

ICN IMPLEMENTATION PANEL

Slide One

- I would first like to thank the ICN leadership and members for the inclusion of non-governmental advisors from the private bar and from companies in the work of this important organization. I am pleased to have the opportunity to participate in this year's conference on the timely topic of Implementation.
- I applaud the ICN leadership for including this panel on Implementation. This is consistent with the Mission Statement that is part of this year's conference materials. I believe that it is significant that the Mission Statement underscores that the quite valuable written work product of this organization should be viewed only as an "intermediate step" towards the goal of real achievement. According to the Mission Statement, actual achievements for the ICN are to be measured by real world changes in practice for the better.
- In other words, Implementation is the goal of the ICN. Without Implementation there will be no real and lasting achievements.
- Merger notification is one of the most promising areas for significant progress on Implementation. As Randy Tritell noted yesterday, the subgroup on Merger Notification Procedures – after four years of work – has now completed its set of Recommended Practices. The intermediate steps in this area have been taken.

Slide Two

- As Makan Delrahim noted yesterday, there are serious real world problems to address in the area of Merger Notification Procedures.
- The International Competition Policy Advisory Committee Report in 2000 highlighted the issue of unnecessary and burdensome costs imposed by the current merger review regimes. The problem has increased in the last five years with the emergence of more merger filing requirements and the continued globalization of business.
- Maria Coppola just summarized the progress that has been made to date in implementation of the merger notification recommended practices.
- There have been significant improvements for which the ICN and its members deserve credit. But much more remains to be done.
- Today, I would like to focus on a few core recommended practices as a priority for implementation since I believe that they offer a means to achieve a much more efficient merger review system.

Slide Three

- I believe that there are five steps to eliminate inefficiency in merger review.

Slide Four

- The first step is to reduce the burden of determining whether a notification is required.
 - Here the key is to eliminate burdensome market share based tests and to focus on turnover in the jurisdiction – an objective test that is much less burdensome to

apply, because it is based on information that is readily available to the parties to the transaction.

Slide Five

- The second – and most important step – is to eliminate unnecessary filings.
 - Here the key is to implement the recommended practice that there be a significant local nexus to the transaction before a notification is required in any jurisdiction.
 - It is important to eliminate both worldwide turnover tests and combined local turnover tests since these can be met even when there is no local nexus to the transaction.
 - The focus should be on significant local turnover of each party. In the case of the seller – only the turnover that is being acquired in the transaction should be counted.

Slide Six

- This second step alone can make a huge difference
 - As a single company case study in the May *Global Competition Review* illustrates
 - employing a 10 MM Euro local turnover requirement for each of two parties can reduce notification by more than 80%.
 - This 10 MM Euro level is a reasonable minimum local threshold for all but the smallest jurisdiction – it is already exceeded today by many jurisdictions such as
 - Belgium (15 MM Euros)
 - Finland (20 MM Euros)
 - Croatia (13.5 MM Euros) → You will hear more about Croatia from the next speaker on this panel.

Slides Seven and Eight

- The third and fourth steps involve reducing the burdens of initial notifications and of post-notification information requests. Again, the Recommended Practices are straightforward and sensible – the message is that parties should only be required to provide what is needed to assess whether there is a real substantive issue to investigate.

Slide Nine

- The fifth step focuses on non-problematic transactions. The filing fee report that Julie Soloway and her team produced for this year's conference confirms what has been widely accepted – the vast majority of mergers do not present real substantive issues. Combining several recommended practices can benefit parties, agencies, and customers by streamlining the process to speed completion of these non-problematic deals.

Slide Ten

- I hope that I have made progress sound logical, simple, and easy to achieve. But I understand that implementation requires hard work – especially when a change in law is required. How do we make progress? I offer a few modest suggestions.