

4th Annual ICN Conference – Bonn Implementation Session

“Creating a More Efficient Global Merger
Review System Through Implementation
of the ICN’s Recommended Practices for
Merger Notification Procedures”

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Implementation – More Efficient Merger Review

Background to the ICN's Efforts to Improve Merger Notification Procedures

International Competition Policy Advisory Committee Report (2000):

“[S]ignificant and sometimes unnecessary transaction costs may be imposed on proposed transactions through the notification and review procedures implemented by various jurisdictions.

Multijurisdictional merger review also imposes indirect and difficult-to-quantify costs that may exceed the direct costs . . .

Other intangible costs arise from the delays that may be engendered by the review process in a number of jurisdictions.

It is therefore important to focus on those *unnecessary* and *burdensome* costs that have little or no relationship to antitrust enforcement goals.”

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5 Steps to Eliminate Inefficiency in Merger Review by Implementing Key Recommended Practices (“RPs”)

1. Reduce the Burden of Determining Whether a Notification is Required
2. Eliminate Unnecessary Notifications
3. Eliminate Unduly Burdensome Initial Notification Requirements
4. Eliminate Unduly Burdensome Post-Notification Information Requests
5. Speed Clearance of Transactions that Do Not Raise Material Competition Concerns

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1. Reduce the Burden of Determining Whether a Notification is Required

RP IIA -- Adopt Clear and Understandable Notification Thresholds

RP IIB -- Utilize Objectively Quantifiable Criteria in Notification Thresholds

- * Eliminate Market Share Based Tests
- * Focus on Turnover in the Jurisdiction
- * Standardize Methodologies for Calculating Turnover Across ICN Member Jurisdictions

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2. Eliminate Unnecessary Notifications

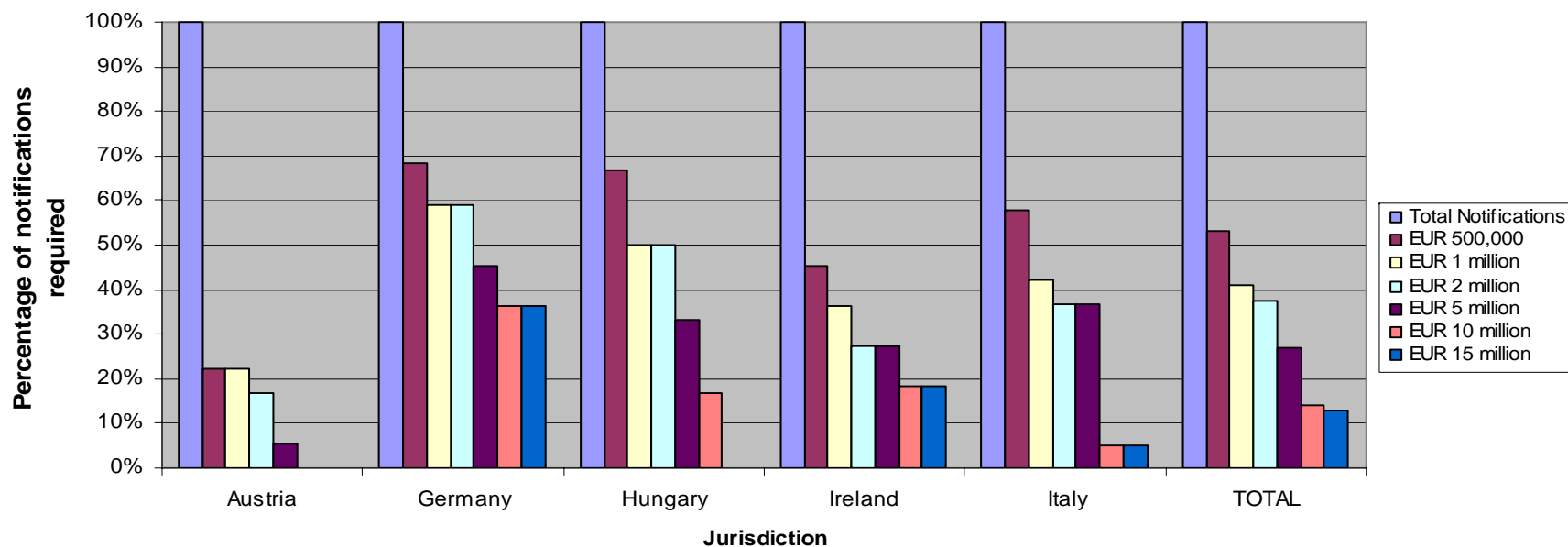
RP IA -- Require Notification Only Where There is a Significant Local Nexus to the Transaction

RP IB -- Require That at Least Two Parties Each Have a Significant Level of Turnover in the Jurisdiction

- * Eliminate Notifications Based Solely on Worldwide Turnover
- * Eliminate Notification Based on Combined Local Turnover of All Parties
- * Count Only the Local Turnover Attributable to the Portion of the Seller that is Being Acquired

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Case Study: One company's notifications between 2002 and 2004 and how the number of notifications would have decreased if ICN compliant thresholds with an increasing national target threshold had been applied



Source: May 2005 Global Competition Review (p. 24)

Implementation at 10MM Euro Level Can Reduce Notifications by >80%

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3. Eliminate Unduly Burdensome Initial Notification Requirements

RP VA-- Limit Initial Notification to Information Needed to Determine Whether the Transaction Merits Detailed Investigation

RP VB-- Provide Case-by-Case Flexibility to Reduce Information Requirements

RP VD-- Limit Translation Requirements and Formal Authentication Requirements

- * Reduce Information Burdens for Most Transactions
- * Use Supplemental Requests as Needed for the Small Percentage of Transactions that Raise Possible Competition Issues

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4. Eliminate Unduly Burdensome Post-Notification Information Requests

RP VIE -- Competition Agencies Should Seek to Avoid Imposing Unnecessary or Unreasonable Costs and Burdens

-- Requests Should Be Reasonably Tailored to Obtain Needed Information

* U.S. Announcement of Second Request Reform Effort a Positive Step

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5. Speed Completion of Transactions That Do Not Raise Material Competition Concerns

RP I -- Eliminate Unnecessary Notifications

RP V -- Streamline Initial Notification Requirements

RP IIIA -- Permit Notification Prior to Definitive Agreement Based on Good Faith Intent

RP IVC -- Employ Early Termination of Applicable Waiting Periods for Most Transactions

- * Fewer Notifications
- * Less Burdensome Forms
- * Earlier Filings & Faster Clearances

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Driving Implementation

- ICN Leadership/Members
 - Lead by Example
 - Recognize Accomplishments
 - Create Momentum for Change
- European Competition Network
 - Well-placed to Promote Reforms (May '05 GCR Articles)
- ICN Merger Notification Procedures Subgroup
 - 2006 Workshop: Sharing Experiences to Spur Implementation
- Legal and Business Community
 - Partner with Member Agencies to Foster Legislative Changes
 - Assist ICN in Building Political Support for Reforms