

Merger Working Group (MWG)

Short Form Work Plan

Projects summary

Pursuant to ‘Working Group structure and 3 year plan’ the Merger Working Group (MWG) will work on the following projects during the 2024-2025 ICN year.

Updates of ICN Recommended Practices Chapters

- Project 1. Update the ICN Recommended Practices Chapter on Unilateral Effects.
- Project 2. Update the ICN Recommended Practices Chapter on Coordinated Effects.
- Project 3. Update the ICN Recommended Practices with a new chapter on counterfactual.
- Project 4. Update the ICN Recommended Practices Chapter on Market Definition.
- Project 5. Update of the ICN Recommended Practices Chapter on the Use of Market Shares: Thresholds & Presumptions.
- Project 6. Update of the ICN Recommended Practices Chapter on The Legal Framework for Competition Merger Analysis.

Other projects

- Project 7. Tools and practices for effective and timely management of merger cases.
- Project 8. Series of webinars on investigative techniques.

In addition to the above projects, the MWG co-chairs, in collaboration with colleagues from the Taiwan Fair Trade Commission (TFTC), will work on the organization of the 2024 ICN MWG Workshop. The Workshop will be held from November 13 to 15, 2024 in Taipei, Taiwan.

Project 1. Update of the ICN Recommended Practices Chapter on Unilateral Effects on horizontal mergers (Led by DG Comp)

The MWG co-chairs intend to update the chapter on unilateral effects of the ICN recommended practices for merger analysis, last updated in June 2009, with more recent practice from national competition authorities, regarding the effects of mergers on innovation and dynamic markets.

Title	Updating the ICN Recommended Practices with a chapter on unilateral effects on horizontal mergers
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Project Description	Update the chapter on unilateral effects on horizontal mergers with the latest practices from national competition authorities, regarding the effects of mergers on innovation and dynamic markets.
Outcomes	Chapter updated.
Contact Details	DG Comp (COMP-ICN-MERGERS@ec.europa.eu)
Description of work/ resources	Drafting team, MWG members, moderators and webinar speakers
Multi-year project?	Multi-year project
Facilitating effective enforcement cooperation	Sharing best practices among ICN members and foster cooperation.
Promoting sustainability	Adding the chapter will allow authorities to share best practices in unilateral-horizontal theories of harm, which, often include assessments of digital or other dynamic and innovative markets, including on sustainability aspects.
Use of existing ICN materials	ICN Recommended Practices for Merger Analysis
Method for evaluating and measuring success	Participation rate in webinars, member feedback in the consultations

Milestones	Activity
October 2023 – May 2024	Updating the chapter on unilateral effects on horizontal mergers based on experience of MWG members and input from webinars
March 2024	Webinar on unilateral horizontal theories of harm and competition analysis
May 2024	Webinar on empirical analysis/evidence in horizontal mergers
June 2024	Webinar on remedies in horizontal mergers
July 2024	Circulation of draft chapter for comments from the MWG members ('first consultation')
TBA	MWG Co-Chairs review the responses to the first consultation and prepare a summary of the comments/views received to be presented at the 2024 Merger Workshop or webinar.
November 2024	Update draft chapter
December 2024	Circulation of the updated draft chapter for comments from the MWG members ('second consultation')

January-April 2025	Finalisation of the chapter
2025	Presentation of the new chapter at the 2025 ICN Annual Conference or Merger Workshop.

Project 2. Update of the ICN Recommended Practices Chapter on Coordinated Effects on horizontal mergers (Led by DG Comp)

The MWG co-chairs intend to update the chapter on coordinated effects of the ICN recommended practices for merger analysis, last updated in June 2009, with more recent practice from national competition authorities, in particular regarding the effects of mergers on innovation and dynamic markets.

