

**INTERNATIONAL COMPETITION NETWORK
MERGER WORKING GROUP
2005-2006 SUBGROUP DRAFT WORK PLANS**

MISSION

The mission of the ICN Merger Working Group 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 each jurisdiction's merger review mechanisms; (ii) facilitate procedural and substantive convergence; and (iii) reduce the public and private time and cost of multijurisdictional merger reviews.

The working group is focused on three areas:

- Merger notification and review procedures;
- The analytical framework for merger review; and
- Investigative techniques for merger review.

ORGANIZATION

The working group is led by the United States Department of Justice (contacts: Makan Delrahim, makan.delrahim@usdoj.gov, and Cynthia Lewis Lagdameo, cynthia.lewis@usdoj.gov). The Working Group has two subgroups, each with its own chair:

The Notification and Procedures subgroup is chaired by Randolph Tritell, Assistant Director for International Antitrust, US Federal Trade Commission (contacts: Randy Tritell, rtritell@ftc.gov and Elizabeth Kraus, ekraus@ftc.gov).

The Merger Investigation and Analysis subgroup is co-chaired by John Fingleton, Chairperson, Irish Competition Authority (contact: Ted Henneberry, eh@tca.ie and Linda NiChualladh, lnic@tca.ie) and Dror Strum, General Director, Israel Antitrust Authority (contact Avi Weiss, weiss1@mail.biu.ac.il and Ann Levy, ann.levy@aa.gov.il). This newly formed subgroup combines the Analytical Framework subgroup and Investigative Techniques subgroup.

The working group includes representatives from antitrust authorities from many different geographic regions and differing stages of development. The working group also includes representatives from the OECD and from the legal, economic, academic and business communities. ICN members and non-governmental advisors interested in participating in the working group are encouraged to contact the subgroups at the addresses listed above.

WORK PLANS

Work plans for each of the subgroups for 2005-2006 are attached.

**INTERNATIONAL COMPETITION NETWORK
MERGER WORKING GROUP**

**NOTIFICATION AND PROCEDURES SUBGROUP
2005-2006 WORK PLAN**

REVIEW OF WORK FROM INCEPTION THROUGH 2005 ANNUAL CONFERENCE

The Notification and Procedures subgroup comprises competition agencies from twelve jurisdictions, the OECD, and non-governmental advisors from many jurisdictions. During its first four years, the subgroup's accomplishments included:

- **Guiding Principles and Recommended Practices.** The subgroup developed eight Guiding Principles and eleven Recommended Practices for merger notification and review, which the ICN has adopted at its annual conferences. Two additional Recommended Practices will be presented for adoption at the 4th annual conference in June 2005. The Principles and Practices are available at: <http://www.internationalcompetitionnetwork.org/guidingprinciples.html>
- **Implementation.** To facilitate implementation of the Guiding Principles and Recommended Practices, the subgroup gathered data on members' experiences with implementation and prepared a report identifying challenges agencies face in implementing the Practices and how they addressed these challenges. These materials are available at http://www.internationalcompetitionnetwork.org/050505Merger_NP_ImplementationRpt.pdf
- **Web link and Template Projects.** To facilitate ready access to merger laws and key features of merger review systems worldwide, the subgroup established links to national merger review laws and related materials, and to responses to a template of questions the subgroup developed about the merger review system. These materials are available at: <http://www.internationalcompetitionnetwork.org/mergercontrollaws.html>
- **Model Waiver of Confidentiality.** The subgroup developed a model form that merging parties and competition agencies can use to facilitate waivers of confidentiality protection for information that parties submit in the merger review process. The subgroup prepared an accompanying paper discussing the rationale for, content of, and use of waivers, along with illustrative agency waiver forms. These materials are available at <http://www.internationalcompetitionnetwork.org/NPWaiversFinal.pdf>
- **Comparative Study of Merger Notification Filing Fees.** The subgroup studied merger notification filing fee systems worldwide and prepared a report discussing the various types of filing fee regimes. This report is available at: http://www.internationalcompetitionnetwork.org/filing_fees_rpt.pdf
- **Costs and Burdens.** The subgroup prepared a report on the costs and burdens of multijurisdictional merger review based on available studies and anecdotal

information. The report is available at:
<http://www.internationalcompetitionnetwork.org/wg1.html>

