



Department of Justice

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**ASSISTANT ATTORNEY GENERAL CHARLES A. JAMES ENCOURAGES MERGER
PROCESS REFORM AT INTERNATIONAL COMPETITION NETWORK
CONFERENCE IN NAPLES, ITALY**

WASHINGTON, D.C. – Charles A. James, Assistant Attorney General in charge of the Justice Department’s Antitrust Division, and Timothy J. Muris, Chairman of the Federal Trade Commission, worked with antitrust agencies from 50 jurisdictions to facilitate reforms in multijurisdictional merger review and to promote effective competition advocacy efforts, objectives that were reviewed at the first annual International Competition Network (ICN) Conference in Naples, Italy on September 28-29, 2002. Consistent with the ICN’s emphasis on working with the private sector, representatives of antitrust agencies were joined by approximately 50 representatives of international organizations, practitioners of antitrust law, economists, industry and consumer associations, and members of the academic community.

The ICN was launched in October 2001 by the Department of Justice, the Federal Trade Commission, and 13 foreign antitrust agencies to provide a venue where senior antitrust officials from developed and developing countries will work to reach consensus on proposals for procedural and substantive convergence in antitrust enforcement.

At the conference, ICN members adopted 8 Guiding Principles around which a merger review regime should be built: sovereignty; transparency; non-discrimination on the basis of nationality; procedural fairness; efficient, timely, and effective review; coordination; convergence; and confidentiality. The proposals are non-binding and it is left to governments to implement them voluntarily, through unilateral, bilateral or multilateral arrangements, as appropriate.

Three detailed Recommended Practices for merger notification procedures were also endorsed by the members, realizing a common desire to recognize the concepts of jurisdictional nexus, the development of objective and understandable merger notification thresholds, and appropriate flexibility in the timing of merger notifications.

- *Jurisdictional Nexus.* These recommended practices provide that jurisdiction should be asserted only over those transactions that have a nexus with the jurisdiction concerned that meets an appropriate standard of materiality. This nexus should be based on activity within that jurisdiction as measured by reference to the activities of at least two parties to the transaction and/or of the acquired business in the local territory.

- *Notification Thresholds.* The recommended practices provide that notification thresholds should be clear and understandable, should be based on objectively quantifiable criteria, and should be based on information that is readily accessible to the merging parties.
- *Timing of Notification.* The recommended practices provide that parties should be permitted to notify proposed mergers upon certification of a good faith intent to consummate the proposed transaction. They further provide that jurisdictions that prohibit closing while the competition agency reviews the transaction should not impose deadlines for notification and that jurisdictions that do not prohibit closing pending review should allow parties a reasonable time in which to file notification following a clearly defined triggering event.

The members agreed to continue to refine these practices and develop additional ones over the next several months for adoption at the next annual conference.

“Implementation of the Guiding Principles and Recommended Practices will make merger review processes around the world more efficient and effective, while at the same time reducing delay and the investigative burden on merging firms in a wide range of transactions,” said Assistant Attorney General James. “The Guiding Principles and Recommended Practices are an important first step in the direction of global convergence toward sound merger practices and procedures.”

Antitrust officials at the conference also discussed the role of competition advocacy in promoting a culture of competition. Discussions centered around an Advocacy Study conducted by the ICN Advocacy Working Group during the past year. The report presented by the Group at the conference includes a detailed analysis of both the theory and the practice of competition advocacy. In addition, the report underscores the importance of advocacy to the ability of competition authorities to promote economic development and procompetitive reform within their governments.

"Government policy ought to spur, not retard, competition," noted Chairman Muris. "The ICN has made substantial progress in identifying techniques that antitrust agencies can use to press their governments to adopt procompetition policies. This effort will continue to be a key ICN initiative in the coming year. Even modest improvements in the quality of competition advocacy can make important contributions to better economic performance."

In addition to continuing work in multijurisdictional merger review and competition advocacy, the ICN has established a working group on capacity building and competition policy implementation.

All ICN documents are available at www.internationalcompetitionnetwork.org.

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