INTERNATIONAL COMPETITION NETWORK

Information Requirements for Merger Notification

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Presented at the 8th Annual Conference of the ICN

Zurich, Switzerland

June 2009

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INTRODUCTION

This paper aims to assist agencies in comparing their approaches to initial notification with those of other ICN members and to help agencies planning to introduce or revise their notification forms or requirements in conformity with the ICN Recommended Practices for Merger Notification and Review Procedures (Recommended Practices or RPs). In doing so, Section I of the paper summarizes the various categories of information ICN members seek in the initial notification of a merger. Section II describes approaches and mechanisms for flexibility that agencies use to obtain the information they need for merger review while minimizing unnecessary costs and burdens of notification, particularly for transactions that do not present material competitive concerns.

The Recommended Practices state that the initial notification should elicit the minimum amount of information necessary to initiate the merger review process. RP V on Requirements for Initial Notification identifies three categories of potentially relevant information: information needed by the agency (1) to verify that the transaction exceeds jurisdictional requirements and notification thresholds; (2) to determine whether the transaction raises competitive issues meriting further investigation; and (3) for a decision clearing or approving the transaction, or to prepare other documentation required to terminate the review of transactions that do not merit further investigation.

Because transactions can have a wide range of possible competitive effects, the RPs recognize that no single set of initial notification requirements is optimal for all transactions. Therefore, the RPs advocate that jurisdictions adopt mechanisms that allow for flexibility in the content of the initial notification and with respect to additional information requirements during the initial phase of the review. The RPs highlight some of the different mechanisms agencies use to provide flexibility to reduce initial notification burdens, including: (1) alternative notification forms; (2) waivers; and (3) limited initial requirements supplemented with agency discretion to seek more information during the initial phase investigation.

The Notification and Procedures Subgroup explored the ways agencies address the initial notification of a merger. The Subgroup reviewed notification forms and surveyed 28 jurisdictions that have implemented one or more mechanisms for flexibility in the content of the initial notification.[1] The Subgroup worked with non-governmental advisors (NGAs) to complete a questionnaire based on publicly available information (e.g., notification forms and agency websites). The NGAs then worked with agency staff to confirm the accuracy of the questionnaire responses.

Summary of Key Findings

Initial Notification. A review of members' notification forms and initial information requirements identified a "common core" of information that is reported to most agencies.[2]

[1] Responses were received covering information requirements in Argentina, Australia, Austria, Brazil, Canada, Chile, Czech Republic, Denmark, Estonia, European Union, Finland, France, Germany, Ireland, Israel, Korea, Lithuania, Mexico, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, Ukraine, United Kingdom, and the United States.

[2] The OECD, in its 1999 Report on Notification of Transnational Mergers, identified a similar "common core" of information that most jurisdictions request, but noted that jurisdictions specify the information to be produced in different forms or quantities. The OECD's "Framework for a Notification and Report Form for Concentrations" synthesizes the common elements of notification forms, providing another useful reference for

This appears to be the case regardless of whether notification is compulsory or voluntary, and whether the review process is formal or informal. First, each competition authority needs certain information for administrative purposes, such as to identify: who is making the filing; the parties to the transaction; information needed to determine the length of the waiting period; the contact person for the filing; and information, such as revenues, aimed at confirming that the transaction is reportable. A second set of information concerns the parties to the filing: in what businesses do they engage and what entities do they own (majority or minority interests) or what entities own the merging parties. Some jurisdictions require documents such as annual reports and securities filings. Third, the reviewing agency needs a description of the transaction. Some jurisdictions require a copy of the acquisition agreement. Finally, most initial filing requests require some level of competitive analysis. Thus, the forms generally ask questions aimed at identifying any competitive overlaps between the parties to the transaction and obtaining some information about the overlaps.

The form and extent of information requested, however, differ significantly among jurisdictions. Factors contributing to these differences include the purpose for which the agency uses the information and the number of transactions typically notified.[3] The information requirements set out in the forms or other formats serve different purposes across jurisdictions — for some, initial information requests are geared towards deciding whether to challenge or block the merger; for others, the form is used to help decide whether to open an initial investigation.[4]

Mechanisms for Flexibility. The objective of implementing mechanisms for flexibility in the context of merger notification requests is to limit information that is not needed in the initial notification, either because the transaction does not present material competitive concerns or the information requested is not relevant to a specific review. Flexible mechanisms that limit the submission and review of such unnecessary information can benefit both agencies and parties. There are many ways to achieve this objective; no one method is necessarily better than another. Often they are complementary, and agencies tend to use more than one mechanism to minimize burden.

Alternate notification forms, such as short and long forms, the ability to waive specific information, discretionary supplementation systems that require only limited initial information, and voluntary notification systems each can help agencies bring flexibility to broadly applicable notification requirements and ease the burden of unnecessary requests within the context of specific transactions.

An innovative approach that might be useful for agencies with extensive notification requirements is an alternative process that allows parties to notify a transaction by letter or exempts parties from filing a notification in non-complex cases. Under this mechanism, the

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agencies when crafting specifications for their notification forms. See OECD Reports, Notification of Transnational Mergers, 1999 available at www.oecd.org/dataoecd/40/2/2752153.pdf.

