

**IMPLEMENTATION OF THE ICN RECOMMENDED
PRACTICES FOR MERGER NOTIFICATION AND
REVIEW PROCEDURES**

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I. EXECUTIVE SUMMARY

This report aims to provide a better understanding of International Competition Network members' experiences in seeking to implement reforms that bring their merger review systems into greater conformity with the ICN's Recommended Practices for Merger Notification and Review Procedures. Based on interviews with officials and members of the private sector in 27 jurisdictions, this Report explains the role of the Recommended Practices in helping to identify areas for possible reform and stimulating reform efforts. The Report discusses how agencies implemented changes internally and pursued legislative reforms. From these experiences, this Report distills four lessons:

- Starting with changes that agencies can implement themselves can improve their merger review system without expending significant effort and resources, and may help build support for more extensive reform;
- The Recommended Practices are most persuasive when they are used as a complement to other internationally-accepted models and work on best practice;
- Building consensus among interested constituencies throughout the reform process facilitates enactment and acceptance of reforms; and
- All stakeholders, including agency officials, private practitioners, and academics, can play an important role in effecting change.

The implementation project participants used these four themes and other lessons learned to develop a "Tip Sheet" that provides information for agencies that are considering reforms to their merger review procedures.

II. TIP SHEET – BASED ON IMPLEMENTATION LESSONS LEARNED

1. Identifying Areas for Change

- (i) Use the International Competition Network (ICN) Recommended Practices as a benchmark to identify aspects of your jurisdiction's merger review regime that could benefit from improvement. If you have questions about whether your law, rules, or practices conform to the Recommended Practices, please contact the Notification & Procedures subgroup:
<http://www.internationalcompetitionnetwork.org/guidingprinciples.html>
- (ii) Compare your merger regime to those in other jurisdictions, especially those with well-established systems, a regional leader, or a close trading partner.
- (iii) The work of the Organisation of Economic Cooperation and Development, including its peer reviews and Council Recommendation Concerning Merger Review, can be a helpful resource for instigating and shaping change.

2. Implementing Change

- (i) Starting with small changes can lead to more extensive reform. Consider starting with improvements that the agency can make itself, without the need for statutory amendments from the legislature.
 - Speeches, press releases, and notices by the competition agency can clarify ambiguities, provide guidance, and announce changes quickly and easily.
 - To facilitate ready access to your agency's merger law and related materials, create a website with a dedicated page on mergers. Complete and update your agency's response to the ICN template. The ICN will link your web page and template to the Notification & Procedures page of the ICN website.
- (ii) If you need more detailed guidance on implementation than the Recommended Practices provide, use laws and regulations from other jurisdictions that have implemented the Recommended Practices as models.
- (iii) In some cases, implementing the Recommended Practices will reduce the agency's workload (for example, by reducing unnecessary filings), but in other cases may

increase it (for example, by increasing published decisions). Consider the resources and staff needed to implement reforms successfully.

3. Building Consensus

- (i) Make the private sector your ally – implementing the Recommended Practices benefits the agency, businesses, and consumers alike. Building consensus will not only promote reform, but also increase its acceptance by the business community and the bar.
- (ii) Emphasize how the changes will bring the jurisdiction into conformity with recognized benchmarks of international best practice. Build consensus to facilitate implementation by publicizing the Recommended Practices, revised laws, procedures, and practices in other jurisdictions, and the OECD Merger Recommendation, to relevant stakeholders, including the legislature and other decision-makers.

III. INTRODUCTION

1. Developing Recommended Practices for Merger Notification and Review Procedures

The Notification and Procedures subgroup is one of three subgroups comprising the ICN's Merger Working Group. The Working Group was established to promote convergence toward best practice in the review of multi-jurisdictional mergers. This subgroup addresses procedural aspects of merger notifications and review, such as the timing of merger notification and review and the scope of information requests. Its mission includes improving the effectiveness of merger review regimes, reducing unnecessary costs and burdens, and facilitating procedural convergence.

The subgroup's main focus has been developing and assisting in the implementation of Guiding Principles and Recommended Practices for Merger Notification and Review Procedures.¹ In its first year, the subgroup drafted a set of Guiding Principles that provide a "road map" for agencies developing and revising merger regimes. The Guiding Principles outline eight precepts on which merger regimes should be based: sovereignty; transparency; non-discrimination on the basis of nationality; procedural fairness; efficient, timely and effective review; coordination; convergence; and protection of confidential information. The ICN adopted the Principles at its first annual conference in September 2002.

Concurrently, the subgroup developed a set of Recommended Practices for Merger Notification and Review Procedures ("Recommended Practices" or "Practices"). The Recommended Practices address priority areas related to merger notification procedures as identified by public and private sector representatives, aimed at facilitating convergence toward best practices in the procedural aspects of merger review. The Practices are designed to accommodate different legal traditions and stages of development. They consist of short, "black letter" statements followed by explanatory comments. During the past three years, the group has developed eleven Recommended Practices, which the ICN has adopted. The

¹ The subgroup also has undertaken projects to increase the accessibility of information on merger review systems worldwide and provide background information on relevant issues such as filing fees and the costs and burdens associated with multi-jurisdictional review. It has also developed a model waiver of confidentiality that merging parties and competition agencies can use to facilitate waivers of confidentiality protection for information that parties submit in the merger review process. These materials, as well as the Guiding Principles and Recommended Practices, are available at <http://www.internationalcompetitionnetwork.org/notification.html>.

Practices address: (1) nexus between the merger's effects and the reviewing jurisdiction; (2) clear and objective notification thresholds; (3) timing of merger notification; (4) merger review periods; (5) requirements for initial notification; (6) conduct of merger investigations; (7) procedural fairness; (8) transparency; (9) confidentiality; (10) interagency coordination; and (11) review of merger control provisions. The subgroup has developed two additional Recommended Practices, on Remedies and Competition Agency Powers, that will be presented for adoption at the ICN's Annual Conference in June 2005.

2. Initial Efforts to Assess and Promote Conformity with the Recommended Practices

Convergence toward these internationally recognized best practices promises to make notification and review of both domestic and cross-border mergers more efficient and effective. Accordingly, the subgroup has devoted considerable time and energy to promoting successful implementation of the Practices by ICN members as well as by non-members considering adopting new merger review rules.

