



International
Competition
Network

Merger Working Group Comprehensive Assessment 2010-2011

Prepared by
The Merger Working Group

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Executive Summary

The ICN Merger Working Group (MWG), founded in October 2001, presented its first work product at the First Annual ICN Conference in Naples in September 2002. Since then, the MWG has prepared a large body of work product¹ and organized many ICN activities, including nine annual ICN conference presentations, and eight multi-day ICN Merger Workshops. More recently, the MWG has also begun to conduct teleseminars² on merger-related topics of interest to its membership.

As the MWG approaches the end of its first decade of work, and to ensure that it continues to be at the forefront of merger review practice and procedure, the MWG undertook a comprehensive assessment of its existing work product and membership needs. There was an excellent response rate from the MWG membership and non-governmental advisors (NGAs). This report contains the MWG's conclusions drawn from the input received. This report and the accompanying appendices summarizing the information received from ICN members and NGAs will be a valuable resource tool for the MWG as it moves into its second decade. Based on the input received, it is clear that the MWG's work product has been positively received and has contributed significantly to enhancing the quality of merger review regimes around the world.

A recurring theme in the responses is the vital role of the MWG in promoting familiarity, use, and implementation of its current and future work product. Guided by the conclusions drawn from this assessment, the MWG will continue to promote MWG work product to maintain and expand the already high levels of familiarity, use, and implementation of MWG work product among ICN members. To achieve this goal, the MWG will continue to (i) practice inclusive and active MWG membership, with opportunities for ICN members and NGAs to contribute to MWG projects and activities, and (ii) place a high priority on promoting the MWG's work product through workshops, teleseminars, web-based tools, and other means. In addition, the MWG is committed to exploring ways in which barriers to the use or implementation of MWG work product can be reduced and, where possible, removed.

The MWG will also continue to pursue future work of relevance and high value to its members. Based on the input received, this will include an emphasis on (1) exploring the potential for additional *Recommended Practices for Merger Analysis*; (2) conducting new work on economic analysis in merger review; (3) conducting new work on investigative techniques, including work to supplement the *Investigative Techniques Handbook*; (4) exploring potential updates to the *Merger Guidelines Workbook*; (5) conducting new work on merger remedies issues; and (6) maintaining, and periodically updating, the merger templates and web links. The MWG will also remain flexible to allow room to address other issues, including cooperation on multi-jurisdictional mergers as well as new and emerging issues in merger review. In assessing future work, the MWG will pursue work in high demand by ICN members, ensure that its most highly valued and used existing work product remains up-to-date, place a high priority on work to promote its existing work product, and prioritize a limited number of high-value projects each year to avoid overburdening ICN members and NGAs participating in its work.

¹ A summary of significant MWG work product and activities is contained in the 2010-11 annual work plan, available at <http://www.internationalcompetitionnetwork.org/uploads/library/doc623.pdf>.

² The teleseminars conducted to date have been telephone conference calls focusing on particular merger topics, with teleseminar speakers providing initial presentations on the selected topic followed by moderated group discussions.

I. Introduction

As stated above, the work product for the MWG for the year 2010-11 involved conducting a comprehensive assessment of its existing work product and membership needs. The comprehensive assessment has included, among other things, an examination of the use and impact of existing MWG work product and other activities, potential barriers to the use and implementation of MWG work product, and ways in which MWG participation and performance might be improved. In addition, an important aspect of the assessment has involved obtaining input on future areas of work that may assist members in making the merger review process more effective.

The MWG undertook two principal projects to gather input for its assessment:

1. The MWG prepared a comprehensive survey to obtain information and input from ICN members to inform the assessment. The survey was circulated to all ICN members in the Fall of 2010. The MWG received survey responses from 54 ICN members, one of the largest survey response rates in ICN history. The survey respondents include a diverse array of agencies from all around the world.³ A summary of the results of the ICN member survey is detailed in [Appendix A](#) of this report.
2. The MWG prepared a separate survey to obtain information and input from non-governmental advisors (“NGAs”). The NGA survey was circulated to all MWG NGAs in December 2010, and MWG members were also encouraged to invite additional NGAs in their jurisdiction to complete the survey. The MWG received survey responses from 23 NGAs from 11 jurisdictions. A summary of the results of the NGA survey is detailed in [Appendix B](#) of this report.

In addition to the input gathered through these principal projects, the MWG also benefited from the input obtained through the ICN’s “Planning for ICN’s Second Decade” project (“Second Decade project”),⁴ and from input provided during breakout session discussions conducting at the November 2010 ICN Merger Workshop in Rome on ICN’s Second Decade and the Future of the MWG.⁵

This report contains the MWG’s conclusions based on its assessment of all of the information gathered through these initiatives. The input obtained indicates that members see a substantial and continuing value in the work of the MWG. The comprehensive assessment has also provided valuable insights for the MWG, which will inform its long and short-term plans and future work priorities to provide optimum benefit for members. In light of the conclusions set out in this report, the MWG will review and revise its Long Term Plan, and develop annual work plans in accordance therewith.

³ During its comprehensive assessment, the MWG has kept in mind that while the ICN member survey reflects input from a broad and diverse group of ICN members, it does not include input from all members. It is possible that there are differences between the agencies that responded and those that did not respond to the member survey. For example, agencies that have participated in the MWG and are more familiar with MWG work products and activities may have been more likely to respond to the survey than agencies less familiar with MWG work products and activities.

⁴ The Second Decade materials considered by the MWG are available at <http://www.internationalcompetitionnetwork.org/second-decade.aspx>.

⁵ A summary of feedback from workshop participants on the workshop and the future of the MWG discussed at the 2010 ICN Merger Workshop in Rome appears in [Appendix C](#) of this report.

The MWG's conclusions are organized into six areas, each of which is considered in turn in this report. These six areas are:

- A. Use and Impact of Existing ICN MWG Work Product;
- B. MWG Participation;
- C. ICN Merger Workshops;
- D. MWG Teleseminars;
- E. Web-Based Tools; and
- F. Future MWG Work.

II. MWG Conclusions Resulting from the Comprehensive Assessment

A. Use and Impact of Existing ICN MWG Work Product

1. **There is a substantial level of familiarity with ICN MWG work product among ICN members, especially with the Recommended Practices ("RPs") and practical guidance materials. The MWG will work to maintain the current high levels of familiarity with MWG work product, and continue to promote MWG work product to those members not yet familiar with them.**

Overall, the ICN member survey provided very positive news on ICN members' familiarity with ICN MWG work product. The ICN member survey responses indicate a high level of member familiarity with the RPs developed by the MWG, with 93% of responding members reporting familiarity with the ICN *Recommended Practices for Merger Analysis*, and 89% reporting familiarity with the ICN *Recommended Practices for Merger Notification and Review Procedures*. The ICN member survey responses also indicate a strong level of member familiarity with other MWG work product. At least 60% of responding ICN members reported familiarity with each listed MWG work product, and over 75% reported familiarity with the *Merger Guidelines Workbook*, the *Investigative Techniques Handbook*, the *Merger N&P Implementation Handbook*, and three of the four listed reports on merger notification and procedures.

Despite these achievements, the MWG believes that there is still room for improvement in promoting familiarity with ICN MWG work product. The ICN member survey indicates that there are members that are not yet familiar with some MWG work product. Furthermore, 19% of ICN members responding to the survey indicated that unfamiliarity with ICN MWG work product is a barrier to their use or implementation of some work product, making a lack of familiarity with ICN MWG work product the second highest barrier (the most commonly mentioned barrier was legal barriers) to work product use or implementation. The MWG has considered the feedback provided on ICN member familiarity with MWG work product, along with suggestions on how the MWG might more effectively promote familiarity, and has taken this information into account in developing its conclusions on future work.

2. **MWG work product has been widely used, both inside and outside competition authorities. MWG work product, particularly the RPs, have had a substantial impact, contributing to significant changes in a number of merger review regimes around the world. The MWG will continue to promote the use and implementation of MWG work product by members.**

The results of the ICN member survey indicate that MWG work product is widely used. Overall, 93% of ICN members responding to the survey reported use of one or more of MWG work products. Over 75% of responding members reported use of the *Recommended Practices for Merger Notification and Review Procedures*, and 85% reported use of the *Recommended Practices for Merger Analysis*. Over 50% of responding members have used the *Merger Guidelines Workbook*, the *Investigative Techniques Handbook*, the *Merger Remedies Report*, and the *Setting Notification Thresholds for Merger Review* report in their merger review regimes. The survey indicated a lesser but significant rate of use (28-46%) of other listed MWG work product.

The ICN member survey results also indicate that MWG work product has had a significant impact in the jurisdictions in which they have been used. Overall, 72% of ICN members responding to the survey indicated that MWG work product has contributed to changes in their merger review regimes. Thirty-two agencies (59% of survey respondents) reported that the *Recommended Practices for Merger Notification and Review Procedures* contributed to changes in their merger review regime, or that they made changes to their merger notification requirements consistent with the RPs. 25 agencies (46% of survey respondents), reported that the more recent *Recommended Practices for Merger Analysis* have contributed to changes in their merger review regimes. Other work product was mentioned less frequently (17-39%) as an impetus for change.

Members that reported use of MWG work product were asked to describe how they have used MWG work product inside and outside their agencies, and to describe any changes in their merger review regimes to which MWG work product had contributed. The responses to these questions, as well as the many examples shared at the 2010 ICN Merger Workshop, confirm that use of MWG work product has been in high impact areas, including the formulation of policy and procedures, use during the course of merger reviews, use in internal training, use with legislatures or in the legislative process, and use in external outreach with relevant stakeholders. The ICN member and NGA survey results also confirm that MWG work product has contributed to high impact changes in merger review regimes, including changes to merger notification requirements, merger review procedures or analysis, and approaches to remedies.

The NGA survey indicates that several NGAs have observed considerable progress in members' implementation of the RPs. Nonetheless, several NGAs noted that there is still work to be done in terms of promoting implementation of the RPs. In particular, NGAs noted gaps in implementation of the *Recommended Practices for Merger Notification and Review Procedures*, and some NGAs suggested that further work to promote existing *Recommended Practices* or to develop new *Recommended Practices* in some areas may be helpful.

The NGA survey results also suggest that some MWG work product is often used by NGAs in the private bar and academia. In particular, the NGA survey results suggest that the RPs, merger templates and web links, and the *Merger Guidelines Workbook* have been used by NGAs in the course of their work. In addition, some NGAs noted that the *Merger N&P Implementation Handbook* and comparative reports have been useful resources in conducting research on the merger review requirements and procedures in different merger review regimes.

While MWG work product has gained wide use, the MWG concludes that efforts to promote awareness, use, and implementation of ICN MWG work product should remain a high priority for the MWG. The ICN member and NGAs surveys solicited suggestions on ways in which the MWG could more effectively promote the awareness and use of MWG work product. Respondents provided a wide range of suggestions, and the MWG has considered these suggestions in arriving at its conclusions on future work to promote familiarity, implementation, and use of existing work product.

In addition, the MWG will continue to assess the level of use and implementation of MWG work product by ICN members, with a particular emphasis on implementation of the RPs. These efforts will be taken in conjunction with consideration of ways that the MWG might assist in addressing barriers to members' use and implementation of the work product.

3. Almost half of ICN members responding to the member survey reported barriers to the use or implementation of ICN MWG work product. Barriers reported by ICN members include, in descending order:

- (i) Legal barriers to use or implementation;**
- (ii) Unfamiliarity with the work product;**
- (iii) Language barriers;**
- (iv) Resource barriers; and**
- (v) Difficulty in locating relevant MWG work product.**

The MWG will explore how the MWG can reduce barriers of unfamiliarity, language, and difficulty in locating relevant MWG work product. The MWG will continue to collect information to understand better the legal, resource, and other potential barriers⁶ to MWG work product use and implementation, and assess whether there are steps the MWG could take to assist in removing these barriers.

In response to the ICN member survey, 46% of survey respondents reported the existence of one or more barriers to the implementation or use of MWG work product by their authority. Barriers reported by ICN members include legal barriers (reported by 26% of responding members), unfamiliarity barriers (reported by 19% of responding members), language barriers (reported by 17% of responding members), resource barriers (reported by 13% of responding members), and difficulty in locating relevant MWG work product (reported by 5.5% of responding members). A brief summary of the input obtained from members in each of these areas, and MWG conclusions with respect to each area, are outlined below.

a. Legal Barriers

While 14 agencies reported legal barriers to the use or implementation of MWG work product, only 2 of the 14 agencies indicated that there are ways in which the MWG could assist in removing legal barriers in their jurisdiction. The suggestions provided include (i) assist members seeking to change their laws, and (ii) provide assistance to ICN members in reaching other relevant stakeholders, including law enforcement agencies and regulators.

Given the low percentage of agencies reporting a role for the MWG in removing legal barriers, and the fact that legal issues often involve jurisdiction-specific considerations that competition authorities within the jurisdiction are best positioned to judge, the MWG concludes that more information on the nature of legal barriers faced by jurisdictions is necessary to assess whether there are steps that the MWG could take to assist members in removing legal barriers to work product use or implementation. The MWG will also explore with interested ICN members whether there are ways in which the MWG might assist in member efforts to change their laws to remove barriers to MWG work product use or implementation.

b. Familiarity Barriers

Ten agencies reported unfamiliarity with ICN MWG work product as a barrier to use or implementation of the work product. Seven of these agencies suggested ways in which the MWG could assist in making work product more familiar, including conducting training sessions/teleseminars, engaging more members in MWG work, translating work product into languages other than English, improving the MWG page of the ICN website, and promoting MWG work product to relevant government stakeholders.

⁶ In addition to the barriers discussed below, NGA survey respondents identified some other potential barriers to the use or implementation of MWG work product in some jurisdictions. These include cultural barriers, political factors, as well as a desire in some jurisdictions to ensure that merger material is country-specific. The MWG will continue to collect information on these and other potential barriers to MWG work product use and implementation to assess whether there are steps that MWG could take to assist in removing such barriers.

The MWG concludes that taking steps to promote MWG work product to ICN members should be a high priority for the MWG. The MWG has considered the suggestions offered by ICN members in arriving at its conclusions on future work to promote familiarity, implementation, and use of MWG work product.

c. *Language Barriers*

Nine agencies reported that language barriers impact their use or implementation of ICN MWG work product. Suggestions offered by these members centered on providing translations of ICN MWG work product in languages other than English. With the generous assistance of individual ICN member volunteers, the MWG has already developed French and Spanish translations of the *Recommended Practices for Merger Notification and Review Procedures*. However, the MWG recognizes that obtaining official translations is a costly and time-consuming process. In addition to the ongoing ICN-wide translation efforts mentioned in the summary of Second Decade feedback,⁷ the MWG will consider ways of identifying existing translations of ICN MWG work product that might be appropriate to include, with appropriate attribution, on the MWG page of the ICN website. The MWG will also continue to welcome approaches from any ICN members that wish to volunteer to assist in translation efforts.

d. *Resource Barriers*

Seven agencies reported that resources are a barrier to their use and implementation of ICN MWG work product. Six of the seven agencies did not indicate any useful role for the MWG in addressing these barriers. (One agency suggested that MWG could recommend that ICN members reinforce their resources to meet the needs.) Given the low percentage of agencies identifying a role for the MWG in this area, a lack of information about the particular resource barriers faced, and the fact that competition authorities are generally in the best position to determine their allocation of resources, the MWG concludes that this is not an area for MWG action at this time. The MWG will continue to collect information to understand better the resource barriers ICN members face with respect to the implementation or use of ICN MWG work product.

e. *Difficulty in Locating Relevant Work Product*

Three of the four agencies identifying other barriers to the use or implementation of ICN MWG work product noted that difficulty in locating relevant ICN MWG work product is a barrier to work product use and implementation. These agencies suggested that the MWG could assist in removing these barriers by (i) considering some reorganization of the MWG page of the ICN website to make it more user-friendly, (ii) providing an overview of MWG work product to assist potential users, and (iii) more clearly labeling documents to provide a better indication of the work product's contents and purpose. The suggestions offered by ICN members facing these barriers coincide with several suggestions offered by members on ways to improve the MWG's web-based tools. The MWG concludes that improvements to the MWG page of the ICN website would assist members in identifying relevant MWG work product. The MWG has considered these suggestions in reaching its conclusions on future work, including a project to improve the MWG page of the ICN website to assist in removing barriers to work product use or implementation.

⁷ See Note from the Chair for ICN Steering Group Call of 8 September 2010, at 7 (September 2, 2010), available at <http://www.internationalcompetitionnetwork.org/uploads/2010-2011/chairnote8.9.10.pdf>.

4. The *Recommended Practices* and practical guidance materials developed by the MWG are highly valued by ICN members. These materials were also most often identified by MWG members and NGAs as likely to be of continued use to competition authorities in the future. The MWG will place an emphasis on these materials in promoting MWG work product, and will also periodically reassess whether these materials should be updated or supplemented to maintain their relevance and usefulness to members.

Both the ICN member and NGA surveys asked respondents to identify the MWG work product or types of work product that they considered most useful. In both surveys, RPs were most frequently mentioned as the most useful work product, followed by practical guidance materials. Among ICN members responding to the survey, 50% identified the RPs, and 48% identified practical guidance materials, as the most useful MWG work product. Among NGA survey respondents, 70% identified the RPs, and 39% identified practical guidance materials, as among the most useful MWG work product.

The ICN member survey also asked respondents to identify the ICN MWG work product that their respective agencies planned to use or reference in the future. Similarly, the NGA survey asked respondents for their views on the MWG work product or types of work product that will continue to be useful to competition authorities in the coming years. In both cases, RPs were most frequently cited, and practical guidance materials were second most frequently cited, as most likely to be of future use to ICN members. Thus, among ICN members responding to the survey, 78% indicated plans to use or reference the RPs in the future. The materials next most frequently cited by ICN members as likely to be of future use were practical guidance materials, including the *Merger Guidelines Workbook* (74%), the *Merger Remedies Report* (72%), the *Investigative Techniques Handbook* (70%), and the *Model Confidentiality Waiver* (65%). Likewise, NGA survey respondents most frequently cited RPs (61%), followed by practical guidance materials (52%), as likely to continue to be useful to competition authorities in the coming years.

Based on this input, the MWG concludes that the MWG RPs and practical guidance materials are highly valued by ICN members and will be of continued use to them. However, these work products may be valued somewhat differently by different members. In examining the results for ICN MWG work product identified as most useful by ICN members, the MWG compared the responses based on agency size, age, number of merger notifications, and number of in-depth or second phase reviews. This data showed a higher tendency for larger, older agencies to identify the RPs as most useful, while smaller and newer agencies had a higher tendency to regard practical guidance as most useful.⁸ Bearing this in mind, the MWG will continue to place an emphasis not only on the RPs but also on practical guidance materials in promoting MWG work product. The MWG will also periodically reassess whether these materials should be updated or supplemented to maintain their relevance and usefulness to members.

The MWG also recognizes that other MWG activities (such as workshops, comparative reports, teleseminars, templates and web links, etc.) were also identified as among the most useful MWG work, or likely to be of future use, by a varying but significant number of ICN members and NGAs. The MWG will consider the information provided on the useful aspects of these in promoting existing work and planning future work.

⁸ For example, 69% of agencies over 20 years old identified RPs as among the most useful work products, while only 38% of these agencies identified practical guidance as among the most useful work products. In contrast, 71% of agencies from 0 to 5 years in age identified practical guidance as among the most useful work products, while 43% of these agencies identified RPs as among the most useful work products. Likewise with respect to agency size, while 59% of agencies with 20 or fewer personnel engaged in merger review identified practical guidance materials as among the most useful MWG work products, 13% of agencies with more than 50 personnel engaged in merger review identified practical guidance materials as among the most useful MWG work products.

B. MWG Participation

1. **Many responding ICN members indicated that they have benefited from participation in MWG activities. A strong majority of ICN members that have participated in MWG activities reported that the MWG offers members adequate opportunities to contribute to its work. The MWG will continue efforts to involve additional ICN members in MWG activities, and to provide participating ICN members with ample opportunities to contribute to its work.**

Forty-six of the agencies responding to the ICN member survey (85% of all responding agencies) reported having participated in one or more MWG activities. Over half of all ICN members responding to the survey reported participating in MWG calls, providing input on MWG work product, and serving as a panelist or moderator in the MWG's sessions at ICN conferences. In addition, 37% of member survey respondents reported participating as a panelist or moderator at ICN Merger Workshops.

ICN members that have participated in MWG activities identified numerous benefits obtained from participation, including, among others, the ability to share experiences and ideas, build relationships with representatives of other agencies, track developments and best practices in merger review, and gain increased familiarity with MWG work product and activities. The most frequently reported constraints on MWG participation were limitations on the time and resources that agencies have available to devote to MWG activities, and budget and financial considerations. In addition, three agencies identified the timing of MWG calls, and two agencies identified language, as constraints on participation.

The MWG considered the feedback provided in the ICN Second Decade project indicating that members value inclusiveness in Working Group activities, and that some members feel that the working groups could be more inclusive or promote greater diversity in working group discussions and the development of work product.⁹ As part of its comprehensive assessment, the MWG included a survey question asking ICN members whether they believe that the MWG offers their authorities adequate opportunities to contribute to MWG work. A strong majority (85%) of ICN members indicated that the MWG does offer them adequate opportunities to contribute to its work.

The MWG also solicited suggestions from ICN members on how the MWG might offer greater opportunities for members to contribute to its work. The MWG received a wide range of suggestions in response to this question, including suggestions to expand participation through teleseminars, webinars, and workshops, continuing financial support for ICN members to attend MWG events, and suggested improvements in outreach with members.

Based on the overall input, the MWG concludes that the MWG has been performing well in terms of member participation, and that, rather than make major changes in this area, the MWG will consider ways in which it might fine-tune its approach to expand opportunities for member participation. In this regard, the MWG will continue to consider suggestions made by ICN members during the Second Decade feedback and in response to the member survey. In doing so, the MWG will continue efforts to:

- prioritize work and limit the number of projects each year to avoid overtaxing members' time and resource limitations;
- announce MWG projects and activities as early as feasible to facilitate members' ability to plan for participation;
- promote MWG projects and participation across the ICN membership (*e.g.* by publicizing the MWG's upcoming workshops/teleseminars/projects through e-mail and on the ICN website, and providing information about the MWG to new members, etc.);

⁹ See Note from the Chair for ICN Steering Group Call of 8 September 2010, *supra* note 7, at 6-9.

- involve the MWG as a whole in MWG projects and major activities, such as developing MWG work product, planning for workshops, and developing ideas for teleseminars;
- promote diversity in MWG activities, including in the input provided on MWG projects and activities, and in the composition of MWG moderators and panelists in workshops and conferences;
- avoid scheduling MWG calls at times that would place even greater burdens on ICN members for whom the timing of calls is already difficult; and
- coordinate with the Steering Group to facilitate the Steering Group's process of considering financial support for members to participate in ICN Merger Workshops and other ICN activities.

In addition, as discussed in greater detail below, the MWG will explore use of web-based tools available through ICN that may expand members' ability to participate in MWG calls and activities, and explore the potential to disseminate workshop and teleseminar materials and content more widely to ICN members and their staff that may not be able to attend these activities in person.

2. The MWG has benefited greatly from the participation of NGAs in MWG projects and activities. NGA participation in the MWG has generally worked well. However, the number of ICN members that have invited NGAs to participate in MWG activities is limited. The MWG will continue to involve NGAs in MWG activities, and continue efforts to encourage ICN members to invite broad and diverse NGA participation in MWG work.

The MWG has benefited greatly from the participation of NGAs in MWG projects and activities. Respondents to the NGA survey also identified a number of benefits that they have received from MWG participation.

The MWG has enjoyed substantial participation by NGAs, and the MWG ranked second among the working groups with which NGAs reported involvement in the ICN Second Decade NGA survey.¹⁰ MWG NGAs have contributed to MWG work in various ways, including drafting work product, contributing comments and NGA perspectives during the development of MWG work product, providing information in response to MWG surveys, and providing input in planning future work. In addition, MWG NGAs have participated in MWG teleseminars and have served as moderators and panelists at ICN conferences and ICN Merger Workshops.

NGA survey respondents who had participated in the MWG were asked whether the MWG has provided them with adequate opportunities to contribute to its work. Nearly all (15 of 16, or 94%) NGA survey respondents that had participated in MWG activities indicated that the MWG provided them with an adequate opportunity to contribute to its work. However, under half (41%) of ICN members that reported having participated in MWG activities indicated that they had invited NGAs to participate in MWG activities.

The MWG has considered the results of ICN Second Decade survey of NGAs, as well as the minutes of the NGA Second Decade call, as part of its assessment.¹¹ The Second Decade input from NGAs suggests that there is room for improvement in the breadth and diversity of NGAs participating in ICN work. As part of the MWG's comprehensive assessment, both the ICN member survey and the NGA survey sought suggestions on how the MWG might more effectively obtain NGA input or broaden or deepen the level of NGA participation in its activities.

¹⁰ Planning for ICN's Second Decade, Responses to August 2010 NGA Survey, at 2, available at <http://www.internationalcompetitionnetwork.org/uploads/2010-2011/responses%20nga%20survey%208.10.pdf>.

¹¹ See Planning for ICN's Second Decade, Responses to August 2010 NGA Survey, *supra* note 10; Planning for ICN's Second Decade: Minutes of the NGA conference call of September 3, 2010, available at <http://www.internationalcompetitionnetwork.org/uploads/2010-2011/2nddecade%20nga%20call%203.9.10.pdf>.

Respondents provided a wide range of suggestions, with no particular areas of widespread support.

Based on the input received, the MWG concludes that NGA participation in the MWG has generally worked well. The MWG will continue to involve NGAs in MWG activities, and will also continue efforts to encourage members to invite NGA participation in MWG work. In these efforts, the MWG will:

- continue to obtain NGA input in the development of MWG work product;
- continue to invite NGAs to participate as speakers or moderators at ICN Merger Workshops to provide NGA perspectives on issues discussed at the workshops;
- continue as appropriate to invite NGAs to participate in MWG teleseminars, and to provide NGAs with advance notice and information about such teleseminars;
- consider whether there are ways to improve coordination with MWG members or NGAs to promote or facilitate NGA participation; and
- consider whether the MWG could conduct additional outreach to encourage more diversity in NGA participation in MWG activities.

C. ICN Merger Workshops

- 1. The MWG will continue to conduct workshops, which are highly valued by ICN members. The MWG will continue to consider both ICN-wide and regional workshops. As workshops are the most highly ranked means of promoting familiarity, use, and implementation of MWG work product among members, the MWG will continue to make workshops a high priority.**

The input obtained during the MWG comprehensive assessment, as well as during ICN's Second Decade project and the 2010 ICN Merger Workshop, indicates that workshops are highly valued by ICN members. Past ICN Merger Workshops have been well attended and many ICN members have attended multiple workshops. Among ICN members responding to this year's comprehensive assessment survey, 85% had attended at least one merger workshop, and 70% had attended multiple workshops. Several ICN members identified workshops as among the MWG's most useful work, and similarly, several NGA survey respondents identified workshops as among the MWG work that will continue to be useful to competition authorities in the coming years. Significantly, 100% of ICN members expressing a view indicated that the MWG should continue to conduct merger workshops.

The MWG also finds it significant that the majority of ICN members providing input on the comprehensive assessment would prioritize promoting familiarity, implementation, and use of existing MWG work first among MWG activities, and that ICN-wide and regional workshops ranked first and second among ICN members in terms of ways to achieve this goal. Both ICN-wide and regional workshops also ranked in the top 10 areas of future work in which ICN members are "very interested."

Based on the input received, the MWG will continue to place a priority on conducting workshops, and will continue to consider conducting both ICN-wide and regional workshops. (As in the past, the MWG anticipates that while regional workshops may focus on particular geographic regions or topics of interest, participation in regional merger workshops will continue to be open to all members.) Given the high value that ICN members place on promoting existing MWG work product, and the high interest in workshops as a means of promoting MWG work product, the MWG will continue to place a central focus on promoting familiarity, use, and implementation of MWG work product in planning future workshops.

- 2. The MWG will focus workshops on topics that ICN members value, and will explore how workshops can be improved. In addition, the MWG will explore ways to disseminate appropriate workshop materials and content more widely for use by ICN members and their staff that may not be able to attend workshops in person.**

The MWG solicited input from ICN members on what they considered to be the most beneficial aspects of past ICN Merger Workshops. In response to this question, ICN members highlighted that ICN Merger Workshops facilitate an exchange of experience and a comparison of approaches among different agencies,¹² promote networking and development of relationships among participants, provide useful training with a beneficial focus on case handlers and practical issues arising in merger review, promote familiarity and use of MWG work product through hypothetical case discussions, provide beneficial plenary and breakout sessions, have developed materials that can also be used by agencies in internal training, and provide perspectives from the private sector.¹³ The MWG still strive to continue providing these benefits in future workshops.

The ICN member survey solicited suggestions from ICN members on useful topics to address in future workshops, as well as suggestions for ways in which ICN Merger Workshops could be improved. The MWG received a wide range of suggestions in response to these questions. In planning future workshops, the MWG will take into account the topics ICN members have suggested, as well as the suggestions provided by ICN members and workshop participants on ways in which workshops could be improved. In addition, in response to member suggestions raised both in ICN member survey responses and in the ICN Second Decade project,¹⁴ the MWG will explore ways to disseminate appropriate workshop materials and content more widely for use by ICN members in internal training or by agency personnel unable to participate in workshops in person.

D. MWG Teleseminars

- 1. There is solid support among ICN members for continuing MWG teleseminars. Accordingly, the MWG will continue to conduct a limited number of teleseminars each year on topics of interest to MWG members and NGAs. The MWG will also explore the potential to conduct additional teleseminars focused on promoting familiarity and use of MWG work product. The MWG will continue to seek diversity in the ICN members and NGAs presenting on MWG teleseminars.**

Teleseminars on merger-related topics is a recent development in the MWG. To date, the MWG has conducted three teleseminars on: (i) “Merger Remedies” in February 2010, (ii) “Tools for Change in Merger Notification and Procedures” in April 2010, and (iii) “Merger Guidelines Developments in the U.K. and U.S.” in January 2011.¹⁵ To assess the value of teleseminars as a MWG activity, the ICN member survey included questions related to members’ participation in teleseminars, and whether and how MWG should conduct teleseminar in the future. The survey focused on the MWG’s first two teleseminars, which were the only teleseminars that had been conducted at the time the survey was circulated.

The input obtained from the member survey indicates that there is solid support among ICN members for continuing teleseminars, although somewhat less than the nearly unanimous support for workshops. The ICN member survey confirmed a good rate of participation in the teleseminars held to date. Among ICN member survey respondents, 26 agencies (48% of all

¹² The importance of experience sharing fora, such as workshops and teleseminars, to ICN members was also one of the key conclusions of ICN’s Second Decade project. See Note from the Chair for ICN Steering Group Call of 8 September 2010, *supra* note 7, at 2.

¹³ Participants in the 2011 ICN Merger Workshop in Rome also identified several of these aspects of workshops as beneficial. See [Appendix C](#), at 1, 2.

¹⁴ See Note from the Chair for ICN Steering Group Call of 8 September 2010, *supra* note 7, at 8, 11.

¹⁵ The MWG also has plans to conduct a teleseminar on foreclosure issues in vertical mergers in late May 2011.

respondents) reported having participated in the first teleseminar, and 20 agencies (37% of all respondents) reported having participated in the second teleseminar. (In addition, phone data indicates that the third teleseminar included participants from 28 jurisdictions.) Perhaps more significantly, 85% of ICN members responding to the survey, including all but one agency of the 28 agencies that had participated in teleseminars as well as several agencies that have not yet participated in teleseminars, indicated that teleseminars should be continued.¹⁶

The MWG notes that teleseminars rank in the middle in terms of the overall ranking of all listed areas of potential future work in which ICN members are “interested” or “very interested.” Nonetheless, following workshops, teleseminars and web-based training were the next highest ranked means of promoting familiarity, implementation, and use of MWG work product. In addition, teleseminars often ranked within the top three in terms of types of work suggested by ICN members “very interested” in particular areas of new work.

Based on the input received, the MWG will continue to conduct a limited number of teleseminars each year on topics of interest to MWG members and NGAs. The MWG concludes that the number of teleseminars should be limited to avoid overburdening members and NGAs, although there may be room to conduct teleseminars somewhat more frequently than has been done in the past. In addition, given the solid rating for teleseminars as a means of promoting MWG work product, the MWG will explore the potential to conduct some teleseminars focused on MWG work product. Finally, the MWG will continue to seek diversity among those presenting on teleseminars, while bearing in mind that leading teleseminar presentations should remain a voluntary commitment of time and resources.

2. The MWG will focus teleseminars on topics that ICN members value, and will explore how teleseminars can be improved. The MWG will also seek to (i) incorporate use of ICN’s webinar technology in future MWG teleseminars, and (ii) more widely disseminate appropriate teleseminar/webinar materials and content, in order to facilitate participation.

The MWG solicited input from ICN members on what they considered to be the most beneficial aspects of teleseminars. In response to this question, ICN members highlighted that teleseminars are an easy and cost-effective method for case handlers and others to come together and discuss relevant issues, share experiences and techniques, and provide training. In addition, members noted that teleseminars have addressed interesting and relevant topics, allow diverse participation, and provide written presentation materials and country-specific examples. The MWG still strive to continue providing these benefits in future teleseminars.

Both the ICN member and NGA surveys solicited suggestions on topics that would be useful to address in future MWG teleseminars, as well as suggestions for ways in which MWG teleseminars could be improved. The MWG received a wide range of suggestions in response to these questions. In planning future MWG teleseminars, the MWG will take into account the topics suggested by ICN members, NGAs, and workshop participants, as well as the suggestions provided on ways in which teleseminars could be improved.

Several ICN members suggested that the MWG consider supplementing its teleseminars with web-based tools. These suggestions are consistent with feedback provided in the Second Decade project indicating that webinars may facilitate participation in ICN activities by members.¹⁷ The MWG understands that ICN is in the process of installing webinar technology for use by the Working Groups. To facilitate participation in MWG teleseminars, the MWG will seek to incorporate ICN’s webinar technology in future teleseminars. In addition, the MWG will explore ways to disseminate appropriate teleseminar materials and content more widely for use by those unable to participate in the teleseminars.

¹⁶ Participants at the 2010 ICN Merger Workshop in Rome also stressed the value of MWG teleseminars. See [Appendix C](#) at 3.

¹⁷ See Note from the Chair for ICN Steering Group Call of 8 September 2010, *supra* note 7, at 7.

E. Web-Based Tools

1. **Many ICN members make regular use of the MWG page of the ICN website. The ICN member survey results indicate that a substantial number of ICN members feel that the MWG page of the website could be improved, and some ICN members identified difficulty in locating relevant work product on the website as a barrier to the use or implementation of some MWG work product. Based on this input, the MWG will undertake a project to explore improvements to the MWG page of the ICN website that may assist in removing barriers to use or implementation of MWG work product by members, and facilitate use of the website by members, NGAs, and other website visitors.**

The ICN member survey indicates that many ICN members use the MWG page of the ICN website on a regular basis. Twenty-nine agencies, or 54% of ICN members responding to the survey, reported use of the MWG section of the ICN website once or more a month, and 10 agencies (19% of all respondents) reported use of the website more than three times a month.

A substantial minority of ICN members (35%) offered suggestions for improving the MWG page of the ICN website. Notably, suggestions for improvement were received from 48% of the agencies reporting use of the MWG section once or more a month, and 50% of the agencies reporting use of the website more than three times a month. Some NGA survey respondents also provided suggestions for improving the MWG section of the ICN website. In addition to these indications of room for improvement, four agencies reported that difficulty in locating relevant MWG work product is a barrier to their use or implementation of some of the work product.

The suggestions for improvements to the website varied, but often involved improving the organization of MWG materials on the website, adding new content or materials to the website, ensuring website materials such as the merger templates and web links are up-to-date, and exploring ways to improve the functionality of the website.

Based on the input received, the MWG will undertake a project to explore improvements to the MWG page of the ICN website. This project will focus on ways in which the MWG page of the ICN website might be improved to address barriers and facilitate use of the website, considering the suggestions received as well as technical, practical, and other relevant considerations. The MWG has taken this into account in developing its conclusions on future work.

2. **The MWG will also explore the potential to incorporate use of ICN's webinar technology in future relevant MWG activities, such as Working Group calls and teleseminars. The MWG will also coordinate with the ICN Curriculum Project to explore the potential development of other on-line merger-related training tools.**

The ICN member and NGA surveys also asked for input on any additional web-based tools the MWG should explore to better serve member needs. The most frequently mentioned tool raised by ICN members, mentioned by 14 of the 20 agencies offering suggestions, was the use of webinars or other web-based training tools. As noted above, the MWG will explore the potential to incorporate use of ICN's recent webinar technology in MWG activities, such as teleseminars and MWG calls. In addition, the MWG will coordinate with ICN Curriculum Project to explore the potential development of other on-line merger-related training tools. Other suggestions provided by ICN members, NGAs, and workshop participants on the use of web-based tools, as part of the MWG comprehensive assessment, the ICN Second Decade project, and the 2010 ICN Merger Workshop, will be considered as part of the MWG's website improvement project.

F. Future MWG Work

1. In assessing future work, the MWG will be guided by the following principles:
 - a. The MWG will pursue work in new areas that are in high demand by ICN members;
 - b. The MWG will take steps to ensure that its most highly valued and used work product materials are appropriately updated;
 - c. The MWG will place a high priority on promoting familiarity, implementation, and use of its work product; and
 - d. The MWG will prioritize a limited number of high-value projects each year to avoid overburdening ICN members and NGAs participating in its work.

The ICN member and NGA surveys asked respondents for input on the future direction of MWG work as the MWG enters its second decade. ICN members were asked to indicate their level of interest in future work in a number of potential areas, and were also asked their views as to the type of work (promoting existing work product, updating existing work product, or developing new work product) they would prioritize first. NGA survey respondents were asked to rank in order of importance their assessment of the most important areas of focus for the MWG in the coming years.

Based on the input provided in response to these questions, the MWG concludes that the above principles should guide its assessment of future work. First, the MWG will pursue work in new areas that are in high demand by ICN members. The survey revealed several areas in which there is a high level of member interest in new MWG work. Economic analysis, investigative techniques, merger remedies, and merger analysis, for example, are each areas in which one-half to two-thirds of ICN members responding to the survey are “very interested” in new MWG work. Member interest in new work in these areas ranked higher than several of the listed areas of potential work focused on promoting or updating existing work product. Therefore, the MWG concludes that new work in areas of high demand by ICN members should continue to be an area of MWG focus in the coming years.

Second, the MWG will take steps to ensure that its most highly valued and used work product materials are appropriately updated. 30% of ICN members responding to the member survey indicated that updating existing MWG work product should be the MWG’s first priority. NGA survey respondents also ranked updating or supplementing MWG work product as the second highest ranking area of importance for MWG focus in the coming years. The MWG notes that updating certain MWG work product ranked much more highly in member interest than other MWG work product. The work product for which there is a high level of interest in updating or supplementing tend to correlate with the work product ICN members rated as most highly valued and likely to be of future use. Thus, there is a high level of ICN member interest in supplementing or updating the *Recommended Practices for Merger Analysis*, the *Merger Guidelines Workbook*, and the *Investigative Techniques Handbook*, but a significant drop in the level of interest for updating other MWG work product. The NGA survey also indicates that the merger templates and web links are of particular value and use to NGAs, and that there is an interest among NGAs in keeping these materials updated.

Third, in considering future work, the MWG will place a high priority on promoting familiarity, implementation, and use of existing MWG work product. The majority (52%) of ICN members responding to the member survey reported that this should be the MWG’s first priority. Similarly, promoting familiarity and implementation of the RPs ranked as the most important work listed by NGA survey respondents for the MWG to pursue in coming years.

Fourth, the MWG will continue to prioritize a limited number of high value projects each year to avoid overburdening ICN members and NGAs participating in its work. The MWG finds this to be an important consideration in assessing future work, given the wide range of potential projects from which to choose. Prioritizing MWG projects are limited in number, of high value to participating members, and benefit from broad member and NGA participation and input, will

help ensure that MWG work product continues to be of high quality and relevance in the coming years.

2. In considering future substantive work, the MWG in the next five years will place emphasis on work in areas in which ICN members are highly interested, including:

- a. Exploring the potential for additional *Recommended Practices for Merger Analysis*;
- b. Conducting new work on economic analysis in merger review;
- c. Conducting new work on investigative techniques, including work to supplement the *Investigative Techniques Handbook*;
- d. Exploring potential updates to the *Merger Guidelines Workbook*;
- e. Conducting new work on merger remedies issues; and
- f. Maintaining, and periodically updating, the merger templates and web links.

The MWG will also remain flexible to allow room to address other issues, including cooperation on multi-jurisdictional mergers as well as new and emerging issues in merger review.

In conducting future work, the MWG will be informed by member interests and needs. As part of the comprehensive assessment, the ICN member survey asked respondents to indicate their level of interest in potential areas of new work. Likewise, the NGA survey asked respondents to provide their view on the most important areas of focus for the MWG in the coming years. Based on the outcome of the survey, the MWG concludes that there is a high level of interest in MWG work in the six areas of work outlined above. Therefore, the MWG will place a particular emphasis on these areas in considering potential new work in the coming years. In addition to these areas of emphasis, the MWG will remain flexible to allow room to address other issues, including cooperation on multi-jurisdictional mergers, as well as new and emerging issues in merger review.

- (i) *Exploring the potential for additional Recommended Practices for Merger Analysis.* Overall, this was the most highly ranked of any area of potential future MWG work in which ICN members indicated a high level of interest. 69% of responding members reported that they are “very interested” in developing new RPs for Merger Analysis. This is also among the most highly rated areas in which members are “very interested” when the MWG examined the data across merger program size, age, and number of merger notifications and in-depth or second phase reviews. Among NGAs, supplementing existing work product, and conducting additional work on identifying new areas of substantive or procedural convergence, ranked highly in terms of important areas of focus for the MWG in coming years.
- (ii) *New work on economic analysis issues in merger review.* Among ICN members, new work on economic analysis in merger review was the second most highly ranked of any area of potential future MWG work. 67% of members responding to the survey are “very interested” in new work in this area, and there was a high level of interest in this area of work across all the groups when the MWG examined the data across different types of agencies. Furthermore, work on economic analysis issues was an area of interest raised by a number of members during the course of the Second Decade feedback,¹⁸ and an area that NGA survey respondents also rated highly as an important area of focus for the MWG in the coming years.

The responses to follow-up questions posed to ICN members “very interested” in work in this area indicate a broad interest in potential topics. Work focusing on the latest developments in the economic analysis of mergers, and use and analysis of economic and econometric data in assessing mergers, were suggested by several “very interested” members.

¹⁸ See Note from the Chair for ICN Steering Group Call of 8 September 2010, *supra* note 7, at 5.

- (iii) *New work on investigative techniques, including work to supplement the Investigative Techniques Handbook.* Among ICN members, new work on investigative techniques was the third most highly ranked of any area of potential future MWG work. 59% of members responding to the survey are “very interested” in new work on investigative techniques. In addition, 52% of members responding to the survey are “very interested” in supplementing the *Investigative Techniques Handbook*.¹⁹

Additional work on investigative techniques appears to have broad interest across all the groups when the MWG examined the data across different types of agencies, although work in this area may be of particular interest to younger and small to mid-size agencies. The responses to follow-up questions posed to ICN members “very interested” in work in this area indicate substantial interest in new work on interviewing techniques, obtaining and using electronic evidence, and investigating mergers efficiently within governing time constraints, among other possibilities.

- (iv) *Updating the Merger Guidelines Workbook.* Among ICN members, updating the *Merger Guidelines Workbook* ranked fourth among areas of potential future work. 57% of ICN members indicated that they are “very interested” in updating this work. This also appears to be an area of strong interest across many of the groups when the MWG examined the data across different types of agencies, although with somewhat less interest among agencies with a larger number of merger review personnel, filings, and second phase reviews.
- (v) *New work on merger remedies issues.* Among ICN members, new work on merger remedy issues tied for 5th among all areas of potential future work, with 52% of members responding to the survey “very interested” in new work in this area.²⁰ When the MWG examined the data across different types of agencies, the data suggests that work in this area may be an area of particular interest to older, larger agencies with a high number of reported transactions and more second phase reviews.

The responses to follow-up questions posed to ICN members “very interested” in new work on merger remedies issues indicate substantial interest in work on assessing potential remedies, as well as monitoring and/or ensuring compliance with remedies.

- (vi) *Maintaining, and periodically updating, the merger templates and web links.* In addition to placing an emphasis on updating the materials outlined above, the MWG also concludes that the merger templates and web links should also be an area of emphasis for the MWG in considering future work. The NGA survey results indicate that the merger templates and web links are of particular value and use to NGAs, and that there is a value to agencies, NGAs and the public in keeping these materials available and updated.

¹⁹ While NGA survey respondents ranked work in this area around the middle in terms of future importance, additional work on investigative techniques was identified among ranked areas of importance by 57% of NGA survey respondents.

²⁰ Additional work on merger remedies was identified among ranked areas of importance by 52% of NGA survey respondents.

- 3. In considering future work to promote familiarity, implementation and use of MWG work product, the MWG in the next five years will place emphasis on:**
- a. ICN Merger Workshops, developed in coordination with willing hosts, that focus on promoting familiarity, use, and implementation of MWG work product;**
 - b. Teleseminars/webinars focused on promoting familiarity, implementation, and use of MWG work product;**
 - c. A project to explore improvements to the MWG page of the ICN website that may assist in removing barriers to use or implementation of MWG work product by members, and facilitate use of the website by members, NGAs, and other website visitors;**
 - d. Coordination with the ICN Curriculum Project to explore the potential development of on-line merger-related training tools, and**
 - e. Work that will assist the MWG in assessing the level of use and implementation of MWG work product by ICN members, with a particular emphasis on implementation of the RPs.**

The MWG will continue to prioritize ICN Merger Workshops as an effective means of promoting familiarity, use, and implementation of MWG work product. Workshops ranked highest among members as a means of promoting MWG work, and both ICN-wide and regional workshops ranked within the top 10 areas of areas of future work in which ICN members are “very interested.” The MWG will develop future workshops in coordination with host agencies, and the frequency, timing, and location of future workshops will depend on the availability and preferences of willing hosts. The MWG’s consideration of workshops will incorporate the conclusions regarding workshops outlined at pages 14-16 above.

In addition, the MWG will also emphasize the development of additional teleseminars/webinars focused on promoting familiarity, implementation, and use of MWG work product. ICN members ranked teleseminars and web-based training next behind workshops among means of promoting MWG work product, with 33% of agencies “very interested” in this as an area of future work. The MWG’s consideration of teleseminars will incorporate the conclusions regarding teleseminars outlined at pages 16-18 above.

Third, as outlined above,²¹ the MWG will conduct a project to explore improvements to the MWG page of the ICN website that may assist in removing barriers to the use or implementation of MWG work product by members. This project may consider, among other things: (i) improvements in the organization or presentation of MWG work products on the website that may assist in locating relevant work product; (ii) the potential to include more existing translations of ICN MWG work product on the MWG page of the ICN website, (iii) suggestions offered by ICN members and NGAs during the comprehensive assessment and ICN Second Decade project on website improvements or new web-based tools that may better serve members; and (iv) the potential role of the website and web-based tools in efforts to disseminate appropriate workshop and teleseminar materials more widely for use by those unable to participate directly in these events.

Fourth, the MWG will explore with the ICN Curriculum Project the potential development of additional on-line merger-related training tools. Finally, in considering future work, the MWG will consider work that will assist the MWG in assessing the level of use and implementation of MWG work product by ICN members, with a particular emphasis on implementation of the RPs.

- 4. In considering future work, the MWG will continue to prioritize a limited number of high-value projects each year to avoid overburdening ICN members and NGAs participating in its work. In so doing, the MWG will maintain a balance over the next five years among different types of work.**

In determining future work, the MWG will be mindful of the time and resource constraints of its participants. As noted above, the MWG concludes that high quality MWG work product is best

²¹ See *supra* at 7-9, 13, 17-20.

achieved through MWG projects that are limited in number, focus on topics of high value to participating members, and benefit from broad member and NGA participation and input. Therefore, the MWG will continue to be selective in its choice of areas for new work each year. While the MWG will consider the principles and areas of emphasis identified in this year's comprehensive assessment in determining future work, it is not feasible to address all areas in any one year, or to address all areas to the same degree over the next five years. Furthermore, the MWG will remain flexible to allow room to address other new and emerging issues in merger review. In selecting future work projects, the MWG will attempt to maintain a balance among different types of work.

III. Conclusion

The MWG is extremely grateful to the many ICN members and NGAs that took the time to contribute to this year's comprehensive assessment, and the MWG concludes that this year's comprehensive assessment project has been time well spent. The input provided by ICN members and NGAs has provided the MWG with a wealth of information regarding the use and impact of the MWG's existing work product, the effectiveness and future direction of MWG activities, and areas of future work that will best serve member interest and needs. In light of the input obtained and conclusions outlined above, the MWG believes that it is well-positioned to serve ICN members as we proceed into the ICN's Second Decade.

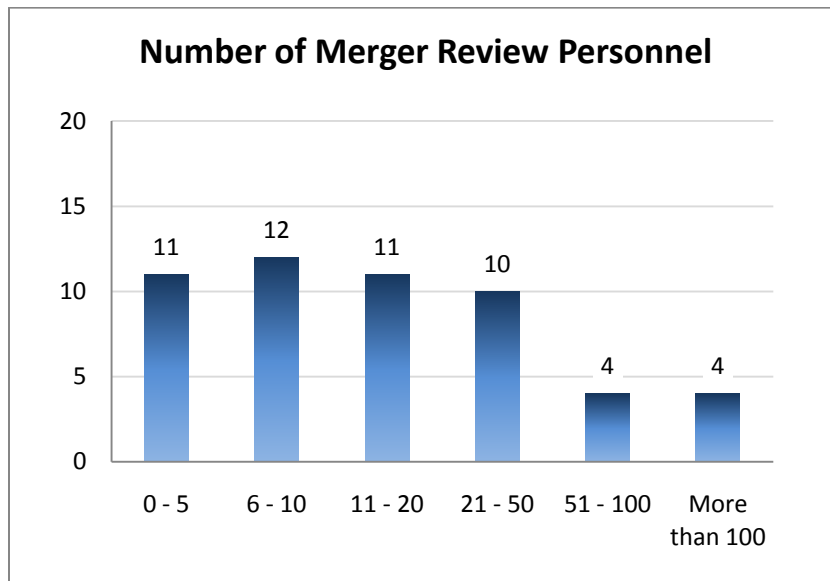
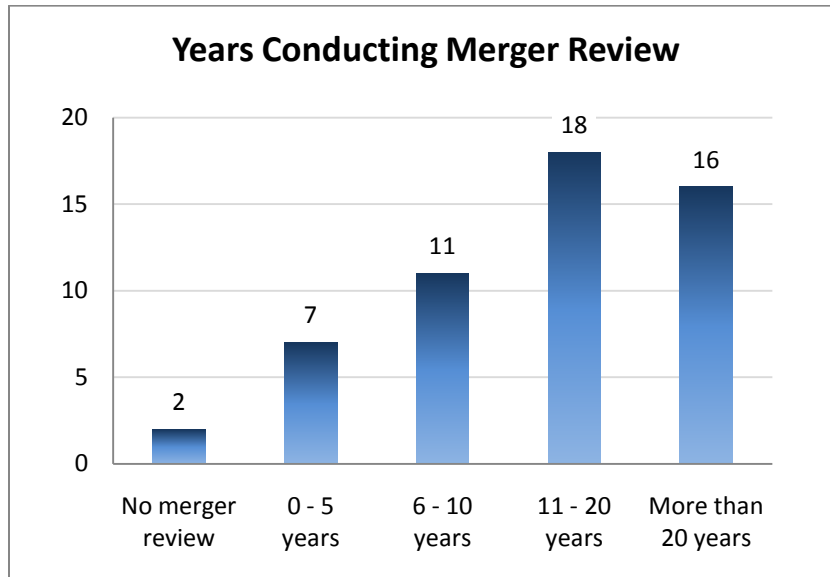
Appendix A

Results of Questionnaire to ICN Members to Assess ICN Merger Working Group Work Product and Future Needs

I. Survey Respondents (Questions 3)

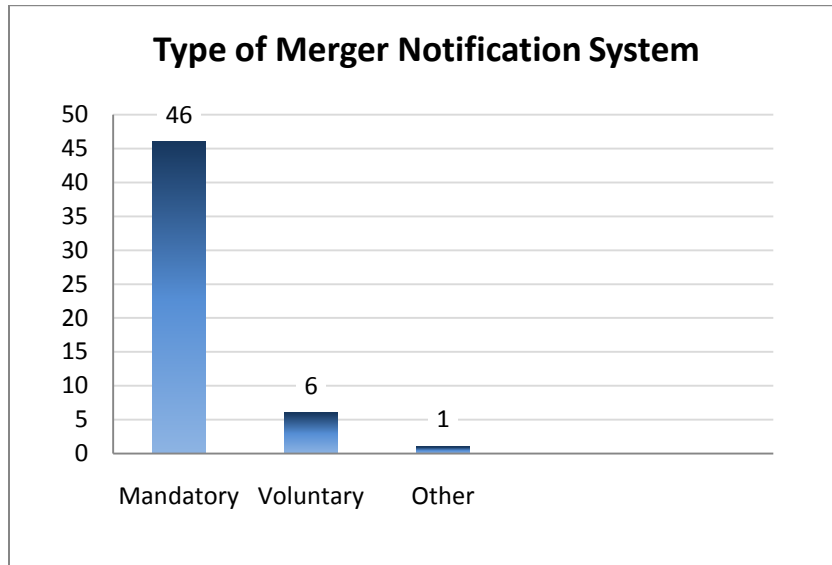
In the fall of 2010, the Merger Working Group conducted a survey of ICN members to assess MWG work product and future needs. A total of 54 ICN members responded to the survey. A list of survey respondents appears in [Annex 1](#) of this Appendix. The survey circulated to ICN members is included in [Annex 2](#).

The member survey requested information on the age and size of members' merger review regimes. The breakout of the age and size of responding members' merger review regimes are depicted in the following charts.²²



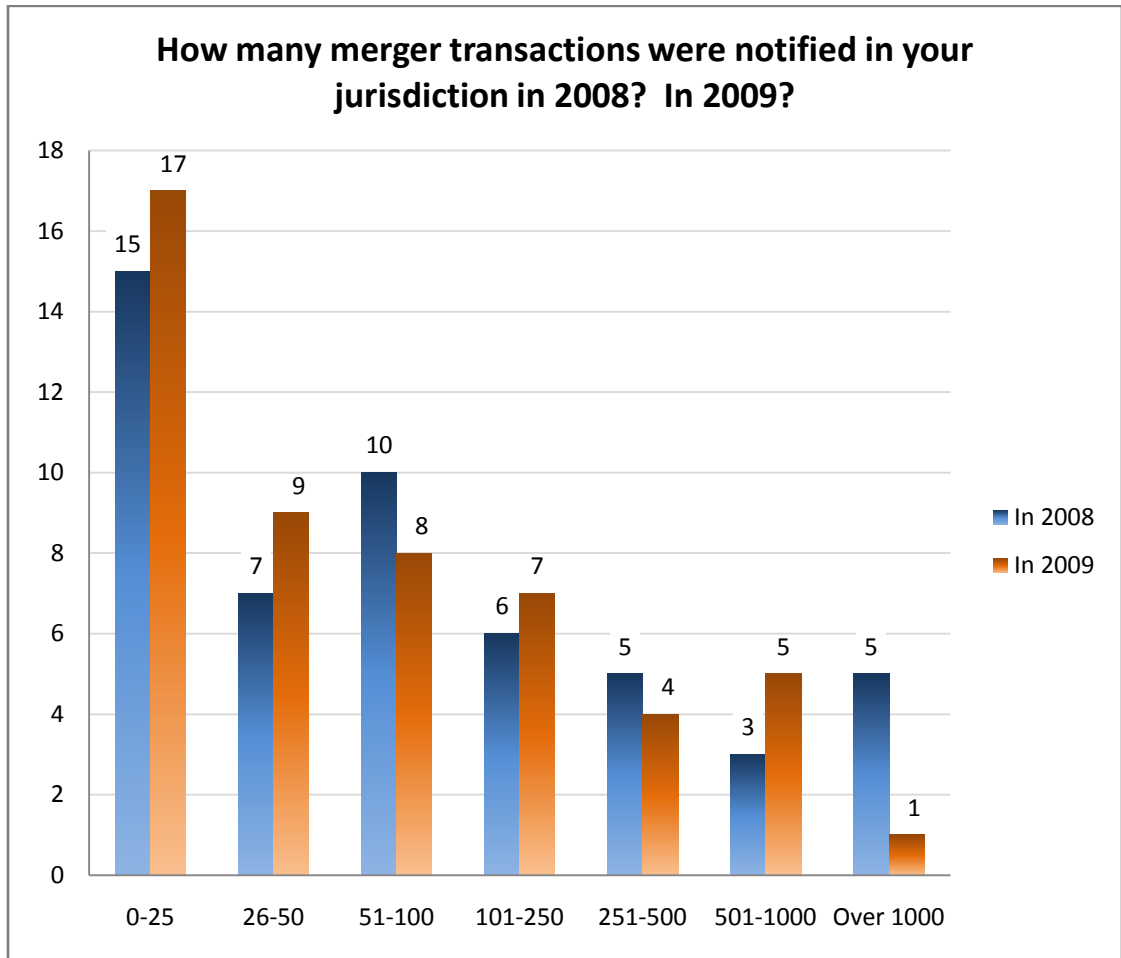
²² All 54 survey respondents provided information on how long they have been conducting merger review. All 52 agencies that reported conducting merger review responded to the question on number of personnel engaged in merger review.

