

## **Merger Working Group 2020-2023 -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 2020-2021 consists of co-chairs from the UK Competition and Markets Authority (UK CMA), the Spanish Comisión Nacional de los Mercados y la Competencia (Spanish CNMC) and the Administrative Council for Economic Defense - Conselho Administrativo de Defesa Econômica (Brazil CADE).

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.

## 2020-2023 STRATEGIC PLANS

The MWG has pursued work in four broad categories: notification and review, investigative techniques, analytical frameworks, 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. In 2019-2020 the MWG focused on a comparative survey and report on conglomerate mergers, a comparative survey and report on procedural infringements, a series of global webinars on digital mergers, and a series of regional webinars on sound decision making.

The 2020-2021 work plan focuses on a comparative survey and report on joint ventures, a regional webinar series on the impact of COVID-19 to the competition authorities' merger review processes, a new webinar series on merger remedies, and the update of the merger notification and procedures template.

For the period 2020-2023, the MWG intends to:

- 1) pursue new work on procedural infringements in merger review (2019-2020); follow-on work on non-horizontal mergers, specifically conglomerate mergers (2019-20); and joint venture analysis (2020-2021);
- 2) hold up-to-date policy discussions on topics such as mergers in the digital economy (2019-2020) or experience-sharing discussions on areas of common interest to members, such as sound decision making (2019-20), merger remedies (2020-2021) and merger control in times of crisis (i.e. COVID-19) by way of global or regional 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 product to help members achieve greater conformity with MWG RPs and other work, through tools such as:
  - 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 analyse 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

### 2020-2021 Projects

#### Projects Summary

Pursuant to ‘Working Group structure and 3-year plan’ the Mergers Working Group will work on the following projects during the 2020-2021 ICN year.

Project 1: Joint Ventures

Project 2: Regional webinar series on merger control in times of crisis (COVID-19)

Project 3: Global webinar series on merger remedies

Project 4: Update of the merger notification and procedures template

Project 5: Working Group dialogue, implementation, and outreach

#### Project 1: Joint Ventures – CNMC

The MWG will conduct a comparative and informational survey and report on joint ventures. The project will focus on analysing joint ventures in merger control procedures, covering issues such as the notion and practical aspects of joint control, the requisites for a joint venture to be notifiable, and the theories of harm used when analysing a joint venture. This new project reflects the ICN members’ interests expressed in the ICN Second Decade Report in 2016 and the poll of the MWG members and NGAs in 2019.

Title	Joint Ventures
Project Description	Comparative study and report of the review of joint venture mergers in member jurisdictions via members’ survey.
Outcomes	Final comparative report on the members’ regulation, theory and analysis on joint venture mergers based on the survey results.
Contact Details	Spanish CNMC (mergers@cnmc.es)
Description of work/resources	Drafting team of members and NGAs
Multi-year project?	Single-year project
Use of existing ICN materials	The Project will be promoted via written work product and as a possible topic for merger workshop and annual conference in 2021
Method for evaluating and measuring success	Member feedback on experiences in survey

Milestones	Activity
July/September 2020	Developing outline of the report and drafting survey questionnaire (including views of NGAs and members of the MWG)
September/October 2020	Circulating the survey to MWG members and NGAs

November/December 2020	Collecting the survey responses and summarising the initial responses
January/March 2021	Preparation of the draft report drawing on survey
March/April 2021	Circulation of draft report to MWG members and NGAs
April 2021	Presentation of final report to Working Group
TBD	Presentation of work product to Steering Group
TBD	Annual Meeting – presentation of work product

### **Project 2: Merger control in times of crisis (COVID-19) – CADE**

The MWG, with the assistance of the regional leads, will conduct a series of regional webinars focusing on how national authorities have responded to the COVID-19 pandemic in relation to their merger review processes. The MWG will conduct the series of webinars (assisted by regional leads) and prepare notes of each webinar. The intention is to submit the Final Report to the SG, in November / December 2020.