WORK TO BE UNDERTAKEN BETWEEN 2005 AND 2006 ANNUAL CONFERENCES

- **Implementation of Guiding Principles and Recommended Practices**
 - Continue to promote conformity with the Guiding Principles and Recommended Practices, including through direct contact with competition agencies, speeches and articles, dissemination through international organizations involved in competition activities, leading by example, and encouraging private sector advocacy.
 - Invite ICN members to contact the subgroup with questions regarding the conformity of their existing or proposed rules and practices with the Recommended Practices; work with members and non-members developing new merger review laws or regulations.
 - Gather additional data on agencies' experience with the Recommended Practices and, in preparation for the workshop (see below), prepare a handbook containing, *e.g.*, agency speeches, press releases, and notices prepared in connection with implementing the Practices and Principles, and possibly examples of legislative provisions that conform to selected Principles and Practices.
- **Workshop on Merger Notification and Procedures**
 - Develop and hold a workshop to promote understanding and implementation of the Guiding Principles and Recommended Practices.
- **Web links and Templates.** Encourage and work with members to keep templates and web links up to date. Invite ICN non-members with merger laws to participate.

SUBGROUP MEMBERS

ICN Members

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|------------------|-----------------|
| • Australia | • Japan |
| • Canada | • Mexico |
| • European Union | • South Africa |
| • France | • Spain |
| • Germany | • Switzerland |
| • Italy | • United States |

International Organizations

OECD

Non-Governmental Advisors

Australia	Dave Poddar
Canada	Canadian Bar Association (P. Franklyn) Kevin Ackhurst Dany Assaf Anthony Baldanza John Bodrug Oliver Borgers Brian Facey Paul Feuer Gail Jaffe Michael Piaskoski
European Union	Simon Hirsbrunner Jonas Koponen Gerwin Van Gerven
France	Jean-Mathieu Cot Anne Wachsmann
Germany	Cornelis Canenbley
Mexico	Mexican Bar Association (G. Castañeda, L. D. Santos) National Association of Enterprise Lawyers (J. G. Zozaya Delano, A. I. Mendoza, F. T. Piñeiro)
United States	American Bar Association (J. Krauss, R. Schlossberg) New York City Bar Association (F. Schaeffer) Donald Baker Kenneth Ewing Andrew Gavil William Kolasky Joseph Simons Charles Stark Ronald Stern Joseph Winterscheid
International Legal and Business Orgs.	Business and Industry Advisory Council (J. Rill, J. Taladay, C. Goldman) International Bar Association (W. Rowley, M. Reynolds, D. Anderson) International Chamber of Commerce (G. Addy/J. Soloway, C. Goldman/R. Kwinter/K. Lawal, D. Yong d'herve/J. Hardy)

**INTERNATIONAL COMPETITION NETWORK
MERGER WORKING GROUP**

**MERGER INVESTIGATION & ANALYSIS SUBGROUP
2005-2006 WORK PLAN**

AIMS

The focus of this subgroup is on the analytical framework and investigative techniques for merger review, including the substantive standards for prohibiting mergers, the criteria for applying those standards, and the tools and techniques used for developing reliable evidence.

