

Implementation of the International Competition Network's Recommended Practices for Merger Review: Final Survey Report on Practices IV–VII

J. William ROWLEY QC and A. Neil CAMPBELL*

The International Competition Network has adopted thirteen Recommended Practices for Merger Notification and Review Procedures. The purpose of these non-binding Recommended Practices is to facilitate convergence among competition agencies around best merger review practices. To assess and promote progress in this regard, the Merger Streamlining Group commissioned two surveys of competition agencies and private law firms in all ICN member jurisdictions. The first, carried out in 2003, found very mixed levels of compliance with the ICN's initial three Recommended Practices. In 2004 a second survey was undertaken to measure implementation of the ICN's next four Recommended Practices relating to Review Periods, Requirements for Initial Notification, Transparency and Review of Merger Control Provisions. This article reports on the 2004 survey, which found that achieving implementation continues to be a significant challenge notwithstanding the momentum arising from the unanimous adoption of the Recommended Practices. The analysis points to numerous opportunities for ICN members to bridge the gap between adoption and implementation.

I. INTRODUCTION

The International Competition Network is a voluntary organisation whose membership includes national and multinational competition authorities. It is focused on improving worldwide cooperation and enhancing competition law convergence.¹ Eight broad *Guiding Principles for Merger Notification and Review Procedures* were adopted by the ICN membership at its inaugural conference in September 2002.² Since then, the ICN has developed and adopted thirteen specific *Recommended Practices for Merger Notification and Review Procedures*.³ The *Recommended Practices* address several areas that public and private sector representatives have identified as the most important to facilitate convergence toward best practices in merger review.

* The authors are partners in the Competition Law Group at, and William Rowley is the chairman of, McMillan Binch Mendelsohn LLP in Toronto, Canada. They can be contacted by mail at BCE Place, Suite 4400, Bay Wellington Tower, 181 Bay Street, Toronto, Ontario, Canada, M5J 2T3, or by email at wrowley@mcmbm.com and neil.campbell@mcmbm.com. The extensive assistance of Casey Halladay and Todd Prendergast of McMillan Binch Mendelsohn LLP in the implementation of the survey and preparation of the report is gratefully acknowledged.

¹ As articulated by Giuseppe Tesaro at the opening address of the first ICN conference in 2002, "the globalisation of the economy requires globalisation of competition enforcement": *International Competition Network: First Annual Conference, Naples, 28 September 2002, Opening speech*, 26 W.Comp. 2, 277, at 278.

² Available online, at <www.internationalcompetitionnetwork.org/icnnpguidingprin.htm> [hereinafter, the *Guiding Principles*].

³ Available online, at <www.internationalcompetitionnetwork.org/2003_practices.pdf> [hereinafter, the *Recommended Practices*].

Following its successful 2003 survey of the ICN's initial three *Recommended Practices*,⁴ in early 2004 the Merger Streamlining Group ("MSG")⁵ again commissioned a survey of competition agencies and private law firms in all ICN member jurisdictions. The 2004 survey was designed to measure implementation of the ICN's next four *Recommended Practices* (relating to Review Periods, Requirements for Initial Notification, Transparency and Review of Merger Control Provisions⁶) in each ICN jurisdiction.

This Report provides a detailed summary and assessment of responses to the 2004 survey. Responses were received from the competition law agencies and/or the private law firms surveyed in 65 (i.e. 88%) of the 74 ICN member jurisdictions.⁷

For analytical purposes, each *Recommended Practice* was broken down into multiple component parts ("elements") which were the subject of separate questions. Table 1 summarises the overall extent of consistency of jurisdictions across the various *Recommended Practices*. Appendix A reports each jurisdiction's actual levels of consistency with each *Recommended Practice* (in percentage terms to provide a common basis for comparison, since the number of elements varies).

At this aggregate level, there is roughly two-thirds compliance, with relatively little variation between the weakest (Review Periods—60%) and strongest (Transparency—73%) areas. The average score of 66% indicates that a considerable level of consistency with these *Recommended Practices* already exists, but that there is also significant room for further convergence towards these *Recommended Practices*. This also masks much more extensive variations amongst the components of each *Recommended Practice*, as well as amongst individual jurisdictions. For example:

⁴ The initial three practices related to Jurisdictional Nexus, Notification Thresholds and Timing of Notification. For the results of the 2003 survey regarding the extent of implementation of these practices see J. William Rowley QC and A. Neil Campbell, *Implementation of the International Competition Network's Recommended Practices for Merger Notification Procedures: Final Report*, 5:1 Business Law International (2004) 110 [hereinafter, the "2003 Report"].

⁵ The members of the Group which commissioned the study are Alcan Inc., British Telecom, Charles River Associates, Compaq Computer Corporation, General Electric Company, Goldman Sachs International, NERA, Rio Tinto plc, and Vodafone Group plc. The MSG is assisted by a project team consisting of Janet McDavid (Hogan & Hartson LLP), Phillip Proger (Jones Day), Michael Reynolds (Allen & Overy, LLP), and J. William Rowley QC and Neil Campbell (McMillan Binch Mendelsohn, LLP). In addition to the 2003 Report referenced above, the MSG has previously published: *Best Practices for the Review of International Mergers*, Global Competition Review (October/November 2001) 27; submitted a response to the European Commission's *Green Paper on the Review of the Merger Regulation* (unpublished, March 2002); provided the US-EU Bilateral Merger Working Group with a report entitled *Best Practices for Merger Review: Analysis and Recommendations for Review Processes in the United States and the European Union* (unpublished, November 2002); commented on aspects of the proposed new EU Merger Regulation (unpublished, April 2003); and provided a submission to the EU entitled *Comments on Annex III: Draft Form RS Published for Public Consultation by the European Commission 18 February 2004*, (unpublished, March 2004). All of these documents are available online, at <<http://www.mcmbm.com/streamline>>.

⁶ The *Recommended Practices* were renumbered in 2004. The survey was conducted before this renumbering, and for the purposes of this report the *Recommended Practices* will be referred to by their previous numbers, IV-VII. After the 2004 additions, the *Recommended Practices* regarding Transparency and Merger Control Provisions were renumbered (from VI to VIII and from VII to XI respectively). Four additional *Recommended Practices* were adopted at the 2004 Annual ICN Conference in Seoul (Conduct of Merger Investigations, Procedural Fairness, Confidentiality and Interagency Coordination), and two others were adopted at the 2005 Conference in Bonn (Merger Remedies and Agency Powers). It was decided in Bonn that the ICN's merger work focus going forward will be on implementation of the 13 *Recommended Practices* adopted to date. The adoption of additional *Recommended Practices* is not expected at least for the short term.

⁷ Five additional jurisdictions have joined the ICN since the survey was conducted (Belarus, Luxembourg, Mongolia, Senegal and Tajikistan), bringing the total current membership to 79.

TABLE 1: OVERALL CONSISTENCY WITH RECOMMENDED PRACTICES IV-VII

Recommended Practice	Number of Elements ⁸	Average Score (%) ⁹
Review Periods (IV)	4–7	60
Requirements for Initial Notification (V)	4–8	65
Transparency (VI)	6–8	73
Review of Merger Control Provisions (VII)	2	72
Total	16–25	66

- Germany and Mexico achieved the highest level of overall compliance with the four *Recommended Practices*, with the European Union, Finland, France, Korea, Lithuania, Mexico, Taiwan, the United Kingdom, the United States and Zambia also reporting consistency of 90% or greater.
- There were 17 jurisdictions (i.e. 27% of respondents) with scores below 50%, including three which achieved less than 25% consistency.
- Over 90% of jurisdictions claim to be achieving the six-month standard for completing reviews, but some components have less than 50% of jurisdictions reporting consistency.

The most notable findings within specific *Recommended Practices* are summarised below:

- Review Periods—65% of responding jurisdictions have procedures for expediting the review of transactions that do not present material competition concerns. While 92% of responding jurisdictions have formal time limits or normally complete reviews within the ICN’s six-month standard for transactions requiring extended reviews, only 73% achieve the benchmark of six-week initial waiting or review periods for transactions not warranting extended review (and 35% do not have procedures for expediting the review of non-problematic mergers).
- Requirements for Initial Notification—With the exception of translation (where there are approximately equal numbers of fully consistent, partially consistent and inconsistent jurisdictions), a majority of responding jurisdictions are consistent with each component of this *Recommended Practice*. However, there are also a considerable number of inconsistent jurisdictions in each case, ranging as high as 42% refusing to accept responsive ordinary course of business information as an alternative to formal filing requirements, 32% requiring personal authentication of the notification by senior officers, and a

⁸ The number of elements reflects the typical range of component questions that applied to respondents. Not all questions were applicable to every jurisdiction’s merger review regime, as shown in Appendices D through G.

⁹ The average score for each *Recommended Practice* reflects the average of each jurisdiction’s percentage level of compliance with the elements comprising that *Recommended Practice*. The “Total” average of 66% is a weighted average which takes into account the total number of elements in each *Recommended Practice*. Appendix A reports each jurisdiction’s actual levels of consistency with each *Recommended Practice* (in percentage terms to provide a common basis for comparison).

further 32% lacking any general flexibility mechanisms relating to the notification requirements for the initial review of a transaction.

- Transparency—85% of responding ICN members have extensive transparency with respect to the scope of their jurisdiction, and 74% make available sufficient information about the major elements of merger review procedure. However, only 46% are consistent with the *Recommended Practice* regarding transparency of substantive principles/criteria, and 42% of those utilising non-competition factors in merger reviews have not provided transparency respecting how these factors interface with other substantive aspects of the merger review regime.
- Review of Merger Control Provisions—As of spring 2004, 84% of responding jurisdictions had either reviewed their merger regime since the initial ICN meeting in Naples (September 2002) or had plans to do so, and 64% indicated an intention to pursue reforms that promote convergence with recognised best practices. However, 11% of jurisdictions had not reviewed their merger regime and had no definite plans to undertake any review in the future.

The survey concluded by updating information regarding the level of government policy activity as the ICN entered its third year:

- Public Statements—Governments in only 21% of jurisdictions have made supportive statements regarding implementation of the *Guiding Principles* and/or the *Recommended Practices*.
- Implementation of Reforms—42% of jurisdictions have made or are in the process of making changes to laws/regulations/guidelines to implement elements of the *Guiding Principles* and/or *Recommended Practices*.¹⁰ A noteworthy example is Australia where the ACCC has indicated that the ICN *Recommended Practices* will underpin proposals to reform its merger regime.¹¹ An additional 13% of jurisdictions indicated that such changes are under consideration.¹²

II. OBJECTIVES AND BACKGROUND

ICN members indicated, after the endorsement of the *Guiding Principles* and the initial three *Recommended Practices* at their first annual meeting in Naples, that implementation issues would be left to the initiative of individual jurisdictions.¹³

¹⁰ These numbers are even more encouraging when consideration is given to the several jurisdictions that noted their merger regime already substantially conforms to the *Guiding Principles* and/or *Recommended Practices*, thus they have not needed to implement amendments or establish plans for convergence.

¹¹ *Australia Adopts ICN Ideas*, Global Competition Review (18 June 2004), available on-line at <http://www.globalcompetitionreview.com/news/news_item.cfm?item_id=1793>.

¹² It is possible that in jurisdictions where only local counsel responded such changes are in fact planned but the respondent was simply unaware.

¹³ See, for example, Konrad Von Finckenstein's remarks to The 2003 Antitrust Conference: *Antitrust Issues in Today's Economy*, New York, 19 March 2003: "All that being said, there is certainly a role for NGAs in advocating that members adopt the *Recommended Practices* and marshal support for their implementation. For example, I believe there will be questions about conformity to ICN recommendations in the next Global Competition Review survey." For additional discussion of the role of private sector stakeholders, see J.W. Rowley QC, *Merger Reform Needs Words and Actions*, 6:7 Global Competition Review (July 2003), 18 at 21.

While this approach was replaced by an explicit commitment of ICN members at the third and fourth annual meetings in Seoul and Bonn to address implementation as a priority issue, private sector participants have also been encouraged to take an active role in promoting such implementation.¹⁴

This survey and report is one response to that request. It builds upon a similar survey and report commissioned by the MSG in 2003. The first report received a very positive response from competition agencies and local antitrust counsel in ICN member jurisdictions, with completed surveys received from 81% of jurisdictions. The results were presented to the ICN members at their second annual meeting in Mérida in June 2003, and subsequently expanded for publication in *Business Law International* in January 2004.¹⁵

Following the process established in 2003, surveys were developed to obtain information from both competition law enforcement agencies and private law firms that are regularly involved in merger reviews. The surveys were designed to gather information that is as objective as possible in order to allow an assessment of the level of implementation of *Recommended Practices IV-VII* in ICN member jurisdictions.

A Preliminary Report was prepared for the April 2004 ICN meeting in Seoul, which contained initial analysis of the degree of implementation of *Recommended Practices IV-VII* based upon surveys received by 7 April 2004.¹⁶ This expanded Final Report incorporates additional survey responses and analysis.

III. SURVEY PROCESS

While all ICN *Recommended Practices* comprise multiple elements, *Recommended Practices IV-VI* have a particularly extensive level of detail. As a result, the 2004 survey was lengthy.¹⁷ It consisted of 34 questions relating to components of the individual *Recommended Practices*, including companion narrative commentaries by the ICN Working Group, as well as certain statistical data and general information about past and anticipated future governmental activities related to implementation.¹⁸

¹⁴ The ICN Leadership initially questioned the appropriateness of the organisation taking an active role in seeking the implementation of its *Recommended Practices*. Although, even at the outset, some participants acknowledged that the issue of implementation would eventually require further reflection: “(i)n the long run, the exercise of identifying the best possible practices makes sense in so far as it is somehow reflected in domestic legislation” (Mario Todino, *International Competition Network: The State of Play after Naples*, (2003) 26 W.Comp. 2, 283, at 302). This debate has been resolved squarely in favour of seeking to help the implementation process. Indeed, the Mission Statement that was part of the ICN’s conference materials for Bonn makes it clear that the valuable written work product of the organisation should be viewed only as an “intermediate step”, and that actual achievements for the ICN are to be measured by real world changes for the better in practice (see *ICN Mission and Achievements Statement*, at 3, available on-line, at <http://www.internationalcompetitionnetwork.org/annual-conferences_bonn.html>).

¹⁵ As note 4 above.

