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Working Party No. 3 on Co-operation and Enforcement

SUMMARY OF DISCUSSION OF THE ROUNDTABLE ON JURISDICTIONAL NEXUS IN MERGER CONTROL REGIMES

Annex to the Summary Record of the 123rd meeting of the OECD Working Party No. 3 on Co-operation and Enforcement on 14-15 June 2016.

14-15 June 2016

This document prepared by the OECD Secretariat is a detailed summary of the discussion held during Item V of the 123rd meeting of Working Party No. 3 on 14-15 June 2016.

More documentation related to this discussion can be found at www.oecd.org/daf/competition/jurisdictional-nexus-in-merger-control-regimes.htm

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ROUNDTABLE ON JURISDICTIONAL NEXUS IN MERGER CONTROL REGIMES

Summary of Discussion

1. Introduction

The **Chair** of Working Party No 3 (WP3), **Mr. Frédéric Jenny**, opened the roundtable on jurisdictional nexus in merger control with a short introduction. The roundtable builds on a Secretariat background paper which assesses compliance regarding jurisdictional nexus with the OECD Recommendation on merger review and ICN's Recommended Practices for Merger Notification and Review Procedures. While there is a trend towards greater compliance with the Recommendation and the Recommended Practices, few countries have decided not to follow international guidelines, and instead use thresholds other than those recommended to identify local nexus. Thus, a first objective of this roundtable is to share experiences regarding recent changes in merger control, and the reasons underpinning those changes.

Secondly, the Chair noted that there are differences between thresholds set by countries that follow the Recommendation. Different approaches to how thresholds are defined and how countries balance between avoiding unnecessary merger control and identifying problematic transactions lead to quite different systems. So, a second objective of the roundtable is to discuss the process by which countries define merger notification and review thresholds.

The Chair introduced the invited speakers: two in-house counsels of companies engaged in transactions which often lead to multi-jurisdictional merger notifications: Jean-Yves Art, Assistant General Counsel of Microsoft, and Kaarli Harry Eichhorn, Global Executive Counsel in Competition Law & Policy with General Electric; Randy Tritell, to report on the ICN's survey on the implementation of the ICN recommended practices on merger review; and, finally, BIAC and the European Commission.

Finally, the Chair suggested the following structure for the roundtable: (i) Setting the Stage; (ii) The Business Perspective; (iii) Looking at changes to notification thresholds in countries; (iv) Reflecting on how notification thresholds are set; and (v) Materiality in local nexus.

2. Setting the Stage

The Chair gave the floor to **Pedro Caro de Sousa** from the Secretariat to present the salient points of the background paper. Pedro first explained that local nexus criteria are *minima* that require that notification thresholds are based on the activity of merging parties in the territory, and that this activity should be measured by reference to the acquired entity or at least two entities participating in the transaction. He explained how notification thresholds reflect a variety of considerations while attempting to achieve an optimum level of enforcement: maximising benefits through catching problematic mergers, while minimising costs by allowing non problematic ones to proceed without review.

The objective of the background paper was to assess the level of compliance with the OECD Recommendation on merger review; to do this, the Secretariat reviewed the types of notification thresholds in OECD Members and Participants in the Competition Committee and compared them with the OECD Recommendation and the ICN Recommended Practices. The paper identifies different types of notification thresholds –of which turnover and assets are arguably the most common, but the value of the transaction and market shares are still fairly widespread. Then there are additional criteria coupled in one way or another with these more common notification thresholds, such as exemptions, residual jurisdiction (which allows reviewing potentially problematic mergers that do not meet the merger control thresholds), or obligations by dominant companies to notify merger in markets in which they are dominant. The Secretariat also found that simultaneous use – alternatively, cumulatively, and sometimes both – of different types of notification thresholds is common.

Mr. Caro de Sousa then summarised the conclusions of the paper, which are that most jurisdictions comply with international recommendations and that there is a trend towards greater compliance. He pointed out that the results nonetheless raised a number of questions: why are countries reviewing their notification thresholds so often? Why did some countries, after consideration, decide not to follow OECD and ICN recommendations? How do jurisdictions set their notification thresholds? What is meant by materiality? Should the OECD Recommendation on merger review be updated?

The Chair thanked Mr. Caro de Sousa for his presentation setting the stage, and gave the floor to Randy Tritell on behalf of the ICN.