[3] This is consistent with RP V.A. comment 2, which states: "the amount of information required in the initial notification may vary depending on the approach to notification thresholds taken by the jurisdiction. Jurisdictions that review transactions of limited value, transactions with limited local nexus, or large numbers of transactions due to low jurisdictional thresholds should be particularly sensitive to any disproportionate burdens arising from the breadth of their initial filing requirements."

[4] In jurisdictions that do not provide for a second stage of review that has additional information requirements, the initial form is the only readily available means of requiring information from the parties. Others have a second stage mechanism that includes provisions for obtaining additional information.

merging parties could submit a letter describing the parties, the proposed transaction, and lack of adverse competitive impact instead of a prescribed premerger notification form.

Agencies should and do provide guidance to parties about the availability and use of flexibility mechanisms. Many agencies provide for pre-notification consultations to discuss what is possible within the context of a proposed transaction.

I. INITIAL INFORMATION REQUESTS

Set out below are four types of information generally requested in initial merger notifications: information for administrative purposes; a description of the transaction; information concerning the parties to the filing; and competitive analysis information. This Section concludes with a brief discussion of how respondents address non-compliance with initial information requirements and confidentiality protections.

A. INFORMATION NEEDED FOR ADMINISTRATIVE PURPOSES

This Section focuses on information needed to identify the merging parties and to confirm the transaction's reportability. Where filing fees are imposed, jurisdictions often request information relating to payment of the fee.[5]

1. Identification of the Merging Parties

Every surveyed jurisdiction requires the disclosure of the merging parties' full legal names and the address for their registered or head offices. Notification forms often also request addresses of other principal offices and contact information for the company and/or its legal representative, including for service of documents.[6]

For the majority of responding jurisdictions, this information appears sufficient to identify and contact the parties. However, many jurisdictions also require the parties to establish that a legal representative is authorized to act on behalf of a merging party, where the representative is signing a notification on behalf of a merging party, in the form of a power of attorney or similar document. In addition, a small number of jurisdictions require the provision of corporate identifier numbers of the merging parties based on tax or commercial registers.[7]

A few jurisdictions require original or certified copies of documents governing the management of the merging parties, such as articles of incorporation, as part of the initial notification.[8] Although this information is largely pre-existing, practitioners have suggested it may not be sufficiently relevant to the agency's disposition of the transaction to justify the efforts required to gather this material and prepare copies that comply with any formal legal

[5] Jurisdictions in which merger notification filing fees are payable in advance typically require parties to disclose the amount of the fee paid, the payor, and the manner of payment (e.g., wire transfer). In some cases merging parties are required to provide proof of payment as part of the initial notification.
[6] Usually name, title/position, postal address, telephone number, facsimile number, and email address.
[7] Typical corporate identifier information is described as the corporation number, registration number from the commercial register, taxpayer identification number or code, social insurance number, and/or organization/corporate ID number. Jurisdictions that require such information include Austria, Czech Republic, Estonia, Lithuania, Portugal, Spain, Sweden, Taiwan, and the United States.
[8] Jurisdictions that require such information include Finland, Mexico, Slovak Republic and Ukraine.

requirements, including potential translation and legalization. (See discussion in Section II.E., below.)

2. Reportability

In the case of compulsory notification regimes, surveyed jurisdictions were almost evenly split between those that require the disclosure of revenue/turnover or asset information to verify that the proposed transaction exceeds the relevant notification thresholds and those that accept the parties' assessment that the proposed transaction is subject to pre-merger notification. In instances in which the disclosure of financial information is required to verify reportability, most survey responses indicated that the information was generally pre-existing and therefore relatively easy to gather. This requirement is acknowledged in RP V.A.[9]

B. INFORMATION ABOUT THE PARTIES' BUSINESSES

A second set of information concerns the parties to the filing: in what businesses do they engage and what entities do they own (majority or minority interests) or what entities own the merging parties.

Most notification forms require merging parties to provide annual reports and/or financial statements for the most recently completed fiscal year.[10] This information, which helps characterize the businesses of the parties, is generally straightforward to collect.[11] Many forms also require merging parties to describe their corporate structure, i.e., the relationship between the merging parties and their affiliates, often by reference to an organizational chart.

Most jurisdictions require the merging parties to provide a list of affiliates in order to have a complete picture of their interests. Many of these jurisdictions also require detailed information about these affiliates, such as financial statements and information about the affiliates' business activities, including recent acquisitions.[12] Some jurisdictions limit these information requirements to affiliates that are most relevant to the agency's review, such as those active in the jurisdiction and/or affected markets. For example, certain jurisdictions, such as Canada, expressly limit affiliate information to affiliates with significant assets in the jurisdiction or revenues from sales in, from, or into the jurisdiction. Others, such as the European Commission, require information only for affiliates that control the merging parties or that are active in markets affected by the proposed transaction.

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[9] RP V.A. provides that initial notification may be used to collect information to verify that the transaction exceeds jurisdictional thresholds.

