.
Outcomes achieved	3 days of workshop, including 5 plenary sessions and 12 breakout sessions.
Assessment of timing	29th March - 1st April 2022
Implementation	CADE hosted the Merger Workshop in 2022 in Brazil, with the support of the MWG Co-chairs, in a hybrid format.
Evaluation	The event succeeded in achieving its purpose and it was evaluated by MWG members and NGAs' feedbacks.
Other learning	The hybrid format was a challenge to be implemented, however it could offer the possibility to participate in the event to many attendees.