Randy Tritell presented the results of a recent survey of how ICN members are implementing the provisions on notification thresholds contained in the ICN Recommended Practices for Merger Notification and Review Procedures. Mr. Tritell presented the background of the development of the ICN Recommended Practices, ICN's efforts to assess compliance and implementation and the recent survey. The main conclusion of the survey was that the ICN Recommended Practices have led to substantial positive reforms in many jurisdictions (52 jurisdictions used the Recommended Practices to decide whether and how to reform their merger notification regime) but there is still substantial non-conformity.

One of the biggest competition enforcement challenges when the ICN was formed in 2001 was achieving effective merger review without imposing undue costs and burdens on parties. The ICN therefore took up the question of multi-jurisdictional merger notification and review as one of its first projects. The ICN's first work was the adoption of a list of guiding principles. The ICN went on to adopt 13 Recommended Practices, some of which relate to local nexus. In 2010-2011, the ICN undertook a systematic review of implementation of several of the Practices, including local nexus and notification thresholds through a survey – at that point, only 27 of the 84 surveyed jurisdictions conformed to the Practices on both nexus and notification thresholds. In the 2016 survey, 91% of jurisdictions responded that their thresholds incorporated a substantial nexus while only 7 jurisdictions said theirs did not. However, many jurisdictions (38%), including OECD members, require notification of a transaction even if the target has no sales or assets in the jurisdiction.

The survey showed that almost all respondents want the ICN to take a more active role in promoting the Recommended Practices, either providing support for domestic reforms such as law amendments, or specific technical assistance to help identify where reforms are needed and how to overcome barriers to implementation. Respondents also welcomed ICN work to monitor compliance and offer specific recommendations for improvements in jurisdictions. As a result, the ICN's merger working group is considering providing experts to assist competition agencies and review members' experiences with reforms, providing more targeted training, and drafting model language to accompany the Recommended Practices. The ICN is also going to look at whether it is time, after 10 years, to update some of its recommendations; this may be a fertile area for the OECD and the ICN to collaborate.

The Chair thanked Mr. Tritell for his presentation and pointed out that there is work to be done to secure more convergence with the ICN Recommended Practices and the OECD recommendation. It would be useful to explore whether non-convergence may be partly due to weaknesses in international recommendations, particularly as regards local nexus.

3. The Business Perspective

The Chair gave the floor to Kaarli Eichhorn, Global Executive Counsel in Competition Law & Policy with General Electric.

Kaarli Eichhorn pointed out that a global consensus has been building on key principles of competition law, as reflected in OECD recommendations and the ICN’s Recommended Practices. Competition authorities should continue to converge on these international best practices, including on merger control.

Mr. Eichhorn explained that the aim of businesses is not to avoid merger review, but to make sure that review only takes place over transactions that are firmly connected to the reviewing jurisdiction. The vast majority of notified merger transactions lead to no intervention because no competition harm is identified – at the EU level, that number is 90%, which may be a representative number globally. Only a very modest number of transactions become subject to remedies, and even fewer to prohibitions. So, while other elements may be relevant to assessing the effectiveness of a merger regime, the nexus question is vital. A fundamental principle would be that where there is no local nexus, there should be no review.

The ICN some years ago identified four costs for companies related to merger control, three of which are unrelated to filing (i.e. the actual merger clearance process) but are related to nexus. They are costs associated with: ascertaining whether there is a requirement to file a merger; filing of transactions that lack an appreciable local nexus, and resulting delays to the transaction due to the merger review process. These costs exist even if merger control procedures are light.

From an agency point of view, reviewing transactions that have no meaningful link with its jurisdiction is a misallocation of resources that, at the same time, hampers business activity, investment, trade and employment. Just a decade ago relatively few jurisdictions had merger control regimes. Today the situation has changed dramatically with approximately 120 jurisdictions with merger control regimes. Businesses thus have to file their transactions to a markedly increased group of enforcement authorities. General Electric’s own data shows that in the 1990s they had a modest number of deals that needed to be cleared in five or more jurisdictions, while in the 2000s the number rose by 900%, and it keeps going up. Mr. Eichhorn mentioned a recent transaction, which was subject to a great number of pre- and post-closing merger clearances, with the pre-closing clearances amounting to almost 30. Upon review, more than half of the relevant jurisdictions had jurisdictional thresholds which did not follow international best practices regarding local nexus.