[10] Argentina, Austria, Brazil, Canada, Czech Republic, Denmark, Estonia, European Union, Finland, France, Ireland, Israel, Korea, Lithuania, Mexico, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, and the United States require annual reports and/or financial statements. As mentioned in Section I.A, above, the financial information requested is often used for reportability purposes.

[11] To the extent that the merger involves public companies, this information is normally available on company or securities commission websites or elsewhere. Indeed, in practice, more relevant and extensive information may be available on company websites, even in the case of private companies. Certain jurisdictions recognize this and allow for the provision of website links in lieu of hard copy materials. For example, in the United States, the parties may instead choose to provide links to these documents on the parties' websites.

[12] Another example of an information requirement that can increase the breadth of initial notification is the provision of information on minority shareholdings (e.g., shareholders with an equity interest in the notifying party in the range of 5% to 10% or more).

C. DESCRIPTION OF THE TRANSACTION

All of the jurisdictions responding to the survey replied that the parties are required to provide a description of the transaction. Twenty-two of the twenty-eight respondents require the parties to provide an explanation of the business rationale of the transaction. Eighteen require the parties to provide information about the timing of the transaction, including the scheduled closing date and/or the expected dates of major events related to the closing of the transaction.[13]

1. Description Requirement

Information typically requested in a description of the transaction includes key elements of the transaction, the nature of the concentration (e.g., whether it is an acquisition of assets, acquisition of shares, acquisition of sole or joint control, amalgamation or merger or joint venture), and the ownership structure and control before and after the transaction.

Jurisdictions require a wide range of detail in the transaction description. For example in Canada, the description may be and often is based on the parties' press releases. For Australia, which has a voluntary notification regime, the level of detail provided depends on the complexity of the matter and the competition issues likely to be raised. The European Commission and Ireland require the parties to submit an executive summary of the proposed transaction. Others specifically require further details, including the conditions that must be satisfied prior to closing, the method of financing, the circumstances that led to the transaction, and the value of the transaction.

2. Explanation of the Business Rationale

Most responding jurisdictions require the parties to provide an explanation of the business rationale for the transaction. The types of explanations required include the strategic and economic reasons for the transaction, the business objectives to be achieved by the transaction, and/or the financial considerations underlying the transaction.[14]

3. Transaction Documents

Almost half of the responding agencies require the parties to provide all the documents relating to or documenting the transaction (separate from documents addressing the

[13] Argentina, Austria, Czech Republic, France, Germany, Israel, Korea, Switzerland, Ukraine, and the United Kingdom do not specifically require the parties to provide information about the timing of the transaction. Germany indicates that such information would, however, be helpful if expedited clearance is required or if staggered acquisitions are contemplated.

[14] Chile, which also has a voluntary notification regime, requires the parties to provide details on the prospects for growth, economies and efficiencies expected to be achieved, the manner and time frame for achieving them, and an estimate of their magnitude and of the likelihood that they will be able to contribute to improving the quantity, quality, and price of the goods or services. Portugal requires the parties to provide information related to the expected volume of business, the resources involved (financial and human resources, assets, etc.), and the main customers and suppliers. Taiwan requires merging parties to illustrate overall economic benefit resulting from the merger. Israel requires the parties to provide information relating to the objectives of the transaction (for example, the acquisition of operations that will complement existing operations, the expansion of operations into new markets, etc.). In Slovenia, if the party plans to claim efficiencies resulting from the concentration, the notification form requires an account of the efficiencies to be gained and the way these efficiencies will affect the Slovenian market.

competitive effects, discussed in Section I.D.4, below). Six agencies (Canada, Chile, Czech Republic, Ireland, Spain, and the United States) require the parties to provide only the "primary" documents (e.g., purchase agreement).[15] Ireland and Slovakia require the parties to provide a copy of the primary documents along with a list of all other documents relating to the transaction.

D. COMPETITIVE ANALYSIS INFORMATION

The vast majority of jurisdictions surveyed indicated that their initial merger notification forms require parties to provide information about competitive effects. Initial notification requests generally ask questions aimed at identifying competitive overlaps between the parties to the transaction and obtaining basic information about the overlaps. The type of information required and the level of difficulty associated with gathering this information varies from jurisdiction to jurisdiction and from transaction to transaction.[16] In some jurisdictions, the parties are not required to define the markets in which they operate or provide market share figures with their initial filing. The majority of respondents require this information as well as information on customers and suppliers and/or vertical markets. Others require more extensive competitive information, such as a list of substitute products, details on barriers to entry, and data on imports and exports, for relevant markets in which the parties' combined share exceeds a certain threshold (an "affected market").[17] Some jurisdictions request such additional information for all products (including non-overlapping products) despite the apparent lack of probative value associated with this information.

Set out below is the typical amount of information that the majority of jurisdictions require.[18]

1. Relevant Markets for Overlapping Products

As a first step, nearly all surveyed jurisdictions require parties to provide their assessment of relevant product and geographic markets for overlapping products.[19] Based on their market assessments, jurisdictions often require parties to calculate market shares. The process of identifying relevant markets and market shares can be subjective, time consuming, and demanding. Although practitioners in many jurisdictions noted that gathering market share

[15] Six jurisdictions (Australia, Austria, Germany, Mexico, Taiwan, and the United Kingdom) do not require the parties to provide the transaction documents as part of the information request. However, the authorities for Australia, Austria, Germany, Mexico, and the United Kingdom may ask the parties to provide such information in a request for additional information.