The survey also requested information on the type of merger notification system, if any, in place in the members' jurisdiction and the role of the national competition authority in their merger review regime. Input provided by members on these questions is depicted in the following charts.²³

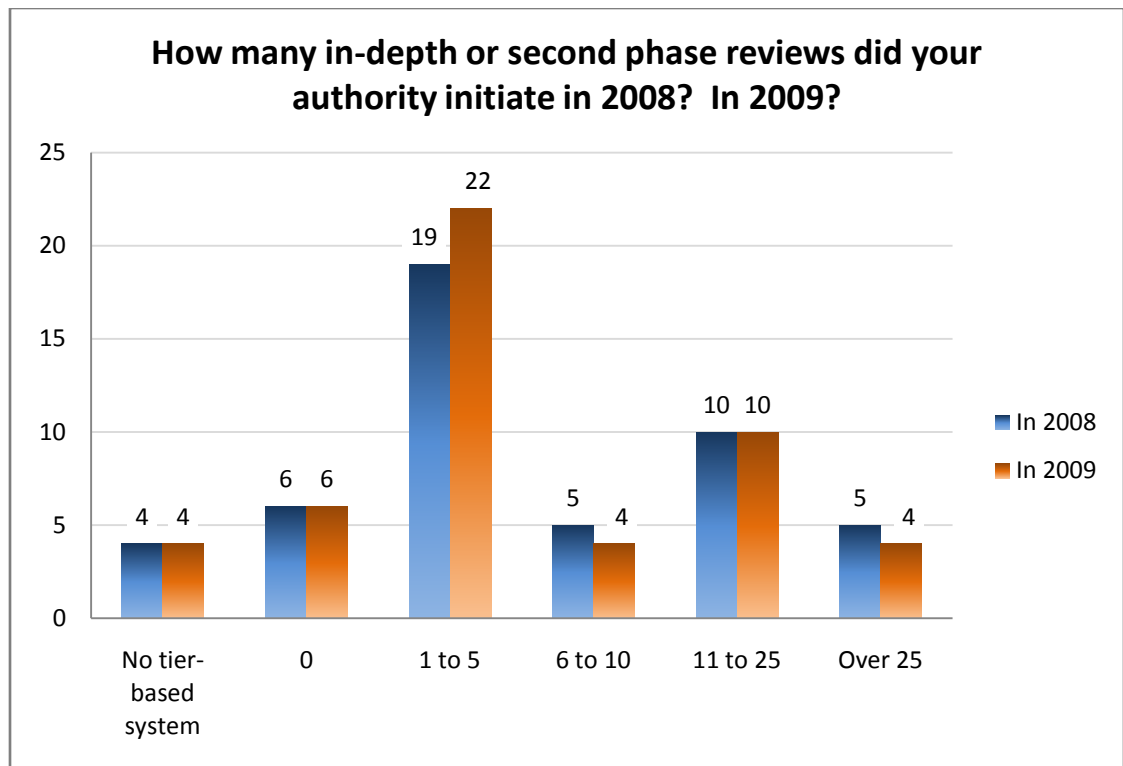


²³ Fifty-three agencies responded to the question on type of merger notification system, and 52 agencies responded to the question on the role of their agency in their jurisdiction's merger review regime.

In addition, the survey requested information from members on the number of merger transactions notified, and the number of in-depth or second phase merger reviews conducted, within respondents' jurisdictions in 2008 and 2009. Fifty-one agencies responded to the questions on the number of notified transactions,²⁴ and 50 agencies responded to the question on the number of in-depth or second phase merger reviews. The information reported on notified transactions and the number of in-depth or second phase investigations is outlined in the charts below.



²⁴ The three non-responding agencies either did not conduct merger review or did not have a notification system. A few responding agencies noted that they considered more mergers than had been notified. Some reported the number of mergers considered, while others reported the number of mergers notified. In addition, some agencies noted that the information provided was based on fiscal rather than calendar year data.



II. Familiarity and Use of ICN MWG Work Product

A. General Familiarity and Use of MWG Work Product (Questions 4.A and 4.B)

The ICN member survey asked members to indicate whether they are familiar with or have used any of the following MWG work product:

Recommended Practices for Merger Notification and Review Procedures

Recommended Practices for Merger Analysis

Merger N&P Implementation Handbook

Merger Guidelines Workbook

Investigative Techniques Handbook

Merger Remedies Report

Model Confidentiality Waiver

Merger Templates and Web Links

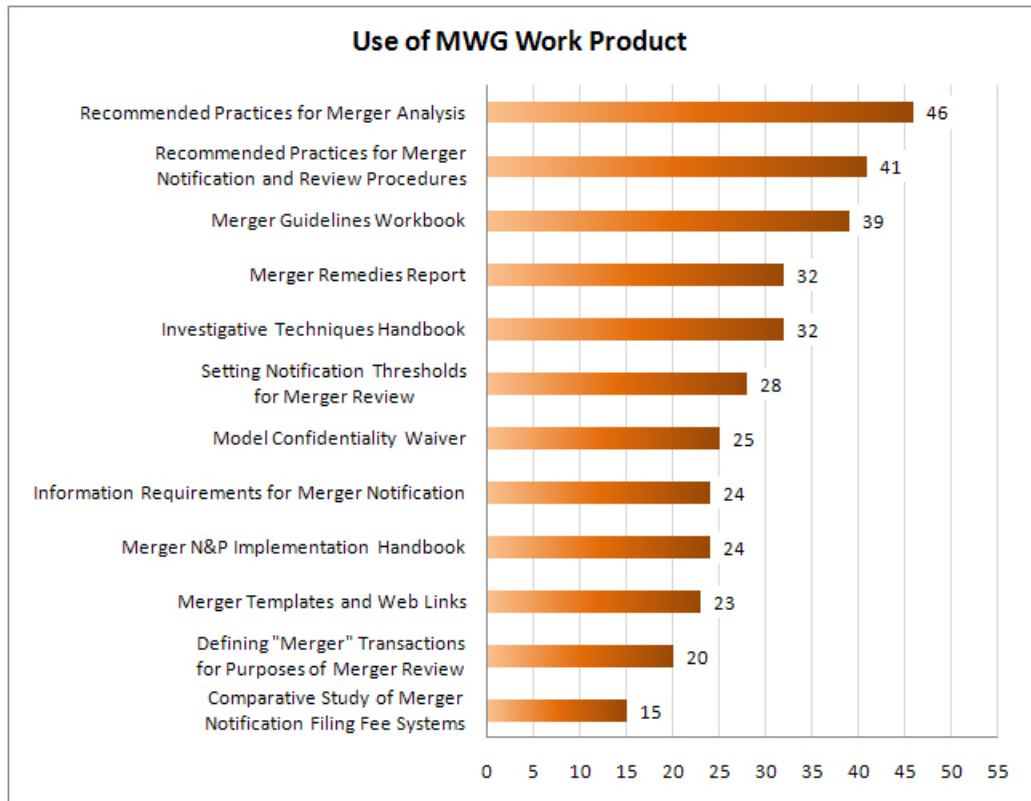
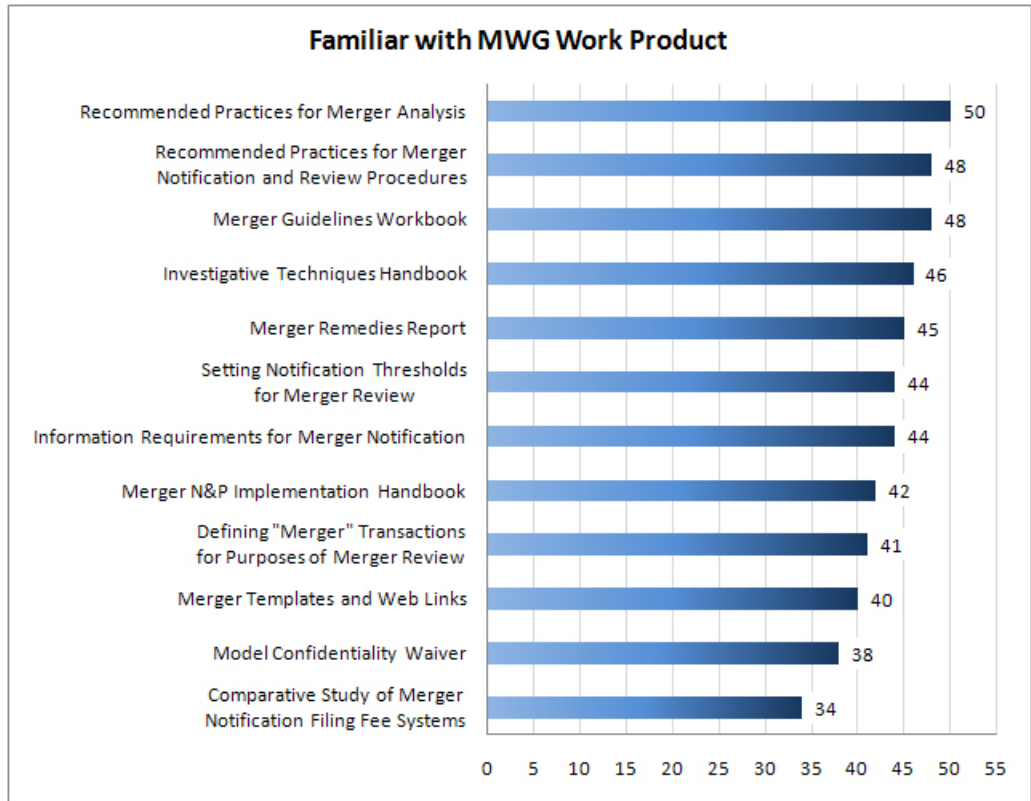
Information Requirements for Merger Notification

Defining “Merger” Transactions for Purposes of Merger Review

Setting Notification Thresholds for Merger Review

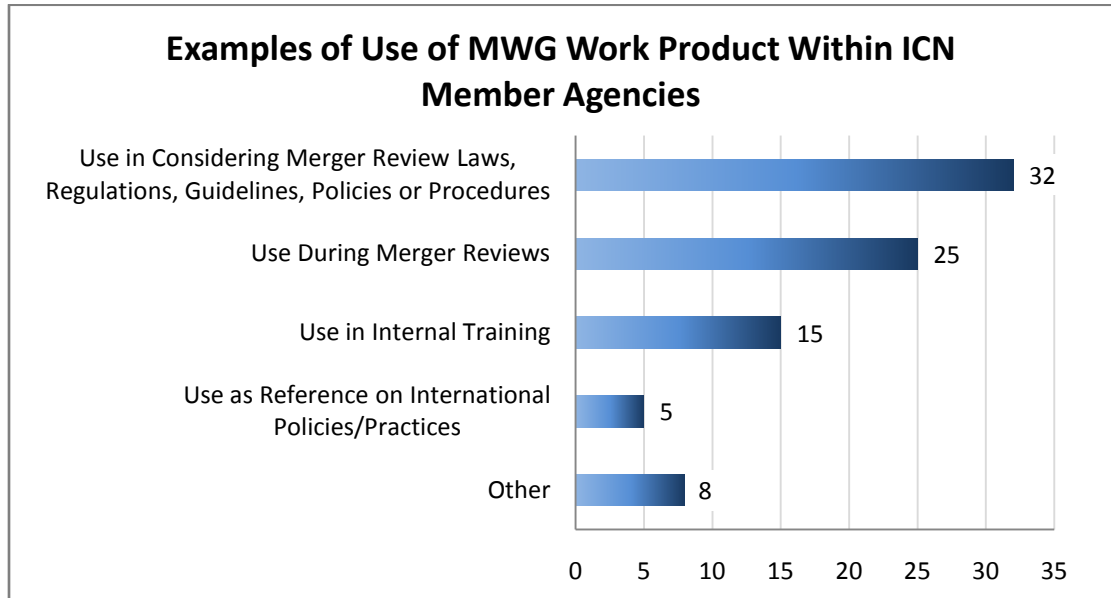
Comparative Study of Merger Notification Filing Fee Systems

The results of the survey question of familiarity and use of the above work product are depicted in the following charts.



B. Examples of Use of MWG Work Product Within Agencies (Question 5)

The ICN member survey solicited examples of how agencies have used MWG work product within their agencies. Fifty agencies (92.6% of all responding agencies) offered one or more examples of how they have used MWG work product within their agencies.²⁵ Uses of MWG work product reported by ICN members are grouped in the chart below.



1. Use in Considering Merger Review Laws, Regulations, Guidelines, Policies, or Procedures

Thirty-two agencies (59.3% of those responding to the survey) provided examples of their use of MWG work product in considering merger review laws, regulations, guidelines, policies or procedures. Of these, seven agencies mentioned consulting MWG work product in drafting, reviewing, or revising merger review laws,²⁶ and another seven agencies reported consulting MWG work product in formulating or revising their merger guidelines.²⁷ Twenty agencies²⁸ referenced use of MWG work product in considering their own merger review regulations, policies or procedures. Of these, four agencies mentioned using MWG work product in assessing their merger notification or review procedures,²⁹ and three agencies referenced use of the *Model Confidentiality Waiver* to draft their own standard confidentiality waivers for use in merger investigations.

²⁵ Of the remaining four agencies, one responded that it is a new institution in the beginning of its work, one responded that information regarding this question is not available, and two agencies did not answer the question.

²⁶ One agency referenced MWG work on thresholds and another agency referenced the *Recommended Practices for Merger Notification and Procedures* and the *Merger N&P Implementation Handbook* as used in this regard.

²⁷ One of these agencies also reported use of MWG work product in connection with legislation, and one also reported use of MWG work product in formulating or revising its merger guidelines.

²⁸ One agency referenced use of the *Recommended Practices for Merger Analysis* in this regard, and another agency noted that it finds it especially important to consider the collective thinking of MWG agencies when evaluating issues such as notification and information collection.

²⁹ One agency referenced the *Recommended Practices for Merger Notification and Review Procedures* as used in this regard.

2. Use During Merger Reviews

Twenty-five agencies (46.3% of those responding to the survey) provided examples of the use of MWG work product by case handlers or others during the course of merger reviews. Fifteen of these agencies reported use of MWG work product by case handlers during the course of merger investigations.³⁰ In addition, four agencies identified MWG work product being used in the course of merger investigations or cases, without specifying how or by whom the work product is used. Four agencies mentioned use of the *Model Confidentiality Waiver* in multi-jurisdictional mergers. One agency mentioned the use of the *Merger Remedies Report* in merger cases where conditions are attached to a merger decision, as well as the use of the *Recommended Practices for Merger Analysis* in merger decisions. Finally, one agency noted the role of MWG work product in efforts to keep first-phase review periods reasonably short.

3. Use in Internal Training

Fifteen agencies (27.8% of those responding to the survey) mentioned their use of MWG work product in internal training. Five of these agencies identified one or more specific MWG work product materials used in internal training, including the *Merger Guidelines Workbook* (mentioned by three agencies), the *Investigative Techniques Handbook* (mentioned by three agencies), the *Recommended Practices for Merger Analysis* (mentioned by two agencies), and the materials used at 2007 ICN Merger Workshop in Dublin (mentioned by one agency).

4. Use as Reference on International Policies/Procedures

Five agencies (9.3% of those responding to the survey) mentioned their use of MWG work product as reference materials on international policies and practices in merger review. Two of these agencies mentioned their use of the merger templates or web links in this regard. In addition, two agencies mentioned their use of MWG product as a tool for comparing their policies or practices with those in other jurisdictions. One agency responded that it finds MWG work product a source of valuable information on international policies, procedures, analysis, and investigative techniques in merger review.

5. Other Use of MWG Work Product Within Agencies

Eight agencies (14.8% of those responding to the survey) offered other examples of their use of MWG work product. One agency noted that it used MWG work product in the course of a remedies project, while another noted that it found the *Recommended Practices for Merger Analysis* useful in preparing a response to Frequently Asked Questions. A third agency responded that it sometimes consults MWG work product in addition to other materials when it confronts issues, noting as an example that the *Merger Guidelines Workbook* provides a good overview of several issues related to merger review. A fourth agency noted that it has used MWG work product in technical assistance missions, while a fifth agency has cited MWG work product as recommended reading for undertakings and those interested in merger control. A sixth agency noted that it used MWG work product in responding to international surveys on economic policy and in reviewing its website. Two agencies responded that their merger regimes are already largely in line with MWG work product, with one noting that as a consequence its use of MWG work product has been limited.

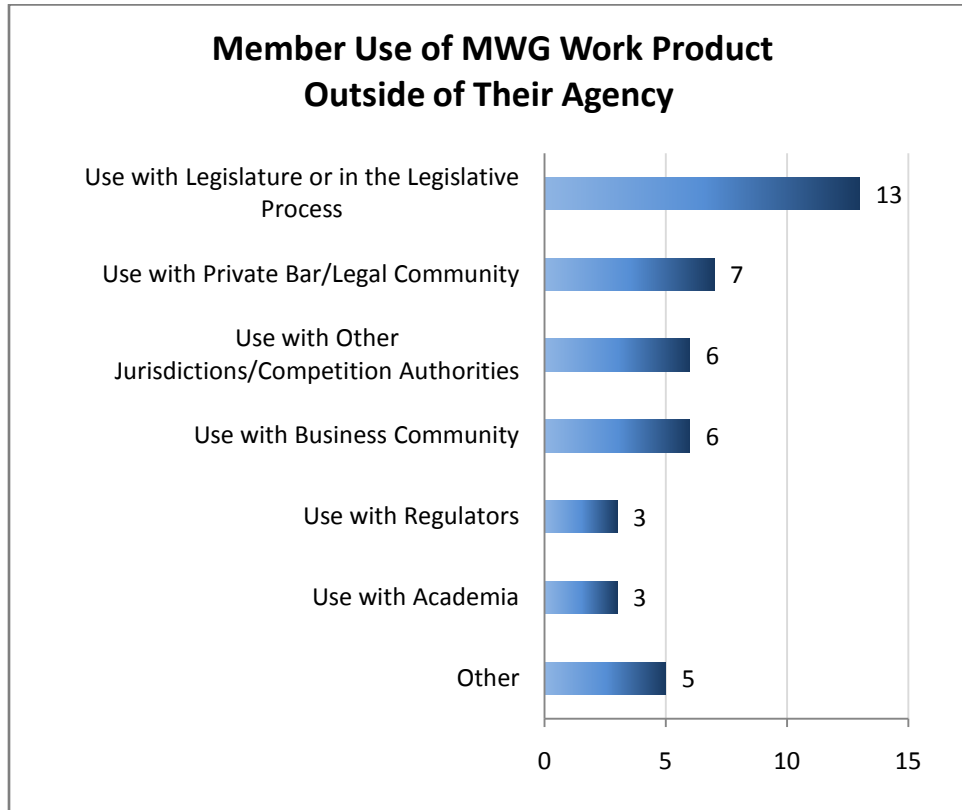
C. Use of MWG Work Product Outside Agencies (Question 6)

The member survey asked whether responding agencies have used MWG work product outside their agencies, and if so, how the MWG work product has been used outside agencies.

³⁰ Of these, two agencies mentioned the *Merger Guidelines Workbook*, one agency mentioned the *Investigative Techniques Handbook*, and one agency mentioned the *Merger Remedies Report* as work product used by case handlers.

In response to this question, 25 agencies (46% of those responding to the survey) identified one or more ways in which they had used MWG work product outside their agency, while 23 agencies (43% of all responding agencies) responded that they had not used MWG work product outside their agency. One agency responded that it found MWG work product useful, and 5 agencies did not respond to this question.

Several of the 25 agencies that reported using MWG work product outside their agency identified more than one outside use of MWG work product. Commonly referenced uses of the work product are outlined on the following chart.



1. Use with Legislature or in the Legislative Process

Thirteen agencies (24.1% of those responding to the survey) indicated that they have used MWG work product with legislators or in the course of the legislative process. Examples of use of MWG with legislative bodies include:

- reference to MWG work product to support proposed legislative amendments (3 agencies);
- use of MWG work product in considering changes in notification turnover thresholds (3 agencies);
- use of MWG work product during evaluations or reviews of the competition law (2 agencies);
- use of the *Recommended Practices for Merger Notification and Review Procedures* to support amendments to merger control rules;
- use of MWG work product in discussing new legislation and assessing existing legislation;
- use of MWG work product in competition advocacy with legislative bodies; and
- use of MWG materials in legislative debates to show consistency of merger review procedures with international standards.

2. Use with Private Bar/Legal Community

Seven agencies (13% of those responding to the survey) reported that they have used MWG work product with the private bar or legal community. Of these, one agency noted that they had used MWG work product in a seminar on notification thresholds. Another agency noted that it had discussed MWG work product in several speeches to the private bar/legal community and the public. A third agency noted that the legal community in its jurisdiction is a frequent user of ICN work product, and that the legal community is interested in MWG work product because the lawyers often help in preparing merger cases.

3. Use with Other Jurisdictions/Competition Authorities

Six agencies (11.1% of those responding to the survey) reported use of MWG work product with other governments or competition authorities. Of these, three agencies reporting using MWG work product in providing technical assistance or in training sessions with other competition agencies. Two agencies reported referencing MWG work product in providing comments requested from other jurisdictions on their merger laws or policies, with one agency noting that it has found the *Recommended Practices for Merger Notification and Review Procedures* particularly useful in this respect. One agency reported using MWG material on confidentiality waivers in dealing with other competition authorities. One agency reported referencing MWG work product in presentations to other competition authorities.

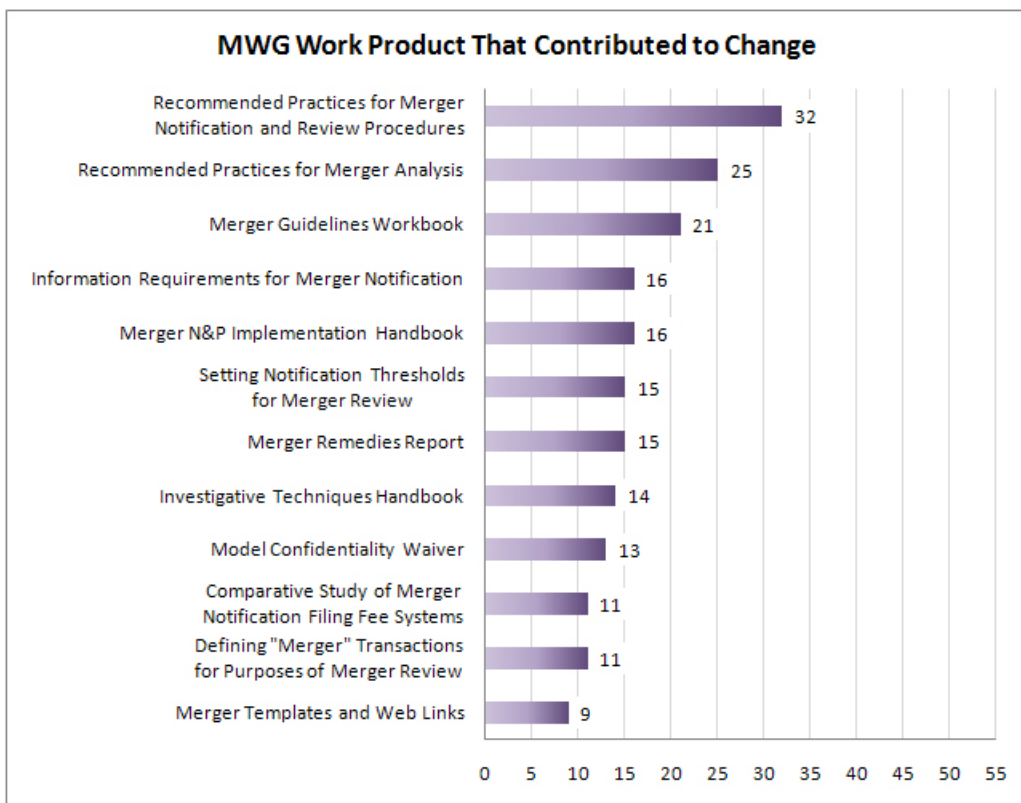
4. Other Uses of MWG Work Product Outside Agencies

Six agencies (11.1% of those responding to the survey) reported using MWG work product in dealings with business associations or the business community. Three agencies (5.6% of those responding to the survey) reported using MWG work product with regulators, with one agency noting that it had used MWG work product in training programs for sectoral regulators. Three agencies (5.5% of those responding to the survey) reported using MWG work product with academia or students.

Other uses reported by ICN members of MWG work product outside agencies include: (i) use of MWG work product as a reference in proposing changes to existing regulations; (ii) reference to MWG work product to support certain policy decisions; (iii) reference to MWG work product in speeches to government; (iv) discussion of MWG work product in press releases, newsletters, and public speeches; and (v) referencing to MWG work product but not using them explicitly.

D. Contribution of MWG Work Product to Changes in Merger Review Regimes (Questions 4.C. and 7)

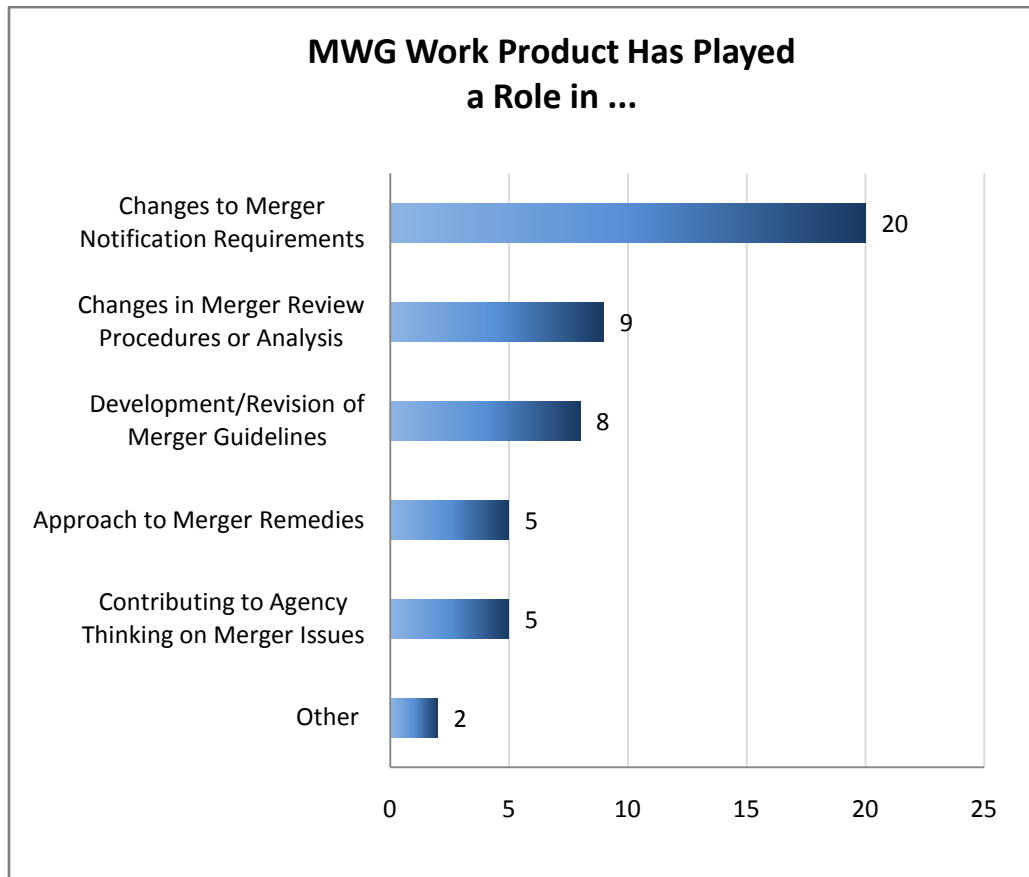
The survey asked ICN members whether any of the identified MWG work product has contributed to any changes in their merger review regimes. The results for those agencies indicating that MWG work product has contributed to changes in their merger regime are depicted in the following chart.



To the extent that members indicated that MWG work product had contributed to changes in their merger review regimes, the survey requested a brief description of such changes and how MWG work product contributed to the changes. Thirty-five agencies (64.8% of all responding agencies) provided descriptions of one or more ways in which MWG work product has contributed to changes in their merger review regimes. Four agencies responded that MWG work product has not contributed to any changes in their merger review regimes, although one of these agencies noted that it expects to take MWG work product into consideration in a current review of its merger legislation, and another noted that it has made efforts to disseminate ICN work product in general. Fifteen agencies did not respond to this question.³¹

³¹ This includes 10 agencies that did not report MWG work product contributing to changes in their merger review regimes in response to Question 4, and five agencies that did report MWG work product contributing to changes.

Commonly referenced examples of how MWG work product has changed or informed ICN member merger review regimes are depicted in the following chart.



1. Role in Changes to Merger Notification Requirements

Twenty agencies (37% of those responding to the survey) indicated that MWG work product contributed to one or more changes to their merger notification requirements, or that they have made changes to their merger notification requirements consistent with MWG work product. Changes identified by agencies in this category include:

- Changes to their merger notification thresholds or local nexus requirements (17 agencies)
- Changes to merger notification deadlines or time limits (3 agencies)
- The introduction of simplified merger notification procedures (2 agencies)
- Proposed or implemented revisions to merger notification requirements consistent with principles outlined in the *Recommended Practices for Merger Notification and Review Procedures* (2 agencies)
- Review of the merger notification system
- Incorporation of the *Recommended Practices for Merger Notification and Review Procedures* in outlining the conditions under which merger parties must notify the competition agency in advance
- Changes to the use of pre-notification phase
- Changes in notification procedures
- Changes in the required information to be filed as part of the notification, and redefinition of the concept of mergers or concentrations.

2. Role in Changes in Merger Review Procedures or Analysis

Nine agencies (16.7% of responding agencies) identified MWG work product as having contributed to changes in their merger review analysis or procedures, or responded that they had implemented changes to their merger review procedures consistent with MWG work product. These agencies described different ways in which MWG work product has contributed to their analysis or procedures, including:

- Standardizing merger control procedures
- Improving legislation on merger procedures
- Assisting in the development of methods and mechanisms to deal with merger cases
- Improving merger reports as well as timeliness, efficiency and the review of merger laws
- Informing the development of merger review processes, particularly with an emphasis on ICN principles such as transparency and timely and effective review
- Establishing the frequency of organizing the decision making power for merger review with an independent authority
- Implementing more streamlined procedures for the merger review process and taking steps to promote greater transparency in merger analysis and enforcement
- Changes in the use of hearings and providing an explanation of competitive concerns
- Increased flexibility in the investigatory timeframe by providing, at the parties' request, additional time triggered on the submission of a remedy offer
- Including the consideration of efficiencies
- Publication of guidelines and enhancing analysis on dominance

3. Role in the Development or Revision of Merger Guidelines

Eight agencies (14.8% of responding agencies) indicated that MWG work product has played a role in the development of or revisions to their public or internal merger guidelines. Among the MWG work product referenced by agencies in this respect are the *Recommended Practices for Merger Analysis* (mentioned by two agencies), the *Merger Guidelines Workbook* (mentioned by one agency), and the *Recommended Practices* generally (mentioned by one agency).

4. Role in Approach to Merger Remedies

Five agencies (9.3% of responding agencies) described ways in which MWG work product has contributed to their approach to merger remedies. Three of these agencies identified the *Merger Remedies Report* as having been of particular use in this regard. Individual agencies in this category commented that MWG work product (i) has provided them with more confidence in solving merger cases with conditions; (ii) has assisted in improving methodologies for conditions mergers with behavior and/or structural remedies; (iii) are sometimes used in considering the imposition of remedies; and (iv) have contributed to the development of a remedies guideline.

5. Role as Informative Reference Contributing to Agency Thinking on Merger Review Issues

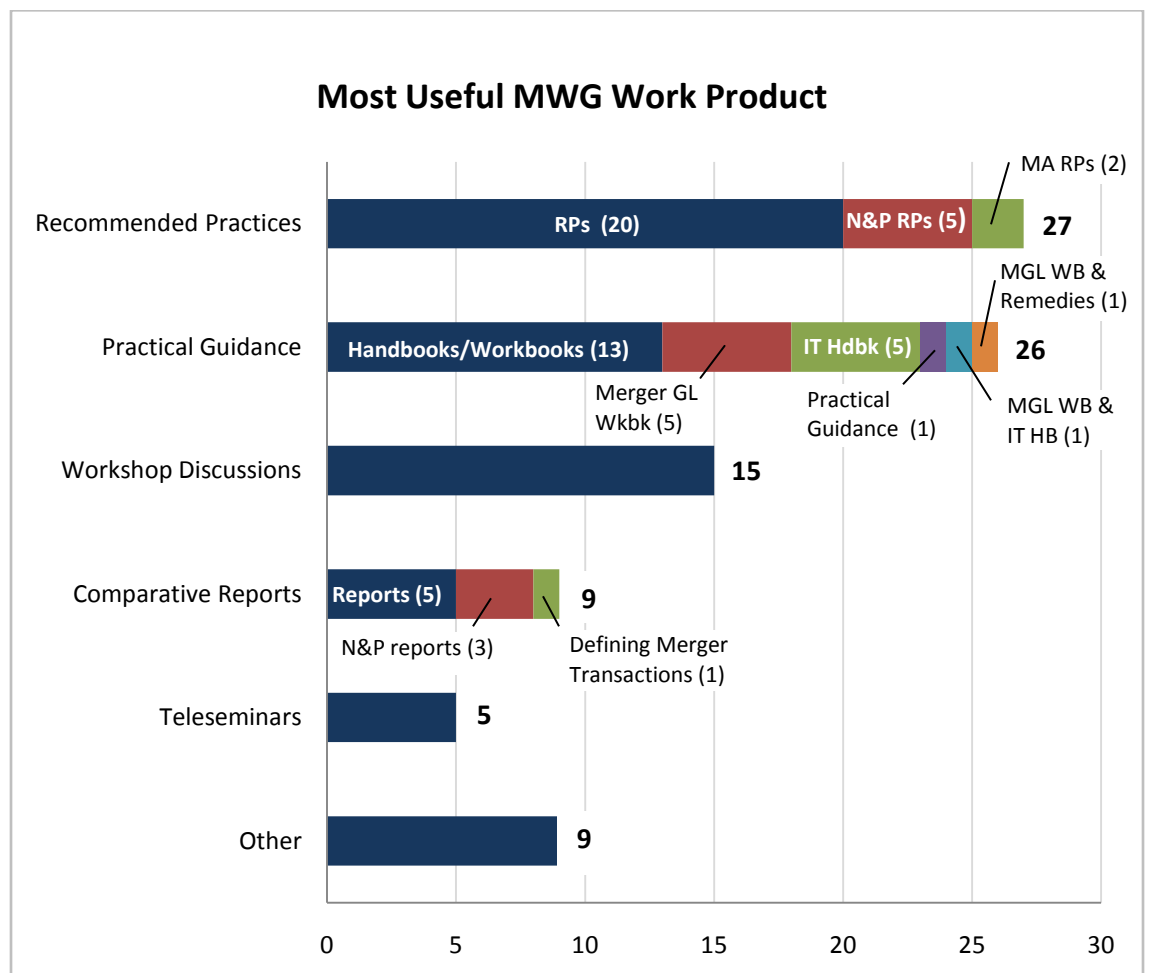
Five agencies (9.3% of all responding agencies) reported ways in which MWG work product has served as an informative reference in the development of agency thinking on merger issues. Examples provided by these agencies of areas in which MWG work product has informed their thinking include notification requirements and procedures, confidentiality waivers, as a staff resource providing additional guidance in conducting merger review, and on merger assessment and merger review generally.

6. Other Roles of MWG Work Product in Changes to Merger Review Regimes

Two agencies listed other ways in which MWG work product has contributed to changes. One agency noted that while MWG work product did not have a direct effect on legislative revisions, MWG work product were referenced in accompanying reports and that MWG comparative reports were particularly helpful in this regard. Another agency noted that MWG has contributed to its merger review becoming more focused.

E. Most Useful MWG Work Product (Question 8)

The member survey also sought views on what agencies have found to be the most useful MWG work products or types of work product. Forty-eight agencies (88.9% of all responding agencies) responded to this question, while six agencies did not respond. Several responding agencies listed more than one work product or type of work product in response to this question. Work product mentioned as most useful by ICN members are depicted in the following chart.



1. Recommended Practices

Twenty-seven agencies (50% of survey respondents) identified Recommended Practices as among the most useful MWG work product. Of these, 20 agencies highlighted the usefulness of RPs generally, noting that they provide comprehensive collective thinking on important practical issues; contain useful input in considering the global standard, best practices, or ideal features of merger review; have been important in promoting global convergence; are compact and easily accessible; assist in the analysis and procedural matters of a case; are easily used by case handlers and staff; and are adaptable for internal training and handbooks.

Five agencies identified the Recommended Practices on Merger Notification and Review Procedures as among the most useful MWG work product. Three of these agencies noted that the *Recommended Practices for Merger Notification and Review Procedures* had been particularly useful as a reference in designing or revising their merger review laws or procedures. Two agencies highlighted the Recommended Practices for Merger Analysis as among the most useful MWG work product.

2. Practical Guidance

Twenty-six agencies (48.1% of survey respondents) also identified one or more of the MWG's practical guidance documents as among the most useful. Thirteen agencies cited handbooks or workbooks as particularly useful, noting that these materials are more easily used by case handlers and staff; assist in promoting smooth engagement in merger cases; provide useful training; and are adaptable for internal handbooks. Seven agencies³² cited the *Merger Guidelines Workbook* as among the most useful MWG work product, noting that it is a good reference; is useful in understanding various approaches to different aspects of merger review; provides clear information on aspects to be reviewed in merger notification; outlines ideal features of merger review; assists in improving procedural issues; and provides useful training material. Six agencies³³ cited the *Investigative Techniques Handbook* as among the most useful MWG work product, with one agency noting that is a great aid as a source of practical tips and guidance on how to deal with certain typical problems during merger investigations. One agency responded that practical guidance documents are the most useful. One agency highlighted the Merger Remedies Report as among the most useful MWG work product, noting that the report has assisted efforts to improve its procedures.

3. Workshop Discussions

Fifteen agencies identified workshop discussions as among the most useful MWG activities. Agencies in this category noted that workshops are most useful to case handlers; provide useful and practical information; provide a forum for discussions, experience sharing, exchanging views, comparisons, and lessons learned; allow participants to develop mutual contacts with other agencies; facilitate access to MWG work product; expose participants to different points of view and how each competition authority deals with issues arising in merger review; are useful in understanding various approaches to different aspect of merger review; have become more important over time in seeing the work product put into practice through presentations and discussion; and provide useful training and topics and materials for internal staff training.

4. Comparative Reports

Nine agencies cited comparative reports as among the most useful MWG work product. Five agencies mentioned comparative reports generally. Agencies in this category noted that comparative reports are useful in understanding various approaches to different aspects of merger review, and assist in designing legislation and evaluating possible revisions in merger control regimes.

Three agencies highlighted comparative reports on merger notification and procedures issues as among the most useful MWG work product, noting that they provide the most comprehensive collective thinking on important practical issues, and are particularly useful on the issues of notification thresholds, initial information requirements, and filing fees. One agency highlighted

³² Five agencies highlighted the *Merger Guidelines Workbook* as among the most useful MWG work products, one agency highlighted the *Merger Guidelines Workbook* and the *Investigative Techniques Handbook* as among the most useful MWG work products, and one agency highlighted the *Merger Guidelines Workbook* and the *Merger Remedies Report* as among the most useful MWG work products.

³³ Five agencies highlighted the *Investigative Techniques Handbook* as among the most useful MWG work products, and one agency highlighted the *Merger Guidelines Workbook* and the *Investigative Techniques Handbook* as among the most useful MWG work products.

Defining “Merger” Transactions for Purposes of Merger Review as among the most useful MWG work product.

5. Teleseminars

Five agencies cited teleseminars as among the most useful MWG activities. Agencies within this category commented that teleseminars are very helpful for training purposes; allow discussions, an exchange of ideas, and mutual contacts among case handlers; provide a forum for discussion and sharing of experiences, and are a good opportunity for other colleagues within competition agencies to participate in ICN work at little cost. One agency encouraged greater use of teleseminars on narrowly targeted subjects.

6. Other Most Useful MWG Work Product or Activities

Nine agencies mentioned other factors as among the most useful MWG work product or activities. Two agencies responded that all MWG work has been very useful, with one noting that they all help agencies become acquainted with best practices in merger control procedures. Three agencies cited a combination of written work product and workshops as most helpful, with one agency also including teleseminars.³⁴ One agency cited the Working Group discussions in developing work product as among the most useful MWG activities, while another cited active participation in the MWG as useful in contributing to greater awareness of the importance of the work product. One agency noted that it found MWG work product useful from a comparative analysis point of view, as they provide a good starting point to understanding how other merger regimes work. One agency noted that the variety of MWG work achieves different purposes, with some providing useful reference material and others providing useful opportunities to learn from other agencies.

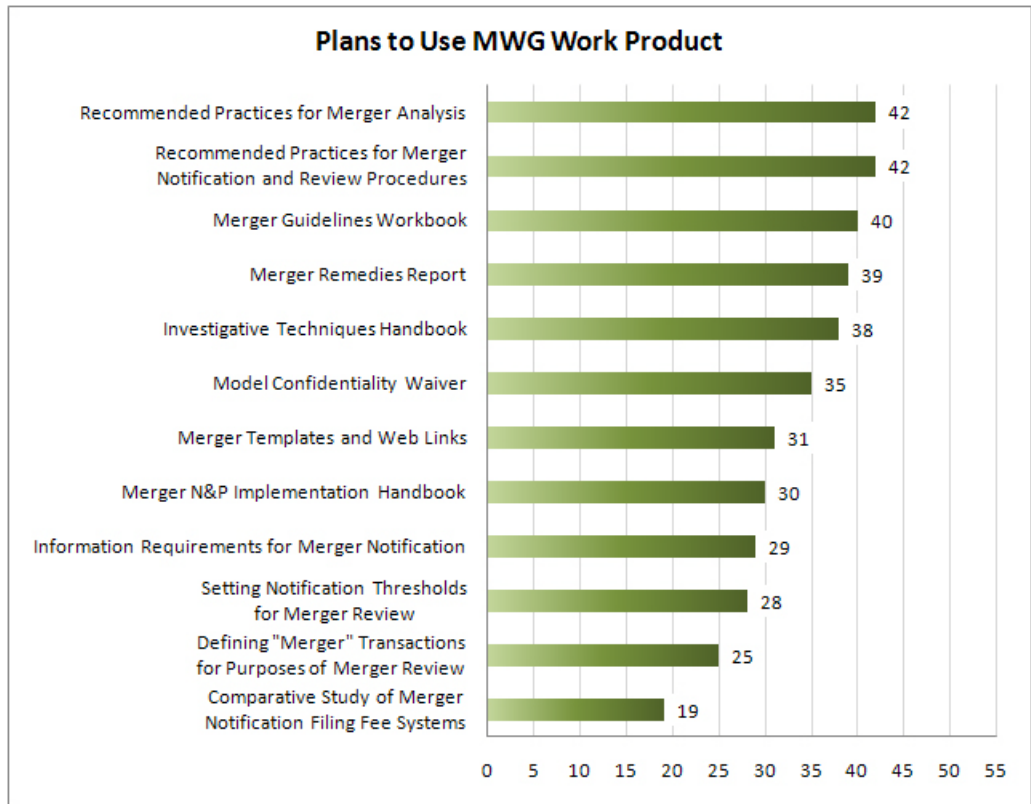
7. Most Useful Work Product by Agency Age, Size, and Number of Merger Notifications and In-Depth or Second Phase Reviews

Responses to this question were cross-checked against the responses to the questions on merger program size, age, and number of merger notifications and in-depth or second phase reviews to explore whether there are any differences in the work product or types of work product found most useful by members based on these factors. The results of this exercise are presented in [Annex 3](#) of this Appendix.

³⁴ One agency noted that workshop discussions are most useful to case handlers, but that written materials are also very good in providing complementary information and providing a good overview of specific topics. Another agency noted that teleseminars and workshops are very helpful for training purposes, while written work products are most useful in enhancing harmonization between the different merger control systems of ICN members. The third agency noted that all of the written work product is useful, and that workshops have also become more important over time.

F. Use of MWG Work Product in the Future (Question 4.D)

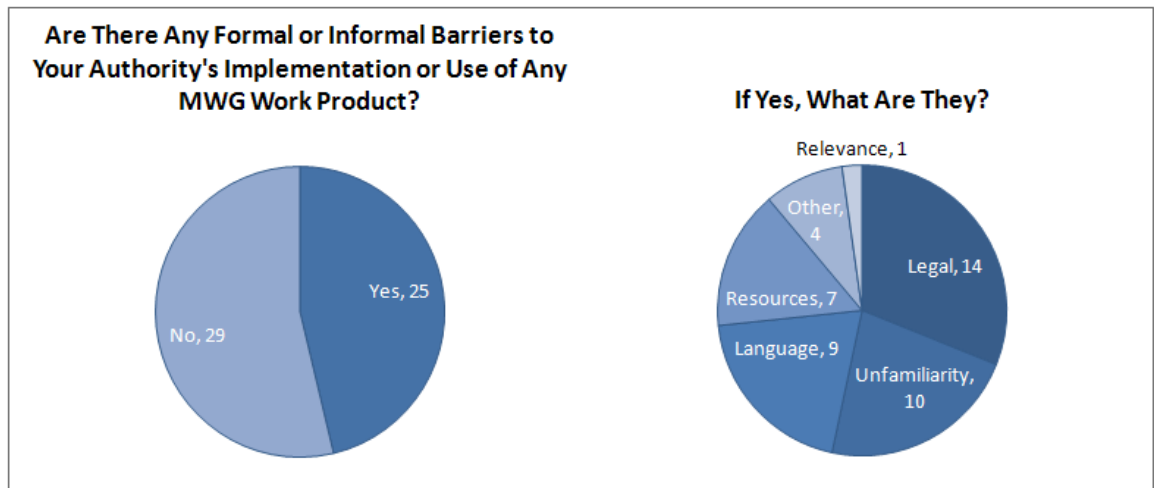
The survey asked ICN members whether their authority planned to use any of the listed MWG work product in the future. The results indicating plans to use MWG work product in the future are depicted in the following chart.



G. Barriers to Use and Implementation of MWG Work Product (Question 9)

1. Reported Barriers to Implementation or Use of MWG Work Product (Questions 9.a and 9.b)

The ICN member survey asked agencies whether there are any formal or informal barriers to their use of MWG work product, and if so, what types of barriers exist. The responses on barriers are outlined on the following chart.



As shown on the charts, 29 agencies (53.7% of responding agencies) responded that they did not face barriers to using and implementing MWG work product, while 25 agencies (46.3%) indicated that they did face one or more barriers. Of the 25 agencies that reported barriers, 56% (14 agencies) identified legal barriers, 40% (10 agencies) identified unfamiliarity barriers, 36% (9 agencies) reported language barriers, 28% (7 agencies) reported resource barriers, one agency reported relevance barriers, and 4 agencies reported other barriers.

Of the 4 agencies that reported that they face other barriers to work product use or implementation, 3 agencies (12% of those reporting barriers) reported difficulty in locating relevant MWG work product as a barrier. One of these agencies recommended that some reorganization of the ICN website to make it more user-friendly would be beneficial. Similarly, a second agency, while recognizing recent website improvements, noted that the MWG still lacks an overview that would put all the materials in perspective (how the product are related, how current each product is, and which work product is currently under review or being updated). A third agency noted that documents could be labeled more clearly and simply, noting that work product titles do not always give a clear indication of the contents and purpose of MWG documents. The other agency reporting other barriers noted that best practices and other non-legal instruments are rare in its legal system, and while MWG work product can be used for interpretation, they are not binding on the legislature.

2. Ways in Which the MWG Could Assist in Removing Barriers to Members' Implementation or Use of MWG Work Product (Question 9.c)

The ICN member survey solicited suggestions from ICN members that reported barriers on ways in which the MWG could assist in removing the barriers to their use or implementation of MWG work product. Of the 25 agencies that reported one or more barriers, 10 agencies (40% of those reporting barriers) suggested ways in which the MWG could assist them in removing barriers.³⁵ Eight agencies (32% of those reporting barriers) responded negatively to the question of whether there are ways the MWG could assist in removing barriers.³⁶ One agency responded that use of some MWG work product would require a change in law, and six agencies (24% of those reporting barriers) did not answer the question.³⁷

Suggestions from agencies reporting one or more barriers include:

- Organizing teleseminars for case handlers (those that actually conduct the merger review analysis) on issues of interest where experiences and practices can be shared.
- Engage members in MWG work.
- Offer MWG assistance to agencies seeking to change their laws.
- It could be useful to improve the document search possibilities on the webpage (e.g. keyword search, advanced full-text search). Similar actions could be taken by agencies, such as including more links to work product in internal intranets, and raising awareness of MWG work product during training sessions on particular topics.

³⁵ This includes three agencies reporting legal barriers, seven agencies reporting unfamiliarity barriers, three agencies reporting language barriers, two agencies reporting resource barriers, and two agencies reporting other barriers. (Several agencies in this category reported more than one barrier.)

³⁶ This includes seven agencies reporting legal barriers, one agency reporting unfamiliarity barriers, one agency reporting relevance barriers, three agencies reporting resource barriers, and one agency reporting other barriers. (Some agencies in this category reported more than one barrier.) Three of the nine agencies responding negatively to this question offered explanatory comments, including (i) the main barrier is legal because without a compulsory notification system, many ICN merger work products are not applicable, (ii) implementation would require some sort of legislative act or order, but ICN standards, reports, and guidelines may be used for inspiration; and (iii) removing existing barriers depends on the agency's own ability to demonstrate the relevance of MWG documents, as well as efficiently allocate resources.

³⁷ This includes four agencies reporting legal barriers, three agencies reporting unfamiliarity barriers, five agencies reporting language barriers, one agency reporting resource barriers, and one agency reporting other barriers. (All agencies in this category reported more than one barrier.)

- Work product on the website is sometimes hard to find. While this has been improved considerably with the new website, the website still lacks an overview that puts all the materials in perspective (how materials are related, how current each work product is, and which work product is currently under review or being updated).
- The website should be more user-friendly. Some re-organization of documents and internal links would be beneficial. Some of the recommended practices to be implemented would require a change in law.
- Translate materials for non-English speakers.
- The MWG should recommend members to translate work product into local languages and to reinforce human resources to meet the needs.
- The MWG should provide the same perspectives for relevant stakeholders, including law enforcement agencies and regulators at the same time.
- Conducting surveys such as the present one.³⁸

H. Ways to More Effectively Promote Awareness and Use of MWG Work Product (Question 10)

The ICN member survey solicited suggestions from ICN members on ways in which the MWG could more effectively promote awareness and use of any of its work product. Thirty-three agencies, or 61.1% of survey respondents, responded to this question.

Of the 33 agencies that responded to the question, eight responded that they either had no suggestions for improvement, or that current efforts to promote awareness and use of MWG work product are adequate. One agency noted that so long as the information is available on the website, anyone interested can find it. Twenty-four agencies provided suggestions on ways in which the MWG might more effectively promote work product awareness and use.

Suggestions on ways in which the MWG might more effectively promote its work varied, but often focused on greater use of workshops, teleseminars, and electronic tools or updates. Of the 24 agencies providing suggestions, 11 agencies reported familiarity with all MWG work product, while 13 agencies did not report familiarity with one or more MWG work product in response to Question 4.

Suggestions provided by members that did not report familiarity with one or more MWG work product include:

- Increasing the number of meetings and workshops.
- Conducting seminars, workshops, outreach activities, and other tools to promote awareness.
- Organizing regular teleseminars/webinars are a very good means to promote awareness, along with annual merger workshops, with a practical perspective. Furthermore, the MWG could send brief annual presentations of new documents and materials to be distributed within the NCAs, together with an updated list of all the documents/guidelines available.
- Collaborating with agencies.
- Integrating the new member countries in which competition policy is still in the early stages.

³⁸ In addition to the suggestions provided by members reporting barriers, two agencies that reported no barriers provided explanatory comments in response to Question 9.c. One agency explained that while it can use and make reference to MWG work product and the ideas described therein, the provisions of its Competition Act and related documents govern. The other agency noted that while its activities are governed to a large extent by statutory and regulatory provisions, it has not encountered any barriers to the use or implementation of MWG work product. In addition to these explanatory comments, five agencies that reported having no barriers in response to Question 9.b. responded to Question 9.c. that they did not have any suggestions to remove barriers.

- Identifying the target audience for products and workshops. An overview on the website that puts all the material in perspective could improve this.
- The work products may be merged. Also sending hard copies of the work products to competition authorities and other libraries may be useful for promotion.
- The MWG could compile summaries of its most important documents, for quick reference by agency staff.
- Regular/monthly newsletters or reports sent to the authorities and an on-line forum on ICN web site.
- MWG could consider starting a quarterly/half-yearly newsletter circulated by e-mail to ICN members on its work products and developments in the area of merger review/interesting cases.
- E-mail updates or a newsletter may help some stay informed of the MWG's work. The ICN might perhaps do more through specialist competition forums like BIICL & Global Competition Review.
- ICN promotes the use of its work product quite well. More teleseminars, articles and newsletters are always useful tools for promoting awareness.
- Conducting such surveys as the present one.

