THE INTERNATIONAL COMPETITION NETWORK AT TEN

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Origins, Accomplishments and Aspirations

Edited by

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Cambridge – Antwerp – Portland

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Distribution for Austria:
Neuer Wissenschaftlicher Verlag
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Groenstraat 31
2640 Mortsel
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The International Competition Network at Ten. Origins, Accomplishments and Aspirations
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ISBN 978-94-000-0192-3
D/2011/7849/63
NUR **827** / 828

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TAKING STOCK AND TAKING ROOT: A CLOSER LOOK AT IMPLEMENTATION OF THE ICN RECOMMENDED PRACTICES FOR MERGER NOTIFICATION & REVIEW PROCEDURES

Maria Coppola and Cynthia Lagdameo*

1. INTERNATIONAL BEST PRACTICE ON MERGER CONTROL

When the ICN was formed, in 2001, achieving effective merger review without imposing undue costs and burdens was one of the biggest challenges facing the global competition community. The rapid adoption of merger control, from a handful of jurisdictions in 1990 to about 60 a decade later, together with risks of divergent outcomes in high profile international transactions, created an atmosphere of urgency.[1] The private sector was uncertain how to navigate what was fast becoming a spaghetti bowl of merger review procedures, and agencies were concerned about having sufficient staffing to review merger filings, and

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The authors are grateful for many useful comments from Ron Stern and Randolph Tritell. Section II and Annex B would not have been possible without the enormous assistance of Brian Telpner and Pape Nicholls from the Federal Trade Commission, David Anderson and Paul Johnson from Berwin Leighton Paisner LLP in Brussels, and Omar Wakil and his colleagues at Torys LLP in Toronto.

1 While this chapter is concerned with the procedural best practices, the ICN also agreed on best practices in substantive merger analysis. The Recommended Practices for Merger Analysis were adopted at the 2008–2010 annual conferences and cover: 1) the legal framework for competition merger analysis; 2) market definition; 3) the use of market shares, thresholds and presumptions; 4) competitive effects analysis in horizontal merger review; 5) unilateral effects; 6) coordinated effects; 7) entry and expansion; and 8) failing firm/exiting assets analysis.

whether and how they would coordinate their reviews and remedies with other jurisdictions.

With this backdrop, a group of fourteen agencies and more than thirty non-governmental advisors (NGAs[2]) set out to develop a set of best practices for merger procedures and review, with the goal of distilling lessons learned from positive experiences, and from repeated frustrations and failures, to define a common set of practices that would rationalize the multijurisdictional merger review process and provide clear, tangible benefits to agencies and the private sector.[3]

The result was the adoption by ICN members, at the ICN's Second Annual Conference, of three Recommended Practices, and then ten more in the following three years, on merger notification and review procedures.[4] Designed to accommodate different legal traditions and stages of development, they consist of short, "black letter" statements followed by explanatory comments. The Practices are non-binding; it is left to governments and agencies to implement them, through legislative reform or changes to internal agency practice, as appropriate. Although the Practices are non-binding, reaching agreement on them was an impressive achievement. ICN members adopted the Practices even though many of their own merger laws and practices did not conform to the

2 NGAs are non-governmental experts, including private practitioners, economists, academics, representatives of international organizations, and industry and consumer groups. As indicated in Ronald A. Stern, "The Role of the ICN in Fostering Convergence – An NGA's Perspective", at p. 321, NGAs were instrumental in providing the ideas and format for the Recommended Practices, and worked closely with members to find practical solutions to concerns raised by agencies.

3 The Recommended Practices drew heavily on existing work, including by the International Competition Policy Advisory Committee, "Final Report" (2000) [hereinafter "ICPAC Report"], available at www.usdoj.gov/atr/icpac/finalreport.htm; the PricewaterhouseCoopers survey (commissioned by the International and American Bar Associations), "A Tax on Mergers? Surveying the time and cost to business of multi-jurisdictional merger reviews" (June 2003), available at www.gobalcompetitionforum.org/gfcpaper.htm); the Business and Industry Advisory Committee to the OECD, "Recommended Framework for Best Practices in International Merger Control Procedures", available at www.biac.org/statements/comp/BIAC–ICCMergerPaper.pdf; and Janet L. McDavid, Philip A. Proger, Michael J. Reynolds, J. William Rowley QC and A. Neil Campbell, "Best Practices for the Review of International Mergers: A Discussion Draft", *Global Competition Review* (October/November 2001), 27.

4 The Recommended Practices for Merger Notification and Review Procedures address: (1) nexus between the merger's effects and the reviewing jurisdiction; (2) clear and objective notification thresholds; (3) timing of merger notification; (4) merger review periods; (5) requirements for initial notification; (6) conduct of merger investigations; (7) procedural fairness; (8) transparency; (9) confidentiality; (10) interagency coordination; (11) review of merger control provisions; (12) remedies; and (13) competition agency powers. See www.internationalcompetitionnetwork.org/uploads/library/doc588.pdf.

Recommended Practices.[5] The members' willingness to adopt practices at odds with many of their own merger review procedures, together with a legitimacy gained from close public-private partnership in drafting the Practices, resulted in the Recommended Practices quickly becoming an important baseline throughout the world for sound merger review policy.[6]

While applauding the ICN for achieving a consensus and adopting the Practices, observers almost immediately looked to evaluate the ICN's success (or failure) by looking at whether members actually implemented the Practices.[7] In 2011, the notion that members' use of the Recommended Practices is the only or the best way to judge the ICN's success is no longer a common view – the breadth of the ICN's work has expanded far beyond these Recommended Practices and other work product such as the ICN's Anti-Cartel Manual are enormously influential in shaping domestic policies. Aspects other than influence on policy, such as the relationships among members, are also recognized as important indicia to evaluate success. Most observers and participants nonetheless agree that implementation of these Recommended Practices is one important indicator of the Network's success.

This chapter assesses ICN member conformity with the Recommended Practices for Merger Notification and Review Procedures and examines the role the Practices have played in effecting change over time. Sections II and III present the current landscape, and detail how conformity with the Practices has changed since the ICN was created. Section IV discusses the various ways the Recommended Practices did or did not influence these changes, and section V draws on these experiences to identify common barriers to implementation.

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5 The Recommended Practices were drafted by the ICN's Merger Notification and Procedures Subgroup. Many of the key players in that group, including Germany, Italy, Korea, and Spain, at that time had laws or procedures that did not reflect the Practices.

6 The ICN work influenced other international standards, such as the OECD's Council Recommendation Concerning Merger Review (available at www.oecd.org/competition). The ICN Recommended Practices remain a key benchmark in activities such as the peer reviews conducted within OECD and UNCTAD.