Title	Updating the ICN Recommended Practices with a chapter on coordinated effects on horizontal mergers
Project Description	Update the chapter on coordinated effects on horizontal mergers with the latest practices from national competition authorities, regarding the effects of mergers on innovation and dynamic markets.
Outcomes	Chapter updated.
Contact Details	DG Comp (COMP-ICN-MERGERS@ec.europa.eu)
Description of work/resources	Drafting team, MWG members, moderators and webinar speakers
Multi-year project?	Multi-year project
Facilitating effective enforcement cooperation	Sharing best practices among ICN members and foster cooperation.
Promoting sustainability	Adding the chapter will allow authorities to share best practices in coordinated-horizontal theories of harm, which, often include assessments of digital or other dynamic and innovative markets, including on sustainability aspects.
Use of existing materials	ICN Recommended Practices for Merger Analysis
Method for evaluating and measuring success	Participation rate in webinars, member feedback in the consultations

Milestones	Activity
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October 2023 – May 2024	Updating the chapter on unilateral effects on horizontal mergers based on experience of MWG members and input from webinars
April 2024	Webinar on coordinated horizontal theories of harm and competition analysis
July 2024	Circulation of draft chapter for comments from the MWG members ('first consultation')
	MWG Co-Chairs review the responses to the first consultation and prepare a summary of the comments/views received to be presented at the 2024 Merger Workshop or webinar.
November – December 2024	Update draft chapter and re-circulate to members for comments on 2 nd draft
January-April 2025	Finalization of the chapter
2025	Presentation of the new chapter at the 2025 ICN Annual Conference or Merger Workshop.

Project 3. Updating the ICN Recommended Practices with a new Chapter on Counterfactual (Lead by UK CMA).

The analysis of whether a merger is likely to harm competition involves a comparison of the prospects for competition with the merger against the competitive situation without the merger. The latter is called the 'counterfactual'. The counterfactual is an analytical tool used in answering the question of whether the merger may raise competition concerns. In recent years, counterfactual analysis has become increasingly relevant due to the more frequent consideration by national competition authorities of dynamic counterfactual situations, especially in relation to evolving markets.

Whilst the 2006 ICN Merger Guidelines Workbook has a specific section on the counterfactual analysis, there is a notable gap in the ICN Recommended Practices for Merger Analysis, where this topic is not specifically addressed (except in relation to failing firm scenarios).

In light of this, the MWG Co-Chairs intend to add a new chapter on Counterfactual reflecting the latest best practices from national competition authorities.

Title	Updating the ICN Recommended Practices for Merger Analysis ('RP') with a new Chapter on Counterfactual
Project Description	Add a new RP Chapter on Counterfactual reflecting the latest best practice from national competition authorities
Outcomes	New Chapter on Counterfactual to be included in the ICN Recommended Practices for Merger Analysis
Contact details	UK Competition and Markets Authority

	icn.mergers@cma.gov.uk
Description of work/resources	Working group/drafting team, MWG members, moderator and webinar speakers
Multi-year project?	Yes
Facilitating effective enforcement cooperation	Sharing best practices among ICN members and fostering cooperation
Promoting sustainability	Project contributes to effective merger control, which in turn promotes competitive markets, innovation, and sustainability
Method for evaluating and measuring success	Member feedback throughout the project (e.g., in response to the survey and consultations)

Milestones	Activity
Nov - Dec 2023	Forming a working group ('WG').
Jan 2024	WG to prepare survey for MWG Members.
Feb - Mar 2024	Survey to MWG Members.
Apr 2024 - Jun 2024	Drafting the new RP Chapter on Counterfactual based on experience of MWG members and input from survey.
Summer 2024	Circulation of a first draft Chapter for comments from MWG Members ('First Consultation').
Sept - Oct 2024	Review of the responses to the First Consultation.
Oct 2024	Discussion of the comments/views received in response to the First Consultation at the 2024 ICN Annual Conference (during a break-out session), or at a webinar.
Nov - Dec 2024	Update of the Chapter based on comments received at the Annual Conference/webinar and in response to the First Consultation.
Jan 2025	Circulation of the updated draft Chapter for comments from the MWG members ('Second Consultation').
Feb - Apr 2025	Review of the comments received in response to the Second Consultation and further update of the Chapter.
Mar - Apr 2025	Presentation of key amendments and comments at the ICN MWG Workshop (if one takes place).
May 2025	Final discussion of the draft chapter at the 2025 ICN Annual Conference
June - Sept 2025	Finalization of the Chapter.
Sept 2025	Presentation to SG for approval.

