



## **Merger Working Group 2017-2020 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 French Autorité de la Concurrence, the Japan Fair Trade Commission, and the U.S. Federal Trade Commission, and project leader 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.

## **2017-2020 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 revisions to ICN's Recommended Practices on notification and review. The 2017-2018 work plan focuses on more revisions to the notification RPs, investigative techniques, and vertical merger analysis.

For the period 2017-2020, the MWG intends to:

- 1) continue its ongoing review of MWG's existing Recommended Practices (RPs) for Merger Notification & Review Procedures and for Merger Analysis, to update, revise, and augment;
- 2) conduct new work on investigative techniques, including written work to supplement the Investigative Techniques Handbook;
- 3) organize periodic workshops to explore merger enforcement issues, with a variety of formats including staff-training events and merger policy discussions;
- 4) pursue new substantive areas of work in which ICN members have expressed particular interest; policy topics such as innovation as an issue in merger review, and vertical merger analysis;
- 5) 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:
  - o teleseminars/webinars, including possible training series of webinars on a dedicated topic(s);
  - o the MWG section of the ICN website;
  - o ICN annual conference sessions and regular merger workshops;
  - o contributing to the preparation of merger-related ITOD modules; and
  - o 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.
- 6) continue outreach and capacity building support for members and NGAs to boost participation in the MWG and familiarity with its work, including assisting interested members with reform of merger laws, rules, and practices. The MWG will continue its efforts to invite additional ICN members to become active in MWG work and to provide participating members with opportunities to contribute to MWG work. The MWG will continue to invite NGA participation in its activities and encourage ICN members to invite broad and diverse NGA participation in MWG work.

## **Merger Working Group 2017-2018 Projects**

### **Project 1: RP Project**

#### **Update of RPs for Merger Notification and Review Procedures and RPs for Merger Analysis (continued from 2016-2017)**

The MWG will continue its RP Project to update content of its two sets of Recommended Practices and produce new implementation work focused on the RPs. During 2016-2017 the MWG updated its RPs on 1) nexus and thresholds and 2) remedies, as well as created new RPs on 3) types of transactions and 4) efficiencies. In 2017-2018, the MWG will:

- create implementation work on the newly revised RPs on types of transactions, nexus, and thresholds, e.g., model language for key provisions;
- revise the International Coordination RP;
- evaluate other RPs for potential revision, including review period, timing, notification requirements, transparency, and conduct of the investigation

*Key output(s):* revised recommended practices, new implementation-focused work supporting the recommended practices

*Timing:* selected revised RPs for the 2018 annual conference

*Responsible:* MWG co-chairs; drafting groups for each selected RP revision

### **Project 2: Investigative Techniques Project (continued from 2016-2017)**

In 2017, the MWG organized a workshop on merger investigative techniques. Flowing from the workshop, the MWG will revise and update its Investigative Techniques Handbook (specifically Chapter 3 on developing reliable evidence). This revision will examine tools and techniques for agencies to conduct legal and economic analysis in merger investigations and consider updates to address topics such as digital evidence gathering.

*Key output(s):* new workbook chapter

*Timing:* new chapter for the 2018 annual conference

*Responsible:* MWG co-chairs; drafting group of interested agencies and NGAs

### **Project 3: Vertical Mergers (new project)**

For 2017-18, the MWG will address a topic new to the group's work: *vertical mergers*. This new work will be of a comparative nature, exploring approaches, guidelines, practices, and cases from member agencies. Options for work include teleseminars/webinars, workshop content, and/or experience sharing written work based upon member input.

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

*Timing:* subject to scoping and initial WG discussions, final written work will depend on teleseminars and member input: expected in 2018 or 2019

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

#### **Project 4: 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:

- Consider an ICN merger workshop in 2017/2018 and 2018/2019
- Teleseminar, workshop, and/or conference discussions on:
  - innovation in merger review (new topic)
  - merger enforcement in specific sectors or industries, e.g. health care, energy (new topic)
- Continued maintenance of the Merger Cooperation Framework (JFTC)
- Implementation work promoting use of the MWG RPs (mentioned above)

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

*Timing:* ongoing, year round

*Responsible:* MWG co-chairs; project leads to organize calls (JFTC and/or CMA)