In conclusion, Mr. Eichhorn pointed out that the work of the OECD and the ICN has led to significant reforms and improvements, but that work remains to be done. While more than 90% of agencies that responded to the ICN survey stated that their jurisdiction rules are in conformity, almost 40% acknowledged that the buyer alone can trigger a notification requirement, and almost 30% stated that seller's activities (and not the target’s) count for jurisdictional purposes while 30% still use market share thresholds. There is need that all thresholds have a strong local nexus, be clear and objective, be easy to use and to comply with, so that merger reviews protect the interests of competition in the most effective way possible.

The Chair thanked Mr. Eichhorn for his presentation and pointed out that regulators must decide whether it is preferable to review additional mergers in order to minimise errors, or whether it is better to allow some potentially problematic transactions not to be reviewed. It was also noted that residual jurisdiction works well for a number of member states.

4. Changes in notification criteria

The Chair invited countries to present their recent reforms and changes in notification criteria.

Italy explained how it changed its merger review thresholds in 2013. The old system had two thresholds – one was the combined turnover of all the firms involved in the merger and the second one was the turnover of the target company. The two thresholds were in the alternative, meaning that only meeting one of them would trigger the notification requirement, which led to a large number of notifications for transactions that had no significant competition effects. The 2013 change consisted of making the thresholds cumulative instead of alternative without changing the level of the threshold, which led to a significant decrease in the number of mergers that were notified. Italy is now looking into whether the threshold should be modified, as it is one of the jurisdictions in Europe with the highest thresholds.

The Chair asked whether, in addition to lowering the thresholds, the authority had considered adopting some residual jurisdiction to review problematic mergers falling below current thresholds. Italy replied that this was not being considered.

Japan then explained that, while notification thresholds may vary depending on the type of business combination, generally the parties have to notify almost all types of combinations if the total domestic sales of the acquiring company exceed JPY 20 billion (Japanese yen), and the total domestic sales of the acquired business exceed JPY 5 billion. In 2009, Japan started using domestic sales instead of assets, in order to have companies with substantial domestic sales notify regardless of whether they have assets in Japan or not.

The floor was then given to **Korea**, which explained why it changed its notification thresholds. It used to happen that foreign companies sometimes failed to notify when they should, while others notified when they did not have to, because the notification criteria were set in the competition authority's (KFTC) internal rules with which the companies were not familiar. This led to both a waste of agency resources and a risk of problematic transactions escaping review. So, the thresholds were set in law, which led to a decrease of notifications of transactions without links to Korea. The present local turnover threshold value seems to work well.

Brazil then described its merger control reform of 2012. This reform eliminated the parties' market share as a notification criterion, and consolidated the volume of business, total turnover, and the production of effects in the national territory as the relevant notification thresholds; this is aligned with the OECD Recommendation. In Brazil the competition authority can review mergers which are not notifiable.

After Brazil, **Sweden** explained that in 2008 it increased its notification thresholds substantially, and at the same time introduced a provision whereby companies could voluntarily notify transaction below the obligatory notification thresholds and above a second, lower, threshold, or the competition authority could call for a notification to be made in that lower range. Both options (voluntary notifications or notifications prompted by the authority) have been used frequently and around 50% of interventions by the competition authority have taken place in this lower range.

Lithuania explained that they have very low turnover thresholds but can nonetheless request notification in cases below the thresholds. This possibility has been used very few times because the thresholds are low, but just weeks before this roundtable a merger that was ordered to be notified based on that provision was prohibited.

The Chair noted that instances of such residual jurisdiction to review mergers that fall below thresholds increase legal uncertainty for businesses. Nonetheless, a number of countries have residual jurisdiction and this does not seem to create significant issues for them.

Indonesia then explained that its merger control regime started being implemented in 2010. Up until now the notification system was mandatory post-merger and voluntary pre-merger but there is a proposal for all transactions meeting the notification thresholds to be notified pre-merger. Local nexus in Indonesia is established on the basis of companies' affiliation to Indonesia, regardless of the impact of the transaction. A merger can be reviewed even if the target has no activity in Indonesia.

Russia described how it had adopted a number of reforms that led to a significant reduction in the number of notified mergers. The system is very transparent.

The Chair summarised the contents of this part of the discussion as providing a sample of countries which have recently changed their merger notification system, and identified a trend towards adopting best practices.

5. Setting Notification Thresholds

The Chair then moved to discuss how best to set notification thresholds

BIAC took the floor first. It remarked that the trend of complying with international recommendations is a visible and welcome development, but that there is still significant work to be done. In particular, a number of countries take into account not the target's turnover but the seller's, and others fail to require two parties to have local activities, meaning that there is a risk of reviewing transactions where there is no competitive interface between the two companies in the reviewing jurisdiction. BIAC proposed to consider sector specific thresholds and the existence of potential competitors in neighbouring jurisdictions.