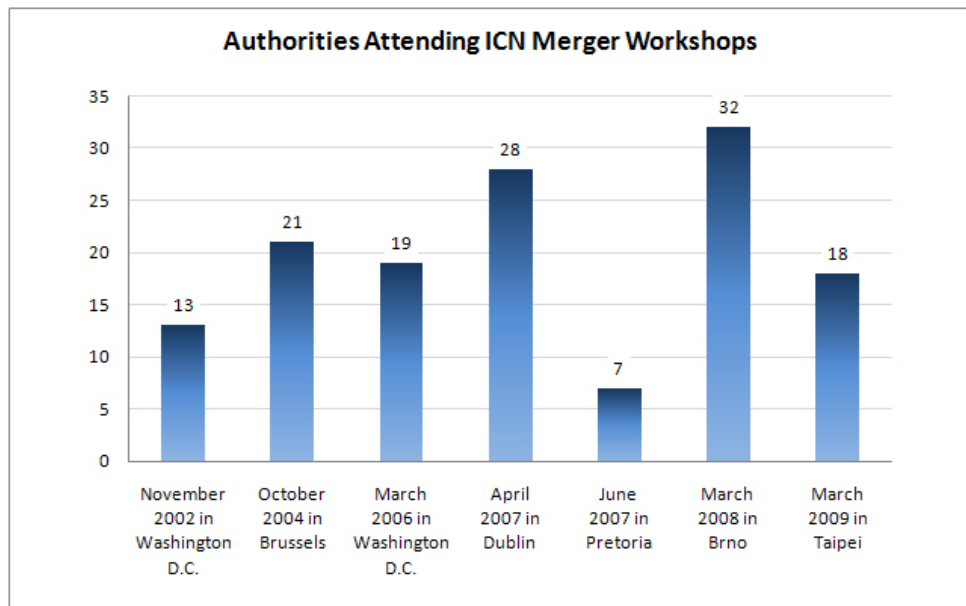
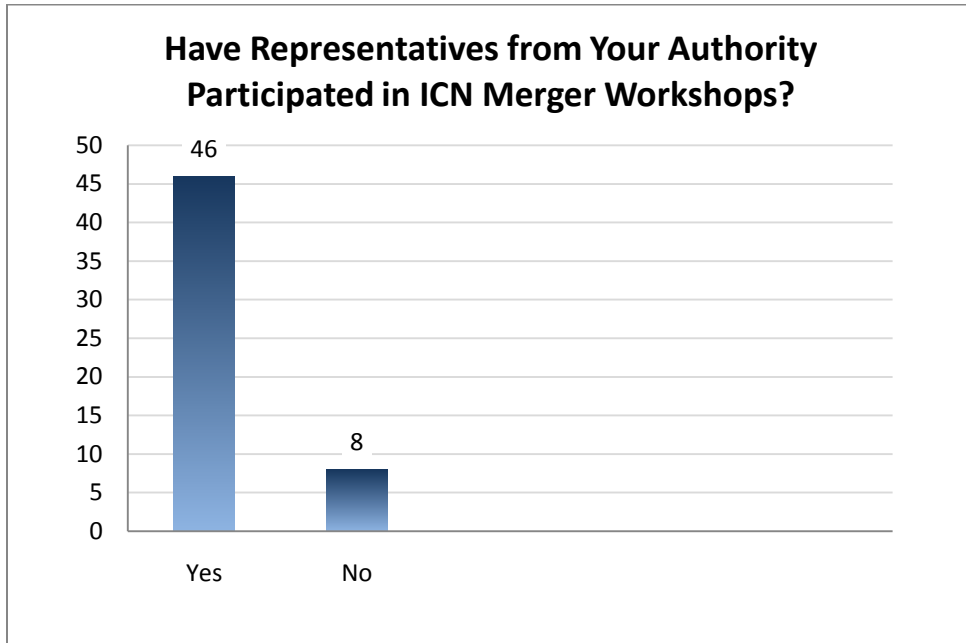
Suggestions from members reporting familiarity with all MWG work product include:

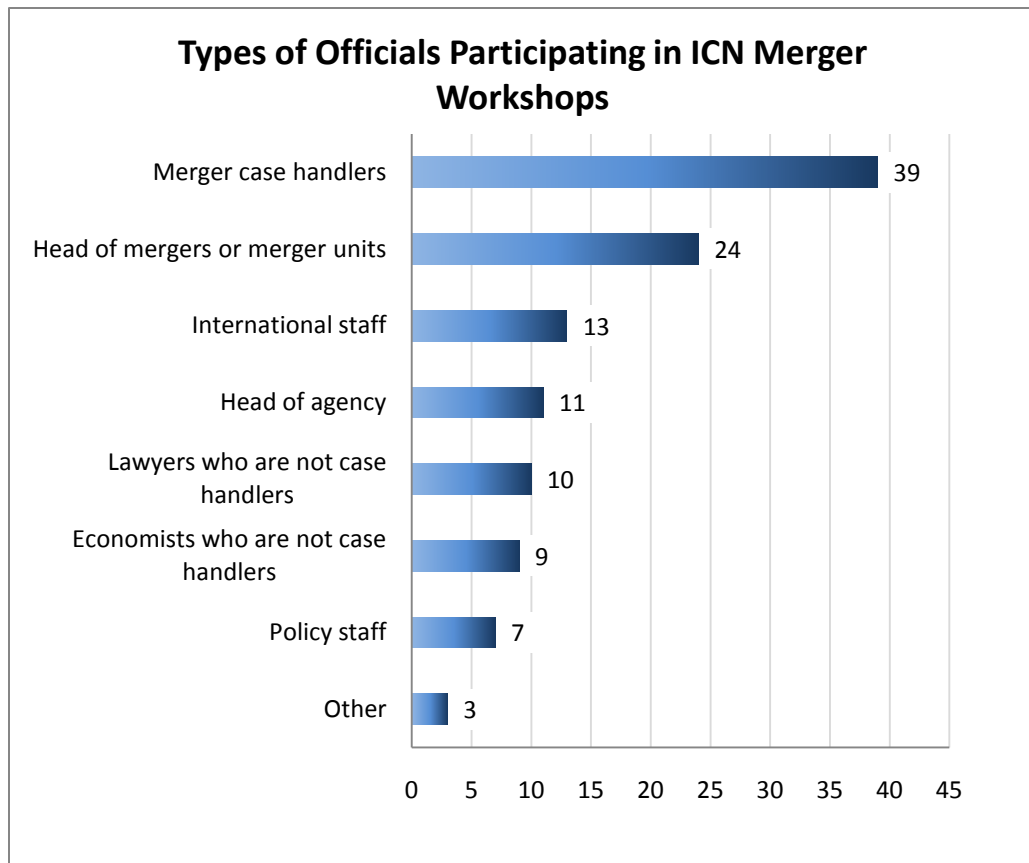
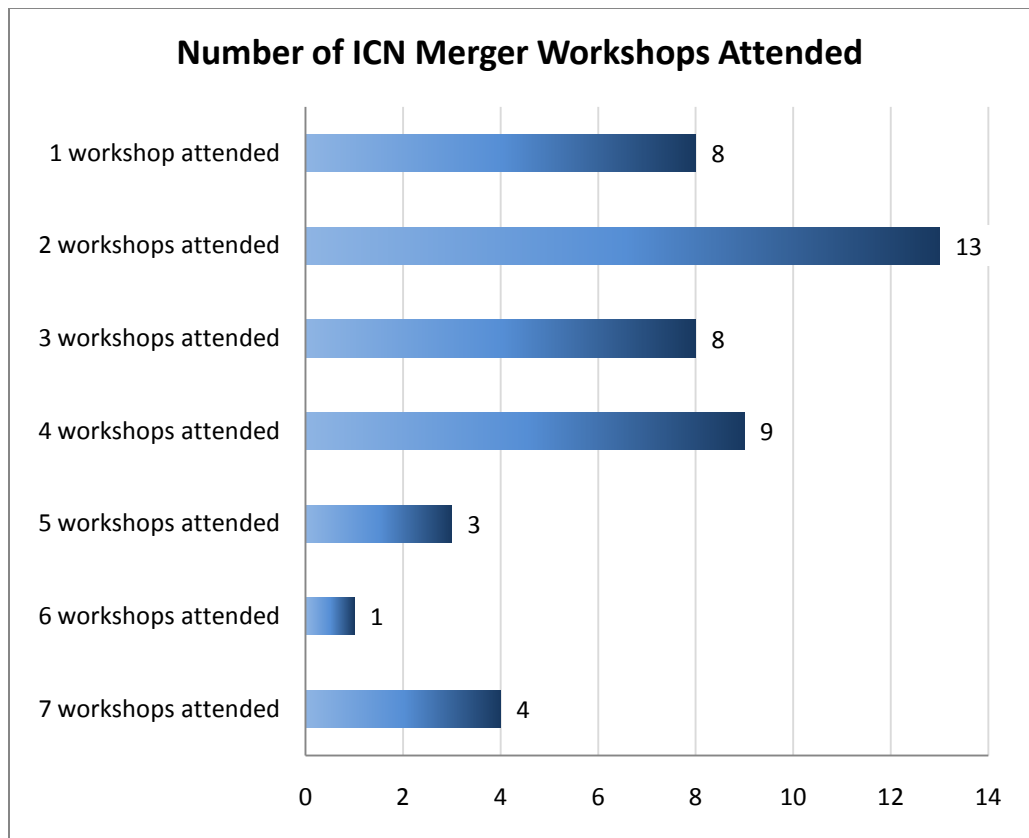
- Continuation of annual ICN workshops as a valuable opportunity to promote awareness and use of MWG work product.
- ICN workshops focusing on assessing hypothetical merger cases are the best way to promote the MWG products.
- Organizing training workshops for agencies and other stakeholders in developing countries.
- Revision of the ICN webpage to facilitate access and research of work products. Teleseminars and other training events could also provide an opportunity to promote these products.
- The MWG currently has a number of effective avenues for promoting awareness of its work product, including electronic access and frequent discussion among member agencies. The MWG may wish to consider expanding electronic promotion of this work even further through e-mail announcements and more frequent teleseminars.
- Continue to announce MWG developments and efforts through ICN website/blog; also, hosting periodic teleseminars to explain or expand upon recently-completed major MWG work product efforts could enhance members' awareness of new MWG work product.
- The ICN Curriculum Project sounds like a promising online tool to better promote MWG work product.
- It could be useful to improve the document search possibilities on the webpage (e.g. keyword search, advanced full-text search).
- The products are now much better organized on the ICN website. Further efforts in that direction would prove useful.
- Wider engagement of NGO's may be worth considering. Moreover, translation of basic documents will certainly help. However, authorities themselves should be more active in promoting good practices.
- One way could be to create informal sub-groups (by region, language, legal system or a combination of these) with their own group leaders responsible for promoting awareness and use of ICN work product via informal contacts, seminars, etc.

III. ICN Merger Workshops (Question 11)

A. Participation in ICN Merger Workshops (Question 11.a, 11.b, and 11.c)

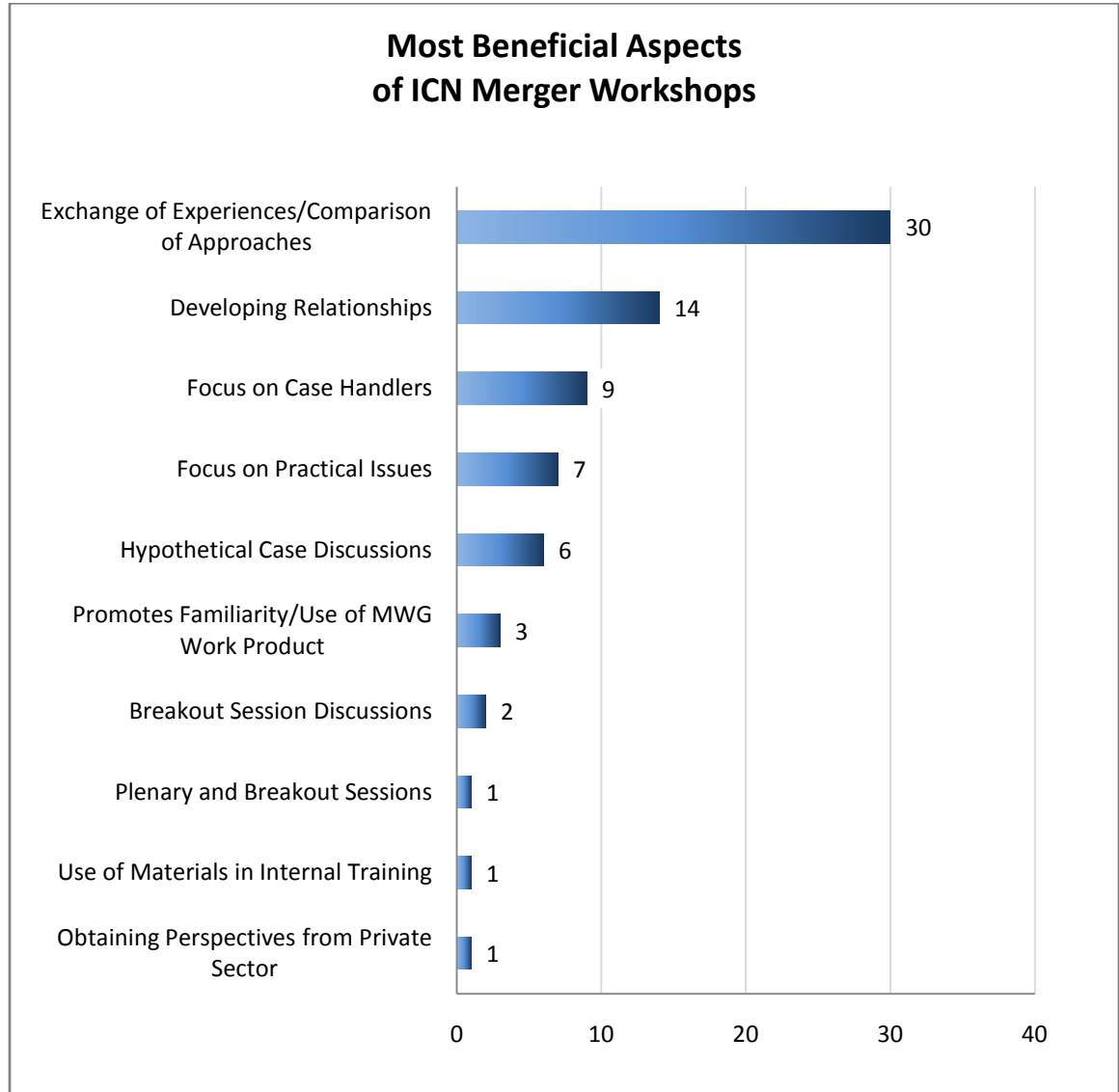
ICN members were asked: (i) whether they had participated in ICN Merger Workshops; (ii) the Merger Workshops in which they had participated; and (iii) the types of officials from their agency that had attended Merger Workshops. The survey results for these questions are depicted on the following charts.





B. Benefits of ICN Merger Workshops (Question 11.d)

The member survey sought input from agencies on what they have found most beneficial about the workshops they have attended. Of the 46 agencies that reported having participated in past ICN Merger Workshops, 42 (91.3 %) responded to this question. Several agencies reported multiple beneficial aspects of the workshops. The benefits reported by ICN members participating in ICN Merger Workshops are illustrated in the following chart.



3. Exchange of Experiences and Comparison of Approaches

The most frequently reported benefit of ICN Merger Workshops is the exchange of experiences and comparison of approaches, a benefit listed by 30 responding agencies. Agencies in this category noted the value of exchanging and comparing experiences and best practices with other competition agencies. In addition, agencies in this category reported that workshops provide a productive means of promoting awareness of new practices, issues, investigative techniques, policy initiatives and trends experienced by agencies. ICN members also commented that workshops provide a forum for comparing processes and procedures, sharing ways to deal with common merger enforcement problems and challenges, and encouraging debate, all of which provide lessons learned through the international experience that may inform workshop participants in thinking about their own merger review regime.

4. Developing Relationships

Another benefit of ICN Merger Workshops cited by 14 agencies is the opportunity to develop relationships with representatives of other agencies. Several of these agencies noted that the contacts developed at workshops are useful in developing networks between agencies and facilitating later cooperation in day-to-day cases and other work.

5. Focus on Case Handlers and Practical Issues

Nine agencies highlighted the workshops' focus on case handlers as one of the most beneficial aspects, noting that workshops provide good training on practical aspects of merger review that are of interest to and beneficial for case handlers. Similarly, seven agencies mentioned the focus on practical issues as one of the most beneficial aspects of ICN Merger Workshops.

6. Use of Hypothetical Case Discussions

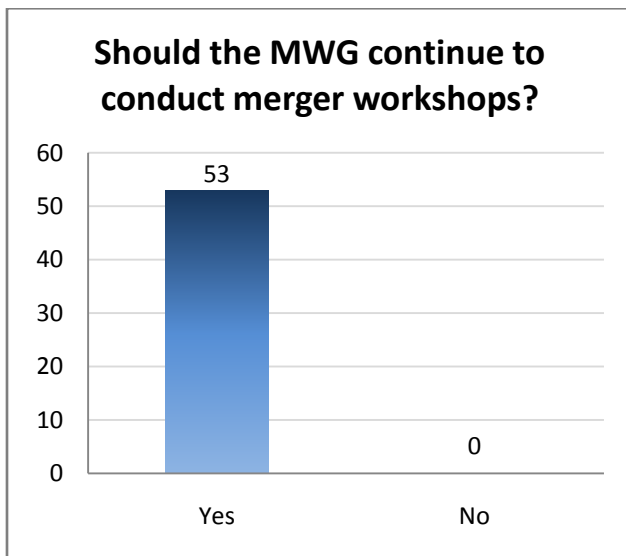
Six agencies highlighted the use of hypothetical case discussions as one of the most beneficial aspects of workshops. Agencies in this category noted that the hypothetical discussions are interesting, provide a great opportunity to learn and share experiences with other agencies, help participants to understand concepts and challenge old habits, and allow discussion of a case in a detailed and effective manner.

7. Other Benefits of Workshops

Other benefits reported by members included promoting familiarity and use of MWG work product (cited by three agencies as one of the most beneficial aspects), as well as the active and detailed breakout discussions (cited by two agencies as one of the most beneficial aspects). Benefits reported by individual agencies included both the plenary and breakout sessions, the use of workshop materials for internal training, and obtaining perspectives from the private sector.

C. Whether the MWG Should Continue to Conduct ICN Merger Workshops (Question 11.f)

ICN members were also asked whether the MWG should continue to conduct merger workshops. All of the 53 agencies that responded to this question indicated that the MWG should continue to conduct merger workshops. One agency that had not attended any merger workshops did not respond to the question.



D. Suggestions for Improvement in ICN Merger Workshops (Question 11.e)

The ICN member survey solicited suggestions from ICN members on ways in which ICN Merger Workshops could be improved. Twenty-four agencies, or 52.2% of the 46 agencies that reported having participated in ICN Merger Workshops, responded to this question, while 30 agencies did not respond.³⁹ Of the 24 agencies that responded to the question, 3 responded that they had no suggestions or that the workshops as currently organized are adequate or work well. The remaining 21 agencies offered suggestions for workshops, with some offering multiple suggestions.

1. Workshop Content/Format

Nine agencies offered suggestions on the content or format of ICN Merger Workshops. These suggestions include:

- Workshops should be more focused on specific topics and could correspond to recent activities of the MWG.
- The MWG could consider reducing the policy aspects of workshops and increasing the practical issues.
- A focus on operative issues is most useful.
- Breaking into smaller groups is helpful to facilitate discussion.
- More clearly defining the target audience may improve workshops. The MWG should consider breakout sessions for experienced staff and heads of departments and sessions where experienced staff teach/discuss/introduce ICN products to relatively new staff, such as those with less than two years experience with mergers. Such an approach would allow

³⁹ The non-responding agencies included 8 agencies that had not participated in ICN Merger Workshops, as well as 22 agencies that had participated in one or more workshops.

senior staff to focus on changes in the global approach to mergers, and junior staff to focus on existing recommended practices and the implementation thereof.

- Occasionally there is wide variability in the experience of officials of national competition authorities attending workshops, which can make it hard to pitch workshop materials at the right level. One way to overcome this is to have advanced and intermediate sessions.
- The series of ICN merger workshops should continue to provide venues for (i) new and mid-level merger case handlers to engage in practical training exercises and learn about investigative techniques; and (ii) the discussion of merger policy issues and new developments from around the world. (Though they need not both be addressed at every workshop.)

In addition, the MWG may wish to solicit ideas from members about how they train their own merger investigators and/or how they address merger developments in their own jurisdictions (at bar association conferences, internal agency discussions, etc.). Such an exercise may uncover new ideas for the format and content of future workshop.

- The MWG may consider holding more regional workshops in different areas so members are able to send more participants with limited budgets.
- The MWG should (i) keep organizing regional workshops, or workshops more tailored by language, region, etc., and (ii) conduct more workshops for case handlers to facilitate discussions on practical issues.

2. Preparatory/Follow-on Work for Workshops

Six agencies offered suggestions for activities before or after the workshops. These suggestions include:

- It might be helpful to provide materials in advance of the workshop, followed by a pre-workshop webinar to review materials.
- Hypotheticals should be distributed in advance, so that everybody will have a chance to prepare well, and some follow up after workshops might be a good idea, such as teleseminars devoted to some issues identified during the workshops.
- Workshops are an excellent resource providing significant benefits to members. Consideration could be given to posting more material from the workshops on the ICN website for future use by member agencies.
- The MWG should provide materials from workshops that could be disseminated to member agencies and possibly used in their own training programs. Where feasible, the MWG may wish to consider webcasting portions of the workshops to those that cannot attend.
- Circulate contact lists after the workshops listing the contact details for all participants.
- Members would benefit from post-workshop reports that describe the conference proceedings and provide details on developments to which attendees were privy.

3. Case Discussions

Five agencies offered suggestions relating to case discussions. These suggestions include:

- Workshops might attempt to address more complex cases or tackle some real life dilemmas.
- The use of actual full case studies would be helpful for peer learning.
- Each attendant could bring real cases from its jurisdiction to the workshops in order to discuss the difficulties encountered and the solutions applied.
- Workshops could conduct breakouts on particular merger review cases (actual or hypothetical).
- Include discussions on hypothetical merger cases.

4. Other Workshop Suggestions

Other suggestions to improve ICN Merger Workshops include:

- Help members in which competition policy is in the early stages to make changes in their merger legislation.
- The MWG may wish to consider planning workshops at more regular intervals, subject to hosting considerations.
- Share templates for notification forms, survey questionnaires, and training curriculum for merger case handlers.
- It may be best to assess potential improvements after the Rome workshop, which seems to have a good mix of plenary and breakout sessions.

E. Suggestions for Topics to Address in Future Workshops (Question 11.g)

The ICN member survey solicited suggestions from ICN members on topics that would be most useful to address in future ICN Merger Workshops. Forty-six agencies, or 85.2% of survey respondents, offered one or more suggestions for topics that would be useful to address in future workshops. Eight agencies did not respond to this question.⁴⁰

The suggestions for future workshop topics varied, but for convenience have been grouped into the categories outlined on the following chart. Several agencies made multiple suggestions, and several of the individual suggestions could be placed in more than one of the listed categories. For brevity, this report lists each suggestion in one category, even if the suggestion could arguably be listed in multiple categories.

⁴⁰ The non-responding agencies included two agencies that had not participated in ICN Merger Workshops, as well as six agencies that had participated in one or more workshops.

Suggestions for Future Workshop Topics		
Merger Analysis Issues (22 Agencies) ⁴¹		
<i>General</i> (11 agencies)	<i>Economic Analysis</i> (13 agencies)	<i>Merger Guidelines Issues</i> (3 agencies)
<ul style="list-style-type: none"> • Merger analysis • Substantive analysis of mergers (including theory of harm) • Merger analysis (both general and specific to economic analysis) • Qualitative and quantitative methods in merger review • Merger analysis, especially in potentially problematic mergers • Analytical developments in different jurisdictions • Market definition, market power, small-sized markets • The implementation of doctrines in different jurisdictions • Instances where a series of mergers in the same sector, which individually may not be disallowed as they cannot be regarded as causing any competition concerns under the criteria set in the national legislation, but the net results of all the mergers may create problems in the downstream market • Continue emphasis of practical training in analysis relevant to case handlers via use of hypothetical cases • Practical issues arising in merger analysis 	<ul style="list-style-type: none"> • Use of economic analysis in merger review (3 agencies) • Merger analysis (both general and specific to economic analysis) • Economic analysis issues arising in merger review • Economic evidence • Practical and simple techniques for simulation of post-merger market effects • Use of econometric tools in the analysis of mergers • The use of econometrics in a competitive effects analysis • Topics on merger analysis based on application of economic theories and econometric models • Economic analysis: a more detailed description of used methods and data collected for purposes of investigations. Also support members of Chief Economist departments attending the workshops. • Economic analysis – topics of relevance in using economic models, seeking the right evidence, and the use of experts • Data handling 	<ul style="list-style-type: none"> • Revision of merger guidelines • Given that the 2010 Workshop will reflect developments in merger analysis, a follow up workshop to review actual changes to guidelines and their impact would be useful • Given new US and UK substantive merger guidelines view of utility of market definition in unilateral effects analysis, this could be an interesting topic.

⁴¹ Five agencies offered multiple suggestions for merger analysis issues that have been listed in more than one of the identified categories.

Suggestions for Future Workshop Topics
Investigative Techniques Issues (12 Agencies)
<ul style="list-style-type: none"> • Merger investigation • Investigative techniques (2 agencies) • Developments in investigative techniques in different jurisdictions • Investigative techniques (e.g. how to conduct an interview, how to draft questionnaires) • Survey methodologies in collecting information for merger analysis • Simple economic investigation tools to be used in phase I to identify need for an in depth investigation • Second phase checks and techniques • Techniques in obtaining and verifying evidence • Evidence in merger review – what evidence is required, not just economic evidence, and how to reconcile it to the theory • Obtaining information without undue burden • Continue emphasis on practical training in investigative techniques relevant to case handlers via use of hypothetical cases
Remedies Issues (10 Agencies)
<ul style="list-style-type: none"> • Merger remedies (6 agencies) • Negotiation and implementation of remedies could be an interesting topic • Remedies – selection and implementation • Effective remedy design, effective evaluation of remedies • Implementation of preventative negative implication of mergers
Case Studies (6 Agencies)
<ul style="list-style-type: none"> • Analyses of hypothetical mergers • Merger cases • More complicated case studies • Hypothetical merger cases, and presentation of the most important merger cases which are interesting because of the use of new methods of economic analysis, unusual remedies, cooperation between various jurisdictions, etc. • Practical training relevant to case handlers via use of hypothetical cases, and workshops may wish to introduce the discussion of case studies to help frame discussions on policy issues with practical examples and experience • Case studies regarding issues such as the efficiency effect, failing firm, remedies, etc.
Coordination/Cooperation Among Agencies in Merger Review (6 Agencies)
<ul style="list-style-type: none"> • Cooperation between agencies • Practical aspects of multi-jurisdictional coordination in merger review, perhaps with an emphasis on remedies • Coordination and information sharing between agencies in mergers (and merger remedies) involving multiple jurisdictions • Cross-border merger control • Cross-border mergers and establishing bilateral agreements • Waivers

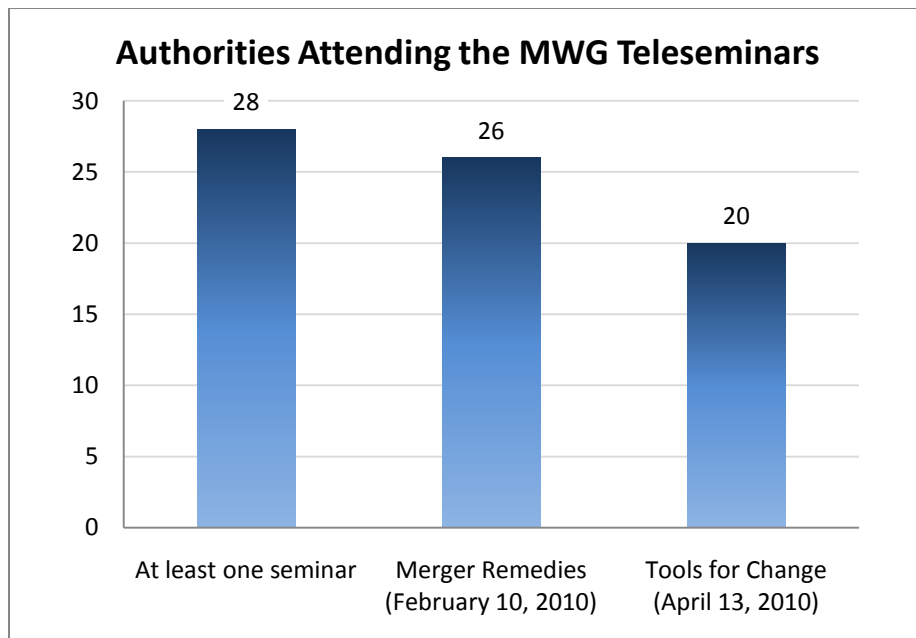
Suggestions for Future Workshop Topics
Merger Notification Issues (4 Agencies)
<ul style="list-style-type: none"> • Appropriate level of thresholds in the jurisdictions with mandatory notification systems • Non-economic thresholds for merger notification, in other words, how to proceed in case a merger does not reach the established threshold but still implies a threat for competition • Calculation of turnover: by sector, by enterprise or global turnover • Recommended Practices for Merger Notification and Review Procedures
Merger Review Issues in Specific Industries or Types of Mergers (4 Agencies)
<ul style="list-style-type: none"> • It would be interesting to address in more detail the potential risks that arise from a specific type of merger and/or specific market(s) and the remedies applicable. • Industry specific enforcement trends and issues • Review of mergers in regulated sectors, and more precisely how to deal with legal constraints to structural remedies, recognizing that conclusions on this topic may vary substantially among jurisdictions • Use of merger review techniques in the course of privatization and liberalization of regulated sectors of economy
Efficiencies (3 Agencies)
<ul style="list-style-type: none"> • Efficiencies • Analysis of efficiencies (2 agencies)
Procedural/Organizational Issues (3 Agencies)
<ul style="list-style-type: none"> • Designing a good decision making process • Organizational issues (engaging parties, directing resources, procedures for protection of confidentiality) • Approaches to claims for confidentiality
Use of Electronic/Digital Evidence (3 Agencies)
<ul style="list-style-type: none"> • Obtaining and using electronic evidence • Gathering and use of electronic (digital) evidence • Dealing with digital evidence gathering
Recommended Practices Issues (3 Agencies)
<ul style="list-style-type: none"> • Recommended Practices • Recommended Practices for Merger Notification and Review Procedures • Review the recommended practices in respect of the duration of phase 1 proceedings in order to take account of the fact that many jurisdictions now know simplified procedures (and apply them in approx. 80-90% of the cases), and tend to accept remedies in non-simplified phase 1 proceedings.
Ex Post Merger Evaluation Issues (3 Agencies)
<ul style="list-style-type: none"> • Ex post evaluation of merger decisions • Ex-post evaluations of merger effects and efficiency of remedies • The methodology to conduct ex post analysis of rendered decisions
Vertical or Non-Horizontal Merger Issues (3 Agencies)
<ul style="list-style-type: none"> • Non-horizontal issues in merger control • Analysis of non-horizontal mergers • Mergers in vertically integrated markets

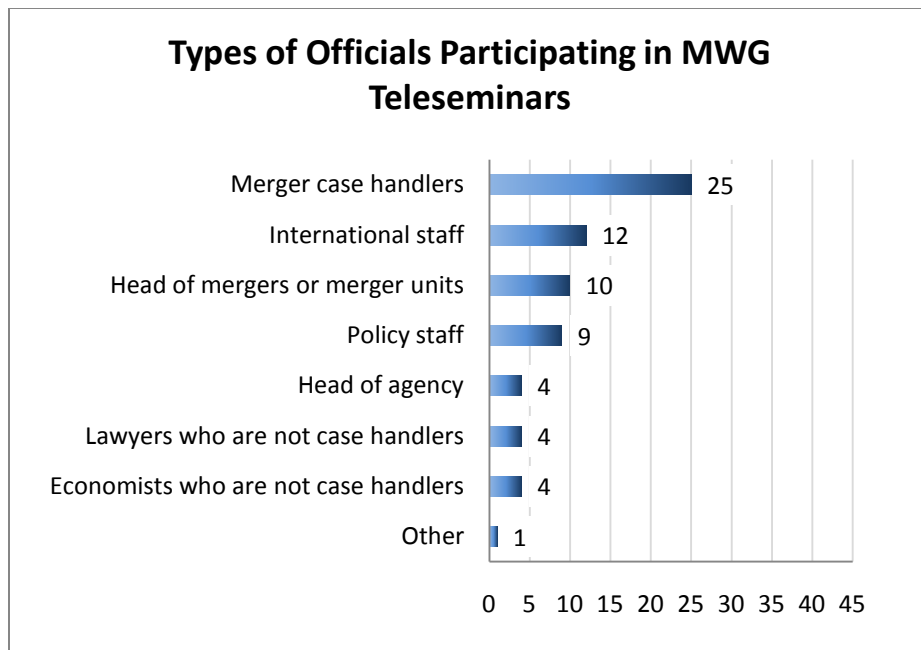
Suggestions for Future Workshop Topics
Other (5 Agencies) <ul style="list-style-type: none"> • Discussion of significant and topical cross-jurisdictional issues that affect merger administration (e.g. global financial crisis), and discussion of merger policy issues (such as trends in merger analysis) as is scheduled for 2010 conference should be interesting and a good balance together with the analytical exercises. • External review of merger decisions • Mergers and acquisitions from a business finance perspective, i.e. what are the main drivers behind M&As, how are they financed, etc. • Minority interests in competitors • All areas are new to the agency

IV. Teleseminars (Question 12)

A. Participation in MWG Teleseminars (Questions 12.a and 12.b)

The use of teleseminars is a relatively recent development in the MWG. The MWG conducted its first two teleseminars in February and April of 2010. To assess the value of teleseminars as a MWG activity, the member survey asked questions related to members’ participation in the two teleseminars that had been conducted as well as whether and how the MWG should conduct teleseminars in the future. Agency responses regarding their participation in MWG teleseminars, and the types of officials from their agency that participated in these teleseminars, are depicted on the following charts.

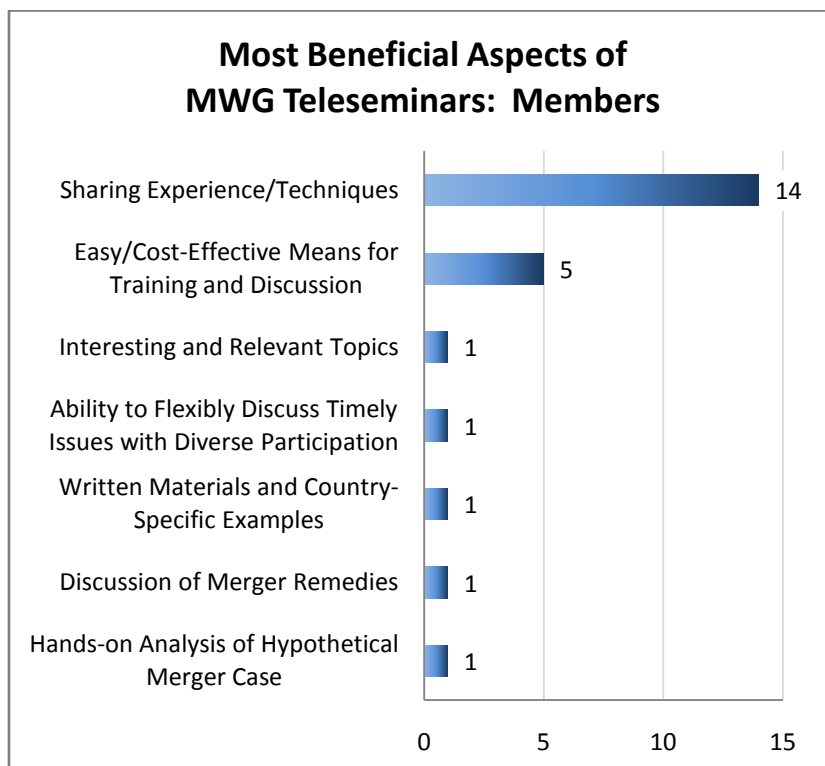




B. Benefits of MWG Teleseminars (Question 12.c)

The member survey also sought views on what agencies have found most beneficial about the teleseminars in which they had participated. Of the 28 responding agencies that had participated in one or more MWG teleseminars, 23 agencies (82.1%) responded to this question. In addition, one agency that had not participated in MWG teleseminars explained that it had not participated because the time it can spend on MWG activities is limited.

The benefits of MWG teleseminars reported by ICN members are outlined in the following chart.



1. Sharing Experiences/Techniques

Sharing experiences and techniques was identified as one of the most beneficial aspects of teleseminars by 14 agencies. Several of these agencies highlighted the benefit of sharing the experiences of individual member agencies through case studies, such as those discussed in the teleseminar on merger remedies. Country-specific examples, such as the examples of agency implementation of the Recommended Practices discussed in the teleseminar on tools for change, were also identified as beneficial by several agencies. One member noted that teleseminars allow agencies to share their own work, as well as obtain ideas from other agencies. Another agency noted that hearing from individual agencies on their experiences and trends may assist in identifying areas of future MWG work.

2. Easy/Cost-Effective Means for Training and Discussion

Five agencies noted that teleseminars are an easy and cost effective way for ICN agencies to come together to discuss topics of mutual interest. Agencies in this category noted that teleseminars: (i) provide a cost-effective method of exchanging ideas and fostering discussion on points of interest to MWG members; (ii) allow more officials to participate than can participate in workshops or other in-person events involving substantial travel expense; (iii) are very specific and therefore very helpful, providing a cost effective way of getting quality training to multiple people; (iv) are an easily accessible way for competition authorities to exchange experiences on particular topics; and (v) provide a meeting place in a cost and time effective way.

3. Other Benefits of Teleseminars

Other agencies noted that teleseminars:

- cover interesting and relevant topics, but are not a replacement for direct contact and presentations;
- offer targeted discussion on discrete and timely issues in merger law, flexibility in the types of topics that can be covered, and participation from a diversity of members;
- provide useful presentation materials;
- provided a beneficial discussion of merger remedies; and
- allow for hands-on analysis of hypothetical merger cases.

C. Suggestions for Improvement in MWG Teleseminars (Question 12.d)

The ICN member survey solicited suggestions from ICN members on ways in which MWG teleseminars could be improved. Twenty-five agencies offered suggestions for teleseminar improvements, including 23 agencies that participated in one or more past MWG teleseminars and 2 that have not yet participated.

1. Format of Teleseminars

Of the 25 agencies that responded to the question, nine agencies offered suggestions on the format of MWG teleseminars. These suggestions include:

- More time should be allowed for audience participation, questions and interactive discussion. (4 agencies)
- They have become like call conferences instead of teleseminars, so they are little bit difficult to follow.
- The MWG teleseminars seem to have the balance right. Experience of joining other groups shows the importance of (a) allowing speakers sufficient time to make their presentation, (b) sufficient time for asking questions, and (c) the speakers being clear in their presentation as to the points they are going to cover.

- Junior members of staff do not frequently attend conferences, and so it is particularly important that the teleseminars are relevant to them.
- Increased use of actual merger case analysis/assessment done by some advanced competition authorities.
- The involvement of NGAs in these calls has been beneficial.

2. Technical Aspects of Teleseminars

Nine agencies offered suggestions on the technical aspects of teleseminars. These suggestions include:

- The MWG may wish to consider supplementing its teleseminars with web-based video seminars to make use of visual tools.
- A web-based element should be included, in order to see the picture as well (like last time).
- Possibly for some participants, the use of Skype can be helpful.
- Teleseminars can be broadcasted online from Skype etc. as well as telephone.
- Enhance participation and interactivity by greater use of web-based seminars (webinars).
- During MWG teleseminars, we had trouble hearing what was said. To improve this, the number of participants of MWG teleseminars could be limited or regional MWG teleseminars could be held.
- Technical improvements to avoid interferences.
- “Listen only” mode controlled by an operator could improve the sound.
- Using local telephone numbers might enlarge the audience.

3. Preparatory/Follow-On Work for Teleseminars

Six agencies offered suggestions for steps that could be taken before or after teleseminars to improve them. These suggestions include:

- When there is no visual aid with the teleseminar, the presentation must be concise and direct. Perhaps a short briefing document could be sent in advance so that the basic story is understood. This would encourage questions and discussion.
- Slides could be sent out earlier as the sound quality in the call is sometimes not high enough.
- MWG teleseminars are well publicized and well attended. Perhaps questions/issues of interest from member agencies could be canvassed prior to the call as there is only limited time within each seminar to answer questions.
- In order to facilitate discussions after the presentation, participants should be encouraged to propose potential questions in advance.
- It would be better to circulate related materials a few days before MWG teleseminars and post scripts on the website for promoting awareness among members.
- In order to allow those who were unable to attend the teleseminar access to the respective content, the MWG could prepare a follow-up summary, for broader distribution among agencies' staffs.

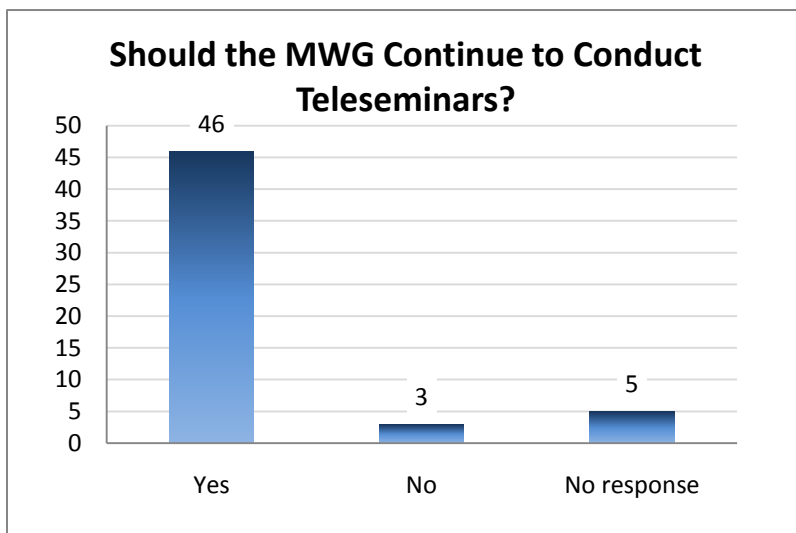
4. Other Suggestions to Improve MWG Teleseminars

Three agencies recommended that teleseminars be conducted more frequently, with one noting that teleseminars are becoming more important as budgets become tighter. Two agencies recommended that the MWG consider greater use of regional or small group teleseminars, with one noting that this would lessen the risk of joining a conference with more than 20 or 30 non-

related participants. One agency that has not yet participated in MWG teleseminars recommended that the MWG explore more convenient times for teleseminars for agencies in different parts of the world. Finally, one agency noted that language issues limit who can participate in MWG teleseminars.

D. Whether the MWG Should Continue to Conduct Teleseminars

ICN members were also asked whether the MWG should continue to conduct teleseminars. Forty-six agencies of the 49 agencies that responded to this question indicated that the MWG should continue to conduct teleseminars. Three agencies, two of which had participated in MWG teleseminars and one of which had not, responded that the MWG should not continue teleseminars. Five agencies that had not participated in MWG teleseminars did not respond to the question.



E. Suggestions for Topics to Address in Future MWG Teleseminars (Question 12.f)

The ICN member survey solicited suggestions from ICN members on topics that would be most useful to address in future MWG teleseminars. Thirty-three agencies (61.1% of survey respondents) offered one or more suggestions for topics that would be useful to address in future teleseminars. This included 21 agencies that had participated in one or more MWG teleseminars, as well as 12 agencies that have not yet participated in MWG teleseminars. Twenty agencies did not respond to this question,⁴² and one agency noted only that teleseminars should be continued if participants find them useful.

The suggestions for future teleseminar topics varied, but for convenience have been grouped into the categories outlined on the following chart. As with the survey question on potential future workshop topics, several agencies made multiple suggestions, and several of the individual suggestions could be placed in more than one of the listed categories. Again, for brevity, this report lists each suggestion in one of the above categories, even if the suggestion could arguably be listed in multiple categories.

⁴² The non-responding agencies included 13 agencies that had not yet participated in MWG teleseminars, as well as 7 agencies that had participated in one or more MWG teleseminars.

Suggestions for Future Teleseminar Topics		
Merger Analysis Issues (17 AGENCIES)⁴³		
General (7 agencies)	Economic Analysis (8 agencies)	Merger Guidelines Issues (3 agencies)
<ul style="list-style-type: none"> • Merger analysis (both general and specific to economic analysis) • Merger analysis focusing on new economies • Market definition, market power, small-sized markets • Concentration analysis • Failing firm doctrine • Application of public interest test as a merger test • Instances where a series of mergers in the same sector, which individually may not be disallowed as they cannot be regarded as causing any competition concerns under the criteria set in the national legislation, but the net results of all the mergers may create problems in the downstream market 	<ul style="list-style-type: none"> • Merger analysis (both general and specific to economic analysis) • Use of economic analysis in merger review (2 agencies) • Merger review with economic analysis techniques • Simulation of post-merger market effects • Economic analysis – topics of relevance in using economic models, seeking the right evidence, and the use of experts • Data handling • How much weight is put on economic evidence in different regimes 	<ul style="list-style-type: none"> • Drafting of merger guidelines • A summary of recent changes to particular agencies guidelines/processes e.g. UK OFT/CC joint guidelines • Given new US and UK substantive merger guidelines view of utility of market definition in unilateral effects analysis, this could be an interesting topic.
Remedies (6 Agencies)		
<ul style="list-style-type: none"> • Merger remedies • Merger remedy issues • Investigation of remedies • New developments in merger remedies • Finding the best ways for applying remedies • Effective remedy design and effective evaluation of remedies 		
Coordination/Cooperation Among Agencies in Merger Review (5 Agencies)		
<ul style="list-style-type: none"> • Cooperation between different jurisdictions and ways of exchanging information between competition authorities • Effective outreach and coordination in multi-jurisdictional mergers • Practical aspects of multi-jurisdictional coordination in merger review, perhaps with an emphasis on remedies • Interagency coordination and information sharing in merger review • Confidentiality waivers 		

⁴³ One agency offered multiple suggestions for merger analysis issues that have been listed in more than one of the identified subcategories.

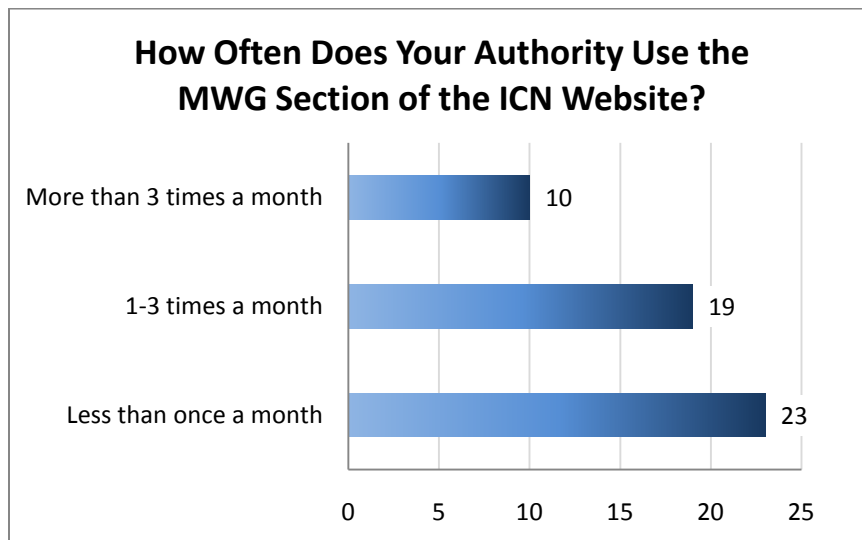
Suggestions for Future Teleseminar Topics
Use of Electronic/Digital Evidence (5 Agencies)
<ul style="list-style-type: none"> • Use of digital evidence in merger investigations • Dealing with digital evidence gathering • Dealing efficiently and effectively with electronic productions • Management of electronic data and documents in a merger investigation • Handling large volumes of data (particularly when large amount of e-mails, etc.) Other topics may emerge from the breakout session and case study at the Rome workshop.
Investigative Techniques (4 Agencies)
<ul style="list-style-type: none"> • Investigative techniques (2 agencies) • Investigative techniques focusing on new economies • How to question third parties
Efficiencies (4 Agencies)
<ul style="list-style-type: none"> • Efficiencies analysis • Efficiency defense in mergers • Efficiencies (measurement and under what circumstances are they an acceptable defence) • Analysis and balancing of efficiencies versus anti-competitive effects
Case Studies (4 Agencies)
<ul style="list-style-type: none"> • Case studies which relate to specific problems of common concern • Market definition in particular cases (actual and/or hypothetical) • Coordinated effects cases in practice • Important issues would be better to do at workshops. In teleseminars, maybe presentations about interesting/complex cases.
Merger Issues in Specific Industries/Sectors (4 Agencies)
<ul style="list-style-type: none"> • Cases in specific sectors • Perhaps market specific mergers where a few speakers share the main lessons learned from an analysis of that sector • Review of mergers in regulated sectors, and more precisely how to deal with legal constraints to structural remedies, recognizing that conclusions on this topic may vary substantially among jurisdictions • Merger review in particular industries of current interest/M&A activity, e.g. banking and finance
Procedural/Organizational Issues (3 Agencies)
<ul style="list-style-type: none"> • Recent changes in merger procedures by any MWG member • Institutional issues • Organizational issues (engaging parties, directing resources, procedures for protection of confidentiality)

Suggestions for Future Teleseminar Topics	
Other (9 Agencies)	
<ul style="list-style-type: none"> • It would be most useful to address discrete practical matters that can be discussed in a comprehensive manner in the allotted time • Recommended Practices • How to deal with merger notification effectively and efficiently • Third party role in merger investigations. Review process in merger control. • Methodology to conduct ex post analysis of rendered decisions • Vertical mergers and their impact on competition • External review of merger decisions • Minority interests in competitors • For example, the topics discussed during the MWG calls of 22 June, 15 July, 29 July, and 7 September 2010 	

V. Web-Based Tools (Question 13)

A. Use of MWG Section of the ICN Website (Question 13.a)

The survey requested input from ICN members on the frequency of their use of the MWG section of the ICN website. Responses to this question are depicted in the following chart.



B. Suggestions for Improvement of MWG Section of ICN Website (Question 13.b)

The ICN member survey solicited suggestions from ICN members on ways in which the MWG section of the ICN website could be improved. Thirty agencies, or 55.6% of survey respondents, responded to this question, while 24 agencies did not respond. Of the 30 agencies that responded to the question, ten responded that they had no suggestions for improvement, or that the current MWG section of the ICN website is adequate. Nineteen agencies offered one or more suggestions for improving the MWG section of the ICN website. One agency noted internal institutional factors that have impacted its use of the website.

1. Organization of MWG Materials

Of the 19 agencies offering suggestions for improvement, 6 offered suggestions on the organization of MWG materials on the ICN website. These suggestions include:

- Providing a better overview of content.
- Products on the website are sometimes hard to find. While this has been improved considerably with the new website, the website still lacks an overview that puts all the materials in perspective (how products are related, how current the products are, and which products are currently under review or being updated).
- While there have been improvements to the accessibility of the site, as the list of MWG work product increases, these documents could perhaps be organized into sub-categories for easier searching, although the search function currently works well.
- Documents in the document library could be made more easily accessible via the MWG-site, and maybe divided into relevant groups based on topic.
- The Document Library section may be an area for improvement. It is sometimes difficult to find a document because the order in which documents are listed is unclear. If there were different sections for handbooks, presentations etc., materials would be easier to find.
- It can be difficult to find work product that is not directly highlighted and linked on the Merger page. It would be helpful if the material under “Click here for a complete list of Merger work products” could be arranged in alphabetical or other more searchable order.

2. Website Content

Eight agencies offered suggestions for website content or materials, with some agencies providing multiple suggestions. These suggestions include:

- Posting materials used at the past MWG workshops (2 agencies)
- Posting all materials used at past ICN annual conferences
- Sharing audio or video of webinars and teleseminars on the ICN website
- It may be helpful to prepare a short note that could be distributed to case handlers and policy makers identifying the work product so far. This would help those involved in ICN work to raise awareness within their organization.
- Providing newsletters and updates via e-mail
- Providing a newsletter on a regular monthly basis
- Include the most interesting merger cases with the analysis used and comments on the economic theories or legal instruments applied.
- It would be interesting to have access to agencies’ opinions on merger simulation software, as well as to respective demo versions, to the extent that it is possible.

3. Website Functionality

Six agencies offered one or more suggestions for additional or improved functionality for the MWG page of the ICN website. These suggestions include:

- It could be useful to improve the document search possibilities on the webpage (e.g. keyword search, advanced full-text search).
- Ensure that links to merger templates are working and send a notification to MWG members when the website has been updated or new documents are added.
- Use of news alerts

- The MWG could implement a merger-specific blog (perhaps as part of the existing ICN blog), to help identify the latest developments in members' merger review regimes. This could include, for example, the outcomes of key investigations and changes in notification rules. The blog could be comment-enabled to facilitate member discussion of these issues.
- Introduction of an intranet for Q&A's and chatting
- The MWG may wish to explore the use of Wiki technology to allow for continuous web-based sharing of ideas.

C. Suggestions for Exploration of Additional Web-Based Tools (Question 13.c.)

The ICN member survey solicited suggestions from ICN members on possible additional Web-based tools that the MWG might explore to better serve members needs. Twenty-four agencies, or 44.4% of survey respondents, responded to this question, while 30 agencies did not respond.

Of the 24 agencies that responded to the question, two responded that they had no suggestions for improvement. One agency noted that while it did not have experience using such tools, it is not averse to experimenting with them. One agency responded that it did not know if there was a demand for such tools, but that the use of the mailing list to post ad hoc questions has worked well. Twenty agencies offered one or more suggestions for additional web-based tools that the MWG might consider to better serve members.

1. Webinars and Web-Based Training

Of the 20 agencies providing suggestions, 14 agencies suggested that the MWG explore webinars or other web-based training tools to better serve members. These suggestions include:

- Web-based training tools (6 agencies)
- Webinars and the use of web facilities in conference calls
- Webinars could be exploited where possible. It is also very useful that presentation materials (slides) are available on the ICN website afterwards.
- Webseminars and the use of web facilities in conference calls (similar to what the ICN UCWG already does)
- Webinars and the ability to pose on-line questions during them
- Live streaming seminars
- Webinars could be useful, but possibly the current way to organize teleseminars is easier to implement and less costly.
- Webinars sound interesting. The MWG perhaps should consider providing web based training which newly appointed staff should complete.
- The ICN Curriculum Project sounds like a promising online tool to better promote MWG work product.

2. Online Discussion Forum and Interactive Web-Based Tools

Nine agencies recommended that the MWG explore the possibility of an online discussion forum or other interactive web-based tools. These suggestions include:

- Online discussion forum (6 agencies)
- Intranet/discussion forum
- Perhaps an interactive section to facilitate questions and answers
- The MWG may wish to explore the use of Wiki technology to allow for continuous web-based sharing of ideas.

3. Other Suggestions

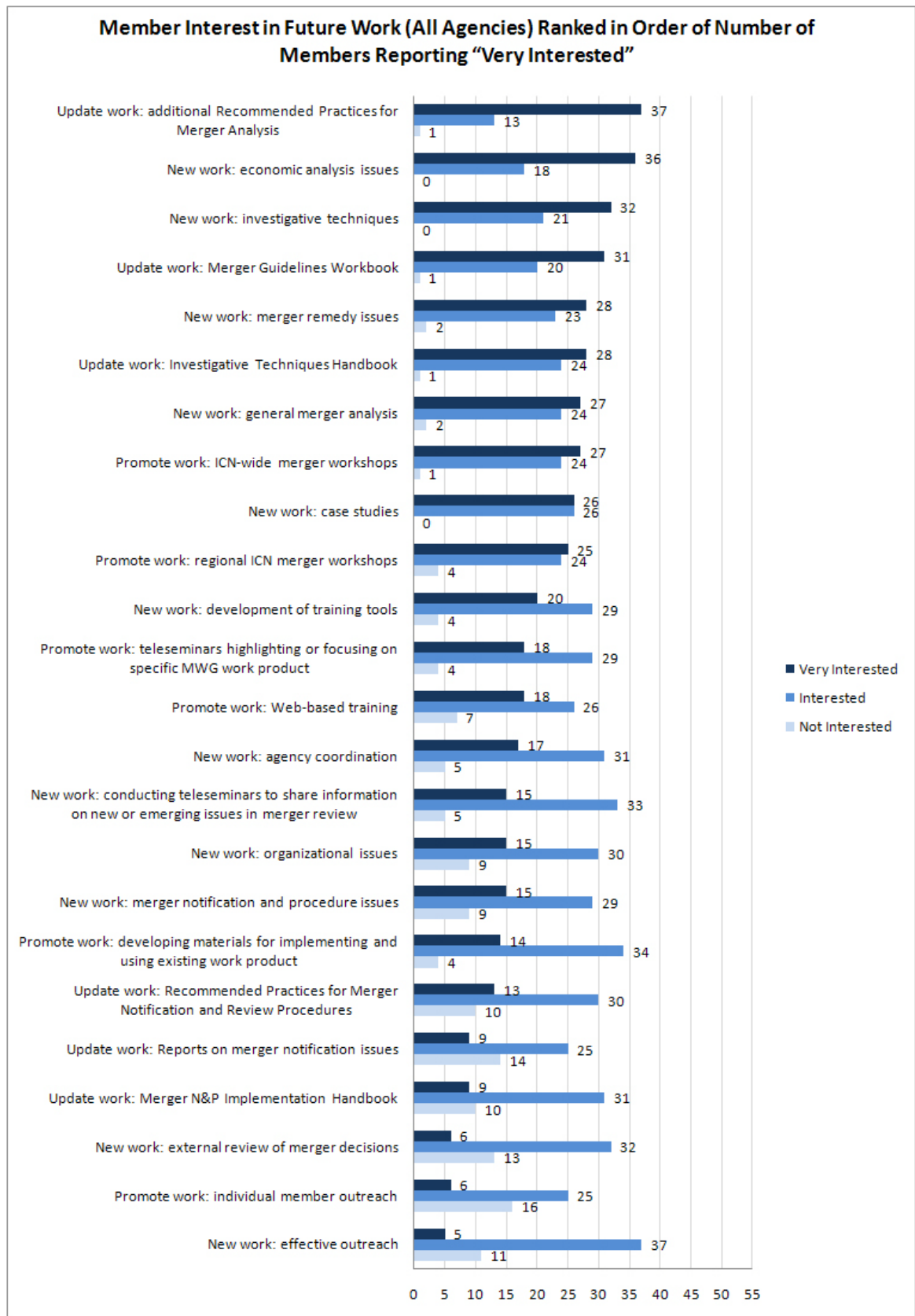
Other suggestions offered by members include:

- Add a Frequently Asked Questions (FAQs) page with links to MWG work product;
- Provide access to agencies' opinions on merger simulation software, as well as respective demo versions, to the extent that it is possible; and
- Provide a listing of contact points at each competition authority to discuss questions such as (a) whether competition authorities have ever dealt with mergers in particular sectors, (b) what type of remedies proved to be suitable in particular sectors, (c) definition of relevant markets, and so on.

