

Remarks of Randolph Tritell  
Assistant Director for International Antitrust  
US Federal Trade Commission

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It is a pleasure for me to be in Cape Town, and to attend my fifth ICN conference. I have been very fortunate to have had the opportunity to be associated from the beginning with one of the ICN's first two projects -- addressing procedural issues arising from the tremendous growth in the number of jurisdictions that have established merger review systems. The Notification and Procedures subgroup of the Merger Working Group responded to that challenge by developing eight Guiding Principles and thirteen Recommended Practices for Merger Notification and Review Procedures.

Let me first introduce the extraordinary group of agencies and advisors that comprise the subgroup and whose efforts have proven so fruitful. [Slide] You will see that the subgroup has a substantial and diverse group of member agencies, aided by a talented and dedicated group of non-governmental advisors. [Slide] That is important, and let me pause for another moment to explain why.

Some of you are aware that each year our subgroup takes our cues from the culture of the host of the next annual conference, as reflected in its proverbs. In case there was any thought of breaking with that tradition this year, David Lewis made sure it was put to rest by presenting me with a collection of South African proverbs. Given the emphasis David has placed on the pan-African dimension of this conference, it seemed appropriate for our subgroup to take our inspiration from cultures across the continent. Here, I have to make two disclaimers – one is my standard one that any views I express are my own and do not necessarily reflect those of the Federal Trade Commission or any

Commissioner, and second, more in the nature of an apology, that I am about to mangle African languages of all sorts, just as I have mangled those of the other understanding hosts of our conferences in the past.

So coming back to the importance of having a dedicated group to accomplish our work, we learned from a saying of the Adan and Ewe peoples, located in Benin, Ghana, and Togo, that: “*Nunya, adidoe, asi metunee o*” – “Wisdom is like a baobab tree; no one individual can embrace it.” But we were also cautioned by a proverb from Zimbabwe: “The more help in the cornfield, the smaller the harvest.”

At the past four conferences, the subgroup has come to you with a request to adopt new Recommended Practices. The ICN Practices have become the world standard for good merger review process. Let me provide a practical example of their use. I have been involved over the past two years with efforts to assist the People’s Republic of China in their efforts to develop a new competition law. The United States, other countries, and private groups have consistently based advice to China on how to structure their merger notification system on the ICN’s Guiding Principles and Recommended Practices. That reflects the power of, instead of saying, “do it this way because that’s how we do it in my country,” instead saying “we suggest you do it like that because it is the accepted international best practice.” And that is a result of the work of the ICN.

For our subgroup, though, the past year has been different. The group decided that it had accomplished at least most of what we sought to achieve in the Recommended Practices. They may not be perfect or complete, but when we saw that the points we were thinking about addressing were becoming increasingly small, we recalled the South African proverb, “If you are looking for a fly in your food, it means that you are full.”

We were similarly chastened as to the benefits of stopping before going too far by a proverb from Ethiopia, “As the chimp gets higher and higher climbing the tree, it exposes its unflattering behind.” We therefore decided to devote our energies, instead of to developing new practices, to working to make sure that agencies and practitioners understand the ones we have, and helping those who want to put them into practice.

Our work during the past year consisted of four projects: conducting a workshop; developing a Handbook; monitoring implementation; and maintaining our weblinks and templates. I will briefly describe each.

Workshop. On March 27-28, the subgroup held a workshop designed to promote greater understanding and further implementation of the Recommended Practices. The Workshop was hosted by the US FTC and DOJ, and organized by Elizabeth Kraus of the FTC and Cynthia Lewis Lagdameo of DOJ. It was a great success both in attendance – with nearly 100 participants from 35 countries – and in results.

Workshop participants learned from each other’s experiences with initiatives to reform merger review procedures. They recognized that agencies sometimes need assistance in identifying deficiencies in their merger review systems, as we learn from the Xhosa: “*Iqaqa aliziva kunuka*” – “A skunk does not smell itself.” Once the issue is identified, it should be admitted to, as we learned from the Zulu, “*A fault confessed is half redressed.*” And we got a solemn reminder of the benefit of not repeating others’ mistakes from the Akan proverb from Ghana: “*Onipa a wahintiw awu no, wontutu mmirika nko n’ayiasse*” – “One does not run when going to the funeral of a person who died by stumbling over a stone.”