¹⁶ *Implementation of the International Competition Network’s Recommended Practices (IV-VII) for Merger Notification Procedures*, April 2004 [hereinafter, the *2004 Preliminary Report*], available online at <www.mcmbm.com/streamline>.

¹⁷ A copy of the agency survey (the law firm version was not materially different) is attached for reference at Appendix B to this report.

¹⁸ Advance copies of the draft survey were shared with the Chairman of the ICN as well as with the Canadian Competition Bureau (in its Vice-Chair capacity), which kindly provided feedback on the survey questions.

The survey was sent to the head of each ICN member agency, and to a local law firm in each jurisdiction, in late February and early March 2004, with a request for responses within approximately four weeks.¹⁹ Follow-up reminder e-mails were sent to agencies and law firms that had not responded as the deadline for the Preliminary Report approached and again after the Seoul meeting to obtain as many additional responses as possible for purposes of this Final Report.

The list of the 74 competition law agency contacts was compiled primarily from the ICN website²⁰ and supplemented from other sources. Local counsel survey recipients with merger review expertise in these same jurisdictions (one per country) were compiled primarily from the firms that contributed to the *2003 Report*,²¹ and supplemented by various other firms as needed. The jurisdictions surveyed and the responding agencies and firms are listed in Appendix C.

IV. RESPONSE RATES

Notwithstanding the length of the survey, the response rates were strong and almost all respondents provided surveys that were substantially complete, as can be seen from Table 2:

TABLE 2: RESPONSE RATES

RESPONSE	Competition Agencies		Law Firms	
	#	%	#	%
Substantially Complete	40	54	52	73
Incomplete	3	4	1	1
No Response	31	42	19	26
Declined to Participate	0	0	0	0
Total Surveyed	74	100	72 ²²	100

While it was disappointing not to receive responses from all ICN member agencies and law firms that were contacted, the 54% and 73% rates of response provide a very extensive profile of the current state of implementation of *Recommended Practices IV-VII*.²³ Indeed, when overlapping agency and private sector responses are consolidated,

¹⁹ A copy of the explanatory cover letter to agencies (the law firm version was not materially different) is reproduced in the *2004 Preliminary Report*, Appendix B.

²⁰ See <www.internationalcompetitionnetwork.org/members.html>.

²¹ These respondents were mainly drawn from the chapter authors of *International Mergers: The Antitrust Process*; see J.W. Rowley QC and Donald I. Baker, (Eds), *International Mergers: The Antitrust Process*, (Sweet & Maxwell, London, 3rd Edn, looseleaf, 2000).

²² Only 72 law firm surveys were sent as there was no local counsel counterpart for the Andean Community or EFTA Surveillance Authority agencies.

²³ The higher private sector response rate may reflect resource availability (although efforts were made to keep the survey as simple as possible) and/or possible self-selection biases. Agencies which are not committed to implementation of *Recommended Practices* may have been less inclined to respond, while private law firms were

jurisdictions from which there was neither a governmental nor a private sector response amounted to only 12% of jurisdictions surveyed.²⁴ Thus the response levels were materially higher than the levels achieved in the 2003 survey.²⁵

For ease of analysis, the results are reported by jurisdiction without segregation between agency and law firm respondents, with the exception of certain relatively subjective questions in which there appeared to be notable differences. With these few areas of exception, responses from the competition agency and a law firm for a particular jurisdiction were generally congruent.²⁶

V. METHODOLOGY

Each of the *Recommended Practices* has multiple components. The survey questionnaire attempted to gather information regarding the major elements of each *Recommended Practice*, as set out in the text of the practice itself and as explained by the accompanying comments of the ICN Notification and Procedures Working Group. In the absence of any objective basis for weighting particular components more or less importantly, an overall measure of the level of consistency with a *Recommended Practice* was calculated by assigning a score of one for each element where a jurisdiction was fully consistent, a score of zero for areas of clear inconsistency, and, where applicable, a score of $\frac{1}{2}$ for partial consistency.²⁷

Not all components of each Reviewable Practice are applicable to every jurisdiction. For example, questions with respect to early termination of waiting periods are not applicable to non-suspensive regimes, and questions regarding the transparency of non-competition factors are not applicable in jurisdictions where such factors are not considered. Thus the total potential score for each *Recommended Practice* varies according to its scope. In total, jurisdictions had a potential score of between 14-

Contd.

presumably not subject to the same disincentive and may have welcomed the opportunity for visible participation in the public policy process.

²⁴ No response was received from the agency nor the local counsel contacted in Barbados, Columbia, Costa Rica, Morocco, Panama, Sri Lanka, or Sweden, and no response was received from the Andean Community nor the EFTA Surveillance Authority agencies (for which there are no local counsel counterparts).

²⁵ In the 2003 round of surveys, substantially complete responses were received from 48% of agencies and 56% of law firms, and jurisdictions from which there was neither a governmental nor a private sector response amounted to 19% of jurisdictions surveyed. Moreover, in the 2003 round, nine jurisdictions acknowledged receipt of the survey but were unable or uninterested in participating, while in 2004 there were only two such jurisdictions (the agency respondents in both Jamaica and Yugoslavia noted that they do not currently have a merger control regime, although Yugoslavia is apparently well on the way to implementing legislation in this area).

²⁶ For the most part, differences between the agency and law firm responses were minor. However, in some instances there were significant divergences. For example, the agency and law firm in Hungary provided quite different responses with respect to *Recommended Practice IV*, in Poland with respect to *Recommended Practice V*, and in Austria with respect to *Recommended Practice VI*, and in Taiwan and Denmark the responses were notably different throughout much of the survey. Where differences arose, the agency response was normally employed in lieu of the law firm response on the assumption that it was better positioned to report on the nuances of its system. The sole exception is Pakistan, where the agency response was incomplete, and the law firm response was used throughout.

²⁷ This represents a more objective alternative to the "Substantial Consistency", "Partial Consistency" and "Inconsistency" classifications used in the *2003 Report* (which would have been difficult to operationalise for *Recommended Practices* with more than three components).

25 across the four *Recommended Practices*. Results have been converted to percentages for ease of comparison.

VI. FINDINGS

A. REVIEW PERIODS (*RECOMMENDED PRACTICE IV*)

The *Recommended Practice* related to Review Periods was divided into seven major elements: (i) expedited review procedures (Q1); (ii) a six week time frame for initial reviews (Q2/Q3); (iii) a six month time frame for extended reviews (Q4/Q5); (iv) early termination powers (where suspensive periods exist) (Q7); (v) availability of limited extensions of time limits with consent of merger parties (Q8); and specially expedited/tailored procedures for (vi) non-consensual transactions such as take-over bids (Q9) as well as (vii) financial distress transactions (Q10).

As a result, the maximum score for a jurisdiction with suspensive periods that is consistent with all the elements is 7 (or as low as 4 if certain questions are not applicable to the structure of a particular type of regime²⁸). Schedule 1 summarises the actual levels of consistency, by component, for each individual jurisdiction (in percentage terms to provide a common basis for comparing suspensive and non-suspensive jurisdictions).²⁹

The overall level of consistency with each of the seven elements of this *Recommended Practice* is summarised in Table 3:

TABLE 3: ELEMENTS OF *RECOMMENDED PRACTICE IV*: REVIEW PERIODS

Element	% of Responding Jurisdictions		
	Fully Consistent	Partially Consistent	Inconsistent
1. Procedures for Expedited Review of Transactions Where No Competition Concerns (Q1)	65		35
2. Initial Waiting/Review Period of Less Than Six Weeks (Q2/Q3)	73		27
3. Extended Waiting/Review Period of Less Than Six Months (Q4/Q5)	92		8
4. Authority May Grant Early Termination of Waiting Period (Q7)	80	11	9
5. Time-Limited Extensions of Waiting Periods With Merging Parties' Consent (Q8)	12		88
6. Special Procedures for Non-Consensual Transactions (Q9)	47		53
7. Special Procedures for Financial Distress Transactions (Q10)	55		45

²⁸ Such elements have been excluded from the percentage calculation of the respective jurisdictions' consistency with the applicable components of the *Recommended Practice*.

²⁹ Available on-line, at <www.mcmbm.com/streamline>.

The main concern which emerges from this summary is that over one-third of responding jurisdictions lack processes for expediting the review of transactions that do not raise significant competitive issues. This continues to be a major source of unnecessary burden resulting from merger review processes. The early termination power and the six-month standard for extended reviews are met by most regimes, although more than one-quarter of jurisdictions fall below the six-week benchmark for initial reviews. Greater flexibility to provide consent extensions of waiting periods and special procedures for time-sensitive transactions would also be desirable.

The findings related to each of the seven specific elements are discussed in greater detail below.

1 *Availability of Expedited Reviews*

Table 4 summarises the extent to which merger review systems have been structured to encourage expedited review of transactions that do not raise material competition concerns:

TABLE 4: AVAILABILITY OF EXPEDITED REVIEW FOR STRAIGHT-FORWARD TRANSACTIONS

Expedited Review (Question 1) Responses	#	%
Formal 2-phase regime	31	49
Policy or practice for expedited review	10	16
Subtotal: Consistent with <i>Recommended Practice</i>	41	65
Not available or unclear	22	35
Total	63	100

These data indicate that half of ICN jurisdictions have adopted formal two-phase structures and one-sixth employ other practices for expediting review of non-problematic transactions.³⁰ However, a sizeable minority have not addressed this important issue.

2 *Length of Initial Waiting/Review Periods*

The extent to which suspensive periods, (or initial review periods in non-suspensive jurisdictions), meet the ICN standard of six weeks or less is tabulated in Table 5:

³⁰ One additional jurisdiction (Israel) noted that it is in the process of completing reforms that will enable an expedited review and clearance where no material competitive concerns are present.

TABLE 5: TIME PERIOD FOR INITIAL REVIEW

Initial Time Period Responses for Suspensive (Question 2) and Non- Suspensive (Question 3) Jurisdictions	Suspensive Jurisdictions		Non-Suspensive Jurisdictions		Total	
	#	%	#	%	#	%
≤ 6 weeks	37	80	10	56	45	73
> 6 weeks	9	20	2	11	11	17
No clear rules, policy or practice			6	33	6	10
Total ³¹	46	100	18	100	62	100

These results are encouraging, with most suspensive jurisdictions and a clear majority of non-suspensive jurisdictions operating within the recommended six-week time period for initial waiting/review periods. Unfortunately, there is a considerable disparity between the level of compliance in suspensive versus non-suspensive jurisdictions and it is disconcerting that fully one-third of non-suspensive jurisdictions are lacking any clear rules, policies or practices in this area.

3. Length of Extended or Waiting/Review Periods

Table 6 contains a similar analysis of the time periods (formal or normal actual) for cases requiring an extended review, relative to the ICN's six-month maximum standard, in suspensive versus non-suspensive jurisdictions:

TABLE 6: TIME PERIOD FOR EXTENDED REVIEWS

Extended Review Time Period Responses for Suspensive (Question 4) and Non-Suspensive (Question 5) Jurisdictions	Suspensive Jurisdictions		Non-Suspensive Jurisdictions		Total	
	#	%	#	%	#	%
Waiting period or formal time limit ≤ 6 months	37	82	12	71	47	79
Waiting period determinable by parties and normally capable of completion in ≤ 6 months	6	13			6	10
Non-binding policy ≤ 6 months			2	12	2	3
No formal time limit or policy, but normally completed in ≤ 6 months			0	0	0	0
Subtotal: Consistent with <i>Recommended Practice</i>	43	96	14	82	55	92

³¹ The denominator of 64 (suspensive plus non-suspensive) responses reflects the fact that the Kazakhstan and Russia respondent both indicated that they employ a dual suspensive/non-suspensive merger regime (both of which are within the 6 week recommended standards), and Venezuela provided an answer of "n/a" for both Questions 2 and 3. The third column reflects the performance of each responding jurisdiction, with Kazakhstan and Russia counted only once each.

Table 6 (cont.)

Extended Review Time Period Responses for Suspensive (Question 4) and Non-Suspensive (Question 5) Jurisdictions	Suspensive Jurisdictions		Non-Suspensive Jurisdictions		Total	
	#	%	#	%	#	%
Waiting period(s) or formal time limit > 6 months	2	4	1	6	3	5
Waiting period not determinable by parties or not normally capable of completion in ≤ 6 months	0	0			0	0
Non-binding policy > 6 months			0	0	0	0
No formal time limit or policy, and only rarely or sometimes completed in ≤ 6 months			2	12	2	3
Total ³²	45	100	17	100	60	100

These data are also encouraging, with over 80% of suspensive and nearly three-quarters of non-suspensive jurisdictions having formal time frames which meet the ICN standard. In addition, a significant number of jurisdictions fulfil the alternative ICN Working Group standards for suspensive or non-suspensive systems, bringing the overall levels of compliance to an impressive 96% and 82% respectively.³³ The only three reporting jurisdictions which have formal waiting periods or time limits in excess of six months are Croatia, Greece³⁴ and the United Kingdom. Chile and Pakistan were the only two jurisdictions without clear time limits where, in practice, reviews were reported to be only rarely or sometimes completed within the six-month *Recommended Practice*.

4. Early Terminations and Extensions of Waiting/Review Periods

The ability of competition agencies to terminate suspensive periods ahead of the formal expiration date is described in Table 7:

³² The denominator of 62 (suspensive plus non-suspensive) responses reflects one survey respondent in a suspensive jurisdiction (India) providing no answer to Question 4, and the survey respondents in two non-suspensive jurisdictions (Indonesia and Philippines) answering “n/a” (as they apparently do not employ two-phase review systems) to Question 5. As was noted in Table 5, survey respondents in Russia and Kazakhstan indicated that those jurisdictions employ a dual suspensive/non-suspensive merger regime (both of which are within the 6 month recommended standards) with the duplication removed in the third column.

³³ However, it is important to note that there are a non-trivial number of cases in some of these jurisdictions (e.g. Canada and the United States) which in practice do extend beyond six months.

³⁴ Both the agency and private law firm respondents from Greece indicated that, despite the prescribed three-month time limit, the review period usually lasts an additional three to six months.