REVIEW OF WORK THROUGH 2005 ANNUAL CONFERENCE

- **The Analytical Framework for Merger Review.** The subgroup produced a series of papers intended to serve as a baseline for comparing and contrasting substantive merger tests (SLC, dominance, public interest) for merger review. The subgroup then created a discussion paper examining basic issues involved in choosing a particular substantive framework.
<http://www.internationalcompetitionnetwork.org/analyticalframework.html>
- **Analysis of Merger Guidelines.** The subgroup worked with multinational teams of non-governmental advisors to prepare a set of six analytical papers, which describe the methodologies of a dozen different members, through analyzing their existing or proposed merger guidelines. The papers describe how these jurisdictions deal with five important topics -- coordinated effects, unilateral effects, market definition, efficiencies, and market entry. These papers are available at:
<http://www.internationalcompetitionnetwork.org/seoul/analysisofmerger.html>
- **Merger Remedies Review Project.** The subgroup prepared a report that provides practical guidance and outlines key principles and the range of tools in the use of merger remedies. The report is based on and illustrated by remedy practice in a variety of jurisdictions. This report is available at:
http://www.internationalcompetitionnetwork.org/bonn/Mergers_WG/SG2_Analytical_Framework/Remedies_Study.pdf
- **Merger Guidelines Workbook – preliminary discussion draft.** The subgroup chairs prepared a preliminary discussion draft of a checklist of topics which the authors of new or revised merger guidelines may wish to cover, with an explanation as to why those topics have value in merger assessment and suggestions as to how those topics might be assessed in practice.
- **ICN Handbook on Investigative Techniques for Merger Review.** The Handbook is designed to inform ICN members of the various tools and techniques used in merger review, to help members organize and use their tools more efficiently, and to provide for an effective process for the evaluation of evidence. The first chapter summarizes the findings of a survey among ICN members carried out in 2003, and reflects agency practice. Chapter two discusses how to plan a merger investigation.

The third chapter addresses the issue of developing reliable evidence in merger cases. The fourth chapter concerns economic and econometric analyses, and the benefits from including economists in merger review. The final chapter of this Handbook presents a private sector perspective on merger review. The Handbook is available at <http://www.internationalcompetitionnetwork.org/investigativetechniques.html>

- **Investigative Techniques Workshops.** The subgroup held two International Merger Workshops for staff lawyers and economists, most recently in Brussels in October 2004 and before that in Washington, DC, in November 2002. At the workshops, members learned about the different practices, tools and techniques used around the world to investigate mergers and gained a better understanding of their advantages and disadvantages.

WORK TO BE UNDERTAKEN BETWEEN 2005 AND 2006 ANNUAL CONFERENCES

- **Merger Guidelines Workbook.** Continue consultation and complete drafting of Workbook for final submission at the 5th Annual ICN Conference.
- **Merger Remedies Review Project.** Report the results of the remedies survey conducted in 2004/2005.
- **Workshops**
 - **Regional workshops on investigative techniques.** The Subgroup is considering holding regional workshops modeled on the Investigative Techniques workshop held in Brussels (2004). By holding the workshops regionally, the Subgroup will be able to facilitate utilization of the IT Handbook by a wide number of staff lawyers and economists around the world and better acquaint participants with the tools and techniques used in merger review. The Subgroup also will consider designing the workshop so that participants can use the materials to hold in-house training sessions.
 - **Workshop on a specific topic, possibly remedies or economic evidence.** The Subgroup is considering holding, subject to available resources, a focused workshop that would deepen participants' acquaintance with specific analytical issues in merger review. Possible topics include economic and econometric analyses, and the benefits that stem from including economists in merger review, or remedies in merger cases, which would build on the Merger Remedies Study and Recommended Remedies Practice.

SUBGROUP MEMBERS

ICN Members

- Australia
- Canada
- European Commission
- France, DGCCRF

- Germany
- Hungary
- Israel
- Italy
- Ireland
- Japan
- Korea
- Mexico
- Poland
- South Africa
- Switzerland
- Taiwan
- United States Department of Justice
- United States Federal Trade Commission
- United Kingdom Competition Commission
- United Kingdom Office of Fair Trading

Non-Governmental Advisors

Australia	Bob Baxt Melissa Randall
Brazil	Mauro Grinberg Jose Augusto Caleiro Regazzini Pricila Benelli Walker
Canada	Brian Facey Cal Goldman Mark Nicholson Michael Piaskoski
European Union	John Davies Frank Montag Javier Ruiz Caszado Annukka Ojala Andreas Rosenfeld
Israel	David Tadmor
Japan	Prof. Mitsuo Matsushita
New Zealand	Andrew Matthews
Spain	Luis Ortiz Blanco Konstantin Joergens
South Africa	Anthony Norton John Oxenham

United States

Larry Fullerton
Deborah Garza
Ilene Knable Gotts
Barry Hawk
Stephanie Hallouet
Michael Kehoe
Mark Leddy
Thomas Mueller
James Rill
Connie Robinson
Ron Stern
John Taladay

United Kingdom

Oliver Gilman
Alistair Lindsay
Tony Woodgate