Armed with this knowledge, participants went back to their agencies with new tools and inspiration to pursue changes to their merger review systems consistent with the ICN recommendations.

Handbook. The Handbook project, which was organized by my colleague, Maria Coppola Tineo, was designed to provide examples and practical tools to agencies that want to put the ICN Recommendations into practice. For each of the main points of the Recommended Practices, the Handbook gives examples of provisions in laws and regulations around the world that can serve as a model. The drafters were inspired by the Batabwa proverb, “Intelligence is fruit picked in the neighbor’s garden.” Or, as the Ekonda, in the Democratic Republic of Congo, put it: “Between imitation and envy, imitation is better.” But we also learned not to take this principle too far from a South African proverb, “If it keeps on imitating everybody, the monkey will one day cut his own throat.” You will hear about the Handbook at the implementation panel on Friday.

Monitoring Implementation. The subgroup also continued its monitoring of ICN members’ implementation of the Recommended Practices. There is very good news on this front, which also will be presented at the implementation session. But let me just mention two things: first, that an impressive number of agencies continue to make conforming changes and, as a result, there are fewer unnecessary burdens on parties and on agencies in reviewing cross-border mergers; but, second, that there is still much work to be done. For example, many jurisdictions still impose unnecessary costs, burdens, and delays on transactions, including by using subjective notification thresholds such as market share, or requiring notification of transactions with little or no connection to or effect in the country. After all, just because an agency has the power to review a merger

doesn't mean it should; or, as an Ethiopian proverb puts it, "It is foolhardy to climb two trees at once just because one has two feet."

In evaluating reforms, we wanted to be careful not to judge a jurisdiction negatively just because it does not say or do things the same way we do. As an Ewe proverb reminds us, in a more colorful variation of the oft-repeated, "no one size fits all": "*Agala be ne yele axa dzi zCm has menye mC yebu o*" – "The crab says that when you see it walking clumsily it does not mean that it has lost its way." Still, we wanted to make sure the reforms are real and not just cosmetic, keeping in mind the Afrikaans proverb, "*Al dra 'n bobbjaan 'n goue ring, bly hy nog 'n lelike ding*" – "Even if a baboon wears a golden ring, it remains an ugly thing." And we were reminded that sometimes there really is a right way by a Kruia proverb: "*Omogera ngomanyere hano gokogeera*" – "Stream, it knows where to flow."

Weblinks and templates. Several years ago, the subgroup initiated two projects to increase the transparency of the world's merger review systems and provide a one-stop resource on the world's merger laws. Through the first project, ICN members placed their merger-related laws, regulations, guidelines, and agency practices onto a dedicated webpage, which was then linked to the ICN website. The second project had agencies respond to a set of questions, referred to as a template, that elicited the key features of the jurisdiction's merger review system. This year, we updated the template, and worked with members to ensure that their information was current. I am pleased to report that from the ICN webpage you can now access links to the merger laws and materials of 59 jurisdictions, and templates completed by 57 jurisdictions, 42 of which have been updated this year. This is probably the most comprehensive database on

national merger laws and practices. We thank all of you who contributed to this project, and ask for your continued input to keep this a valuable resource. As a Bateke proverb says, “The river swells with the contribution of small streams.”

Breakout sessions. Finally, this afternoon’s break-out sessions will focus on the first two Recommended Practices, on nexus with the reviewing jurisdiction and notification thresholds. [Slide] The goal is to bring out some of the key themes identified in the March Workshop in regard to setting appropriate thresholds. The questions will be:

- What transactions should be subject to pre-merger notification requirements?
- How can agencies determine thresholds that are appropriate and ensure sufficient local nexus? and
- How can the business community assist in promoting implementation of the Recommended Practices?

Please take the opportunity to tell us about your experiences in trying to implement the Recommended Practices. As I mentioned, we have not yet reached our goal, and for the work to continue effectively we must bear in mind the teaching of the Mpongue, “Don’t throw away the oars before the boat reaches the shore.”

In my research, I have noticed a teaching that is apparently universal in South Africa, as it is reflected in proverbs of several cultures, including the Xhosa, who say “*Ukuhamba yimfundo*” – “Traveling is learning” and the Sesotho, who say “*Ho tsamaea ke ho bona*” – “To travel is to see – the more one travels the more one becomes open-minded and learned.”

From my short time here I have already found these to be true, and I look forward to the rest of our conference and my stay in this beautiful country. Thank you.