



INTERNATIONAL COMPETITION NETWORK

**Towards more effective and efficient cooperation in
Merger Review**

-Framework for Merger Review Cooperation-

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Thursday, April 19, 2012

The 11th ICN Annual Conference

Rio de Janeiro, Brazil

1. Introduction

Thank you very much for the kind introduction. It is a great pleasure to participate in this Merger Working Group plenary session following the one last year.

Indeed, it was at last year's merger panel that I proposed the establishment of an international framework for merger review cooperation. The JFTC had been working on crystalizing this idea and drafted a proposal titled "The International Competition Network's Framework for Merger Review Cooperation" with the assistance of other ICN members. I would like to take this opportunity to express my sincere appreciation for their assistance, especially to the US Department of Justice, the US Federal Trade Commission, and the European Commission, as well as the co-chairs and members of the Merger Working Group.

Thanks to their cooperation, the draft proposal was approved by the Merger Working Group and the Steering Group in March. I would like to present the finalized draft proposal for your approval and invite participation from ICN members in the framework.

2. JFTC's Experience in Reviewing International Merger Cases

To begin with, I would like to explain the background of my proposal based on the JFTC's experience.

With the globalization of business activities, there have been a growing number of large-scale international mergers that affect several jurisdictions and require simultaneous merger reviews by competition authorities. Given this trend, the JFTC has been cooperating with other competition authorities in specific merger cases. For example, in the past few years, we have exchanged information with other competition authorities in cases such as the acquisition of Sanyo Electric by Panasonic and the proposed joint venture by BHP Billiton and Rio Tinto for iron ore production. Most recently, we exchanged information concerning two proposed mergers and acquisitions (M&As) in the Hard Disc Drive (HDD) industry, and have completed our review.

Needless to say, cooperation in merger reviews has been facilitated by existing bilateral or multilateral agreements and other cooperative mechanisms, as well as good relationships fostered through daily communications and face-to-face meetings, including

ICN conferences like today's. However, in my view, these information exchanges are still taking place on an ad hoc basis except for those among some mature agencies. To exchange information regarding specific merger cases in a more timely and efficient way, I consider it critical to establish some kind of framework within ICN for this purpose.

3. ICN Framework for Merger Review Cooperation

As you can see in our finalized proposal, the key points of this framework are as follows:

(Purpose of the framework)

First, the framework is intended to facilitate effective and efficient cooperation between and among ICN member agencies by identifying each agency's liaison officers and possible ways to exchange information.

(Participation in the framework)

Second, participation in the framework is open to all ICN member agencies that are responsible for reviewing mergers. It is

intended for the exchange of information under this framework to be subject to the respective laws and regulations of the participating agencies, and the confidentiality of information should be maintained to an extent consistent with their laws and regulations. However, it is important to note that the nature of the framework is nonbinding.

Participation in the framework does not create any legally binding rights or obligations. This means that an ICN member's participation in the framework and related cooperation in no way affects their independent decision-making in merger reviews. At the same time, participation in the framework does not restrict the ability of participants to exchange information based on bilateral agreements, including related provisions in free trade agreements or through the regional cooperation network.

(Framework contacts)

Third, to participate in the framework, ICN members are invited to fill out a plain and simple information form with the contact information of their liaison officers, and submit it to the JFTC. The JFTC shall create a contact list of liaison officers based on this

submitted information and make it available to those ICN members that participate in the framework. If a participating agency in the framework would like to contact the other agencies that are reviewing the same merger, it may use this contact list to approach the liaison officers of its counterpart agencies.

(Contacting relevant agencies and exchange of information)

Fourth, the draft proposal outlines steps agencies may take to promote effective and efficient cooperation. Cooperating agencies are not required to take any or all of these steps and may choose to cooperate differently with individual agencies depending on the nature of the cases, etc.

In general, when agencies decide to cooperate under the framework, they may wish to exchange either nonconfidential or confidential information. Cooperating agencies may exchange information such as merger review schedules and substantive issues in specific cases, including market definitions, potential competitive effects, and possible remedies. In addition, when an individual agency

considers it useful, it may ask for a waiver from the merging and/or third parties to exchange confidential information.

Our proposal highlights the potential steps for information exchange based on existing ICN work products. However, if members wish to do so, further guidance may be developed by the Merger Working Group in the future.

4. Implementation of the Framework

If ICN members approve our proposal, the JFTC would like to move forward to establish this framework in close coordination with the Merger Working Group. We will circulate the information form to all ICN members after the conference and would like to invite as many ICN members as possible to participate.

However, the establishment of this framework is not the end, but only the beginning. The framework is just a cornerstone, and what to build upon it will be determined and developed by the members who participate in the framework. When you have a specific international merger case in front of you and are considering cooperating with other

agencies through the contact list, it is up to you what information you exchange or how you exchange information based on the framework.

Merger Working Group members may also consider developing further guidance in the future in the course of implementing this framework.

5. Conclusion

In its first decade, ICN produced a tremendous amount of work products while rapidly expanding its membership. In particular, the Merger Working Group is one of the working groups that has achieved a significant convergence among its members. This framework is intended to build on the past achievements of the ICN and complement the enforcement cooperation project of the Steering Group initiatives. This project takes advantage of ICN's valuable network of competition agencies in a practical way. I truly hope that this framework will contribute to more effective and efficient cooperation among ICN members and further contribute to the improvement and the convergence of international merger reviews.

Thank you very much for your kind attention.