

## **Merger Working Group 2018-2021 Work Plan**

### **MISSION**

The mission of the ICN Merger Working Group (MWG) is to promote the adoption of best practices in the design and operation of merger review regimes in order to: (i) enhance the effectiveness of merger review; (ii) facilitate procedural and substantive convergence; and (iii) reduce the public and private time and cost of merger reviews.

### **ORGANIZATION**

The MWG leadership consists of co-chairs from the Japan Fair Trade Commission, U.S. Federal Trade Commission, and UK Competition and Markets Authority. The MWG includes over 65 competition authorities from many geographic regions and experience levels. The MWG also includes dozens of nongovernmental advisors (NGAs) from the legal, economic, academic, and business communities.

### **GOALS**

The MWG seeks to:

- 1) Promote greater international cooperation and convergence in merger review standards, practices, and outcomes;
- 2) Enable members to improve the quality of their merger investigation and analysis;
- 3) Assist members to avoid imposing unnecessary burdens on agencies and businesses;
- 4) Encourage transparency in agency practice to increase predictability in merger review;
- 5) Pursue merger-related work that addresses the needs of ICN members, producing work of interest to merger case handlers, economists, lawyers, and policy officials; and
- 6) Promote familiarity, implementation, and use of MWG work product.

## **2018-2021 STRATEGIC PLAN**

The MWG has pursued work in four broad categories: notification and review, investigative techniques, analytical framework, and other policy issues (e.g., cooperation). From year to year, the MWG work focuses on different categories, with the intent to cycle through all aspects of merger enforcement on a regular basis. For example: in 2013 the MWG completed work on investigative techniques involving economics, followed by 2015 output on enforcement cooperation, 2016 work on remedies analysis, and 2017-18 revisions to ICN's Recommended Practices on notification and review. The 2018-2019 work plan focuses on vertical merger analysis, investigative techniques, and enforcement cooperation.

For the period 2018-2021, the MWG intends to:

- 1) Review, update, and augment its written work on investigative techniques, including an overhaul to the Investigative Techniques Handbook;
- 2) organize annual workshops to explore merger enforcement issues, with a variety of formats including staff-training events and merger policy discussions;
- 3) pursue new substantive areas of work in which ICN members have expressed particular interest; policy topics such as merger review in the digital economy, innovation in merger review, and joint venture analysis;
- 4) promote familiarity, implementation, and use of MWG work product to help members achieve greater conformity with MWG RPs and other work, through tools such as:
  - teleseminars/webinars, including possible training series of webinars on a dedicated topic(s);
  - the MWG section of the ICN website;
  - ICN annual conference sessions and merger workshops;
  - contributing to the preparation of merger-related ITOD modules; and
  - implementation tools such as the self-assessment tools developed for members to analyze their level of use and implementation of the RPs for Merger Notification and for Merger Analysis.
- 5) continue outreach and capacity building support for members and NGAs to boost active participation in the MWG and familiarity with its work, including assisting interested members with reform of merger laws, rules, and practices.

## **Merger Working Group 2018-2019 Projects**

### **Project 1: Vertical Mergers (continued from 2017-2018)**

The MWG will use the results of the 2017-18 survey of member agency experience with vertical mergers to draft a written work product on vertical mergers. This new work will be of a comparative nature, exploring approaches, guidelines, practices, and cases from member agencies. Options also include teleseminars/webinars and workshop content.

*Key output(s) may include:* new comparative work based on member input, teleseminars, and/or workshop sessions

*Timing:* subject to scoping and WG discussions, final written work will depend on teleseminars and member input: expected for 2019 conference

*Responsible:* CMA

### **Project 2: Investigative Techniques Project (continued from 2017-2018)**

In 2017, the MWG organized two workshops on merger investigative techniques and received member feedback on how to improve its Investigative Techniques Handbook. In 2018, the MWG will draft new work on developing reliable evidence for the Handbook. This revision will examine tools and techniques for agencies to conduct legal and economic analysis in merger investigations. This project will also explore two other connections with or extensions to MWG's investigation-focused work: the existing RP on conduct of investigations to examine possible revisions to the MWG's top line work on investigations and the possible creation of 'day-to-day' guides for case officer consideration.

*Key output(s):* new workbook chapter

*Timing:* new chapter for the 2019 annual conference

*Responsible:* FTC; drafting group of interested agencies and NGAs

### **Project 3: Working Group dialogue, implementation, and outreach**

The MWG will continue initiatives to promote interaction among members and NGAs on topics of merger policy and enforcement in the following ways:

- The 2018 annual MWG workshop will be hosted by the JFTC, 7-8 November 2018.
- The MWG will continue regular teleseminar/webinars on topics such as merger enforcement in specific sectors or industries (e.g., retail mergers) or policy areas of interest. These calls may form part of existing projects vs. standalone new topics.
- The MWG will continue implementation work promoting use of the MWG RPs, including the ongoing work of designing model language templates for RPs.
- Continued maintenance of the Merger Cooperation Framework (JFTC)

*Key output(s):* workshop; 2-4 teleseminars; implementation work

*Timing:* ongoing, year round

*Responsible:* MWG co-chairs; project leads to organize calls

#### **Project 4: Enforcement Cooperation Tools**

The MWG (via the JFTC) maintains the ICN Merger Cooperation Framework to facilitate member contacts for the purpose of merger enforcement cooperation. In 2018-19, the MWG will explore informative, practical work about how agencies cooperate (e.g., compilation of model waivers from around the world and update to the ICN model waiver; identifying information agencies share without waivers; issues related to extraterritorial remedies) in support of the Framework. This work may be accomplished via teleseminars and/or short, practical-styled written work product or compilations of member materials.

*Key output(s) may include:* short, practical-styled written work product or compilations of member materials

*Timing:* expected for 2019 annual conference; subject to scoping and WG discussions, final written work will depend on teleseminars and member input

*Responsible:* JFTC, FTC; possible drafting group of interested agencies and NGAs

#### **Discussion & scoping for possible work on decision-making in mergers**

The MWG will explore the topic of agency decision-making in merger cases. This topic was recently discussed at the OECD, and that work could provide a guide for similar ICN discussions. The topic will explore ways agencies seek to ensure that their merger decisions are sound, concepts like ex-post study of decisions, internal tools for assessing evidence in investigations, input from member experiences making hard choices between prohibition vs. remedy decisions, and others. This project will begin with teleseminars in 2018, with the possibility of a practical-minded written work product describing the tools and practices discussed.

*Key output(s) may include:* discussions; perhaps summaries of presentations or short, practical-styled written work product or compilations of member materials

*Timing:* expected by 2019 annual conference

*Responsible:* MWG co-chairs; possible project lead and interested agencies and NGAs presenters