Project 4. Update of the ICN Recommended Practices Chapter on Market Definition (Led by CCB)

The MWG co-chairs intend to update the chapter on market definition of the ICN recommended practices for merger analysis, last updated in April 2010, with more recent practice from national competition authorities.

Title	Updating the ICN Recommended Practices Chapter on Market Definition
Project Description	Update the chapter on market definition with more recent practice from national competition authorities.
Outcomes	Chapter updated.
Contact Details	Canadian Competition Bureau (estelle.filiatrault-begin@cb-bc.gc.ca / Jessica.Woodbyrne@cb-bc.gc.ca / melissa.fisher@cb-bc.gc.ca)
Description of work/ resources	Drafting team, MWG members, moderators and webinar speakers and/or moderator and speakers at the annual ICN conference
Multi-year project?	Yes
Facilitating effective enforcement cooperation	Updating/sharing recent practices among ICN members, foster cooperation and promote convergence with respect to approaches to market definition.
Promoting sustainability	Project contributes to efficient merger control, which in turn promotes competitive markets, innovation and sustainability
Use of existing ICN materials	ICN Recommended Practices for Merger Analysis
Method for evaluating and measuring success	Member feedback in the consultations, participation rate in webinars (if we do webinars)

Milestones	Activity
June 2024	Forming a working group / preparing proposals for updates to be published for consultation
September/October 2024	Circulation of the draft revised chapter for comments from MWG members ("First consultation")
November/December 2024	Working group and MWG Co-Chairs review the responses to the first consultation and prepare a summary of the comments/views received to be presented at the 2024 Merger workshop or webinar.
January/February 2025	Update draft chapter
March/April 2025	Circulation of second draft revised chapter for comments ("Second consultation")
June 2025	Presentation of the draft revised chapter to the MWG members at a webinar for final discussion

December 2025	Finalization of the chapter
2026	Presentation of the updated chapter at the 2026 AC or Merger Workshop

Project 5. Update of the ICN Recommended Practices Chapter on the Use of Market Shares: Thresholds & Presumptions (led by the French Autorité de la concurrence)

The MWG co-chairs intend to update the chapter on the use of market shares: thresholds and presumptions of the ICN recommended practices for merger analysis, last updated in April 2008.

Markets shares are one of the main indicators used by competition agencies to assess companies’ market power. In some jurisdictions, market shares, when reaching a certain level, give rise to a presumption of competitive harm. The update of the concerned chapter aims at assessing the appropriate metrics to evaluate market shares and the relevance of the latter to appreciate companies’ market power, in particular in the context of digitalised economies and rapidly evolving markets.

Initial views on the scope of the update might be collected during webinar(s) and, if feasible, during a dedicated session at the MWG workshop in Taiwan in November 2024. No survey or written consultation of members will take place in 2024.

This is a multi-annual project.

Project 6. Update of the ICN Recommended Practices Chapter on The Legal Framework for Competition Merger Analysis (led by the US FTC)

This initial RP Chapter frames the ultimate goal of merger control and the principles that should underpin the assessment of mergers. The MWG co-chairs intend to update the chapter on The Legal Framework for Competition Merger Analysis, last updated in April 2008, to reflect developments in the last years.