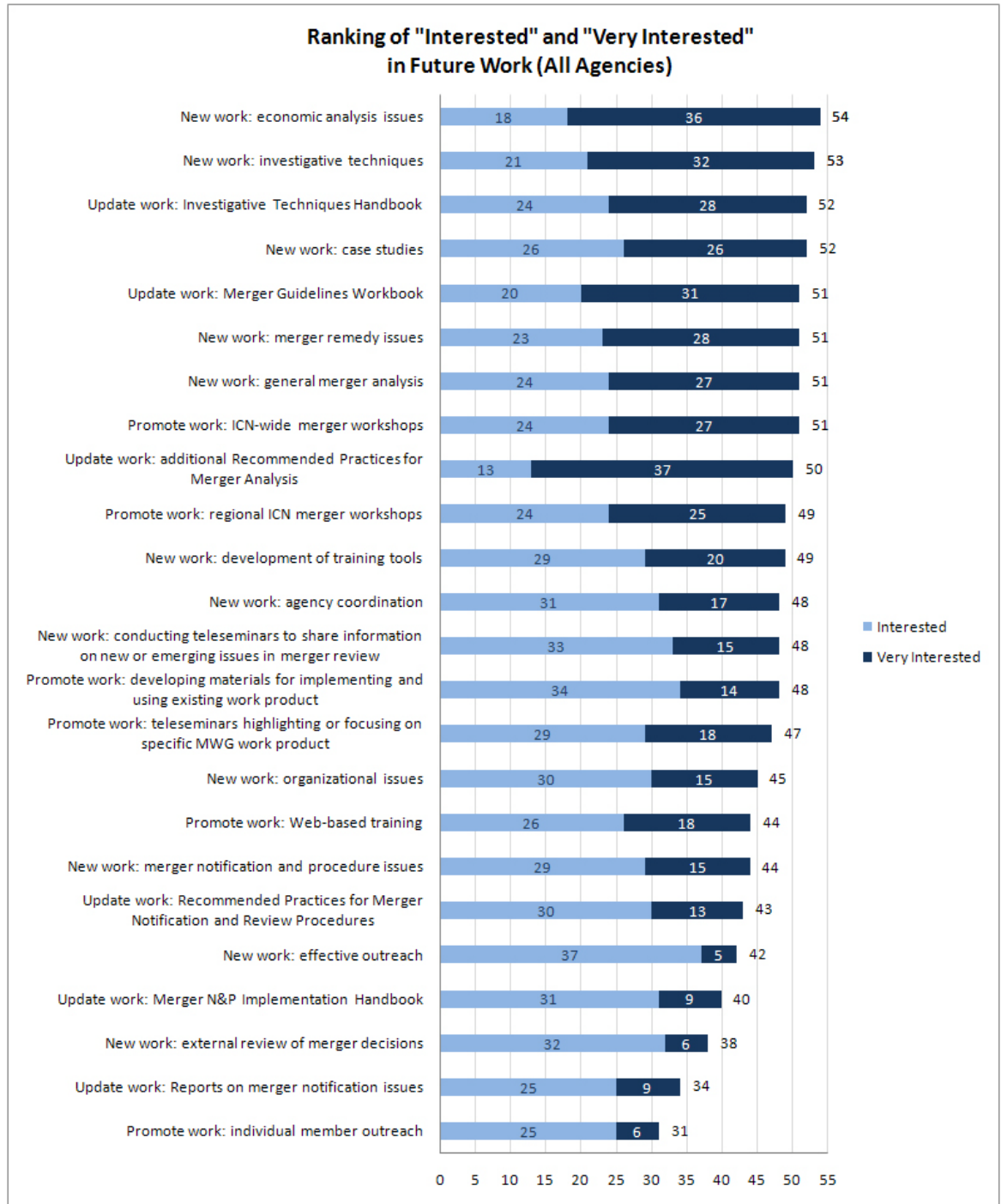
VI. Member Needs and Future Direction of MWG Work

A. Member Interest in Future MWG Work (Question 14)

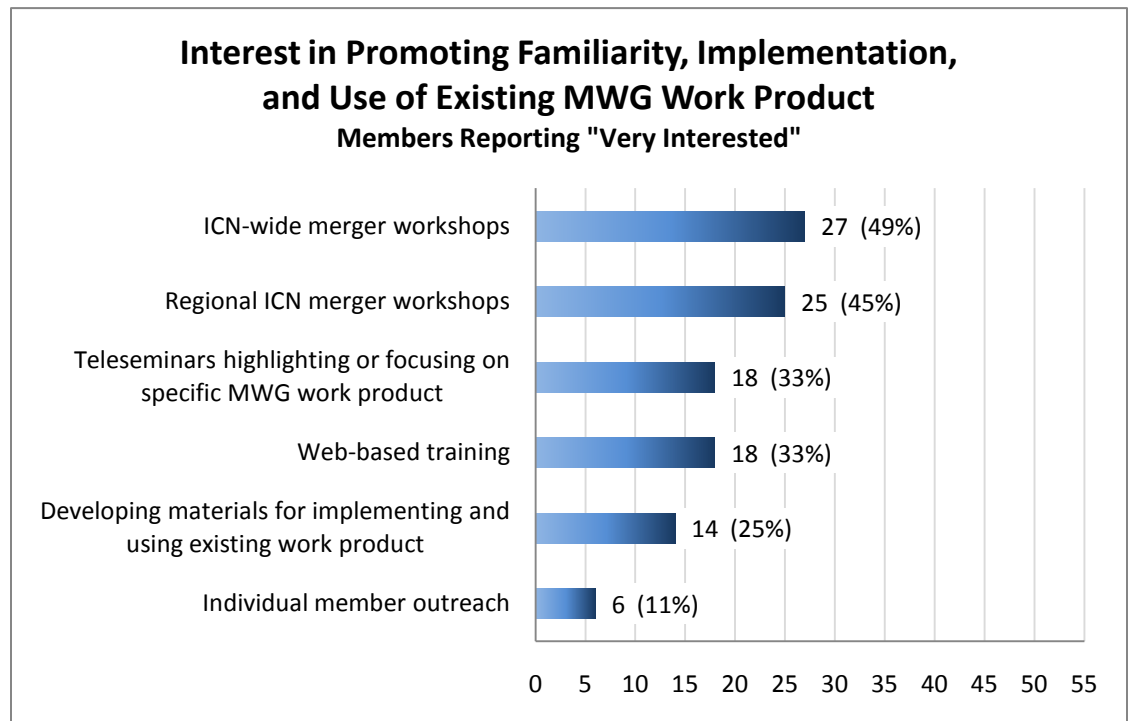
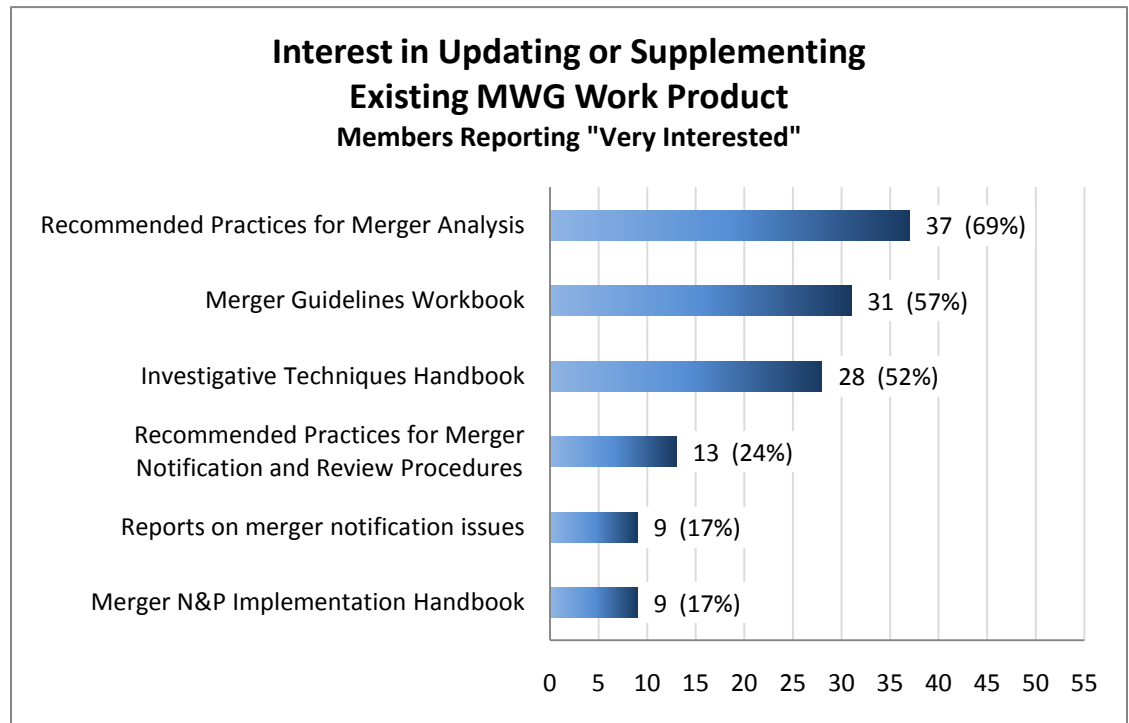
The ICN member survey solicited respondents' interest in further MWG in three areas: (i) updating or supplementing existing MWG work product; (ii) undertaking additional efforts to promote familiarity, implementation, and use of existing work product; and (iii) new work product. The overall results for this portion of the questionnaire, listed in descending order of the number of agencies reporting that they are "very interested" in various categories of future work, are outlined in the following chart.

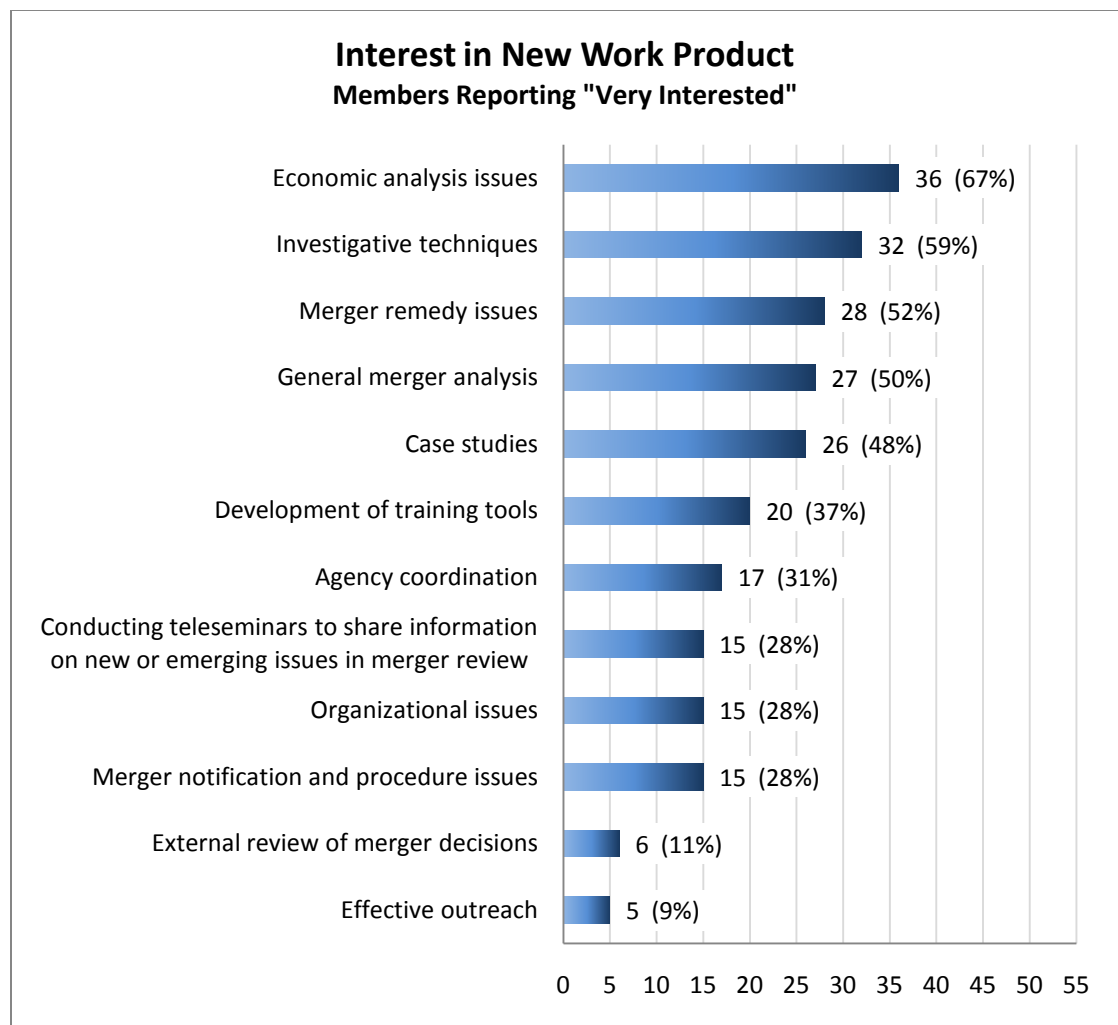


The following chart depicts the responding agencies that reported that they are either “interested” or “very interested” in the identified categories of potential future work.



The following charts focus on the number and percentage of responding agencies that reported that they are “very interested” in identified areas of potential future work.





The responses to Question 14 were cross-checked against the responses to the questions on merger program size, age, and number of merger notifications and in-depth or second phase reviews to explore whether there are any differences in the ICN members' interest in future work based on these factors. The results of this exercise are presented in [Annex 4](#) of this Appendix.

B. Type of New Work Suggested by Members "Very Interested" in Identified Topics (Question 14.c)

The survey posed a series of follow-up questions for agencies reporting that they are "very interested" in new MWG work in several of the listed categories.⁴⁴ Members that reported being "very interested" in particular topics were asked an open-ended question regarding what topics would be most useful, and a multiple choice question about what type of work (*e.g.* Recommended Practices, handbooks or workbooks, reports, teleseminars, workshop discussions, or other) would be most useful on the identified topic. The results for these follow up questions are outlined below, in order of the number of members who indicated that they are "very interested" in such future work.

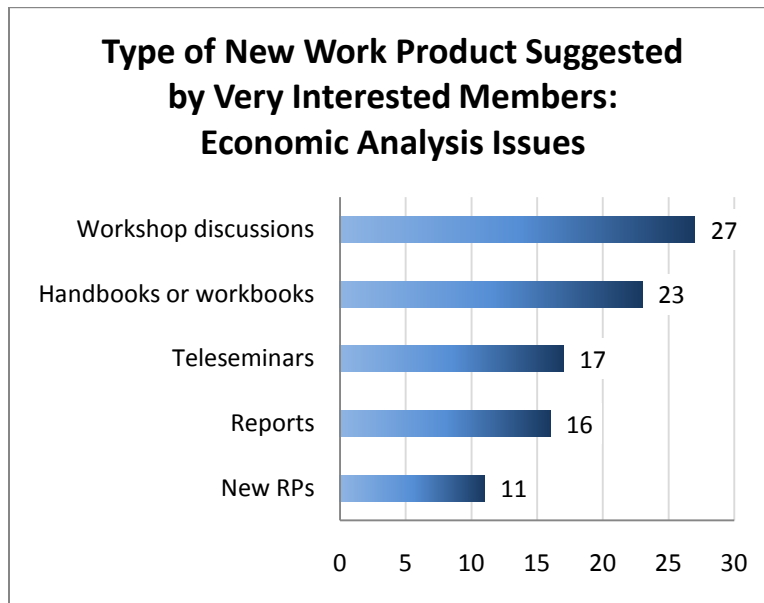
⁴⁴ Four of the listed categories for potential new work did not include follow-up questions, and therefore are not included in this section. These categories include: case studies (36 members reporting "very interested"), development of training tools (20 members reporting "very interested"), conducting teleseminars to share information on new or emerging issues in merger review (15 members reporting "very interested"), and effective outreach (5 members reporting "very interested").

1. Merger Analysis: Economic Issues

Thirty-six agencies (67% of all survey respondents) reported that they are very interested in new MWG work on economic analysis in merger analysis.⁴⁵ These agencies were asked what topics would be most useful to address within this category. Twenty-seven of the members responding “very interested,” and one agency responding “interested,” answered this question. The types of economic analysis topics in which these members indicated new work would be most useful include:

- Latest developments in economic analysis of mergers (15 agencies)
- Use and analysis of economic and econometric data in assessing mergers (14 agencies)⁴⁶
- All issues (2 agencies)
- Relevant market definition
- Use of critical loss in market definition
- Conducting merger analysis during the initial phase
- The ICN may help in preparing caseworkers for economic arguments and working with economic professional on a wide range of issues
- It would be useful to conduct further discussions in teleseminars and workshops of common issues arising in the economic analysis of mergers. Based on the discussions, it may be useful to consider whether the Investigative Techniques Handbook could usefully be supplemented or updated in this area.

Members reporting a high level of interest in new work on economic analysis issues were also asked what type or types of work in this area would be most useful. The results for this question are depicted in the following chart.



⁴⁵ In addition, 18 agencies reported that they were “Interested” in new work in this area, and no agencies reported that they were not interested in new work in this area. (One agency did not respond to the question.)

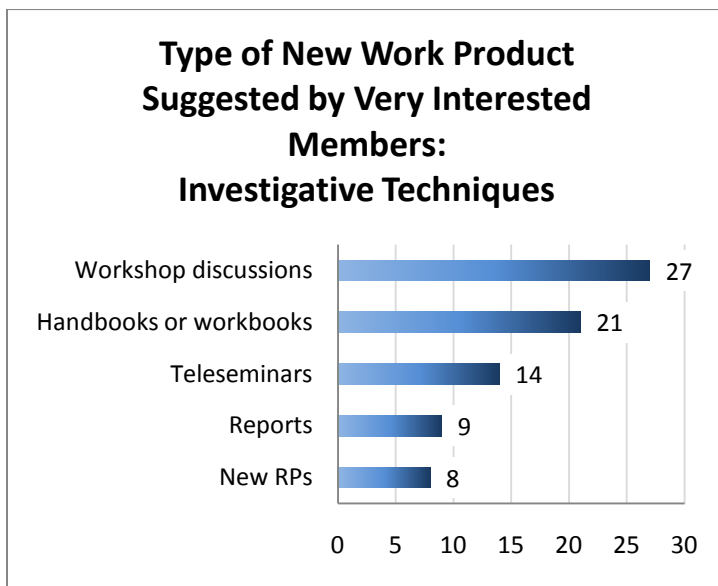
⁴⁶ One agency added examples of potential topics such as diversion ratio, upward pricing pressure, critical loss analysis, and merger simulations. Another agency noted that work in this area could include identifying and using “natural experiments” as evidence of likely competitive effects.

2. Investigative Techniques

Thirty-two agencies (59% of all survey respondents) reported that they are very interested in new MWG work on investigative techniques in merger review.⁴⁷ Twenty-three of these agencies also responded to the question regarding what topics would be most useful to address within this category. The types of investigative techniques topics in which these members indicated new work would be most useful include:

- Interviewing techniques (11 agencies)
- Obtaining and using electronic evidence (10 agencies)
- Investigating mergers efficiently within governing time constraints (9 agencies)
- Obtaining information without imposing undue burden (6 agencies)
- Interactions with sector regulators with a concurrent merger review role (4 agencies)⁴⁸
- Use of compulsory requests (2 agencies)
- Assessing compliance with notification rules and compulsory requests
- Assessing compliance with compulsory requests
- It would be useful to update the Investigative Techniques Handbook to include a discussion of techniques for handling electronic evidence and techniques for assessing potential merger remedies. Teleseminars and workshop discussions on investigative techniques might also be useful.

Members reporting a high level of interest in new work on investigative techniques were also asked what type or types of work in this area would be most useful. The results for this question are depicted in the following chart.



3. Merger Remedy Issues

Twenty-eight agencies (52% of all survey respondents) reported that they are very interested in new MWG work on merger remedy issues.⁴⁹ Twenty-two of these agencies also responded to the

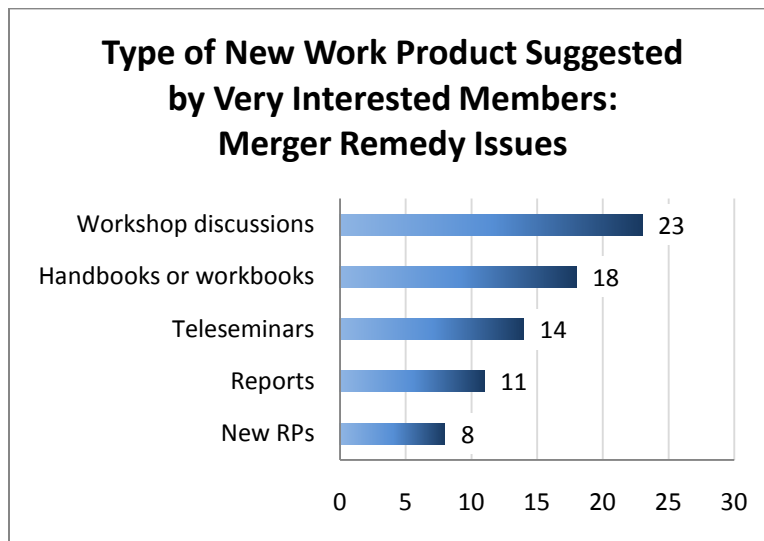
⁴⁷ In addition, 21 agencies reported that they are “Interested” in new work in this area, and no agencies reported that they are not interested in new work in this category. (One agency did not respond to this question.)

⁴⁸ One agency noted that future work on legal constraints to competition remedies in regulated sectors would be useful.

question regarding what topics would be most useful to address within this category. The types of merger remedy topics in which these members indicated new work would be most useful include:

- Assessing potential remedies (9 agencies)⁵⁰
- Monitoring and/or ensuring compliance with remedies (9 agencies)
- Use of trustees (6 agencies)⁵¹
- Evaluating potential remedies, particularly structural vs. behavioral issues
- Assessing remedies intended to provide fair access to essential supplies and facilities and prevent possible abuse of dominance
- It would be useful to update the Investigative Techniques Handbook to include some treatment of techniques for assessing potential merger remedies in particular contexts. It would also be useful to engage in further experience-sharing regarding the design of effective and appropriate remedies, and the issues involved in considering merger remedies when multiple jurisdictions are investigating a merger.
- Coordination across jurisdictions in crafting remedies
- How to ensure the effectiveness of a remedy and take into account proportionality. (For remedies to be effective, it may be necessary to include other businesses where competition concerns are not identified. Is such a remedy disproportionate to the competition concerns?)
- Ex post evaluation of remedies
- Updated RPs for merger remedies would be highly useful.
- All issues

Members reporting a high level of interest in new work on merger remedy issues were also asked what type or types of work in this area would be most useful. The results for this question are depicted in the following chart.



⁴⁹ In addition, 23 agencies reported that they are “Interested” in new work in this area, while 2 agencies reported that they are “Not Interested” in new work in this category. (One agency did not respond to this question.)

⁵⁰ One agency specified market testing of remedies as an area that would be most useful, while another indicated that a focus on the choice and design of remedies would be useful.

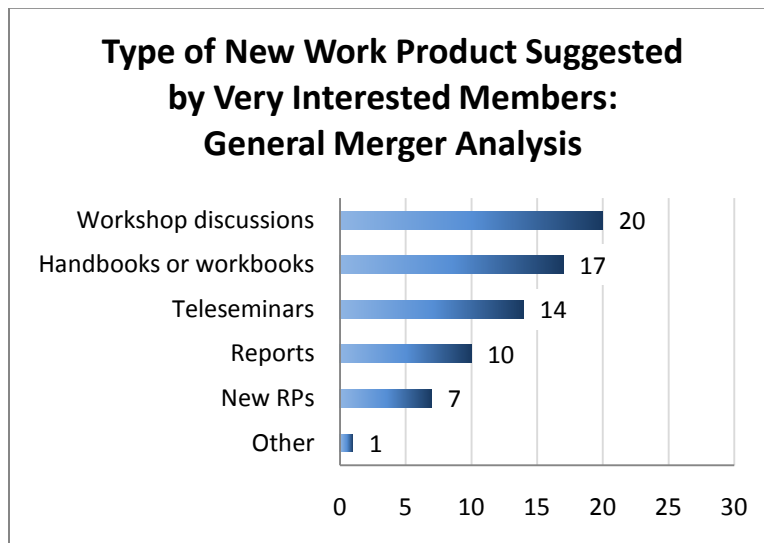
⁵¹ One agency noted that new work on how to make the best use of a trustee would be useful.

4. Merger Analysis: General

Twenty-seven agencies (50% of all survey respondents) reported that they are very interested in new MWG work on general merger analysis issues.⁵² Twenty of these agencies also responded to the question regarding what topics would be most useful to address within this category. The types of general merger analysis topics in which these members indicated new work would be most useful include:

- Merger analysis issues arising in particular sectors or particular types of mergers (9 agencies)⁵³
- Conducting in-depth analysis of particular issues in potentially problematic mergers (7 agencies)⁵⁴
- Conducting merger analysis during the initial phase (2 agencies)⁵⁵
- All issues (2 agencies)
- Discussing review of mergers that involve private equity funds, trusts and similar entities
- It would be useful to explore the potential for Recommended Practices on the analysis of efficiencies in merger review. The Recommended Practices for Merger Analysis will not be complete without some treatment of this issue. It would also be useful to conduct work to assess the implementation of the Recommended Practices for Merger Analysis. Teleseminars and workshop discussions on common merger analysis issues may also be useful.
- New RPs on non horizontal mergers would be highly useful
- How to conduct a review of merger decisions (to show that a decision the authority made had a positive effect)

Members reporting a high level of interest in new work on general merger analysis issues were also asked what type or types of work in this area would be most useful. The results for this question are depicted in the following chart. (One agency responding “Other” suggested implementation work on the *Recommended Practices for Merger Analysis*.)



⁵² In addition, 24 agencies reported that they are “Interested” in new work in this area, while 2 agencies reported that they are “Not Interested” in new work in this area. (One agency did not respond to this question.)

⁵³ One agency specified that work on merger issues in particular sectors would be useful.

⁵⁴ One agency noted that a focus on theories of harm would be useful.

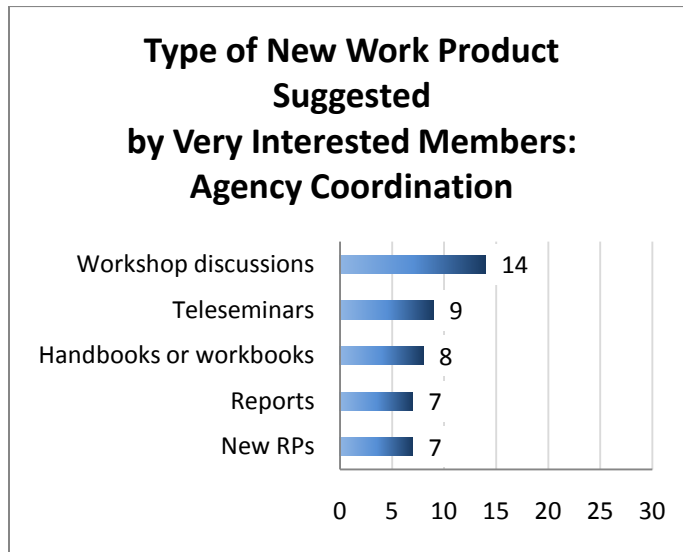
⁵⁵ One agency indicated that work on economic analysis during the initial phase would be useful.

5. Agency Coordination

Seventeen agencies (31% of all survey respondents) reported that they are very interested in new MWG work on agency coordination in multi-jurisdictional mergers.⁵⁶ Twelve of these agencies, as well as one agency responding “interested,” responded to the question regarding what topics would be most useful to address within this category. The types of agency coordination topics in which these members indicated new work would be most useful include:

- Procedural coordination (9 agencies)⁵⁷
- Information sharing while protecting confidentiality concerns (8 agencies)
- Coordination to avoid inconsistent remedies (8 agencies)⁵⁸
- Coordination on substantive issues (6 agencies)
- One agency noted that agency coordination is likely to an important challenge in the years to come, and may be a useful topic to address in the Investigative Techniques Handbook.

Members reporting a high level of interest in new work on agency coordination issues were also asked what type or types of work in this area would be most useful. The results for this question are depicted in the following chart.



⁵⁶ In addition, 31 agencies reported that they are “Interested” in new work in this area, while five agencies reported that they are “Not Interested” in new work in this area. (One agency did not respond to this question.)

⁵⁷ One agency noted that work on how to induce parties to notify in parallel would be useful.

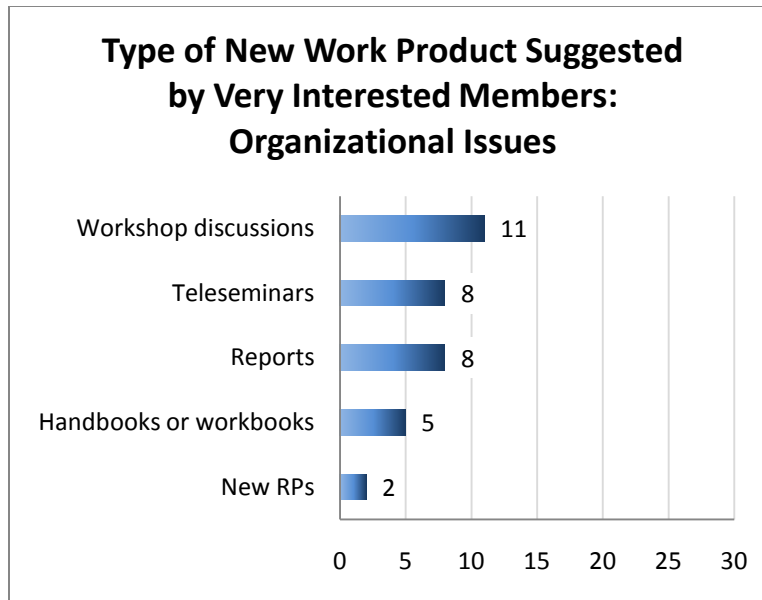
⁵⁸ One agency noted that work on ways to avoid inconsistent or redundant remedies would be useful.

6. Organizational Issues

Fifteen agencies (28% of all survey respondents) reported that they are very interested in new MWG work on merger-related organizational issues.⁵⁹ Thirteen of these agencies also responded to the question regarding what topics would be most useful to address within this category. The types of organizational issues in which these members indicated new work would be most useful include:

- Mechanisms that agencies have found useful in conducting more efficient or effective merger review (7 agencies)⁶⁰
- Promoting a transparent process (6 agencies)⁶¹
- Directing a merger review organization and its resources (3 agencies)
- Engaging the parties and addressing their arguments (3 agencies)⁶²
- Establishing procedures to protect the confidentiality of submissions (2 agencies)⁶³
- Separation (or not) of investigative and decision making powers
- Independence of authority
- How to structure the organization to be most effective in merger review and enforcement

Members reporting a high level of interest in new work on organizational issues were also asked what type or types of work in this area would be most useful. The results for this question are depicted in the following chart.



⁵⁹ In addition, 30 agencies reported that they are “Interested” in new work in this area, while nine agencies reported that they are “Not Interested” in new work in this area.

⁶⁰ One agency in this category noted that work on the effective allocation of resources would be useful.

⁶¹ One agency in this category noted that work on promoting transparency in agency decision making would be useful, while another agency noted that work on promoting a transparent process within the constraints of limited time and resources would be useful.

⁶² One agency in this category noted that work on how engaging the parties and addressing their arguments promotes procedural fairness and due process would be useful.

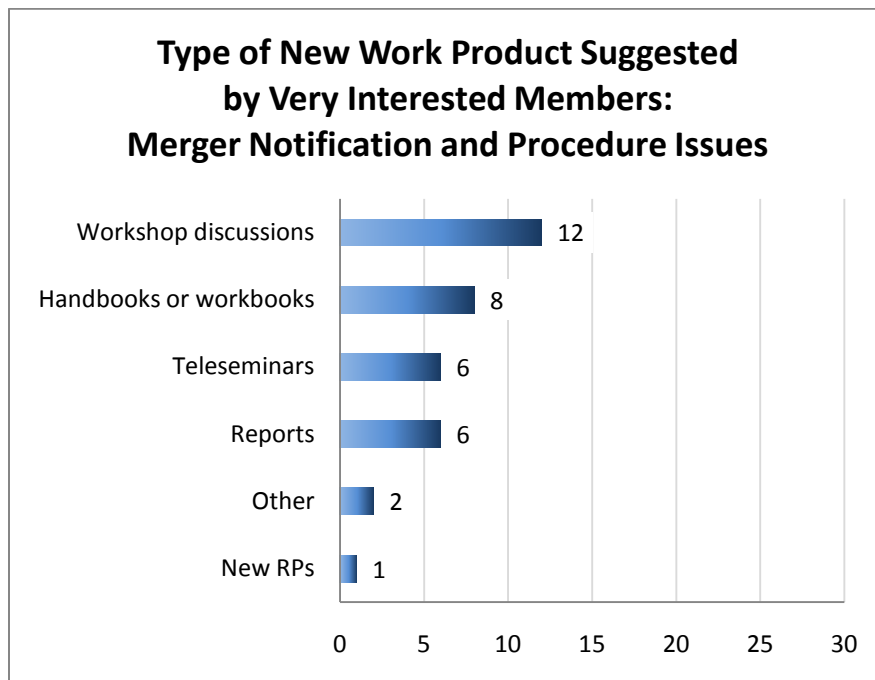
⁶³ One agency noted that work toward a common approach to treatment of information when confidential (e.g. use of ranges, assumptions that information above a certain age is no longer confidential, consideration of claims that disclosure might harm employment relations, etc.) would be useful.

7. Merger Notification and Procedure Issues

Fifteen agencies (28% of all survey respondents) reported that they are very interested in new MWG work on merger notification and procedure issues.⁶⁴ Ten of these agencies also responded to the question regarding what topics would be most useful to address within this category. The types of merger notification and procedures topics in which these members indicated new work would be most useful include:

- Defining joint ventures and calculating turnover for purposes of notification rules (4 agencies)
- Criteria used in merger notification such as calculation of turnover and other measurement tools (3 agencies)
- Initial notification requirements (3 agencies)
- Timing and timetables for merger review (2 agencies)
- Procedures for third party participation in merger review (2 agencies)
- Use of exemptions from merger notification
- Further work assessing implementation, and barriers to implementation, of the Recommended Practices would be useful.

Members reporting a high level of interest in new work on merger notification and procedures issues were also asked what type or types of work in this area would be most useful. The results for this question are depicted in the following chart. (Two agencies responding “Other” suggested, respectively, (i) implementation work on the *Recommended Practices for Merger Notification and Review Procedures*, and (ii) possibly revisiting and updating the *Recommended Practices* as necessary.)



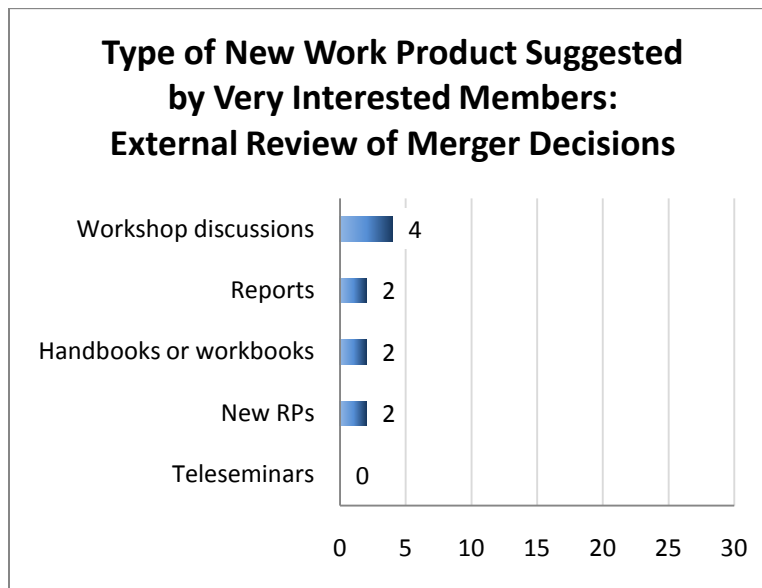
⁶⁴ In addition, 29 agencies reported that they are “Interested” in new work in this area, while nine agencies reported that they are “Not Interested” in new work in this area. (One agency did not respond to this question.)

8. External Review of Merger Decisions

Six agencies (11% of all survey respondents) reported that they are very interested in new MWG work on external review of merger decisions.⁶⁵ Three of these agencies also responded to the question regarding what topics would be most useful to address within this category. The types of external review topics in which these members indicated new work would be most useful include:

- Issues arising on judicial review and appeals (2 agencies)
- Proper design of the review process, timing of the review process, and bodies engaged in the review process (e.g. other administrative authorities, courts)

Members reporting a high level of interest in new work on external review of agency decisions were also asked what type or types of work in this area would be most useful. The results for this question are depicted in the following chart.



C. Most Useful MWG Work (Question 16)

In addition to gauging interest in identified categories of work, the survey asked ICN members to identify what future MWG work would be most useful to them. Thirty-seven agencies, or 68.5% of survey respondents, responded to this question, while 17 agencies did not respond. Of the 37 agencies that responded to the question, 35 identified MWG work that would be most useful, one referenced its answers to Questions 14 and 15 on future work, and one responded that it would prefer to provide this information after enhancing its familiarity and use of the current work product.

The future work identified by ICN members as most useful to their authority varied, but for convenience have been grouped into the categories outlined in the following chart. As with some of the prior survey questions, some agencies made multiple suggestions, and several responses could be placed in more than one category. Again, for brevity, this report lists each suggestion in one of the above categories, even if the suggestion could arguably be listed in multiple categories.

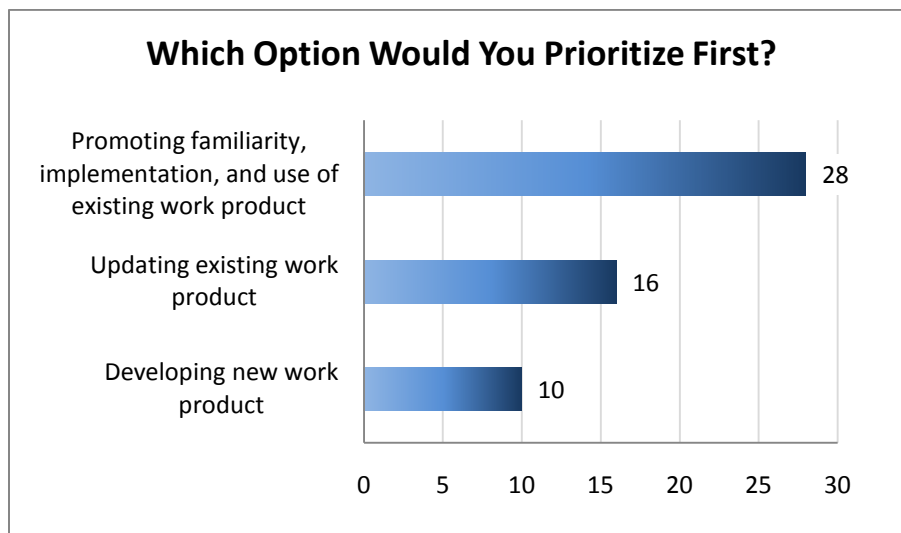
⁶⁵ In addition, 32 agencies reported that they are “Interested” in new work in this area, while 13 agencies reported that they are “Not Interested” in new work in this area. (Three agencies did not respond to this question.)

Future MWG Work That Would Be Most Useful to Your Authority	
Merger Analysis Issues (16 Agencies)	
General (6 agencies)	Economic Analysis (10 agencies)
<ul style="list-style-type: none"> • Merger analysis • Analyzing mergers; analyzing the relevant market and how to calculate the market share in the relevant market • Latest developments in merger analysis • Reports and guidelines regarding merger issues as to substance • Merger analysis: conducting in-depth analysis of particular issues in potentially problematic mergers • Coordinated effects 	<ul style="list-style-type: none"> • Economic analysis issues in merger review (3 agencies) • Data handling • Use of econometric tools in the analysis of mergers • Simulation of post-merger market effects • Practical guidance on topical issues (e.g. economic evidence) in the form of a handbook or workbooks and workshops • The development and drawing up of guidelines on the use of economic and econometric analysis when assessing the impact of a merger • RP or work book on how to use economics in merger review • Develop/revise RPs to address use of economics and econometrics in merger analysis
Remedy Issues (4 Agencies)	
<ul style="list-style-type: none"> • Merger remedy issues (2 agencies) • Analysing remedies • Implementation of remedies 	
Investigative Techniques (4 Agencies)	
<ul style="list-style-type: none"> • Investigative techniques • Latest developments in investigative techniques • Interviewing techniques, obtaining and using electronic evidence • Exchange of experiences with other competition authorities on drafting of questionnaires 	
Training (4 Agencies)	
<ul style="list-style-type: none"> • Training curriculums • Work on use of existing MWG products • Providing training materials and other opportunities (such as workshops and teleseminars) building on existing Recommended Practices and other MWG work product • The hypothetical materials have been useful from an internal staff training perspective. Development of other training materials for internal member use would be valuable. 	
Workshops/Teleseminars (3 Agencies)	
<ul style="list-style-type: none"> • Workshops • Workshops and teleseminars • The workshops are a valuable opportunity to liaise with other member agencies on topical issues, to assist in the development of new merger review regimes/agencies, and provide a valuable opportunity for staff development. 	
Coordination/Cooperation Among Agencies in Merger Review (3 Agencies)	
<ul style="list-style-type: none"> • Agency coordination and information sharing in multi-jurisdictional mergers • Enhancing of cooperation between agencies • Recommended practices in relation to international cooperation 	

Future MWG Work That Would Be Most Useful to Your Authority
Efficiencies (2 Agencies)
<ul style="list-style-type: none"> • Efficiencies • Efficiency defense
Work on Sector Specific or Types of Mergers (2 Agencies)
<ul style="list-style-type: none"> • Merger analysis issues arising in particular sectors or types of mergers • Industry-specific merger trends and issues
Non-Horizontal Mergers (2 Agencies)
<ul style="list-style-type: none"> • Non-horizontal mergers analysis • Non-horizontal (vertical and diagonal) mergers
Case Studies (2 Agencies)
<ul style="list-style-type: none"> • Case studies • Current information on new and interesting cases that would be useful in our legal practice
Other (4 Agencies)
<ul style="list-style-type: none"> • Reports • Developing new work product • Subject 6 – organizational issues • Updating filing fees and notification thresholds comparison

D. Prioritization of MWG Work (Question 15)

The ICN member survey asked respondents which option they would prioritize first: (i) developing new work product; (ii) promoting familiarity, implementation, and use of existing work product, or (iii) updating existing work product. Responses to this question are depicted in the following chart.

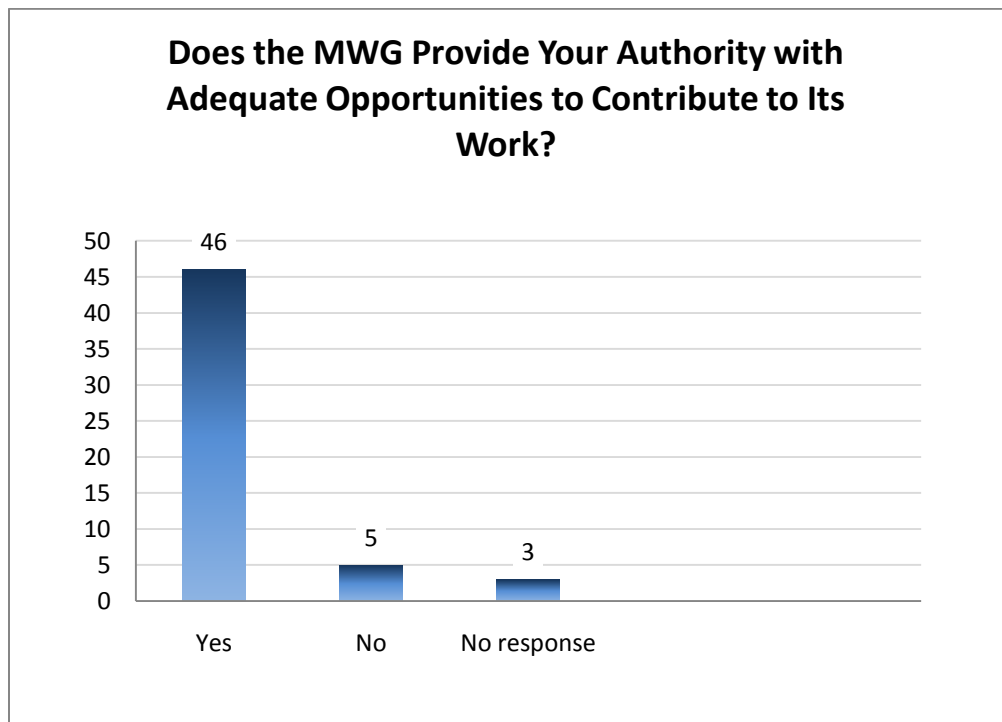
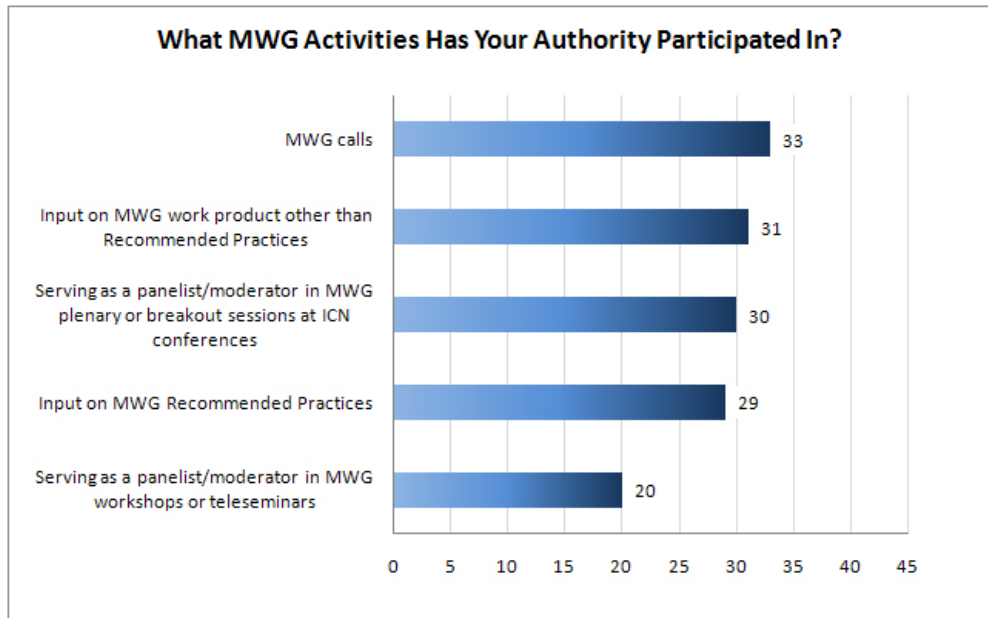


VII. Merger Working Group Participation and Performance

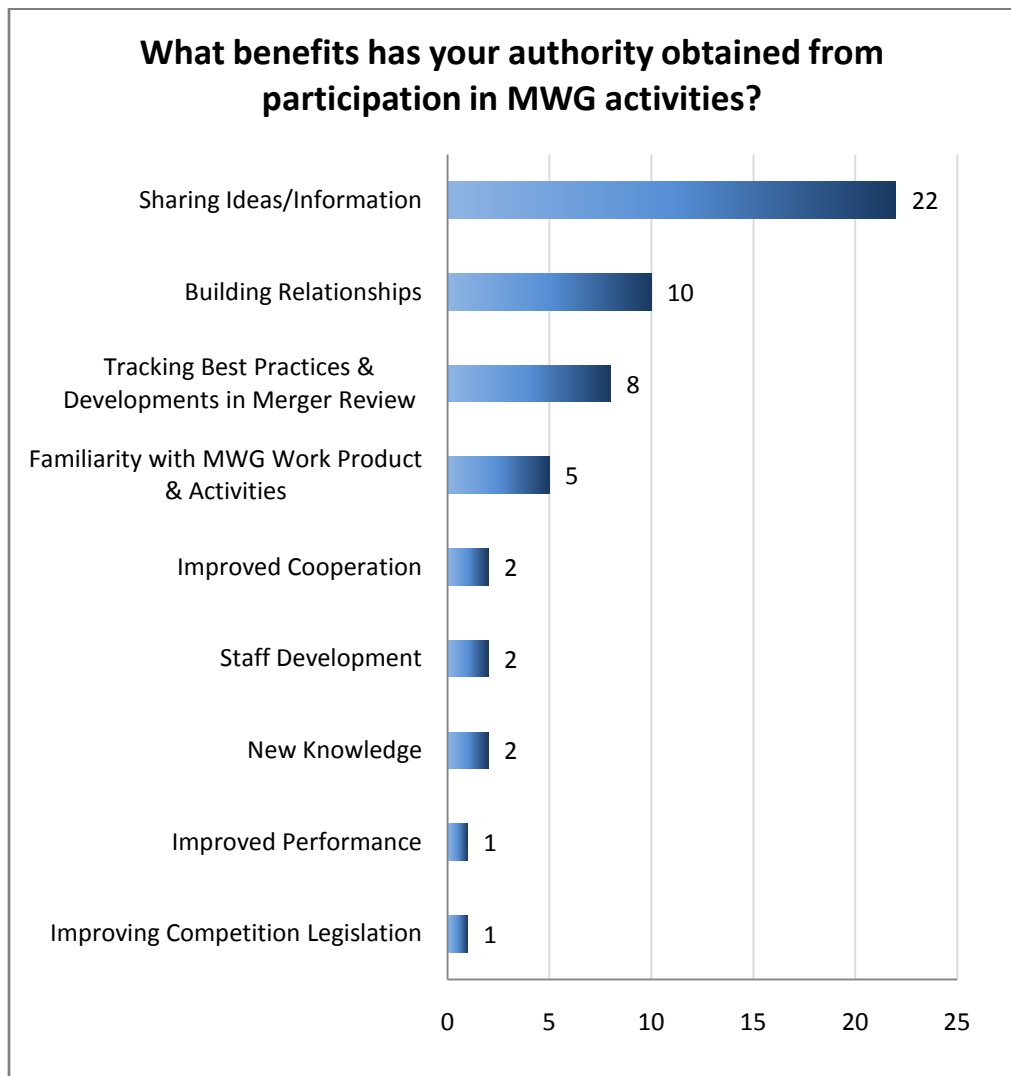
A. Member Participation in the Merger Working Group

1. Member Participation in MWG and Benefits of Participation (Questions 17, 18, 19)

The ICN member survey asked agencies whether they had participated in identified MWG activities, and whether the MWG has provided their authority with adequate opportunities to contribute to its work. The responses to these questions are depicted in the following charts.



Of the 46 agencies that reported having participated in MWG activities in response to Question 17, 38 (82.6%) described one or more benefits their agency had obtained from MWG participation. Benefits reported by MWG participants are outlined in the following chart.



The most frequently reported benefit of MWG participation is members’ ability to share ideas and information, a benefit listed by 22 responding agencies (47.8% of agencies reporting past MWG participation). Agencies in this category emphasized the benefit of sharing knowledge, experiences and approaches to merger review through MWG activities. Several members stressed that contributing their own experience to MWG discussions is valued as a benefit of MWG participation. One agency commented that while the exchange of information in MWG calls has been beneficial, the agency would like to participate more in other MWG activities, such as serving in panelist or moderator roles at workshops and conferences.

Another benefit of MWG participation cited by several agencies is the opportunity to build and maintain relationships with representatives of other agencies. This was listed as a benefit by 10 agencies (21.7% of agencies reporting MWG participation). The ability to track best practices and the latest developments in merger review was cited as a benefit of MWG participation by 8 agencies, or 17.4% of agencies reporting MWG participation. Increased familiarity with MWG work product was cited as a benefit by 5 agencies, or 10.9% of those reporting MWG participation. Other benefits reported by members include improved cooperation among agencies, opportunities for staff development, new knowledge, improved performance, and improving competition legislation.

2. Constraints on Member MWG Participation (Question 21)

Thirty-one agencies (57.4% of all responding agencies) reported the existence of one or more constraints on their ability to participate in MWG activities. Nine agencies (16.7%) reported no current constraints on their ability to participate in MWG activities, while 14 agencies (25.9%) did not respond to this question.

Limitations on the time and/or resources agencies have available to devote to MWG activities was the most frequently reported constraint on participation, reported by 20 agencies (37% of all survey respondents). In addition, 10 agencies (18.5% of all survey respondents) identified financial or budgetary limitations as a constraint on their ability to participate in MWG activities, with one agency commenting that cost is usually the limiting factor for participation in less developed countries. While some agencies noted that these types of constraints are beyond the purview of the MWG to address, 8 agencies offered suggestions of steps the MWG might consider to avoid overtaxing members' time, resource, and budgetary limitations.

Suggestions to avoid overtaxing members' time, resource, and budgetary limitations include:

- Prioritize projects and focus on a limited number of high value projects each year.
- Set well-defined priorities that do not increase the current level of activity.
- Announce MWG calls and teleseminars as early as possible so that member participants can more easily work them into their schedules.
- Planning in advance of teleseminars and workshops has worked very well, and is crucial for our participation.
- Limit the number of MWG calls, and consider whether some issues could be handled by e-mail rather than through calls.
- Consider offering a toll-free number for members to participate in MWG calls and teleseminars.
- ICN should continue to encourage and fund participation in ICN workshops for training.
- Consider web based options that would allow more staff to attend MWG activities.

Three agencies (5.6% of all survey respondents) reported that the timing of MWG calls posed a constraint on their ability to participate. These agencies noted that the traditional timing of MWG calls and teleseminars presents a hardship to some agencies. **Suggestions to address issues raised by the timing of MWG calls include:**

- The MWG may wish to consider the use of web-based tools to enable member participation at a broader range of times, which would allow more staff from agencies for which timing is an issue to participate. (2 agencies)
- Calls should be scheduled no later than 8 a.m. for eastern U.S. and Canada and 2 p.m. in Brussels

Two agencies (3.7% of all survey respondents) reported language as a constraint on participation, and one recommended that it would be useful to organize regional training programs based on common language. Two agencies reported other constraints on MWG participation. One agency noted that technical problems on conference calls sometimes limit participation, while the other noted that the lack of merger review provisions in its competition law constrained its participation in the MWG.

