

# Foreword

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The International Bar Association is delighted to present this special report of its Global Forum for Competition and Trade Policy, *International Merger Control: Prescriptions for Convergence*, in the hope that the rich array of collected ideas will assist in defining the issues and provide building blocks for an urgently required, more rationalised multijurisdictional review process.

Competition law, traditionally a response to local political concerns, has gone global. The last decade, with its massive increases in trade flows and cross-border investments, has seen a remarkable growth in the antitrust oversight of mergers. Today, over 100 countries have some form of antitrust laws, with an additional two dozen or so engaged in the development process (see [www.globalcompetitionforum.org](http://www.globalcompetitionforum.org) for details). Of these, between 70 and 80 have enacted merger regimes and many more are under consideration.

Although the growth of competition laws is compatible with liberalisation of trade and investment (well-designed and effectively enforced competition laws remove market imperfections and free up market forces), the multiplication of *regulatory* pre-closing merger clearance regimes is a different matter.

Once the paragon of non-regulatory antitrust, the United States can readily be identified as midwife to the problems this report seeks to address. The catalyst for change came with the passage of the Hart-Scott-Rodino Act in 1976 in the hope of identifying truly large mergers (about 150 per year were expected to be caught) and to prevent midnight mega-mergers before the government could seek interim relief. (Before the end of the century, annual HSR filings would reach nearly 5,000 and US merger law was to become both bureaucratic and regulatory.<sup>1</sup>)

1 See Eleanor M Fox, Introduction, *Policy Directions for Global Merger Review*, a special report by the Global Forum for Competition and Trade Policy, Global Competition Review, 1999.

Kick-started by HSR, pre-notification systems have become pervasive, but their adoption has come with notable costs. The number of regimes now in place, often employing different substantive principles, jurisdictional thresholds and processes, spotlight valid concerns about the imposition of wasteful transaction costs, policy inconsistency and the inefficient allocation of resources.

Against this backdrop, the birth last year of the International Competition Network (ICN) provides the first real opportunity to address today's problems. The concept for an organised multilateral approach to deal with competition laws' increasingly international reach could subject many to parenthood claims. Three stand out:

- (1) the thoughtful recommendations for a Global Competition Initiative found in the 1999 report of the International Competition Policy Advisory Committee (ICPAC);
- (2) the first public show of support by the United States for a multilateral approach to antitrust convergence at the 10th Anniversary Conference on the EC Merger Regulation (until then the United States had resolutely opposed multilateral-decision making in antitrust, with particular concern about a role for the WTO); and
- (3) the IBA-convened Ditchley Park meeting last year of 40 of the world's senior competition officials and stakeholders to discuss (and promote) the feasibility of a Global Competition Network.

Formally launched in New York City last October, the ICN is currently engaged initially on two important projects: merger control processes in a multijurisdictional context and the competition advocacy role of antitrust agencies.

And progress is already apparent (see [www.internationalcompetitionnetwork.org](http://www.internationalcompetitionnetwork.org) for proposed *Guiding Principles for the Review of International Mergers* and the beginnings of a list of *Recommended Practices for Merger Notification Procedures* which are to be recommend for adoption by the ICN at its first annual meeting scheduled for 28-29 September in Naples, Italy).

But there is an enormous gulf between talk and action, and the first real test for the ICN will not be whether its merger convergence work groups' recommendations are adopted in Naples. The challenge will be whether identifiably necessary changes can be implemented. And here real leadership is needed from competition laws, bipolar leaders, the US federal agencies and the EC Competition Directorate. Stepping up to the plate with plans for process change in these two primary seats of antitrust must be a condition precedent to action from legislators and enforcers whose laws and policies have drawn so heavily from these sources.

Against this backdrop, this special report was designed and commissioned to support and facilitate the ICN's merger notifications and procedures and the analytical framework projects. The IBA is a longstanding proponent of sensible

legislative convergence, transparency and due process in the competition law field. We are extremely grateful to our authors for their time, dedication and scholarship and hope that their efforts and this report contribute to the achievement of these objectives.