Title	Updating the ICN Recommended Practices with a chapter on the legal framework for competition merger analysis
Project Description	Update the chapter on the legal framework for competition merger analysis to reflect modern merger practices and the importance of thorough merger review.
Outcomes	Chapter updated.
Contact Details	Federal Trade Commission (Paul O’Brien pobrien@ftc.gov / Steven Couper scouper@ftc.gov)
Description of work/resources	Drafting team, MWG members

Multi-year project?	No
Facilitating effective enforcement cooperation	Sharing best practices among ICN members and foster cooperation.
Use of existing materials	ICN Recommended Practices for Merger Analysis - The Legal Framework for Competition Analysis (April, 2008)

Milestones	Activity
June-August 2024	Updating the chapter on the legal framework for competition merger analysis
September 2024	Circulation of draft chapter for comments from the MWG members ('first consultation')
September 2024 - January 2025	Series of drafting calls, updates to draft chapter, and re-circulation to members for comments on 2 nd draft
January-April 2025	Finalization of the chapter
2025	Presentation of the new chapter at the 2025 ICN Annual Conference

Project 7. “Tools and practices for effective and timely management of merger cases” (Led by Competition Commission of Mauritius)

Merger cases are time sensitive and resource intensive calling for their effective and timely management. Indeed, competition authorities around the world try to find tools and means to enhance the management of their merger cases, and in that perspective have developed tools and practices for the effective and timely management of merger cases. Hence, the MWG Co-Chairs intend to launch a new project which will help in identifying the different tools and practices implemented by the various competition agencies and share same amongst all members.

This project aims to create a repository compiling all the tools and best practices which are used by competition agencies to effectively manage merger cases. The project will also include the challenges of these tools and practices when being considered by the agencies.

These tools will then be shared with the ICN members through a report which they can consult to inspire themselves to develop their own tools or adopt existing one to enhance the management of their merger cases. The report can also be used as a benchmark by competition agencies.

The project will be led by the Competition Commission of Mauritius.

Title	Tools and practices for effective and timely management of merger cases
Project Description	Compile the different tools and practices implemented by various competition agencies to enhance the effective and timely management of merger cases and share with members.
Outcomes	A report on the tools and practices for effective and timely management of merger cases together with their success and challenges.
Contact Details	Competition Commission of Mauritius (sailesh.ramyead@competitioncommission.mu / reevashinee.parasuraman@competitioncommission.mu)
Description of work/resources	Survey questionnaire team, Analysis & drafting team, Input of MWG members
Multi-year project?	Multi-year project
Facilitating effective enforcement cooperation	Creating a synergy amongst members through sharing of various tools and practices and fostering cooperation.
Promoting sustainability	This project will enhance the use of resources on merger cases and will therefore promote sustainability.
Use of existing ICN materials	New Project
Method for evaluating and measuring success	Usage of the work product and member feedback

Milestones	Activity
May 2024	Discussion at ICN Annual Conference 2024 (MWG BOS3)
June – July 2024	Design & Testing of Survey questionnaire
August 2024	Issue of questionnaire
September - October 2024	Receive submission & seek clarifications

November 2024 -January 2025	Compilation of findings and analysis
February - April 2025	Drafting of Report
May – June 2025	Views on Report
July 2025	Finalization of Report

Project 8. Investigative Techniques in Merger Review (Led by KT)

The MWG hosted a series of webinars on the topic "Investigative techniques in merger review" in 2024. This will be followed by a summary report to be prepared in 2024.

Topics included: (a) the use of quantitative methods (e.g. survey design and analysis, price pressure, etc.); (b) review of parties' and third parties' internal documents; (c) efficiencies (e.g. assessment, obtaining reliable evidence, etc.).

The aim of the project is to share best practices among the ICN members on investigative techniques used in merger control, and to foster cooperation.

Title	Investigative Techniques in Merger Review
Project Description	Share best practices on investigative techniques.
Outcomes	Series of webinars on the topic "Investigative Techniques in Merger Review" throughout the year, followed by a summary report.
Contact Details	Norwegian KT (icn.mergers@kt.no)
Description of work/resources	MWG members, moderator, and webinar speakers
Multi-year project?	Multi-year project
Facilitating effective enforcement cooperation	Sharing best practices among ICN members and foster cooperation.
Promoting sustainability	The project promotes sustainability by facilitating effective enforcement by sharing best practices and thereby, ensuring that markets are competitive, and innovations are not reduced.