7 See, e.g., The Merger Streamlining Group, "Implementation of the ICN's Recommended Practices for Merger Notification Procedures" (2003); J. William Rowley & A. Neil Campbell, "Implementation of the International Competition Network's Recommended Practices for Merger Notification Procedures: Final Report", *Business Law International*, vol. 5, no. 1 (Jan. 2004); J. William Rowley & A. Neil Campbell, "Paradise Lost or Regained?", *Global Competition Review* (Oct. 2004); Tony Reeves and Russell Hunter, "European merger thresholds vs. the ICN", *Global Competition Review* (May 2005); J. William Rowley and A. Neil Campbell, "Implementation of the ICN's Recommended Merger Practice: A work in (early) progress", the Antitrust Source (July 2005); and J. William Rowley QC and A. Neil Campbell, "Implementation of the International Competition Network's Recommended Practices for Merger Review: Final Survey Report on Practices IV-VII", (2005) 28 *W. Comp.* 5, 533, at 583 and 585.

This chapter focuses exclusively on four of the thirteen Recommended Practices for Merger Notification and Review Procedures: nexus between the merger's effects and the reviewing jurisdiction; objective criteria for notification thresholds; timing of notification; and merger review periods.[8] The Recommended Practices on thresholds are arguably among the most important of the Practices, since the notification of transactions that have little or no effect in the reviewing jurisdiction is a clear waste of agency and private resources. The Practices on timing and review periods are particularly important to streamlining multijurisdictional merger review. Most importantly, however, all four of these Practices lend themselves to a mostly objective evaluation of whether or not agencies conform to them.

2. CURRENT LANDSCAPE

In adopting the Recommended Practices, ICN members recognize them as an international standard of good practice. Despite their non-binding nature, the expectation is that ICN members will implement them, as appropriate.[9] This section reports on the number of ICN members that do and do not conform to

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8 The first Recommended Practice, on nexus, states that competition agencies should not assert jurisdiction over a merger unless the transaction would have an appreciable effect in their territory. Instead, jurisdiction should be asserted only over transactions that have a material nexus with the reviewing agency's jurisdiction, based on the merging parties' activity within that jurisdiction. Agencies can meet this standard by adopting a notification threshold that applies either to significant local activities of each of at least two parties to the transaction, or a significant local presence of the business being acquired. The second Recommended Practice, on notification thresholds, states that notification thresholds should be based on objectively quantifiable criteria, such as sales or assets. Market share-based tests and other criteria that are judgmental are not appropriate for use in making the initial determination as to whether a transaction is notifiable.

The Recommended Practice on timing sets forth when transactions can or should be notified. The Practice explains that parties to a transaction should be permitted to notify transactions without undue delay, thereby allowing parties to file when they deem most efficient and that best facilitates coordination of multiple filings.

The Recommended Practice on review periods states that suspensive jurisdictions – jurisdictions that prohibit parties from closing while the transaction is being reviewed – should be completed in a reasonable period of time, so as not to incur the high costs associated with undue delay. Agencies should, for example, incorporate procedures that provide for expedited review and clearance of notified transactions that do not raise material competitive concerns. In suspensive jurisdictions, initial waiting periods should expire within a specified period following notification and any extended waiting periods should expire within a determinable time frame. To best facilitate multi-jurisdictional review, agencies' rules should provide for completing the initial review of a transaction in six weeks or less, and extended review should be capable of completion in six months or less.

9 Of course, there is no perfect "one size fits all" legal standard for the world, and some ICN members, after careful consideration, have decided that some aspects of the Practices are not appropriate for their jurisdiction.

the Recommended Practices as of February 2011.[10] A summary table of ICN members' conformity with the Recommended Practices is available in Annex B.

Recommended Practice I, *Nexus to Reviewing Jurisdiction*, seeks to screen out notification of transactions that are unlikely to result in appreciable competitive effects within the jurisdiction concerned. Requiring notification of transactions that lack a sufficient nexus with the reviewing jurisdiction imposes unnecessary costs and commitment of competition agency resources without corresponding enforcement benefit. The thresholds in 30 of 75 jurisdictions with mandatory merger notification have merger notification thresholds that incorporate appropriate standards of materiality as to the level of local nexus required, such as material sales or assets levels of at least two parties (or the target alone) within the territory of the jurisdiction concerned.[11] Forty six jurisdictions do not.[12] Of these non-conforming jurisdictions:

– Twenty three have notification thresholds that can be triggered based on the sales or assets of the buyer alone or only the seller's activities, even when the target has no (or a de minimis) presence in the jurisdiction.[13]

Recommended Practice II, *Notification Thresholds*, requires clear, understandable, easily administrable, bright-line tests for notification thresholds that permit parties to readily determine whether a transaction is notifiable. The Practice states that notification thresholds should be based exclusively on objectively quantifiable criteria. Market share-based tests and other criteria that are subjective, while appropriate for later stages of the merger review process, are not appropriate for the initial determination as to whether a transaction is notifiable. Calculating market share requires the notifying parties to define the relevant market, which is often costly and time-consuming. Moreover, the scope of the product and geographic markets are often key issues in the ultimate evaluation of the transaction and therefore should not be the basis for parties having to

10 Currently, 87 of ICN's 114 members have merger control laws. See Annex A. ICN Members with Merger Control Laws. However, information was unavailable for two ICN members (Fiji and Kyrgyz Republic) so unless otherwise noted, 85 is the denominator used to calculate percentages.

11 This discussion on thresholds does not include the nine jurisdictions that have voluntary merger notification (Australia, Chile, Costa Rica, Mauritius, New Zealand, Panama, Papua New Guinea, Singapore, United Kingdom).

12 Two jurisdictions – Kenya and Zambia – have mandatory merger notification but do not specify merger thresholds.

13 The following jurisdictions have notification thresholds that can be triggered based on the sales or assets of the buyer alone or only the seller's activities, even when the target has no (or a de minimis) presence in the jurisdiction: Albania, Argentina, Armenia, Azerbaijan, Brazil, Cyprus, Egypt, El Salvador, Kazakhstan, India, Indonesia, Italy, Macedonia, Malta, Montenegro, Pakistan, Russia, Tajikistan, Tanzania, Thailand, Tunisia, Ukraine, Uruguay, and Uzbekistan.

determine whether notification is required. Even if parties and the agency agreed on the relevant market, parties would also have to have sufficient data, including on their competitors' sales, to calculate their market shares. Furthermore, even if there is agreement on the relevant market and data are available, there can be issues with determining the appropriate period of time to use. Particularly in jurisdictions with fines for failure to file, a mistake in defining the market or calculating shares could be costly.