BIAC then presented a hypothetical to help assess how an agency might go about adjusting its thresholds. Merger thresholds set a certain level of materiality – a competition agency does not want to review all mergers, only those that pass some materiality threshold. BIAC then presented a distribution of problematic mergers at various levels of thresholds, and used this information to design thresholds that do not catch non problematic transactions. To deal with the possibility of problematic mergers falling outside thresholds, BIAC would suggest a safety net of residual jurisdiction over transactions after a change of threshold; i.e. that the competition authority retains the right to review mergers that fall below the (increased hypothetical) notification thresholds but are within the old thresholds. An alternative would be a super-simplified notification form for transactions at this level.

BIAC referred to market shares. While companies typically keep sales data by jurisdiction, these are not to market shares, and even when they have data on market shares, these are not reliable. When a company is faced with a market share threshold but does not have market share data, it may file a transaction out of caution, but more often than not the decision would to not file. Thus, objectively quantifiable thresholds actually lead to higher likelihood of transactions being notified.

The Chair pointed out that having multiple notification thresholds for different sectors may increase the complexity and uncertainty of the system. BIAC distinguished between complexity of notification requirements, which the business community accepts, and legal certainty as to the closing of the transaction, which is more problematic.

Austria then explained that in its system the assets of the buyer alone can trigger a notification, subject to an assessment of the effect of the merger in Austria. Austria also pointed out that mergers where only the buyer generates a turnover might be problematic, and gave the example of the airport of Vienna buying the airport of Bratislava, where the latter had no turnover in Austria but the transaction was still a very important merger for Austria. Austria also suggested that, when evaluating the burden of a notification system, not only notification thresholds have to be taken into account but also whether the notification burden and costs are low.

India then explained that it increased notification thresholds and suggested that, as regards market shares, an option is to ask for competitors for their market share estimates, to increase the reliability of the information.

China described the notification thresholds put in place in 2008. The merger control system also allows MOFCOM to investigate mergers falling below the thresholds. China uses turnover as a notification criterion, because it reflects the economic power of the undertaking and the potential impact of transaction on the market; also, turnover is objective, clear, transparent, predictable and easy to understand by undertakings and authorities. To ensure local nexus, a local turnover threshold of CNY 400 million (Chinese yuan renminbi) was adopted. When setting the notification threshold level, research was carried out by a group of experts, including economists and law experts. This research group took into account the size of the Chinese economy, the experience of similarly situated jurisdictions, conducted international comparisons and built an economic model based on historical data that led to the adoption of the present thresholds.

The Chair gave the floor to **Estonia** to present its notification thresholds, which are based on local turnover. Prior to 2006 they used worldwide turnover as a threshold, but this led to the notification of many mergers without a sufficient link to Estonia. In order to set suitable thresholds, the authority analysed the turnover figures of many Estonian companies. Estonia has also a rule allowing catching transactions in economic sectors where turnovers are generally not very high. Under this rule, if a company or group of companies has acquired during the previous two years a company in the same economic sector, the turnovers of the targets are added up. Last year, the authority made a proposal to the government to allow notifications in cases where a transaction might restrict competition.

Hungary then explained that it has taken action to increase the efficiency of its proceedings and reduce burden on companies. The competition authority, GVH, has introduced a simpler notification form and allows for simplified procedure. The local nexus notification thresholds meet international recommendations. Hungary is considering doubling the individual turnover threshold applicable to (at least two) undertakings that are parties to the transaction, and subject mergers that would thus fall outside the jurisdiction of the GVH to a voluntary notification.

The Chairman then turned to **Portugal**, noting that Portugal has revised its merger thresholds but decided to rely on market shares, against international recommendations. Portugal explained that it amended its competition law in 2012. It used to have a pure turnover threshold as well as (alternatively) a pure market share threshold. To review these thresholds, a working group was set up within the Portuguese ministry of economic affairs that involved the ministry itself, the competition authority, representatives from the competition lawyers' association, and representatives from the business community. A statistical analysis was conducted, and it revealed that in relatively small markets with low turnover in Portugal there were a number of problematic transactions. So, removing the market share threshold would mean that 25% of mergers where the authority intervened would not have been notified. One solution would be to lower the turnover thresholds, and another to retain residual jurisdiction to intervene in problematic mergers. The business community however opposed both these alternatives and advocated for maintaining a market share threshold. Therefore, the working group looked at the market share threshold to see how to make it more workable and decided to raise it from 30%-50%, while coupling it with a minimum local turnover for market shares between 30% and 50% and raising the turnover thresholds. Following the amendments in the notification thresholds, the authority has tried to improve pre-notification contacts with the parties to reduce as much as possible any uncertainty resulting from the thresholds. Furthermore, notifying parties must always submit their estimated market shares when filing.