TABLE 7: AUTHORITY TO GRANT EARLY TERMINATION OF WAITING PERIODS

Early Termination (Question 7) Responses	#	%
Yes	37	80
Sometimes	5	11
No	4	9
Total ³⁵	46	100

These results are somewhat surprising. It would seem uncontroversial to allow an agency to terminate a suspensive period as soon as it is satisfied that a transaction is not anti-competitive. Yet one-fifth of agencies cannot do so at all or only have such powers in limited circumstances. This represents an area in which simple and non-prejudicial changes could make a significant practical contribution to the streamlining of merger review processes.

Table 8 provides a similar profile regarding the ability of competition agencies to extend suspensive or review periods with the consent of the merging parties on a limited basis (appropriate) or without consent (inappropriate):

TABLE 8: TIME-LIMITED EXTENSION OF WAITING PERIODS ON CONSENT

Waiting Period Extension (Question 8) Responses	#	%
Yes (with consent)	5	12
Yes (without consent)	19	45
No	18	43
Total ³⁶	42	100

The picture which emerges in this area is disappointing. Nearly half of agencies do not have the flexibility to avoid the initiation of Phase II proceedings and/or an adverse enforcement decision where such a result might be obviated by a time-limited extension. Moreover, very few of the agencies that have extension powers are required to obtain the consent of the merging parties, which is an important safeguard against the unwarranted use of extension powers where they do exist.

5. *Special Rules for Take-Over Bid and Financial Distress Transactions*

The ICN Working Group's recommendation that one or more appropriate procedures be identified for facilitating expeditious review of time-sensitive (e.g. take-over bid and financial distress) transactions is assessed in Table 9:

³⁵ This question applied only to suspensive jurisdictions, hence the lower total number of responses.

³⁶ This question applied only to suspensive jurisdictions, and there were 4 additional respondents (Armenia, Canada, Kazakhstan and Kenya) who provided an answer of "n/a", hence the lower total number of responses.

TABLE 9: SPECIAL PROCEDURES FOR TIME-SENSITIVE TRANSACTIONS, TAKE-OVER BIDS AND FINANCIAL DISTRESS CASES

Responses Regarding Special Procedures for Non-Consensual (Question 9) and Financial Distress (Question 10) Transactions	Take-Overs and Other Non-Consensual Transactions		Financial Distress Transactions	
	#	%	#	%
One or more special procedures ³⁷	29	47	34	55
None	33	53	28	45
Total ³⁸	62	100	62	100

These data indicate that roughly half of jurisdictions have taken one or more steps to adapt normal review procedures to the distinctive characteristics of take-over bids and financial distress transactions (although notably, only about one-third of jurisdictions have adopted special procedures for both categories of transactions). Interestingly, a formal shortening of the waiting or review period is rarely the special procedure of choice, being available in only about 15% of jurisdictions for non-consensual transactions and 10% of jurisdictions in financial distress cases.

B. REQUIREMENTS FOR INITIAL NOTIFICATION (*RECOMMENDED PRACTICE V*)

The *Recommended Practice* related to Review Periods was segmented into eight major elements: (i) limiting initial notifications to necessary information (Q11); (ii) flexibility mechanisms to minimise burdens during initial notifications/reviews (Q12); willingness to accept (iii) ordinary course of business information (Q13) and (iv) other substantially responsive materials (Q14) as substitutes for formal notification requirements; availability of confidential pre-filing guidance with respect to (v) legal/jurisdictional/factual issues related to notifications (Q15) and (vi) information required in such notifications (Q16); (vii) no, or only partial translation requirements (Q17); and (viii) ability to file notifications without personal officer authentications (Q18).

As a result, the maximum score for a jurisdiction that is consistent with all of the elements is 8 (or as low as 4 if certain questions are not applicable to the structure of a particular type of regime). Schedule 2 reports the actual levels of consistency, by element, for each individual jurisdiction (in percentage terms to provide a common basis for comparisons).³⁹

³⁷ For simplicity, the analysis has been undertaken on an aggregated basis instead of considering the incidence of each type of special procedure mentioned in the Working Group's Commentary. Examples of such procedures identified by the ICN Working Group include: shortened waiting/review periods; initial filing made by acquiror only in take-overs; discretionary information waivers; substantive review standards for "failing firms"; etc.

³⁸ There was one respondent (Macedonia) that did not provide an answer for Question 9, and one (United Kingdom) that did not provide an answer for Question 10.

³⁹ Available on-line, at <www.mcmbm.com/streamline>.

A summary of the percentage of fully and partially consistent jurisdictions for each of the eight elements of this *Recommended Practice* is provided in Table 10:

TABLE 10: ELEMENTS OF *RECOMMENDED PRACTICE V*: REQUIREMENTS FOR INITIAL NOTIFICATION

Element	% of Responding Jurisdictions		
	Fully Consistent	Partially Consistent	Inconsistent
1. No Unnecessary Information Required in Initial Notification (Q11)	77		23
2. Flexibility Mechanisms for Notification and Information Requirements During Initial Review (Q12)	68		32
3. Acceptability of Alternate Sources of Information: Ordinary Course of Business Information (Q13)	58		42
4. Acceptability of Alternate Sources of Information: Substantially Responsive Information in Other Formats (Q14)	55	12	33
5. Availability of Confidential Pre-Notification Guidance re Notifiability of Transaction (Q15)	66	19	15
6. Availability of Confidential Pre-Notification Guidance re Information Required in Notification Form (Q16)	66	17	17
7. Full Translation of Supporting Documents Not Required (Q17)	35	30	35
8. Filing Does Not Require Personal Authentication by Senior Officers (Q18)	68		32

It is encouraging that a majority of jurisdictions are consistent with each of the elements of this *Recommended Practice*, with the exception of translation (where there is basically an equal split between fully consistent, partially consistent and inconsistent rules/practices). While translation requirements are therefore an obvious priority for reducing unnecessary time and cost burdens, there are also a sizable minority of jurisdictions reporting inconsistencies with each of the other components of this *Recommended Practice*.

The survey results for each of the eight elements are discussed in more detail below.

1. *Unnecessary Information in Merger Notification Filings*

The ICN Working Group has recommended that initial notifications only require information that is necessary to determine whether an in-depth review is

needed.⁴⁰ Assessing a jurisdiction’s consistency with the “necessary” standard involves a subjective, rather than objective, response. Accordingly, Table 11 compiles the agency and law firm responses to this survey question separately:

TABLE 11: UNNECESSARY INFORMATION IN INITIAL FILING REQUIREMENTS

Unnecessary Information in Initial Notification (Question 11) Responses	Agency Responses		Law Firm Responses	
	#	%	#	%
No	30	81	31	67
Yes	7	19	15	33
Total	37 ⁴¹	100	46 ⁴²	100

Over eighty percent of agencies perceived that their initial notifications did not contain unnecessary information requirements, whereas only two-thirds of law firms view filing requirements in this manner. While the sample size is small, this differential suggests that necessity may indeed be in the eye of the beholder. This conclusion is reinforced by an examination of the ten⁴³ cases in which the agency and law firm within a jurisdiction differed—in all but three, it was the agency which perceived that none of the information was unnecessary. Hopefully this *Recommended Practice* will stimulate informed debate regarding the extent to which various specific filing requirements could be reduced without prejudicing effective initial review processes.

2. Flexibility Mechanisms for Notifications and/or Information Requirements

Table 12 indicates the extent to which jurisdictions which reported one or more flexibility mechanisms⁴⁴ for reducing unnecessary burdens related to initial notification requirements and/or additional information requests during the initial review period:

⁴⁰ *Recommended Practices*, #V, para. A.

⁴¹ The agency respondents from Australia, Poland and the United Kingdom answered “n/a” for Question 11.

⁴² In addition to the fact that the local counsel respondent from Albania did not provide information regarding any of the components of *Recommended Practices V* and *VI* (hence a reduced denominator of 62 for questions relating to these components), the law firm respondents in two other jurisdictions (Denmark and India) did not respond to Question 11, and four (Chile, Indonesia, Pakistan and Thailand) provided answers of “n/a”.

⁴³ 18% of the 56 jurisdictions responding to this question.

⁴⁴ The “flexibility mechanisms” identified by the ICN Working Group include: (i) advance ruling certificates; (ii) short form notifications; (iii) other reduced filing requirements (with or without the agency’s discretion to seek additional information); (iv) discretionary waivers of information requirements; and (v) any other mechanism(s) that allow for flexibility in the context of the initial notification and/or initial phase of the review.

TABLE 12: MECHANISMS PROVIDING FLEXIBILITY FOR NOTIFICATION AND ADDITIONAL INFORMATION REQUIREMENTS DURING INITIAL REVIEWS

Initial Review Information Flexibility (Question 12) Responses	#	%
Yes	40	68
No	19	32
Total ⁴⁵	59	100

It appears from these responses that over two-thirds of jurisdictions employ at least one of the five types of mechanisms listed by the ICN Working Group or some other flexibility mechanism.⁴⁶ However, there remains a sizeable minority which have not adopted any of these useful burden-reducing techniques.

3. *Willingness of Competition Agencies to Accept Alternative Sources of Information*

Table 13 reports on the responses to two similar survey questions which probed ICN Working Group recommendations concerning the willingness of competition agencies to accept readily-available information in lieu of formal notification requirements (strict compliance with which may be burdensome):

TABLE 13: ACCEPTABILITY OF ALTERNATIVE SOURCES OF INFORMATION

Responses Regarding Acceptability of Ordinary Business (Question 13) Other Responsive (Question 14) Information	Ordinary Course Of Business Information		Substantially Responsive Information In Other or Formats ⁴⁷	
	#	%	#	%
Yes	34	58	33	55
Limited circumstances			7	12
Subtotal: Consistent with Recommended Practice	34	58	40	67
No	25	42	20	33
Total ⁴⁸	59	100	60	100

As with flexibility mechanisms generally,⁴⁹ a clear majority of ICN jurisdictions are generally open to “substance over form”. However, a significant minority remain unable or unwilling to depart from formal notification requirements in favour of less burdensome substitute forms of information.

⁴⁵ Three survey respondents (Australia, Chile and Indonesia) provided answers of “n/a” for Question 12.

⁴⁶ No attempt was made to track usage by individual types of mechanisms.

⁴⁷ For example, merger filings from other jurisdictions.

⁴⁸ Two survey respondents (Chile and Indonesia) provided an answer of “n/a” to both Questions 13 and 14, while an additional survey respondent (Ukraine) did not provide an answer to Question 13.

⁴⁹ See the discussion following Table 12 above.

4. *Availability of Confidential Pre-Notification Guidance*

The *Recommended Practices* focus on the availability of confidential pre-notification guidance from competition agencies in two key areas: legal/jurisdictional/factual issues related to notification obligations, and the information requirements in the notification form itself. Table 14 compares the current practices in each area:

TABLE 14: CONFIDENTIAL PRE-NOTIFICATION GUIDANCE

Responses Regarding Availability of Confidential Guidance in Relation to Notifiability (Question 15) and Notification Requirements (Question 16)	Notifiability of Transaction		Notification Requirements	
	#	%	#	%
Yes	40	66	39	66
Sometimes	12	19	10	17
No	9	15	10	17
Total ⁵⁰	61	100	59	100

It is encouraging that both these useful types of confidential pre-notification guidance are always available in two-thirds of responding jurisdictions and sometimes available in half of the remaining jurisdictions. Since both competition agencies and merging parties benefit from early resolution of issues regarding notifiability and information requirements, it would be desirable for such jurisdictions to expand the availability of this type of guidance.

5. *Translation of Supporting Documents*

Perhaps because translation of supporting documents is often a matter of agency discretion rather than specific rules, there were noticeable differences between agency and law firm responses to this question. Table 15 provides comparative responses for two separate types of documentary materials that are commonly required to accompany merger filings:⁵¹

⁵⁰ One respondent (Indonesia) provided an answer of “n/a” to both Questions 15 and 16, while two additional respondents (Iceland and Slovenia) did not provide an answer for Question 16.

⁵¹ Answers to Questions 17(ii) (annual reports & securities filings) and 17(iii) (other supporting materials) were generally the same among survey respondents. Question 17 was therefore scored with a half-point allotted to each of parts 17(i) and (ii), and the parallel responses to part 17(iii) were not used.

TABLE 15: TRANSLATION OF SUPPORTING DOCUMENTS

Translation Requirement (Question 17) Responses	Agencies				Law Firms			
	Transaction Documents		Annual Reports and Securities Filings		Transaction Documents		Annual Reports and Securities Filings	
	#	%	#	%	#	%	#	%
Translation not required	9	29	15	45	10	28	16	43
Summary sufficient	6	19	10	30	4	11	8	22
Subtotal: Consistent with <i>Recommended Practice</i>	15	48	25	76	14	39	24	65
Full translation required ⁵²	16	52	8	24	22	61	13	35
Total ⁵³	31	100	33	100	36	100	37	100

The key finding from this question is that jurisdictions are much more likely to require full translation of transaction documents than annual reports and other supporting materials. Given the time and cost of translating large and complex documents, it is encouraging to see summaries emerging as a moderately popular middle ground that deserves further attention by jurisdictions which are not prepared to proceed without any translation of transaction or other documents.

6. Authentication Requirements

The prevalence of requirements that initial notifications and/or supporting documentation be personally authenticated by senior officers is summarised in Table 16:

TABLE 16: PERSONAL AUTHENTICATION BY SENIOR OFFICERS NOT REQUIRED

Personal Authentication (Question 18) Responses	#	%
Yes	40	68
No	19	32
Total ⁵⁴	59	100

It is encouraging to see that the flexible approaches advocated by the ICN Working Group (such as simple signatures from company personnel or representations by counsel) are more than twice as common as the cumbersome formal requirements

⁵² It should also be noted that a significant number of agency respondents (Belgium, Cyprus, European Union, Malta, Mexico, Norway and Switzerland) commented that, although translation normally is required, documents in English generally will be accepted.

⁵³ A significant number of agency respondents did not answer some or all of the parts to Question 17, hence the reduced and fluctuating denominators.

⁵⁴ Two survey respondents (Australia and Indonesia) provided an answer of "n/a" to Question 18, while an additional respondent (India) did not provide any answer.

for personal authentication by senior officers. Nevertheless, there is obvious room for improvement in the nearly one-third of responding jurisdictions where personal authentication is still required.

