



## **ICN Merger Working Group Long Term Planning, 2010-2014**

### ***Mission & Purpose***

Since its inception, the Merger Working Group (MWG) has successfully developed consensus recommended practices and practical guidance across issues of merger notification, investigation and analysis. In its next phase, the Merger Working Group will focus its efforts on practical projects that seek to identify agency practices, techniques, and processes that make merger review even more effective. In drafting this plan and guiding future work decisions, the Working Group is mindful of the following factors: the audience for its work product; a balance between promoting existing work product versus creating new work product; a balance between work that is ripe for convergence efforts versus comparative dialogue; projects that complement the institutional strengths and impact of ICN's mission; projects that encourage broader member and NGA engagement; and initiatives that are well-suited to ICN's practical, project-oriented nature.

### ***Overall Goals***

1. Promote greater international cooperation and convergence in merger review standards.
2. Enable members to improve the quality of their merger review—i.e., reduce Type 1 errors (seeking to or enjoining competitively benign or pro-competitive mergers) as well as Type 2 errors (failing to enjoin anticompetitive mergers).
3. Assist members in finding ways to avoid imposing unnecessary burdens on business and agencies as necessary to achieve goal #1.
4. Increase transparency in agency practice to minimize uncertainty and increase predictability in merger review.

### ***Strategies for Achieving Goals--2010-2014***

1. The Merger Working Group will continue to *create new practical guidance work product* for effective merger review so as to help members improve their review processes. To do so, the Working Group will evaluate what issues agencies face that are not addressed by its existing work product.
2. The Merger Working Group will *assess the impact of ICN merger recommended practices and practical guidance* on agencies around the world, evaluating the awareness, desire, and ability to implement existing work product. To do so, the Working Group will sponsor efforts to solicit voluntary agency self-assessments on this point, and reach out to practitioners to provide views on this point. Insofar as some recommended practices are not implemented, the Working Group will evaluate, based on the outcomes of the self-

assessments, what factors account for that fact (*e.g.*, a skepticism of the merits of the practice or a lack of clarity on how the practice should be implemented).

3. The Merger Working Group will also focus on *providing training opportunities for merger enforcers*, including developing course materials that explain how to use recommended practices and other practical guidance documents that are not proliferating widely.
4. The Merger Working Group will *critically evaluate the usefulness of its existing work product*. Insofar as certain work product raises concerns about its effectiveness or comprehensibility, the Working Group will seek to improve that work product as appropriate. Insofar as particular practices are widely hailed and appreciated, the Working Group will stand ready to promote such practices and act as a source of assistance to members in drafting or revising merger notification and review legislation.
5. The Merger Working Group *will seek to broaden participation from members and NGAs* across its activities. Among other things, the Working Group will seek develop new forms of and opportunities to participate as well as seek to engage new types of participants.

### ***Potential Working Group Plans***

This practical focus on improving merger enforcement techniques will guide the selection of future projects across a range of potential working group outcomes, such as:

#### *Assessment of Existing Work Product From Members and Others*

- Surveys of ICN members and NGAs to obtain a clear picture of members' needs in this area, what merger work product members are using as well as why they are not using certain recommended practices, and identifying practical techniques in merger enforcement that may assist agencies in making merger review more effective. Self-assessment surveys could be supplemented by other survey instruments.

#### *Promotion and Updating of Existing Work*

- Update and expand the Merger Working Group's practice-focused work product (*e.g.*, the Investigative Techniques Handbook, the Merger Remedies Review Report, RPs on notification and review procedures).
- Continue to evaluate the effectiveness and the impact of Merger Working Group work product, and, in coordination with the ICN Advocacy and Implementation Network, offer implementation advice and experience for jurisdictions revising or considering new guidelines, rules or practical techniques.

#### *New Work Product*

- Collaborate with and complement the Agency Effectiveness Working Group by applying its general principles to agency effectiveness in the merger context, evaluating what approaches best enable effective merger enforcement.
- Study and discuss member approaches to develop new practical guidance on topics such as: effective screening of initial information; the initial identification of competitive issues; planning merger reviews; engaging the parties; promoting a transparent review and decision process; and international coordination and cooperation in multi-jurisdictional merger reviews.

### *Training opportunities*

- Use workshops, teleseminars, and webinars to discuss policy issues and demonstrate practical techniques for policy officials and investigative staff. Develop hypotheticals based on merger review scenarios.
- Make available more web-based training tools based on workshops and member materials.

### *Expand Participation*

- Target projects that attract expanded participation in the Merger Working Group by ICN members.
- Develop opportunities to broaden the base of NGA participation, particularly academics.

### *Timeline*

#### **Existing Work – prior to 2010 annual conference.**

- Complete current draft RPs and agree on the completion of the Merger Analysis RP project.
- Conduct and assess experimental WG teleseminars as a tool for member exchanges.

#### **Setting the future direction – 2010-2011.**

- In 2010, conduct a comprehensive survey of member needs and evaluation of work product to date, with key emphasis on assessing current work product and identifying practical techniques for improving merger enforcement.
- Based upon that evaluation, results of breakout session discussions at the annual conference, and working group discussions, prioritize and set timetable for new work on effective enforcement techniques.
- Hold 1-2 merger workshops to promote Merger WG's practical agency effectiveness discussions and existing work product.

#### **Future Work 2011-2014.**

- Accomplish new consensus work on more effective enforcement techniques, including new and updated RPs, as appropriate (*e.g.*, remedies).
- Hold additional merger workshops, incorporating practical agency effectiveness discussions and training exercises. Establish schedule, purpose and content of training materials and future workshops.