[16] The RPs recognize that it is legitimate for competition agencies to require the merging parties to provide information sufficient to demonstrate that the transaction does not present material competitive concerns. At the same time, competition agencies should be flexible as to formal requirements where the merging parties are able to demonstrate the absence of material competitive concerns by reference to objectively quantifiable information maintained in the ordinary course of business, as opposed to the detailed market information sometimes required upon notification. See RP V.B. comment 3.

[17] Much of this information is similar to that requested in so-called "long forms" as set out in the table in Section II.A.3. By linking this information to "affected markets" these jurisdictions have shown flexibility by not requiring a similar amount of information in transactions that do not present material competitive concerns.

[18] For the avoidance of doubt, references to thresholds in this Section of the report and in Section II do not relate to filing thresholds, but rather to whether additional information is required if certain thresholds are met.

[19] With its focus on objective, readily available information, the notification form in the United States only requires parties to identify overlapping products via "NAICS" codes, the North American Industry Classification System. NAICS is the standard used by federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the United States economy.

information can be challenging, they also recognize the relevance of the information to an agency's review.

2. Customers and Suppliers

Most surveyed jurisdictions limit information on customers to overlapping products. Most jurisdictions require the parties to identify the top five customers of overlapping products and to provide those customers' names, addresses, the share of sales purchased. Certain other jurisdictions differ. For example, Switzerland requires only a description of the typical customer, and Argentina requires parties to submit information only for customers to which more than 5% of turnover can be attributed. Korea, Germany, and the United States do not require any customer information.[20]

Similar to the disclosure requirements for customer information, most jurisdictions require each of the parties to identify its top five suppliers of the overlapping products. Switzerland requires only a description of the typical supplier and Argentina requires parties to submit information only for suppliers to which more than 5% of production costs can be attributed. Supplier information is not required by Germany, Korea, and the United States.

3. Vertical Markets

In addition to requiring information on horizontal markets, most respondents require market share information on vertical markets. This information is not required in Canada, Germany, Korea, Mexico, Ukraine, and the United States. The majority of surveyed jurisdictions require the parties to submit this additional information only if they exceed the 25% threshold, i.e., one party or both parties combined must have a 25% or more market share in a relevant vertical market. Others use market share thresholds from 0% to 33%.

4. Evaluation Documents

In addition to the information requirements outlined above, the majority of surveyed jurisdictions require parties to submit all documents, including analyses, reports, or surveys, used to assess the effects of the merger on competition.[21] These documents often discuss specific markets, competitors, customers, suppliers, and the overall competitive impact of the transaction. As they are typically prepared by and for those business people most closely involved in the negotiation and evaluation of the transaction, these documents frequently shed a great deal of light on the question whether potential competitive effects of the transaction warrant further investigation. For most of these jurisdictions, these documents generally are required only if there is an affected market.

E. COMPLIANCE ISSUES

The consequences of non-compliance with the filing requirements vary among jurisdictions. While almost all agencies have the power to order the parties to supplement missing or

[20] In the United States, once an investigation is opened – which occurred in roughly 20% of reported transactions in fiscal year 2008 – the reviewing agency routinely asks the parties to provide customer lists voluntarily. The agencies request customer lists based on their own initial assessment of potential markets. See Section II.C.

[21] Brazil, Chile, Germany, Korea, Mexico, and Taiwan are the only surveyed jurisdictions that do not require the parties to provide documents that evaluate competitive effects as part of the transaction. Mexico does not specifically require the parties to provide documents but the antitrust authority may request them.

inaccurate information, some may also impose monetary or other sanctions on the companies[22] and, in some jurisdictions, their officers (where false or misleading information has been provided).[23] A majority of jurisdictions enforce compliance with pre-merger filing requirements by linking compliance with the running of time limits (e.g., waiting periods). Most jurisdictions with mandatory waiting periods permit the reviewing agency to suspend or interrupt the running of the waiting period (stop or "reset" the clock) pending the parties' completion of the filing.[24]

F. CONFIDENTIALITY

The RP on Confidentiality states that business secrets and other confidential information received from merging parties and third parties in connection with the merger review process should be subject to appropriate confidentiality protections and that competition agencies should avoid unnecessary public disclosure of confidential information in public announcements, court or administrative proceedings, decisions, and other communications respecting a pending transaction (See RP IX. A. and E.). In the surveyed jurisdictions, information submitted in connection with a notification generally is either treated as confidential, or parties have an opportunity to identify confidential information that will not be disclosed to the public.[25] Thus, most jurisdictions appear to have the recommended confidentiality protections in place.

Some agencies publish the fact of notification[26] or may disclose confidential information as needed in a published decision.[27] For example, in Germany, the usual practice is to publish the fact that the Bundeskartellamt has received a notification, the date of notification, the parties' names, the products involved, the location of the parties' head offices in the case of domestic parties, and the nature and date of the authority's decision. In addition, these agencies generally have noted that a limited amount of information is likely to be disclosed during market contacts undertaken as part of the review of the transaction.[28] Some agencies

[22] Argentina, Austria, Brazil, European Union, France, Germany, Mexico, Slovakia, and Ukraine.