- The majority (42) of jurisdictions with mandatory merger notification use objective tests.
- Thirty jurisdictions have market share or similarly subjective thresholds.[14]

Recommended Practice III, *Timing of Notification*, advocates that parties should be permitted to notify transactions without undue delay. Given the time sensitivity of almost all merger transactions, parties have an incentive to file in a timely manner. By allowing parties to notify based on an appropriate indicia that they intend to proceed with the transaction, such as a letter of intent, parties can make filings at the time they deem most efficient, and that would best facilitate the coordination of filings in multiple jurisdictions. While most ICN members allow notification based on a good faith intent to consummate the transaction or a similar criterion, 17 allow parties to notify only after a definitive agreement has been concluded.[15] Moreover, 24 jurisdictions have a filing deadline, requiring parties to notify within a specified time following the signing of the definitive agreement.[16] Many have a seven day deadline – requiring parties to a global merger seeking to coordinate its filings to make all necessary or advisable notifications within seven days of signing a definitive agreement.

Recommended Practice IV, *Review Periods*, outlines appropriate time tables for review. While mergers may present complex legal and economic issues, in such cases, competition agencies need sufficient time to properly investigate and analyse them in order to reach well-informed decisions. At the same time, merger transactions are almost always time sensitive, and delay in the completion of

14 The following jurisdictions include subjective criteria in their notification thresholds: Azerbaijan, Barbados, Belarus, Bosnia, Brazil, Colombia, Greece, Honduras, Indonesia, Israel, Jersey, Jordan, Kazakhstan, Latvia, Macedonia, Moldova, Mongolia, Morocco, Nicaragua, Portugal, Russia, Slovenia, Spain, Taiwan, Thailand, Tunisia, Ukraine, Uruguay, Uzbekistan, Vietnam.

15 Albania, Argentina, Cyprus, Denmark, Finland, Hungary, Iceland, India, Ireland, Korea, Macedonia, Malta, Panama, Portugal, Slovak Republic, and Uzbekistan all require a definitive agreement to notify a transaction.

16 Jurisdictions with a filing deadline include: Albania, Argentina, Bosnia, Brazil, Croatia, Cyprus, Denmark, Finland, Greece, Hungary, Iceland, India, Ireland, Jordan, Malta, Montenegro, Portugal, Serbia, Slovenia, Tunisia, Uruguay, Uzbekistan, and Vietnam.

agency reviews could jeopardize the transaction, adversely impact business operations due to market uncertainty and work force attrition as well as defer the realization of any efficiencies arising from the transaction. The Recommended Practices therefore advocate that merger reviews should be completed within a reasonable time frame.

- In 55 jurisdictions, initial waiting periods expire within six weeks or less, and in 65 jurisdictions extended or "Phase II" reviews must be completed or capable of completion within six months or less following the submission of the initial notification.[17]
- Waiting periods in 8 jurisdictions do not expire within a determinable time frame.[18]
- Most jurisdictions allow the parties to consummate a transaction upon expiration of the waiting period absent formal action of the agency in conformity with the RPs; eighteen do not.[19]

The Recommended Practices also advocate that merger review systems incorporate procedures that provide for expedited review and clearance of notified transactions that do not raise material competitive concerns. At least 27 jurisdictions achieve this objective through review procedures that allow non-problematic transactions to proceed following a preliminary review undertaken during an abbreviated initial review period, and subjecting only transactions that raise material competitive concerns to extended review.[20]

Overall, approximately 25 per cent of ICN members with merger control conform to all aspects of Recommended Practices I–IV. These conforming members are highlighted in Annex B.

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17 The following jurisdictions either have initial review periods longer than six weeks or have second phase review longer than six months: Albania, Azerbaijan, Barbados, Belarus, Brazil, Colombia, Costa Rica, Croatia, El Salvador, India, Jordan, Kazakhstan, Kenya, Montenegro, Moldova, Morocco, Namibia, Nicaragua, Pakistan, Panama, Poland, Romania, Slovak Republic, Thailand, Tunisia, Uruguay, Venezuela, and Vietnam.

18 These eight jurisdictions include Azerbaijan, Brazil, Colombia, Costa Rica, Kazakhstan, Mauritius, Romania, and Zambia.

19 While in the majority of ICN member jurisdictions, an agency's lack of response at the expiration of a waiting period means the transaction has the agency's approval, Argentina, Azerbaijan, Barbados, El Salvador, India, Jersey, Jordan, Kazakhstan, Kenya, Kyrgyzstan, Lithuania, Moldova, Nicaragua, Russia, Slovak Republic, Slovenia, Vietnam and Zambia require an affirmative response from the agency.

20 These jurisdictions include, *inter alia*, Belgium, Brazil, Canada, Denmark, Estonia, European Commission, Greece, Iceland, India, Israel, Kazakhstan, Korea, Lithuania, Malta, Mexico, Montenegro, the Netherlands, Norway, Romania, South Africa, Spain, Sweden, Switzerland, Taiwan, Turkey, United States, Zambia.

3. A DECADE OF REFORM

A snapshot of the landscape today can inform where the ICN is or should be headed, but an understanding of how to get there requires a better understanding of the dynamic process of reform over the past decade. While various sources have tried to identify the number of agencies that have made changes and to describe the reforms[21]; a comprehensive, systematic recording of implementation of the Recommended Practices does not exist. This section seeks to help fill that gap with respect to the first four Recommended Practices.

According to a 2010 survey of ICN members[22]; over 75% of the 54 responding agencies used or are using the Practices to, among others, identify areas of for change, provide conforming language, and build support for change, and nearly 80% intend to use the Practices in the near future.[23] About 60% of the respondents indicated that these Recommended Practices had already contributed to change in their merger review regimes.[24] In some instances changes bring a jurisdiction into greater conformity in one area but not necessarily into compliance with all aspects of the Recommended Practices.

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21 See supra note 8. See also Randolph W. Tritell, "Monitoring and Implementation of the Recommended Practices for Merger Notification Procedures", remarks for the International Competition Network Third Annual Conference, Seoul (April 22, 2004); Maria Coppola, "Monitoring and Implementation of the Recommended Practices for Merger Notification Procedures", Remarks for the International Competition Network Fourth Annual Conference, Bonn (June 8, 2005); J William Rowley QC and Omar K Wakil, International Mergers: The Problem of Proliferation, Fordham Corporate Law Institute's 33rd Annual Conference on International Antitrust Law and Policy (2006); Maria Coppola, "Implementation of the Recommended Practices for Merger Notification and Review Procedures", Remarks for the International Competition Network Fifth Annual Conference, Cape Town (May 5, 2006); J William Rowley and Omar Wakil, "The ICN five years on", *Global Competition Review* (2006); Maria Coppola "Merger Notification and Procedures", Remarks for the International Competition Network's Sixth Annual Conference, Moscow (May 31, 2007).