3. Ways to Encourage Broader Participation in, or Provide Greater Opportunities to Contribute to, MWG Work (Question 20)

The ICN member survey solicited suggestions from ICN members on ways in which the MWG could encourage broader member participation or offer members greater opportunities to contribute to its work. Twenty-eight agencies, or 51.9% of survey respondents, responded to this question.⁶⁶

Of the 28 agencies that responded to the question, eight responded that they either had no suggestions for improvement, or that the current opportunities for member participation in the MWG were adequate. Seventeen agencies provided suggestions on ways in which the MWG might encourage broader participation or provide greater opportunities to contribute to its work. Four agencies noted factors that have impacted their participation, including the distance required to travel to workshops, time constraints related to merger caseload, the case handlers involved in MWG activities, and the lack of a specialized merger unit.

Suggestions for ways to encourage broader member participation include:

a. Expanding Participation Through Teleseminars, Webinars, and/or Workshops

Six agencies suggested that the MWG focus on teleseminars, webinars, and/or workshops as an opportunity to expand participation. These agencies' suggestions include:

- Planning and conducting teleseminars and workshops provide opportunities for a diverse group of members to participate, and doing more of these types of programs would further encourage broader participation.
- More use of teleseminars and webseminars could provide a platform for more active contributions.
- ICN members could be incorporated to a greater extent in drafting agendas for future seminars and discussions, e.g. by providing ideas for possible topics. They could also be given the opportunity to take part in seminars as speakers or moderators on a voluntary basis.
- With regard to the workshop, it may be useful to provide a recording or transcript of the sessions so that agencies unable to attend can still benefit from the discussions.
- A good strategy would be to organize books, workshops and seminars exclusively based on case handlers' contributions.
- Organizing regional ICN merger workshops.

b. Financial Support

Two agencies suggested that financial support be provided for younger competition authorities with limited budgets to participate in workshops and conferences. These suggestions include:

- Provide financial support for participation in workshops and conferences
- Fund the participation of officials coming from competition authorities which are in the beginning of the application of competition policy and which have a limited budget for training and missions.

⁶⁶ The non-responding agencies included 7 agencies that had not participated in the MWG activities listed in Question 17, as well as 19 agencies that had participated in one or more MWG activities.

c. *Other*

Other suggestions for ways in which the MWG can encourage greater member participation include:

- When new projects arise, MWG could send an e-mail broadcast to all ICN members to ask for participants who would be interested to contribute to its work.
- The use of Internet discussions may encourage broader participation.
- Increase the national diversity of speakers and moderators at ICN conferences and MWG workshops.
- The MWG should consider who the targeted participants of the MWG are, and consider ways to motivate more case handlers to participate in MWG work instead of the staff of international units, heads of agencies etc. This could help to increase the dissemination of the work of the MWG.
- Continue efforts to expand participation in the MWG, and encourage meaningful and diverse participation in, and contribution to, the group's work.
- Include more details on how more advanced authorities have overcome their challenges.
- Explore ways of reducing language barriers, and encouraging greater participation by members for whom English is not an official language.
- Consider the creation of informal sub-groups (by region, language, legal system or a combination of these) with their own group leaders responsible for promoting awareness and use of ICN work product via informal contacts, seminars, etc.
- Consider assigning different topics of study to different competition authorities to encourage wider member participation.

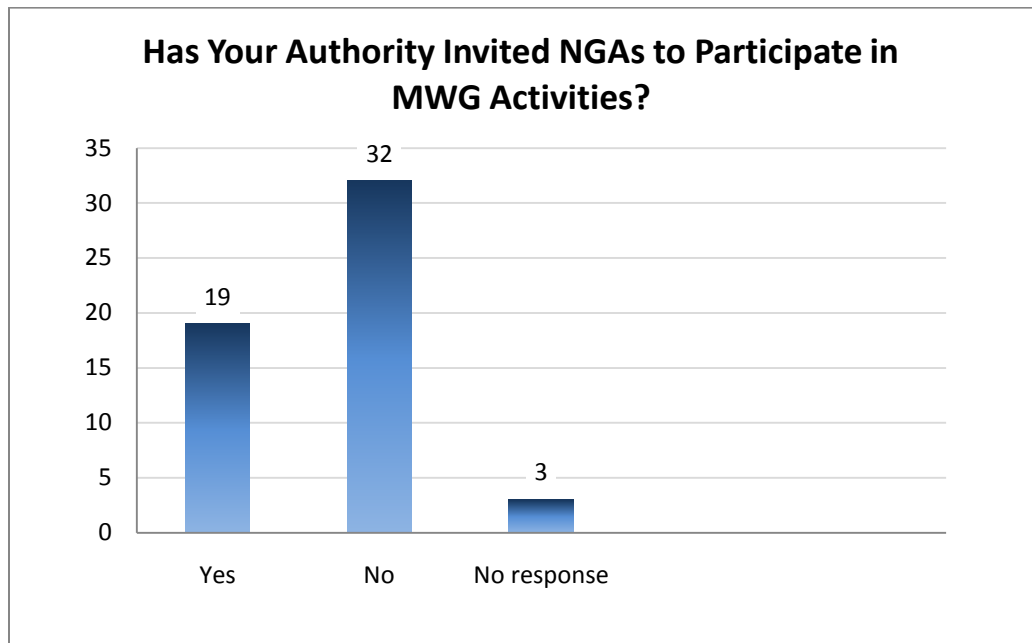
d. *Suggestions from Members Indicating Current Opportunities for Participation Are Not Adequate*

Responses to Question 20 were cross-checked against responses to question 19 to identify suggestions made by agencies that indicated that the MWG does not provide their authority with adequate opportunities to contribute to MWG work. Of the five agencies that responded "No" to Question 19, four provided suggestions on how the MWG could encourage broader member participation or offer greater opportunities for members to contribute to its work. These suggestions include:

- The workshops are usually conducted far from the authority, meaning that it cannot always attend the activities.
- Include more details on how more advanced authorities have overcome their challenges.
- Provide financial support for participation in workshops and conferences.
- Increase national diversity of speakers and moderators at ICN conferences and MWG workshops.

B. NGA Participation in the MWG (Question 22)

The ICN member survey asked members whether they had invited NGAs to participate in MWG activities. The responses to this question are depicted in the chart below.



The survey also solicited suggestions from ICN members on ways in which the MWG could more effectively obtain NGA input or expand the level of NGA participation in its activities. Twenty-two agencies (40.7%) responded to this question, while 32 agencies did not.⁶⁷

Of the 22 agencies that responded to the question, five agencies indicated that the current process of involving NGAs works well.⁶⁸ Three agencies reported that they did not have any suggestions for improvement.⁶⁹ One agency reported that while it had not yet invited NGAs to participate in the Merger Working Group, it intended to do so.

Thirteen agencies indicated that there are ways in which the Merger Working Group might more effectively obtain NGA input or expand the level of NGA participation in the group activities, and 12 of these agencies offered suggestions for improvement. Of the 12 agencies offering suggestions, 7 reported having invited NGAs to participate in MWG activities in response to Question 22.a.

Suggestions made by members that had invited NGA participation in MWG activities include:

- E-mail distribution lists could be set up to inform NGAs about work product and upcoming events. It would be useful to reflect more about what type of input is expected from NGAs.
- Promote ICN work to NGAs and the general public, e.g. report in relevant national professional journals.
- Make ICN work product and activities more familiar with NGAs.

⁶⁷ Of the non-responding agencies, six agencies had not participated in any of the MWG activities listed in Question 17, and an additional 18, while having participated in one or more of the MWG activities, had not invited NGA participation.

⁶⁸ All five agencies reported participation in one or more of the MWG activities listed in Question 17, and four had invited NGAs to participate in MWG activities.

⁶⁹ All three agencies reported participation in one or more of the MWG activities listed in Question 17, but had not invited NGAs to participate in MWG activities.

- Greater clarity about the role and responsibility of the NGAs within the MWG may be helpful.
- Further efforts to encourage MWG members to involve NGAs in MWG activities.
- Hold world-wide NGA calls. Enhance diversity of NGA participation, perhaps by broadening geographic representation of NGAs, or by recruiting academics as targets for potential NGA participation.
- Conduct a survey on NGAs' assessment of the MWG product.

Suggestions offered by members that had not invited NGA participation in MWG activities include:

- The NGAs are generally not well informed on the ICN activities, so maybe through web site of the competition authorities or annual plans more emphasis could be put on MWG activities.
- Provide more information to NGAs about the possibilities of their participation.
- Hosting national workshops in respective countries.
- Take into account NGAs in all communications that the MWG distributes to ICN members.
- Invite NGAs to participate in the workshops.

VIII. Other Comments

The questionnaire concluded by welcoming any other suggestions or comments not covered by the survey questions. Additional comments provided in response to this question include:

- The MWG excites great passion for merger work
- The questionnaire has been very well put together and covers the stated objectives well.

Annex 1

ICN Members Responding to 2010 MWG Questionnaire to Assess MWG Work Product and Future Needs

1.	Australia: Australian Competition and Consumer Commission (ACCC)
2.	Austria: Federal Competition Authority (Bundeswettbewerbsbehoerde)
3.	Belgium: Belgian Competition Authority (Directorate General)
4.	Bosnia and Herzegovina: Council of Competition
5.	Brazil: Conselho Administrativo de Defesa Econômica (CADE)
6.	Bulgaria: Commission on Protection of Competition
7.	Canada: Competition Bureau
8.	Chile: National Economic Prosecutor's Office (Fiscalía Nacional Económica or FNE)
9.	Chile: Tribunal de Defensa de la Libre Competencia
10.	Caribbean Region: CARICOM Competition Commission
11.	Costa Rica: Commission to Promote Competition
12.	Croatia: Croatian Competition Agency
13.	Cyprus: Commission for the Protection of Competition
14.	Czech Republic: Office for the Protection of Competition
15.	Denmark: Danish Competition and Consumer Authority (DCCA)
16.	El Salvador: Superintendencia de Competencia
17.	Estonia: Estonian Competition Authority
18.	EU: European Commission
19.	Finland: Finnish Competition Authority
20.	France: Autorité de la concurrence
21.	Germany: Bundeskartellamt
22.	Honduras: Commission for the Defense and Promotion of Competition (Comision para la Defensa y Promocion de la Competencia)
23.	Hungary: The Hungarian Competition Authority (Gazdasági Versenyhivatal)
24.	Indonesia: Commission for the Supervision of Business Competition (KPPU)
25.	Ireland: The Competition Authority
26.	Israel: Israel Antitrust Authority
27.	Italy: Autorità Garante della Concorrenza e del Mercato
28.	Japan: Japan Fair Trade Commission (JFTC)
29.	Jersey: Jersey Competition Regulatory Authority
30.	Jordan: Ministry of Industry and Trade Competition Directorate
31.	Kenya: Monopolies and Prices Commission
32.	Korea: Korea Fair Trade Commission (KFTC)
33.	Kosovo: Kosovo Competition Authority
34.	Lithuania: Competition Council
35.	Mexico: Federal Competition Commission (Comisión Federal de Competencia)
36.	Morocco: Ministry Responsible of Economic and General Affairs

37. Netherlands: Netherlands Competition Authority
38. Poland: Office of Competition and Consumer Protection (Urząd Ochrony Konkurencji i Konsumentów)
39. Portugal: Portuguese Competition Authority (Autoridade da Concorrência)
40. Russian Federation: Federal Antimonopoly Service
41. Singapore: Competition Commission of Singapore
42. South Africa: Competition Commission
43. Spain: Comisión Nacional de la Competencia
44. Sweden: The Swedish Competition Authority
45. Switzerland: Swiss Competition Commission
46. Taiwan: Fair Trade Commission, Executive Yuan, R.O.C.
47. Turkey: Turkish Competition Authority
48. U.K.: Competition Commission
49. U.K.: Office of Fair Trading
50. U.S.: Department of Justice, Antitrust Division
51. U.S.: Federal Trade Commission
52. Uzbekistan: State Demonopolization and Competition Committee
53. Vietnam: Vietnam Competition Authority
54. Zambia: Zambia Competition Commission

Annex 2

Questionnaire to ICN Members to Assess ICN Merger Working Group Work Product and Future Needs

ICN Merger Working Group

Questionnaire to ICN Members

to Assess ICN Merger Working Group Work Product and Future Needs



I. Introduction

Purpose of Questionnaire: As one of its top priorities for this year, the ICN Merger Working Group (MWG) is conducting a comprehensive assessment of its work product and ICN membership needs. The purpose of this survey is to gather information from ICN members that will assist the MWG in the following areas:

- assessing the use and impact of its work product and other activities;
- identifying potential barriers to work product use or implementation; and
- evaluating new areas of work that would assist ICN members in making merger review more effective.

In completing this questionnaire, we request that members consider all aspects of their merger regime, including the establishment and revision of merger notification and review procedures, as well as the review and analysis of individual mergers. The MWG will analyze the information gathered in the survey to assess the MWG's past initiatives, consider appropriate areas of future work, and review its Long-Term Plan. We very much welcome your input, and thank you for taking the time to complete this questionnaire.

Questionnaire responses are requested by October 1, 2010.

Use of Questionnaire Responses: The MWG will consider all information received in conducting its assessment. At the conclusion of the assessment, the MWG will report on its findings, including those based on the results of this survey. The MWG plans to report on the responses received primarily on an aggregate basis. However, the MWG may, in some cases, wish to report individual responses or report results in such a way that it may be possible to identify the responding agency or jurisdiction.

If there are any responses provided by you that you wish to be reported only in an aggregate or non-attributable manner, please indicate the relevant question numbers in the space below:

II. About Your Authority

1. Name and jurisdiction
 - a. Name of Authority:
 - b. Jurisdiction:
2. Contact person at your authority regarding this questionnaire response
 - a. Contact Name:
 - b. E-mail Address:
3. Merger review at your authority
 - a. For how many years has your authority conducted merger review? *Select one.*
 - 0-5 years
 - 6-10 years
 - 11-20 years
 - More than 20 years
 - Authority does not conduct merger review
 - Other *Please specify:*

ICN Merger Working Group Questionnaire

- b. How many personnel at your authority, such as those listed in Question 11.c below and excluding administrative support personnel, work on merger review? *Select one.*
 - 0-5
 - 6-10
 - 11-20
 - 21-50
 - 51-100
 - More than 100

- c. What type of merger notification system, if any, is in place in your jurisdiction? *Select one.*
 - Mandatory notification system
 - Voluntary notification system
 - No merger notification system
 - Other *Please specify:*

- d. How many merger transactions were notified in your jurisdiction in 2008?

In 2009?

- e. How many in-depth or second phase merger reviews did your authority initiate in 2008?

In 2009?

- f. Does your authority: *Select all that apply.*
 - Make merger decisions subject to merits appeal
 - Make merger decisions subject to judicial appeal
 - Bring merger cases in court
 - Make merger decisions on the recommendation of a minister
 - Conduct only first phase investigations
 - Conduct only second phase investigations

III. ICN MWG Work Product

4. In the table below, please respond "Y" (for Yes) or "N" (for No) in the boxes under A, B, C, and D to indicate your use and assessment of the MWG product listed.

ICN Merger Working Group Work Product	A. Is your authority familiar with this work product? (Y/N)	B. Has your authority used this work product in your merger review regime? (Y/N)	C. Has this work product contributed to any changes in your merger review regime? (Y/N)	D. Does your authority plan to use or reference this work product in the future? (Y/N)
a. <u>Recommended Practices for Merger Notification and Review Procedures</u>				

ICN Merger Working Group Questionnaire

ICN Merger Working Group Work Product	A. Is your authority familiar with this work product? (Y/N)	B. Has your authority used this work product in your merger review regime? (Y/N)	C. Has this work product contributed to any changes in your merger review regime? (Y/N)	D. Does your authority plan to use or reference this work product in the future? (Y/N)
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b. [Recommended Practices for Merger Analysis](#)

c. [Merger N&P Implementation Handbook](#)

d. [Merger Guidelines Workbook](#)

e. [Investigative Techniques Handbook](#)

f. [Merger Remedies Report](#)

g. [Model Confidentiality Waiver](#)

h. [Merger Templates and Web Links](#)

i. Reports on Merger Notification and Procedures:

- [Information Requirements for Merger Notification](#)
- [Defining "Merger" Transactions for Purposes of Merger Review](#)
- [Setting Notification Thresholds for Merger Review](#)
- [Comparative Study of Merger Notification Filing Fee Systems](#)

5. With respect to your use of MWG work product as indicated in Question 4 above, can you provide any specific examples of how you have used or promoted MWG work product within your agency (e.g. use of work product in formulating merger policy or procedures, use of work product in internal training, or use by case handlers in the course of merger investigations)?

6. Have you used any MWG work product outside the authority (e.g. with legislators, sector regulators, courts, the business community, the private bar/legal community, consumers, or the public), and if so, how? Did you find the MWG work product useful?

ICN Merger Working Group Questionnaire

7. With respect to any instances in which MWG work product has contributed to changes in your merger review regime as indicated in Question 4 above, please provide a brief summary of the changes made and how MWG work product contributed to the change.

8. Which MWG work products or types of work product (e.g. Recommended Practices; handbooks, workbooks, or other practical guidance; comparative reports; teleseminars; workshop discussions; etc.) have you found to be most useful and why? Has this changed over time?

9. Barriers to implementation or use of MWG work product
 - a. Are there any formal or informal barriers to your authority's implementation or use of any MWG work product?

 Yes No

 - b. If Yes, what are they? *Select all that apply.*

 Legal (e.g. implementation of work product would require a change in law)

 Unfamiliarity (e.g. lack of understanding or familiarity with the work product by case handlers or other personnel)

 Language (e.g. work product is not accessible to non-English speaking personnel)

 Relevance (e.g. work product is not relevant to your issues or needs)

 Resources (e.g. implementation or use of work product is not a current priority given agency resources)

 Other *Please specify:*

 - c. Are there ways in which the MWG could assist in removing barriers to your authority's use or implementation of MWG work product? If so, how?

10. Are there ways in which the MWG could more effectively promote awareness and use of any of its work product? If so, how?

IV. Other Merger Working Group Activities

11. ICN Merger Workshops
 - a. Have representatives from your authority participated in ICN Merger Workshops?

 Yes No

 If No, go to question 11.f below.

 - b. Which ICN Merger Workshops has your authority participated in? *Select all that apply.*

 November 2002 workshop in Washington D.C.

 October 2004 workshop in Brussels

 March 2006 workshop in Washington D.C.

 April 2007 workshop in Dublin

 June 2007 workshop in Pretoria

 March 2008 workshop in Brno

 March 2009 workshop in Taipei

ICN Merger Working Group Questionnaire

- c. What types of officials at your authority have participated in ICN Merger Workshops? *Select all that apply.*
 - Head of agency
 - Head of mergers or merger units
 - Merger case handlers (including lawyers/economists)
 - Lawyers who are not case handlers
 - Economists who are not case handlers
 - Policy staff
 - International staff
 - Other:

- d. What has your authority found most beneficial about the ICN Merger Workshops that your officials have attended?

- e. Are there ways in which ICN Merger Workshops could be improved to provide greater benefits to members?

- f. Should the MWG continue to conduct merger workshops?
 - Yes No

- g. What topics would be most useful to address in future workshops?

12. MWG teleseminars

- a. Have representatives of your authority participated in either of the following MWG teleseminars? *Select all that apply.*
 - Merger Remedies (February 10, 2010)
 - Tools for Change (April 13, 2010)

If your authority did not participate in any MWG teleseminars, go to question 12.e below.

- b. What types of officials at your authority have participated in MWG teleseminars? *Select all that apply.*
 - Head of agency
 - Head of mergers or merger units
 - Merger case handlers (including lawyers/economists)
 - Lawyers who are not case handlers
 - Economists who are not case handlers
 - Policy staff
 - International staff
 - Other:

- c. What has your authority found most beneficial about the teleseminars in which your officials participated?

- d. Are there ways in which MWG teleseminars could be improved?

ICN Merger Working Group Questionnaire

- e. Should the MWG continue to conduct teleseminars?
 Yes No
- f. What topics would be most useful to address in future teleseminars?

13. Web-based tools

- a. How often does your authority use the MWG section of the ICN website? *Select one.*
 Less than once a month
 1-3 times a month
 More than 3 times a month
- b. Are there ways in which the MWG section of the ICN website could be improved? If so, how?
- c. Are there any additional Web-based tools (e.g. webinars, other Web-based training tools, an online discussion forum, etc.) that the MWG should explore to better serve member needs?

V. Member Needs and Future Direction of MWG Work

14. Indicate your authority's interest in further MWG work in each of the following areas:

	Very Interested	Interested	Not Interested
a. Update or supplement existing MWG work product			
Possible projects:			
1) Review and update Recommended Practices for Merger Notification and Review Procedures	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2) Explore potential for additional Recommended Practices for Merger Analysis covering topics such as efficiencies, non-horizontal mergers, or analysis of merger remedies	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3) Supplement Investigative Techniques Handbook to include new material covering topics such as investigation of remedies or use of digital evidence in merger investigations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4) Update Merger N&P Implementation Handbook to include new information on RP implementation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5) Update Merger Guidelines Workbook to update illustrative cases or reflect the latest developments in ICN members' merger guidelines	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6) Review and update reports on merger notification issues	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7) Other <i>Please specify:</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Very Interested	Interested	Not Interested
b. Undertake additional efforts to promote familiarity, implementation, and use of existing MWG work product			
Possible mechanisms:			
1) ICN-wide merger workshops	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2) Regional ICN merger workshops	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

ICN Merger Working Group Questionnaire

	Very Interested	Interested	Not Interested
3) Teleseminars highlighting or focusing on specific MWG work product	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4) Web-based training efforts, such as through outreach with the ICN Curriculum Project	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5) Individual member outreach, such as through outreach with AISUP	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6) Develop materials designed to promote implementation and use of existing work product (e.g. training materials, implementation handbooks, voluntary self-assessments, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7) Other <i>Please specify:</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Very Interested	Interested	Not Interested

c. New work product

Possible areas of focus:

1) Investigative techniques. *E.g.:*

- Use of compulsory requests
- Obtaining and using electronic evidence
- Obtaining information without undue burden
- Interviewing techniques
- Investigating mergers efficiently within governing time constraints
- Assessing compliance with notification rules and compulsory requests
- Interaction with sector regulators with a concurrent merger review role

If you selected Very Interested, what topics would be most useful?

If you selected Very Interested, what types of new work would be most useful? *Select all that apply.*

- | | |
|---|---|
| <input type="checkbox"/> New RPs | <input type="checkbox"/> Teleseminars |
| <input type="checkbox"/> Handbooks or workbooks | <input type="checkbox"/> Workshop discussions |
| <input type="checkbox"/> Reports | <input type="checkbox"/> Other <i>Please specify:</i> |

ICN Merger Working Group Questionnaire

	Very Interested	Interested	Not Interested
--	----------------------------	-------------------	---------------------------

- 2) Merger notification and procedure issues. *E.g.:*
- Timing and timetables for merger review
 - Use of exemptions from merger notification
 - Criteria used in merger notification such as calculation of turnover and other measurement tools
 - Defining joint ventures and calculating turnover for purposes of notification rules
 - Procedures for third party participation in merger review
 - Initial notification requirements

If you selected Very Interested, what topics would be most useful?

If you selected Very Interested, what types of new work would be most useful? *Select all that apply.*

- | | |
|---|---|
| <input type="checkbox"/> New RPs | <input type="checkbox"/> Teleseminars |
| <input type="checkbox"/> Handbooks or workbooks | <input type="checkbox"/> Workshop discussions |
| <input type="checkbox"/> Reports | <input type="checkbox"/> Other <i>Please specify:</i> |

	Very Interested	Interested	Not Interested
--	----------------------------	-------------------	---------------------------

- 3) Merger analysis: general. *E.g.:*
- Conducting merger analysis during initial phase
 - Conducting in-depth analysis of particular issues in potentially problematic mergers
 - Merger analysis issues arising in particular sectors or particular types of mergers.

If you selected Very Interested, what topics would be most useful?

If you selected Very Interested, what types of new work would be most useful? *Select all that apply.*

- | | |
|---|---|
| <input type="checkbox"/> New RPs | <input type="checkbox"/> Teleseminars |
| <input type="checkbox"/> Handbooks or workbooks | <input type="checkbox"/> Workshop discussions |
| <input type="checkbox"/> Reports | <input type="checkbox"/> Other <i>Please specify:</i> |

ICN Merger Working Group Questionnaire

	Very Interested	Interested	Not Interested
--	----------------------------	-------------------	---------------------------

4) Merger analysis: economic analysis issues. *E.g.:*

- Use and analysis of economic and econometric data in assessing mergers
- Latest developments in economic analysis of mergers

If you selected Very Interested, what topics would be most useful?

If you selected Very Interested, what types of new work would be most useful? *Select all that apply.*

- | | |
|---|---|
| <input type="checkbox"/> New RPs | <input type="checkbox"/> Teleseminars |
| <input type="checkbox"/> Handbooks or workbooks | <input type="checkbox"/> Workshop discussions |
| <input type="checkbox"/> Reports | <input type="checkbox"/> Other <i>Please specify:</i> |

	Very Interested	Interested	Not Interested
--	----------------------------	-------------------	---------------------------

5) Merger remedy issues. *E.g.:*

- Assessing potential remedies
- Monitoring and ensuring compliance with remedies
- Use of trustees, etc.

If you selected Very Interested, what topics would be most useful?

If you selected Very Interested, what types of new work would be most useful? *Select all that apply.*

- | | |
|---|---|
| <input type="checkbox"/> New RPs | <input type="checkbox"/> Teleseminars |
| <input type="checkbox"/> Handbooks or workbooks | <input type="checkbox"/> Workshop discussions |
| <input type="checkbox"/> Reports | <input type="checkbox"/> Other <i>Please specify:</i> |

ICN Merger Working Group Questionnaire

	Very Interested	Interested	Not Interested
--	----------------------------	-------------------	---------------------------

6) Organizational issues. <i>E.g.</i> :	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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- Mechanisms that agencies have found useful in conducting more efficient or effective merger review
- Directing a merger review organization and its resources
- Engaging the parties and addressing their arguments
- Promoting a transparent process
- Establishing procedures to protect confidentiality of submissions

If you selected Very Interested, what topics would be most useful?

If you selected Very Interested, what types of new work would be most useful? *Select all that apply.*

- | | |
|---|---|
| <input type="checkbox"/> New RPs | <input type="checkbox"/> Teleseminars |
| <input type="checkbox"/> Handbooks or workbooks | <input type="checkbox"/> Workshop discussions |
| <input type="checkbox"/> Reports | <input type="checkbox"/> Other <i>Please specify:</i> |

	Very Interested	Interested	Not Interested
--	----------------------------	-------------------	---------------------------

7) Agency coordination in multi-jurisdictional mergers. <i>E.g.</i> :	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
---	--------------------------	--------------------------	--------------------------

- Procedural coordination
- Coordination on substantive issues
- Information sharing while protecting confidentiality concerns
- Coordination to avoid inconsistent remedies

If you selected Very Interested, what topics would be most useful?

If you selected Very Interested, what types of new work would be most useful? *Select all that apply.*

- | | |
|---|---|
| <input type="checkbox"/> New RPs | <input type="checkbox"/> Teleseminars |
| <input type="checkbox"/> Handbooks or workbooks | <input type="checkbox"/> Workshop discussions |
| <input type="checkbox"/> Reports | <input type="checkbox"/> Other <i>Please specify:</i> |

ICN Merger Working Group Questionnaire

	Very Interested	Interested	Not Interested
--	------------------------	-------------------	-----------------------

- 8) External review of merger decisions. *E.g.:*
- Issues arising on judicial review and appeals
 - Strategies for conducting investigations to minimize potential issues in external review

If you selected Very Interested, what topics would be most useful?

If you selected Very Interested, what types of new work would be most useful? *Select all that apply.*

- | | |
|---|---|
| <input type="checkbox"/> New RPs | <input type="checkbox"/> Teleseminars |
| <input type="checkbox"/> Handbooks or workbooks | <input type="checkbox"/> Workshop discussions |
| <input type="checkbox"/> Reports | <input type="checkbox"/> Other <i>Please specify:</i> |

	Very Interested	Interested	Not Interested
--	------------------------	-------------------	-----------------------

- 9) Effective outreach. *E.g.:*
- Communicating effectively on merger review issues with the private bar, judiciary, sector regulators, and other government officials

- 10) Development of training tools. *E.g.:*
- Developing new training materials for in-house member use or posting on the MWG Web page
 - Posting of workshop materials on the MWG Web page
 - Collecting examples of member training materials

- 11) Conducting teleseminars to share information on new or emerging issues in merger review

- 12) Case studies. *E.g.:*
through discussion in teleseminars or workshops, a collection of significant cases or other forms of exchange.

13) Please suggest other areas for new work not already mentioned in which your authority is very interested:

15. Which option would you prioritize first? *Select one.*

- Developing new work product
- Promoting familiarity, implementation, and use of existing work product
- Updating existing work product

16. What future MWG work would be most useful to your authority?

ICN Merger Working Group Questionnaire

VI. MWG Participation and Performance

17. Which of the following MWG activities has your authority participated in? *Select all that apply.*
- MWG calls
 - Input on MWG Recommended Practices (drafter, providing comments on drafts, etc.)
 - Input on other MWG Work (drafter, providing comments on drafts, submission of survey responses, etc.)
 - Serving as a panelist/moderator in MWG workshops or teleseminars
 - Serving as a panelist/moderator in MWG plenary or breakout sessions at ICN conferences
18. What benefits has your authority obtained from participation in the activities identified in Question 17 above?
19. Does the MWG provide your authority with adequate opportunities to contribute to its work?
- Yes No
20. Are there ways in which the MWG could encourage broader member participation or offer members greater opportunities to contribute to its work? If so, please describe.
21. Are there time, resource, or other constraints that limit your ability to participate in the MWG calls, workshops, teleseminars, or other activities? If so, please describe and provide any suggestions on how the MWG could help address these constraints.
22. NGA participation in the MWG
- a. Has your authority invited NGAs to participate in MWG activities?
 Yes No
 - b. Are there ways in which the MWG could more effectively obtain NGA input or expand the level of NGA participation in its activities? If so, please describe.
23. Do you have any other suggestions or comments on the MWG not covered by the questions above?

Thank you very much for taking the time to complete this questionnaire.

Please return your responses by e-mail to: **ICN.Secretariat@cb-bc.gc.ca**

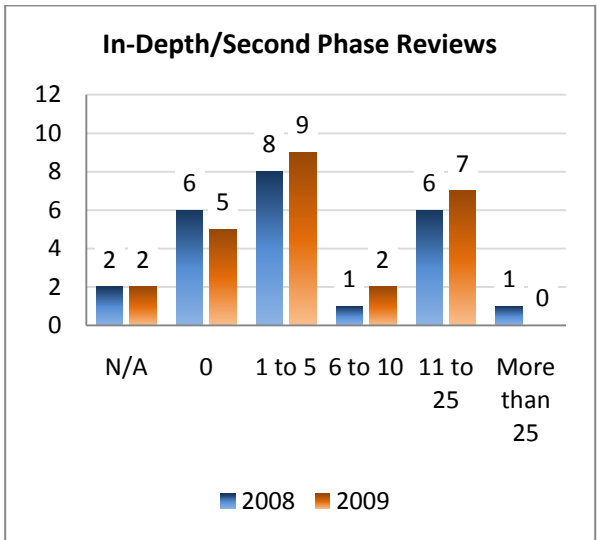
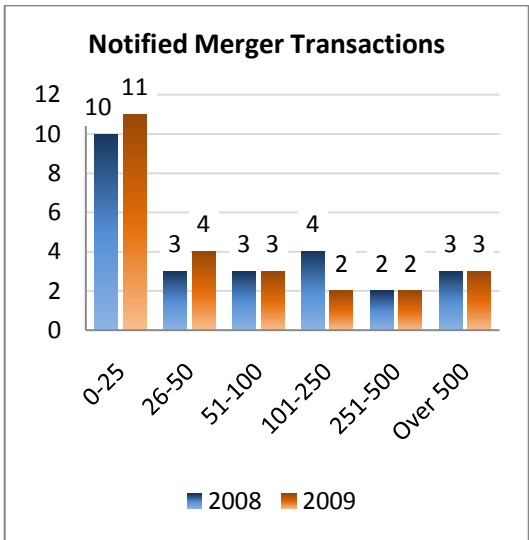
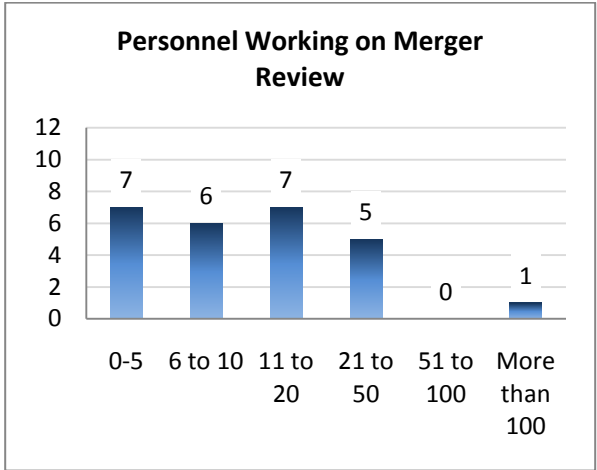
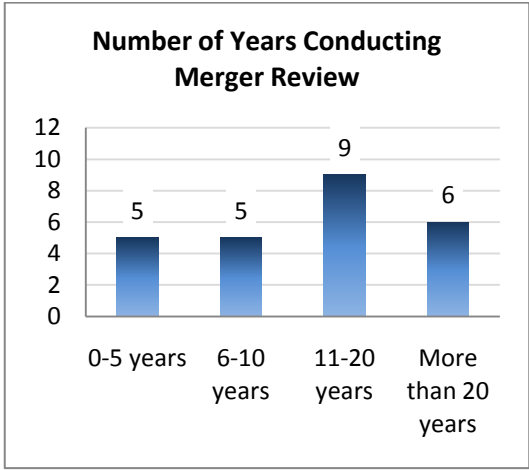
Annex 3

Most Useful MWG Work Product by Agency Age, Size, and Number of Merger Notifications and In-Depth Reviews



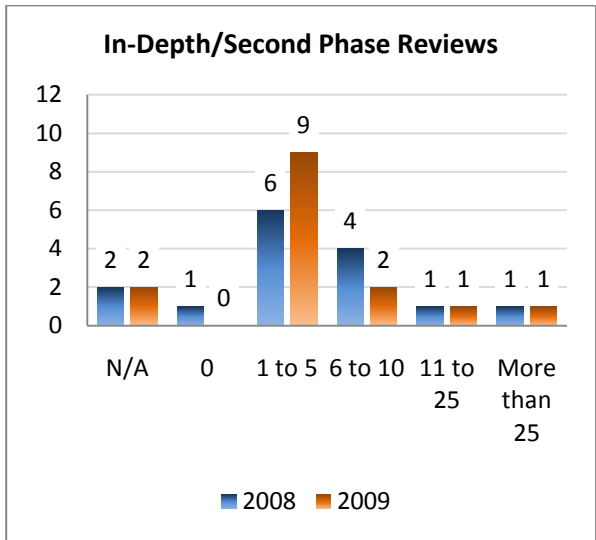
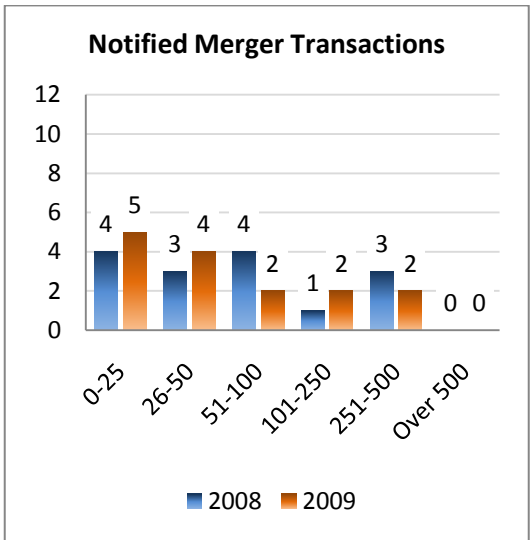
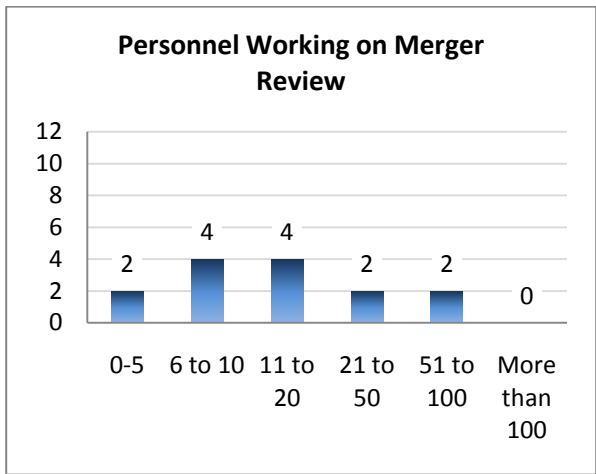
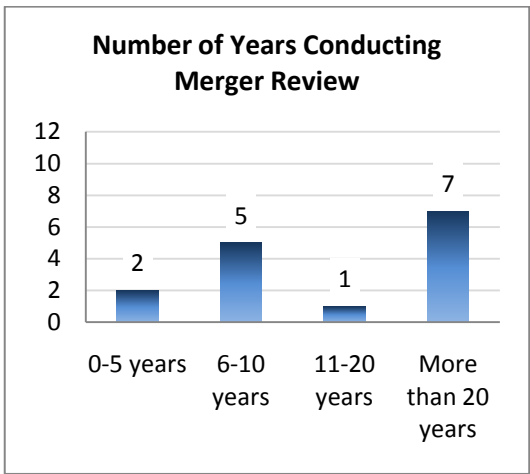
Most Useful MWG Work Product by Agency Age, Size, and Number of Merger Notifications and In-Depth Reviews

Practical Guidance (Handbooks, Workbooks, Etc.) (26 Agencies)



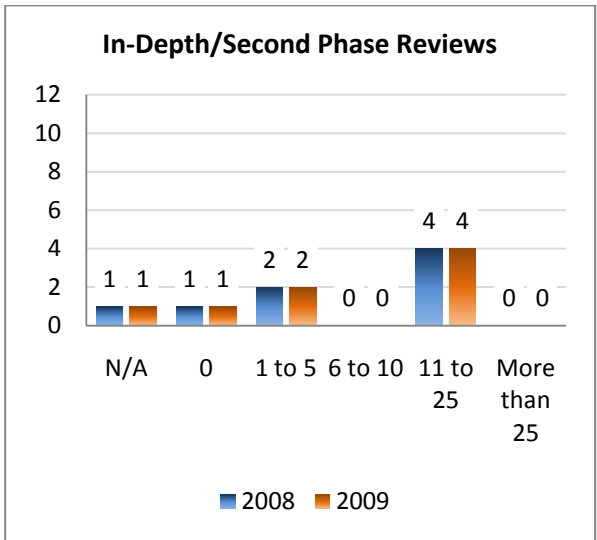
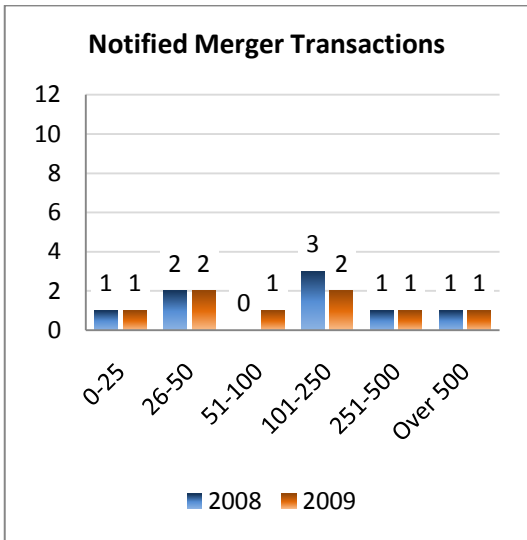
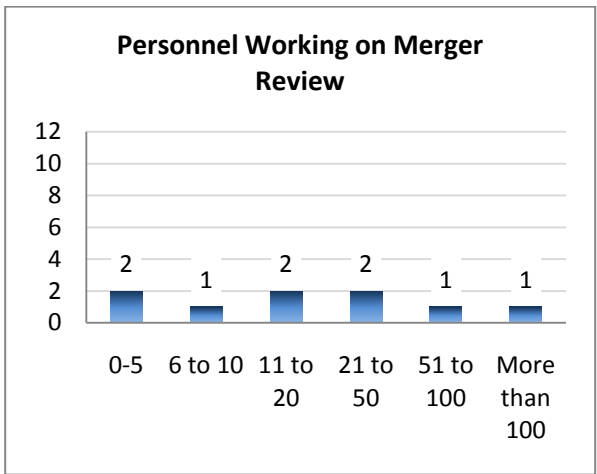
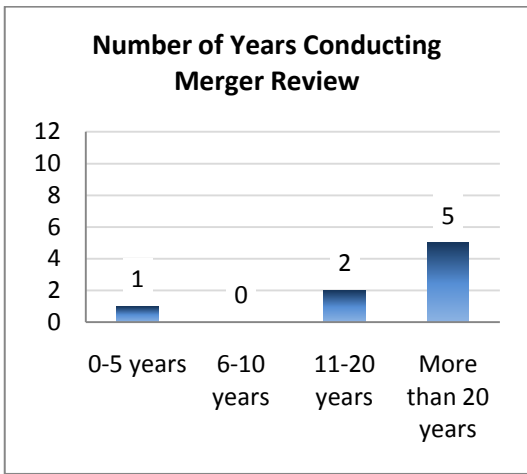
Most Useful MWG Work Product by Agency Age, Size, and Number of Merger Notifications and In-Depth Reviews

Workshop Discussions (15 agencies)



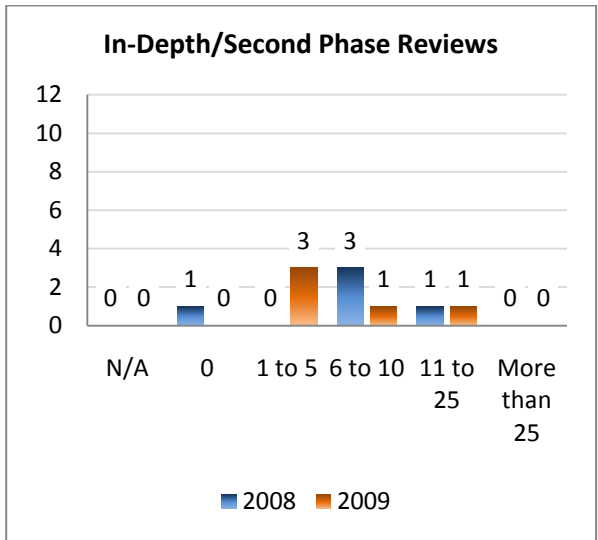
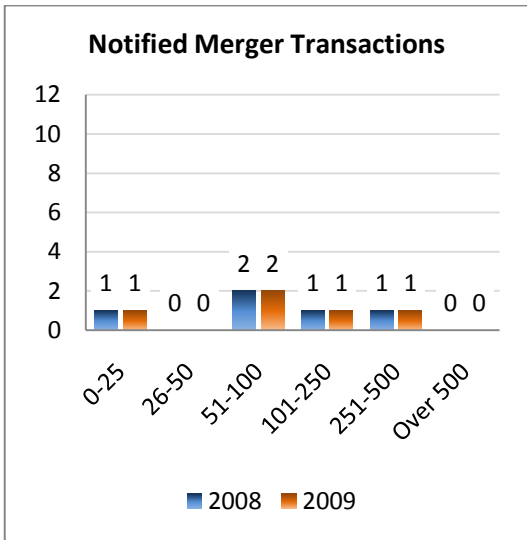
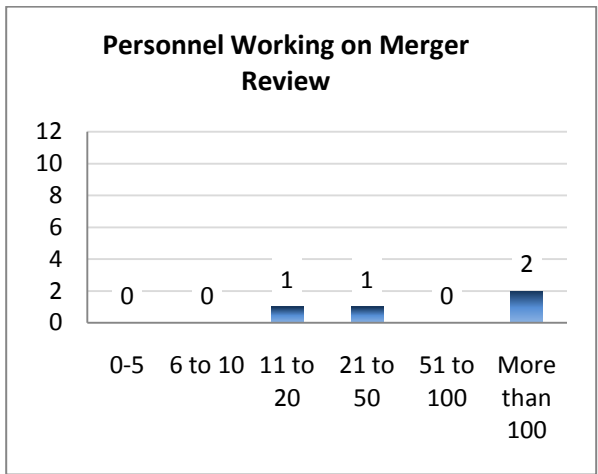
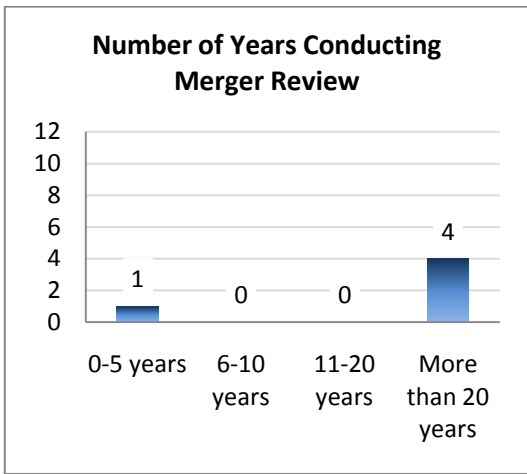
Most Useful MWG Work Product by Agency Age, Size, and Number of Merger Notifications and In-Depth Reviews

Comparative Reports (9 Agencies)



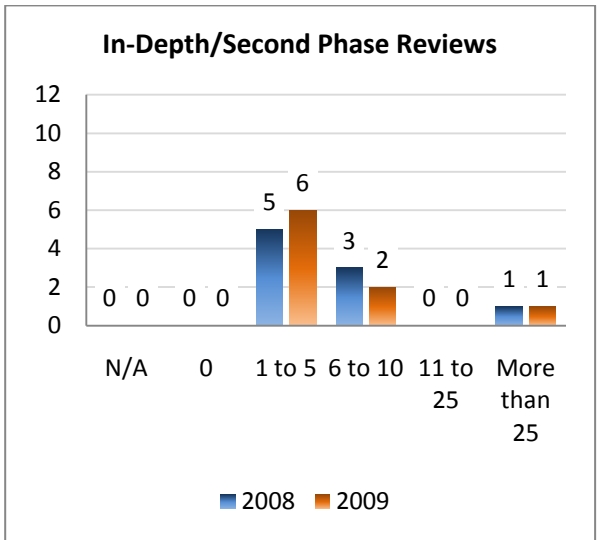
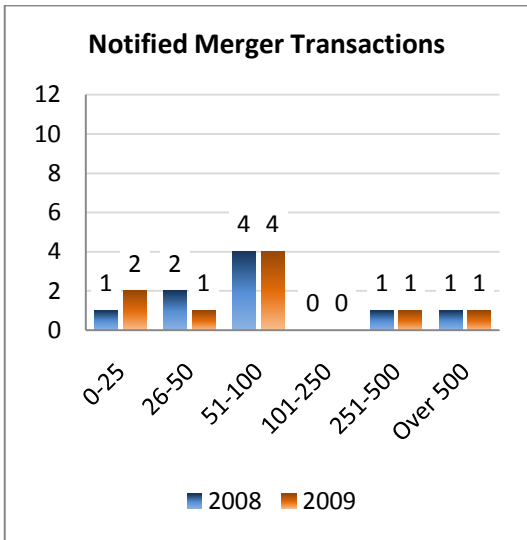
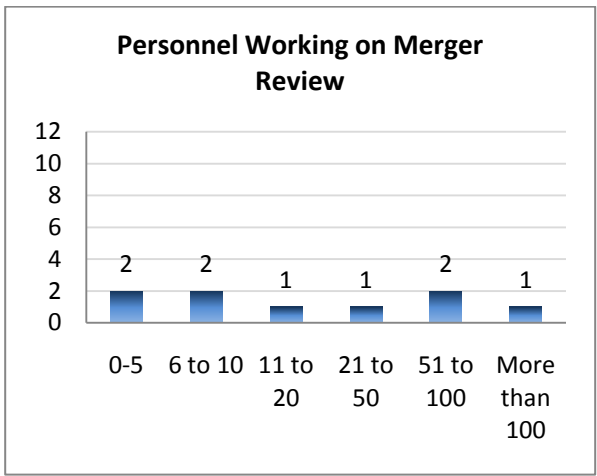
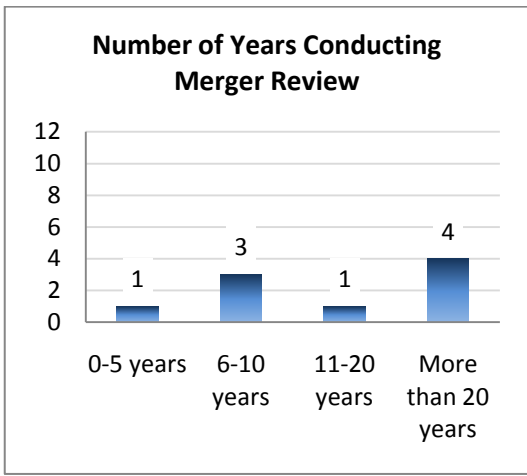
Most Useful MWG Work Product by Agency Age, Size, and Number of Merger Notifications and In-Depth Reviews

Teleseminars (5 Agencies)



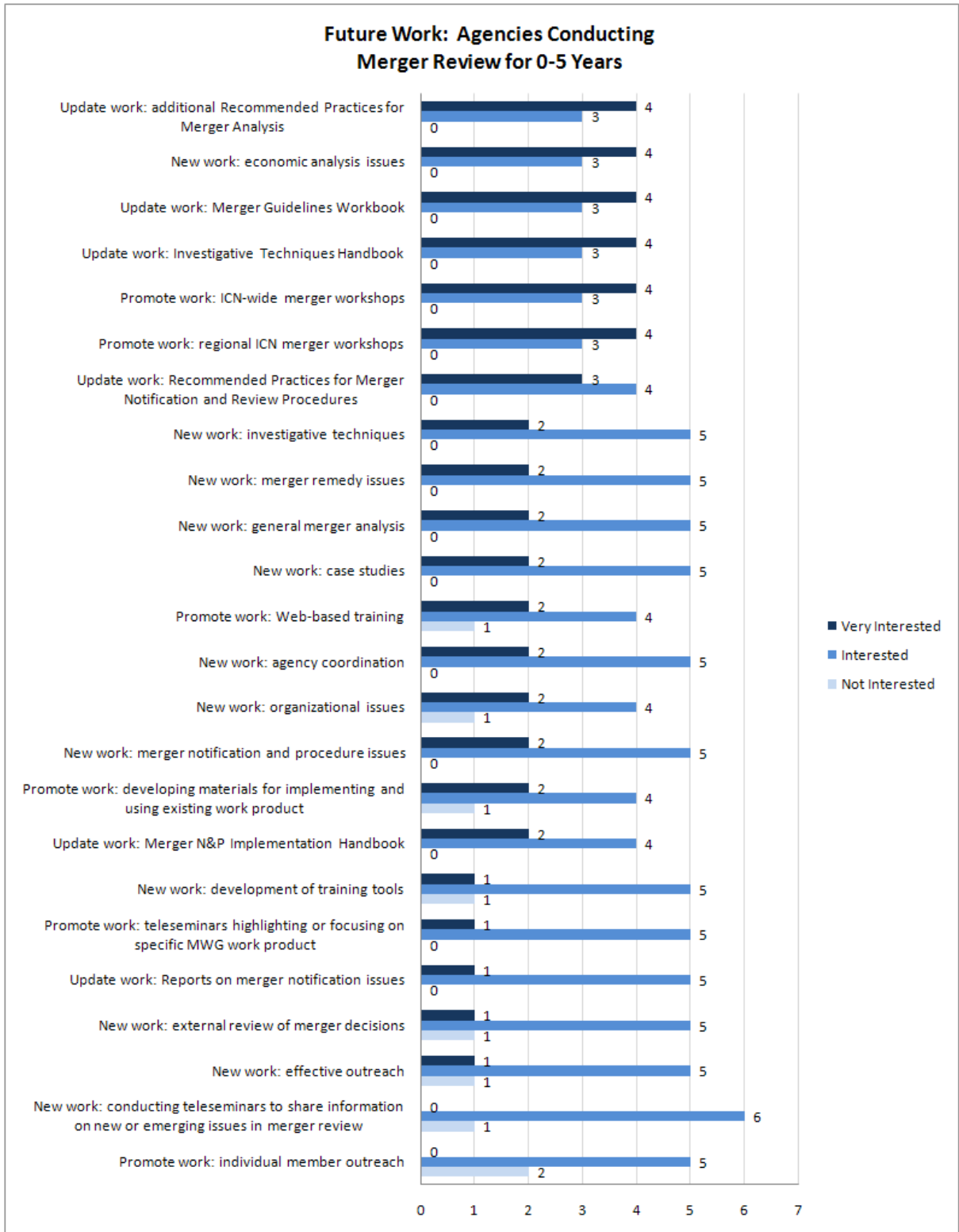
Most Useful MWG Work Product by Agency Age, Size, and Number of Merger Notifications and In-Depth Reviews

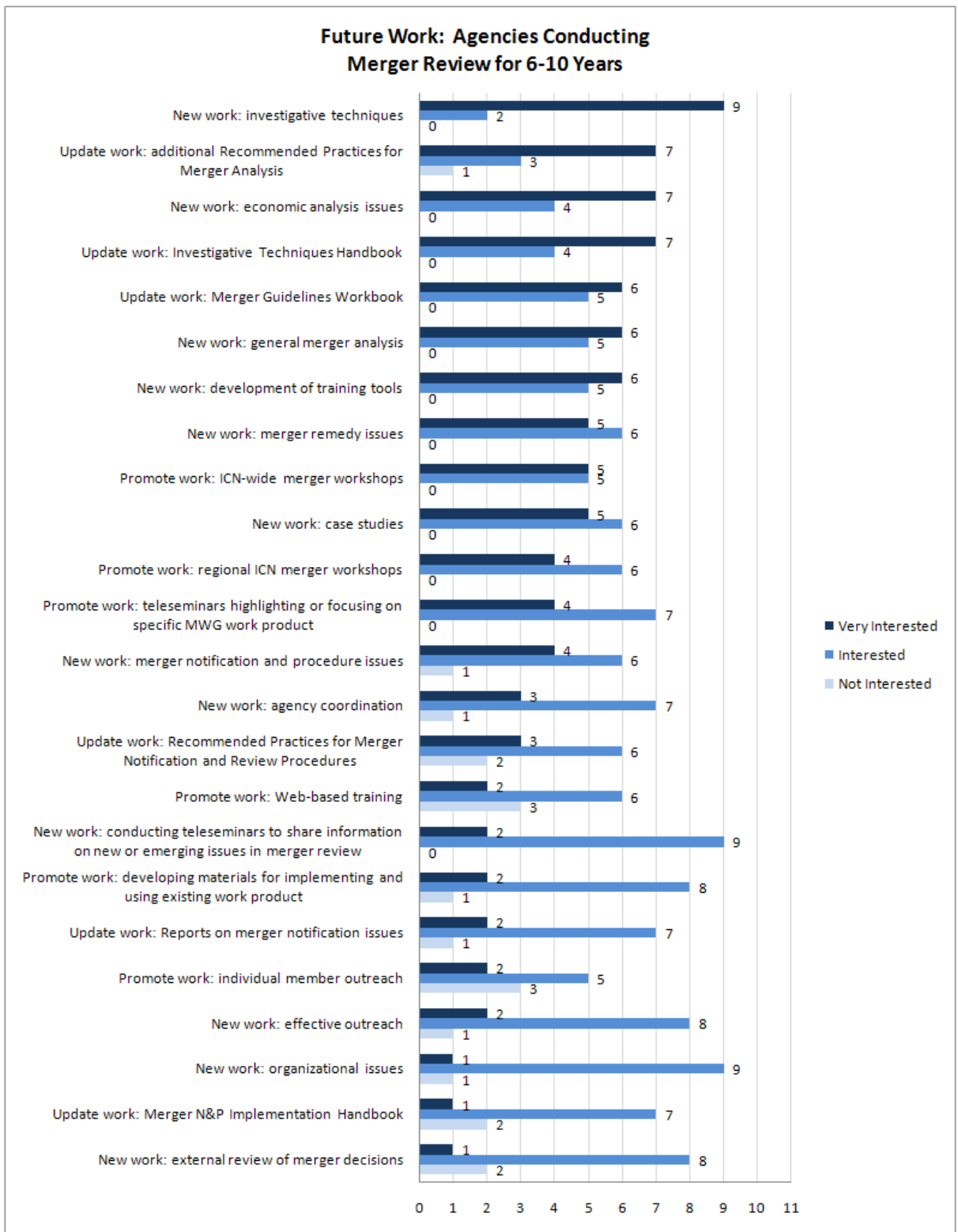
Other (9 Agencies)