[23] Among the surveyed jurisdictions, Australia, Canada, Germany, and Ukraine mentioned the possibility of sanctions against company officers.

[24] Practices diverge as to whether the resetting of the clock is triggered immediately or only after a certain grace period during which the merging parties may remedy the failure to provide complete information. The European Commission, for example, takes the view that the effective functioning of the filing procedure requires a resetting of the clock as soon as they detect a deficiency in the information provided. Once the clock is reset, the companies have the opportunity to provide the missing information within a reasonable period time. Failure to do so within the time set typically results in the rejection of the filing.

[25] Eleven of the responding jurisdictions (Argentina, Austria, Brazil, Chile, Estonia, Ireland, Lithuania, Portugal, Slovakia, Sweden, and Taiwan) generally allow parties to identify certain information as confidential. Information identified as confidential typically is protected from public disclosure. In two jurisdictions (Ireland and Slovakia), in addition to identifying information as confidential, parties must provide reasons why the authority should treat the information as confidential. In twelve responding jurisdictions (Australia (unless the permission of the parties is obtained), Canada, Denmark, European Union, France, Finland, Korea, Mexico, Slovenia, Switzerland, Ukraine, and the United States), the agency generally will not make public information provided in connection with a notification. In Israel, the notification forms are divided into confidential and non-confidential parts. Only information provided in response to the questions posed in the confidential portion will be protected from disclosure.

[26] E.g., Austria, Estonia, European Union, France, Finland, Germany, Ireland, Lithuania, Slovakia, Spain, and Taiwan. Two responding jurisdictions (Canada and the Ukraine) indicated that information provided in connection with a notification might be shared with foreign authorities.

[27] E.g., Australia, Brazil, Canada, Estonia, and Finland.

[28] In Australia, confidential reviews provide an interim view to merger parties, however, an unqualified view can only be made following a public review.

stated, however, that in exceptional cases they would refrain from publishing notification or from making market contacts at the parties' request.[29] One respondent, however, specifically indicated that while parties can request that a transaction be reviewed without public disclosure, it is often unrealistic in the context of an investigation.

II. MECHANISMS FOR FLEXIBILITY TO REDUCE INITIAL NOTIFICATION BURDEN

Because transactions can have a wide range of possible competitive effects, the Recommended Practices recognize that no single set of initial notification requirements is optimal for all transactions. Therefore, the RPs advocate that jurisdictions adopt mechanisms that allow for flexibility in the content of the initial notification and with respect to additional information requirements during the initial phase of the review.

The Recommended Practices underscore that there are various ways to provide flexibility in the initial review. These mechanisms include (1) alternative notification formats that vary with the likely complexity of the competitive analysis of the transaction, (2) procedures that provide agency staff with discretion to waive responses to information specifications that are not sufficiently relevant to the agency's disposition of the transaction, and (3) abbreviated initial notification requirements coupled with procedures that provide competition agency staff with discretion to seek additional information during the initial review period.

Many agencies use one or more of these mechanisms, as well as other mechanisms detailed below.[30] In addition, voluntary notification systems provide the additional flexibility to parties of choosing whether to file at all. Whichever mechanisms are used to provide flexibility, the RPs advocate that agencies seek to limit the information sought from parties to transactions that do not appear to present material competitive concerns. The RPs recognize, however, the need for competition agencies to require the merging parties to provide information sufficient to demonstrate that the transaction does not present such concerns (See RP V.B. comment 3).

A. ALTERNATIVE NOTIFICATION FORMATS

1. Description

Many jurisdictions allow for different notification forms that vary with the nature of the transaction being notified. For example, several jurisdictions allow filing parties to make a submission using either a "long form" or a more abbreviated "short form" depending on the complexity and competitive impact of the transaction. For instance, parties that file with the European Commission can choose to use the Short Form CO instead of the longer Form CO when they believe the transaction is unlikely to raise competition concerns. Other

[29] Australia (the fact of notification is not publicized in relation to confidential reviews), Brazil, Canada, Germany, Israel, Switzerland, and the United States. This is consistent with RP IX.C., which states that competition agencies should seek to defer contacts with third parties until the proposed transaction becomes public where such deferral would not adversely affect the reviewing agency's ability to conduct its investigation effectively or complete its review within applicable deadlines.

[30] The RPs identify additional measures to minimize the burden of translating documents submitted with initial notifications and of certifying the validity of notifications and supporting information (see RP V.D.). These are discussed in Section II.E., below.

jurisdictions, such as Argentina, Israel, and Spain, also offer two separate prescribed forms. In addition, Korea and Switzerland permit parties to make a full or simplified notification using a single form.[31]

The choice between a short and a long form offers an important mechanism for flexibility in transactions deemed to lack significant anticompetitive impact. For filing parties, short form filings do not take as much time or as many resources to complete and file, and may reduce the resources competition agencies expend to review them.