C. TRANSPARENCY (*RECOMMENDED PRACTICE #VI*)

The *Recommended Practice* related to Transparency was disaggregated into eight major elements: (i) making all merger laws and other materials publicly available in a timely manner (Q19); ensuring that the aspects of (ii) jurisdictional scope (Q20) and (iii) merger review procedure (Q21) are readily determinable from public materials; (iv) providing guidance regarding substantive principles and criteria used in applying the law (Q22); (v) where non-competition factors are considered, ensuring that their interface with competition factors is transparent (Q23); (vi) publishing reasons for clearance decisions that set precedents or shift enforcement policies (Q25); (vii) making relevant materials available on a regularly updated website (Q27); and (viii) providing English translations of basic merger review materials (Q28).

As a result, the maximum score for a jurisdiction that is consistent with all the components is 8 (or as low as 6 if certain questions are not applicable to the structure of a particular type of regime). Schedule 3 lists the degree of consistency of each jurisdiction with each major element of this *Recommended Practice* (on a percentage basis to facilitate comparisons).⁵⁵

A summary of the extent of consistency of responding jurisdictions with the eight elements of this *Recommended Practice* can be found in Table 17:

TABLE 17: ELEMENTS OF *RECOMMENDED PRACTICE VI: TRANSPARENCY*

Element	% of Responding Jurisdictions		
	Fully Consistent	Partially Consistent	Inconsistent
1. Timely Availability of Laws, Policies and Practices (Q19)	48	52	0
2. Public Information Regarding Jurisdictional Scope of Merger Laws (Q20)	85	10	5
3. Public Information Regarding Merger Review Procedures (Q21)	74	24	2
4. Transparency of Substantive Principles and Criteria (Q22)	46	34	20
5. Transparency of Non-Competition Factors in Merger Review (Q23)	58	8	34

⁵⁵ Available on-line, at <www.mcmbm.com/streamline>.

Table 17 (cont.)

Element	% of Responding Jurisdictions		
	Fully Consistent	Partially Consistent	Inconsistent
6. Regular Publication of Reasons for Key Decisions (Q25)	44	16	40
7. Competition Agency Website Materials (Q27)	77	16	7
8. Availability of Merger Review Materials in English (Q28)	53	31	16

As can be seen from these data, there is considerable variability across the eight dimensions of transparency. While most jurisdictions make available extensive public information regarding jurisdictional and procedural matters (including through up-to-date websites), it is unfortunate that less than half achieve the *Recommended Practice* on substantive principles/criteria and that only slightly more than half of those employing non-competition factors have achieved sufficient transparency in this area.⁵⁶ Regular publication of key enforcement agency decisions is also an important area for improvement, with equal numbers of agencies making and not making such disclosures.

Additional analysis in respect of each of the eight transparency elements is provided below.

1. *Timely Availability of Laws, Policies, and Practices*

The survey sought information on the extent to which each of laws, regulations, policies, case decisions and other materials relevant to merger review were made readily available to the public in a timely manner. Table 18 presents the responses on an aggregated basis:

TABLE 18: TIMELY AVAILABILITY OF LAWS, POLICIES, AND PRACTICES

Timely Availability (Question 19) Responses	#	%
All information categories fully available	29	48
Partially available	31	52
All information categories unavailable or not timely	0	0
Total ⁵⁷	60	100

⁵⁶ As noted in the discussion of Table 22 below, this question was only applicable to the approximately 40% of jurisdictions that employ non-competition factors.

⁵⁷ Two survey respondents (Philippines and Thailand) provided an answer of "n/a" for Question 19.

While no jurisdiction reported complete unavailability or lack of timeliness, it was disappointing to find that less than half of the responding jurisdictions made all such materials fully available on a timely basis. Given the ease with which transparency can be achieved using internet websites, this surely is a priority area where implementation of the ICN *Recommended Practices* could generate significant benefits quickly and at low cost.

2. Jurisdictional Scope and Review Procedures

Questions 20 and 21 of the survey examined more specifically whether three attributes of jurisdictional scope and 12 aspects of merger review procedures were readily determinable from publicly available materials. Table 19 presents a summary which condenses the components of each question:

TABLE 19: PUBLIC INFORMATION REGARDING JURISDICTION AND PROCEDURES

Responses Regarding Determinability of Jurisdiction (Question 20) and Procedure (Question 21)	Jurisdictional Scope (3 Attributes) ⁵⁸		Merger Review Procedures (12 Aspects) ⁵⁹	
	#	%	#	%
All yes	53	85	46	74
Mixed	6	10	15	24
All no	3	5	1	2
Total	62	100	62	100

The results in these areas are much more positive. Nearly all jurisdictions achieved full transparency on the jurisdictional scope elements (although public information does not allow for ready determination of any of the jurisdictional scope elements in Indonesia, Kenya and the Philippines). Similarly, nearly three-quarters of jurisdictions display transparency on all twelve of the listed procedural matters, and only one country (Philippines) was not seen as providing readily determinable information about any of these items.

⁵⁸ These were: (i) the types of transactions to which the merger control law applies; (ii) any exemptions or exclusions from the merger control law; and (iii) the precise tests or thresholds that govern whether the parties must notify the transaction or whether the competition agency has jurisdiction over a transaction.

⁵⁹ These were: (i) the identity and contact details of the competition agencies; (ii) any filing deadlines; (iii) notification procedures, including the information to be provided in the initial filing; (iv) any filing fees; (v) review periods; (vi) suspensive periods and any limits on implementing the transaction prior to clearance; (vii) investigative procedures; (viii) any deadlines that the merging parties, third parties, or the competition agencies must obey during the review period; (ix) procedures and deadlines for appealing adverse decisions or for challenging a merger; (x) procedural rights of merging and third parties; (xi) enforcement procedures pertaining to violations of the merger control laws (e.g. failure to notify) or merger review decisions (e.g. breach of conditions or obligations); and (xii) measures for protecting confidential information.

3. *Substantive Principles and Criteria*

The extent to which guidelines or other materials have illuminated the substantive principles and criteria that competition agencies use in applying their merger laws is tabulated in Table 20:

TABLE 20: TRANSPARENCY OF SUBSTANTIVE PRINCIPLES AND CRITERIA

Substantive Transparency (Question 22) Responses	#	%
Extensively available	28	46
Partially available	21	34
Minimally or none available	12	20
Total ⁶⁰	61	100

The level of substantive transparency varies dramatically: nearly half of jurisdictions provide extensive information regarding decision-making principles and criteria, but one-fifth offer minimal or no guidance about agency practices on such important matters. While agency guidelines may require considerable effort to develop, competition laws are so open-textured that attempts to provide greater clarity on substantive standards would be very welcome.

4. *Non-Competition Factors*

While the *Recommended Practices* do not object to the consideration of non-competition factors in merger reviews, they urge transparency regarding the manner in which such considerations interact with competition-oriented criteria. Table 21 outlines the degree of transparency in the minority of responding jurisdictions that employ non-competition factors in their merger review processes:

TABLE 21: TRANSPARENCY OF NON-COMPETITION FACTORS

Transparency of Non-Competition Factor (Question 23) Responses	#	%
Yes	14	58
Partially	2	8
No	8	34
Total ⁶¹	24	100

While the majority of merger review regimes focus purely on competition issues, 39% of responding jurisdictions consider non-competition factors as well. In such systems, it is

⁶⁰ One survey respondents (India) did not provide an answer for Question 22.

⁶¹ The remaining 38 jurisdictions (61% of those responding to this question) reported that non-competition factors were not used in their merger review processes.

encouraging that a solid majority provide transparency that contributes to making the interface between the decision-making factors understandable. However, eight jurisdictions (Croatia, Iceland, Indonesia, Kenya, Latvia, Pakistan, Slovenia and Ukraine) have not done so, and two additional jurisdictions (Brazil and New Zealand) have only achieved partial transparency in this area. Due to the relatively low number of jurisdictions that consider non-competition factors, if even a few of these jurisdictions made an effort to increase transparency the overall percentage of compliance would improve dramatically.

5. *Publication of Key Decisions*

The *Recommended Practices* advocate case-specific transparency in the form of reasoned explanations for, at a minimum, those decisions which set a precedent or represent a shift in policy or practice. The frequency of such published decisions is summarised in Table 22:

TABLE 22: REGULAR PUBLICATION OF REASONS FOR KEY DECISIONS

Responses Regarding Publication of Key Decisions (Question 25)	#	%
Yes	27	44
Case-by-case	10	16
No	25	40
Total	62	100

The practice on publication of key decisions is evenly divided between agencies that regularly do and those that do not, with a small group varying on a case-by-case basis. This again suggests a significant opportunity to improve the public understanding of how merger review processes are applied in many countries.

6. *Website Reference Materials*

The important role of websites in promoting transparency, particularly for international transactions, is examined in Table 23:

TABLE 23: COMPETITION AGENCY WEBSITE REFERENCE MATERIALS

Website Reference Material (Question 27) Responses	#	%
Complete and updated	47	77
Incomplete or not updated	10	16
Planned/in development	1	2
No website or plans for website	3	5
Total ⁶²	61	100

⁶² One respondent (India) did not provide an answer to Question 27.

The availability of reference materials on agency websites is very high: 93% of agencies maintain such a site and over 80% of those are reported to be complete and up-to-date. Of the three jurisdictions that do not have a current or planned website (Pakistan, Philippines and Tunisia), at least two can be characterised as relatively new arrivals on the competition law scene. While resource constraints are a particular challenge for such agencies, it would be desirable if they could consider this cost-effective form of communication at an early date in order to make relevant information more easily available to interested parties domestically and abroad. Hopefully 100% of ICN jurisdictions will have comprehensive websites in the near future, as this greatly facilitates the analysis of potential competition issues for parties involved in international transactions.

7. *Availability of English Translations*

The survey requested information regarding the availability of English translations of basic merger review materials (i.e. laws, regulations and guidelines). The results are presented in Table 24:

TABLE 24: AVAILABILITY OF MERGER REVIEW MATERIALS IN ENGLISH

Availability of English Material (Question 28) Responses	#	%
Yes (all)	33	53
Some selected materials	19	31
No	10	16
Total	62	100

Notwithstanding the wide availability of website reference materials noted above, English translations are less common. Just over half of jurisdictions have provided such translations for all core materials and another one-third make selected materials available in English. Again, it would be helpful to the international business and legal communities if the remaining jurisdictions could make progress in this area as soon as resources permit.

D. REVIEW OF MERGER CONTROL PROVISIONS (*RECOMMENDED PRACTICE #VII*)

The *Recommended Practice* related to Review of Merger Control Provisions has two major elements: (i) plans to periodically review and improve the merger process (Q29); and (ii) intentions to pursue reforms that will promote convergence to ICN Recommended Practices (Q30). Schedule 4 reports the degree of consistency of each jurisdiction with these two components.⁶³

⁶³ Available on-line, at <www.mcmbm.com/streamline>.

This report focuses on the portion of Question 29 which requested an indication of future plans to review each jurisdiction's merger review regime.⁶⁴ In addition, Question 30 canvassed intentions to pursue convergence towards ICN *Recommended Practices*. Table 25 contains the responses:

TABLE 25: FUTURE REFORM OF MERGER REGIMES

Responses Regarding Plans to Review Regime (Question 29) and Pursue Convergence with Best Practices (Question 30)	Plans To Review Merger Regime		Plans To Pursue Reforms That Converge With Best Practices	
	#	%	#	%
Yes	52	84	39	64
Uncertain or undecided			11	18
No	10	16	11	18
Total ⁶⁵	62	100	61	100

An exemplary 84% of responding jurisdictions reported plans to review their merger regime (or have already done so since the ICN's initial meeting in Naples in September 2002). The number of jurisdictions indicating plans to pursue reforms that converge with recognised best practices is a somewhat less impressive, but solid, 64% (although this figure may be understated to the extent that private law firm respondents have imperfect information). While nearly 60% of the responding jurisdictions are consistent with both elements, it is discouraging that 11% have no definite plans to undertake any review or pursue convergence with best practices despite having adopted the *Recommended Practices* on a consensus basis.

E. GOVERNMENT STATEMENTS AND ACTIONS

The survey concluded by soliciting information about government statements and actions in relation to implementation of the *Guiding Principles* and *Recommended Practices*. Data provided in response to these questions are summarised below in Tables 26 (public statements) and 27 (implementation of changes). Individual country responses are set out in Schedule 4.⁶⁶

⁶⁴ Where a jurisdiction indicated that its merger regime had undergone a review since the last ICN Naples meeting (i.e. 2002 or later), they were treated as a "Yes" for Question 29 regardless of whether or not any additional review is currently planned.

⁶⁵ The law firm respondent from Albania provided an answer for Question 29 but not Question 30, while an additional respondent (India) did not provide an answer to either Questions 29 or 30.

⁶⁶ Available on-line at <www.membrm.com/streamline>

TABLE 26: STATEMENTS REGARDING *GUIDING PRINCIPLES* AND *RECOMMENDED PRACTICES*

Responses Regarding Public Statements on <i>Guiding Principles</i> (Q31) and <i>Recommended Practices</i> (Q32)	<i>Guiding Principles</i>		<i>Recommended Practices</i>	
	#	%	#	%
Support	13	21	13	21
Neutral	7	11	6	10
None	41	68	42	69
Total ⁶⁷	61	100	61	100

These data remain virtually unchanged from responses to similar questions posed in the *2003 Report*, which found that only 13 jurisdictions had made public statements supporting the *Recommended Practices* and 14 regarding the *Guiding Principles*.⁶⁸ Although several jurisdictions reported neutral government statements about the *Guiding Principles* and/or the *Recommended Practices*, the absence of publicly visible support from over three-quarters of ICN members is alarming.

TABLE 27: IMPLEMENTATION OF *GUIDING PRINCIPLES* AND *RECOMMENDED PRACTICES*

Responses Regarding Implementation of <i>Guiding Principles</i> (Q33) and <i>Recommended Practices</i> (Q34)	<i>Guiding Principles</i>		<i>Recommended Practices</i>	
	#	%	#	%
Yes	14	23	13	21
In progress	8	13	11	18
Considering	9	14	8	13
No	31	50	30	48
Total ⁶⁹	62	100	62	100

These data suggest a slightly more positive trend. The *2003 Report* indicated that only 10% of responding jurisdictions had or were planning to implement aspects of the *Recommended Practices*, while a further 20% of jurisdictions had such changes under consideration.⁷⁰ These numbers have since increased to 39% and 13%, respectively, but are still difficult to reconcile with the more positive responses provided on the specific elements of *Recommended Practice VII* (see Table 25 above).⁷¹

⁶⁷ Two survey respondents (Albania and Ukraine) did not provide an answer to Questions 31 or 32.

