



## **2022 International Competition Network (ICN) Annual Conference<sup>1</sup>**

### **Plenary Session: Implementation in the ICN**

#### *Promotion & Implementation Group*

*Moderator: Mr. Randy Tritell, Director International Affairs, US Federal Trade Commission*

#### *Panelists:*

*Viviana Blanco Barboza, President, COPROCOM (Costa Rica)*

*Mary Catherine Lucey, Associate Professor, UCD Sutherland School of Law (Ireland)*

*David Miller, Executive Director, Fair Trading Commission (Jamaica)*

*Parret Muteto, Chief Analyst, Research & Education, Zambia Competition and Consumer Protection Commission*

### **Speaking Notes of Mr. David Miller, Executive Director, Fair Trading Commission**

Please allow me to thank the ICN for the opportunity to be here among this esteemed group of competition law practitioners.

Transparency and independence are two of the Jamaica Fair Trading Commission's key values which are engrained in our culture because of our relative newness in several areas of Competition Law; one of which is merger assessments. Today I will focus on Mergers & Acquisitions (M&As) and one of the ICN's work products.

Notably, our law (Jamaica's competition legislation) does not have expressed merger provisions; it does not provide for premerger notification and does not include a threshold level. We use a section in our law on agreements that may substantially lessen competition to deal with mergers. For this reason our public education strategy on M&As is robust. To avoid challenges we have to ensure that our processes are transparent and complete.

We have therefore had to be very clinical, accurate and precise when investigating mergers and when speaking with the business community and the private bar. Being a member of the ICN since its early days we are aware of the ICN's work and the range of work products. We rely on several information sources – on top of our sources has been the ICN Merger Guidelines Workbook.

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<sup>1</sup> The 2022 ICN Conference was held on May 4 to 6, 2022, in Berlin, Germany.

In the early part of the last decade we were new to M&As and we used the Workbook extensively to teach and develop ourselves in the context and core principles of mergers. We found it to be a user-friendly, practical manual which is written in easy to understand language. The explanations and point by point breakdown of the various steps makes it easy to follow.

The focus of the Workbook is on first principles, their rationale and practical application. Areas such as developing theories of harm; working out market definition; examining market structure and concentration as well as other areas such as unilateral and coordinated effects; market entry and expansion; and efficiencies are sections that we use frequently – internally for assessments, as well as externally in our public education work.

Also, the Case Studies were very instructive as we learnt to navigate through investigations – things such as information that we needed, techniques to assess the relevant market – I think we are much the better for using the Workbook.

*Moderator's Question: "About 2 months ago the Jamaica FTC issued its Merger Guidelines. Please describe how the ICN's Merger Guidelines Workbook influenced Jamaica's Guidelines, in particular, given that Jamaica does not have pre-merger notification".*

We have been investigating M&As for the past 10 or so years and we saw an increasing number from around 2018 to just before COVID-19. It therefore became necessary for us to develop internal Guidelines and the ICN Workbook was our main source for guidance. Sections from our Guidelines including the Phase 1 and Phase 2 aspects were tailored from the Workbook.

Because we do not have expressed merger provisions in our law, merging firms question our investigation processes and therefore we are clear in stating that everything we do accords with international best practices. For example, we direct them to documents such as the ICN Workbook, specifically to the Case Studies section where they see for themselves that what we are doing is along the correct lines. This brings 'comfort' to them.

In March 2022 we first issued Merger Assessment Guidelines which was taken through a stakeholder consultation where law firms and consultancy firms were invited to comment. Already, we have received positive feedback from the Business Community and the Jamaican Bar Association. In fact, we have been discussing the guidelines with at least two multinational companies, and have been invited to present the Guidelines and discuss key issues to the Jamaican Bar Association.

Thank you to the ICN and to the Conference hosts, the Bundeskartellamt, for putting on this Conference.