22 In the fall of 2010, the Merger Working Group conducted a survey of ICN members to assess MWG work product and future needs [hereinafter "2010 ICN Survey"]. Fifty four ICN members responded to the survey. A report on this survey is forthcoming May 2011, available here: www.internationalcompetitionnetwork.org/working-groups/current/merger.aspx.
These responses are similar to a general survey conducted in the 2008, where 77% of the 53 respondents indicated that they used the ICN Recommended Practices, with nearly all of these respondents saying they are pro-actively working towards applying the Practices [hereinafter "2008 ICN Survey"]. For the 2008 survey report, see: www.international competitionnetwork.org/uploads/library/doc390.pdf.

23 2010 ICN Survey.

24 Experience suggests that the 80 percent of respondents that "intend" to use the Recommended Practices means that many, if not most, of these members will undertake some type of reform. However, reforms may cover only some of the Recommended Practices or members may determine that a particular Practice is not appropriate for their jurisdiction.

3.1. THRESHOLDS

Since the ICN was created, 22 ICN members have introduced significant changes to their merger thresholds to bring them into conformity with the Recommended Practices by adding a material local nexus.

- Sixteen jurisdictions eliminated thresholds that triggered notification solely on the basis of worldwide sales or assets.[25]
- Sixteen jurisdictions (including seven that eliminated the worldwide requirement) strengthened thresholds by requiring at least two parties (or the target) to have sales or assets in the reviewing jurisdiction.[26]

Ten years ago, approximately half of the jurisdictions with merger control had subjective notification thresholds.[27] Today more than forty per cent of these members replaced their subjective thresholds with objective, sales or assets based threshold, although a number of the newer agencies have introduced laws with subjective thresholds.

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25 Argentina, Bosnia, Brazil, Colombia, Croatia, Czech Republic, El Salvador, Estonia, Iceland, India, Ireland, Korea, Latvia, Poland, Serbia, Slovak Republic. The Recommended Practices accept that some agencies may choose to use worldwide sales as an *ancillary* threshold. See Recommended Practice I.B, comment 2. The discussion here and below refers to thresholds that can be triggered by worldwide sales alone, with little or no local nexus.

26 Albania, Belgium, Bulgaria, Czech Republic, Estonia, Finland, Germany, Hungary, Ireland, Korea, Latvia, Portugal, Romania, Slovak Republic, Slovenia. Some of these jurisdictions, such as Germany and Ireland, have introduced thresholds that arguably are not "material" because of the small presence required. The Recommended Practices state that merger notification thresholds should apply only to transactions with a material nexus to the reviewing jurisdiction. Although they are specific in some aspects of notification thresholds, the Recommended Practices provide little guidance regarding the "material nexus" requirement. As a result, there has been considerable uncertainty and debate about what constitutes a "material" threshold.

There is an exception to the two party / target requirement of Recommended Practice I. In that Practice, subsection C, comment 4, the Recommended Practices allow for agencies who are concerned about a situation where a local, dominant firm acquires a significant foreign potential competitor that lacks significant sales in the jurisdiction, and who otherwise would not have jurisdiction to review these transactions, to have a one party notification threshold if the thresholds are set at a very high level and that there are other objectively-based limiting filters. Arguably Austria and Serbia meet the very narrow exception criteria, and thus could be added to the jurisdictions that adopted conforming thresholds.

27 These 29 jurisdictions included: Algeria, Azerbaijan, Belarus, Brazil, Bulgaria, Colombia, Czech Republic, Estonia, Finland, France, Greece, Indonesia, Israel, Latvia, Moldova, Mongolia, Norway, Pakistan, Poland, Portugal, Slovak Republic, Slovenia, Spain, Taiwan, Tunisia, Turkey, Ukraine, United Kingdom, Uzbekistan. In 2001 approximately 60 jurisdictions had merger control. See ICPAC Report, Annex 2-C, available at www.justice.gov/atr/icpac/2c.htm.

– 13 members eliminated subjective thresholds based on market share or triggered by standards such as "creating a dominant position."[28]

In some cases, ICN members made changes to their merger notification thresholds that brought their thresholds into greater, but not full, conformity with the ICN Recommended Practices. For example, Argentina eliminated its worldwide sales threshold, but replaced it with a threshold that can be triggered by the buyer's local sales alone. Bosnia replaced its worldwide threshold with a two party local nexus requirement, but also added a market share threshold. Moldova made revisions but maintained a market share threshold. Brazil eliminated its worldwide sales threshold, but, as described below, has not yet successfully introduced ICN-compliant thresholds. Colombia abolished its market share threshold, but replaced it with a threshold that can be met by the buyer's sales.

Only seven ICN members have had a major legislative overhaul to their merger control regime and maintained or added a non-conforming threshold.[29] No members that had conforming thresholds made changes that would bring them out of conformity with the Recommended Practices.

3.2. TIMING

Reforms consistent with the ICN practice on timing of notification were introduced by 19 ICN members.

– Six jurisdictions abolished the requirement to notify only after a definitive agreement had been signed.[30]
– Fourteen jurisdictions eliminated filing deadlines.[31]

3.3. REVIEW PERIODS

Of the four Recommended Practices reviewed here, the one with the most traction was review periods. Over a relatively short period of time, dozens of members undertook reform designed to shorten overall review periods and "fast

28 Belgium, Bulgaria, Czech Republic, Estonia, France, Iceland, India, Norway, Pakistan, Poland, Romania, Slovak Republic, Turkey eliminated subjective thresholds. Annex B to this chapter shows which jurisdictions currently have a subjective threshold.
29 Albania, Argentina, Bosnia, Colombia, Israel, Moldova, Pakistan.
30 Argentina, Bosnia, European Commission, France, Ireland, Serbia.
31 Belgium, Denmark, Estonia, European Union, Finland, Greece, Korea, Latvia, Lithuania, Poland, Slovak Republic, Slovenia, and South Africa.

track" non-problematic transactions. In all, 27 members made conforming changes to review periods over the last ten years.

- Eight ICN members introduced changes so that their review periods conform to the six week / six month review periods described above.[32]
- Eleven members made review periods determinable.[33]
- Fifteen jurisdictions introduced expedited review or simplified procedure.[34]
- Three jurisdictions introduced reforms allowing parties to consummate properly notified transactions upon the expiration of the review period absent formal action by the agency.[35]

The quantity and depth of reforms made in each area of the four Recommended Practices is remarkable. Comparing this experience to the spread of international norms in other fields, these changes – all in less than a decade – were enacted with lightning speed. The ICN cannot, however, assume full credit for these changes – many were already underway when the Practices were drafted, and other norms, such as those articulated by the European Commission, were significant. The next section looks at the degree of influence of the Recommended Practices in effecting these changes.