2. Criteria for the Selection of a Short Form

a) General

In general terms, a short form notification is available when the notifiable transaction is unlikely to raise competition concerns. Filing parties base this assessment on various criteria, the most common of which are outlined below. Several jurisdictions also encourage parties to meet with agency staff during pre-notification consultations to discuss which form parties may use.

(i) The absence of competition concerns: Certain jurisdictions specify that filing parties may use a short form notification when there are no horizontal overlaps or vertical relationships between the parties. This is the position, for example, in the European Union, Estonia, and Spain. In Korea, merger notification guidelines describe five types of non-complex transactions that are eligible for "simplified" review. In other jurisdictions, the guidance relating to market activity appears more general. In Mexico, for example, filing parties may use the short form when the parties do not carry out the same or related activities, and in Switzerland, filing parties may use a short form notification when the transaction is not complex, although its use must be approved by the Swiss Competition Commission.

(ii) Market shares indicate absence of competitive concern: Many jurisdictions incorporate a market-share test for filing parties to consider in determining whether to use a short form. Thus, filing parties must analyze the market(s) at issue, and this analysis often includes adjacent markets. For instance, in the European Union, a short form notification may be used when the parties to the concentration do not have, in the case of horizontal overlaps, a combined market share exceeding 15%, or, in the case of vertical relationships, individual or combined market shares exceeding 25%. Other jurisdictions, such as Estonia, Korea, Sweden, and Taiwan have similar market share screens for determining which forms to use.

(iii) Pre-existence of joint control: In some jurisdictions, a short form notification may be used where a party is to acquire control of an undertaking over which it already holds a degree of influence that amounts to "joint control." This is the case in the European Union, Estonia, Spain, and Taiwan. In Mexico, the short form is available when the acquirer already has control of the target undertaking, and in cases of corporate reorganization. In the United

[31] Similarly, Austria has a single merger notification form but in certain circumstances permits less information to be provided, which can be considered to be a short form notification. In addition to jurisdictions that provide a general short form/long form option, Switzerland allows filing parties to submit a "multijurisdictional" filing that adds only Switzerland-specific information to lessen the burden of using different forms where notification in multiple jurisdictions is required. Such filings must be based on filings made in certain specified jurisdictions, including the EU, France, Germany and the United Kingdom.

States, transactions in which the acquirer already controls the target are exempt from notification.

(iv) Joint ventures: In the EU, a short form notification may be used where the parties form a full-function joint venture that has no, or negligible, activities within the European Economic Area (the specific thresholds for which are set out in the short form). Similar rules apply in other jurisdictions. A shortened "notice" may be used in Estonia where a joint venture is established that will not be active in Estonia. Finland and Spain have similar rules relating to their national territories.

b) Specific Agency Guidance for Selecting a Form

The majority of jurisdictions that accept both long and short merger notification forms provide guidance with respect to which form to use. The format of the guidance varies: some jurisdictions provide detailed guidance, set out both within the notification form itself and in an explanatory notice, while other jurisdictions use legislation to provide technical guidance on which form to use. Regardless of its form, this guidance is useful for companies and advisors and is available online. [32]

In certain circumstances, even when the criteria for use of a short form notification are met, the competition authority may subsequently request the parties to submit a long form notification. In Taiwan, for example, the Taiwanese Fair Trade Commission may request an enhanced notification when one of the firms is a holding company. Argentina's competition authority may require the filing parties to complete an additional form that requests further information if the transaction is complex.

3. Description of the Types of Information Generally Contained in Short Forms Versus Long Forms

The table below describes the types of information generally contained in the short form compared to the types of information in the long form. Both forms typically ask for the

[32] For example, the following jurisdictions offer online guidance:

Argentina - http://www.infoleg.gov.ar/infolegInternet/resaltaranexos/145000-149999/146751/norma.htm in Spanish;

European Commission - http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:133:0001:0039:EN:PDF;

Estonia - Guidelines for Submission of Notices of Concentration at https://www.riigiteataja.ee/ert/act.jsp?id=1052018 and in English at http://www.globalcompetitionforum.org/regions/europe/Estonia/2006_59_1062.pdf;

Finland - Guidelines on the Revised Provisions on the Control of Concentrations at http://www.kilpailuvirasto.fi/cgi-bin/english.cgi?luku=legislation&sivu=guidelines-control-of-concentrations;

Israel - Guidelines for Reporting and Evaluating Mergers at http://eng-archive.antitrust.gov.il/ANTItem.aspx?ID=177; and

Taiwan - Guidelines on Handling Merger Filings at http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=744&docid=2712.

general categories of information outlined in Section I of this paper – information for administrative purposes, information about the parties to the filing, and a description of the transaction. Both forms also ask for some level of competitive analysis. The difference lies, for the most part, in the breadth of information required relating to competitive effects.