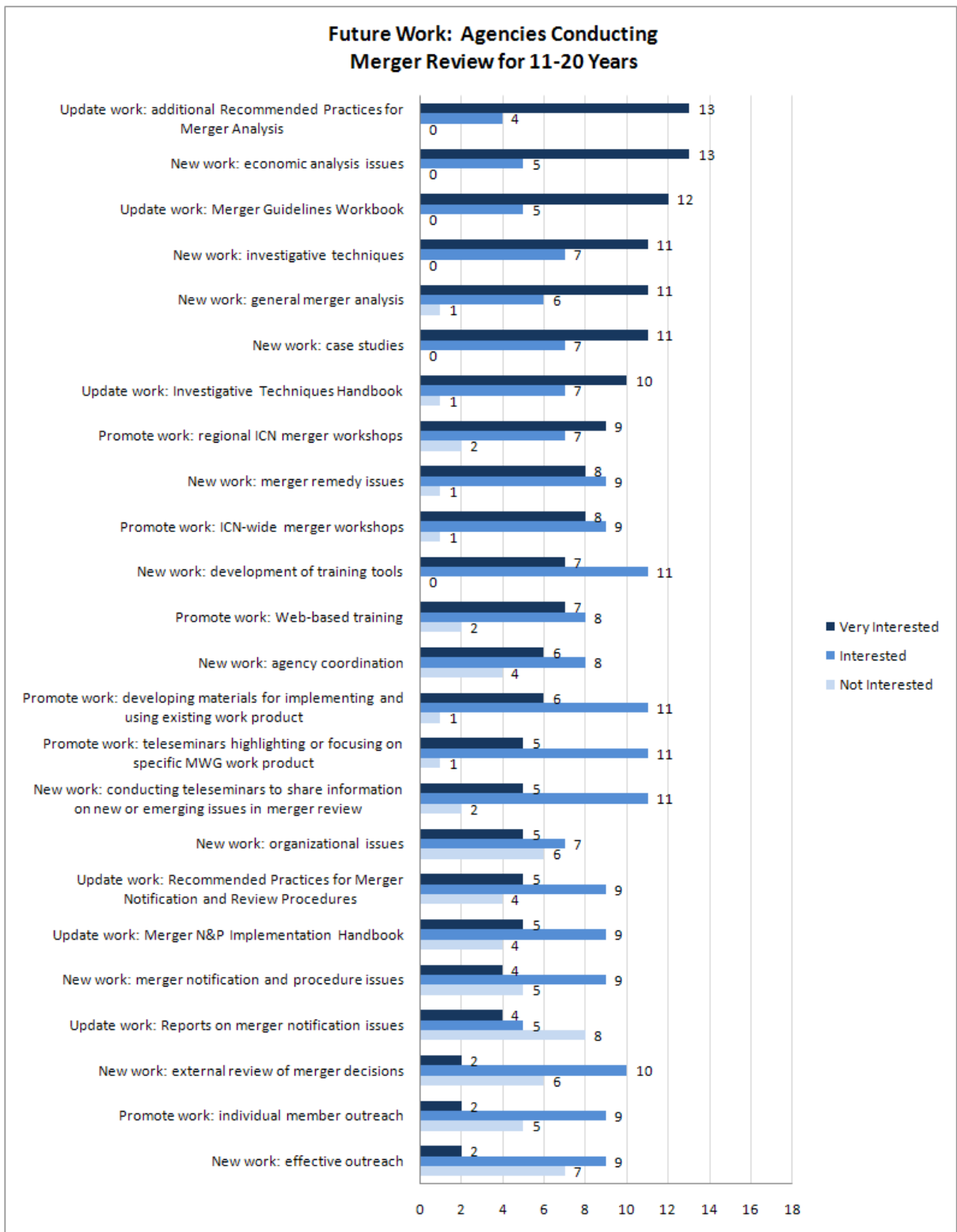


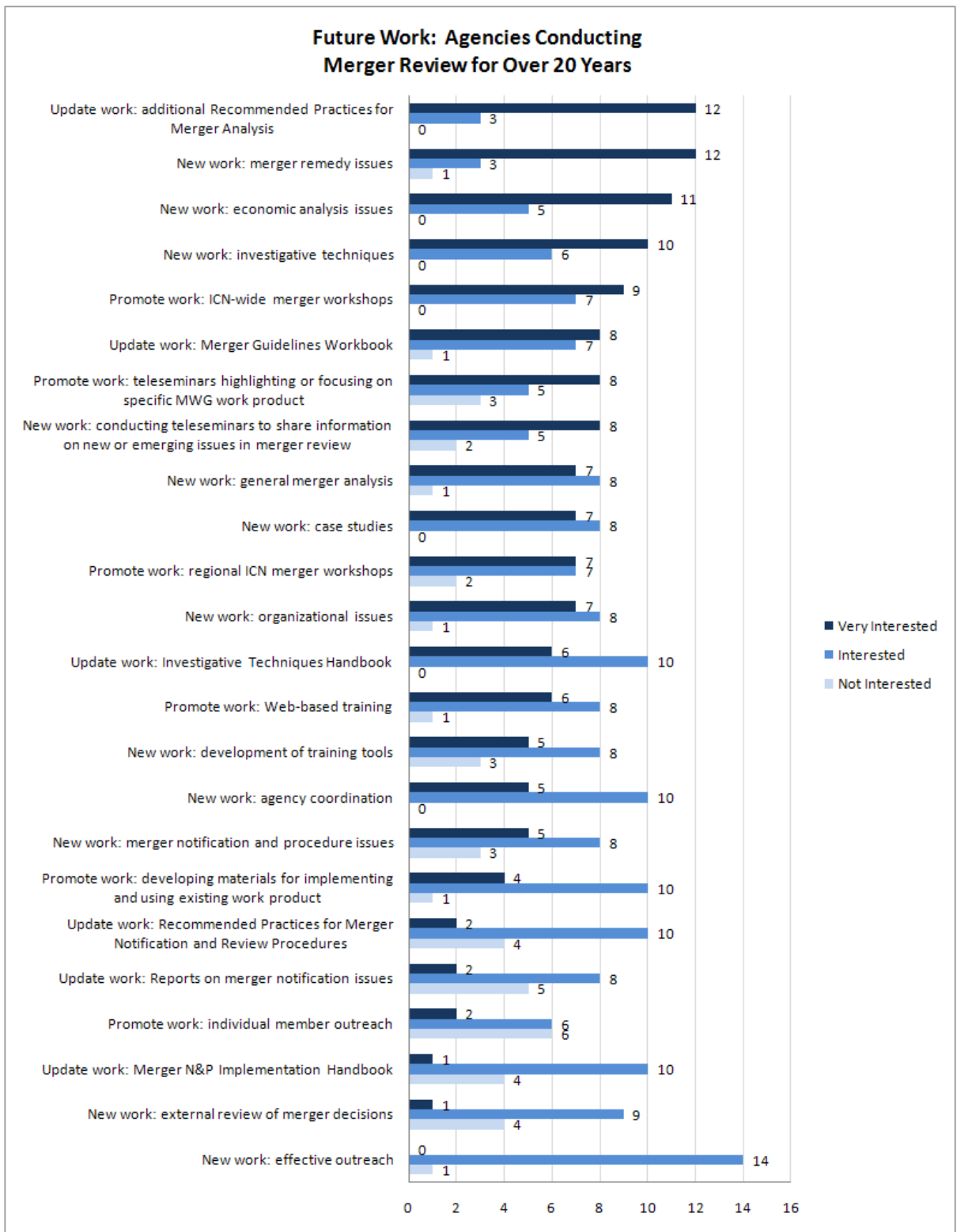
Annex 4

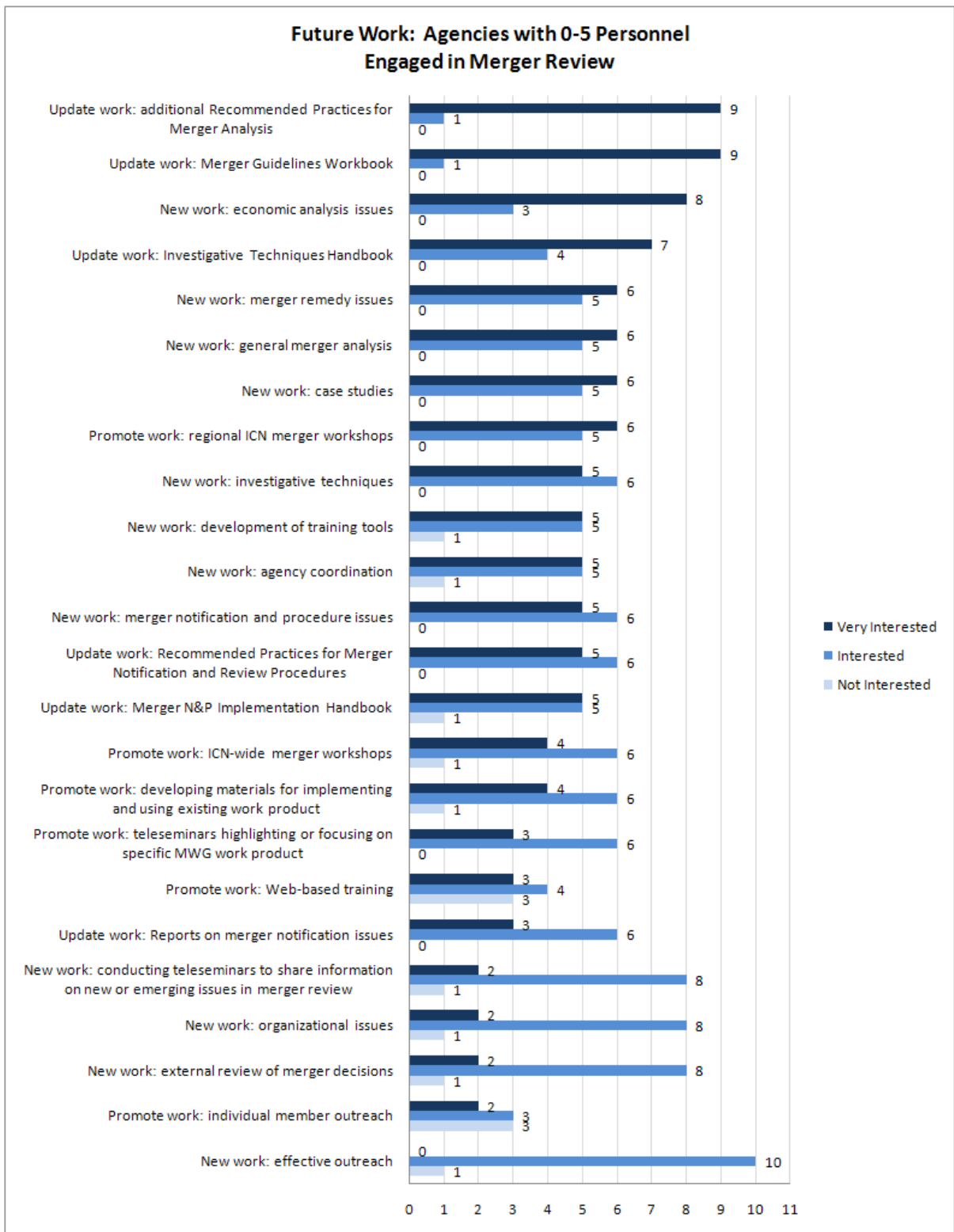
Interest in Future Work by Agency Age, Size, and Number of Merger Notifications and In-Depth Reviews

