



Department of Justice

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**INTERNATIONAL COMPETITION NETWORK ADOPTS
RECOMMENDED PRACTICES TO IMPROVE MERGER ANALYSIS
AND PRESENTS REPORT ON UNILATERAL CONDUCT ISSUES**

***Assistant Attorney General Christine Varney Promotes
Antitrust Collaboration and Convergence at Istanbul Conference***

WASHINGTON — Today, at the ninth annual International Competition Network (ICN) conference in Istanbul, the ICN adopted Recommended Practices for substantive merger analysis, approved a pilot project for a virtual university on competition law and practice, and presented a report on the analysis of refusal to deal and margin squeeze conduct under unilateral conduct laws, the Department of Justice announced today.

The ICN conference, hosted by the Turkish Competition Authority, was held on April 27-29, 2010. More than 500 delegates participated, representing more than 80 antitrust agencies from around the world, and included competition experts from international organizations and the legal, business, consumer and academic communities. Christine Varney, Assistant Attorney General in charge of the Department of Justice's Antitrust Division; Federal Trade Commission (FTC) Chairman Jon Leibowitz; and FTC Commissioner William E. Kovacic were among the U.S. delegates who participated in the conference. The conference showcased the recent work of ICN working groups on mergers, unilateral conduct, cartels, competition advocacy and competition agency effectiveness.

"Ten years ago, in its report to Assistant Attorney General Klein, the International Competition Policy Advisory Committee recommended a 'global competition initiative.' Today's ICN has fulfilled the promise of a working collaboration of government competition enforcement officials from around the world, helping to increase understanding and achieve consensus on important policy and enforcement issues," Assistant Attorney General Varney said. "The Antitrust Division is committed to participating fully in ICN efforts to promote cooperation and convergence through international dialogue and shared enforcement goals."

Based on the work of the Merger Working Group, co-chaired by the Antitrust Division and the Irish Competition Authority, ICN members adopted two detailed Recommended Practices for Merger Analysis. The new Recommended Practices for merger analysis address:

- *Market Definition in Merger Review.* Agencies generally should address the competitive effects of a merger within economically meaningful markets. The hypothetical monopolist test is an appropriate test to determine the relevant market(s) in which to analyze the competitive effects of a merger.

- *Failing Firm/Exiting Assets Analysis.* Agencies should carefully review claims by the merging parties that a merger will not harm competition because the acquired firm and its assets would have exited the market absent the merger in any event.

The conference highlighted the work of the Unilateral Conduct Working Group, which was established to promote analytical convergence and sound enforcement of laws governing unilateral conduct by firms with substantial market power. Co-chaired by the FTC and the German Bundeskartellamt, the Working Group's session explored the competition analysis of refusal to deal and margin squeeze conduct, highlighting the results of a report based on a survey of more than 40 jurisdictions.

In addition, the ICN conference showcased the work of the Cartel Working Group, which aims to enhance the ability of antitrust agencies to crack cartels through the discussion of effective investigative techniques and the examination of important legal and policy topics. In Istanbul, the Cartel Working Group presented the results of a survey of more than 45 jurisdictions and their views of the significant anti-cartel enforcement developments over the past decade. During the past year, the working group conducted a teleconference discussion series devoted to the trend of jurisdictions adopting criminal sanctions against individuals for hard-core cartel conduct. The Cartel Working Group presented new work addressing digital evidence gathering in cartel investigations and cartel case initiation.

The Advocacy Working Group presented guidance for agencies on conducting effective market studies and a report summarizing a series of teleseminars on agencies' competition advocacy programs. The Agency Effectiveness Working Group presented a report on strategic planning and prioritization principles.

The network also launched an ambitious pilot project to create a "virtual university" on competition law and practice, which will include training modules aimed at new agency staff.

In October 2001, the Justice Department and the FTC joined with antitrust agencies from 13 other jurisdictions (Australia, Canada, the European Union, France, Germany, Israel, Italy, Japan, Korea, Mexico, South Africa, the United Kingdom and Zambia) to create the ICN. The ICN now includes 112 member agencies from 99 jurisdictions.

ICN documents are available at www.internationalcompetitionnetwork.org.

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