4. DRIVERS OF REFORM

The preceding section shows an impressive record in the breadth and depth of ICN members' reforms that bring global merger review procedures into greater conformity with the Recommended Practices. The factors influencing these reforms are many and multi-faceted. For example, the catalyst for reform in some jurisdictions was a need to rationalize resources in the face of increases in merger filings. In others, reform was prescribed or suggested by the European Commission or in OECD or UNCTAD peer reviews. Still other agencies initiated change to reflect international best practice. In many jurisdictions, a combination of these factors was influential.

In 2005, the ICN conducted a study to examine the forces driving merger reform. The study identified three principal factors: 1) a desire to bring the merger review regime into greater conformity with international best practice, including the Recommended Practices; 2) convergence toward the regimes of other

32 France, Greece, Hungary, Latvia, Lithuania, Pakistan, Serbia, South Africa.
33 Australia, Brazil, Bulgaria, Colombia, Greece, Hungary, Ireland, Korea, Portugal, Serbia, South Africa.
34 Australia, Belgium, Brazil, Colombia, Costa Rica, Czech Republic, Denmark, Estonia, Israel, Korea, Mexico, Netherlands, Norway, Taiwan, Zambia.
35 Bulgaria, Croatia, Taiwan.

jurisdictions, such as those with well-established merger review systems, a regional leader, or a close trading partner; and 3) recognition by stakeholders, in particular, the private bar, the business community, and the competition agency, that the merger review system was not as effective or efficient as it could be.[36] Examining the role of the Recommended Practices in effecting these reforms, the report concluded that:

> The Recommended Practices' influence, while significant, is not always direct; their role depends on the agency, the level of support for merger reform, and the legal context. The Practices may be used in conjunction with other factors to build support for reforms and to shape the direction and content of such reforms.[37]

This study found that other benchmarks, such as the OECD Council Recommendation Concerning Merger Review, played an important role in merger reform.[38]

More recent studies indicate that the influence of the ICN Recommended Practices is growing. A 2008 survey of ICN members found that the Recommended Practices for Merger Notification and Review Procedures were the most well known and most used ICN work product, with nearly eighty per cent of respondents saying they used the Practices.[39] In a 2010 survey of ICN members, nearly 90% of the 54 responding agencies are very familiar with the Recommended Practices.[40]

ICN members are also working to implement these Practices. In the 2008 ICN study, for example, 70% of the 53 responding agencies had indicated they are working towards applying ICN Recommended Practices.[41] In the 2010 study, over 75% of the 54 responding agencies indicated that they used or are using the Practices, and nearly 80% asserted that they intend to use the Practices in the near future. About 60% of the respondents indicated that the Recommended Practices had already contributed to change in their merger review regimes.[42]

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36 International Competition Network, "Report on the Implementation of the ICN Recommended Practices for Merger Notification and Review Procedures" (April 2005) at 4 [hereinafter "2005 Implementation Report"], available at www.internationalcompetitionnetwork.org/uploads/library/doc324.pdf.

37 Ibid.

38 The 2005 ICN study found the ICN's and OECD's work have been mutually reinforcing in establishing benchmarks for multijurisdictional merger review. See 2005 Implementation Report.

39 2008 ICN Survey at 24–25.

40 2010 ICN Survey.

41 2008 ICN Survey at 24–25.

42 These responses are similar to the 2008 ICN Survey, in which 77% of the 53 respondents indicated that they used the ICN Recommended Practices, with nearly all of these respondents saying they are working towards applying the Practices. 2008 ICN Survey at 24–25.

ICN members' use of the Recommended Practices can be divided into three categories: 1) to identify areas for reform; 2) to build support for reform; and 3) to drive reform.[43]

4.1. DESIGNING REFORMS

ICN members have frequently used the Recommended Practices as a benchmark to review their own practices. Comparing their systems to the Recommended Practices has allowed agencies to evaluate and identify specific areas for improvement.[44] For example, the Czech agency has said it was "really inspired" by the ICN Recommended Practices in reforming its merger thresholds.[45] The Swedish agency used the Recommended Practice on local nexus to identify threshold reforms introduced in 2008. Finland also indicated that the Recommended Practice on nexus was influential, with a direct impact on the drafting of the law. In 2009, the Colombian agency used the Recommended Practices in creating a "fast-track" merger review procedure. In formulating its 2009 competition law reform, the Costa Rican agency worked with a consultant who, at the agency's request, canvassed the ICN work. Once the amendments were drafted, the agency asked the ICN to review its proposed reforms to determine whether they conformed with the Recommended Practices. The Recommended Practices also appear to influence non-members. For example, when a draft Chinese antimonopoly bill was circulated, many agencies and bar associations urged the Chinese government to adopt merger rules consistent with the ICN Practices. Changes in successive drafts of the antimonopoly law reflected many of these comments.

In other cases, such as India and the Slovak Republic, bar associations and business groups have used the Recommended Practices to highlight for the agency or legislature areas of the merger regime that would benefit from

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43 In some cases, merger reform involved use of the Recommended Practices described in two or even three categories. For example, in Brazil the Recommended Practices informed design of the reforms, they were used as benchmarks in commentary by bar associations, and the agency relied on the Practices (including a letter from the Chair of the ICN's Steering Group in support of the changes) to lobby the legislature and other stakeholders for reform. In the European Union, the Recommended Practices were used as a benchmark for changes, and as a means of persuading national competition authorities to endorse the changes. Mario Monti, "Quo Vadis?", International Forum on European Competition Policy Brussels (April 2003) [hereinafter "Monti Quo Vadis"], available at http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/03/195&format=HTML&aged=0&language=EN&guiLanguage=en.

44 Many examples cited in this section come from discussions and e-mails between the author and counterparts in the agencies undertaking reforms.

45 Remarks by Martin Pecina at the International Competition Network's Fifth Annual Conference, Cape Town (2006).

reform.[46] Written comments from bar associations, business groups, or other agencies on proposed laws or amendments often use the Recommended Practices to suggest areas for reform.[47]

4.2. SUPPORT FOR REFORMS

ICN members have also used the Recommended Practices as a stamp of legitimacy for changes the agency wanted to make. Agencies have used the Recommended Practices to convince the legislative body of the soundness of proposed reforms, because they conform to international standards.

For example, in Germany, the Practices are cited in official documents for the legislature as a rationale for change.[48] In Ireland, The Competition Authority cited the ICN Recommended Practices in a consultation document on proposed reforms, saying the reforms would make the Irish regime consistent with international standards.[49] Many other agencies, such as those in Belgium, Brazil, Finland, and Portugal have used the Recommended Practices to promote their reforms with the legislature.[50] These and other agencies (e.g., Zambian Competition Commission) have used the Recommended Practices to build support with the private sector as well, by showing how proposed changes would measure up to best practice.