In 2003, the subgroup began an informal benchmarking project to measure the conformity of ICN members' merger review systems with the Recommended Practices. Using available primary and secondary source materials, the subgroup compiled a rough baseline of agency conformity, and monitored changes in merger review laws and agency practice to examine the extent to which they were changing in the direction of the Practices. In addition, subgroup members as well as other ICN members and advisors from the private sector began to incorporate the Recommended Practices into their outreach and technical assistance programs to increase awareness of the Practices by newer agencies and by jurisdictions considering enacting a merger review system.²

These early efforts resulted in two main conclusions: (i) an impressive number of ICN members appeared to be taking steps to implement the Recommended Practices; and (ii) a more systematic approach to monitoring reform and assessing the scope of changes aimed at conformity with the Recommended Practices was necessary. Following the ICN's Third

² Other efforts aimed at promoting conformity with the Guiding Principles and the Recommended Practices include direct contact with competition agencies, speeches and articles by agency officials, having subgroup members lead by example, and encouraging private sector support and advocacy.

Annual Conference in April 2004, the subgroup established a project dedicated to implementation of the Recommended Practices.

3. The Implementation Project³

The implementation project began by developing a baseline study of the conformity of ICN members' merger review systems with selected provisions of the Recommended Practices. The study focused on aspects of Recommended Practices with which conformity could be measured objectively. The project group gathered information from primary and secondary sources and consulted with local counsel and/or agency officials in each ICN member jurisdiction with a merger review system. Annex B presents the aggregate results of this survey.

The project group sought a better understanding of how jurisdictions initiated conforming changes to their merger review regimes so it could provide practical guidance to jurisdictions considering making changes to their merger review systems. Based in large part on prior work by the subgroup and the private sector,⁴ the project group identified jurisdictions that had made or proposed changes that brought their laws into greater conformity with the Practices. The group contacted 27 agencies with diverse experiences with merger reform. The group developed an interview protocol aimed at identifying factors that facilitated or impeded change and the role that the Practices played in the reform process. Based on the interviews, the group identified common themes from the agencies' experiences.

While the ICN's work on implementation of the Recommended Practices is a continuing project, this Report sets forth what has been learned to date. The Report is presented in four sections. Section I identifies and describes catalysts for change, in particular the role the Practices have played in initiating merger reform processes and identifying areas for possible reform.⁵ Increased understanding of the impetus for change can enable other ICN members

³ A list of project participants is provided in Annex A.

⁴ *E.g.*, by the Merger Streamlining Group (MSG), "a group of international businesses, which have broad experience with the merger review processes of many jurisdictions"; *see* "Implementation of the International Competition Network's Recommended Practices for Merger Notification Procedures: Final Report," J. William Rowley & A. Neil Campbell, *Business Law International*, vol. 5, no. 1 (Jan. 2004); "Paradise Lost or Regained?," J. William Rowley & A. Neil Campbell, *Global Competition Review*, Merger Streamlining Group (Oct. 2004), both available at <http://www.mcmillanbinch.com/streamline>.

⁵ A summary of the catalysts for change is provided in Annex C.

to pursue reforms more effectively in their jurisdictions. Section II discusses the ways in which agencies have implemented reforms; this may help ICN members determine the appropriate vehicle for change. Section III summarizes the lessons learned from agencies' implementation experiences.⁶ Section IV outlines the subgroup's plans for future implementation work.

IV. THE ROLE OF THE RECOMMENDED PRACTICES AS A CATALYST FOR CHANGE

As of April 2005, 46% of ICN member jurisdictions with merger laws have made or have proposed changes that bring their merger regimes into closer conformity with the Recommended Practices; an additional 8% are planning to make such changes. Nearly two-thirds of the jurisdictions that have made changes to their merger review systems and were interviewed for this project cited the Recommended Practices as having played a role in initiating or shaping their merger reform efforts.

The project group found that the Recommended Practices' influence, while significant, is not always direct; their role depends on the agency, the level of support for merger reform, and the legal context. The Practices may be used in conjunction with other factors to build support for reforms and to shape the direction and content of such reforms. The group found three factors important to initiating merger reform:

- A desire to bring the merger review regime into greater conformity with international best practice generally, and the Recommended Practices in particular;
- Convergence toward the regimes of other jurisdictions, such as those with well-established merger review systems, a regional leader, or a close trading partner; and
- Recognition by stakeholders, in particular, the private bar, the business community, and the competition agency, that the merger review system was not as effective or efficient as it could be.

In the interviews, agencies indicated that they used the Recommended Practices, other work on international best practice -- in particular, by the Organization for Economic Cooperation

⁶ Annex D presents selected jurisdictions' implementation of the Recommended Practices.

and Development ("OECD") -- and merger regimes in other jurisdictions as benchmarks by which to measure their own merger rules, practices, and procedures, and to identify areas for possible reform. Agencies also consulted with the private sector, including the legal, business, and academic communities, as well as consumers, for advice on proposed changes.

1. The Recommended Practices as a Standard of International Best Practice

Several agencies relied on the Recommended Practices directly as a standard of international best practice for merger review. Comparing their systems to the Recommended Practices allowed the agencies to evaluate and identify specific areas for improvement. The Recommended Practices also helped to delineate goals and practices, and provided a basis for informal agency action, both prior to and contemporaneous with legislative revisions. For example, officials from the Peruvian agency are benchmarking their proposed legislative changes against the Recommended Practices, citing the Practices as "internationally-accepted best practice." In Brazil, the Recommended Practices provided the agencies and other reform proponents with a defined path to address many of the concerns identified with their merger review process. Some agencies, such as the Russian Antimonopoly Service, used the Practices to persuade legislators of the need for change.

Some agencies have instituted a system of ongoing or periodic review, in which they use the Recommended Practices as a guidepost. In Canada, for example, the agency's *Fee and Service Standards Policy and Handbook* provides that the "Service Standards will continue to be reviewed in view of the worldwide trend of convergence related to certain antitrust and merger review activities. For further information related to convergence, refer to the International Competition Network."⁷

2. Role of the OECD

Several agencies, including Brazil, Canada, Mexico, and Poland, reported that the work of the OECD, including its peer reviews and Recommendations, was helpful in initiating and shaping their merger reform efforts. The OECD Competition Committee, particularly its working party on enforcement cooperation, has devoted substantial efforts to studying the merger review process, and its work helped inform the development of the ICN

⁷ Competition Bureau Fee and Service Standards Policy, fn 4 (March 2003), available at <http://cb-bc.gc.ca/epic/internet/incb-bc.nsf/en/ct02537e.html>.

Recommended Practices. Following the ICN's adoption of the Recommended Practices, the OECD Council adopted a Recommendation Concerning Merger Review⁸ that closely follows the Recommended Practices and further supports the ICN's work. Thus the ICN's and OECD's work have been mutually reinforcing in establishing benchmarks for multijurisdictional merger review.