⁶⁸ *2003 Report*, as note 4 above, at 131ff.

⁶⁹ One survey respondent (Ukraine) did not provide an answer to Questions 33 or 34.

⁷⁰ *2003 Report*, as note 4 above, at 133.

⁷¹ Similarly, 36% of jurisdictions have implemented or are in the midst of implementing elements of the *Guiding Principles* (as compared with 14% in 2003), while the level of jurisdictions merely considering such changes remains relatively constant at 14% (16% in 2003).

VII. CONCLUSIONS

The ICN's *Recommended Practices* are an extremely important initiative for mitigating the spiralling scope, complexity and costs of international merger review processes. It is hoped that this report will provoke discussion and foster implementation of these unanimously-adopted *Recommended Practices* by identifying areas where substantial progress has already been made and simultaneously highlighting those areas where further improvements could be targeted. The results of the 2004 survey, like its 2003 predecessor, indicate that significant opportunities for improvement exist in most jurisdictions.

While it is encouraging to see that some jurisdictions are implementing the *Recommended Practices*, a clear majority of jurisdictions have not yet made implementation a priority. Indeed, a recent ICN report⁷² suggested that some reform efforts, while positive, were motivated by a desire to conform to the European Merger Regulation and that authorities might not be particularly concerned with the *Recommended Practices*.⁷³ The report also pointed to a number of practical steps ICN members could take to facilitate implementation, such as starting with changes that can be implemented relatively easily through administrative actions at the agency level. Another commentator has proposed focussing on a few key *Recommended Practices*, such as Jurisdictional Nexus and Notification Thresholds, that would most significantly reduce unnecessarily burdensome filing requirements.⁷⁴ Even within Europe, where the European Competition Network is well positioned to promote burden-reducing convergence, there continue to be many opportunities to enhance compliance with the *Recommended Practices*.⁷⁵ It is clear that achieving implementation will be a significant challenge, notwithstanding the consensus and momentum arising from their development and adoption.⁷⁶ Bridging this gap must be seen as a critical issue for ICN members and other interested stakeholders.

⁷² See *Implementation of the ICN Recommended Practices for Merger Notification and Review Procedures* (April 2005), available online, at <www.internationalcompetitionnetwork.org/050505merger_NP_implementationrpt.pdf>.

⁷³ Specifically, in Croatia, Estonia, France, Latvia, Macedonia, the Netherlands, Norway and Portugal.

⁷⁴ See the remarks of Ronald A. Stern, Vice President and Senior Antitrust Counsel, General Electric Company, made during the Implementation Session at the ICN's 4th Annual Conference, Bonn, 8 June, 2005, available on-line, at <<http://www.internationalcompetitionnetwork.org/annualconference2005.html>>. See also Tony Reeves and Russell Hunter, *European Merger Thresholds vs. the ICN*, *Global Competition Review* (May 2005), 24.

⁷⁵ J. William Rowley QC and Neil Campbell, *The Role that the European Competition Network Could Play*, *Global Competition Review* (May 2005), 22.

⁷⁶ There is a German proverb that may aptly sum up this situation: "Kraht der Hahn auf dem Mist, ändert sich's Wetter oder's bleibt wie's ist." ("If the cock crows on the muck heap, the weather will change, or it will stay the way it is." In other words, it will take more than crowing about the *Recommended Practices* to get them implemented!).

APPENDIX A

OVERALL CONSISTENCY WITH *RECOMMENDED PRACTICES IV-VII*

Jurisdiction	IV	V	VI	VII	Total	
	Review Periods	Requirements for Initial Notification	Transparency	Review of Merger Control Provisions	#	%
MAXIMUM SCORE ⁷⁷	4-7	4-8	6-8	2	16-25	100
Germany	7/7	7/7	7.5/8	2/2	23.5/24	98
Mexico	5/5	8/8	6.5/7	2/2	21.5/22	98
France	6/7	8/8	6.5/7	2/2	22.5/24	94
Zambia	7/7	6.5/8	8/8	2/2	23.5/25	94
Australia	5/5	4/5	6.5/7	2/2	17.5/19	92
Lithuania	6/7	7/8	7/7	2/2	22/24	92
United States	7/7	7.5/8	6.5/8	2/2	23/25	92
European Union	6/7	7/7	6/7	2/2	21/23	91
Finland	6/7	8/8	6.5/7	1/2	21.5/24	90
Korea	6/7	7.5/8	7/8	2/2	22.5/25	90
Taiwan	5/7	8/8	7.5/8	2/2	22.5/25	90
United Kingdom	3/5	6/6	8/8	2/2	19/21	90
Czech Republic	6/7	6.5/8	6.5/7	2/2	21/24	88
Malta	5/7	7/7	6/7	2/2	20/23	87
Denmark	6/7	7/8	5.5/7	2/2	20.5/24	85
Norway	5/7	8/8	5.5/7	2/2	20.5/24	85
Netherlands	6/7	6.5/8	6.5/7	1/2	20/24	83
Switzerland	5/7	7/8	6/7	2/2	20/24	83
Ireland	4/7	7/8	7.5/8	2/2	20.5/25	82
New Zealand	4/5	6/7	7/8	1/2	18/22	82
South Africa	5/7	6.5/8	8/8	1/2	20.5/25	82
Estonia	4/7	6.5/8	7/7	2/2	19.5/24	81
Hungary	3/5	6.5/8	6/7	2/2	17.5/22	80
Canada	6/7	5/8	6/7	2/2	19/24	79
Romania	5/7	7/8	5/7	2/2	19/24	79
Slovak Republic	4/7	6.5/8	6.5/7	2/2	19/24	79
Greece	5/7	6.5/8	6/7	1/2	18.5/24	77
Japan	5/7	6.5/8	6/7	1/2	18.5/24	77
Portugal	6/7	4/8	6/8	2/2	18/25	72
Austria	4/7	7.5/8	5/8	1/2	17.5/25	70
Italy	5/5	4/8	5.5/7	1/2	15.5/22	70
Latvia	3/5	5/8	6/8	2/2	16/23	70
Slovenia	5/7	6/8	4/8	2/2	17/25	68
Belgium	4/7	4.5/8	5.5/7	2/2	16/24	67
Cyprus	4/7	4/8	6/7	2/2	16/24	67

⁷⁷ Although the maximum scores for the elements of *Recommended Practices IV-VI* were 7 / 8 / 8 respectively, responses of "n/a" were not counted against a jurisdiction's score—hence the existence of lower denominators for some jurisdictions. Such responses were almost always explained by the design of a particular jurisdiction's merger regime (e.g. suspensive vs. non-suspensive, single phase vs. two phase, no mandatory notification of proposed mergers, etc.).

Appendix A (Cont.)

Jurisdiction	IV	V	VI	VII	Total	
	Review Periods	Requirements for Initial Notification	Transparency	Review of Merger Control Provisions	#	%
MAXIMUM SCORE ⁷⁶	4–7	4–8	6–8	2	16–25	100
Bulgaria	4/7	4/8	6.5/8	2/2	16.5/25	66
Israel	4/7	6/8	5.5/8	1/2	16.5/25	66
Brazil	2/5	4.5/8	6/8	2/2	14.5/23	63
Spain	4/7	2.5/8	6.5/7	2/2	15/24	63
Poland	4/7	3/8	6.5/8	2/2	15.5/25	62
Ukraine	5/7	4/8	4.5/8	1/2	14.5/25	58
Macedonia	3/7	4/8	4.5/7	2/2	13.5/24	56
Turkey	5/7	2/8	6.5/7	0/2	13.5/24	56
Argentina	4/7	6/8	3/7	0/2	13/24	54
Russia	2/7	5.5/8	4/7	1/2	12.5/24	52
Iceland	4/5	2.5/7	4.5/8	0/2	11/22	50
Armenia	2/7	3/8	4.5/7	2/2	11.5/24	48
Croatia	2/7	3/8	5/8	1/2	11/25	44
India	3/7	3/8	5/8	0/2	11/25	44
Chile	0/6	1/4	6/7	1/2	8/19	42
Uzbekistan	3/7	3/8	3/7	1/2	10/24	42
Pakistan	0/5	4/7	2.5/8	2/2	8.5/22	39
Tunisia	1/5	4.5/8	3/7	0/2	8.5/22	39
Kazakhstan	2/7	3/8	3/7	1/2	9/24	38
Peru	1/7	2/8	5/7	1/2	9/24	38
Venezuela	1/4	2/8	3/7	2/2	8/21	38
Thailand	1/5	3/8	4/7	0/2	8/22	36
Azerbaijan	3/7	2/8	2.5/7	1/2	8.5/24	35
Kyrgyzstan	2/7	3/8	3/7	0/2	8/24	33
Kenya	2/7	2/7	2/8	1/2	7/24	29
Philippines	1/4	1/7	0/6	2/2	4/19	21
Albania ⁷⁸	3/5	No response	No response	1/2	4/23	17
Indonesia	0/4	n/a ⁷⁹	2/8	0/2	2/14	14
Average						66

⁷⁸ Albania did not provide responses to any of the component questions with respect to *Recommended Practices V* or *VI*, but scored 4/7 (57%) on *Recommended Practices IV* and *VII*.

⁷⁹ None of the elements of *Recommended Practice V* were applicable to Indonesia as the notification elements of the country's merger review regime were not yet developed.

APPENDIX B—SURVEY

MERGER STREAMLINING GROUP
2nd ANNUAL SURVEY OF IMPLEMENTATION
OF THE INTERNATIONAL COMPETITION NETWORK
*RECOMMENDED PRACTICES (IV–VII) FOR
MERGER NOTIFICATION PROCEDURES*

ICN Member Agencies Survey—Recommended Practices IV–VII

March, 2004

OVERVIEW/NOTES:

1. In 2003, the Merger Streamlining Group commissioned a survey of all ICN member agencies as well as a law firm in each ICN jurisdiction to assess the state of implementation of the initial three *Recommended Practices* that had been approved in principle at the ICN's inaugural meeting in Naples in September, 2002.⁸⁰ This survey focuses on the four additional *Recommended Practices* adopted at the ICN's second annual meeting in Merida in June, 2003.
2. Respondents that did not complete the survey regarding the three initial *Recommended Practices* (Jurisdictional Nexus, Notification Thresholds and Timing of Notification) last year, or whose jurisdiction has made changes to its merger regime, are requested to also complete the separate enclosed survey relating to the initial three *Recommended Practices*.
3. This survey is directed to the government agency(ies) with primary responsibility for review of merger transactions under domestic competition / antitrust laws (hereafter, the "Competition Authority").
4. Each ICN *Recommended Practice* is reproduced in bold italics at the beginning of the questions related to the particular practice (without the accompanying Working Group Comments, which can be found on the ICN's website⁸¹).
5. Instructions for Electronic Responses—Please type any narrative answers in the fields located throughout the document (or provide a separate sheet if necessary). Use your mouse to click any applicable checkboxes.
6. Please return responses by **26 March, 2004** to the attention of

J. William Rowley QC
Email—msg.survey@mcmillanbinch.com

⁸⁰ For a copy of the final report on the *Implementation of the International Competition Network's Recommended Practices for Merger Notification Procedures*, as well as additional information regarding the Merger Streamlining Group, see <<http://www.mcmillanbinch.com/PracticeArea.aspx?ParID=bdbdc2a3-d34f-4535-b884-17a54f1391e9>>.

⁸¹ See <<http://www.internationalcompetitionnetwork.org/recommendedpractices.html>>.

BCE Place, Suite 4400
 Bay Wellington Tower
 181 Bay Street
 Toronto, Ontario
 Canada M5J 2T3
 Telephone: 416.865.7008
 Facsimile: 416.865.5519

7. If you have any questions concerning the survey, please contact Casey W. Halladay at 416.865.7171 or casey.halladay@mcmillanbinch.com.

Responding Jurisdiction: _____
 Responding Agency: _____
 Contact Person: _____
 Title: _____
 Phone: _____
 Fax: _____
 Email: _____

SURVEY OF *RECOMMENDED PRACTICES IV–VII* AND GENERAL QUESTIONS

IV. MERGER REVIEWS SHOULD BE COMPLETED WITHIN A REASONABLE PERIOD OF TIME

- Merger review systems should 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.
- In non-suspensive jurisdictions, initial merger reviews should be completed within a specified period following notification and any extended reviews should be completed within a determinable time frame.
- Jurisdictions should adopt appropriately tailored procedures to accommodate particular circumstances associated with non-consensual transactions and sales in bankruptcy.