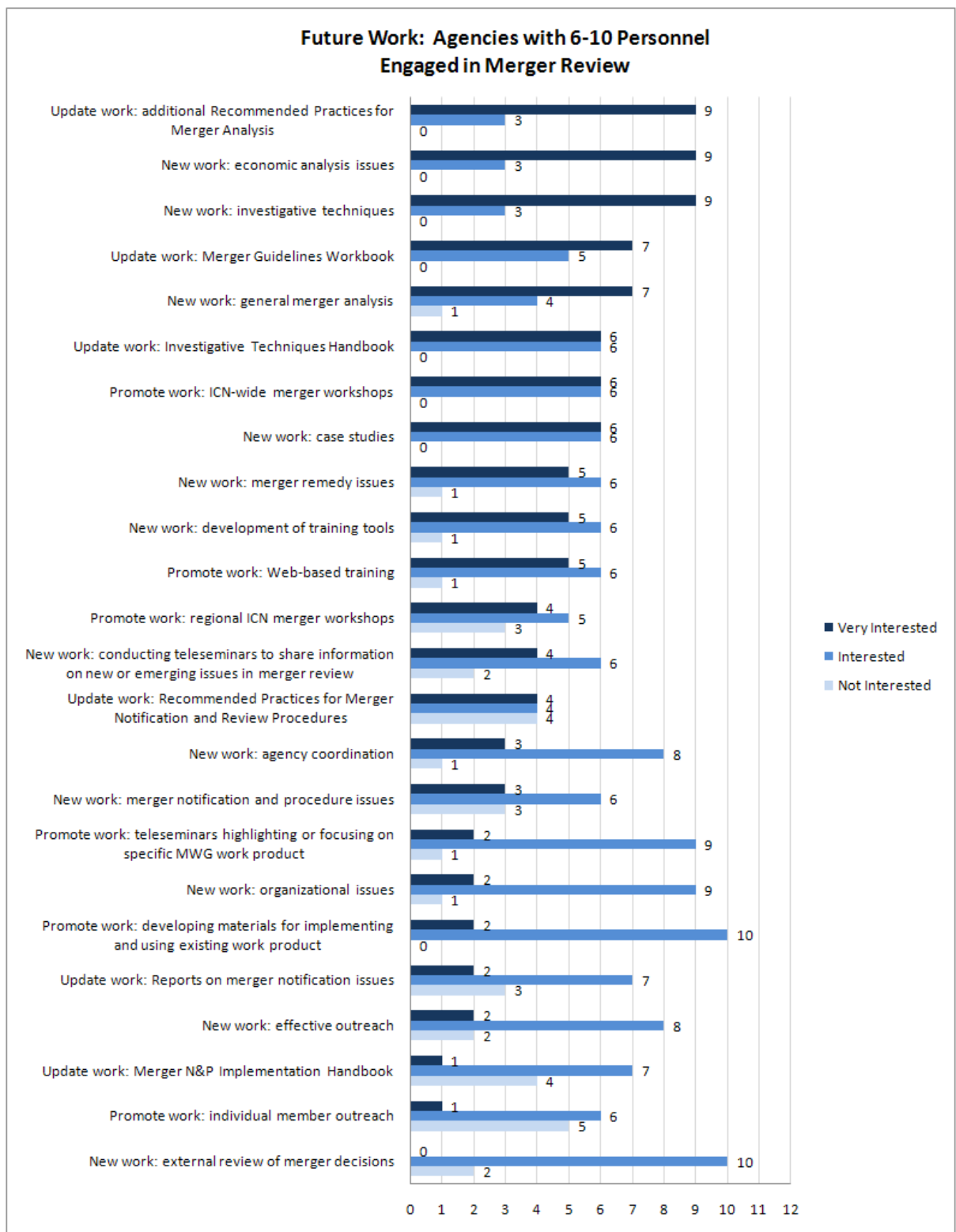


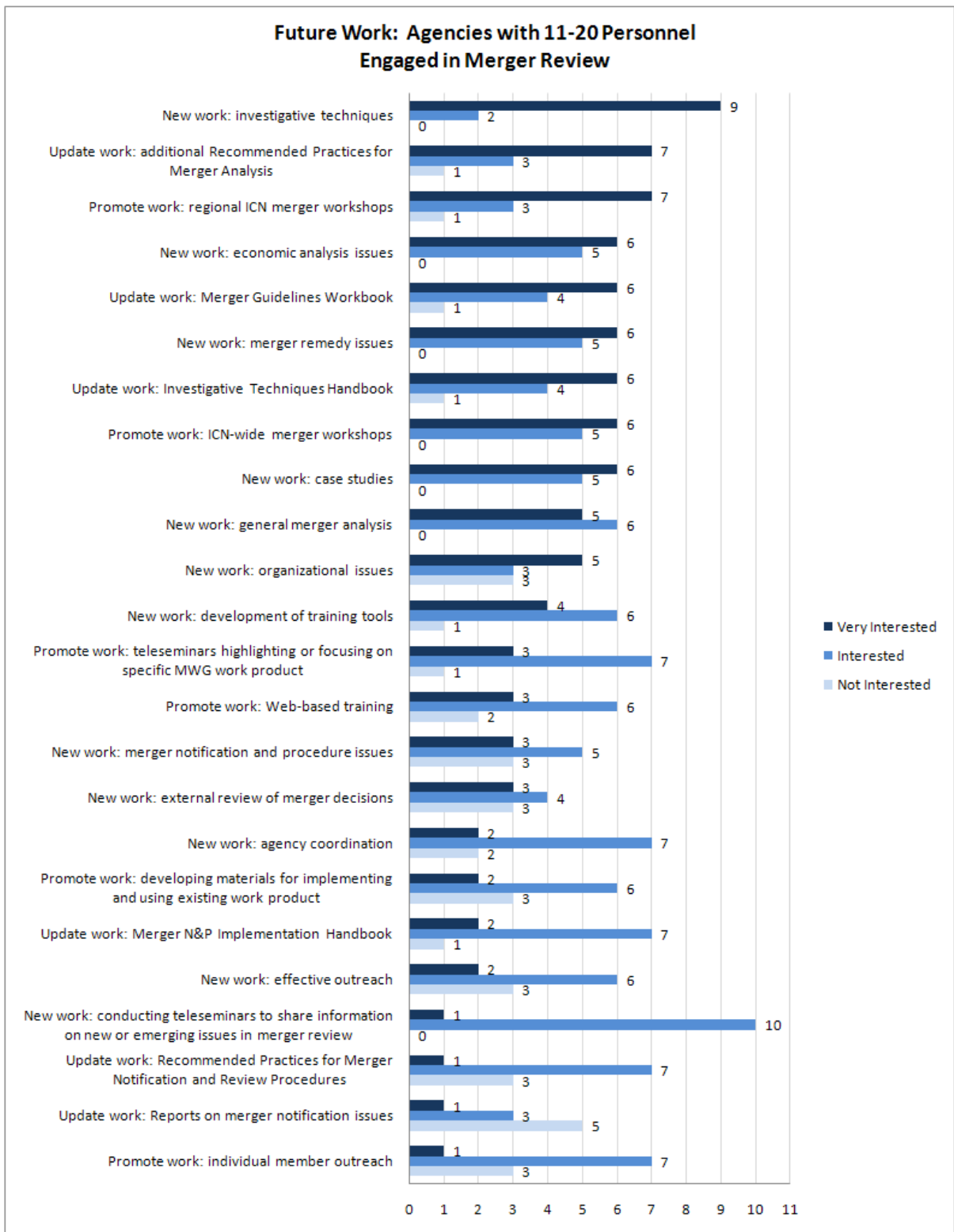


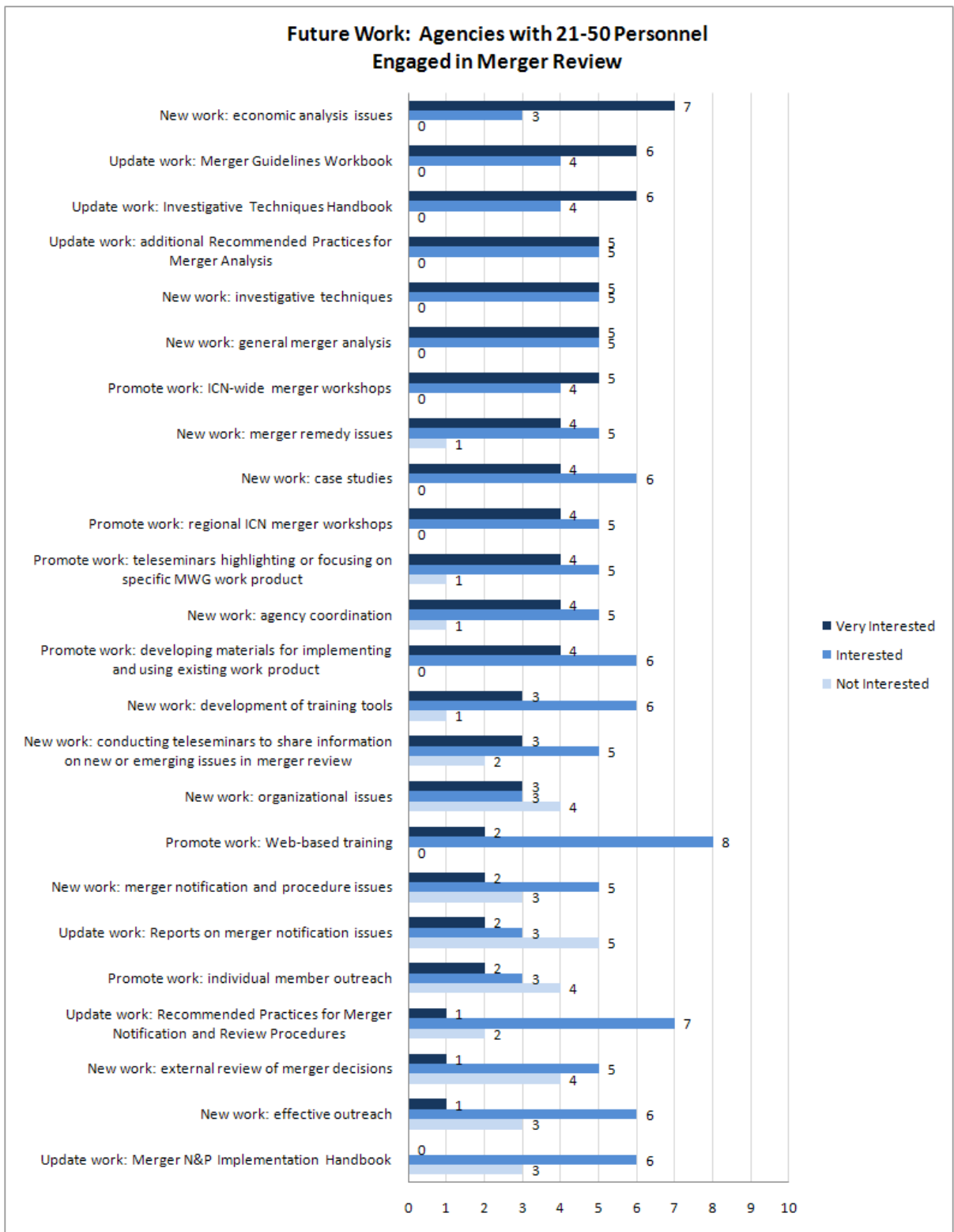


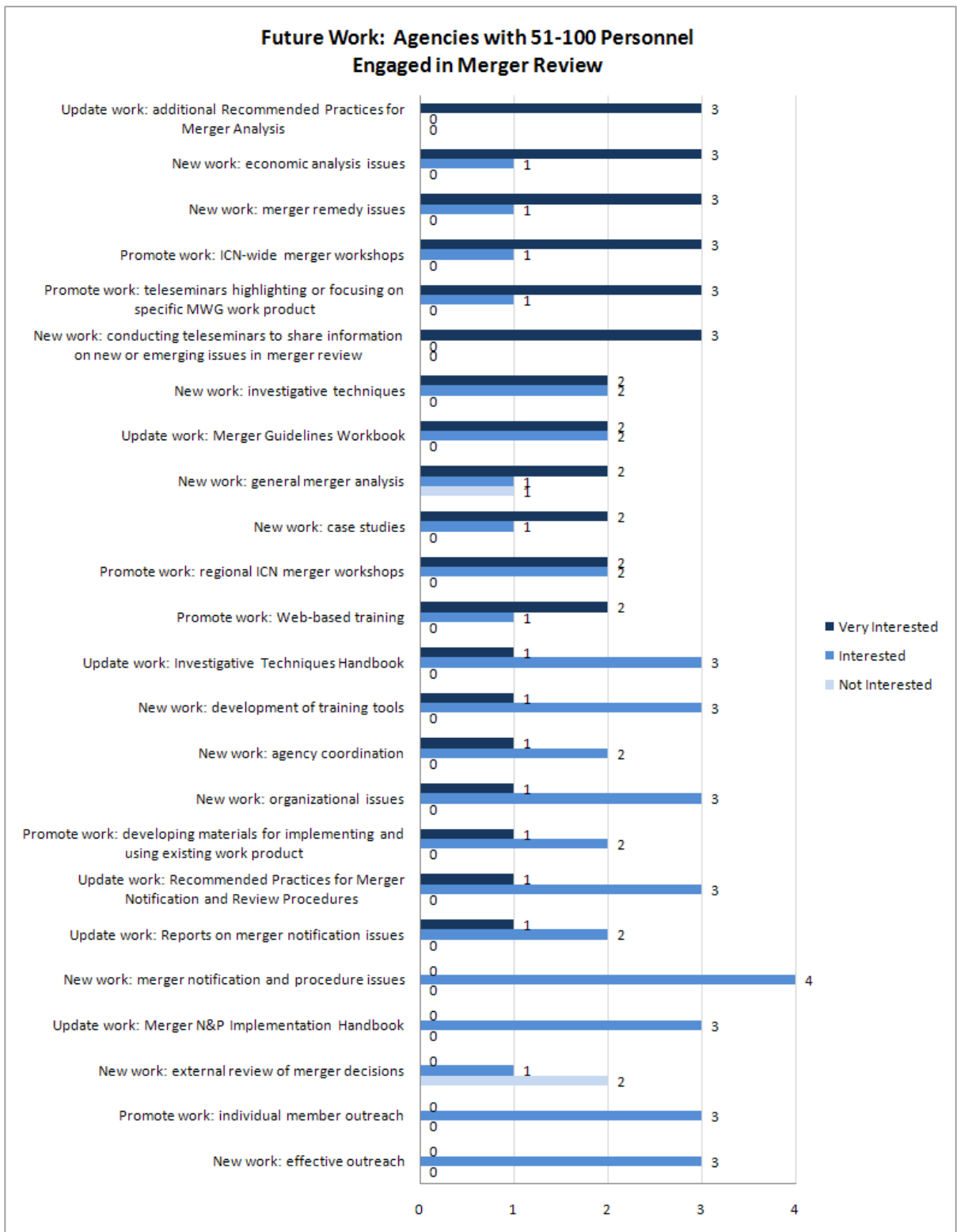


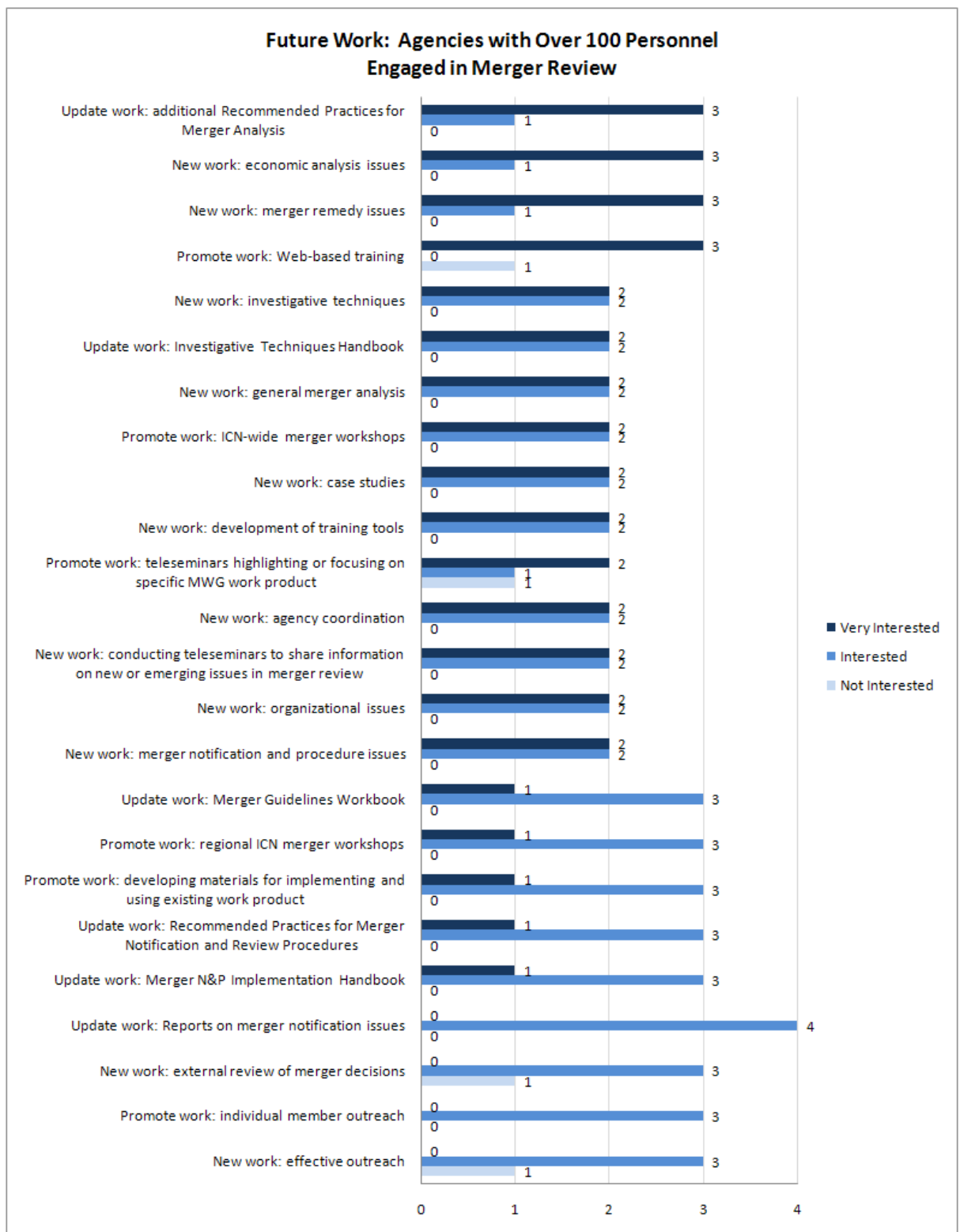


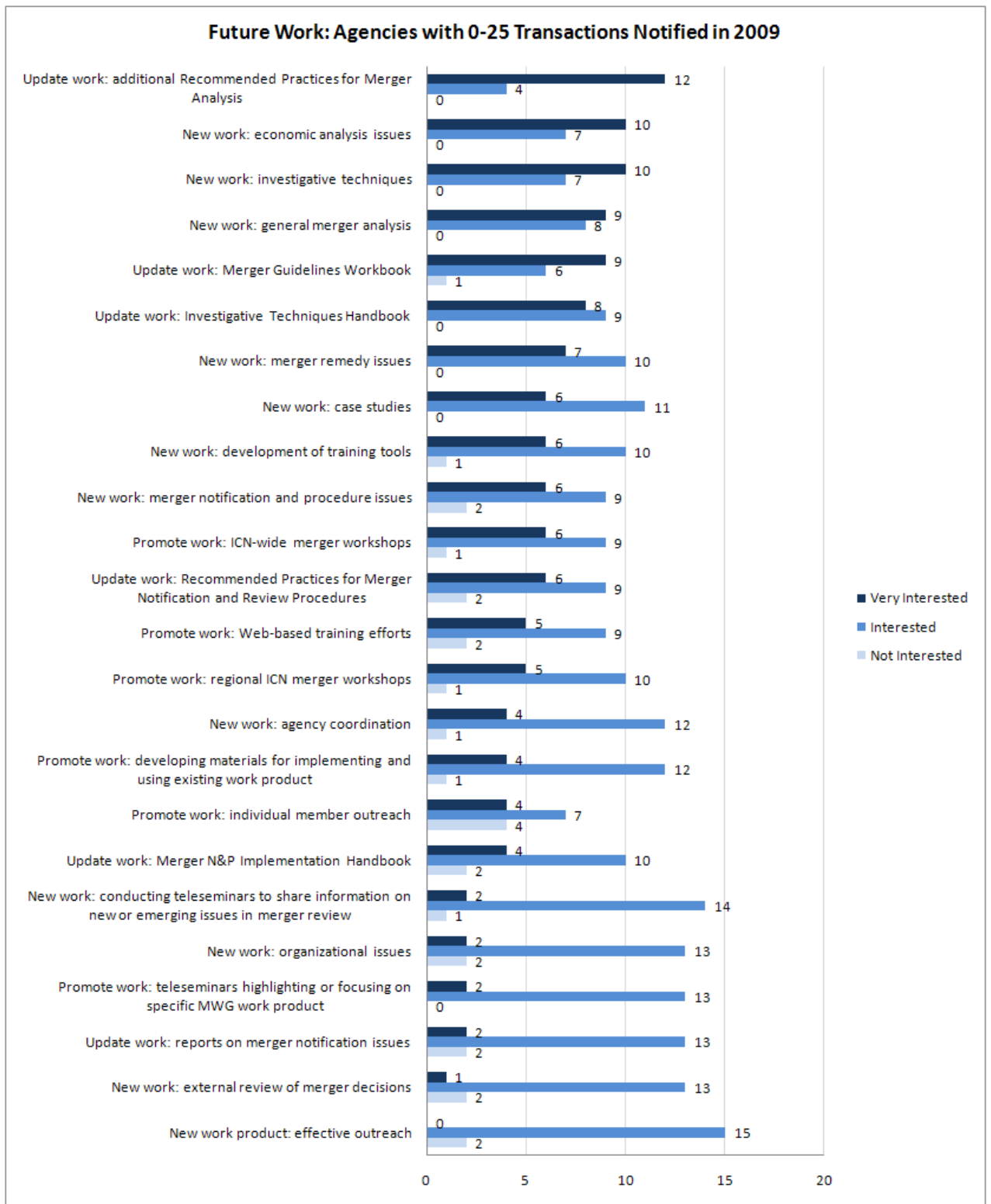


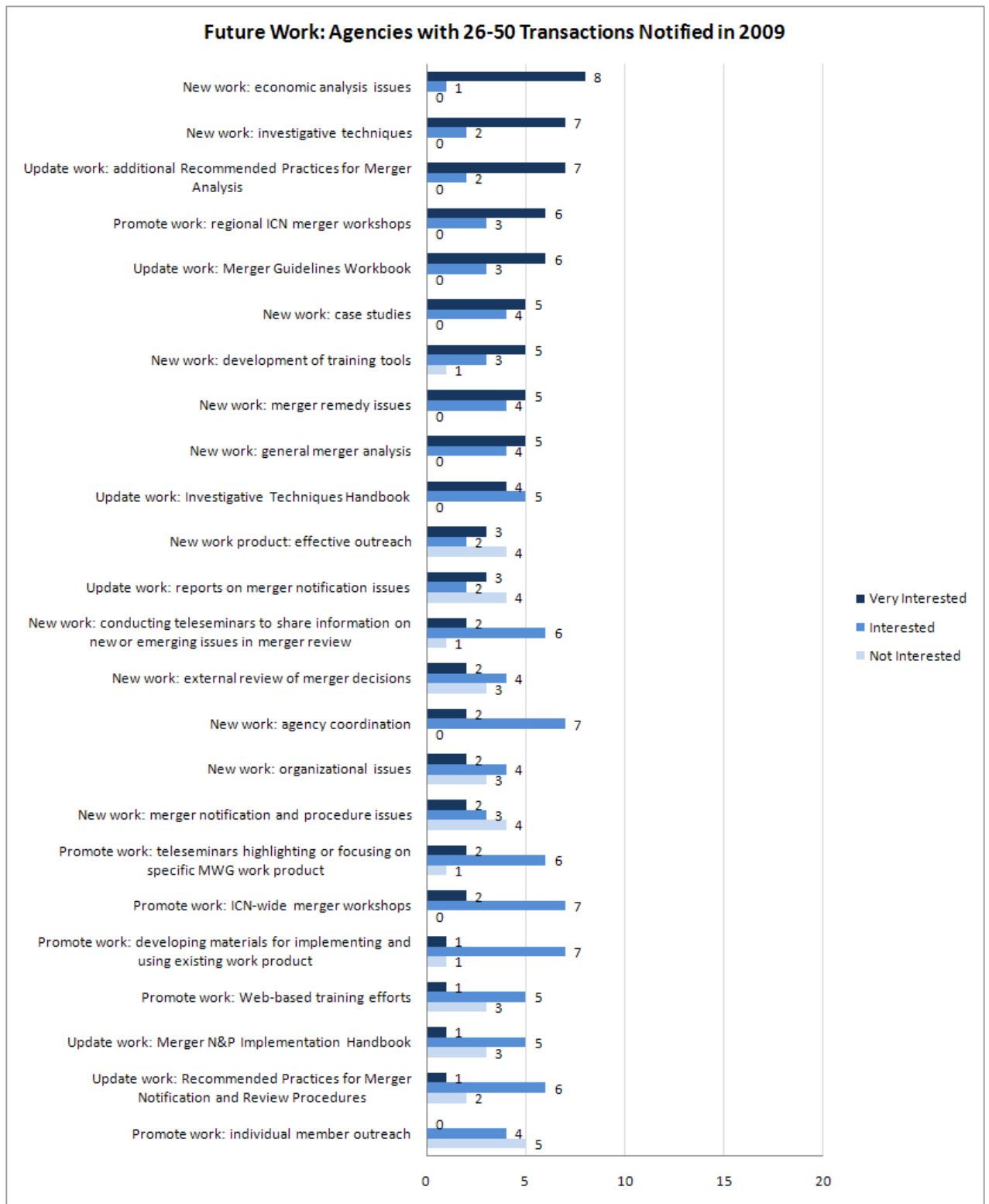


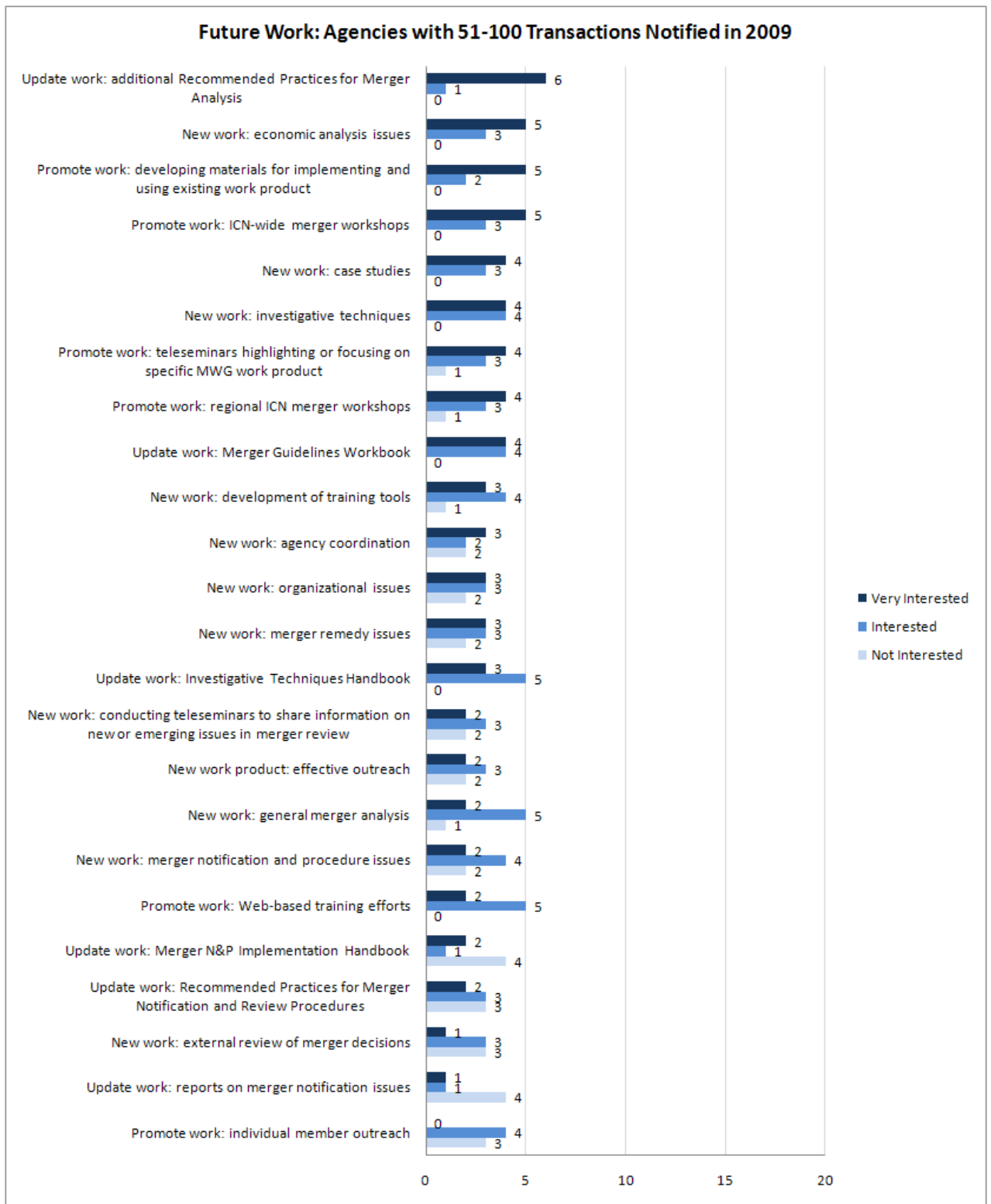


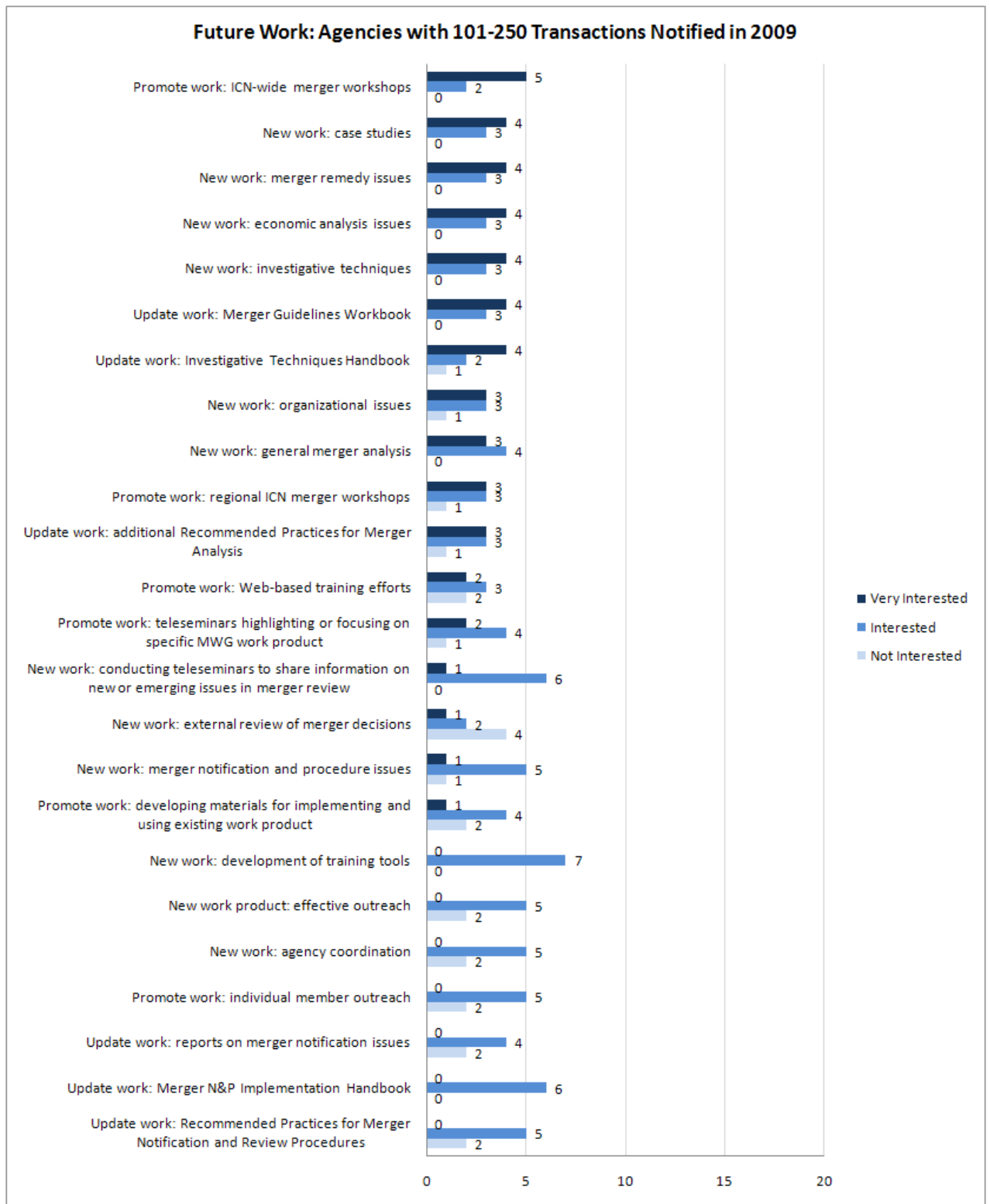


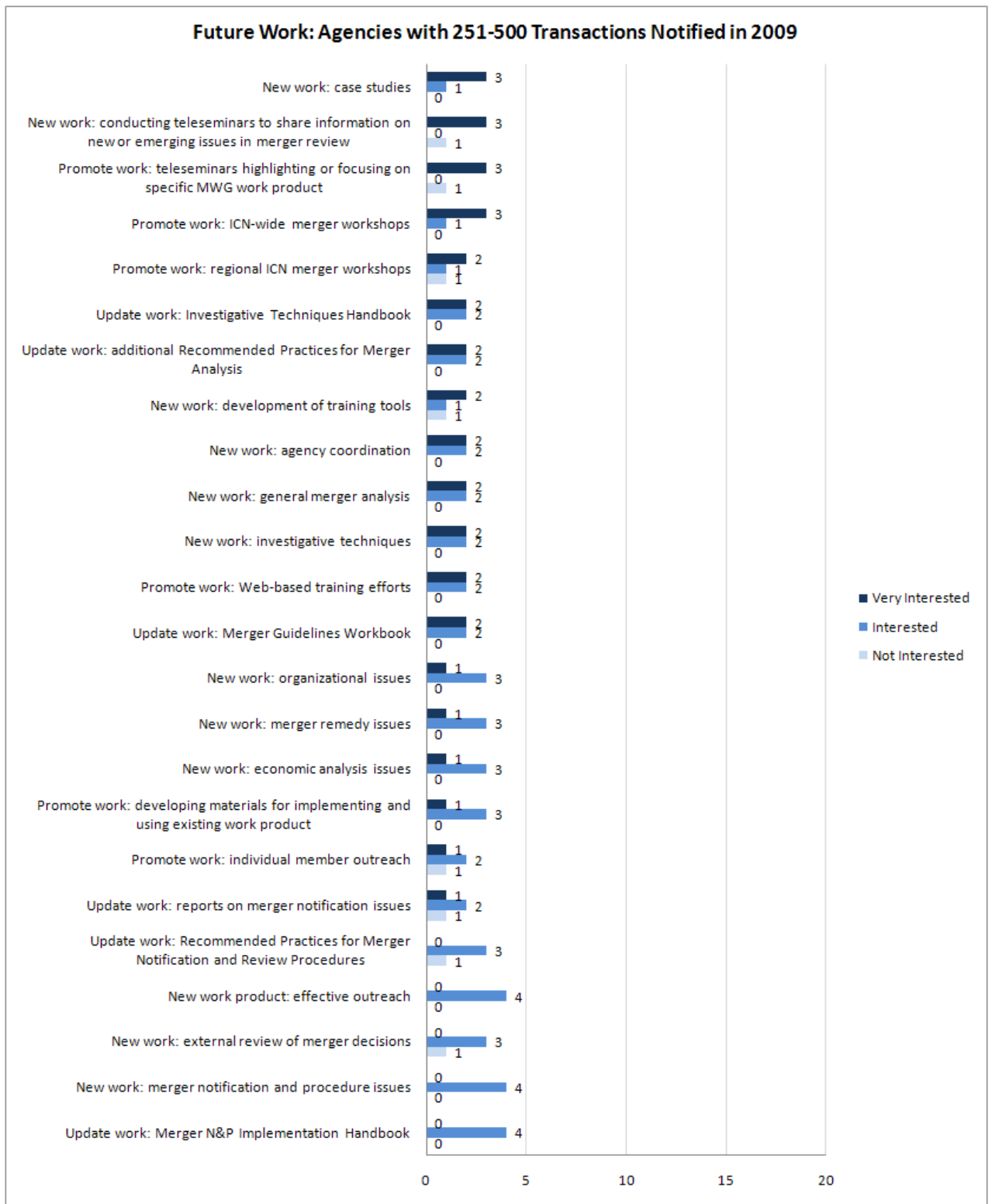


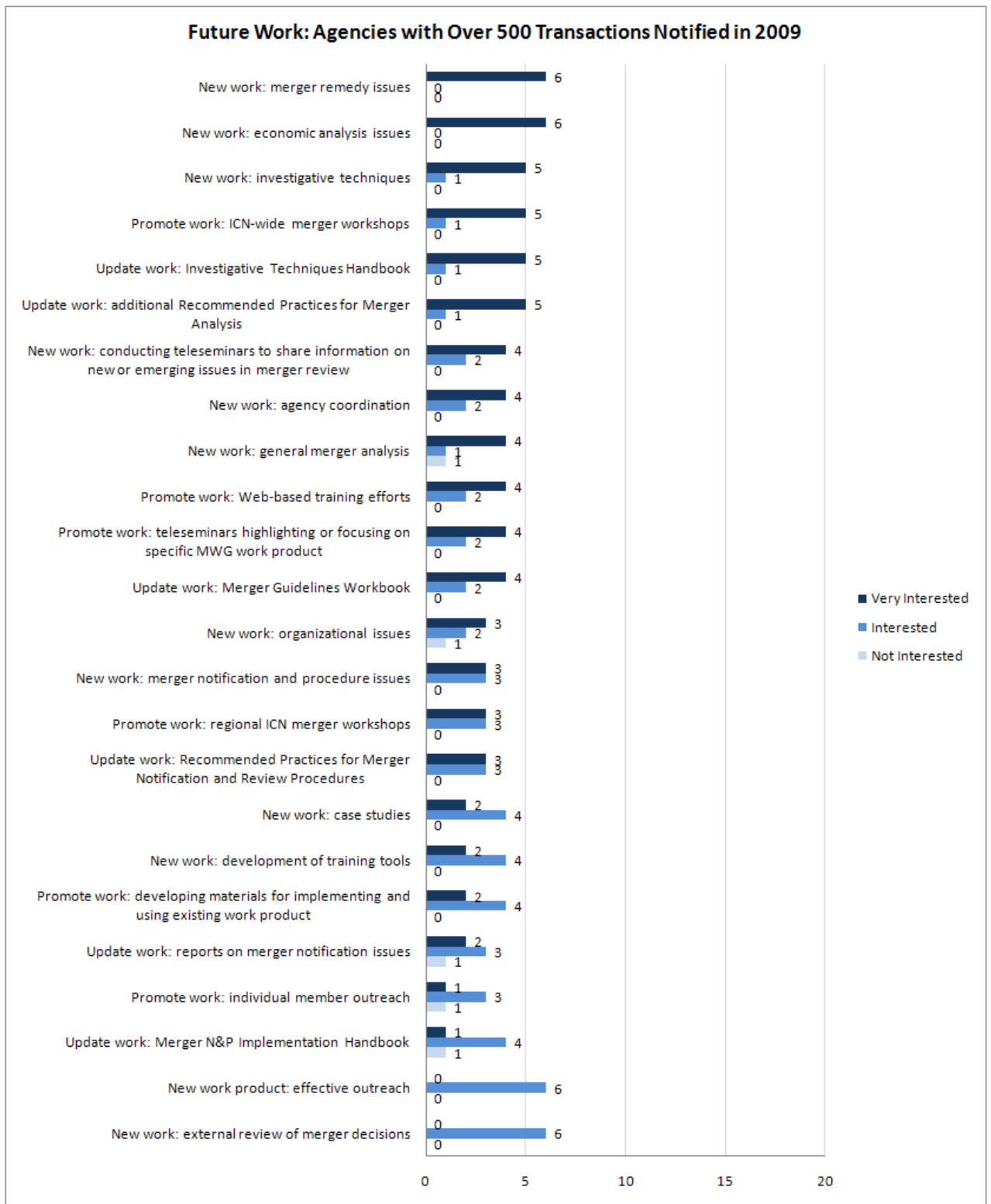


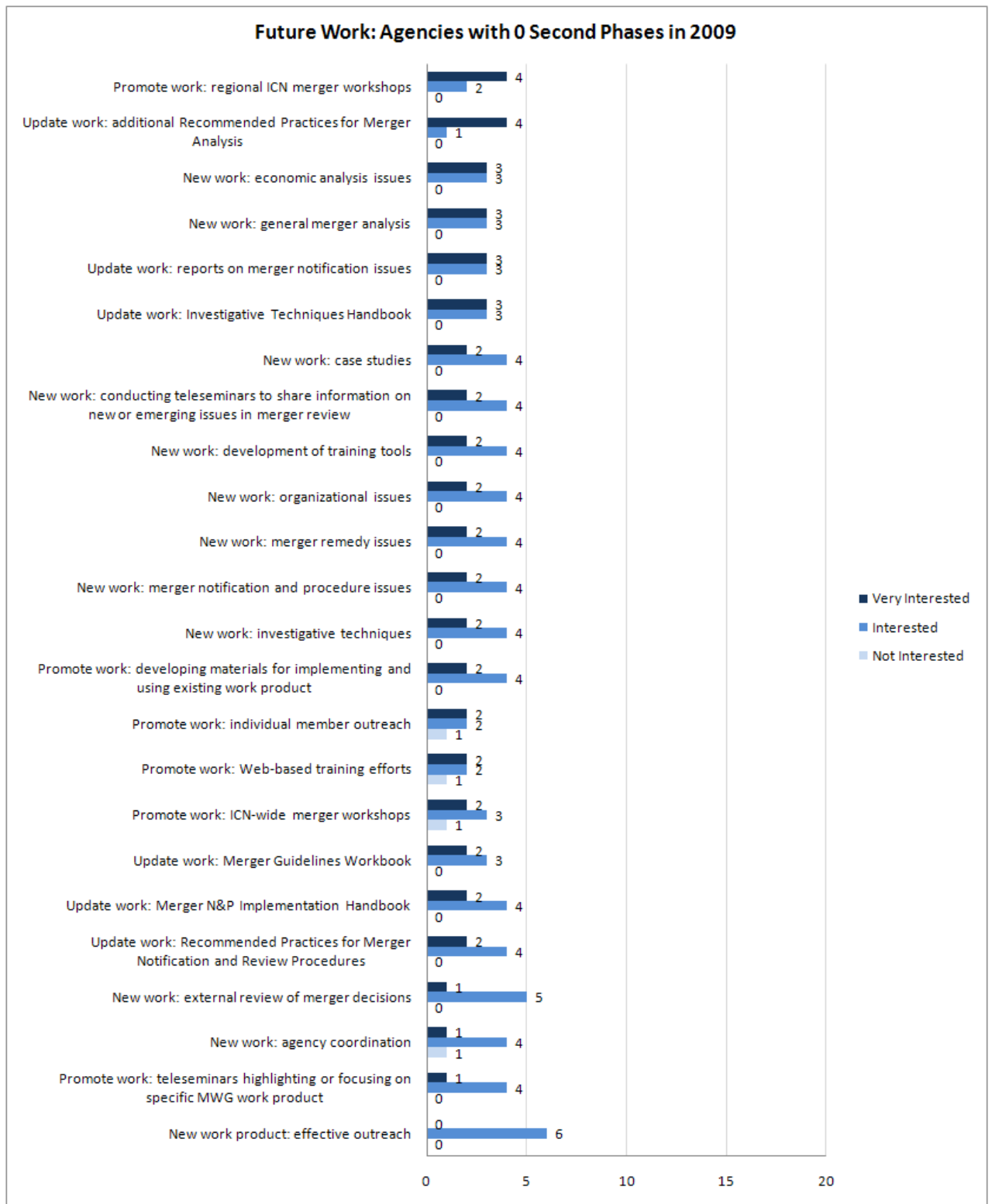


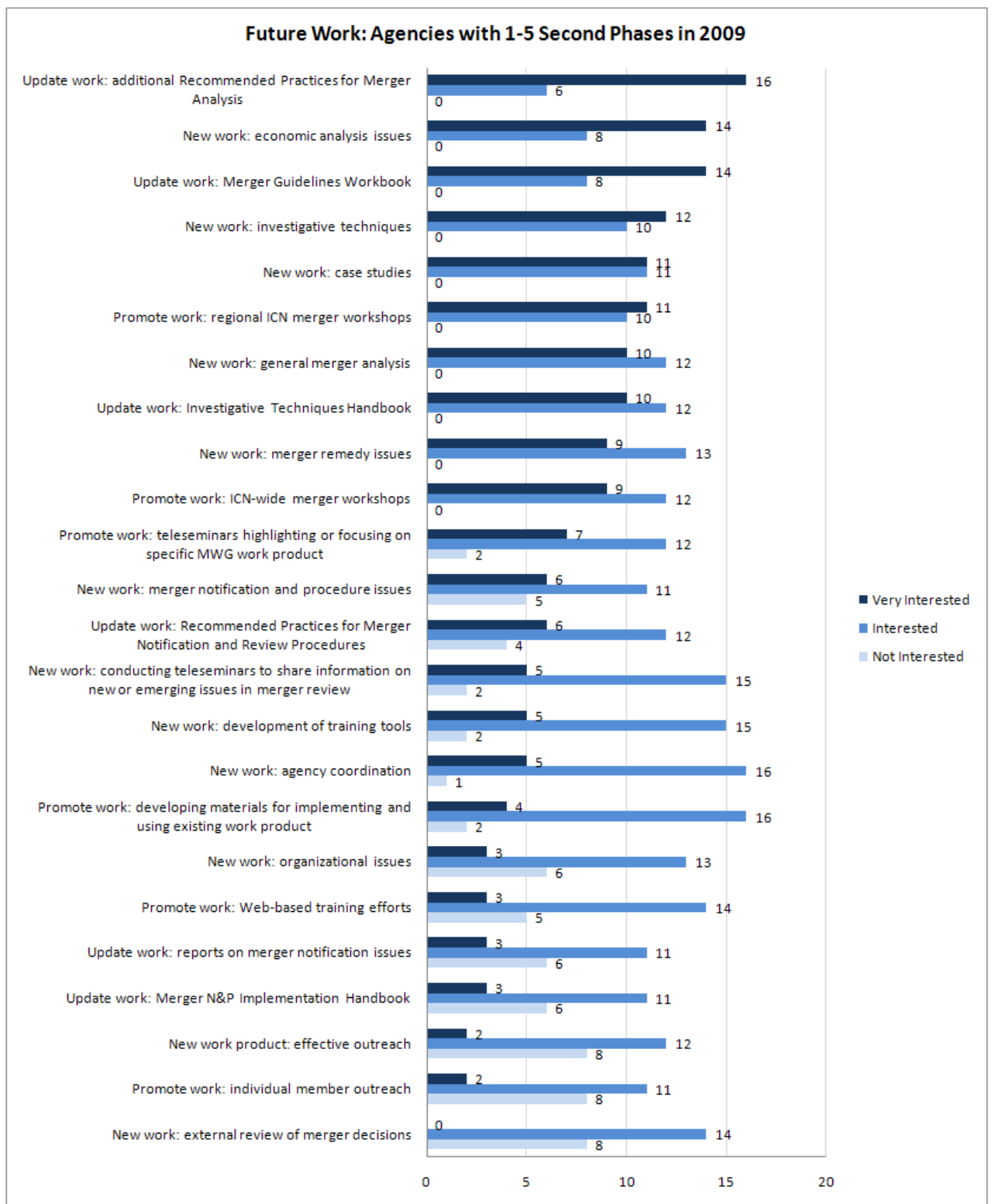




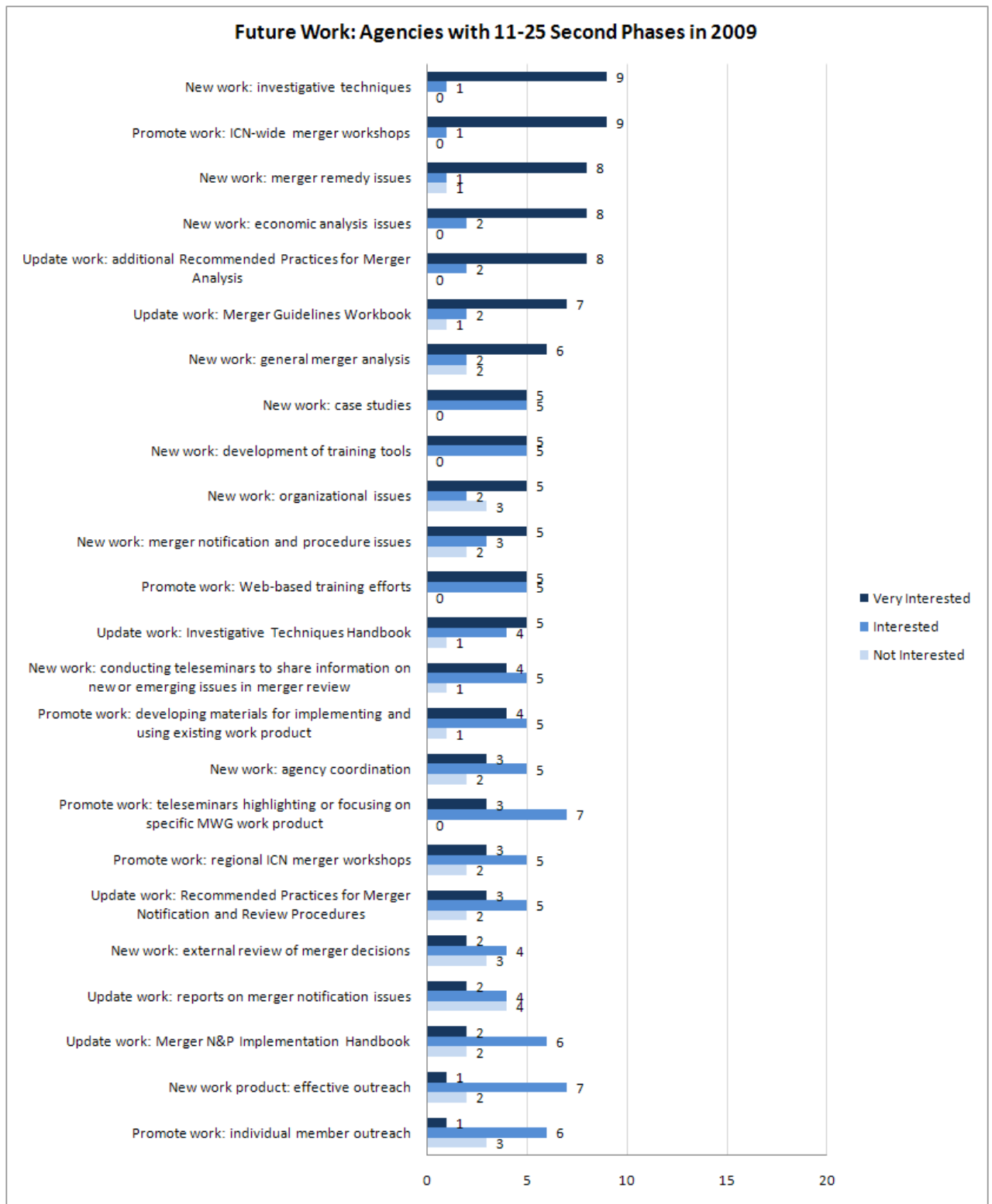


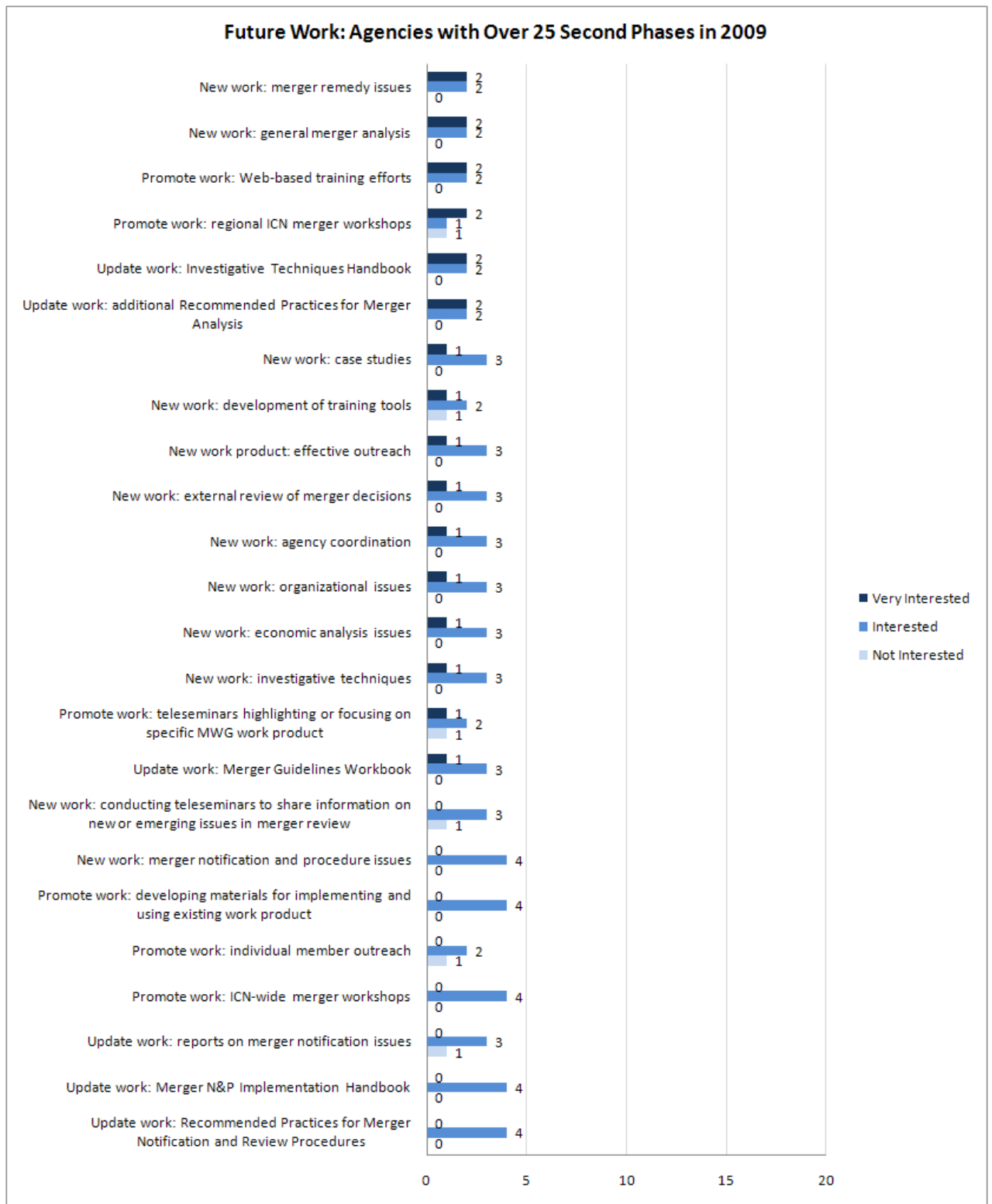


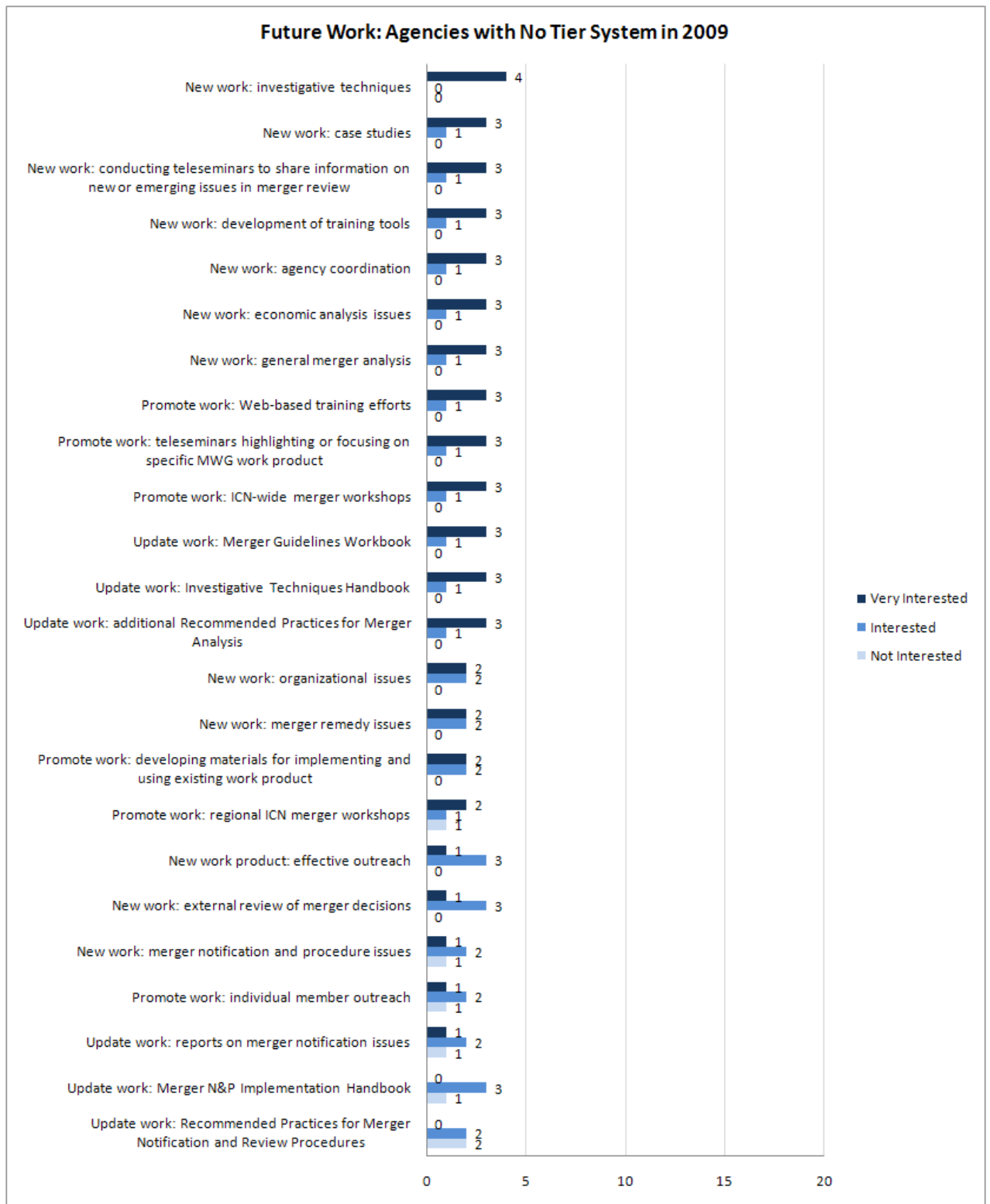












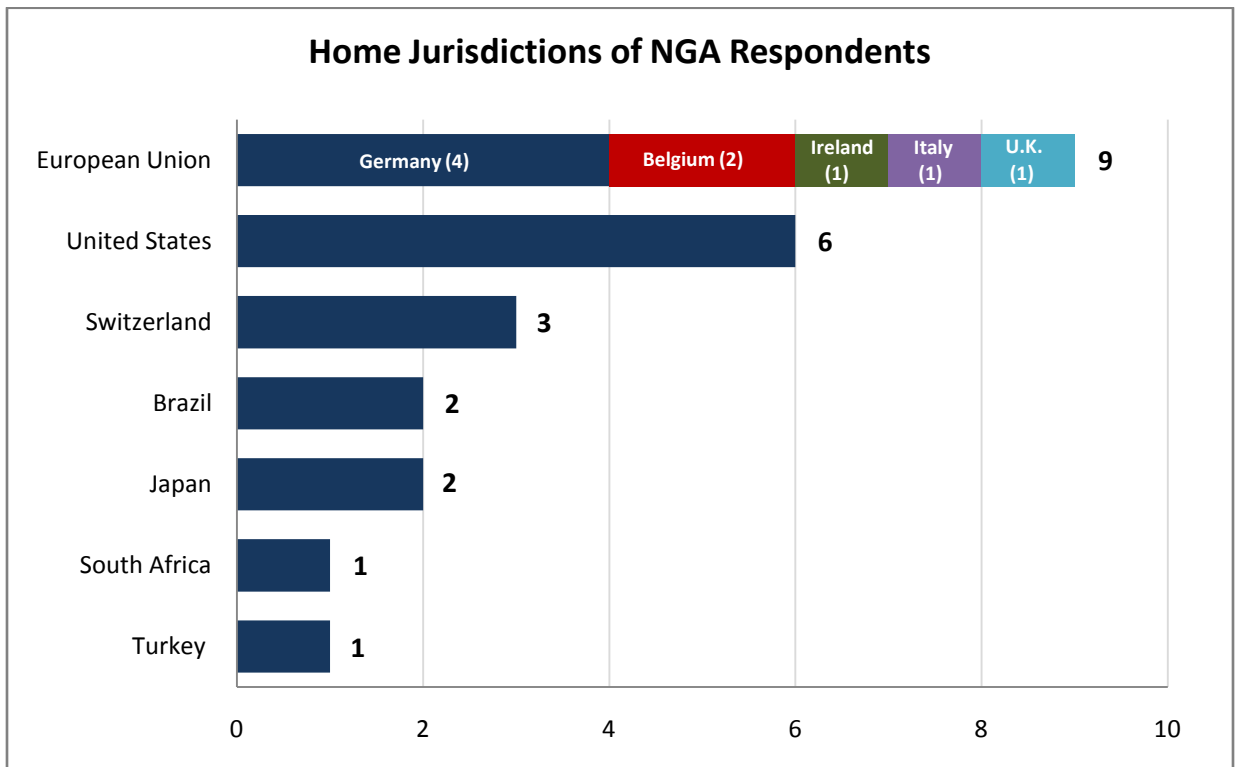
Appendix B

Results of Questionnaire to Merger Working Group NGAs to Assess ICN Merger Working Group Work Product and Future Needs

I. Survey Respondents (Questions 2-4)

In December 2010, the Merger Working Group conducted a survey of Merger Working Group (MWG) non-governmental advisors (NGAs) to assess MWG work product and future needs. The survey circulated to MWG NGAs is included at [Annex 1](#). In addition to MWG NGAs, MWG members were also invited to circulate the survey to other non-governmental advisors that they believed could provide useful input. The MWG received 23 responses to the survey.

The NGA survey requested information on the respondents' home jurisdiction⁷⁰ and the merger regimes with which they were familiar. The breakout of respondents' home jurisdictions and the merger review regimes (or regions of merger review regimes) which with they reported familiarity are depicted in the following charts.

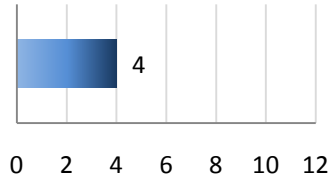


⁷⁰ One respondent reported two home jurisdictions, resulting in 24 reported home jurisdictions for 23 responses. All NGA survey respondents reported familiarity with the merger review regime in their home jurisdiction, and 21 respondents reported familiarity with the merger review regimes in one or more other jurisdictions as well.

**Merger Review Regimes with Which
NGA Survey Respondents Are Familiar**

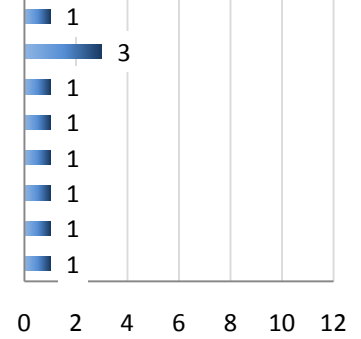
Worldwide

Many/Most/All Regimes
Around the World



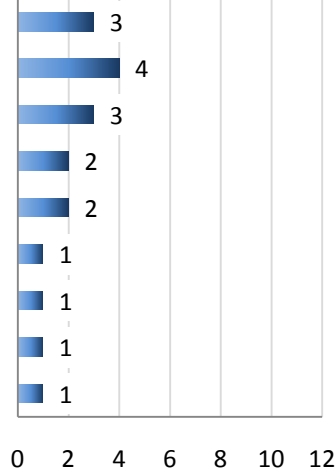
Africa

Many/All African Regimes
South Africa
Kenya
Mauritius
Namibia
Tanzania
Zambia
Zimbabwe



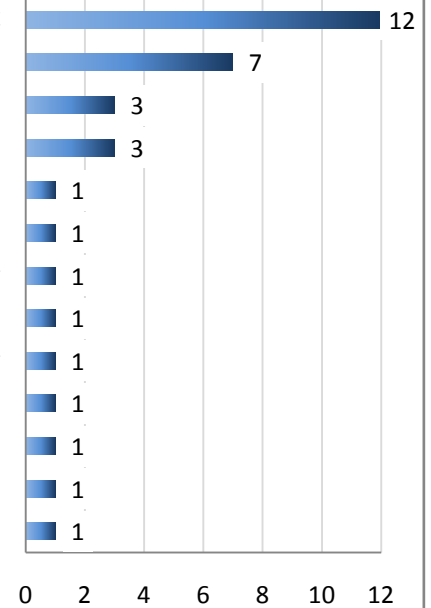
Asia & Australia

Many/All Asian Regimes
China
Turkey
Japan
Republic of Korea
Australia
India
Israel
Pakistan



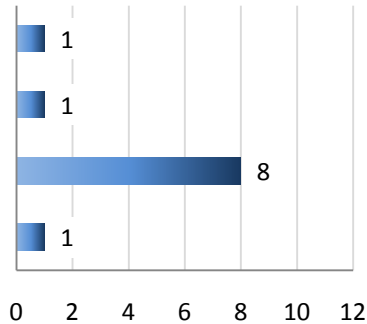
Europe

EC
Many/All EU Regimes
Russia
Switzerland
Austria
France
Germany
Ireland
Italy
Montenegro
Serbia
Spain
Ukraine



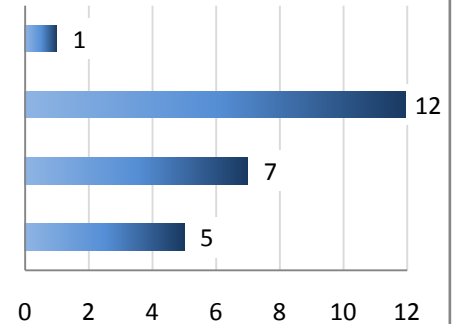
Central and South America

All South American
Regimes
Some Latin American
Regimes
Brazil
Argentina



North America

All North American
Regimes
United States
Canada
Mexico



The NGA survey also requested information as to whether respondents were employed or affiliated with particular organizations. All 23 respondents answered this question, with some respondents identifying multiple affiliations. The responses are outlined in the following chart.



II. ICN MWG Work Product (Questions 5-11)

The NGA survey asked respondents a series of questions regarding the use and impact of ICN MWG work product. The survey listed the following examples of MWG work product that respondents might wish to consider in responding to these questions.

Recommended Practices for Merger Notification and Review Procedures

Recommended Practices for Merger Analysis

Merger N&P Implementation Handbook

Merger Guidelines Workbook

Investigative Techniques Handbook

Merger Remedies Report

Model Confidentiality Waiver

Merger Templates and Web Links

Reports on merger notification and procedures:

Information Requirements for Merger Notification

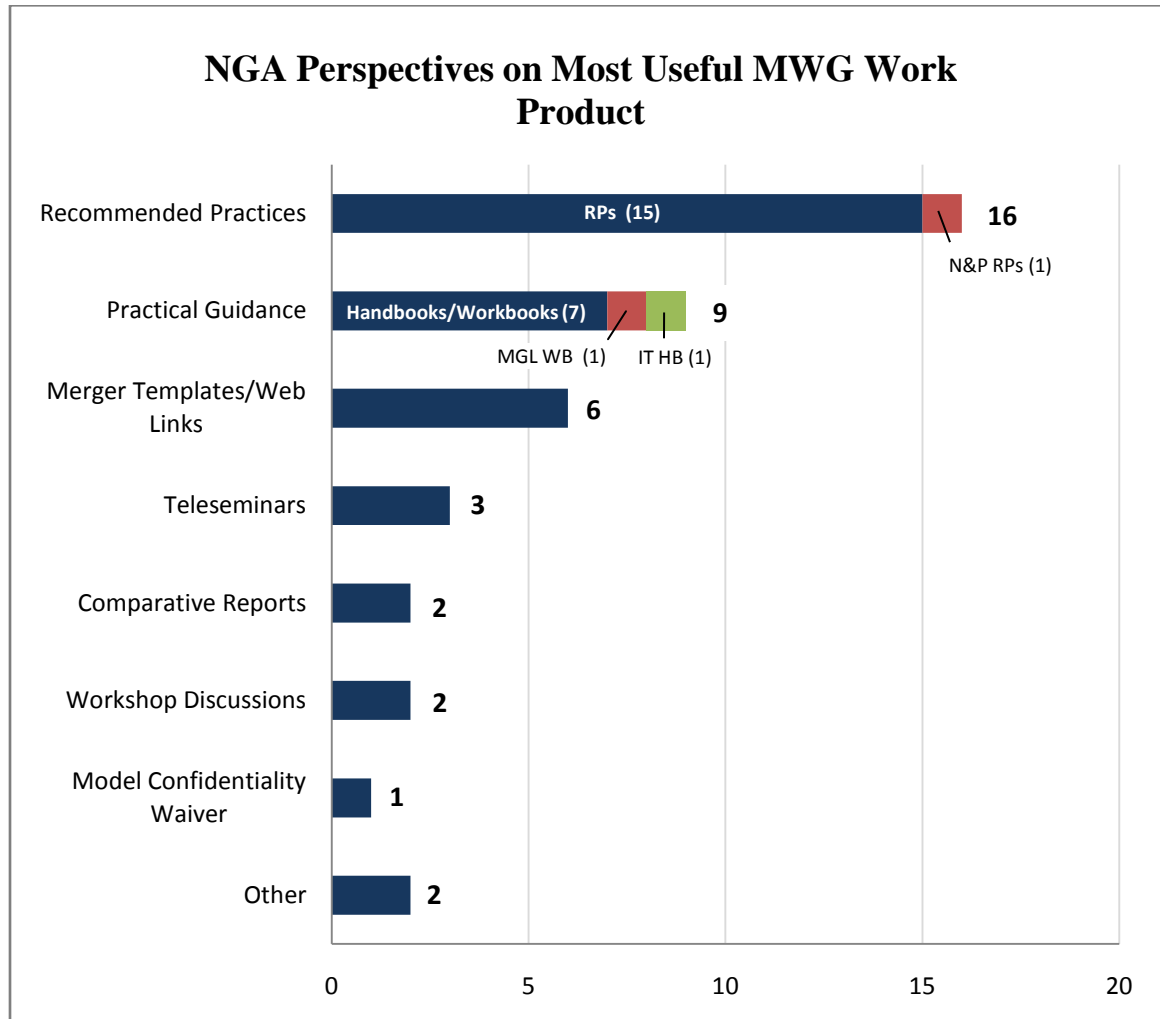
Defining “Merger” Transactions for Purposes of Merger Review

Setting Notification Thresholds for Merger Review

Comparative Study of Merger Notification Filing Fee Systems

A. Most Useful MWG Work Product (Question 5)

The NGA survey asked respondents to identify which MWG work products or types of work product they believed have been most useful and why. All 23 respondents answered this question, with several listing more than one work product or type of work product as among the most useful. Work products mentioned as most useful by NGA respondents are depicted in the following chart.



1. Recommended Practices

Sixteen respondents to the NGA survey (70% of all respondents) identified Recommended Practices (RPs) as one of most useful MWG work products. Of these, 15 highlighted the usefulness of both sets of RPs or RPs generally, and one highlighted the usefulness of the *Recommended Practices for Merger Notification and Review Procedures*. The respondent highlighting the *Recommended Practices for Merger Notification and Review Procedures* as most useful noted that while the recommendations often cannot be adopted for institutional reasons, there have been numerous instances in which these RPs have materially influenced policy and have led to less burdensome practices.

Respondents highlighting the usefulness of RPs generally cited the following reasons for considering the RPs as among the most useful MWG work product.

- RPs embody a consensus of view of ICN members regarding the “best practices for both the merger review process and the substantive assessment of merger, and these have been

instrumental in encouraging a number of jurisdictions to reform/revise their laws and regulations to comply with, or come closer to complying with, the RPs.

- The RPs are clear and can be implemented.
- RPs contribute to discussions on how to improve merger review regimes in various jurisdictions.
- RPs further encourage the implementation of standards.
- The RPs have been implemented.
- RPs have led national competition authorities to harmonize their approach.
- The objective and direct approach of RPs tends to bring more efficiency and effectiveness through their implementation by jurisdictions.
- RPs represent in a concise form the agreed thinking on merger analysis. Involvement in the preparation of Recommended Practices is also important as it involves discussions with those with different perspectives and forces one to re-examine merger analysis issues.
- Access to up-to-date thinking from leading practitioners and government officials is extremely useful, particularly when conveniently summarized in the MWG publications.
- RPs set the stage for cooperation and coordination and greatly enhanced those objectives. Also, it helped immensely in putting new enforcement agencies on a better track and helped eliminate a lot of duplication and unnecessary activities.
- The *Recommended Practices for Merger Notification and Review Procedures* have brought harmonization of merger notification procedures, while the RPs for Merger Analysis have brought harmonization of common principles applied when assessing multi-jurisdictional mergers.

2. Practical Guidance

Nine respondents to the NGA survey (39% of all respondents) identified the MWG's practical guidance documents as among the most useful. Of these, seven respondents cited handbooks and/or workbooks as particularly useful, noting that these work products provide concrete and usable tools that are helpful on daily work, provide a list of issues and logic tools useful for training and for organizing the analysis in a structured way, provide an objective and direct approach that tends to bring more efficiency and effectiveness to merger review, and include general information of use for academic purposes as well as in legal activities. One of these respondents identified handbooks as among the most useful work product based upon conversations with developing world agency officials.

In addition, one respondent highlighted the *Merger Guidelines Workbook* as among the most useful MWG work products, noting that it provides a solid background and knowledge base. Another respondent highlighted the *Investigative Techniques Handbook* as the most useful MWG work product, noting that it is extremely useful for convergence of practice.

3. Merger Templates/Web Links

Six NGA survey respondents (26% of all respondents) identified the merger templates and web links as among the most useful MWG work product. Respondents in this category noted that these tools are very useful in their daily work, assist as an initial step in assessing the need to notify international merger transactions in other jurisdictions, assist in advising clients, and effectively summarize material information with regard to merger filings in various jurisdictions in global merger transactions. One respondent noted that while the templates and links have proved useful in some instances, they do not appear to be consistently updated.

4. Teleseminars

Three NGA survey respondents (13% of all respondents) cited teleseminars as among the most useful MWG activities. Respondents in this category commented that teleseminars are accessible, up-to-date, and convey comparative substance.

5. Comparative Reports

Two NGA survey respondents (9% of all respondents) cited particular comparative reports as among the most useful MWG work products. One respondent identified the report on *Setting Notification Thresholds for Merger Review* as particularly useful in arguing in favor of second national turnover thresholds. The other respondent identified two reports as particularly useful: (i) *Information Requirements for Merger Notification*, which is useful as a checklist when coordinating multi-jurisdictional filings, and (ii) *Comparative Study of Merger Notification Filing Fee Systems*, which can be useful for preliminary cost estimates, but updates should be provided regularly.

6. Workshop Discussions

Two NGA survey respondents (9% of all respondents) cited workshop discussions as among the most useful MWG activities. One respondents in this category noted that workshops allow agencies to get together as peers to talk and work through the work products and issues.

7. Model Confidentiality Waiver

One NGA survey respondent identified the *Model Confidentiality Waiver* as among the most useful MWG work product.

8. Other

One NGA survey respondents noted that all MWG work product helps people who work in practice. Another respondent noted that the MWG work products have clearly played an important role in the merger control investigations of jurisdictions with limited experience in the field, although EU and US merger guidelines and notices also play a role and it is not always easy to determine from where jurisdictions draw their inspiration.

B. Implementation of Recommended Practices (Question 7)

The NGA survey asked respondents for their impressions on the extent to which the *Recommended Practices for Merger Notification and Review Procedures* and the *Recommended Practices for Merger Analysis* have been implemented in the jurisdictions with which they are familiar, and whether there are particular *Recommended Practices* or areas in which further efforts to promote implementation of the RPs would be useful. Twenty-two respondents answered this question, with two of these respondents indicating that they had no opinion or views on the question.

The remaining 20 NGA survey respondents offered their perspectives on the implementation of the RPs in jurisdictions with which they are familiar. Several NGAs noted progress in RP implementation, including:

- The RPs have been implemented to a very significant extent.
- The RPs are 90% implemented.
- For the RPs for Merger Notification and Review Procedures: there is a high level of implementation with some exceptions. For the RPs for Merger Analysis: there are generally high levels of implementation; but discrepancies in some jurisdictions.

- In one respondent's home jurisdiction, the RPs have played a role in bringing the regime in line with international practice and standards.
- In one respondent's home jurisdiction, attention has been paid to the RPs in conducting merger analysis.
- One respondent indicated that the merger regulation in his home jurisdiction generally conforms with the RPs.
- In one respondent's home jurisdiction, there has been a change from worldwide turnover of the economic groups to their turnover in the home jurisdiction, for the purposes of interpreting the filing thresholds. This change was adopted based on one of the recommendations proposed by ICN MWG. A bill to amend the law also excluded the market share filing threshold in line with ICN MWG's recommendations. Regarding ICN Recommended Practices for Merger Analysis, the competition authority is reportedly currently reviewing its existing guidelines and developing a new one.
- In one respondent's home jurisdiction, the RPs have been partially adopted, and local competition authority officials are conscious of the benefits of the MWG recommended practices.
- In one respondent's home jurisdiction, the RPs for Notification and Review Procedures have been implemented in some aspects, but do not follow them in other aspects.

Some NGA survey respondents noted areas for improvement in RP implementation. These are outlined below.

- Some jurisdictions have or are considering merger notification systems that are more complicated than the ICN Recommended Practices and are not limited to information needed to verify whether a transaction raises competitive issues. The *Recommended Practices for Merger Notification and Review Procedures* could help competition authorities improve these systems.
- Several ICN *Recommended Practices for Merger Notification and Review Procedures* and ICN *Recommended Practices for Merger Analysis* have not been implemented by a number of jurisdictions. The main Recommended Practices for which further implementation efforts would be useful include:
 - Notification thresholds that are not based on objectively quantifiable criteria (e.g. use of market shares).
 - Requirement to submit information that is not necessary to review the transaction/unproportionate requests for information.
 - Imposition of unreasonable translation requirements and formal authentication burdens.
 - Unclear deadlines for notification.
 - No merger review within a reasonable period of time.
 - No defined timetable for merger review although merger legislation imposes a stand-still obligation on notifying parties.
- Waiting periods for merger clearance differ from country to country, however the range of waiting periods is rather wide. An effort to "harmonize" waiting periods would be helpful. In a few jurisdictions, there is a lack of transparency in the competition proceedings, therefore timing of the review process was rather unclear.
- While certainly there is a desire to be consistent with these work products in some regions, more work still needs to be done in other regions.
- Specific ICN recommendations on information requirements for merger notification would be valuable.

- It would be useful to spend some more time on appropriate standards of review concerning non-horizontal mergers.

C. Changes or Improvements Linked to ICN MWG Work Product (Questions 6)

The NGA survey asked respondents whether they were aware of any changes or improvements linked to MWG work product in the merger review regimes with which they were familiar. Twenty (87%) of the 23 NGA survey respondents answered this question.

Of the 20 responses to the question, four (17% of all survey respondents) indicated that they were not familiar with any changes or improvements linked to MWG work product. One respondent indicated that while the standards of review have improved in many jurisdictions, it is difficult to identify the extent to which these are linked to MWG work product. One respondent answered that there have not been any material changes in the merger review regime in his home jurisdiction since 2009. The remaining 14 NGA survey respondents (61% of all survey respondents) described one or more changes in merger review regimes linked to MWG work product.

1. Changes in Merger Notification and Review Procedures

Of the 14 respondents that described changes linked to MWG work product, nine highlighted one or more changes to merger notification and procedures requirements linked to MWG work product. Changes in merger notification and review procedures reported by survey respondents include:

- Changes or amendments in turnover thresholds (7 respondents)
- A proposed elimination of the market share filing threshold
- Changes in filing procedures
- The introduction of local nexus requirements
- Changes to merger notification forms
- ICN has documented a number of changes by jurisdictions to their merger notification and review procedures based in part on the example set by the Recommended Practices.
- The *Recommended Practices for Merger Notification and Review Procedures* have been particularly significant in aiding regimes that are implementing merger notification for the first time.

Several of these respondents linked these changes to the *Recommended Practices for Merger Notification and Review Procedures*. One respondent also cited the report on *Setting Notification Thresholds for Merger Review* as being used to argue in favor of the introduction of a second national turnover threshold. One respondent noted that the work of the Merger Streamlining Group, which included citation to the RPs and examples of ICN jurisdictions, impacted the move to higher merger notification turnover thresholds in one jurisdiction. One respondent noted that while MWG work product was linked to changes in merger notification requirements made in the merger review regime of his home jurisdiction in 2003, the respondent has not heard references to ICN MWG work product in the competition authority's more recent speeches.

2. Other Reported Changes Linked to MWG Work Product

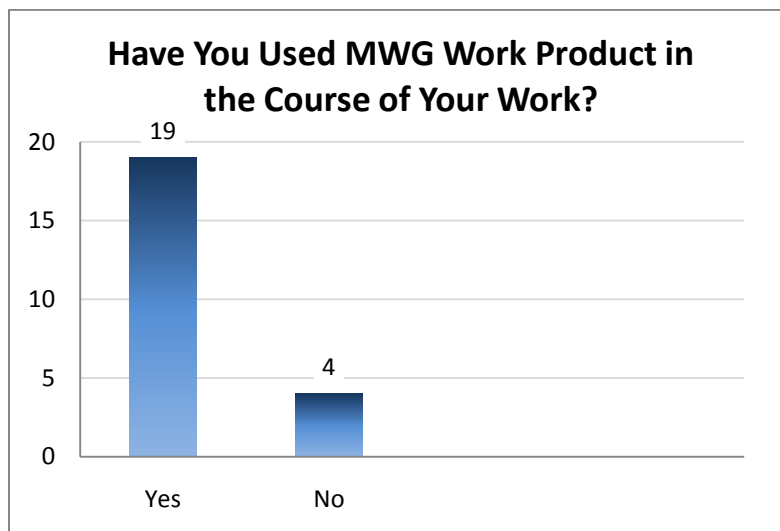
Seven NGA survey respondents identified other changes in merger review regimes linked to MWG work product. Other changes in merger review regimes linked to MWG work product identified by NGA survey respondents include:

- Anecdotal information from speaking with officials indicates use of MWG substantive materials particularly with regard to smaller/new agencies.

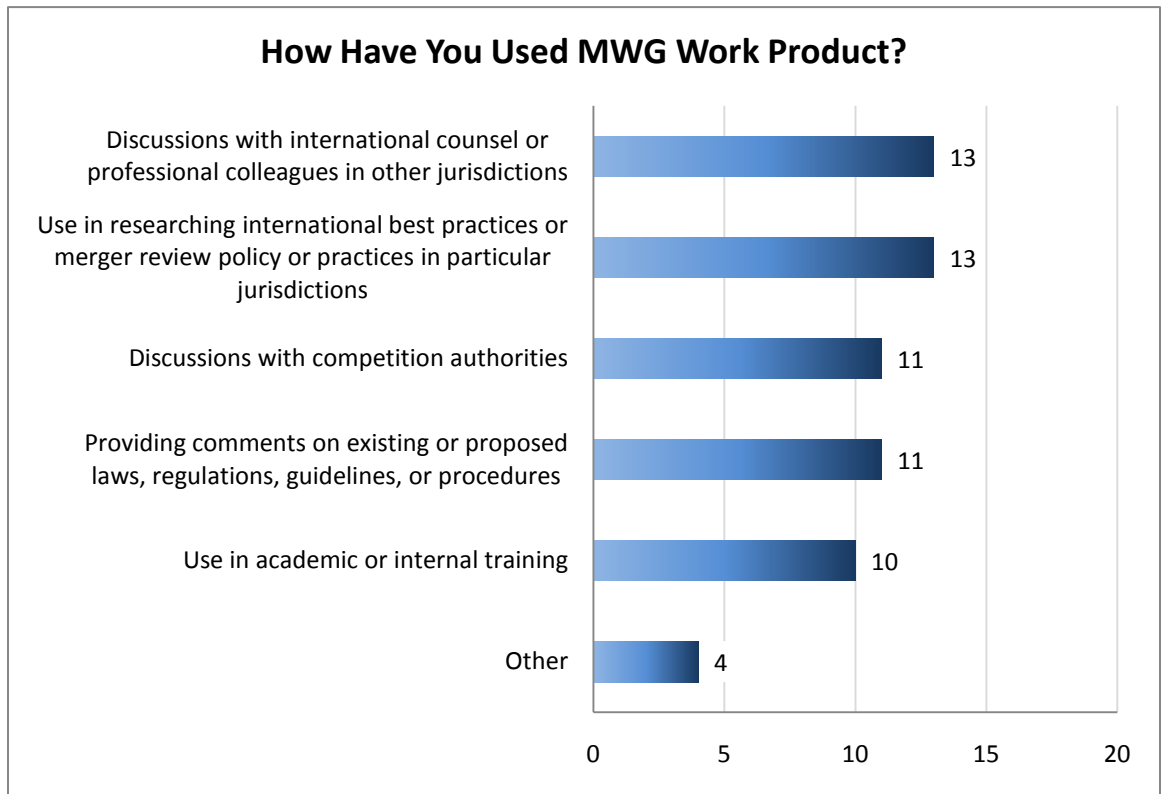
- Some recent proposals for reforming merger provisions reflect ICN thinking.
- The government in one jurisdiction is looking for ways to facilitate merger reviews.
- The American Bar Association Antitrust Section has cited the RPs when commenting on proposed merger laws and guidelines in many jurisdictions, and they may have influenced the final laws or guidelines.
- One respondent indicated that the merger review system in his home jurisdiction has been positively influenced by the work of the ICN in the merger field.
- Best practices have led to changes in law or merger regulations.
- Jurisdictions with limited experience in the field of merger analysis are increasingly willing to give weight to relatively advanced economic concepts such as closeness of competition between two merging parties. This is a result, no doubt, of the work of ICN (and leading competition authorities) to describe these principles and making them accessible to a wide group of regulators around the globe.

D. NGA Use of MWG Work Product (Question 8)

The NGA survey asked respondents whether they had used or referenced MWG work product in the course of their work. As shown in the following chart, 19 of the 23 survey respondents indicated that they have used MWG work product in their work.

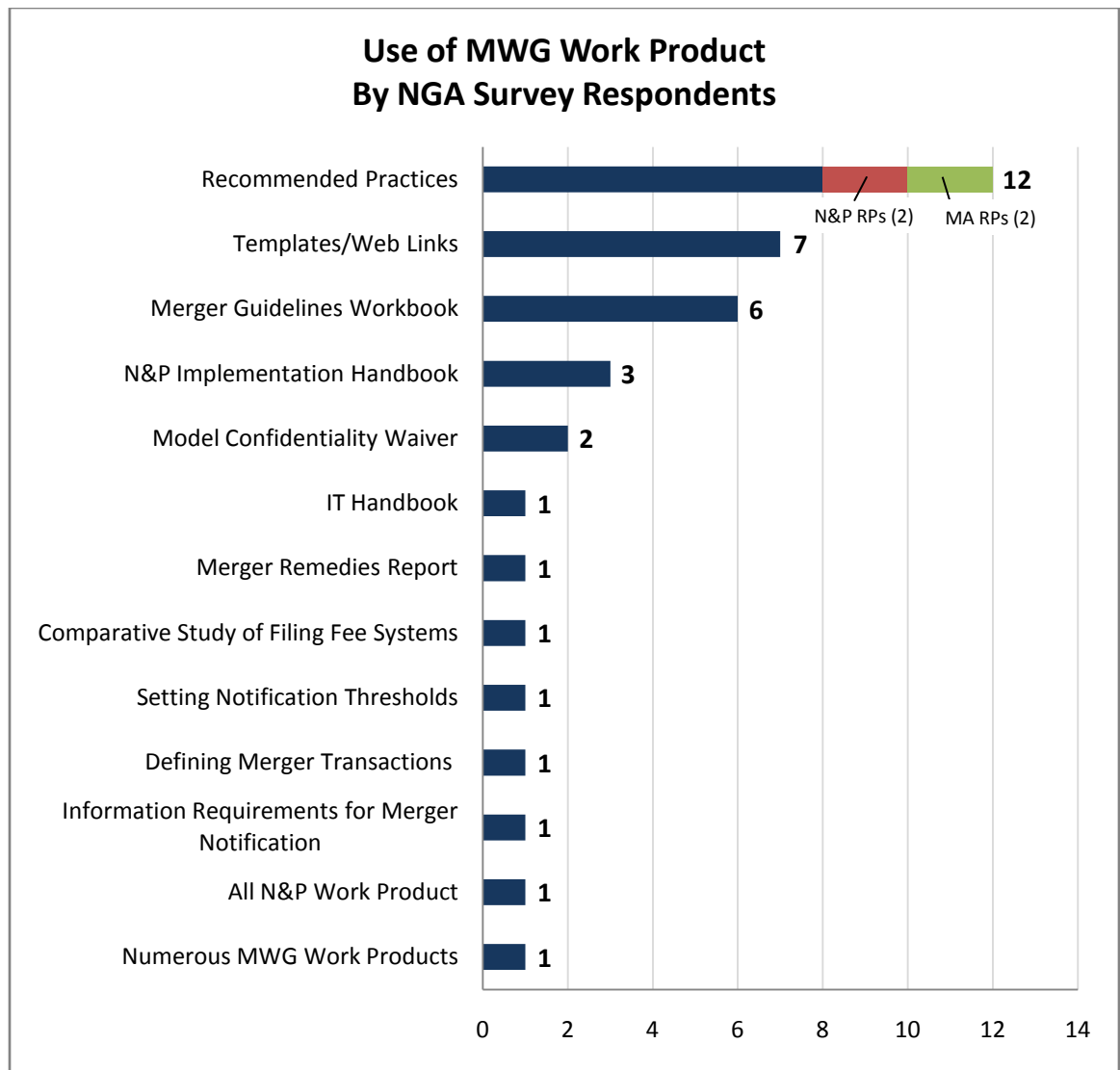


For those that reported using MWG work product, the NGA survey asked how they had used MWG work product. The survey results for this question are outlined in the following chart.



“Other” reported uses of MWG work product reported by NGA survey respondents include (i) use of MWG work product in training national competition authorities in developing countries, (ii) use of MWG work product in internal merger control analysis, (iii) use of templates to prepare submissions, and (iv) use of MWG work product in discussions with new/emerging agencies and in work with UNCTAD’s competition division for possible use in training UNCTAD constituent agencies.

The NGA survey asked respondents that reported use of MWG work product information regarding the work product used and whether they found it helpful. All 19 NGA survey respondents that reported use of MWG work product answered this question. MWG work products NGA survey respondents reporting using in their own work are outlined in the following chart.



1. Recommended Practices

Twelve NGA survey respondents (52% of all respondents) mentioned their use of Recommended Practices. Of these, eight noted their use of both sets of RPs or RPs generally. While most respondents merely identified their use of RPs, some respondents provided additional descriptions of their use of the RPs, as outlined below.

- One respondent noted use of the *Recommended Practices for Merger Notification and Review Procedures* for information on harmonization of merger notification procedures, and use of the *Recommended Practices for Merger Analysis* for information on harmonization of common principles applied when assessing multi-jurisdictional mergers.
- Another respondent cited use of the *Recommended Practices for Merger Notification and Review Procedures* in researching international best practices, providing comments on proposed laws or procedures, and in discussions with international counsel and professional colleagues, and use of *Recommended Practices for Merger Analysis* in discussions with competition authorities.
- Another respondent noted that the RPs present agreed thinking on merger analysis in a concise form.
- Two respondents noted that they found the RPs very useful or helpful.

Four respondents highlighted their use of particular RPs, with two noting their use of the *Recommended Practices for Merger Notification and Review Procedures* and two noting their use of the *Recommended Practices for Merger Analysis*. Other than one noting that the RPs for Merger Notification and Review Procedures were helpful, these respondents did not provide any additional information on their use of the particular work product.

2. Templates/Web Links

Seven NGA survey respondents (30% of all respondents) highlighted use of the ICN Merger Templates and web links in their work. Some respondents in this category provided the following additional information:

- One respondent noted use of templates and web links in discussions with international counsel and for internal merger control analysis
- One respondent noted that the templates and web links are useful to compare different jurisdictions and reach all the relevant data
- One respondent noted that it has found the templates and web links quite helpful.

3. Merger Guidelines Workbook

Six NGA survey respondents (26% of all respondents) identified their use of the Merger Guidelines Workbook. Some respondents in this category provided the following additional information:

- One respondent noted that the Merger Guidelines workbook provides a solid background knowledge base.
- One respondent noted use of the Merger Guidelines Workbook in discussions with competition authorities, in researching international best practices or merger review policy or practices in particular jurisdictions, in discussions with international counsel or professional colleagues, and in providing comments on existing or proposed laws or procedures.
- Three respondents noted that they found the Merger Guidelines Workbook helpful or very helpful.

4. Merger N&P Implementation Handbook

Three NGA survey respondents (13% of all respondents) highlighted their use of the *Merger N&P Implementation Handbook*. One of these respondents noted that the handbook is helpful when analyzing notification thresholds, the timing of notification, review and remedies because it allows comparison of merger regimes in different jurisdictions. Another respondent noted that the Handbook has been helpful.

5. Model Confidentiality Waiver

Two NGA survey respondents (9% of all respondents) highlighted their use of the *Model Confidentiality Waiver*. One of these respondents noted that it has used this work product in discussions with competition authorities.

6. Other Work Products

Individual NGAs noted use of the Investigative Techniques Handbook, the Merger Remedies Report, and each of the referenced N&P reports Information Requirements for Merger Notification, Defining "Merger" Transactions for Purposes of Merger Review, Setting Notification Thresholds for Merger Review, and Comparative Study of Merger Notification Filing Fee Systems. One respondent noted use of the report on Setting Notification Thresholds for Merger Review in providing comments on existing and proposed laws.

In addition, one respondent indicated that it has used all MWG work product relating to merger notification and procedures, while one respondent reported use of numerous MWG work products which were very helpful.

E. Barriers to Use or Implementation of MWG Work Product (Question 9)

The NGA survey asked respondents whether they are aware of any barriers to the use or implementation of MWG work product in the jurisdictions with which they are familiar, and whether there are ways in which the MWG could assist in removing barriers. Twenty-one of the 23 survey respondents (91%) answered this question.

Of the 21 respondents that answered the question, 12 responded either that there were no barriers, or that they were not aware of any barriers, to the use or implementation of MWG work product in the jurisdictions with which they were familiar. One of these respondents noted that while there are generally no barriers, some past and recent proposals for reforming the merger provisions of the applicable law in his home jurisdiction have reflected ICN thinking.

One respondent observed that more empirical data is needed to assess use and implementation. This respondent noted:

We need more empirical data on implementation so the ICN can “self-assess” on this important aspect of its work. For the Moscow Workshop, the WG did a survey of implementation of procedural RPs, and perhaps this can be built upon. Without knowing what has been done, we do not know fully the story on implementation (apart from anecdotal evidence, and perhaps results from this survey), and without that, we cannot say where we are and where we have to go on implementation, and concrete action has to be a key priority of this WG.

Eight respondents discussed one or more barriers to work product use and implementation. Barriers to MWG work product use or implementation reported by NGA survey respondents include:

1. **Legal Barriers.** One respondent noted that merger review processes and standards are often governed by statute or by judicial decision that limit the flexibility of the enforcement authorities, thus limiting the ability of the parties most familiar with ICN to bring their practices into compliance with ICN recommendations.
2. **Familiarity Barriers.** One respondent commented on barriers of unfamiliarity, noting that barriers may to a large extent exist because people are not fully aware of these products. MWG products should therefore be more promoted.
3. **Language Barriers.** One respondent commented on language barriers, noting that non-English speakers have difficulty reading materials in English quickly and verbally discussing issues in English. In particular, technical and economic terms are difficult.
4. **Other Barriers.** Five respondents provided other comments relating to barriers to MWG work product use and implementation. These comments include:
 - Cultural barriers -- the MWG work products could be taken more seriously by some competition authorities
 - There appear to be political impediments in some jurisdictions. The ICN leadership and the MWG could assist in overcoming those obstacles by encouraging the local competition authorities to actively support reform with their governments/legislatures. In some cases, the business community and academics may be of assistance in building political support for legislative changes that may assist the competition authority to promote reform. My sense is that this is a country-by-country issue in which the relevant stakeholders need to work together to find the best way forward. In some

cases, the political situation will make reform efforts difficult or even counterproductive. In general, however, I believe that, with additional focus on implementation by the ICN leadership, substantial additional progress can be achieved.

- The influence of local politicians on the decision making of national competition authorities remains a problem in less developed jurisdictions.
- We have encountered a slight resistance to the MWG material mostly on the basis that the authority would like to ensure the merger material is country-specific. In some countries, OECD and UNCTAD have attempted to roll out their own templates. MWG should seek to engage in a more proactive manner with the relevant merger individuals at these authorities.
- Established merger review

F. Ways to More Effectively Promote Awareness and Use of MWG Work Product (Question 10)

The NGA survey solicited suggestions from respondents on ways in which the MWG could more effectively promote awareness and use of any of its work product. Nineteen of the 23 respondents (83%) to the NGA survey responded to this question.

Of the 19 respondents to this question, two indicated that they had no suggestions for improvement, and two respondents indicated that the MWG has done a great job or as well as it realistically could in promoting awareness and use of MWG work product.

Fifteen respondents provided suggestions on ways in which the MWG might more effectively promote work product awareness and use. The suggestions varied, but often involved the use of training through conferences, workshops, or seminars, as well as other means of communicating MWG work product.

