

## **Merger Working Group 2019-2022 -Working Group structure and 3 year 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 for 2019-2020 consists of co-chairs from the Japan Fair Trade Commission (JFTC), UK Competition and Markets Authority (UKCMA) and Spanish COMISIÓN NACIONAL DE LOS MERCADOS Y LA COMPETENCIA (Spanish CNMC). The MWG includes over 60 competition authorities from a variety of geographic regions and experience levels. The MWG also includes dozens of Non-Governmental Advisors (NGAs) from the legal, economic, academic, and business communities.

### **LONG TERM GOALS**

In order to fulfil the mission of the Working Group, 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.

## 2019-2022 STRATEGIC PLANS

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 2015 the MWG completed [work on enforcement cooperation](#), followed by 2016 [work on remedies analysis](#), 2017-18 revisions to [ICN's Recommended Practices on notification and review](#), and 2018-2019 [comparative study on vertical merger analysis](#) as well as 2019 enforcement cooperation tools. The 2019-2020 work plan focuses on continued work on non-horizontal merger analysis, a new project on procedural infringements, and teleseminars featuring 1) high-level discussions on digital economy and 2) regional discussions on merger review decision-making, etc.

For the period 2019-2022, the MWG intends to:

- 1) pursue new work on procedural infringements in merger review (2019-2020) and joint venture analysis (2020-); follow-on work on non-horizontal mergers, specifically conglomerate mergers(2019-20);
- 2) hold up-to-date policy discussion on topics such as mergers in the digital economy or experience-sharing discussions on areas of common interest to members (decision making) (2019-20) by way of teleseminar/webinars;
- 3) organize annual workshops to explore merger enforcement issues, with a variety of formats including staff-training events and merger policy discussions;
- 4) promote familiarity, implementation, and use of MWG work products 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, enforcement cooperation tools to facilitate members to cooperate on merger reviews through ICN's [Framework for Merger Review Cooperation](#), etc.
- 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 Annual Plan

### 2019-2020 Projects

#### Projects Summary

Pursuant to 'Working Group structure and 3 year plan' the Merger Working Group will work on the following projects during the 2019-2020 ICN year.

Project 1: Conglomerate Mergers

Project 2: Procedural Infringements

Project 3: Working Group dialogue, implementation, and outreach

#### Project 1: Conglomerate Mergers

The MWG will add to recent work on vertical mergers ([comparative survey report](#) in 2017-2018, followed by [comparative case studies](#) in 2018-2019) by exploring conglomerate merger theories and case studies in 2019-2020 to conclude the multi-year work on non-horizontal mergers. The single-year project plans to follow the method of brief comparative survey of member jurisdictions, but also to have possible teleseminar(s) to enhance the members' understanding the theory behind and share experiences. New and emerging issues relevant to digital economy (e.g. nascent competition) may also be covered.

<b>Title</b>	<b>Conglomerate Mergers</b>
Project Description	Comparative study of the review of conglomerate mergers in member jurisdictions via members' survey. Possibly one or two experience sharing teleseminar(s) to understand the theory behind the assessment of conglomerate effects.
Outcomes	Final comparative report on the members' regulation, theory and analysis on conglomerate mergers based on the survey results with possible think piece on basic theory of harm for conglomerate mergers and new and emerging issues.
Contact Details	Japan Fair Trade Commission ( <a href="mailto:icn-mergers@jftc.go.jp">icn-mergers at jftc.go.jp</a> )
Description of work/resources	Drafting team of member(s) and NGAs
Multi-year project?	Single-year project, but forms a part of multi-year non-horizontal merger discussion, preceded by Vertical Merger Project (2017-2019)
Use of existing ICN materials	The Project will refer to the Vertical Merger Survey Report (2018) and will be promoted via written work product and possible topic for merger workshop and annual conference in 2020
Method for evaluating and measuring success	Member engagement in webinar and feedback on experiences in survey

<b>Milestones</b>	<b>Activity</b>
November 2018	BOS on Conglomerate Mergers at Merger Workshop
May 2019	BOS on Non-Horizontal Mergers at ICN Annual Conference

June-September 2019	Developing outline of the report and drafting survey questionnaire as well as possible think piece
July 2019-	Calling for speakers for the teleseminar
October 2019 – January 2020	Possible experience-sharing teleseminar (s) exploring (1) key issues and (2) relevance to digital economy (e.g. nascent competition)
October 2019	Circulating the survey to members
November 2019	Collecting the survey responses and summarizing the initial responses
December 2019 – January 2020	Preparation of the draft report drawing on the survey
February 2020	Circulation of draft report to membership and NGAs; possible presentation of the findings of the report at the Merger Workshop;
March 2020	Presentation of final report to Working Group
April 2020	Presentation of work product to Steering Group
May 2020	Annual Meeting - presentation of work product

## **Project 2: Procedural Infringements**

The MWG will start the new work on procedural infringements in merger review, given the growing members' and merging parties' interests in the topic. The project will aim to cover mainly two areas of infringements: 1) infringements of mandatory notification obligations (e.g. failure to file, gun-jumping), and 2) infringements of compliance with review procedure (e.g. RFI compliance) via members' survey. The MWG will produce a written comparative report to be presented at the 2020 annual conference and also have discussions possibly at the merger workshop and annual conference.