(a) ***Are there procedures available to allow for expedited review and clearance of notified transactions that do not raise material competitive concerns?***

- Yes formal two-phase, short form/long form, or other abbreviated / extended review system
- Yes clear agency policies/practices that provide for expedited review notwithstanding the absence of a formal regime (please elaborate in the Explanations)
- Not available or unclear

Explanations:

(b) ***The ICN Working Group Comment 2 to Recommended Practice #IV.C indicates that “initial waiting periods should expire in 6 weeks or less in suspensive jurisdictions”. How long is the initial statutory waiting period in your jurisdiction? (Please specify exact waiting period in the Explanations)***

- 6 weeks or less
- Longer than 6 weeks
- Not applicable non-suspensive regime (please answer Q3 instead)

Explanations:

(c) ***ICN Working Group Comment #2 to Recommended Practice #IV.D states that “initial reviews in non-suspensive jurisdictions should be completed in 6 weeks or less”. What is the normal initial review period in your jurisdiction? (Please identify any specifically prescribed duration and provide any other relevant information regarding timing of initial reviews in the Explanations)***

- Clear rule, policy or practice of 6 weeks or less
- Clear rule, policy or practice of longer than 6 weeks
- No clear rule, policy or practice
- Not applicable suspensive regime (please answer Q2 instead)

Explanations:

(d) ***ICN Working Group Comment #2 to Recommended Practice #IV.C indicates that, for more complex transactions in suspensive systems, “extended or ‘Phase II’ reviews should be completed or capable of completion within 6 months or less following submission of the initial notification(s)”. Which of the following best describes the requirement in your jurisdiction? (Please specify the exact waiting period(s) or formula(e) and provide any other relevant information in the Explanations)***

- Overall waiting period (or cumulative waiting periods in two phase regime) of 6 months or less

- Overall waiting period (or cumulative waiting periods in two phase regime) of more than 6 months
- Overall waiting period (or cumulative waiting periods in two phase regime) is determinable by the actions of the merging parties and is normally capable of completion within 6 months or less
- Overall waiting period (or cumulative waiting periods in two phase regime) is not determinable by the actions of the merging parties or is not normally capable of completion within 6 months or less
- Not applicable non-suspensive regime (please answer Q5 instead)

Explanations:

(e) ICN Working Group Comment #2 to Recommended Practice #IV.D states that, “extended or ‘Phase II’ reviews [in non-suspensive jurisdictions] should be completed or capable of completion within 6 months or less following the submission of the initial notification(s).” What is the normal overall review period for complex transactions in your jurisdiction? (Please specify any formal time limits or published guidelines/policies and provide any other relevant information in the Explanations)

- Formal overall time limit of 6 months or less
- Formal overall time of more than 6 months
- Non-binding guideline/policy which provides that reviews will be completed within a time period which is:
 - 6 months or less; or
 - longer than 6 months.
- No formal time limits or guidelines/policies. If so, are reviews normally completed within 6 months or less?
 - Usually
 - Sometimes
 - Rarely
- Not applicable non-suspensive regime (please answer Q4 instead)

Explanations:

- (f) *Please provide statistics on total reviews completed, segmented by duration and the number of cases in which a remedy was obtained, to the extent that data can readily be compiled, for the years 2000–2003. (Please include all reviews undertaken even if a filing was not required. Note any clarifications regarding the data in the Explanations—e.g. estimates vs. actuals, compilations based on fiscal vs. calendar years, etc. Also, if review thresholds changed over this period, please provide the date of the change and summarize the differences between the prior and current thresholds.)*

	2000	2001	2002	2003
Total Mergers Reviewed				
Review Duration:				
6 weeks or less				
6 weeks—6 months				
More than 6 months				

Total Cases in Which Remedies Were Obtained

Explanations:

- (g) *ICN Working Group Comment #5 to Recommended Practice #IV.C notes that, in respect of transactions that do not raise material competition concerns, “each jurisdiction’s procedures should enable the competition agency to grant early termination of applicable waiting periods”. Does the Competition Authority in your jurisdiction have the ability to do so?*

- Yes general discretion
 Only in certain circumstances (please elaborate in the Explanations)
 No

Explanations:

- (h) *ICN Working Group Comment #6 to Recommended Practice #IV.C suggests that review procedures:*

“should be sufficiently flexible to allow for a limited extension, with the consent of the notifying party(ies), of applicable waiting periods to avoid the initiation of Phase II proceedings and/or an adverse enforcement decision where such result might be avoided by a limited extension”.

Does your Competition Authority have the power to extend waiting periods or suspensive periods?

- Yes—with the consent of the merging parties
 Yes—without the merging parties’ consent
 No
 Not applicable (e.g. in non-suspensive jurisdictions)

Explanations:

(i) **ICN Working Group Comment #1 to Recommended Practice #IV.E states that “jurisdictions should adopt appropriately tailored procedures” to take into account the time sensitivity and other distinctive features of “non-consensual transactions” such as take-over bids. Which, if any, of the following procedures identified in the Working Group’s Comment are available for non-consensual transactions in your jurisdiction? (Please check all that apply)**

- “Shortened review periods (or, where applicable, waiting periods)”
- “Permitting the applicable initial review period to commence upon filing by the acquiring party only (where filings by both the acquiring and acquired parties are normally required)”
- “Discretionary waivers of information requirements relating to the target company in hostile situations”
- “Discretionary derogations permitting implementation of the bid during the review period, provided that the acquiring person does not exercise voting rights or does so only to maintain the full value of the shares”
- Other(s) (please describe in the Explanations below and / or provide a copy of the relevant provision)
- None

Explanations:

(j) **ICN Working Group Comment #2 to Recommended Practice #IV.E suggests that “jurisdictions should consider adopting procedures for accelerated review of transactions involving sales of companies in financial distress which are subject to court-supervised processes (e.g., bankruptcy or similar restructurings)”. Which, if any, of the following procedures are available for court-supervised sales of companies in financial distress? (Please check all that apply)**

- Shortened review and/or suspensive periods
- Discretionary derogations permitting implementation of a restructuring transaction prior to completion of the merger review process (i.e. subject to possible post-closing remedial orders)
- Substantive standards particular to “failing firm” cases
- Reduced information requirements from the financially distressed company
- Reduced information requirements from the acquiring party
- Other(s) (please describe in the Explanations below)

Explanations:

V. REQUIREMENTS FOR INITIAL NOTIFICATION

- A. Initial notification requirements should be limited to the information needed to verify that the transaction exceeds jurisdictional thresholds, to determine whether the transaction raises competitive issues meriting further investigation, and to take steps necessary to terminate the review of transactions that do not merit further investigation.
- B. Initial notification requirements and / or practices should be implemented so as to avoid imposing unnecessary burdens on parties to transactions that do not present material competitive concerns.
- C. Competition agencies should provide for the possibility of pre-notification guidance to parties on the notifiability of the transaction and the content of the intended notification.
- D. Jurisdictions should limit translation requirements and formal authentication burdens.

(k) ICN Working Group Comment #1 to Recommended Practice #V.A states that:

“Because most transactions do not raise material competitive concerns, the initial notification should elicit the minimum amount of information necessary to initiate the merger review process. It should be used to collect information to verify that the transaction is properly before the competition agency in light of applicable jurisdictional requirements and notification thresholds and to determine whether the transaction raises competitive issues meriting further investigation. The initial notification also may be used to collect information that the competition agency needs for a clearance decision or to prepare other documentation required to terminate the review process.”

Are there any components of the initial notification form in your jurisdiction which are not necessary to either: (i) determine if the Competition Authority has jurisdiction to review the transaction; (ii) identify whether there are competitive issues that merit further investigation; or (iii) prepare a clearance decision?

- Yes
 No

Explanations:

(l) In recognition of the fact that most mergers do not raise significant competition concerns, ICN Working Group Comment #1 to Recommended Practice #V.B indicates that:

“To enable the competition agency to accomplish its mission without imposing unnecessary burdens on merging parties, jurisdictions should adopt mechanisms that allow for flexibility in the context of the initial notification and / or with respect to additional information requirements during the initial phase of the review”.

Which, if any, of the flexibility mechanisms identified in ICN Working Group Comment #2 are available in your jurisdiction? (Please check all that apply)

- “Advance ruling certificates” or similar alternatives which allow clearances for straightforward transactions to be obtained without a full formal filing
- “Short form notifications” which reduce the regular filing requirements for straightforward transactions
- Other “alternative notification formats” which reduce the filing requirements for straightforward transactions (please elaborate in the Explanations)
- “Discretionary waivers” which provide the Competition Authority with “discretion to waive responses to information specifications that are not sufficiently relevant to the agency’s disposition of the transaction”
- “Discretionary supplementation” (*i.e.* “abbreviated initial notification requirements coupled with procedures providing competition agency staff discretion to seek additional information during the initial review period”)
- Other(s) (please elaborate in the Explanations)
- None

Explanations:

(m) ICN Working Group Comment #3 to Recommended Practice #V.B states that:

“[...] competition agencies should be flexible as to formal requirements where the merging parties are able to demonstrate the absence of material competitive concerns by reference to objectively quantifiable information maintained in the ordinary course of business, as opposed to the detailed market information sometimes required upon notification.”

Is the Competition Authority in your jurisdiction generally prepared to accept ordinary course of business information that demonstrates the absence of competitive concerns as a substitute for elements of the formal notification that may be difficult or burdensome to compile?

- Yes
- No

Explanations:

(n) ICN Working Group Comment #5 to Recommended Practice #V.B indicates that, while “competition agencies are entitled to expect notifications to contain specific original material relating to their jurisdiction”, they “should consider accepting substantially responsive information in a different format prepared by parties in the ordinary course of business or for submission to another jurisdiction”. To what extent is the Competition Authority in your jurisdiction prepared to do so?

- Generally yes

- Only in limited specific situations (such as fiscal vs. calendar year data)
 Generally no

Explanations:

(o) ICN Working Group Comment #1 to Recommended Practice #V.C notes the advantages to both competition agencies and merging parties of early clarification and resolution of jurisdictional, legal and factual issues related to notifications. Will your Competition Authority provide merging parties with confidential pre-notification guidance regarding issues relating to whether or not the transaction is notifiable?

- Yes
 Sometimes (please elaborate under Explanations)
 No

Explanations:

(p) Will your Competition Authority provide merging parties with confidential pre-notification guidance regarding issues related to the information required for the intended notification?

- Yes
 Sometimes (please elaborate under Explanations)
 No

Explanations:

(q) ICN Working Group Comment #1 to Recommended Practice #V.D states that:

“While it is appropriate for jurisdictions to require notifications to be in an official language (although they may choose to accept them in additional languages), they should not require extensive translation of supporting documents, such as transactional materials and annual reports, submitted as part of the notification. Competition agencies should accept translated summaries, excerpts, and other means of reducing translation burdens, without prejudice to their ability to require full translations if the transaction appears to raise competitive concerns.”

To what extent are the supporting materials for a notification required to be translated into the local official language?

- | | | | | |
|---|---|---|---|---|
| (i) Transaction documents: | <input type="checkbox"/> Full translation | <input type="checkbox"/> Summary or excerpt | <input type="checkbox"/> Translation not required | <input type="checkbox"/> Not applicable |
| (ii) Annual reports & securities filings: | <input type="checkbox"/> Full translation | <input type="checkbox"/> Summary or excerpt | <input type="checkbox"/> Translation not required | <input type="checkbox"/> Not applicable |
| (iii) Other supporting materials: | <input type="checkbox"/> Full translation | <input type="checkbox"/> Summary or excerpt | <input type="checkbox"/> Translation not required | <input type="checkbox"/> Not applicable |

Explanations:

- (r) **ICN Working Group Comment #2 to Recommended Practice #V.D indicates that “reasonable assurance of the validity of notifications [. . .] can and ordinarily should be achieved without requiring the parties’ senior officials to provide notarization or consularization personally”. Does your jurisdiction allow notifications to be submitted without personal formal authentication by senior officers (e.g. by duly authorized counsel or other individuals, and / or by ordinary signatures)?**

- Yes
- No

Explanations:

VI. TRANSPARENCY

- A. Merger control laws should be applied with a high level of transparency, subject to the appropriate protection of confidential information.
- B. Merger control regimes should be transparent with respect to, at a minimum, the jurisdictional scope of the merger control law, the competition agency’s decision-making procedures, and the principles and criteria the competition agency uses to apply the substantive review standard.
- C. Competition agencies should promote transparency by making information about the current state of merger control law, policy, and practice readily available to the public.

- (s) **ICN Working Group Comment #2 to Recommended Practice #VI.A explains that “transparent application of merger control laws entails making all relevant laws, regulations, and other materials relevant to merger control law, policy, and practice readily available to the public in a timely manner.” To what extent has this been achieved in your jurisdiction? (Please elaborate on any “Partially” responses in the Explanations)**

- | | | | | |
|-------------------------------|---|--------------------------------|------------------------------------|--|
| (i) Laws: | | <input type="checkbox"/> Fully | <input type="checkbox"/> Partially | <input type="checkbox"/> Unavailable or not timely |
| (ii) Regulations: | <input type="checkbox"/> Not applicable | <input type="checkbox"/> Fully | <input type="checkbox"/> Partially | <input type="checkbox"/> Unavailable or not timely |
| (iii) Policies or Guidelines: | <input type="checkbox"/> Not applicable | <input type="checkbox"/> Fully | <input type="checkbox"/> Partially | <input type="checkbox"/> Unavailable or not timely |
| (iv) Case decisions: | | <input type="checkbox"/> Fully | <input type="checkbox"/> Partially | <input type="checkbox"/> Unavailable or not timely |
| (v) Other materials: | <input type="checkbox"/> Not applicable | <input type="checkbox"/> Fully | <input type="checkbox"/> Partially | <input type="checkbox"/> Unavailable or not timely |

Explanations:

(t) More specifically, ICN Working Group Comment #1 to Recommended Practice #VI.B states with respect to “jurisdictional scope” that:

“Publicly available materials should permit ready determination of (i) the types of transactions to which the merger control law applies; (ii) any exemptions or exclusions from the merger control law; and (iii) the precise tests or thresholds that govern whether the parties must notify the transaction or whether the competition agency has jurisdiction over a transaction”.

Are each of these items readily determinable from publicly available materials in your jurisdiction?

- | | | |
|---|------------------------------|-----------------------------|
| (i) Types of Transactions: | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (ii) Exemptions/Exclusions: | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (iii) Notification and Jurisdiction Tests/Thresholds: | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

Explanations:

(u) Similarly, with respect to merger review procedures, ICN Working Group Comment #2 to Recommended Practice #VI.B states that:

“Publicly available materials should permit ready determination of: (i) the identity and contact details of the competition agencies; (ii) any filing deadlines; (iii) notification procedures, including the information to be provided in the initial filing; (iv) any filing fees; (v) review periods; (vi) suspensive periods and any limits on implementing the transaction prior to clearance; (vii) investigative procedures; (viii) any deadlines that the merging parties, third parties, or the competition agencies must obey during the review period; (ix) procedures and deadlines for appealing adverse decisions or for challenging a merger; (x) procedural rights of merging and third parties; (xi) enforcement procedures pertaining to violations of the merger control laws (*e.g.*, failure to notify) or merger review decisions (*e.g.*, breach of conditions or obligations); and (xii) measures for protecting confidential information.”

Are each of these items readily determinable from publicly available information in your jurisdiction?