3. Convergence Toward Merger Regimes in Other Jurisdictions

Many respondents identified a desire to converge towards the merger regimes of other jurisdictions, particularly those with well-established merger review systems, a regional leader, or a close trading partner, as a key factor motivating changes to their merger regimes. Agencies often used merger review rules in these "model" jurisdictions as benchmarks to identify areas for reform. Some jurisdictions, such as Israel, examined developments and experiences from a range of jurisdictions (*e.g.*, the EU, Canada and the US) for guidance. In other jurisdictions, merger reform was driven in large part by a desire to align practices, standards, and procedures more closely to those of a large trading partner or neighboring jurisdiction – for example, New Zealand's merger reforms were motivated by their desire to promote consistency with Australia's competition rules.

Convergence with the European Community Merger Regulation (ECMR) was a key motivator for current and aspiring European Union Member States (*e.g.*, Estonia, France, Latvia, Macedonia, the Netherlands, Poland) and other European countries (*e.g.*, Croatia, Norway) to reform their merger review processes. Given the regional context and the importance of the EC to these national legal systems, it is often relatively easy for these jurisdictions to import EC standards into domestic law. Interview respondents from several European countries indicated that the Recommended Practices were an important secondary factor (*e.g.*, the Croatian Competition Act was amended to comply with EC rules, but the Practices played a significant role in persuading decision makers to adopt merger reforms) while for others, the Practices played little or no role in determining whether and how to change the merger regimes (*e.g.*, the Latvian agency considered the laws of other countries and aimed at conformity with EC merger rules, but did not consult or consider the Recommended Practices).

⁸ Available at: www.oecd.org/competition.

Even when the Practices played no direct role in a jurisdiction's merger reforms, they may have had an indirect influence, for example if a jurisdiction used as a model the merger review systems of jurisdictions that follow the Recommended Practices. Thus, the Norwegian agency interview respondent said that the agency was comfortable modeling its merger system changes on the ECMR because it assumed that the ECMR conformed with the Recommended Practices. "Model" regimes not only have used the Practices to improve their own systems, but also many have incorporated them into outreach efforts. Thus, the Recommended Practices have played an important, albeit sometimes indirect, role in the process of benchmarking and convergence.

4. Role of the Private Sector

Almost every agency considering reform reported that they consulted with the private sector, including representatives of the legal, business, and academics communities, and, in some instances, the general public. In assessing proposed changes, and sometimes proposing reforms themselves, the private sector often was a persuasive advocate for the Recommended Practices. Members of the private sector have used the ICN's Practices to assess merger review systems;⁹ some agencies referred to the work of the "Merger Streamlining Group"¹⁰ as having an important role in publicizing the ICN's Practices and encouraging agency self-assessment.

Individual private sector participants have also been integrally involved in developing the Recommended Practices as non-governmental advisors to the Notification and Procedures subgroup. They have provided perspectives, based on their experience with multijurisdictional merger review, on the design of efficient and effective merger regimes, and made suggestions for reforming areas in need of improvement.¹¹ Given the private sector's important role as a catalyst for change and in shaping reform, increased efforts to

⁹ See Rowley & Campbell, *supra* note 3; "EEA merger thresholds and the ICN Recommended Practices," T. Reeves and R. Hunter, Global Competition Review (forthcoming).

¹⁰ See <http://www.mcmillanbinch.com/streamline>.

¹¹ Improvements identified include those made in other fora, *see, e.g., id.*; International Competition Policy Advisory Committee, <http://www.usdoj.gov/atr/icpac/icpac.htm>; Business and Industry Advisory Committee to the OECD, "Recommended Framework for Best Practices in International Merger Control Procedures," <http://www.biac.org/statements/comp/BIAC-ICCMergerPaper.pdf>.

educate the private sector about the Recommended Practices can continue to reinforce support for the Recommended Practices as a model for convergence toward best practice.

V. IMPLEMENTING CHANGE

There are various ways to implement the Recommended Practices, the effectiveness of which may depend on the nature of the provision at issue, the competition agency's institutional structure, the competition law, and the legal framework in which the agency operates. This section presents examples of how agencies have accomplished reforms, classified by the type of change that the agency or jurisdiction used. One key factor, building consensus, is discussed at the end of this section and in the next section on lessons learned.

1. Methods of Implementation

Changes at the Agency Level

Several jurisdictions were able to make changes quickly and effectively by changing agency practice. Reforms included increasing transparency of agency practice and decisions, amending agency procedures and administrative requirements, and issuing or revising merger guidelines, decrees, and decisions.

- Increased transparency of agency practice and decisions: Agencies increased transparency by, among other things, initiating a website and issuing speeches and press releases. For example, the Antitrust Division of the United States Department of Justice (DOJ) and the United States Federal Trade Commission (FTC) have recently increased transparency by issuing a reasoned explanation of decisions to clear merger investigations in appropriate cases, for example when the decision has precedential value or represents a change in enforcement policy or practice. In these cases, the agency issues a public statement and press release on its decision, which it also makes available on its website. DOJ issued a press release to announce this change in policy, which was cited in a number of competition-related publications and articles. Many competition agencies, particularly in Europe, systematically publish a non-confidential copy of their merger decisions on their websites (the French DGCCRF introduced this practice in 2002). Another example of increased transparency is the recent release by Canada of a Policy Statement for the Publication of Technical Backgrounders whereby the Canadian Competition Bureau will,

in certain circumstances, issue a technical background paper describing its analysis in a particular investigation, and the reasons underlying its final conclusions. In determining whether to publish the background paper, the Bureau will consider: whether the release of more comprehensive information will provide useful insight or education to the public and business community, encouraging greater compliance with the law; the issues are sufficiently important or complex; there is a need to clarify a point of law or policy (for example, where the Bureau has taken a new approach); the matter has received substantial publicity in the press; or the practice has a significant impact on consumers.

- Administrative Requirements: In 2003, the Mexican Federal Competition Commission (CFC) introduced agency-level changes to its merger review procedure to increase conformity with the Recommended Practices on Initial Notification Requirements and Review Periods. The CFC's changes reduced the amount of information parties were required to produce in the initial merger filing (in particular, corporate documents), substantially reduced the additional information the agency requested following notification, and set a shorter period than the legislation required for the agency to issue its final decision. The CFC made these and other changes public by posting the "Plenum Criteria" and merger guidelines on its website.
- Brazil instituted an informal "fast track" or "simplified procedure" for reviewing mergers that do not raise competitive concerns. In 2002, prior to the introduction of this procedure, the average length of review for all three of the Brazilian competition agencies was 246 days. In 2004, the average length of review decreased to 213 days. Brazil's Secretaria de Direito Econômico (SDE), one of the three competition agencies, reduced its average review time for simple cases from 39.7 to 23.7 days. Approximately 65% of all merger cases are currently reviewed under the simplified procedure.
- Agency Decisions: Depending on whether the jurisdiction has a common or civil law system, agency decisions may have precedential value, which can help refine interpretations of merger review practice to conform to the Recommended Practices. In 2005, the Brazilian competition tribunal, CADE, issued a decision (*ASC/Krone*) in which it reinterpreted the Brazilian merger threshold of R\$ 400 million to apply to sales in Brazil, rather than to worldwide sales, which resulted in the notification of numerous transactions that did not meet the Recommended Practice on Jurisdictional Nexus. CADE has issued similar decisions based on this new interpretation, which conforms to the Recommended Practice, giving it precedential value.