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46 See discussion in Ronald A. Stern, "The Role of the ICN in Fostering Convergence – An NGA's Perspective", p. 321. In both cases the agencies introduced changes that brought their regimes into greater conformity with the Recommended Practices, and indicated publicly that the revisions were consistent with the ICN Recommended Practices.

47 See, e.g., Comments by the American Bar Association Section of Antitrust Law, available at www.americanbar.org/groups/antitrust_law/resources/comments_reports_amicus_briefs.html. See also comments to foreign agencies and governments by the Merger Streamlining Group, available at http://38.99.129.197/PracticeArea.aspx?ParID=bdbdc2a3–d34f–4535–b884–17a54f1391e9; and comments by the International Bar Association to governments on merger laws and amendments, available at www.ibanet.org/LPD/Antitrust_Trade_Law_Section/Antitrust/Projects.aspx.

48 The Government's statement that accompanied the draft bill said proposed changes, if enacted, would "correspond to international recommendations, such as in the 'recommended practices' of the International Competition Network or a recommendation of the OECD." Available at www.bmwi.de/BMWi/Redaktion/PDF/Gesetz/meg–3–entwurf,property=pdf,bereich=bmwi,sprache=de,rwb=true.pdf.

49 The Competition Authority of Ireland, Public Consultation on the Operation and Implementation of the Competition Act 2002: Competition Authority Submission to the Department of Enterprise Trade and Employment (December 2007) at 20, 34–36, available at www.tca.ie/images/uploaded/documents/S_07_008%20Submission%20Dept%20Enterprise,%20Trade%20&%20Employment.pdf.

50 The case of Belgium is slightly different. Rather than using the Practices to promote change with the legislature, the Competition Council used the Recommended Practices to lobby against a proposal to reintroduce a market share threshold. Remarks by Stefaan Raes at the International Competition Network's Fifth Annual Conference, Cape Town (2006).

The Recommended Practices often appear in agency press releases or speeches announcing change. For example, the 2003 EU merger reforms eliminating the definitive agreement requirement and the filing deadline explicitly referenced the ICN Recommended Practice on timing of notification.[51] In 2004 the Australian Competition and Consumer Commission introduced indicative timelines for informal merger reviews, and in the press release explained that these changes were underpinned by the Recommended Practices.[52]

4.3. IMPETUS FOR REFORM

Some agencies have introduced reforms motivated principally by the desire to be viewed as in conformity with the Recommended Practices. For example, a Korean Fair Trade Commission delegate at the ICN's 8th annual conference said the KFTC significantly increased the materiality of their notification thresholds "responding directly to recommendations from the ICN." More recently, a delegate from the Polish competition authority explained that they had eliminated their market share threshold because they wanted to conform to the ICN Recommended Practices.[53]

Understanding the precise influence of the Recommended Practices, as opposed to other factors such as the OECD Council Recommendation or the desire to be in harmonization with a regional leader, is beyond the scope of this chapter.[54] Moreover, making changes to reduce unnecessary costs and burdens and make multi-jurisdictional merger review more efficient and effective is the common end game, determining the relative influence of the Recommended Practices is less important than understanding how best to effectuate change and overcoming barriers to doing so. Examining member experiences in making change in some detail offers insight into common challenges, as explained in the next section.

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51 In *Monti Quo Vadis*, Mario Monti explains "Our merger reform proposals thus contain an explicit reference to the ICN recommended practice." The Recommended Practices were also cited in the press release announcing the changes.

52 See, e.g., Australian Competition and Consumer Commission, "Revised processes proposed for informal merger reviews" (September 2004), available at www.accc.gov.au/content/index.phtml/itemId/589231/fromItemId/465054.

53 As explained in note 62 infra, the delegate was explaining that he worried this had not been an appropriate change.

54 It is interesting to note, however, that many of the possible "independent variables" – the OECD Council Recommendation, bar association and other stakeholder pressure, and even to some degree the European Commission merger regulation – were all influenced by the Recommended Practices.

5. BARRIERS TO IMPLEMENTATION

Section III above shows that most ICN members aspire to implement the Practices. Not every ICN member, however, is able to incorporate all aspects of the Practices into their merger regime at any particular time. In the 2010 ICN survey discussed above, nearly half of the responding agencies indicated that they faced one or more barriers to implementing the Recommended Practices. Barriers include legal obstacles, insufficient resources, uncertain impact on resources, and lack of stakeholder support.[55]

The most significant barrier to implementing Recommended Practices I–IV is unequivocally legislative. Almost all of the existing thresholds that do not conform to the Recommended Practices would require legislative change to become ICN-compliant. Legislative change can be an obstacle because an ICN-compliant regime would conflict with existing legislation outside of the competition sphere, or, more frequently, because of the agency's inability to garner political support for reform. To increase support for reform, some agencies, such as the Comisión Federal de Competencia in Mexico, that have successfully introduced legislative reform have found it helpful to start with small changes that can lead to more extensive reform. These agencies began, for example, with improvements that are in the agency's control, without the need for statutory amendments.[56] Experience has shown that as the agency, bar, and business reap the benefits of these reforms, they become more willing to engage in legislative reforms.

An agency may also be unwilling to engage in legislative reform on merger procedure because of fears that once part of the competition law is open for change, the entire law may be called into question. Thinking creatively about reform may be one way to overcome this obstacle. The German agency may have mitigated this risk by including the amendments to their merger thresholds with a package of measures concerning small and medium enterprise reform, citing better thresholds as a way to reduce the costs and burdens to SMEs.

The second biggest, and related, obstacle is lack of resources. Many agencies have indicated that they are concerned about the budgetary impact of initiating reforms, which may have long run benefits but also high short term costs.

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55 In the 2010 ICN Survey, of the 25 agencies that reported barriers to implementation, 56% (14 agencies) identified legal barriers, 40% (10 agencies) identified unfamiliarity barriers, 36% (9 agencies) reported language barriers, 28% (7 agencies) reported resource barriers, one agency reported relevance barriers, and 4 agencies reported other barriers.

56 Speeches, press releases, and notices by the competition agency can clarify ambiguities, provide guidance, and announce changes quickly and easily.