- | | | |
|---|---|--|
| (i) Competition Authority contact information: | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (ii) Filing deadlines: | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (iii) Filing procedures and information requirements: | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (iv) Filing fees: | <input type="checkbox"/> Not Applicable | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| (v) Review periods: | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (vi) Suspensive periods: | <input type="checkbox"/> Not Applicable | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| (vii) Investigative procedures: | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (viii) Deadlines for merging or third parties: | <input type="checkbox"/> Not Applicable | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| (ix) Procedures and deadlines for challenges/appeals: | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (x) Procedural rights of merging and third parties: | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (xi) Enforcement procedures for violations of merger law: | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (xii) Protections for confidential information: | <input type="checkbox"/> None Available | <input type="checkbox"/> Yes <input type="checkbox"/> No |

Explanations:

(v) *ICN Working Group Comment #3 to Recommended Practice #VI.B indicates that publicly available “supplemental materials should provide insight into the substantive principles and criteria (i.e., the analytical framework) that the competition agency uses in applying the law.” To what extent has this type of information been made publicly available through guidelines, policies, case law or other mechanisms in your jurisdiction?*

- Extensively
- Partially
- Minimally or none available

Explanations:

(w) *ICN Working Group Comment #3 to Recommended Practice #VI.B also notes that “if a jurisdiction’s merger test includes consideration of non-competition factors, the way in which the competition and non-competition considerations interact should also be made transparent.” Has this been done in your jurisdiction? (Note: please briefly summarize any non-competition factors under Explanations)*

- Yes
- Partially
- No
- Not applicable—no non-competition factors

Explanations:

(x) *ICN Working Group Comment #2 to Recommended Practice #VI.C states that “a reasoned explanation should be provided for decisions to challenge, block or condition the clearance of a transaction, and for clearance decisions that set a precedent or represent a shift in enforcement policy or practice.” Please provide data or estimates regarding the frequency of published decisions by the Competition Authority relative to the overall number of merger reviews, segmented by cases involving remedies and those involving unconditional clearances. (Note: if data for a period other than the 2003 calendar year is more readily available, please describe the alternative time period used under Explanations)*

	# of Published Decisions in 2003	# of Merger Reviews in 2003
Mergers Challenged, Blocked or Conditioned		
Unconditional Clearances		
TOTAL		

Explanations:

(y) Does the Competition Authority have a policy of regularly publishing reasoned explanations for clearances which “set a precedent or represent a shift in enforcement policy or practice?”

- Yes
- Considered on a case-by-case basis
- No

Explanations:

(z) ICN Working Group Comment #3 to Recommended Practice #VI.C indicates that “after acquiring sufficient experience, competition agencies may wish to consider publishing guidelines on merger analysis, procedure, and/or jurisdiction to assist interested parties in handling future merger cases.” To what extent has the Competition Authority issued such guidelines? (Please check all that apply)

- Comprehensive guidelines issued
- Guidelines issued on specific topics
- Guidelines planned or in development
- No guidelines issued or planned/in development

Explanations:

(aa) ICN Working Group Comment #4 to Recommended Practice #VI.C suggests that relevant materials “should be made available on a publicly accessible, dedicated website” which is “updated regularly.” To what extent has this been done in your jurisdiction? (Note: please provide the website address under Explanations)

- Website which is kept complete and up-to-date
- Website which is incomplete or not kept updated
- Website planned or in development
- No website currently in place or planned/in development

Explanations:

(bb) ICN Working Group Comment #5 to Recommended Practice #VI.C encourages competition agencies “to the extent permitted by available resources, to consider making available an English translation of basic merger laws, regulations, guidelines and interpretive notices.” Are such translated materials available from the Competition Authority on its website or otherwise?

- Yes all the basic materials are available in English
- Partially only selected materials are available in English

No

Explanations:

VII. REVIEW OF MERGER CONTROL PROVISIONS

- A. Jurisdictions should periodically review their merger control provisions to seek continual improvement in the merger review process.
- B. Jurisdictions should consider reforms to their merger control laws and procedures that promote convergence towards recognized best practices.

(cc) ICN Working Group Comment #1 to Recommended Practice #VII.A recommends that “merger control laws and procedures should be reviewed periodically in an effort to seek continual improvement in the merger review process.”

- (i) When was the last time your jurisdiction’s merger legislation was comprehensively reviewed? Year:
- (ii) When was the last time your jurisdiction’s merger policies/ procedures were comprehensively reviewed? Year:
- (iii) Does your jurisdiction have plans to review its merger regime in the future? (If yes, please provide details regarding the anticipated timing and scope of the review in the Explanations) Yes No

Explanations:

(dd) ICN Working Group Comment #1 to Recommended Practice #VII.B urges jurisdictions “to enact reforms of their merger control laws and procedures that promote convergence towards recognized best practices.” Does your Competition Authority intend to pursue such reforms?

- Yes
- Uncertain/undecided
- No

Explanations:

(ee) Since the ICN Naples meeting in 2002, has the Competition Authority made any public statements within your jurisdiction regarding the ICN's general Guiding Principles for Merger Notification and Review? (The eight guiding principles are Sovereignty; Transparency; Non-Discrimination; Procedural Fairness; Efficient, Timely and Effective Review; Co-ordination; Convergence; and Protection of Confidential Information.⁸²) Please elaborate on the statements made and the date in the Explanations (and/or provide a copy of any relevant published material)

- Support/endorsement/intention to implement
- Neutral/informational
- Opposition/concern
- None

Explanations:

(ff) Since the ICN Naples meeting in 2002, has the Competition Authority made any public statements within your jurisdiction regarding any of the ICN's Recommended Practices for Merger Notification Procedures? Please elaborate on the statements made and the date in the Explanations (and/or provide a copy of any relevant published material)

- Support/endorsement/intention to implement
- Neutral/informational
- Opposition/concern
- None

Explanations:

(gg) Have there been any changes to legislation/regulations/guidelines which implement elements of the Guiding Principles for Merger Notification and Review? Please elaborate on the timing and nature of the changes which have been made, are in progress, or are under consideration in the Explanations. Please also provide a website link or copy of any such regulations, laws, guidelines or other published materials for reference

- Yes
- In progress
- Under consideration
- No

Explanations:

⁸² See <www.international.competitionnetwork.org/wg1_practices_principles.html>.

List of Relevant Materials Attached (or Website Links):

(hh) Have there been any changes to legislation/regulations/guidelines which implement elements of any of the Recommended Practices for Merger Notification Procedures? Please elaborate on the timing and nature of the changes which have been made, are in progress, or are under consideration in the Explanations. Please also provide a website link or copy of any such regulations, laws, guidelines or other published materials for reference

- Yes
- In progress
- Under consideration
- No

Explanations:

List of Relevant Materials Attached (or Website Links):

Thank you for completing this survey. We will provide you with a copy of the report containing the aggregated responses. Please indicate the contact person to whom it should be sent:

Name: _____

Email Address: _____

Mailing Address: _____

APPENDIX C—LIST OF SURVEY RESPONDENTS

JURISDICTION	AGENCY RESPONDENTS	LAW FIRM RESPONDENTS
Albania	No response	Wolf Theiss
Andean Community ⁸³	No response	N/A
Argentina	No response	M. & M. Bomchil
Armenia	State Competition Commission	No response
Australia	Australian Competition and Consumer Commission	Minter Ellison
Austria	Federal Competition Authority	Freshfields Bruckhaus Deringer
Azerbaijan	No response	Baker & McKenzie
Barbados	No response	No response
Belgium	Competition Service	Van Bael & Bellis
Brazil	Brazilian Competition Policy System	Stroeter Royster & Ohno Advogados
Bulgaria	Commission on Protection of Competition	Borislav Boyanov & Co.
Canada	Competition Bureau	McMillan Binch LLP
Chile	No response	Claro y Cia.
Colombia	No response	No response
Costa Rica	No response	No response
Croatia	No response	Law Office Babic
Cyprus	Commission for the Protection of Competition	No response
Czech Republic	Office for the Protection of Economic Competition	No response
Denmark	Danish Competition Authority	Gorrissen Federspiel Kierkegaard
EFTA Surveillance Authority ⁸⁴	No response	N/A
Estonia	Estonian Competition Board	Hedman Osborne Clark Alliance Lepik & Luhaaar
European Union	European Commission	Allen & Overy
Finland	Finnish Competition Authority	Roschier Holmberg, Attorneys Ltd.
France	DGCCRF—Ministry of Finance	Gide Loyrette Nouel
Germany	Federal Antitrust Office	Freshfields Bruckhaus Deringer
Greece	Greek Competition Commission	M. & P. Bernitsas Law Offices
Hungary	Office of Economic Competition	Baker & McKenzie
Iceland	No response	LOGOS Legal Services
India	No response	Dr S. Chakravarthy
Indonesia	No response	Baker & McKenzie
Ireland	Competition Authority	McCann FitzGerald
Israel	No response	Caspi & Co.
Italy	Autorità garante della concorrenza e del Mercato	Studio Legale Ughi e Nunziante
Jamaica	Fair Trade Commission	No response

⁸³ The Andean Community is made up of member states Bolivia, Colombia, Ecuador, Peru and Venezuela. For private firm responses, see the entries for member states Colombia, Peru and Venezuela.

⁸⁴ The EFTA Surveillance Authority is made up of member states Iceland, Liechtenstein and Norway. For private firm responses, see the entries for member states Iceland and Norway.

Japan	Japan Fair Trade Commission	No response
Kazakhstan	No response	Baker & McKenzie
Kenya	No response	Kaplan & Stratton
Korea	No response	Yoon & Yang
Kyrgyzstan	No response	Baker & McKenzie
Latvia	Competition Council	No response
Lithuania	Competition Council	Lideika, Petrauskas, Valiunas
Macedonia	No response	Polenak Law Office
Malta	Commission for Fair Trading Consumer and Competition Division Ministry of Economic Affairs	No response
Mexico	Federal Competition Commission	No response
Morocco	No response	No response
Netherlands	Netherlands Competition Authority	Allen & Overy
New Zealand	Commerce Commission	Buddle Findlay
Norway	Norwegian Competition Authority	Advokatfirmaet Hjort DA
Pakistan	Monopoly Control Authority	Orr Dignam & Co
Panama	No response	No response
Peru	No response	Munis, Forsyth, Ramirez, Perez- Taiman & Luna Victoria
Philippines	No response	Baker & McKenzie
Poland	Office for Competition & Consumer Protection	Prof. Dr. Tadeusz Skoczny
Portugal	Competition Authority	Marques Mendes & Associados
Romania	Competition Council of Romania	Musat & Asociatti
Russia	No response	Baker & McKenzie
Slovak Republic	Antimonopoly Office of the Slovak Republic	No response
Slovenia	No response	Jadek & Pensa
South Africa	Competition Commission	Webber Wentzel Bowens
Spain	No response	B. Cremades y Asociados
Sri Lanka	No response	No response
Sweden	No response	No response
Switzerland	Competition Commission	Pestalozzi Lachenal Patry
Taiwan	Fair Trade Commission	Undisclosed
Thailand	Department of Internal Trade of Thailand	Allen & Overy
Tunisia	No response	Gide Loyrette Nouel
Turkey	No response	Cosar Ortak Avukat Burosu
Ukraine	Antimonopoly Committee of the Ukraine	Baker & McKenzie
United Kingdom	Office of Fair Trading Competition Commission	Linklaters
United States	Federal Trade Commission and Department of Justice	Hogan & Hartson
Uzbekistan	No response	Baker & McKenzie
Venezuela	Superintendencia para la Promoción y Protección de la Libre Competencia	No response
Yugoslavia	Antimonopoly Commission	No response
Zambia	Zambia Competition Commission	No response

SCHEDULE 1
CONSISTENCY WITH *RECOMMENDED PRACTICE IV*: REVIEW PERIODS

Jurisdiction ⁸⁵	Element (Question #—see Appendix B for Survey Questions)							%
	Q1	Q2/Q3	Q4/Q5	Q7 ⁸⁶	Q8	Q9	Q10	
Albania	1	0	1	n/a	n/a	0	1	60
Argentina	1	0	1	1	0	1	0	57
Armenia	1	0	1	0	0	0	0	29
Australia	1	1	1	n/a	n/a	1	1	100
Austria	1	1	1	1	0	0	0	57
Azerbaijan	0	1	1	1	0	0	0	43
Belgium	1	0	1	0	0	1	1	57
Brazil	1	0	1	n/a	n/a	0	0	40
Bulgaria	1	1	1	1	0	0	0	57
Canada	1	1	1	1	0	1	1	86
Chile	0	0	0	n/a	n/a	0	0	0
Croatia	1	1	0	0	0	0	0	29
Cyprus	1	1	1	1	0	0	0	57
Czech Republic	1	1	1	1	0	1	1	86
Denmark	1	1	1	1	0	1	1	86
Estonia	1	1	1	1	0	0	0	57
European Union	1	1	1	1	0	1	1	86
Finland	1	1	1	1	0	1	1	86
France	1	1	1	1	0	1	1	86
Germany	1	1	1	1	1	1	1	100
Greece	1	0	0	1	1	1	1	71
Hungary	1	1	1	n/a	n/a	0	0	60
Iceland	0	1	1	n/a	n/a	1	1	80
India	0	0	No response ⁸⁷	1	1	0	1	43
Indonesia	0	0	n/a	n/a	n/a	0	0	0
Ireland	1	1	1	1	0	0	0	57
Israel	0	1	1	1	0	0	1	57
Italy	1	1	1	n/a	n/a	1	1	100
Japan	1	1	1	1	0	0	1	71
Kazakhstan	0	1	1	0	0	0	0	33
Kenya	0	0	1	1	0	0	0	29
Korea	1	1	1	1	0	1	1	86
Kyrgyzstan	0	1	1	0	0	0	0	29
Latvia	1	1	1	n/a	n/a	0	0	60
Lithuania	1	1	1	1	0	1	1	86

⁸⁵ For a list of the responding agencies and/or law firms, please see Appendix C.

⁸⁶ Questions 7 and 8 were not applicable to non-suspensive jurisdictions. Responses of "n/a" were not counted against a jurisdiction's score, as such responses were almost always due to aspects of a jurisdiction's merger regime (e.g. suspensive vs. non-suspensive, single phase vs. two phase, no mandatory notification of proposed mergers, etc.) that do not reflect its consistency with the *Recommended Practices*.

⁸⁷ Where a question was not answered, a score of "0" was awarded when calculating that jurisdiction's level of compliance, although the question was disregarded when calculating the total percentage of jurisdictions consistent with that question.