<b>Title</b>	<b>Merger control in times of crisis (COVID-19)</b>
Project Description	A series of regional webinars on how national authorities have responded and adapted their merger review processes in reaction to the COVID-19 pandemic.
Outcomes	Written report on the key points which arose from the regional webinars.
Contact Details	Brazil CADE (international@cade.gov.br)
Description of work/resources	Regional leads, moderators, and webinar speakers
Multi-year project?	Single-year project
Use of existing ICN materials	New Project
Method for evaluating and measuring success	Member and NGA participation in webinars

<b>Milestones</b>	<b>Activity</b>
June/July 2020	Call for regional leads and list of topics to be discussed.
July/August 2020	Regional leads invite panel members and arrange the webinars.
September / October 2020	Webinars take place. Notes are sent to the overall lead.
November 2020	CADE prepares draft report and circulates to the MWG members and NGAs.
November / December 2020	CADE finalises report and presents to the SG.

### **Project 3: Merger remedies – CMA**

The MWG will conduct a series of global webinars focusing on how competition authorities approach merger remedies. Topics include: (a) divestiture remedies (including discussing non-controlling minority shareholdings); (b) behavioural remedies (e.g., access to key technology or infrastructure, price caps or long term supply commitments, and firewalls

and ringfencing); and (c) coordination of multi-jurisdictional remedies (including timing, process and substance). The MWG will produce notes of the key points arising from the webinars, submit the Final Report to the SG, and possibly present at the Annual Conference 2021.

<b>Title</b>	<b>Merger remedies</b>
Project Description	A series of global webinars on merger remedies.
Outcomes	Written report on the key points which arose from the webinars.
Contact Details	UK CMA (ICN.mergers@cma.gov.uk)
Description of work/resources	Moderators and webinar speakers
Multi-year project?	Single-year project
Use of existing ICN materials	New Project
Method for evaluating and measuring success	Member and NGA participation in webinars

<b>Milestones</b>	<b>Activity</b>
November / December 2020	Webinar 1: Structural remedies
January / February 2021	Webinar 2: Behavioural remedies
March / April 2021	Webinar 3: Multi-jurisdictional remedies
April / May 2021	CMA circulates draft report to MWG members and NGAs
May 2021	Presenting report to the Annual Conference
May / June 2021	CMA finalises report and presents to the SG

#### **Project 4: Update of the merger notification and procedures template – CADE**

The MWG will update the merger notification and procedures template. The information included in the merger notification and procedures template helps members and the public to learn about merger control in member jurisdictions and also assists agencies when engaging in international cooperation with its counterparts. This project includes reviewing the template and updating it as to reflect developments in merger assessment in recent years. The MWG will circulate the revised template to collect more recent information from the MWG members. As a development of this activity, the MWG will work on a comparative analysis based on the information collected.

<b>Title</b>	<b>Merger notification and procedures template</b>
Project Description	Update of the merger notification and procedures template
Outcomes	Revised template and comparative analysis based on the information collected
Contact Details	Brazil CADE (international@cade.gov.br)
Description of work/resources	Drafting team and commenting by member(s) and NGAs

Multi-year project?	Single-year project
Use of existing ICN materials	<a href="#">ICN's Recommended Practices on notification and review</a>
Method for evaluating and measuring success	Member feedback on template

Milestones	Activity
July/August 2020	Revision of the template and circulation for the MWG members
September 2020	MWG members will comment on the template
October/December 2020	Review of the MWG Responses
January/April 2021	Draft report on the experiences of MWG members and circulation to the MWG members and NGAs
May 2021	Finalises the report and presents it to the SG for approval

### **Project 5: 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 2021 annual MWG workshop
- 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 2021 annual MWG workshop will be hosted in spring 2021. Further details will be decided by the host in collaboration with the MWG Co-Chairs.

#### 2) Webinars

- The MWG plans to continue exploring timely topics of merger policy and enforcement through webinars. In 2020-2021 the MWG plans to host two series of webinars, as described above in the annual workplan.

#### 3) Framework for Merger Review Cooperation

- The MWG will continue the promotion and the maintenance of the [Merger Cooperation Framework](#).