Although a 2008 ICN survey on agency effectiveness cited resource constraints due to review of mandatory notifications as *the principal reason* agencies cannot proactively determine their enforcement and advocacy priorities, agencies may be uncomfortable introducing change when there is not abundant data on the cost savings associated with reform.[57] Also, while in most cases implementing the Recommended Practices will reduce an agency's workload (for example, by reducing unnecessary filings), in other cases these reforms may increase it (for example, by shortening the length of review). A few agencies are concerned about the budgetary impact of reform – compliant thresholds may mean fewer filings (and a reduction, as opposed to shifting, of personnel) and/or less revenue from filing fees. Gathering data on member experience concerning the costs and benefits of reform could promote further implementation.[58]

Opposition from within the competition community can be an obstacle to change. While stakeholders are more frequently important allies in building consensus and support for change[59], agencies in Belgium, Brazil, and Portugal, for example, have had their proposed reforms challenged by bar associations or business groups, who disagreed with the changes on principle or may even have been concerned that change would negatively impact revenues. Some agencies have found it useful in the face of these challenges to emphasize, as a way of

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57 See International Competition Network, "Agency Effectiveness Project" (April 2008) at 6, available at www.internationalcompetitionnetwork.org/uploads/library/doc367.pdf. Most of the agencies that indicated this to be the case were younger agencies. Agencies that have implemented ICN-compliant reforms have not, in general, made public data concerning the agency's costs savings from changes. Some agencies, such as in Brazil and Czech Republic, have provided this information as explained in the next footnote, but more information like this would certainly help agencies make decisions about the relative benefit of engaging in reform.

58 Existing data suggest enormous resource savings. For example, the changes to the notification thresholds in the Czech Republic translated into a reduction of notified transactions from 239 in 2003 to 56 in 2005. See Martin Pecina, "Implementing the ICN Recommended Practices for Merger Notification and Review" Remarks at International Competition Network's 6th Annual Conference, Moscow, available at www.internationalcompetitionnetwork.org/uploads/library/doc425.pdf. In Brazil, according to the International Law Office, the 2005 CADE interpretation of the merger notification thresholds as applying to domestic turnover contributed to a 75% drop in the volume of notified mergers, with similar reductions in the length of SDE investigations (source: www.internationallawoffice.com/Newsletters/Detail.aspx?r=13875&i=1084305). Also, Brazil instituted an informal "fast track" or "simplified procedure" for reviewing mergers that do not raise competitive concerns. In 2002, prior to the introduction of this procedure, the average length of review for all three Brazilian competition agencies was 246 days. In 2004, the average length of review decreased to 213 days. Brazil's Secretaria de Direito Econômico (SDE), one of the three competition agencies, reduced its average review time for simple cases from 39.7 to 23.7 days. By 2005, approximately 65% of all merger cases were reviewed under the simplified procedure. 2005 Implementation Study at 9.

59 See discussion in Ronald A. Stern, "The Role of the ICN in Fostering Convergence – An NGA's Perspective", p. 321. See also 2005 Implementation Report at 15–16.

building support, how the reforms will bring the jurisdiction into conformity with well recognized benchmarks of international best practice. Educating stakeholders about how the reforms benefit the agency, businesses, and consumers alike helps build consensus, which promotes reform and increases acceptance by the business community and the bar.

Related to education and understanding, another impediment to implementation of the Recommended Practices is the complexity of some of the Practices. Some agencies have indicated that certain aspects of the Recommended Practices are unclear and would benefit from further guidance and illustrative examples. Agencies have also suggested the difficulty of determining an "appropriate" monetary level for their thresholds inhibits them from introducing reform.[60]

For some ICN members language is a barrier to implementation. Although the Practices are available in English, French, and Spanish, for most ICN members this is not their first language. Also, many of the ICN documents that are designed to be used in conjunction with the Practices, such as the "Implementation Handbook," are available only in English.

Finally, one "barrier" to implementation may not be a "barrier" at all. Not every ICN member necessarily finds every aspect of a Practice appropriate for their jurisdiction. The Israeli agency, for example, carefully reviewed the Recommended Practice on objectivity of thresholds, conducted a multi-year retrospective study of their own experience, and concluded that too many potentially problematic transactions would have escaped notification absent the market share threshold. Since the agency lacked jurisdiction to review non-notifiable transactions, it retained its market share threshold.[61]

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60 For a fuller discussion of the materiality issue, including how to determine "appropriateness," see International Competition Network, "Setting Notification Thresholds, Report to the ICN Annual Conference, Kyoto" (April 2008), available at www.internationalcompetitionnetwork.org/uploads/library/doc326.pdf.

61 Similar views were expressed by the Polish and Portuguese delegates at a November 2010 ICN merger workshop in Rome. However, given the difficulties associated with market share thresholds discussed above, and the conclusions of the ICN's Setting Notification Thresholds Report (ibid. at 8), having non-jurisdictional thresholds may be a more appropriate measure. A recent discussion in the UK acknowledged the importance of maintaining jurisdiction over non-notifiable transactions. See *Global Competition Review*, "An Interview with John Fingleton" (February 14, 2011).

6. CONCLUSION

Convergence toward these internationally recognized best practices has made notification and review of both domestic and cross-border mergers more efficient and effective. However, as the volume of cross-border transactions increases and with merger filings again on the rise[62], reducing the unnecessary costs and burdens of merger review is as important, if not more so, than it was when the ICN was formed in 2001.[63]

While some observers have noted that the ICN has already picked the low hanging fruit by adopting the Recommended Practices and should focus on other areas, the current landscape suggests that there is considerable divergence with the ICN's best practices and the majority of ICN members. Either the Practices are not truly universal or considerable work remains to be done. The overwhelming support, however, for the Recommended Practices, the tiny fraction of agencies who have made changes that do not conform to the Recommended Practices, and the fact that no agency has engaged in reforms that change an ICN-compliant regime to a non-compliant one, suggest support for the conclusion that there is more work to do.[64]

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62 A 2008 *Financial Times* article explains "It is now as likely as not that if two car companies decided to merge, it would affect competition in dozens of national markets, not just in their respective home countries." Antitrust explosion, (editorial), *Financial Times* (July 28, 2008). Increases in merger filings have been reported by some of the principal competition authorities. The U.S. competition agencies, for example, reported that merger filings increased by 63% this past year. See Federal Trade Commission and Department of Justice, Hart-Scott-Rodino Annual Report, Fiscal Year 2010, at 1.

63 The International Chamber of Commerce recently noted that "Compliance with merger control has become a major factor in mergers and acquisitions, in terms of both cost and time. Even relatively small transactions may be subject to merger control in ten or more jurisdictions". The presenter acknowledges, "To some degree, businesses must accept this as a cost of doing business", but "To the extent that merger control regimes unnecessarily impose costs, they penalize society as a whole, and the international business community in particular. The ICN Recommended Practices for Merger Notification Procedures represent an international consensus as to appropriate merger control procedures. The ICC should try to persuade governments to make their merger control regimes consistent with the ICN Recommended Practices." Presentation by Jeffrey I. Zuckerman, Curtis, Mallet-Prevost, Colt & Mosle LLP (February 14, 2011).