- Merger Guidelines: Australia recently conducted a review of its competition laws, in which it sought to improve its informal process for reviewing mergers. In developing new guidelines, the Australian Competition and Consumer Commission expressly looked to the Recommended Practices to "provide greater transparency and accountability to Australia's informal merger assessment process while preserving the benefits of the existing informal system." The guidelines, based on the Recommended Practices, have been accepted in Australia by the private antitrust bar and by business, and are reported to be working well.

In October 2004, the US DOJ released the Antitrust Division Policy Guide to Merger Remedies, setting forth the Division's merger remedy policies and describing their legal and economic underpinnings. The guide is intended to explain the Division's analytical framework for crafting and implementing relief in merger cases to the business community, antitrust bar. In France, the DGCCRF plans to release its final merger guidelines, which were largely inspired by the Recommended Practices, shortly (possibly by June 2005).

- Agency Decrees: In some jurisdictions, agency decrees are considered more permanent than guidelines, and thus are more convincing to stakeholders. In 2004, the Antimonopoly Office of the Slovak Republic used legislative decrees to introduce changes that brought its merger regime into closer conformity with the Recommended Practices. Decrees 268 and 269 of April 21, 2004 established a local nexus requirement, increased turnover thresholds for merger notification, and clarified and reduced review periods.

Legislative Change

Internal agency change was not always possible or sufficient to realize desired reform, in particular when the reforms could be accomplished only through legislative action. Moreover, in some cultures, reforms would not be "institutionalized" without the force of legislative approval. Accordingly many reforms were pursued through the legislative process.

- Regulation Requiring Legislative Approval: In 2004, the European Commission amended its Merger Regulation, including by making reforms that brought its merger notification and review system into greater conformity with the Recommended Practices. Citing the Recommended Practice on Timing of Notification as a source of inspiration for the

changes, the EC made it possible for parties to notify transactions upon a showing of the parties' good faith intent to carry out the transaction, rather than requiring a definitive agreement, and enabled parties to determine the time of notification instead of requiring notification within seven days after the definitive agreement.

- In 2003, the Romanian Parliament adopted Government Emergency Ordinance No. 121/2003, amending the merger notification and review regime by introducing local nexus standards based on the Recommended Practices. The law previously required notification of mergers in which the parties' aggregate turnover exceeded 25 billion Lei; under the new legislation, transactions are notifiable only if the parties' aggregate turnover exceeds €10 million at least two parties have Romanian turnover exceeding €4 million. This amendment brings the Romanian merger notification and review regime into greater conformity with the local nexus provisions of the Recommended Practices.
- Adoption of a Merger Notification System and/or New Merger Law: Costa Rica and Peru are each using the Recommended Practices as a benchmark as they consider establishing new merger notification systems. Poland recently enacted a new competition law that eliminates both the requirement that parties notify within seven days of a definitive agreement and the market-share based threshold exemption.

2. A Key Element Common to Successful Reform

Building Consensus

Many agencies in jurisdictions that had successful reform experiences cited building consensus as important not only to accomplishing the reform, but to ensuring its acceptance by the business community and bar.

- Legislative Reform: The three Brazilian competition agencies recently agreed on a proposed draft bill that aims to correct many of the weaknesses identified in the current merger review system. The bill provides for, *inter alia*, clear, objective notification thresholds based exclusively on the parties' sales in Brazil, shorter, defined deadlines for review, and a more streamlined review and decision-making process. All of these changes would increase conformity with the Recommended Practices. The Brazilian agencies consulted private practitioners, other government bodies, and members of the international legal community throughout the drafting process. The agencies continue to

build support for the bill domestically and internationally through further dialogue and the solicitation of additional comments on the bill.

- Non-Legislative Reform: In Australia, the ACCC launched its proposed merger guidelines initiative in a speech by its Chairman at a major business function. The speech explained the ICN and the principles behind the Recommended Practices, as well as the agency's proposed approach to merger review. The agency then released draft guidelines for public consultation and published them on the internet with a media release explaining the initiative. The ACCC consulted broadly with the Australian competition bar as well as industry and business groups, who met with senior ACCC staff and Commissioners to exchange views. Based on this process, the draft merger guidelines were refined and finalized. Although some areas of difference between the private sector and the agency remained, the legal and business communities' initial skepticism and concerns about the Commission's intentions were addressed through the consultation processes. This consensus approach led to what is generally accepted as the smooth implementation of the ACCC's new merger guidelines.

VI. LESSONS LEARNED

The experiences of ICN members that have used the Recommended Practices to make or propose changes to their merger review systems offer several lessons for the global competition community. These experiences demonstrate that certain Recommended Practices can be implemented with little effort by the agency, and that small efforts can pave the way for more extensive reform. Another lesson relates to the power of multiple institutions and vehicles providing the same substantive message -- the interviews clearly illustrate that a consistent message by international institutions and other interested parties facilitates reform. A third lesson is the importance of building consensus. A related, fourth lesson is that all stakeholders within a jurisdiction, whether within the agency, in private practice, or in academia, can play an important role in merger reform.

1. Gradual Change Can Lead to More Extensive Reforms

Some Recommended Practices may be easier to implement, particularly those that do not require legislative action. Virtually all jurisdictions interviewed, for example, took steps to increase the transparency of the merger review process, as indicated in Annex C. While the

reason for this is not clear from the interviews, one likely explanation is that the Recommended Practice on Transparency is easier to implement than other Practices.¹² For example, speeches and press releases by the competition agency can increase transparency by clarifying ambiguities and providing guidance. Even the establishment of a merger-specific web page can increase transparency. Among others, Australia, Brazil, Canada, the European Union, France, Hungary, Israel, Japan, Macedonia, Mexico, Poland, the Slovak Republic, and the United States have introduced important changes to increase the transparency of their merger review procedures.

An agency conducting a transparency review can take immediate steps, such as issuing press releases and guidelines and establishing or adding content to a website, to improve transparency. Members of the bar or academics can help identify areas where increased transparency would be particularly beneficial, and convey this message to agency officials.