Suggestions provided by NGA survey respondents on ways to more effectively promote awareness and use of MWG work product include:

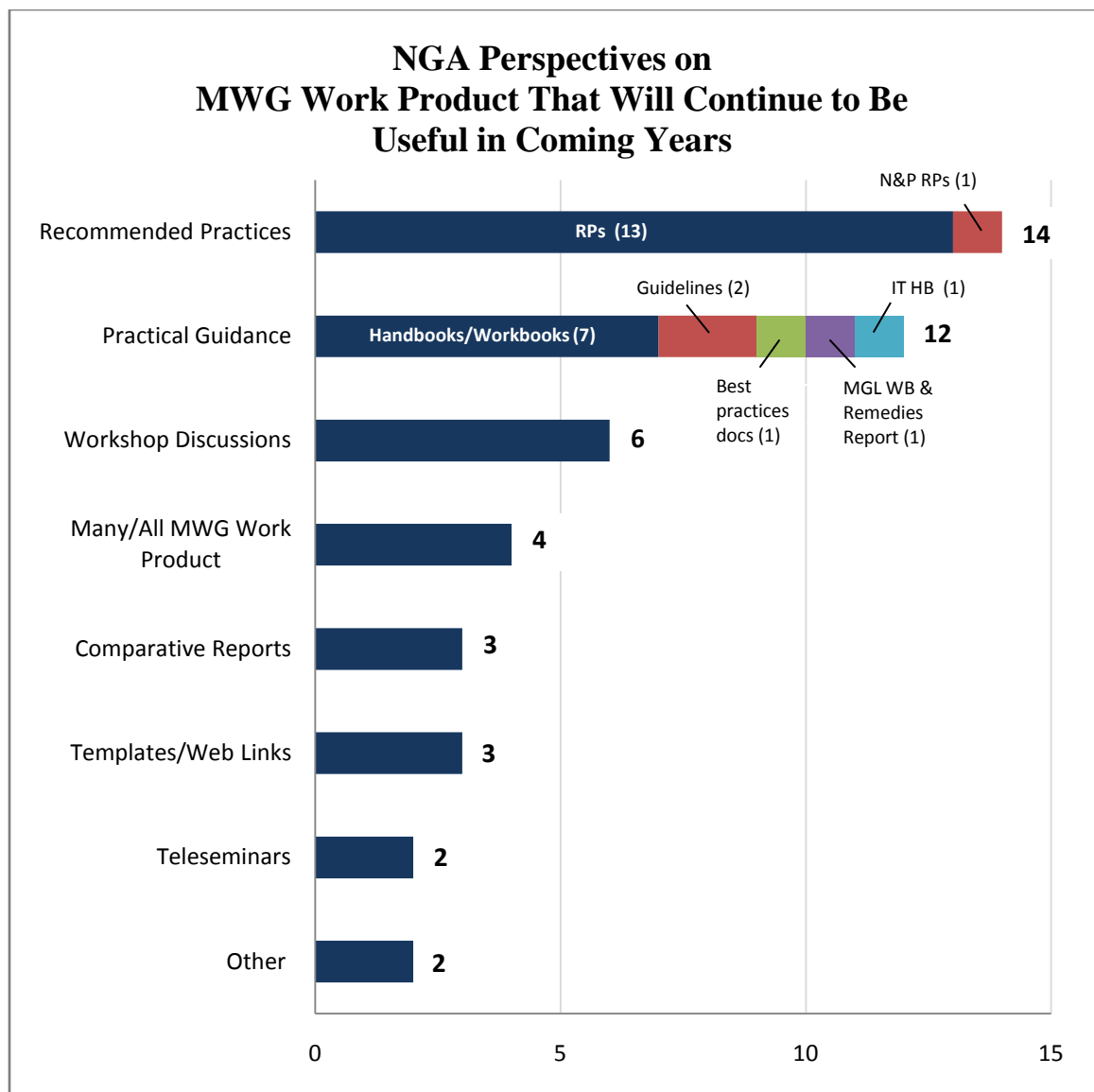
- Promote specific seminars during the year with authorities and NGAs in different parts of the world to discuss specific themes and promote awareness and use of MWG work product.
- Conduct seminars for lawyers, etc.
- Promote MWG work products in different areas, panels, workshops, the internet, etc.
- Conduct more teleconferences.
- Conduct regional workshops and more case studies working through them. Emphasize the importance of implementation to save time and money of parties and agencies, continuing to voice the original aims when the Working Group was started.
- Organize a regional conference, away from the workshops and the annual conference, co-sponsored with a leading regional organization.
- A sub-Saharan conference has been suggested to the ICN leadership. Such a conference would be an ideal situation to promote the MWG material.
- Promote stronger representation of MWG work product in non-ICN conferences.
- Attempt to include an ICN component in continuing legal education (CLE) seminars.
- For someone not familiar with MWG work products (for instance lawmakers), it might be helpful to have a very short kind of executive summary for each work product.
- The ICN could be more proactive. In addition, improvements that would ease finding materials on the website would increase the use of ICN work product. Workshops and teleseminars also help to promote the MWG and remind ICN members and NGAs (and the

public generally) of the excellent work product that the MWG has created over the last decade.

- Communicate through a specific e-mail to all members every time a new MWG work product is issued.
- Promote awareness of MWG work product by, for example, sending a newsletter/alert for important changes in merger control regimes or MWG findings and reports.
- Promote MWG work product through links on the national authorities' website or specific e-mail news alerts. MWG work products should be easily accessible, maybe not only through the ICN website.
- Perhaps more explicit reference by competition authorities as to how and why they pay attention to, as well as use, the RPs.

G. NGA Perspectives on Work Product That Will Continue to Be Useful to Competition Authorities in Coming Years (Question 11)

The NGA survey asked respondents to identify what future MWG work product or types of work product they believed will be continue to be useful to competition authorities in the coming years and why. Twenty-two of the 23 NGA survey respondents answered this question. Several respondents listed more than one type of work product that they believe will continue to be useful in the future. Work products mentioned as likely to remain useful to competition authorities in coming years are depicted in the following chart.



1. Recommended Practices

Fourteen respondents to the NGA survey (61% of all respondents) identified Recommended Practices (RPs) as MWG work that will continue to be useful to competition authorities in the coming years. Thirteen of these agencies identified RPs generally as of ongoing usefulness. Of these, two respondents stressed that RPs are the most useful written work product of the MWG, and one noted that RPs provide a baseline. Another respondent noted the importance of ensuring that the RPs remain updated to follow new developments.

One respondent identified the RPs for Merger Notification and Review Procedures as most likely to be useful to competition authorities in the coming years, because these RPs give authorities, especially those developing merger regulations, general ideas of what the global standards are.

2. Practical Guidance

Twelve respondents to the NGA survey (52% of all respondents) identified the MWG’s practical guidance documents as likely to remain useful to competition authorities in the coming years.

Of these, seven respondents cited handbooks or workbooks as likely to be of ongoing usefulness. These agencies noted that handbooks, workbooks, and other practical guidance are useful for training purposes and useful due to their direct, objective and practical approach. Two

respondents noted that handbooks, workbooks, and other resource material will remain useful to the extent that they are updated, and one also noted the importance of making them easily accessible.

Two respondents identified guidelines as of ongoing usefulness, with one of these highlighting practical guidelines which help to implement best practices and standards, particularly with respect to a convergence of proceedings. One respondent noted that “best practices” products which allow agencies to share practical knowledge seem likely to have staying power in terms of their utility. Another respondent identified the Merger Guidelines Workbook and Merger Remedies Report as likely to be of ongoing usefulness, while another identified the Investigative Techniques Handbook as likely to continue to be useful to competition authorities in the coming years.

3. Workshop Discussions

Six NGA survey respondents (26% of all respondents) identified workshop discussions as likely to be of continuing use to competition authorities in the coming years. These agencies noted that workshop discussions and other face-to-face exchanges (i) have substantial value to competition authorities, (ii) are an important tool in following new developments, (iii) facilitate the identification of issues that could be further developed or improved, and (iv) allow case officers to work through MWG work product in a case study setting with the benefit of NGA perspectives.

4. Many/All MWG Work Product

Four NGA survey respondents (17% of all respondents) responded that many or all of MWG work product is likely to continue to be useful to competition authorities in the coming years. Respondents in this category noted that:

- The MWG has succeeded in preparing very relevant and useful documents which will continue to be a great use for agencies across the world and which will help in creating a common understanding and convergence. The tools/work products are very complementary and will continue to have use.
- All the MWG work products are useful and will continue to be useful for the competition authorities in the coming years because they need to read and analyze all the relevant data before reach the conclusion and also for the legal framework they need to read these kind of materials. These will be guiding principles.
- All MWG work product has value, although my personal sense is that RPs are the most useful written outputs. Workshop discussions and other face-to-face exchanges also have substantial value to competition authorities.
- MWG work product will continue to be useful because there are new developments all the time, such as the current discussion over the use of upward pressure on price measures in merger analysis.

5. Comparative Reports

Three NGA survey respondents (13% of all respondents) cited comparative reports as likely to continue to be of use to competition authorities in the coming years. One of these respondents noted that comparative reports help to identify issues that can then be further developed or improved.

6. Merger Templates/Web Links

Three NGA survey respondents (13% of all respondents) cited the merger templates and web links as likely to be of ongoing usefulness in the coming years. One of these respondents noted that while it is not in a position to respond on behalf of competition authorities, these resources will continue to be useful for companies.

7. Teleseminars

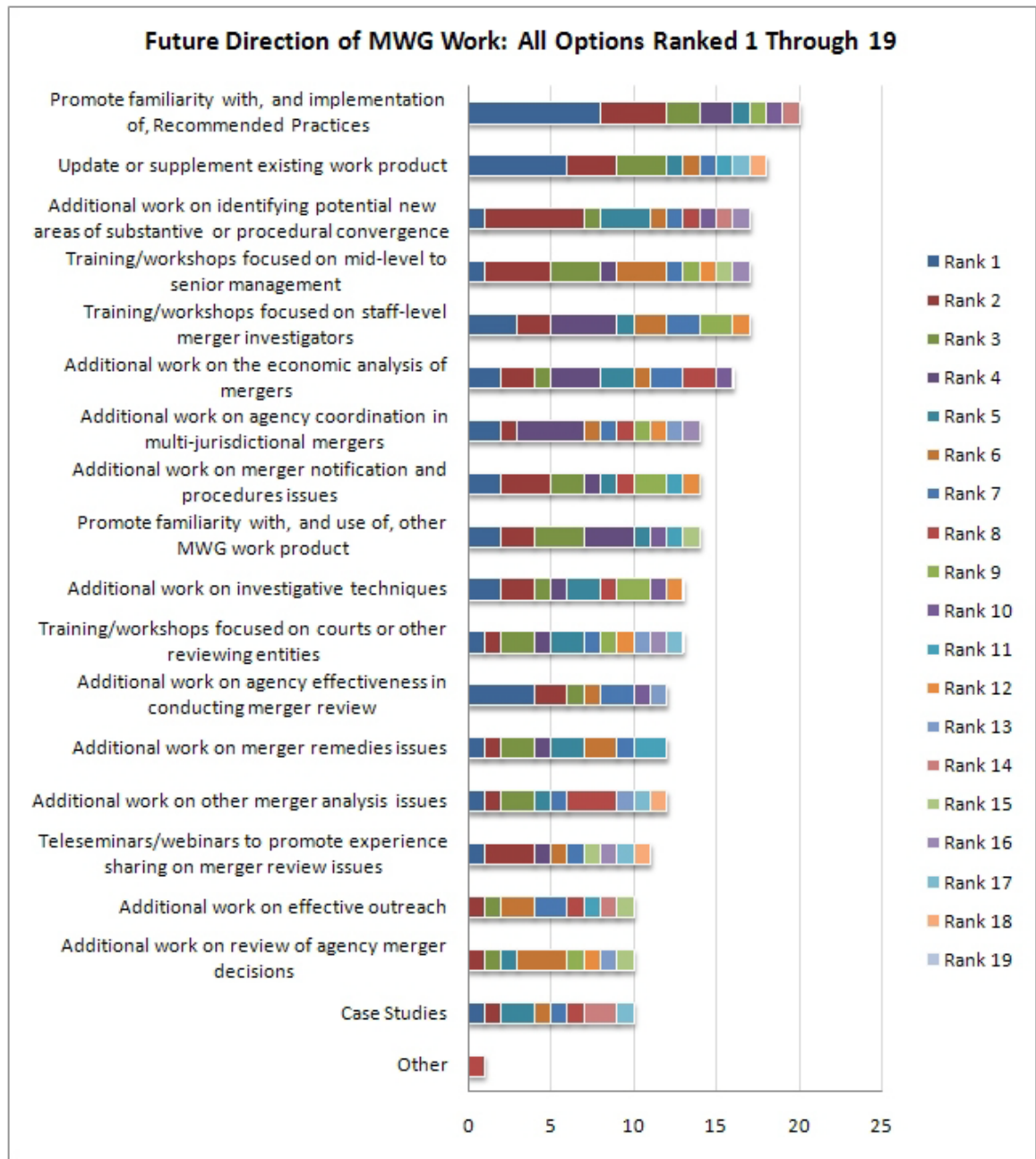
Two NGA survey respondents (9% of all respondents) indicated that teleseminars will continue to be useful in coming years. One of these respondents noted, however, that teleseminars can be time consuming and depend on the relevant authorities' ability to attend the sessions considering technology limitations.

8. Other

One NGA survey respondent identified model texts as likely to continue to be of use to competition authorities in the coming years. Another NGA responded that the future should focus on specific, ongoing problems of note rather than running the gamut of merger notification practices, as the basic job in the second respect has already been done.

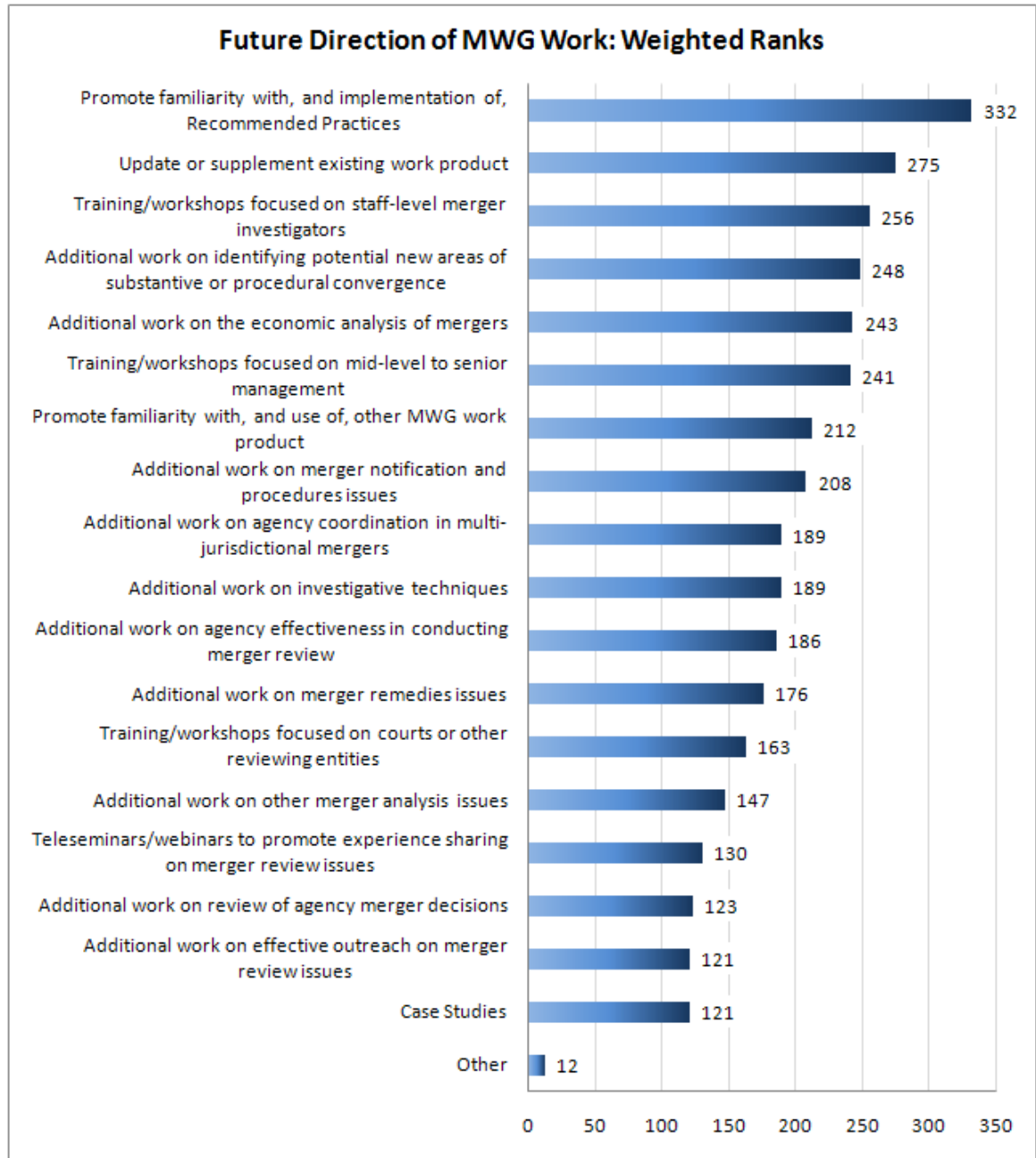
III. Future Direction of MWG Work (Questions 12-13)

The NGA survey asked respondents to provide their views on the most important areas for the MWG's focus to promote and improve effective merger review in the coming years. Respondents were provided a list of potential areas of focus, including an "other" category in which respondents could provide their own suggested areas of focus, and asked to rank as many as they felt applied in order of relative importance. All 23 NGA survey respondents answered this question. The results of this question are depicted in the following chart.

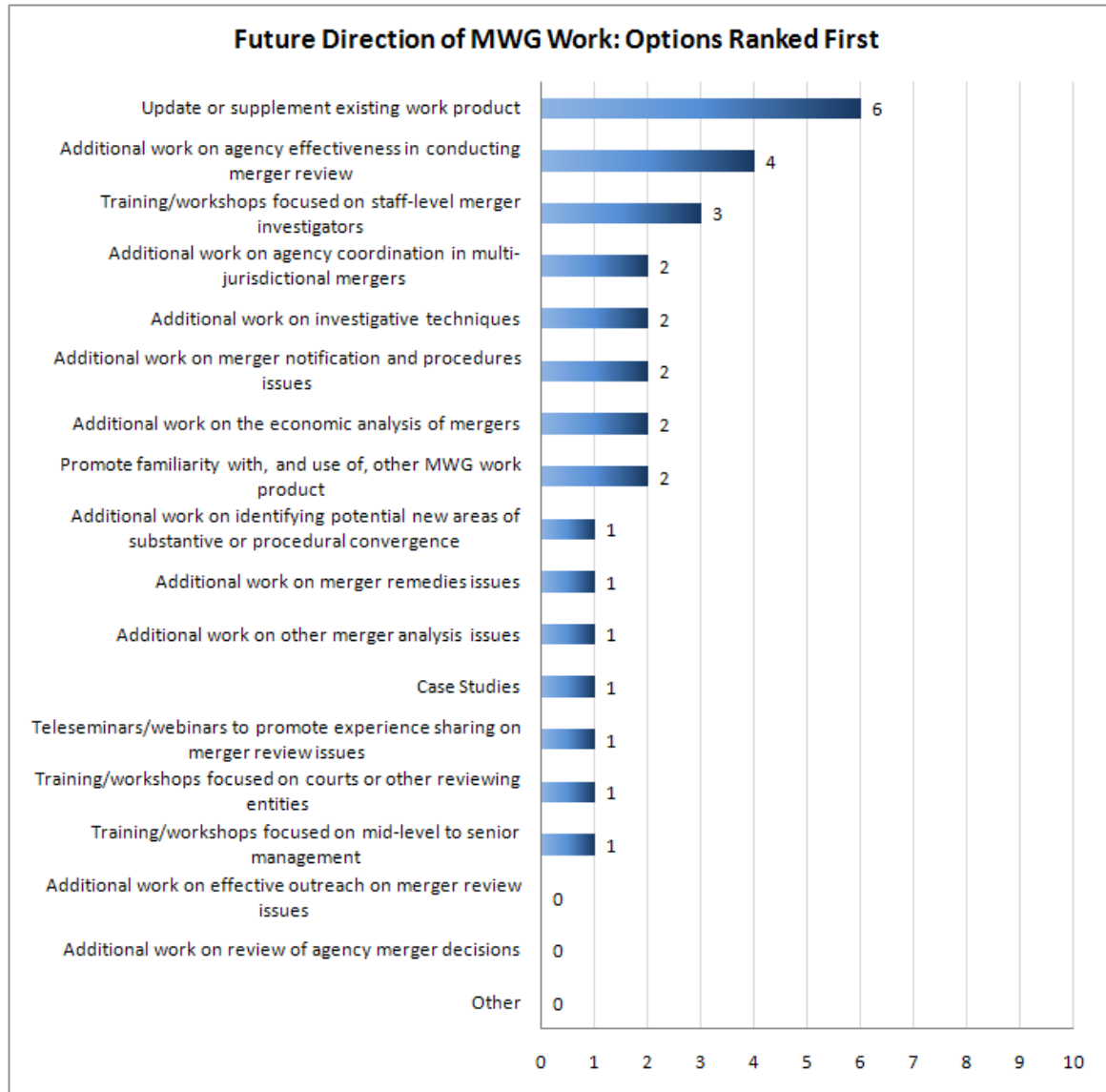


The “Other” suggested area for future work is work on best practices for economic review and use of economists.

The following chart depicts the areas of importance identified by NGA survey respondents in weighted order, with options ranked first given a value of 19, options ranked second given a value of 18, and so on to a value of one for options ranked 19th, with all the values assigned to the responses in each category aggregated.



The following chart outlines the areas of future work NGA survey respondents prioritized first in terms of importance.



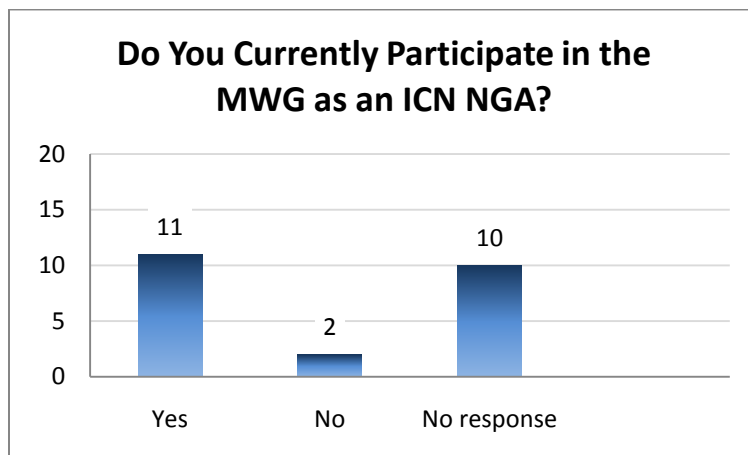
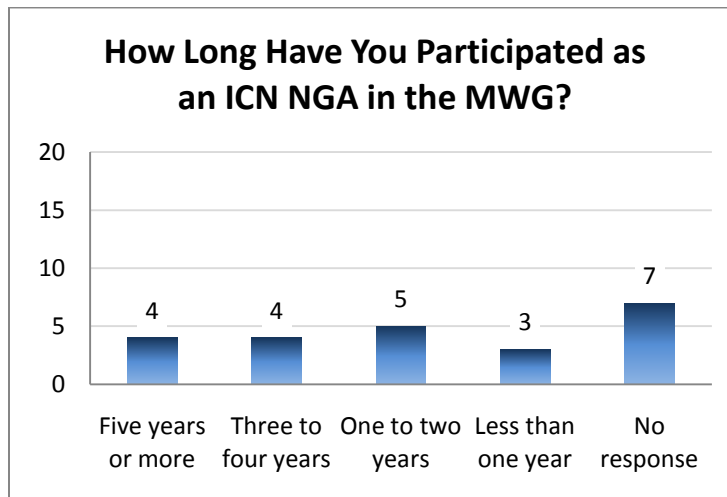
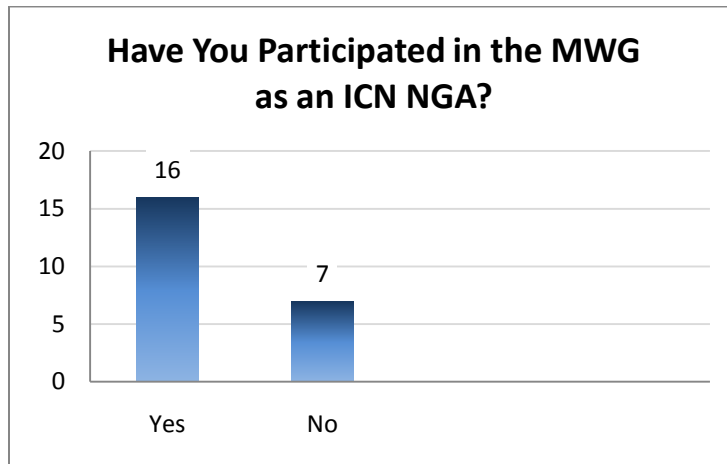
The NGA questionnaire also asked respondents what particular MWG projects they believed would be most useful and why. Fifteen of the 23 NGA survey respondents, or 65% of all respondents, answered this question. The projects identified by NGA survey respondents as particularly useful include:

- Implementation of Recommended Practices and other existing work products in order to bring more efficiency and effectiveness to new MWG projects.
- Promote familiarity with, and implementation of, Recommended Practices to reach a level playing field in merger review practices.
- Implementation projects, work on remedies, and coordination of remedies in mergers involving multiple jurisdictions.
- Workshops on implementation of procedure and substance – so the ICN can showcase and explain the work product, and agencies can utilize these tools in a rehearsal setting, and see what their peers think and do.
- Identification and further development of areas of convergence in order to facilitate the coordination of multijurisdictional filings.
- Revision of Recommended Practices and outreach to nascent competition jurisdictions. A number of new jurisdictions require considerable attention to ensure they achieve what is intended, and many struggle with resources. Outreach by the MWG can assist considerably in this regard.
- Merger Guidelines because they have very relevant explanations and helpful general information.
- Additional work on the economic analysis of merger is the most useful project, because economic analysis is the most important consideration when evaluating mergers.
- Additional work on review of non-horizontal mergers. Although a lot of efforts have been made, this still is a difficult area for many competition agencies. Furthermore, it would be very useful to develop standard best practices for the use of economic evidence.
- Creating written documents (practices, handbooks, etc) is very useful because they can be reviewed and passed on to others. Many younger agencies need 'objective' study material to familiarize themselves with the issues. Also local scholars, lawyers, etc can rely on this work product. There is a need for training and seminars but this should be based on written work product in order to formulate a common agreed view. Otherwise, there is a risk that formulated recommendations are simply a translation of local practices and preferences.
- Opportunities for enforcers to engage in face-to-face discussions to share experience are particularly useful, especially when framed in the context of specific procedural or analytical issues.
- Practical training programs for agency staffs; and if possible, some practical training programs for the private bar on how to work effectively with agency staffs.
- One respondent considers the top priority in his jurisdiction to be the review by the courts of merger decisions. It would be useful if work could be conducted concerning case presentation and use of evidence in the courts.
- Merger templates and web links, because they effectively summarize the latest merger regulations (especially the thresholds) of various jurisdictions.
- Some merger templates do not reflect the current merger control regime. As these templates are particularly useful for merger analysis by law firms and in-house legal departments, we consider updating the merger templates and weblinks the most important area of focus.

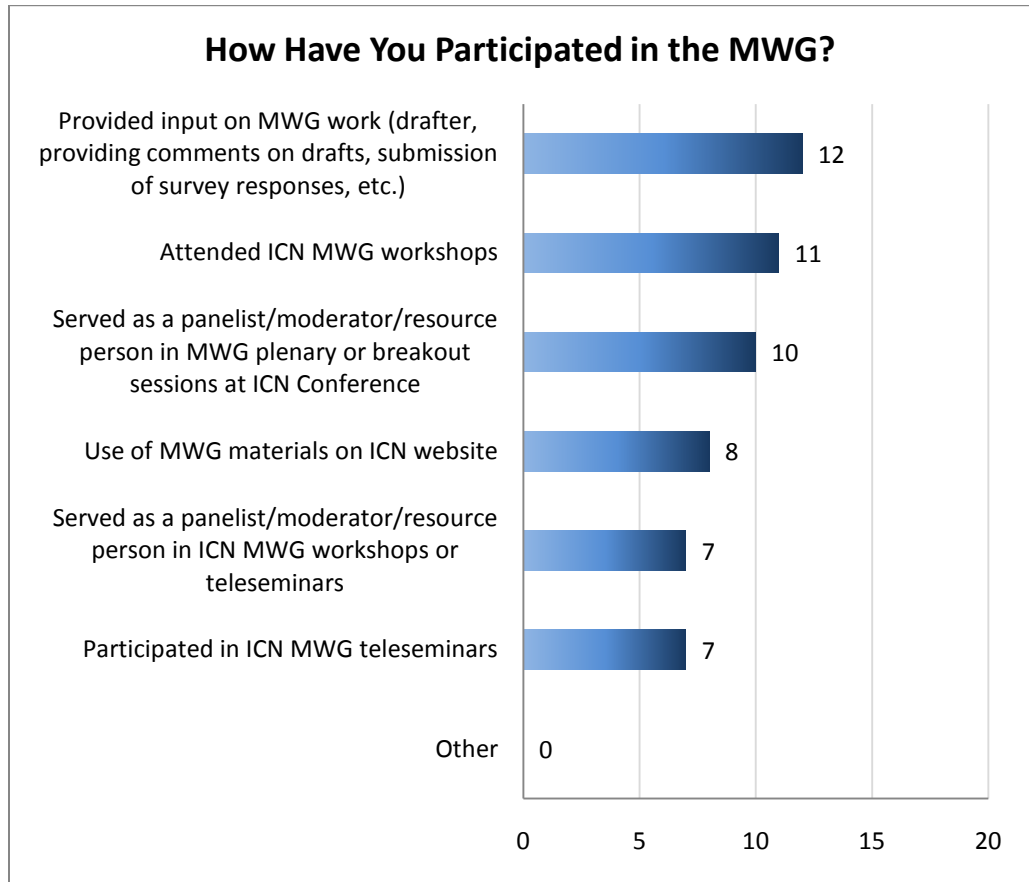
IV. Merger Working Group Participation and Performance

A. NGA Survey Respondents' Participation in the Merger Working Group (Questions 14.a, 14.b, 14.c, and 14.d)

The NGA survey asked respondents whether they had participated in the MWG as an ICN NGA, how long they participated as an ICN NGA in the MWG, and whether they currently participate as an ICN NGA in the MWG. The responses to these questions are depicted in the following charts.

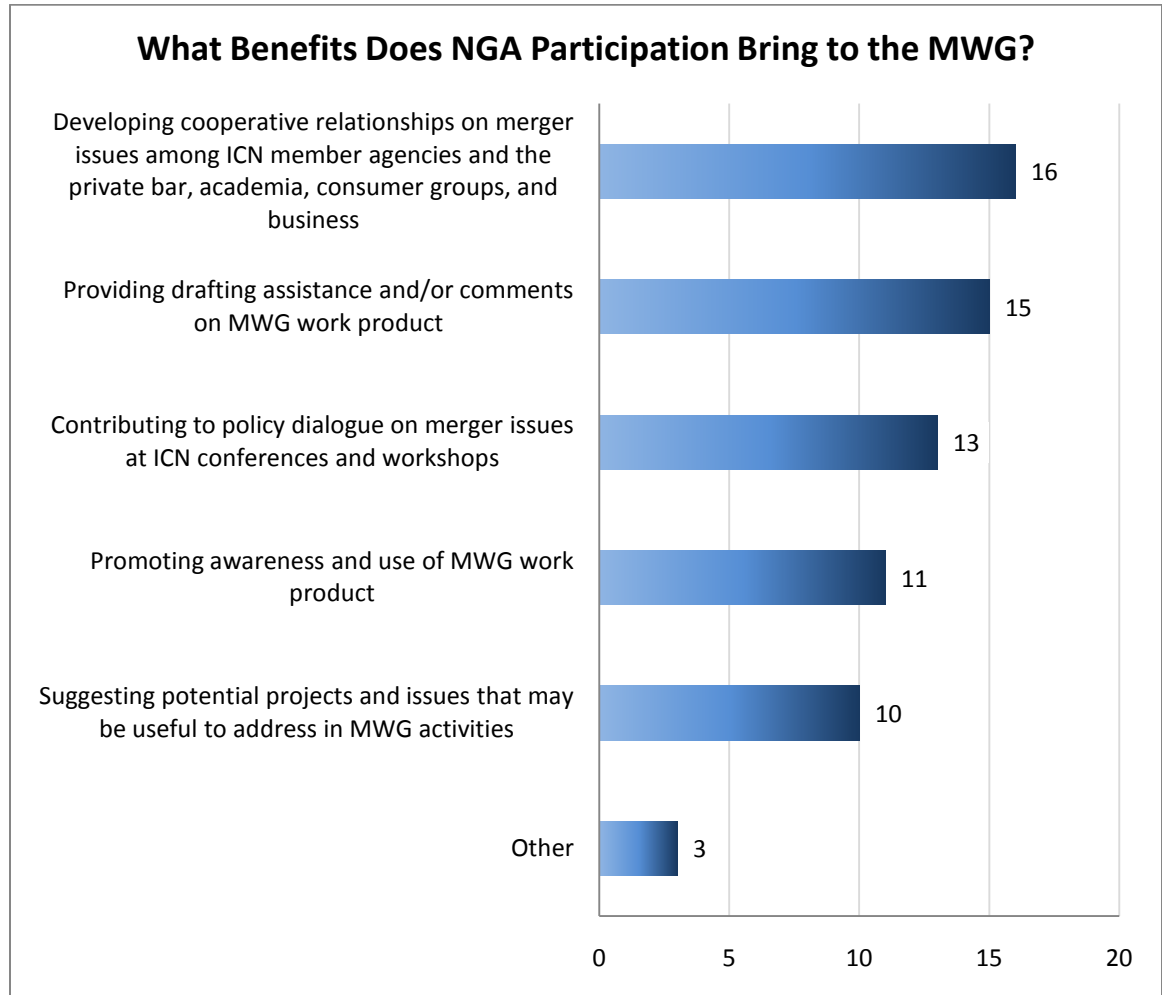


The NGA survey also asked respondents that had participated in the MWG how they have participated in the MWG. All 16 respondents that reported having participated in the MWG answered this question, with many indicating multiple types of participation. The responses to this question are outlined in the following chart.



B. Benefits of NGA Participation to the MWG (Question 14.e)

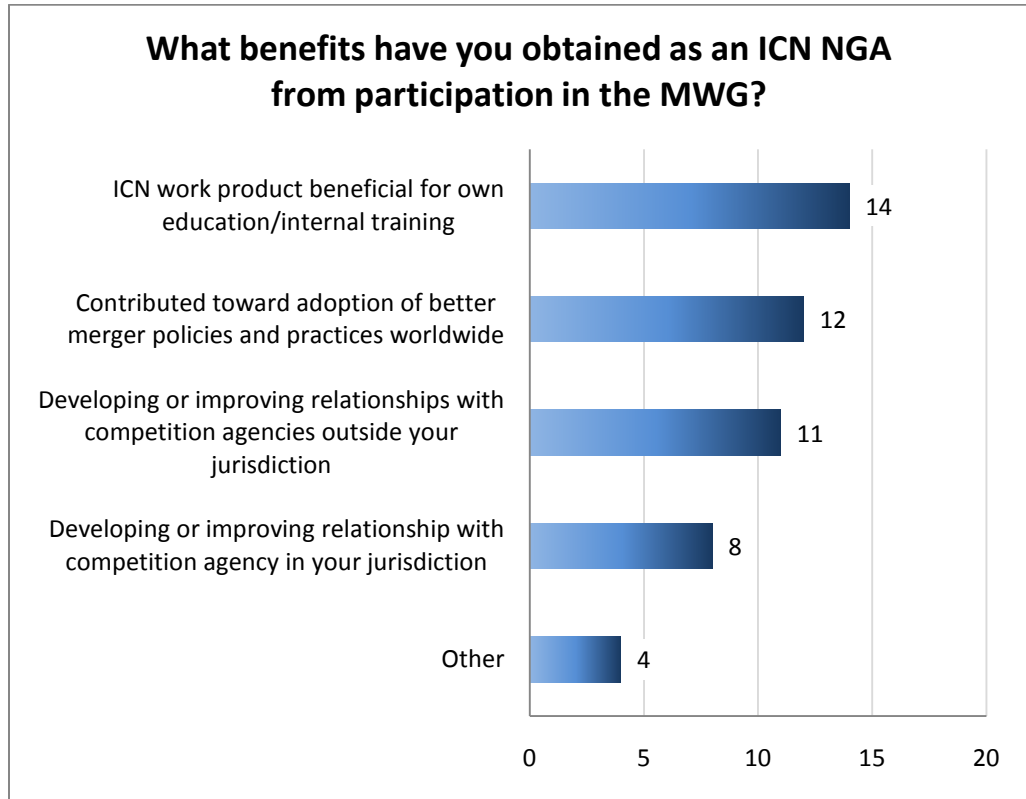
The NGA survey asked respondents their views on the benefits that NGA participation brings to the MWG. All of the 16 respondents that reported having participated in the MWG answered this question, with several reporting multiple benefits. The responses to this question are depicted in the following chart.



“Other” reported benefits of NGA participation for the MWG include (i) identifying common issues to agencies and helping to connect agency officials at ICN events, (ii) contributing comments from a perspective that may be different from that of agencies, and (iii) preparing articles for books and newspapers with relevant information discussed in the MWG, and contributing to bring this information to other people (lawyers, economists, academics, etc.).

C. Benefits of Participation in the MWG to NGAs (Question 14.f)

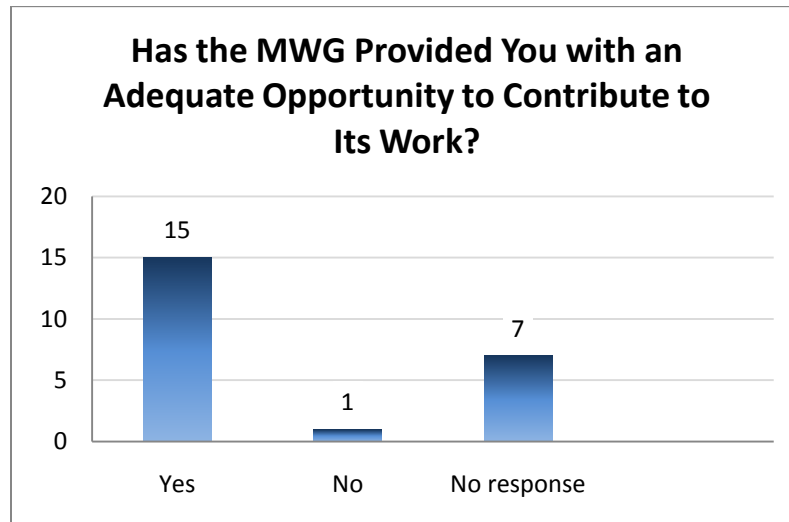
The NGA Survey also asked respondents their views on the benefits they have obtained as an ICN NGA from participating in the MWG. All 16 of the NGA survey respondents that reported having participated in the MWG answered this question, with several again reporting multiple benefits. The responses to this question are depicted in the following chart.



“Other” reported benefits of MWG participation for NGAs include (i) increasing dialogue, transparency and convergence helps our clients, the agencies and the public – those are huge benefits, (ii) participating in discussions with competition authorities in my jurisdiction, (iii) keeping up with new developments in merger analysis and leading cases in other jurisdictions, and (iv) obtaining relevant information for classes in law school, speeches and articles and book.

D. Adequacy of Opportunities to Contribute to MWG Work (Question 14.g)

The NGA survey asked respondents whether the MWG has provided them with an adequate opportunity to contribute to its work. The responses to this question are depicted in the following chart.



E. Ways the MWG Could More Effectively Obtain NGA Input or Broaden or Deepen the Level of NGA Participation in Its Activities (Question 15)

The NGA survey solicited suggestions from respondents on ways in which the MWG could more effectively obtain NGA input or broaden or deepen the level of NGA participation in MWG activities. Thirteen respondents, or 57% of all NGA survey respondents, offered suggestions regarding NGA participation in the MWG.

Suggestions offered by NGA survey respondents on ways to more effectively obtain NGA input, or broaden or deepen NGA participation in MWG activities, include:

- The MWG could strive for better coordination on NGA participation at the beginning of each year.
- Before MWG activities, the MWG could send brochures, e-mail, or some relevant data about the seminars, and perhaps also give some certificates to promote participation to these activities.
- Involve more NGAs from the developing world.
- Outreach to involve NGAs from a broad range of jurisdictions would be helpful.
- NGAs with experience and institutional ICN/NGA memory can help new NGAs participate, and encourage new NGAs from non-law backgrounds and emerging/developing economies to join and participate. Also, finding projects where NGAs can assist and contribute helps them to engage more fully. Organizing regional ICN merger workshops.
- Conduct workshops/conferences with NGA participation.
- Organize discussions/brainstorming in workshops more often.
- Conduct regular surveys with regard to their latest practices, for example.
- Allow (if it is not already allowed) NGAs to indicate to the MWG other NGAs interested in contributing to MWG activities.
- Invite competition-focused groups within jurisdictions to meetings of the ICN.

- Not only in MWG, but also in all other activities developed by ICN, consideration should be given to creating specific subgroups to each jurisdiction in addition to the general groups. The level of NGA interest may increase when they are dealing not only with general issues, but also with specific questions related to their home jurisdiction.
- One respondent answered that, while not having participated as much in MWG activities recently, the MWG seems to do a good job and to be doing well.
- One respondent answered that the private sector has contributed greatly to the success of the MWG's work.

F. Suggestions for Teleseminars (Question 16)

The NGA survey solicited suggestions from respondents on topics for future MWG teleseminars or ways in which MWG teleseminars could be improved. Of the 12 respondents that answered this question, four responded that they did not have any suggestions. Eight NGA survey respondents (35% of all survey respondents) offered suggestions for MWG teleseminars.

Suggestions offered by NGA survey respondents for future MWG teleseminar topics or improvements in MWG teleseminars include:

- Refreshing and breathing renewed life into the RPs, possibly through an implementation project;
- Information requirements for merger notification;
- Investigative techniques and non-horizontal mergers;
- Procedural convergence or best standards in competition proceedings;
- “Carve-out” solutions in multi-jurisdictional mergers, and methods of attributing turnover in merger cases (*e.g.* by origin, customer, country where the competition takes place, etc.);
- Exploring aspects of competition cases on review by the courts (*e.g.* case presentation and use of evidence in court);
- Latest developments in merger regulations in China; and
- Teleseminars are challenging. Speakers need to be disciplined, and should limit themselves to short presentations.

G. Suggestions for Improvement to MWG Section of MWG Website

The NGA survey solicited suggestions from respondents on ways in which the MWG section of the ICN website could be improved to make it more useful. Eleven respondents, or 48% of survey respondents, responded to this question, while 12 respondents did not answer this question.

Of the 11 survey respondents that replied to the question, five responded that they had no suggestions for improvement, or that the current MWG section of the ICN website is user friendly. One respondent noted that while the ICN website recently was not available for a long period of time (during the website upgrade), overall the website is accessible and easy to use. Five respondents (22% of all NGA survey respondents) offered suggestions for improving the MWG section of the ICN website.

Suggestions offered by NGA survey respondents on ways to improve the MWG section of the ICN website include:

- Specific e-mails informing recipients of updates in the website
- The templates and links have tremendous potential benefit to the public, but they have to be maintained. Maintaining data bases is always a problem, but if there were a way to keep their content current, that would be highly beneficial.

- Likely a template review for regimes is due – a good way for NGAs and agencies to cooperate to produce a useful tool.
- While the MWG’s section of the ICN website provides adequate information to persons concerned in this area, it could be helpful to separate different sections according to relevant subjects.
- A commented online merger threshold database for all member jurisdictions.

V. Concluding Comments

The NGA survey concluded by welcoming any other suggestions or comments not covered by the survey questions. Four respondents offered additional comments in response to this question, outlined below.

- One respondent commented that the dialogue with companies and law firms is very useful for the work of the MWG as it may provide viewpoints and experiences other than those of competition authorities.
- One respondent suggested including more case studies/discussions during the breakout sessions in the ICN conference.
- One respondent commented that it would be great if there were more fluctuation in the speaking engagements offered to NGAs.
- One respondent noted that it would be useful to better understand the division of NGAs in the different Working Groups. This respondent noted having received communications from the MWG in the past, but these communications have stopped and now the respondent only receives communications from the UCWG. If possible, this respondent would like to continue participating in the MWG as an NGA.

Annex 1

Questionnaire to MWG NGAs to Assess ICN Merger Working Group Work Product and Future Needs

ICN Merger Working Group



Questionnaire to ICN NGAs

to Assess ICN Merger Working Group Work Product and Future Needs

I. Introduction

Purpose of Questionnaire: As one of its top priorities for this year, the ICN Merger Working Group (MWG) is conducting a comprehensive assessment of its work product and ICN membership needs. The purpose of this survey is to gather information from ICN NGAs that will assist the MWG in the following areas:

- assessing the use and impact of its work product and other activities;
- identifying potential barriers to work product use or implementation; and
- evaluating new areas of work that would assist ICN members in making merger review more effective.

The MWG will analyze the information gathered in the survey to assess the MWG's past initiatives, consider appropriate areas of future work, and review its Long-Term Plan. We very much welcome your input, and thank you for taking the time to complete this questionnaire.

Questionnaire responses are requested by January 21, 2011.

Use of Questionnaire Responses: The MWG will consider all information received in conducting its assessment. At the conclusion of the assessment, the MWG will report on its findings, including those based on the results of this survey. The MWG plans to report on the responses received primarily on an aggregate basis. However, the MWG may, in some cases, wish to report individual responses or report results in such a way that it may be possible to identify the responding NGA.

If there are any responses provided by you that you wish to be reported only in an aggregate or non-attributable manner, please indicate the relevant question numbers in the space below:

II. Respondent Information

1. a. Name:
- b. Home Jurisdiction:
2. Do you practice in, or have you otherwise become familiar with, the merger review regime in your home jurisdiction?
 - Yes No
3. a. Have you worked or otherwise become familiar with merger review regimes outside of your home jurisdiction?
 - Yes No
- b. If Yes, with what other merger review regimes (or groups of merger review regimes) are you familiar?

ICN Merger Working Group Questionnaire

4. Are you employed or affiliated with any of the below organizations? *Select all that apply.*

- Law firm
- Economic consulting firm
- Academic institution
- Consumer organization
- International organization
- Private sector corporation or company
- Other (please specify):

III. ICN MWG Work Product

Questions 5-11 below request your input on the impact and use of ICN MWG work product. In responding to these questions, you may wish to consider the following ICN MWG work product, among others:

[Recommended Practices for Merger Notification and Review Procedures](#)

[Recommended Practices for Merger Analysis](#)

[Merger N&P Implementation Handbook](#)

[Merger Guidelines Workbook](#)

[Investigative Techniques Handbook](#)

[Merger Remedies Report](#)

[Model Confidentiality Waiver](#)

[Merger Templates and Web Links](#)

Reports on merger notification and procedures:

[Information Requirements for Merger Notification](#)

[Defining "Merger" Transactions for Purposes of Merger Review](#)

[Setting Notification Thresholds for Merger Review](#)

[Comparative Study of Merger Notification Filing Fee Systems](#)

5. Which MWG work products or types of work product (e.g. Recommended Practices; handbooks, workbooks or other practical guidance; comparative reports; teleseminars; workshop discussions; etc.) do you believe have been most useful and why?

6. Are you aware of any changes or improvements linked to ICN MWG work product in the merger review regimes with which you are familiar? If so, please describe.

7. To what extent have the *ICN Recommended Practices for Merger Notification and Review Procedures* and the *ICN Recommended Practices for Merger Analysis* been implemented in the jurisdictions with which you are familiar? Are there particular *Recommended Practices* or areas in which further efforts to promote implementation of the RPs would be useful?

ICN Merger Working Group Questionnaire

8. a. Have you used or referenced MWG work product in the course of your work?

Yes No

b. If Yes, how have you used MWG work product? *Select all that apply.*

- Discussions with international counsel or professional colleagues in other jurisdictions
- Discussions with competition authorities
- Use in researching international best practices or merger review policy or practices in particular jurisdictions
- Providing comments on existing or proposed laws, regulations, guidelines, or procedures
- Use in academic or internal training
- Other (please specify):

c. For each use of MWG work product identified in response to Question 8.b above, which MWG work product have you used? Did you find the work product helpful?

9. Are there any barriers to the use or implementation of MWG work product in the jurisdictions with which you are familiar? If so, what barriers exist and are there ways in which the MWG could assist in removing them?

10. Are there ways in which the MWG could more effectively promote awareness and use of any of its work product? If so, how?

11. What MWG work product or types of work product (e.g. Recommended Practices; handbooks, workbooks or other practical guidance; comparative reports; teleseminars; workshop discussions; etc.) do you think will continue to be useful to competition authorities in the coming years and why?

IV. Future Direction of MWG Work

12. In your view, what are the most important areas of focus for the MWG to promote and improve effective merger review in the coming years? Please rank as many as apply in order of your assessment of their relative importance, with "1" reflecting the most important item, "2" the second most important item, and so on.

Rank Potential Areas of Focus

- | | |
|--|---|
| | Update or supplement existing work product |
| | Promote familiarity with, and implementation of, <i>Recommended Practices</i> |
| | Promote familiarity with, and use of, other MWG work product |
| | Additional work on identifying potential new areas of substantive or procedural convergence |
| | Training/workshops focused on staff-level merger investigators |
| | Training/workshops focused on mid-level to senior management |
| | Training/workshops focused on courts or other reviewing entities |
| | Additional work on investigative techniques |
| | Additional work on the economic analysis of mergers |

ICN Merger Working Group Questionnaire

Rank Potential Areas of Focus

- Additional work on other merger analysis issues
- Additional work on merger notification and procedures issues
- Additional work on merger remedies issues
- Additional work on agency effectiveness in conducting merger review (e.g. conducting merger review efficiently, directing a merger review organization and its resources, engaging the parties and addressing their arguments, promoting a transparent process, or establishing procedures to protect the confidentiality of submissions)
- Additional work on agency coordination in multi-jurisdictional mergers
- Additional work on review of agency merger decisions
- Additional work on effective outreach (e.g. with business, the private bar, judiciary, sector regulators, other government officials, or the public) on merger review issues
- Teleseminars/webinars to promote experience sharing on merger review issues
- Case Studies
- Other (please specify):

13. What particular MWG projects do you think would be most useful and why?

V. MWG Participation and Performance

14. MWG Participation

a. Have you participated in the MWG as an ICN NGA?

- Yes No

If No, proceed to question 15 below.

b. Do you currently participate in the MWG as an ICN NGA?

- Yes No

c. How long have you participated as an ICN NGA in the MWG?

- Less than one year
- One to two years
- Three to four years
- Five years or more

d. How have you participated in the MWG? *Select all that apply.*

- Provided input on MWG work (drafter, providing comments on drafts, submission of survey responses, etc.)
- Attended ICN MWG workshops
- Participated in ICN MWG teleseminars
- Served as a panelist/moderator/resource person in ICN MWG workshops or teleseminars
- Served as a panelist/moderator/resource person in MWG plenary or breakout sessions at ICN Conference
- Use of MWG materials on ICN website
- Other (please specify):

Appendix C

2010 ICN Merger Workshop

Feedback on the Workshop and Future of the MWG

In November 2010, the Italian Competition Authority hosted the eighth ICN Merger Working Group Workshop in Rome with the theme of “Merger Policy and Practice.” The workshop was attended by approximately 135 member agency and NGA participants from more than 50 jurisdictions.

This annex reports the results of the feedback from the 2010 workshop and, in more detail, the workshop discussions devoted to the MWG’s comprehensive assessment and future of the working group.

I. Overview of the 2010 Workshop

General themes in the overall feedback from the 2010 ICN merger workshop:

- Overall, participants were very satisfied with the content, format and speakers at the workshop.
- Participants put a strong emphasis on practical discussions and exercises, including sharing of investigative and analytical experiences and group exercises focused around a specific fact pattern.
- Participants have a clear desire for less presentation and more dialogue and interaction in breakout sessions.
- Participants expressed an appreciation for policy level discussions among all participants, regardless of level of experience. Significant time set aside for policy discussions was a new aspect of the 2010 workshop.
- A few participants suggested that the MWG consider ways to tailor some sessions to the different levels of experience of the participants.
- Several of the suggestions for future MWG work and workshops mirror the topics that rated well at the workshop: case studies, agency cooperation and economic analysis.

II. Breakout Session Discussion of MWG’s Future

The workshop included a breakout session discussion on this year’s working group comprehensive assessment project and future of the working group. Participants were asked for views on the use of the MWG’s existing work product, MWG workshops, and the working procedures and future work for the MWG.

The discussions were informal and open to all ideas from the member and NGA participants at the workshop, with the idea that the feedback would be included in the broader MWG assessment project. Thus, no attempt was made to determine preferred or consensus support for specific ideas.

III. Use and Impact of Merger Working Group Work Product

Overall, the workshop participants described a substantial level of familiarity with ICN MWG work product at their agencies. Participants considered the MWG’s work as “good work” and “very useful,” particularly for new merger investigators. They described the work as a useful baseline of international practice that complements the specifics of an agency’s own practice.

The level and frequency of use of any specific work product depends on work product topic – for example, the analysis work is consulted more often than the remedies work. Several participants specifically mentioned the Investigative Techniques Handbook and Merger Guidelines Workbook

as frequently used by their agencies' merger staff. The discussion also produces a simple reminder about work product: agencies and individuals use most what they need most.

Many participants shared stories of how existing Merger Working Group work product is used by member agencies. The discussions confirmed that MWG work products have influenced the laws and practices of ICN member agencies.

Examples from the discussions include:

- MWG work product is included in an introductory packet or starter kit for new investigators
- Reform of merger notification rules based on N&P RPs
- Use of N&P RPs to help support a change of notification thresholds in the law
- Use of the member templates for basic information about merger review regimes and for comparisons
- MWG Remedies Report inspired a study on merger remedies
- Use of RPs during a public consultation on draft guidelines
- MWG work as useful basis for comparing domestic practices with practices in other jurisdictions
- Use of workshop materials and hypothetical for internal agency training

IV. ICN Merger Workshops

Participants widely praised the MWG workshops and unanimously supported continuing such workshops. Participants articulated the benefits of workshops as venues for experience sharing, staff training, discussion of emerging issues, and developing contacts.

Participants were asked about preferences for the content and target audiences for workshops, specifically, preferences for discussions of merger policy issues and for training style exercises. The participants articulated benefits for the working group to pursue both policy issues and practical training, noting that both need not be covered together in every workshop. The discussions emphasized the value to merger staff of practical, training-style workshops built around a hypothetical that includes investigative or analytical exercises. More experienced participants valued the discussion of trends and emerging issues and the opportunity to make contact with other agencies with a view towards enhancing inter-agency cooperation.

Most importantly, the breakout discussions stressed that whatever the content of the workshops, the working group should be clear about the intended target audience so that members send the appropriate participants.

Some participants explained that they when they return, they share their workshop experience with others in the agency or use the hypothetical materials for internal training. The participants also confirmed the importance of circulating in advance the hypothetical and other appropriate materials to be discussed at a workshop.

V. Ideas for the Working Group

The participants were also asked for views about the working procedures and future work for the MWG.

A. Ideas related to MWG process and work procedures

- Participants stressed the value of MWG teleseminars, and several supported doing more teleseminars, especially topics focused on training purposes.
- Consider whether work product could/should be tailored to different audiences. For example, younger agency perspectives or small/bigger economies or new/experiences investigators, especially in teleseminars and workshops.
- Consider additional ways to promote the exchange of information and news about merger review. For instance: the MWG could add a reporting function/exchange of important merger decisions via calls, teleseminars or workshops or develop a database of merger cases.
- Enhance inter-agency merger cooperation; for instance by facilitating the exchange of information about merger investigations.
- Case studies: presentation of important cases via teleseminars, at workshops or conferences, or through other work product.
- Promote broader involvement for NGAs; i.e., academics

B. Ideas for future work for the MWG

- Economic analysis in merger review
- Merger remedies; emphasis on practical issues, application to specific cases, and coordination with other jurisdictions.
- Implementation of existing MWG recommendations and guidance; including additional guidance on how to implement.
- Ex post review of agency merger decisions
- Efficient use of resources for merger review
- How to explain the benefits of merger review/measure the impact of merger review

VI. Summary

Overall, the breakout discussions on the future of the MWG at the 2010 ICN Merger Workshop were very positive. Participants were familiar with existing MWG work product and explained its value through many examples of how their agencies have put MWG guidance to use. Participants were also very supportive of the MWG's workshops and teleseminars as additional venues for training, promoting dialogue and building relationships. Finally, the workshop participants provided several ideas for the MWG's working procedures and consideration of future work. Overall, the workshop discussions substantially support and complement the ideas from the more comprehensive member and NGA surveys completed in 2010-11.