Use of existing ICN materials	New project
Method for evaluating and measuring success	Participation rate in webinars

Milestones	Activity
February 2024	Webinar on quantitative methods
March 2024	Webinar on the use of internal documents
April 2024	Webinar on efficiency gains
June/July 2024	Summary report

Past Projects

The MWG has pursued work in broad categories: merger evaluation, digital mergers, updating existing work products, notification and review, investigative techniques, analytical frameworks, cooperation, and other policy issues. 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 2016 completed 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 and a series of global webinars on digital mergers and on sound decision making. In 2020-2021 the MGW worked 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 webinar series on merger remedies, and the update of the merger notification and procedures template.

Following this previous work in 2021-2022 the MGW organised a series of webinars on ex post merger review, hosted the 2022 ICN Merger Workshop in Brazil, began the update of the ICN Recommended Practices Chapter on Entry and expansion, and started a multi-year comparative survey and report on Control of data, market power, and potential competition in merger reviews. In 2022-2023, the MWG continued working on the update of the ICN Recommended Practices (RP) Chapter on Entry and expansion and the report on Control of data, market power, and potential competition in merger review. The MWG also started the update of the ICN RP with a new chapter on non-horizontal mergers and the project "Digital Mergers" consisting in a series of webinars on the topic "Digital Mergers" followed by webinar notes, and an overall report.

In 2023-2024, the MWG completed the update of the ICN RP Chapter on Entry and Expansion as well as the project on “Digital Mergers”. The MWG also held a series of webinars on investigative techniques. The MWG continued working on the update of the ICN RP with two new chapters on non-horizontal mergers (new chapter approved by the Steering group in April 2024) and counterfactual, as well as on the update of the ICN RP Chapters on Unilateral Effects and Coordinated Effects.

Title	Update the ICN Recommended Practices Chapter on Entry and expansion
Description and output	Update the ICN Recommended practices chapter on entry and expansion.
Outcomes achieved	Draft updated chapter and circulated for comments.
Assessment of timing	December 2021 – June 2022
Implementation	Draft chapter.
Evaluation	The project is completed.
Other learning	

Title	Updating the ICN Recommended Practices with a chapter on Non-horizontal mergers
Description and output	Add a chapter on non-horizontal mergers with the latest practices from national competition authorities.
Outcomes achieved	New chapter on the ICN Recommended Practices on non-horizontal mergers.
Assessment of timing	October 2022 – May 2024
Implementation	RP Chapter approved by SG
Evaluation	The project is completed

Title	Control of personal data, market power, and potential competition in merger reviews
Description and output	The comparative survey questionnaire was outlined in March 2022 and the survey was circulated to MWG members in May 2022.
Outcomes achieved	Draft questionnaire developed and circulated to MWG members. A webinar promoted in October 2022. A breakout session promoted during the ICN Annual Conference 2023 in Barcelona.
Assessment of timing	March 2022 – April 2023

Implementation	Project focused on survey and report, not implementation.
Evaluation	Member feedback on experiences.
Other learning	More time to receive comments from MWG members.

Title	Ex-post merger evaluation
Description and output	A series of webinars and an overall report about ex-post merger evaluation.
Outcomes achieved	2 webinars and a report.
Assessment of timing	February 2022 – May 2022
Implementation	The report will be shared with ICN Members.
Evaluation	Participation rate in both webinars.
Other learning	

Title	2022 ICN Merger Workshop
Description and output	Host the hybrid ICN Merger Workshop in Brazil.
Outcomes achieved	3 days of workshop, including 5 plenary sessions and 12 breakout sessions.
Assessment of timing	29th March - 1st April 2022
Implementation	CADE hosted the Merger Workshop in 2022 in Brazil, with the support of the MWG Co-chairs, in a hybrid format.
Evaluation	The event succeeded in achieving its purpose and it was evaluated by MWG members and NGAs' feedbacks.
Other learning	The hybrid format was a challenge to be implemented, however it could offer the possibility to participate in the event to many attendees.