The interviews suggested that agencies can implement other changes that can provide significant benefits to all stakeholders, often at low or no cost to the agency. For example, many respondents cited the Recommended Practice on Review Periods as relatively simple for agencies to implement by reducing or clarifying the length of their review periods to conform to the suggested six-week/six-month time frames in the Practice. This can benefit private parties through more expeditious review and increased certainty, and the agency through more efficient use of its resources. Changes to review periods have been made or are planned by Australia, Brazil, Hungary, Israel, Latvia, and Macedonia, among others.

Thus, as a first step to implementing sound merger reform, agencies and the private sector can identify areas in which change might be most easily implemented. Similarly, when major legislative reform is not necessary, planned, or possible, agencies may accomplish some reform by changing agency rules or practices. Starting with smaller steps can have at least two important advantages: it allows agencies to improve their merger review system without expending significant effort and resources, and may help build support for more extensive reforms.

¹² Other reasons may include that transparency is a widely accepted principle of good administration, and that steps to increase transparency will typically be similar across jurisdictions and are unlikely to be influenced by differences in local laws, making it easier for an agency to follow the example of other jurisdictions.

2. Consistent Messages Facilitate Reform

A striking observation made by agency after agency was that the Practices and other materials could be even more effective if many parties delivered the same substantive message. Some respondents noted the important role that the Practices were able to play, both in providing a benchmark and in building consensus for change, when the suggested approaches conformed to those recommended by the OECD. The OECD conducted peer reviews of Mexico, Brazil, and Poland and made recommendations consistent with the Recommended Practices that helped facilitate change. Uzbekistan cited the consistency of the Recommended Practices with advice from technical assistance providers, including the OECD and the Asian Development Bank, as a key factor in determining which changes were important and then in building consensus to accomplish the reforms.

Another lesson that emerged from the interviews was the importance that the actions and practices of mature institutions and regional leaders hold for other jurisdictions, and the role this plays in implementing reform consistent with the Recommended Practices. Newer agencies and regimes often assume that convergence toward merger notification procedures of a "model" regime (*e.g.*, towards the ECMR by European countries), automatically will bring them into compliance with the Recommended Practices, particularly if the model regimes is an active ICN member. Thus, mature institutions and regional leaders should be aware of their likely influence on newer agencies, and review their own systems accordingly.

Neither the ICN nor these other institutions should be expected to reach consensus on every aspect of best practice. However, ICN members and advisors and others advocating merger process reform should be aware that their activities can be mutually beneficial. The power in the harmony of a consistent substantive message also suggests that none of these parties, including the ICN, should be concerned that its work is unnecessarily duplicative. While each project should add value, repeating a good message through multiple channels can accelerate convergence toward merger review systems based on sound principles and practices.

3. The Importance of Building Consensus

As explained more fully in Section II, above, the interviews strongly demonstrate the importance of building consensus. Consensus building, both within and outside of government, often was instrumental in securing the necessary "buy-in" from important

constituencies for reforms. Many jurisdictions accorded significant weight to consensus building in establishing momentum for reform as well as effecting the changes.

Some jurisdictions, including Mexico and Brazil, said that starting with internal, agency change was one way agencies can build support. For example, to achieve consensus among key stakeholders on proposals for legislative reform to the Mexican merger regime, the competition agency maintained an ongoing process of consultations with the Mexican Bar (including interested academics) and the business community. This outreach kept important interest groups informed of the agency's internal efforts to respond to constructive criticism aimed at improving the merger system.

4. Each Stakeholder has an Important Role

The experiences of many jurisdictions demonstrate that all stakeholders, including agency officials, private practitioners, and academics, can play an important role in the merger reform process. Members of the private sector have been effective in highlighting to agency officials the importance of merger reform and the benefits that it can accomplish. Some private parties have expertise or experience that makes them particularly well situated to identify specific problems within a merger review system. In France, for example, practitioners were able to assist the agency in determining appropriate areas for improvement. Business associations and private practitioners also can educate other stakeholders about unnecessary costs and burdens arising from existing merger review systems.

Individuals outside the agency can play an instrumental role in building consensus. Business associations have played an important role in the consultation process, for example in Japan. Awareness of the Recommended Practices by these groups has proven particularly beneficial to implementation of the Practices. In the public sector, the ICN and member agencies should seek to spread awareness to as many stakeholders as possible, in particular the more influential stakeholders such as business associations. Ensuring that other international organizations, particularly those that offer technical assistance to new competition authorities, are aware of the Recommended Practices should help to increase and improve their implementation.

VII. HOW THE SUBGROUP CAN HELP – FUTURE WORK

Implementation of the Guiding Principles and Recommended Practices will continue to be a priority for the ICN and the Merger Notification & Procedures subgroup. The subgroup will continue to pursue implementation through direct contacts with competition agencies, by giving speeches and writing articles, working with international organizations involved in competition policy, and leading by example. The subgroup will also continue to work closely with non-governmental advisors, who play an important role in promoting the ICN and encouraging, and sometimes convincing, their national competition agencies and legislatures to change their merger review laws and practices to conform more closely to the Recommended Practices.

The subgroup will continue to benchmark agency reforms. The subgroup will also support ICN members and non-members by, upon request, reviewing and commenting on proposed changes to merger review legislation, regulations, and agency practice. In response to information gathered during the implementation interviews, the subgroup plans to make practical tools to aid implementation efforts, such as speeches, press releases, notices, and legislative provisions that conform to the Recommended Practices, more readily available.

To promote deeper understanding and implementation of the Principles and Practices, the subgroup plans to hold an implementation workshop in 2006.

ANNEX A

IMPLEMENTATION PROJECT PARTICIPANTS

Name	Affiliation
<u>Member Participants</u>	
Tim Grimwade Mark Pearson	Australian Competition and Consumer Commission
Stephen Ryan Dan Sjøblom	DG-Competition, European Commission
Cynthia Lewis Lagdameo Paul O'Brien	US Department of Justice
Maria Coppola (Project Leader) Elizabeth Kraus Randolph Tritell	US Federal Trade Commission
<u>International Organizations</u>	
Andreas Reindl	Organisation for Economic Cooperation and Development
<u>Non-governmental Advisors</u>	
Joseph Krauss, Logan Breed, Michaelynn Ware (Hogan & Hartson LLP) Robert Schlossberg (Freshfields Bruckhaus Deringer LLP)	American Bar Association
Dave Poddar (Mallesons Stephen Jaques)	Australian Bar Association
John Taladay, Jane Comer (Howrey Simon Arnold & White)	Business and Industry Advisory Council
Dany Assaf, Paul Feuer (Ogilvy Renault)	Canadian Bar Association
Gail Jaffe	Canadian Non-governmental Advisor
William Rowley, Todd Prendergast, Omar Wakil (McMillan Binch)	International Bar Association
Robert Kwinter (Blake, Cassels & Graydon, LLP)	International Chamber of Commerce
Joseph Winterscheid, Davina Garrod (McDermott Will & Emery LLP) Ronald Stern (General Electric Company)	US Non-governmental Advisors

ANNEX B

COMPLIANCE WITH RECOMMENDED PRACTICES¹

Summary of Selected Responses for 53 ICN Member Jurisdictions

January 2005

RP I: Nexus

Question: Do your merger notification thresholds include a requirement that a transaction have a "local" nexus with your jurisdiction, *e.g.*, having activities in the jurisdiction?