Macedonia	0	1	1	0	0	No response	1	43
Malta	1	1	1	1	0	0	1	71
Mexico	1	1	1	n/a	n/a	1	1	100
Netherlands	1	1	1	1	0	1	1	86
New Zealand	0	1	1	n/a	n/a	1	1	80
Norway	1	1	1	1	0	0	1	71
Pakistan	0	0	0	n/a	n/a	0	0	0
Peru	0	0	1	0	0	0	0	14
Philippines	0	0	n/a	n/a	n/a	0	1	25
Poland	0	0	1	1	0	1	1	57
Portugal	1	1	1	1	0	1	1	86
Romania	1	1	1	1	0	0	1	71
Russia	0	1	1	0	0	0	0	29
Slovak Republic	1	0	1	1	0	0	1	57
Slovenia	1	1	1	1	0	1	0	71
South Africa	1	1	1	1	0	1	0	71
Spain	1	1	1	0	0	1	0	57
Switzerland	0	1	1	1	0	1	1	71
Taiwan	0	1	1	1	0	1	1	71
Thailand	0	0	1	n/a	n/a	0	0	20
Tunisia	0	0	1	n/a	n/a	0	0	20
Turkey	1	1	1	1	0	0	1	71
Ukraine	1	1	1	1	0	1	0	71
United Kingdom	1	1	0	n/a	n/a	1	No response	60
United States	1	1	1	1	1	1	1	100
Uzbekistan	0	1	1	1	0	0	0	43
Venezuela	0	n/a	1	n/a	n/a	0	0	25
Zambia	1	1	1	1	1	1	1	100
Total Consistent Jurisdictions	41	45	55	37	5	29	34	
% of Consistent Jurisdictions	65	73	92	80	12	47	55	

SCHEDULE 2
CONSISTENCY WITH *RECOMMENDED PRACTICE V*:
REQUIREMENTS FOR INITIAL NOTIFICATION

Jurisdiction	Element (Question #—see Appendix B for Survey Questions)								%	
	Q11	Q12	Q13	Q14	Q15	Q16	Q17	Q18		
Albania				No response						0
Argentina	1	1	1	1	0.5	0	0.5	1	75	
Armenia	0	1	0	1	0	0	1	0	38	
Australia	n/a	n/a	1	1	1	1	0	n/a	80	
Austria	1	1	1	1	1	1	0.5	1	94	
Azerbaijan	0	0	1	0	0	0	0	1	25	
Belgium	1	1	0	1	0.5	0.5	0.5	0	56	
Brazil	1	0	0	0	1	1	0.5	1	56	
Bulgaria	1	1	1	1	0	0	0	0	50	
Canada	1	1	0	1	1	1	0	0	63	
Chile	n/a	n/a	n/a	n/a	0	0	0	1	25	
Croatia	0	0	0	1	0.5	0	0.5	1	38	
Cyprus	1	0	0	1	0.5	0.5	1	0	50	
Czech Republic	0	1	1	0.5 ⁸⁸	1	1	1	1	81	
Denmark	1	1	1	1	1	1	1	0	88	
Estonia	1	1	0	1	1	1	0.5	1	81	
European Union	1	1	1	1	1	1	n/a	1	100	
Finland	1	1	1	1	1	1	1	1	100	
France	1	1	1	1	1	1	1	1	100	
Germany	1	1	1	1	1	1	n/a	1	100	
Greece	1	1	1	0.5	1	1	0	1	81	
Hungary	1	0	1	1	1	1	0.5	1	81	
Iceland	0	1	0	0	0.5	No response	n/a	1	36	
India	No response	0	1	0	1	1	No response	No response	38	
Indonesia	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	
Ireland	1	1	1	1	1	1	0	1	88	
Israel	1	1	1	0	1	1	1	0	75	
Italy	1	1	0	0	0	0	1	1	50	
Japan	1	1	1	0.5	1	1	1	0	81	
Kazakhstan	1	0	0	0	0.5	0.5	0	1	38	
Kenya	1	0	0	0	0	0	n/a	1	29	
Korea	1	1	1	1	1	1	0.5	1	94	
Kyrgyzstan	1	0	0	0	0.5	0.5	0	1	38	
Latvia	0	1	1	0.5	1	1	0.5	0	63	
Lithuania	0	1	1	1	1	1	1	1	88	
Macedonia	1	0	1	0	0.5	0.5	0	1	50	
Malta	1	1	1	1	1	1	n/a	1	100	
Mexico	1	1	1	1	1	1	1	1	100	

⁸⁸ The *Recommended Practices* recognise that partial compliance with the element addressed by Question 14 (acceptability of substantially responsive information in other formats) may be sufficient.

SCHEDULE 3
CONSISTENCY WITH *RECOMMENDED PRACTICE VI*: TRANSPARENCY

Jurisdiction	Element (Question #—see Appendix B for Survey Questions)								%	
	Q19	Q20	Q21	Q22	Q23	Q25	Q27	Q28		
Albania									No response	0
Argentina	0.5	1	0.5	0.5	n/a	0	0.5	0		43
Armenia	0.5	1	1	0.5	n/a	0	0.5	1		64
Australia	0.5	1	1	1	n/a	1	1	1		93
Austria	0.5	0.5	0.5	0.5	1	0	1	1		63
Azerbaijan	0.5	1	0.5	0	n/a	0	0.5	0		36
Belgium	1	1	1	1	n/a	0	1	0.5		79
Brazil	1	1	1	1	0.5	0	1	0.5		75
Bulgaria	0.5	1	1	0.5	1	0.5	1	1		81
Canada	0.5	1	1	1	n/a	0.5	1	1		86
Chile	1	1	1	0.5	n/a	1	1	0.5		86
Croatia	0.5	1	1	0.5	0	0.5	0.5	1		63
Cyprus	1	1	1	0.5	n/a	0.5	1	1		86
Czech Republic	1	1	1	0.5	n/a	1	1	1		93
Denmark	0.5	1	1	0.5	n/a	1	1	0.5		79
Estonia	1	1	1	1	n/a	1	1	1		100
European Union	1	1	1	1	n/a	0	1	1		86
Finland	1	1	1	1	n/a	1	1	0.5		93
France	1	1	1	1	n/a	1	1	0.5		93
Germany	0.5	1	1	1	1	1	1	1		94
Greece	1	1	1	1	n/a	1	0.5	0.5		86
Hungary	1	1	1	1	n/a	0	1	1		86
Iceland	1	1	1	0	0	0	1	0.5		56
India	0.5	1	0.5	No response	1	1	No response	1		63
Indonesia	0.5	0	0.5	0	0	0	0.5	0.5		25
Ireland	0.5	1	1	1	1	1	1	1		94
Israel	1	0.5	0.5	0.5	1	1	1	0		69
Italy	1	1	1	0.5	n/a	0	1	1		79
Japan	0.5	1	1	1	n/a	1	1	0.5		86
Kazakhstan	0.5	1	0.5	0	n/a	0	1	0		43
Kenya	0.5	0	0.5	0	0	0	0.5	0.5		25
Korea	1	1	1	1	1	0.5	1	0.5		88
Kyrgyzstan	0.5	1	1	0	n/a	0	0.5	0		43
Latvia	0.5	1	1	1	0	0.5	1	1		75
Lithuania	1	1	1	1	n/a	1	1	1		100
Macedonia	1	1	1	0	n/a	0	1	0.5		64
Malta	1	1	1	1	n/a	0	1	1		86
Mexico	0.5	1	1	1	n/a	1	1	1		93
Netherlands	1	1	1	1	n/a	1	1	0.5		93
New Zealand	0.5	1	1	1	0.5	1	1	1		88
Norway	1	1	1	1	n/a	0	1	0.5		79
Pakistan	0.5	0.5	0.5	0	0	0	0	1		31
Peru	0.5	1	0.5	0.5	n/a	1	1	0.5		71
Philippines	n/a	0	0	0	n/a	0	0	0		0

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Poland	0.5	1	1	0.5	1	0.5	1	1	81
Portugal	0.5	1	1	0.5	1	0	1	1	75
Romania	0.5	1	1	0.5	n/a	0	1	1	71
Russia	0.5	1	1	0.5	n/a	0	0.5	0.5	57
Slovak Republic	1	1	1	0.5	n/a	1	1	1	93
Slovenia	0.5	1	1	0	0	0	0.5	1	50
South Africa	1	1	1	1	1	1	1	1	100
Spain	1	1	0.5	1	n/a	1	1	1	93
Switzerland	1	0.5	1	1	n/a	1	1	0.5	86
Taiwan	1	1	1	1	1	0.5	1	1	94
Thailand	n/a	0.5	0.5	0.5	1	1	0	0.5	57
Tunisia	0.5	1	0.5	0	n/a	1	0	0	43
Turkey	1	1	1	0.5	n/a	1	1	1	93
Ukraine	0.5	1	1	0.5	0	0.5	1	0	56
United Kingdom	1	1	1	1	1	1	1	1	100
United States	1	1	1	1	n/a	0.5	1	1	81
Uzbekistan	0.5	1	0.5	0	n/a	0	1	0	43
Venezuela	0.5	0.5	0.5	0.5	n/a	0	1	0	43
Zambia	1	1	1	1	1	1	1	1	100
Total Fully Consistent	26	47	39	24	13	23	43	31	
% of Fully Consistent	47	86	71	45	65	41	80	55	
Total Partially Consistent	29	4	15	19	1	10	9	14	
% of Partially Consistent	53	7	27	35	5	18	16	25	

SCHEDULE 4
CONSISTENCY WITH *RECOMMENDED PRACTICE VII*: REVIEW OF MERGER CONTROL PROVISIONS
AS WELL AS STATEMENTS AND IMPLEMENTATION ACTIVITIES IN SUPPORT OF THE
GUIDING PRINCIPLES AND RECOMMENDED PRACTICES

Jurisdiction	<i>Recommended Practice VII</i>			<i>Supportive Statements</i>		<i>Implementation</i>	
	Element (Question #—see Appendix B for Survey Questions)			<i>Guiding Principles</i>	<i>Recommended Practices</i>	<i>Guiding Principles</i>	<i>Recommended Practices</i>
	Q29 ⁸⁸	Q30	%	Q31	Q32	Q33	Q34
Albania	1	0	50	No Response	No Response	Yes	Yes
Argentina	0	0	0	None	None	No	No
Armenia	1	1	100	None	None	Considering	Considering
Australia	1	1	100	Support	Support	Considering	Considering
Austria	1	0	50	None	None	No	No
Azerbaijan	1	0	50	None	None	No	No
Belgium	1	1	100	None	None	No	No
Brazil	1	1	100	None	None	Considering	Considering
Bulgaria	1	1	100	None	None	No	No
Canada	1	1	100	Support	Support	Yes	No
Chile	1	0	50	None	None	No	No
Croatia	1	0	50	None	None	No	In Progress
Cyprus	1	1	100	Neutral	Neutral	Considering	Considering
Czech Republic	1	1	100	Support	Support	Yes	Yes
Denmark	1	1	100	None	None	No	No
Estonia	1	1	100	Neutral	Neutral	In Progress	In Progress
European Union	1	1	100	Support	Support	Yes	Yes
Finland	1	0	50	None	None	In Progress	In Progress
France	1	1	100	None	None	In Progress	In Progress

⁸⁹ Where a jurisdiction indicated that its merger regime had undergone a review since the last ICN Naples meeting (*i.e.*—2002 or later), they were given a point for Question 29 whether or not any additional review is currently planned.

Germany	1	1	100	Support	Support	No	No
Greece	1	0	50	Neutral	Neutral	Considering	Considering
Hungary	1	1	100	None	None	Considering	Considering
Iceland	0	0	0	None	None	No	No
India	No response ⁸⁹	No response	0	None	None	No	No
Indonesia	0	0	0	None	None	No	No
Ireland	1	1	100	Support	Support	Considering	Yes
Israel	1	0	50	None	None	In Progress	In Progress
Italy	0	1	50	None	None	No	No
Japan	1	0	50	None	None	Yes	No
Kazakhstan	1	0	50	None	None	No	No
Kenya	1	0	50	None	None	No	No
Korea	1	1	100	Support	Support	Yes	Yes
Kyrgyzstan	0	0	0	None	None	No	No
Latvia	1	1	100	Neutral	Neutral	In Progress	In Progress
Lithuania	1	1	100	None	None	Yes	Yes
Macedonia	1	1	100	None	None	No	No
Malta	1	1	100	None	None	No	No
Mexico	1	1	100	Support	Support	Yes	Yes
Netherlands	1	0	50	None	None	No	In Progress
New Zealand	0	1	50	None	None	No	No
Norway	1	1	100	Neutral	None	Yes	Yes
Pakistan	1	1	100	None	None	No	No
Peru	1	0	50	None	None	No	No
Philippines	1	1	100	None	None	In Progress	In Progress
Poland	1	1	100	None	None	No	In Progress
Portugal	1	1	100	None	None	Yes	Yes
Romania	1	1	100	Neutral	Neutral	In Progress	In Progress
Russia	1	0	50	Neutral	Neutral	No	No
Slovak Republic	1	1	100	Support	Support	Yes	Yes
Slovenia	1	1	100	None	None	No	No
South Africa	0	1	50	None	None	No	No

⁹⁰ Where a question was not answered, a score of “0” was awarded when calculating that jurisdiction’s level of compliance, and the question was disregarded (i.e., the total was reduced by 1) when calculating the percentage of consistent jurisdictions.

Jurisdiction	<i>Recommended Practice VII</i>			<i>Supportive Statements</i>		<i>Implementation</i>	
	Element (Question #—see Appendix B for Survey Questions)			<i>Guiding Principles</i>	<i>Recommended Practices</i>	<i>Guiding Principles</i>	<i>Recommended Practices</i>
	Q29 ⁸⁸	Q30	%	Q31	Q32	Q33	Q34
Spain	1	1	100	None	None	No	No
Switzerland	1	1	100	Support	Support	Yes	Yes
Taiwan	1	1	100	Support	Support	Considering	Considering
Thailand	0	0	0	None	None	No	No
Tunisia	0	0	0	None	None	No	No
Turkey	0	0	0	None	None	No	No
Ukraine	1	0	50	No Response	No Response	No Response	No Response
United Kingdom	1	1	100	None	None	Yes	Yes
United States	1	1	100	Support	Support	Yes	Yes
Uzbekistan	1	0	50	None	None	No	No
Venezuela	1	1	100	None	None	Considering	Considering
Zambia	1	1	100	Support	Support	In Progress	In Progress
Total Positive ⁹⁰	52	39		13	13	22	24
% Positive	84	64		21	21	35	39

⁹¹ For Question 29, a response of “Yes” or an indication that the merger regime had undergone a review since the last ICN Naples meeting was counted as a positive response. For Question 30, a response of “Yes” was counted as a positive response. For Questions 31 and 32, a response of “Support” was counted as a positive response. For Questions 33 and 34, a response of “Yes” or “In progress” was counted as a positive response.