The Slovak Republic changed its merger notification threshold in 2012, to eliminate mandatory notifications in cases in which there was no appropriate link to the Slovak market. When determining its new thresholds, Slovakia looked at ICN Recommended Practices and OECD Recommendation, examined individual industries and the size of these industries in the economy, compared the sales by hundreds of companies in individual sectors during past years, compared the turnovers of similarly sized countries, and used as a benchmark its previous merger control experience. While this change has been positive, there is still some space for improvement. One issue is that foreign-to-foreign joint ventures are still caught by the threshold. Secondly, in more local industries in which companies do not attain the thresholds, there may still be potentially harmful mergers. In 2011, the authority had tried to introduce the right for ex officio interventions, but -mainly due to the strong public opposition to that change- this proposal was not retained.

Finally, **Ukraine** described how, in a general move to reduce burden on business activity in Ukraine, it changed its merger control thresholds in 2016. The merger control system in place since 2002 was ineffective, catching too many transactions – from 1 000 to 1 500 each year – and including a market share threshold. To decide on the new thresholds, the authority looked at 1 500 past transactions and grouped them in two sets: one set of international transactions, and a second set of Ukrainian transactions with turnovers within a certain range. It also looked at specific industrial sectors in Ukraine. It eventually proposed a two-tiered test which was based on turnover, including a requirement of local turnover. Ukraine eliminated its market share threshold because there is no reliable information available. As a result of this reform, it is anticipated that the total number of merger notifications will decrease approximately 50%.

The **UK** made some comments on its voluntary merger notification system. The UK explained that the notification of mergers under UK law is not mandatory and parties can self-assess and take the risk of not notifying. This means that only a small proportion of the mergers that meet the turnover and share of supply jurisdictional thresholds set out in the UK law are actually notified to the CMA. The UK clarified that the CMA can ‘call in’ and investigate mergers that were not notified voluntarily, but fall within its jurisdiction. The CMA has a Mergers Intelligence team who tracks the merger activity in the UK. This team examines about 550 mergers a year and less than 5% of those are ‘called in’ because the CMA only asserts jurisdiction over those merger that may potentially raise competition concerns. In the last financial year, the CMA reviewed 62 cases in total and the CMA found, in phase 1, that 20 of those cases might raise competition concerns. The CMA said that it only found in 2 out of 62 cases that it did not have jurisdiction to investigate. These statistics show how a voluntary regime can be quite effective.

6. Materiality and Local Nexus

The Chair then moved to the last point of the discussion on what can be an appropriate local nexus or a sufficiently material transaction.

The Chair gave the floor to **Jean-Yves Art**, Assistant General Counsel of Microsoft, who endorsed tests based on clear, objective thresholds, and particularly on local turnover. He offered three comments on this. The first was that, since the objective is to filter those merger transactions which are likely to have a significant impact on competition in the jurisdiction concerned, merger review should be triggered by at least each of two participating undertakings. If the local turnover of only one participating undertaking was sufficient to trigger merger notification, then a very significant number of merger transactions which have no or very little impact on competition in the country would have to be notified. Regarding greenfield joint ventures, merger control should trigger only if the current or foreseeable turnover of the joint venture exceeds the local turnover threshold. The second comment related to the level of the turnover threshold. Mr. Art suggested looking at the ratio of local turnover to GDP across jurisdictions and comparing that ratio with the ratio of total notifications to the number of notifications that raise competition issues. This may provide an interesting perspective on what could be the appropriate turnover threshold. Thirdly, regarding the ICT industry, there are companies with no or little turnover, but a large value potential. This means that mergers of significant economic and perhaps competition effects might not be subject to review. He suggested two ways of addressing this issue. The first option would be a residual criterion catching all mergers that have substantial direct and foreseeable effect on competition on the local market, which would require clear and practical guidelines by the agency concerned defining the parameters of substantial direct and foreseeable effects, combined with a possibility for the parties to have pre-merger contacts. A second option would be to design specific turnover or turnover-like criteria, e.g. one could combine two notification criteria based, respectively, on the value of the transaction and on the number of local customers served by the parties.