35 jurisdictions:	Yes
8 jurisdictions:	No
10 jurisdictions:	Information not available

RP II: Notification Thresholds/Pre-Notification Guidance

Question: Do your notification thresholds use subjective criteria, *i.e.*, containing a subjective element?

27 jurisdictions:	Yes
23 jurisdictions:	No
3 jurisdictions:	Information not available
14 jurisdictions:	Market share
1 jurisdiction:	Market power
4 jurisdictions:	Market share and market power
4 jurisdictions:	Other subjective criteria

¹ These responses are based on information gathered by the Implementation Project group from primary and secondary sources. In most cases the responses were checked with local counsel, or in some cases agency officials, in each jurisdiction.

Question: What types of guidance, if any, do you provide regarding the methodology to be used to calculate or determine whether notification thresholds have been met?

32 jurisdictions: Formal or informal guidance provided
2 jurisdictions: None
19 jurisdictions: Information not available

RP III: Timing of Notification

Question: When are parties allowed to provide formal notification?

13 jurisdictions: At any time (even if transaction is speculative)
12 jurisdictions: Upon good faith intent to consummate (*e.g.*, signed letter of intent, agreement in principle, public announcement)
10 jurisdictions: Upon executive of a definitive agreement
5 jurisdictions: Upon a combination of the above
3 jurisdictions: Upon other triggering event
10 jurisdictions: Information not available

RP IV: Review Periods

Question: Does your system employ a single phase review period, a two phase review (preliminary review period and extended review period), or other?

13 jurisdictions: Single phase
29 jurisdictions: Two phase
3 jurisdictions: Other review periods
8 jurisdictions: Information not available

Question: Do you provide for expedited reviews of non-problematic transactions?

20 jurisdictions: Yes
18 jurisdictions: No
15 jurisdictions: Information not available

Question: Is your jurisdiction "suspensive" (*i.e.* prohibits the consummation of notified transactions pending the expiration or early termination of specified "waiting periods") or "non-suspensive jurisdictions" (*i.e.* where parties are permitted to close notified transactions pending review by the competition agencies)?

34 jurisdictions: Suspensive
12 jurisdictions: Non-suspensive
7 jurisdictions: Information not available

Question: Does your jurisdiction complete its initial review within 6 weeks of notification?

41 jurisdictions: Yes
5 jurisdictions: No
7 jurisdictions: Information not available

Question: Is your jurisdiction capable of completing any extended review within 6 months of notification?

37 jurisdictions: Yes
3 jurisdictions: No
13 jurisdictions: Information not available

RP V: Requirements for Initial Notification

Question: Does your jurisdiction provide for flexibility with respect to notification requirements, *e.g.*, alternative formats that vary with the likely complexity of competition analysis?

20 jurisdictions: Yes
17 jurisdictions: No
16 jurisdictions: Information not available

Question: Are parties allowed to submit information beyond that required in the initial filing voluntarily, to help narrow or resolve potential competitive concerns?

28 jurisdictions: Yes
25 jurisdictions: Information not available

Question: To what extent must supporting documents be translated into at least one official language?

- 20 jurisdictions: Require that all documents (including transaction documents, annual reports, etc.) be fully translated
- 17 jurisdictions: Allow for a combination of translated summaries, excerpts, partial translations, no translation, or English
- 16 jurisdictions: Information not available

RP VI: Conduct of Merger Investigations

Question: Are investigation periods subject to definitive deadlines?

(a) Initial Review (phase 1)

- 44 jurisdictions: Yes
- 4 jurisdictions: No
- 5 jurisdictions: Information not available

(b) Extended Review (phase 2)

- 31 jurisdictions: Yes
- 3 jurisdictions: No (but 2 have procedures to limit undue delay)
- 19 jurisdictions: Information not available

Question: Does your agency employ specific measures to limit delays that may be caused in non-consensual transactions, such as hostile tender offers, by the target company?

- 6 jurisdictions: Yes
- 23 jurisdictions: No
- 24 jurisdictions: Information not available

RP VII: Procedural Fairness

Question: Are third parties permitted to express their views on a merger during the merger review process?

- 32 jurisdictions: Yes

1 jurisdiction: No

20 jurisdictions: Information not available

Question: Is there an opportunity for external review of decisions (*e.g.* judicial review)?

43 jurisdictions: Yes

1 jurisdiction: No

9 jurisdictions: Information not available

RP VIII: Transparency

Question: Is the following information readily-available to the public:

(a) information regarding the jurisdictional scope of the merger law?

40 jurisdictions: Yes

13 jurisdictions: Information not available

(b) the competition agency's decision-making procedures?

31 jurisdictions: Yes

9 jurisdictions: No

13 jurisdictions: Information not available

(c) the principles and criteria that the competition agency uses to apply the substantive review standard?

34 jurisdictions: Yes

3 jurisdictions: No

16 jurisdictions: Information not available

Question: Are reasons made available to the public regarding agency decisions to: a) challenge a transaction, b) block a transaction, c) impose conditions on the clearance of a transaction, d) clear a transaction, e) clear a transaction, but only when the clearance transaction sets a precedent or represents a shift in enforcement policy or practices?

20 jurisdictions: Make reasons available with respect to an agency decision to challenge a transaction

19 jurisdictions:	Make reasons available with respect to an agency decision to block a transaction;
19 jurisdictions:	Make reasons available with respect to an agency decision to impose conditions on the clearance of a transaction;
15 jurisdictions:	Make reasons available with respect to an agency decision to clear a transaction;
5 jurisdictions:	Make reasons available with respect to an agency decision to clear a transaction, but only when the clearance sets a precedent or represents a shift in enforcement policy or practices.
29 jurisdictions:	Information not available

Question: Please indicate the methods employed by the competition agencies in your jurisdiction to promote transparency: a) publishing general guidelines and notices on substantive law and procedure, b) publishing individual enforcement decisions, c) publishing individual non-enforcement decisions, d) issuing press releases on important decisions, e) issuing statements explaining actions or non-actions that signify a change in enforcement policy, f) delivering speeches, g) publishing information materials h) other?