<b>Title</b>	<b>Procedural Infringements</b>
Project Description	Comparative study of procedural infringements in merger review in members' jurisdictions covering 1) infringements of mandatory notification obligation (e.g. failure to file, gun-jumping, remedy violation) and 2) infringements of compliance with review procedure (e.g. providing misleading information)
Outcomes	Written comparative report on the differing laws applying to procedural infringements and the recent experience of members in applying their legislation.
Contact Details	UK Competition and Markets Authority (ICN.mergers at <a href="http://cma.gov.uk">cma.gov.uk</a> ) and Spanish CNMC (mergers at <a href="http://cnmc.es">cnmc.es</a> )
Description of work/resources	Drafting team of member(s) and NGAs
Multi-year project?	Single-year project (TBD)
Use of existing ICN materials	New Project
Method for evaluating and measuring success	Member feedback on experiences in survey and discussion of report at future ICN events

<b>Milestones</b>	<b>Activity</b>
May 2019	BOS on Procedural Infringements at ICN Annual Conference
July-October 2019	Developing outline of the report and drafting survey questionnaire

November 2019	Circulating the survey to members
December 2019	Collecting the survey responses and summarizing the initial responses
December 2019 – February 2020	Preparation of the draft report drawing on survey
February 2020	Circulation of draft report to membership and NGAs; possible presentation of the findings of the report at the Merger Workshop; Possible topic for a Plenary/Mini Plenary/BOS
March 2020	Presentation of final report to Working Group
April 2020	Presentation of work product to Steering Group
May 2020	Annual Meeting - presentation of work product

### **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 2020 annual MWG workshop
- High-level discussions on merger reviews in the digital economy.
- Regional teleseminar series on agency decision-making in merger review
- Continued implementation work promoting use of the MWG RPs, including the ongoing work of designing model language templates for RPs.
- Promotion and maintenance of the Merger Cooperation Framework

#### 1) Annual MWG workshop

- The 2020 annual MWG workshop will be hosted by Australian Competition and Consumer Commission in Melbourne in February 2020. Further details will be decided by the host in collaboration with the MWG Co-Chairs.

#### 2) Teleseminar/webinars

- Responding to growing ICN-wide interests and following discussions at the Plenaries and BOS at the Merger Workshop in 2018 and the Annual Conference in 2019 as well as further developments in some jurisdictions, the MWG plans to continue to have high-level, policy discussions on this issue in the form of a couple of global teleseminars.

<b>Milestones</b>	<b>Activity</b>
July-September 2019	Planning of teleseminars (selection of topics, speakers, etc.)
October 2019-	2-3 teleseminars on digital mergers. Possible topics would include; <ol style="list-style-type: none"> <li>1) Introduction of expert reports on digital issues (e.g., EU, UK, ACCC)</li> <li>2) Advanced discussion on specific aspects of digital mergers</li> </ol>

- The MWG will also hold regional teleseminar series on agency decision-making in merger review, covering ways to ensure that the decision-making of competition agencies are 1) sound (e.g. internal or external tools and process for assessing evidence and making merger decisions, ex-post study of merger review); 2) independent (e.g. national champion theory, consideration of public interests, etc.); and 3) transparent (e.g. party and third party's opportunity to be heard). It plans to follow the successful format of regional teleseminar series on retail mergers in 2018-2019 for getting involvement of wider membership, but also a global introductory or concluding call will be aimed to bring members' experiences all together. Interested volunteers to organize a specific regional call will be invited to cooperate with MWG Co-Chairs and USFTC.

<b>Milestones</b>	<b>Activity</b>
July 2019-	Planning of teleseminar series (Selection of topics, regional leads)
October 2019 -	Regional teleseminar series on decision-making with introductory/concluding global call 1) Sound decision making 2) Independence of decision making (e.g., national champion theory) 3) Transparency of decision making

### 3) Framework for Merger Review Cooperation

- The MWG will continue the promotion and the maintenance of the [Merger Cooperation Framework](#) by the lead of the JFTC, following the creation of enforcement cooperation tools such as [promotional flyer](#), sample information request form and [note on types of information exchanged](#) in 2018-2019.