Norway then explained that it had significantly increased its thresholds, resulting in a significant reduction in the number of notifications. However, the authority still has the competence to order notifications for transactions that are below the thresholds for a period of up to three months after the change of control or after the final agreement has been concluded – which has resulted in companies not announcing mergers until that deadline has passed. The authority also has the power to impose an obligation to notify all acquisitions in markets where there is reason for concern, and it imposed that obligation on 11 companies in different markets with high concentrations, like for instance the groceries market. The information required for these obligatory notifications is the bare minimum.

At this point the Chair gave the floor to the **European Commission**, where local nexus is ensured through the requirement that at least two undertakings to the concentration achieve a certain minimum turnover within the European Union. Regarding joint ventures, a transaction becomes notifiable to the European Commission based on turnover, regardless of where the joint venture will be located and where its economic activity and sales activity is going to be located. Over the period from 2005 to 2015, around 470 notifications of joint ventures with negligible activities within the EEA were made at EU level, representing around 13.5% of yearly notifications. Although those types of joint ventures are subject to a simplified procedure, in 2014 the EU circulated a White Paper where it was proposed to remove those transactions altogether from EU merger control; the proposal has not been adopted so far. The Commission also referred to the specificities of the EU as a supranational organisation, where competence to review mergers is divided between the Commission and the Member States. In light of the principle of subsidiarity governing the EU, the division of competences is complemented by the application of the 2/3 rule and by the referral system. According to the 2/3 rule, even if a concentration meets the EU turnover thresholds it doesn't have to be notified to the Commission if each of the undertakings concerned achieves more than two-thirds of its aggregate Union-wide turnover in one and the same Member State. In a reference period from 2001-2008, 126 cases fell under the 2/3 rule, which corresponded to only 0.5% of total number of notifications in all member states. Then there is the referral system, in which a merger can be referred from the Member States to the Commission or vice-versa. Such referrals can be made upon request from the parties or the national authorities.

The Chair then turned to **Germany**, which expressed its view that at least two undertakings must fulfil local nexus criteria. In particular, it noted that since the local nexus threshold for the second undertaking was introduced in Germany in 2007 the number of notifications decreased by one third. In addition to the domestic turnover thresholds, German competition law includes a domestic effect clause which is an important filter, in particular with regard to joint venture cases. The domestic effects test is applied with the help of guidelines and pre-notification contacts with the parties in the event of doubt. Germany is amending its competition law and considering a proposed amendment which could contain a new transaction volume threshold for mergers in digital markets.

The last contribution was from the **US**, which focused on two interesting components of its system that were raised in the Secretariat background paper: how its foreign exemptions work, and the fact that US thresholds are not jurisdictional, so that the agencies can take action and investigate non notifiable transactions. With regard to the exemptions and the foreign-based exemptions, these were adopted very early on. As the HSR (Hart–Scott–Rodino Antitrust Improvements Act) thresholds have been updated, so have the foreign exemptions; there has also been an alignment of the foreign exemptions with the basic threshold amounts set out in the HSR act itself. Secondly, the thresholds in the US are not jurisdictional, and this is an important part of the system. Over the past five years, each agency (DoJ and FTC) has entered into in-depth reviews of 28 non notifiable transactions, amounting to over 20% of overall in-depth reviews. Decoupling the thresholds from jurisdiction enables the US to set the HSR threshold standards for notifications rather high, such that they do not burden business or the agencies, while allowing reviewing the small number of transactions that might fall below the thresholds and might affect competition in the US.

7. Chair’s Closing Remarks

The **Chair** thanked all participants in the roundtable and stressed that papers submitted by participants and the Secretariat were very useful to frame the discussion. He identified a consensus to try as much as possible to put in place a merger system that is not burdensome either for the business community or for competition authorities. He concluded that there is no one right solution, as each option creates trade-offs in the fine-tuning of the notification thresholds between legal predictability, flexibility and appropriate targeting. The discussion showed that small jurisdictions may have very small markets and absolute value thresholds might not be ideal there. Another idea which came out was the role of economics, statistics and history in trying to find appropriate thresholds. A last issue was whether there is an organised way to change merger control systems when the economy changes as well.

The Chair concluded that there is a call for a deepening of the recommendations of both the OECD and the ICN, which have been quite influential. There is a question of whether something could be added in how one defines the materiality or relevance of the thresholds, and whether some common methodology for setting notification thresholds could be offered. He asked the Secretariat to prepare a scoping note for the next meeting on what further work, given the discussions, could be pursued.