30 jurisdictions:	Some or all of these methods are used
24 jurisdictions:	Publish general guidelines and notices on substantive law and procedure
20 jurisdictions:	Publish individual enforcement decisions
20 jurisdictions:	Publish individual non-enforcement decisions
19 jurisdictions:	Issue press releases on important decisions
10 jurisdictions:	Issue statements explaining actions or non-actions that signify a change in enforcement policy
13 jurisdictions:	Deliver speeches
19 jurisdictions:	Publish information materials
5 jurisdictions:	Use other methods
23 jurisdictions:	Information not available

[RP IX: Confidentiality – not surveyed]

RP X: Interagency Coordination

Question: Has the agency in your jurisdiction coordinated one or more merger reviews with another competition agency reviewing the same merger?

20 jurisdictions: Yes
7 jurisdictions: No
26 jurisdictions: Information not available

Question: Does the agency in your jurisdiction have a basic model waiver of confidentiality form?

3 jurisdictions: Yes
15 jurisdictions: No
35 jurisdictions: Information not available

RP XI: Periodic Review

Question: Has your jurisdiction reviewed the substantive and/or procedural aspects of its merger review process within the last: a) 1 year, b) 5 years, c) 10 years, or d) other?

19 jurisdictions: 1 year
7 jurisdictions: 5 years
1 jurisdiction: 10 years
1 jurisdiction: Other
25 jurisdictions: Information not available

Question: Does your jurisdiction enter into such review on a periodic basis?

9 jurisdictions: Yes
9 jurisdictions: No
35 jurisdictions: Information not available

Question: Has your jurisdiction considered reforms of its merger control laws to better comply with the ICN Recommended Practices?

7 jurisdictions: Yes

7 jurisdictions: No

39 jurisdictions: Information not available

ANNEX C. SELECTED INTERVIEW RESPONSES REGARDING SOURCES OF INPUT ON MERGER REGIME CHANGES*

Jurisdiction	Best Practices				Private Sector			Other Regimes		Internal
	ICN	OECD	IBA	BIAC	Bar	Academic	Business	ECMR	Other	Self Assessment
Australia	Both				Consulted		Consulted			Catalyst
Brazil	Both	Considered			Catalyst	Catalyst	Catalyst			Catalyst
Canada	Considered	Considered			Both		Both		Considered	Catalyst
Croatia	Considered	Considered			Catalyst	Catalyst	Catalyst	Both		
Estonia	Considered				Consulted			Both		Catalyst
EU	Considered		Considered		Both	Both	Both		Considered	Catalyst
Finland		Considered			Catalyst		Catalyst	Considered	Considered	
France	Considered	Considered	Considered	Considered	Consulted	Consulted	Consulted	Both		
Ireland					Consulted	Consulted	Consulted	Considered		
Israel	Both							Considered	Considered	Catalyst
Japan	Considered						Catalyst		Considered	
Latvia								Both	Considered	

Jurisdiction	Best Practices				Private Sector			Other Regimes		Internal
	ICN	OECD	IBA	BIAC	Bar	Academic	Business	ECMR	Other	Self Assessment
Macedonia					Consulted	Consulted		Both		
Mexico	Both	Considered			Consulted	Consulted				
Netherlands					Consulted	Consulted	Consulted	Both		Catalyst
Norway								Both		
Poland	Considered	Considered						Both		Catalyst
Russia	Considered	Considered					Catalyst	Considered	Considered	Catalyst
United States	Considered	Considered		Considered	Consulted	Consulted	Consulted			Catalyst

Legend: "Catalyst" - played a significant role in prompting changes to the merger review system. "Consulted" (for Private Sector sources) and "Considered" (for Best Practices and Other Regimes) – referenced once the need for change was established. "Both" - influential both in identifying a need for change and in shaping actual changes.

* The information in this table is not intended to be comprehensive.

ANNEX D

HIGHLIGHTS OF MERGER REFORMS AND PROPOSED REFORM BY RECOMMENDED PRACTICE

Jurisdiction	A, L ¹	Nexus	Notification Thresholds	Timing of Notification	Review Periods	Requirements for Initiation Notification	Inter-Agency Coordination	Conduct of Merger Investigations	Procedural Fairness	Transparency	Confidentiality	Periodic Review
Australia	A, L				Definitive time frames			Names and contact details of project officers are made available both to the merging parties and third parties	(1) Issues statement outlining the basis for the preliminary decision (2) Merging and third parties invited to submit comments	(1) Establishment of definitive timeframes; (2) New public register; (3) Details of the ACCC's reasons for decisions in proposed transactions of significant interest; (4) Invitation for third parties to submit comments in merger investigations		
Brazil	A, L		Thresholds were increased by legal interpretation requiring local Brazilian sales of at least R\$400 million. Further increase in thresholds is addressed in draft legislation.	Pre-merger notification system (proposed)		Fast track/simplified procedure for non-complex cases	SEAE & SDE join merger procedure review (proposed)	SEAE & SDE joint procedure: once a transaction is notified, SDE determines whether the transaction is likely to be complex. If so, SDE and SEAE will conduct investigation jointly (proposed)	Agency is authorized to enter into agreements with merging parties to identify pre-decisional activities	Consultation with and request for comments from third parties regarding proposed changes.		

¹ A: agency action; L: legislative action.

Jurisdiction	A, L ¹	Nexus	Notification Thresholds	Timing of Notification	Review Periods	Requirements for Initiation Notification	Inter-Agency Coordination	Conduct of Merger Investigations	Procedural Fairness	Transparency	Confidentiality	Periodic Review
Canada	A, L		Increase in thresholds					<i>New Service Standard Policy</i>		(1) Guidelines and notices are regularly issued and available on the agency's website; (2) The agency sought input from stakeholders, <i>i.e.</i> , bar association, law firms and others, on proposed changes		Yes
Croatia	A, L		Increase in turnover threshold: (i) combined world wide sales of goods/services in excess of 1 billion Kuna; and (ii) at least two of the merging parties have local sales in excess of 100 million Kuna each		Definitive time frames					Private law firms, independent working groups (<i>e.g.</i> , law professors, business community representatives) were consulted throughout the drafting process of the new Competition Act, guidelines, etc.		
Estonia	L	Addressed in draft legislation	Addressed in draft legislation	Addressed in draft legislation		Addressed in draft legislation			Addressed in draft legislation	(1) Addressed in draft legislation; (2) Input from stakeholders/third parties, notably private sector lawyers was found particularly helpful the drafting process; (3) Once the law is passed, changes will be on the agency's website and otherwise made publicly available, <i>e.g.</i> , through discussions with practitioners		