Short Form	**Long Form**
• Corporate information on the parties, their principal businesses, ownership and control structure, affiliates and activities in the jurisdiction. • A description of the transaction and its objectives. • Information relevant to the assessment of jurisdiction. • Market definitions for overlapping markets and markets between which vertical links may exist in the jurisdiction. • Information on overlapping markets and markets, between which vertical links may exist (market size, the parties' sales, and market shares).	• Corporate information on the parties, their principal businesses, ownership and control structure, affiliates, and activities in the jurisdiction. • A description of the transaction and its objectives. • Information relevant to the assessment of jurisdiction. • Market definitions for the affected markets in the jurisdiction. • Information on the affected markets in the jurisdiction (market size, the parties' sales, and market shares). • Information on the structure of supply and demand, barriers to entry or expansion, recent new entry, research and development, cooperative agreements in the affected markets. • Information on possible conglomerate links. • Information on competitors' activities in the affected markets. • Information on major customers and suppliers for each affected market. • Competitive assessment. • Identification of other national (competition or regulatory) authorities, to which the transaction has been notified. • Information on trade associations. • Contact details of competitors, customers, and suppliers. • Copies of market surveys, business plans, management presentations, and other strategic papers. • Copies of the most recent version of the transaction documents.

4. Statistics on the Selection of Forms

Few jurisdictions publish statistics on the use of their short and long forms. Of the 347 mergers notified to the European Commission in 2008, 189 decisions (54%) were issued under the simplified procedure.[33] Under the EU regime, the percentage of short form usage has remained relatively consistent from year to year since its introduction in 2004. In Switzerland, it is estimated that parties use a simplified form twice as frequently as the regular form.[34]

Some jurisdictions have a smaller percentage of short form filings than long form filings. In Israel, for example, the majority of filings use the long form.[35] In Korea, approximately 40% of all merger notifications are made using a simplified form.

B. WAIVERS

1. Description

Another mechanism for flexibility is the ability to waive certain categories of information in the notification form. When transactions appear not to have significant competitive effects, certain substantive information may be omitted from, or a modified response provided in, the notification. This reduces the burden for the filing parties and for the competition authorities in reviewing the filing. Waivers are used both by jurisdictions with a single notification form and those with alternative notification formats.

In some jurisdictions, the parties can themselves decide when information is not necessary or cannot be provided. Thus, the parties are able to exercise a kind of routine waiver by omitting information from or providing modified information in the notification. In other jurisdictions, the parties cannot omit required information or provide modified information unless they reach agreement with the competition authority for a discretionary waiver; such waivers are typically agreed to in pre-notification consultations (see Section II.E.2, below).

2. Routine Waivers

In certain jurisdictions, the parties may simplify the notification form by omitting or modifying part of the information otherwise required. In many jurisdictions, determining what to omit is based on whether the proposed transaction involves "affected" markets or has tangible local effects. For example, if a transaction does not create "affected" markets, only a very basic level of information is required. If, however, there are "affected" markets as a result of the transaction, a significantly more substantial amount of information generally is required.

In Canada, perhaps uniquely, merging parties may unilaterally choose not to file certain of the required information. They may do so if they provide an affidavit setting out that the

[33] Published statistics relate to the use of the EU's simplified procedure for the treatment of certain concentrations. This number was used as a proxy for use of the short form since almost all simplified procedures involve a short form.

[34] In addition, approximately 40% of notifications made in Switzerland use the multijurisdictional notifications procedure, which aims to lessen the burden of using different forms because it allows the parties to file the same form in multiple jurisdictions.

[35] Over the last four years, 57% of merger notifications were made using the standard form, and 43% using the short form.

information: (1) is not relevant to the assessment of the transaction;[36] (2) is not known or reasonably obtainable; (3) is privileged; or (4) has been previously provided to the Bureau and has not changed.[37] For example, the notification form requires certain customer and supplier information to be provided for all affiliates of the parties with significant assets in Canada or significant sales in, from, or into Canada. However, if there are "significant affiliates" whose activities are unrelated to the proposed transaction, merging parties can and normally choose not to provide information about those affiliates. In practice, these provisions give merging parties a high degree of flexibility. Merging parties, for their part, have an incentive to be forthcoming and make good-faith assessments because this may affect the start of the waiting period. Further, the provision of misleading or inaccurate information could constitute a criminal offence.

The United States does not offer waivers but provides flexibility for filing parties when they are unable to provide certain information or documents. If a filing party cannot provide a complete response to a section of the notification form, it may provide modified information or omit the required information as long as the modification or omission is accompanied by a statement of reasons for noncompliance with the requirements of the form.[38]

3. Discretionary Waivers

Several jurisdictions use discretionary waivers, allowing filing parties to obtain the competition authority's consent that certain information is not required for assessment of the transaction and can be excluded from the notification.[39] Waivers can provide agencies the flexibility of reducing or adapting, on a discretionary basis, the pre-determined information requirements provided for in the notification form.

As with routine waivers, the decision to grant a waiver is typically based on whether the information is necessary for the competitive assessment. In the EU regime, for example, implementing legislation states that the European Commission may dispense with the obligation to provide certain information required by the notification form where the Commission considers that compliance is "not necessary for the examination of the case."[40] The instructions for both the long and short versions of the notification form state that the Commission will consider such a request provided that parties "give adequate reasons why that information is not relevant and necessary to its inquiry into the notified operation."[41]

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[36] Where the information is not supplied because it is not relevant, the Commissioner of Competition can, within seven days after the filing, require that the information be supplied. In such a case, the filing would be considered complete and the waiting period would start only upon receipt of the information that was not originally supplied.