64 In addition to the question of non-jurisdictional thresholds discussed supra at note 62, the very limited exception to the two party / target threshold in Recommended Practice I.C.4 discussed supra at note 27 may be ripe for review. Agencies that have eliminated single party or combined/aggregate thresholds have all indicated the revised thresholds are vast improvements. Finally, given the support for market share thresholds among some ICN members, the ICN may want to have a discussion about the relative utility of market share thresholds, or how to design market share thresholds in a way that, at a minimum, the thresholds refer to an increase in a market share in an overlap market. In the 2010 ICN Survey 43 of 53 responding agencies indicated they were very interested (13) or interested (30) in reviewing and updating if necessary the Recommended Practices.

Annex A. ICN members with Merger Control Laws, February 2011

1. Albania
2. Argentina
3. Armenia
4. Australia
5. Austria
6. Azerbaijan
7. Barbados
8. Belarus
9. Belgium
10. Bosnia
11. Brazil
12. Bulgaria
13. Canada
14. Chile
15. Colombia
16. Costa Rica
17. Croatia
18. Cyprus
19. Czech Republic
20. Denmark
21. Egypt
22. El Salvador
23. Estonia
24. EU
25. Fiji
26. Finland
27. France
28. Germany
29. Greece
30. Honduras
31. Hungary
32. Iceland
33. India
34. Indonesia
35. Ireland
36. Israel
37. Italy
38. Japan
39. Jersey
40. Jordan
41. Kazakhstan
42. Kenya
43. Kyrgyzstan
44. Latvia
45. Lithuania
46. Macedonia
47. Malta
48. Mauritius
49. Mexico
50. Moldova
51. Mongolia
52. Montenegro
53. Morocco
54. Namibia
55. Netherlands
56. New Zealand
57. Nicaragua
58. Norway
59. Pakistan
60. Panama
61. Poland
62. Portugal
63. Romania
64. Russia
65. Serbia
66. Singapore
67. Slovak Republic
68. Slovenia
69. South Africa
70. South Korea
71. Spain
72. Sweden
73. Switzerland
74. Taiwan
75. Tajikistan
76. Tanzania
77. Thailand
78. Tunisia
79. Turkey
80. Ukraine
81. United Kingdom
82. United States
83. Uruguay
84. Uzbekistan
85. Venezuela
86. Vietnam
87. Zambia

Annex B. ICN members' conformity with Recommended Practices, February 2011

	Merger Notification Thresholds			Timing			Review Periods				
	ICN-compliant	Non ICN-compliant		ICN-compliant	Non CN-compliant		ICN-compliant	Non ICN-compliant			
		one party	subjective		definitive agreement	filing deadline		Initial waiting period do not expire within six weeks	extended review not capable of completion within 6 months	non-determinable	affirmative response required
Albania		×			×	×		×			
Argentina		×			×	×	√				×
Armenia		×		‡	‡	‡		‡	‡	‡	‡
Australia	–	–	–	√			√				
Austria	√			√			√				
Azerbaijan		×	×	√				×	×	×	×
Barbados			×	√				×			×
Belarus			×	√				×			
Belgium	√			√			√				
Bosnia			×			×	√				
Brazil		×	×			×		×		×	
Bulgaria	√			√			√				
Canada	√			√			√				
Chile	–	–	–	√				‡	‡	‡	‡
Colombia			×	√					×	×	
Costa Rica	–	–	–	√				×	×	×	
Croatia	√					×		×			
Cyprus		×			×	×	√				
Czech Republic	√			√			√				
Denmark	√				×	×	√				
Egypt		×		√				‡	‡	‡	‡
El Salvador		×		√				×	×		×
Estonia	√			√			√				
European Commission	√			√			√				
Fiji	‡	‡	‡	‡	‡	‡		‡	‡	‡	‡
Finland	√				×	×	√				
France	√			√			√				
Germany	√			√			√				
Greece			×			×	√				
Honduras			×	‡	‡	‡	√				
Hungary	√				×	×	√				
Iceland	√				×	×	√				
India		×			×	×		×	×		×
Indonesia		×	×	√			√				
Ireland	√				×	×	√				

	Merger Notification Thresholds			Timing			Review Periods				
	ICN-compliant	Non ICN-compliant		ICN-compliant	Non CN-compliant		ICN-compliant	Non ICN-compliant			
		one party	subjective		definitive agreement	filing deadline		Initial waiting period do not expire within six weeks	extended review not capable of completion within 6 months	non-determinable	affirmative response required
Israel			×	√			√				
Italy		×		√			√				
Japan	√			√			√				
Jersey			×	√							×
Jordan			×			×		×			×
Kazakhstan		×	×	√				×		×	×
Kenya		×	×	√				×			×
Korea	√				×		√				
Kryrgzystan	‡	‡	‡	√					‡	‡	×
Latvia			×	√			√				
Lithuania	√			√							×
Macedonia		×	×		×		√				
Malta		×			×	×	√				‡
Mauritius	–	–	–	√				‡		×	‡
Mexico	√			√			√				
Moldova			×	√					×		×
Mongolia			×	‡	‡	‡		‡	‡	‡	‡
Montenegro		×				×		×			
Morocco			×	√				×	×		
Namibia	*	*	*	√				×			
Netherlands	√			√			√				
New Zealand	–	–	–	√			√				
Nicaragua			×	√				×	×		×
Norway	√			√			√				
Pakistan		×		√					×		
Panama	–	–	–		×				×		
Poland	√			√				×			
Portugal			×		×	×	√				
Romania	√			√				×		×	
Russia		×	×	√							×
Serbia	√					×	√				
Singapore	–	–	–	√			√				
Slovak Republic	√				×			×			×
Slovenia			×			×					×
South Africa	√			√			√				
Spain			×	√			√				
Sweden	√			√			√				
Switzerland	√			√			√				

	Merger Notification Thresholds			Timing			Review Periods				
	ICN-compliant	Non ICN-compliant		ICN-compliant	Non CN-compliant		ICN-compliant	Non ICN-compliant			
		one party	subjective		definitive agreement	filing deadline		Initial waiting period do not expire within six weeks	extended review not capable of completion within 6 months	non-determinable	affirmative response required
Taiwan			×	√			√				‡
Tajikistan		×		‡	‡	‡		‡	‡	‡	‡
Tanzania		×	×	‡	‡	‡		‡	‡	‡	‡
Thailand		×	×	‡	‡	‡		‡	‡	‡	‡
Tunisia		×	×			×		×			
Turkey	√			√			√				
Ukraine		×	×	√			√				
United Kingdom	–	–	–	√			√				
United States	√			√			√				
Uruguay		×	×			×		×			
Uzbekistan		×	×		×	×		‡	‡	‡	‡
Venezuela	–	–	–	√				×			
Vietnam			×			×			×		×
Zambia		×	×	√						×	×

Key:
- √ indicates compliant
- × indicates non-compliant
- ‡ indicates information not available
- – indicates voluntary jurisdiction
- * indicates no thresholds adopted yet
- highlight indicates jurisdiction fully compliant