Jurisdiction	A, L ¹	Nexus	Notification Thresholds	Timing of Notification	Review Periods	Requirements for Initiation Notification	Inter-Agency Coordination	Conduct of Merger Investigations	Procedural Fairness	Transparency	Confidentiality	Periodic Review
European Union	A, L	Provisions for referral to the Commission from Member State or vice versa		Possibility to notify on basis of good faith intent; seven day deadline eliminated		New short form CO		Revised set of best practices		New horizontal merger guidelines; third parties consulted during review; all changes published on website	Non-confidential version of Commission decisions made available	Next review scheduled for July 2009; ongoing review within Commission
Finland	A, L	Local nexus required for at least two parties	New thresholds: combined aggregate world-wide turnover exceeds €350 million; and at least two of the parties have local Finnish turnover in excess of €20 million each							New set of guidelines and amendments to the law (available in English on the FCA website). To increase public understanding of the new changes, seminars were offered, press releases issued and articles published. Throughout the process, input was solicited from private bar, business community and trade unions.		

Jurisdiction	A, L ¹	Nexus	Notification Thresholds	Timing of Notification	Review Periods	Requirements for Initiation Notification	Inter-Agency Coordination	Conduct of Merger Investigations	Procedural Fairness	Transparency	Confidentiality	Periodic Review
France	A,L		Increased thresholds	Possibility to notify on basis of a draft agreement	Expedited review addressed in draft guidelines			(1) Procedures applicable to investment funds and sales in bankruptcy addressed in draft guidelines; (2) Introduction of two-phase procedure; (3) Rules of referral to EC		(1) Publication of non-confidential merger decisions, available in French on website (decisions are in the process of being translated into English); (2) Main texts of the French merger law available in English; (3) Draft guidelines (discussing expedited review and clearance) to be cleared shortly; (4) Input from third parties was considered in merger review process	Decisions are made publicly available through non-confidential version	
Hungary	A,L		Increased turnover threshold proposed		Two-phase procedure with definitive time frames					Notice on how to determine when a merger will be subject to a single phase or two phase review		
Ireland	A,L	Legislative change likely to occur in the next 2-3 years				Pre-definitive agreement meetings with parties				(1)Public consultation - all interested parties have had opportunity to provide input into proposed changes; (2) All relevant changes have been published		

Jurisdiction	A, L ¹	Nexus	Notification Thresholds	Timing of Notification	Review Periods	Requirements for Initiation Notification	Inter-Agency Coordination	Conduct of Merger Investigations	Procedural Fairness	Transparency	Confidentiality	Periodic Review
Israel	A,L		Increase in turnover threshold: (i) combined world wide sales in excess of NIS 150 million and (ii) at least two of the merging parties have local sales in excess of NIS 10 million each; market share threshold retained	If a transaction is notifiable, parties should generally notify after a definitive agreement is signed. However, the agency can commence investigation at an earlier stage.	In 2004, decisions in 50% of all notified mergers were rendered within 20 days, and 90% of within 30 days.	Introduction of long and short form, with less onerous obligations for companies that perform more than one merger/year. On aggregate, this has resulted in shorter procedures and a decrease in workload	.		Before formal notification, the merging parties may informally approach the General Director of the agency for a pre-ruling on the probability of merger clearance	(1) Publication of notice on the calculation of turnover; (2) Two workshops with outside lawyers and other interested parties were held to promote understanding and awareness of the new merger law, and to offer guidance as to how the law would be applied; (3) Open dialogue between agency and private sector		Periodic review on an ad hoc basis
Japan	A,L									(1) Public consultation prior to adoption of the new <i>Revised Merger Guidelines</i> ; (2) Related issues addressed in guidelines		
Latvia	L	Local sales requirement added	New thresholds requiring domestic sales, but retained market share test							(1) Changes to merger law were discussed with non-governmental organizations; (2) New amendment to the competition law was published in the Official Gazette as well as on the agency's website; (3) Various articles were published in the media.		Yes

Jurisdiction	A, L ¹	Nexus	Notification Thresholds	Timing of Notification	Review Periods	Requirements for Initiation Notification	Inter-Agency Coordination	Conduct of Merger Investigations	Procedural Fairness	Transparency	Confidentiality	Periodic Review
Macedonia	L	Clarification of domestic sales	New thresholds requiring domestic sales, but retained market share test	Premerger notification	Phase 1 - 25 working days; Phase 2 - 90 days; automatic clearance at expiry					(1) Third parties, e.g., law faculties, outside lawyers, bar associations, etc., were consulted in the merger review process; (2) Publication of guidelines and notices forthcoming	Confidentiality and business secrets	
Mexico	A	Addressed in guidelines	Addressed in guidelines		(1) Maximum legal review period for non-complex cases: 45 days; (2) Proposed expedited review procedure for mergers that do not raise material competitive concerns: 15 days	(1) Notarization and translation requirements for corporate documents have been reduced; (2) Proposed legislative reforms include simplified information requirements for authentication of documents submitted.	Close cooperation between the FCC and several agencies to exchange views and information regarding transactions subject to multi-jurisdictional review	Addressed in guidelines	Addressed in guidelines	(1) FCC publishes annual report; (2) Publication of 'Plenum Criteria' (direct result of this RP); (3) Competition legislation, decision-making procedures and merger guidelines publicly available on the FCC website; (4) Consultation with outside lawyers	Proposed legislative reforms include a definition of confidential information	Review underway
New Zealand	L											Filing fees, guidelines and merger clearance application will be reviewed.
Norway	L	Local nexus requirement	Prenotification system with local thresholds		Two phase review period					(1) Published changes on website; (2) Publishes merger decisions	Regime includes provisions for confidentiality protections but not privileges	

Jurisdiction	A, L ¹	Nexus	Notification Thresholds	Timing of Notification	Review Periods	Requirements for Initiation Notification	Inter-Agency Coordination	Conduct of Merger Investigations	Procedural Fairness	Transparency	Confidentiality	Periodic Review
Poland	L		Market share threshold eliminated	Seven-day from agreement filing requirement eliminated						Changes in merger control regime were discussed with third parties at a conference in 2004		
Russia	L		Substantial increase (150 times) - up to R3 bn and US\$100 m in assets							The changes to the law were widely announced and published in the media		
Uzbekistan	L	Addressed in draft legislation	Increase in thresholds	Pre-merger notification						Proposed changes have been highlighted through press releases and made publicly available		