[37] For example, if a party recently submitted a merger filing in connection with another transaction and all of the information is still valid. This is sometimes used by targets of hostile bids where there are multiple bidders.

[38] For instance, filing parties frequently have difficulty gathering revenue information for the base year (currently 2002) in the United States notification form (discussed below). In this instance they may provide an estimate and a statement of their reasons for noncompliance. Filing parties may also withhold certain documents that would otherwise be submitted with the filing on the basis of a claim of privilege.

[39] Denmark, Estonia, Finland, Germany, Ireland, Israel, Korea, Mexico, Slovakia, Slovenia, and Spain. Waivers are available in all systems discussed here, including in jurisdictions where there is a choice of merger notification form, such as the European Union and Argentina.

[40] Article 4(2), Commission Regulation (EC) No 802/2004 of 7 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings.

[41] Annex I (1.3(g)), Annex II (1.5 (g)), Commission Regulation (EC) No 802/2004 of 7 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings.

Filing parties generally are required to request a waiver before they submit their notification. In many jurisdictions, including Mexico, waivers are generally agreed upon through informal discussions between the parties and the competition authority's case team. Other jurisdictions, such as Slovenia require a formal waiver application. In Germany, waivers are usually granted informally (e.g., the Bundeskartellamt accepts a notification that does not contain all information required by the law), but parties can request written confirmation from the German Bundeskartellamt.[42] Other jurisdictions, such as Argentina, Brazil and Portugal, allow parties to submit a notification form without certain information, and request upon submission that the notification be considered complete. In some jurisdictions it is not necessary to agree to such waivers in advance, but the competition authority may subsequently request further information.

4. Types of Information Typically Waived

The following categories of information were identified as classes of information for which waivers are often granted:

a) detailed information on the parties' activities outside the jurisdiction concerned;

b) information on the activities of affiliates (subsidiaries that are active on other than the relevant or neighboring product and geographic markets, etc.);

c) detailed turnover data, in particular breakdowns by country, historical data and annual reports;

d) detailed market data, in particular historical information on market size and market shares of competitors;

e) details of the market landscape such as:
   i) structure of supply and demand;
   ii) barriers to entry and expansion and recent entries;
   iii) competitors, suppliers and customers;
   iv) research and development;
   v) cooperative agreements; and

f) market surveys, business plans, management presentations, and other strategic papers.

5. Guidance

In jurisdictions that provide for routine waivers, guidance or legislation generally sets out the conditions that must be satisfied before certain sections of the merger notification form can

[42] The German Bundeskartellamt will often waive information concerning some or all of the parties' affiliates if their activities are not relevant to the transaction. Furthermore, the Bundeskartellamt will often waive information concerning markets where parties have more than 20% market shares if the transaction does not affect the markets at issue. Similarly, in Korea, the notifying party may consult with the Korean Fair Trade Commission prior to notification to obtain derogations from the filing requirements if the missing information is not available or is not relevant to the agency's analysis of the transaction's competitive effects.

be waived. These jurisdictions include Austria,[43] Denmark, [44] Ireland,[45] Mexico,[46] Sweden,[47] and the United States.[48]

With respect to discretionary waivers, the majority of jurisdictions have no formal guidance or request procedure, but instead rely upon pre-notification meetings and ongoing contact between the parties and the case team.

C. DISCRETIONARY SUPPLEMENTATION SYSTEMS REQUIRING ONLY LIMITED INITIAL INFORMATION

1. Description

Discretionary supplementation systems, as used in the United States and Germany, distinguish themselves from other merger notification systems because they require a very limited amount of information in the initial filing. If the submitted information is insufficient for the agency to conclude that the transaction raises no competitive concerns, the reviewing agency has the flexibility to request additional information without proceeding to a second stage investigation.

A discretionary supplementation system reduces the notification burden on the merging parties by requiring only basic, objective information, which, in many cases the parties maintain in the ordinary course of business. Agencies with a discretionary supplementation system can tailor any additional information sought to the specific circumstances of each case. For example, in the United States, instead of requiring the parties to provide customer lists in the initial filing, the reviewing agency can decide whether it needs the lists, and if so, can request them on the basis of the markets that the agency has tentatively defined based on the initial filing and publicly available information.

2. Description of the Types of Information Generally Required for the Initial Filing in Discretionary Supplementation Systems

In the United States, the filing parties must provide the general categories of information outlined in Section I, in particular the identity of parties making the filing, the structure and value of the transaction, certain transaction documents, and certain high-level documents discussing the competitive impact of the transaction. In addition, the notification form requires listings of subsidiaries, shareholders and minority holdings, financial and revenue

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[43] Instructions are available in German at http://www.bwb.gv.at/BWB/Service/Formblaetter/fbz010106.htm.
[44] See Executive Order No. 480 on 15 June 2005 on Notification of Mergers issued by the Danish Competition Authority in Danish at http://www.ks.dk/konkurrenceomraadet/regler/bekendtgoerelser/bekendtgoerelser-kronologisk/bkg-nr-480-af-15062005/. Guidance is also provided in English at http://www.ks.dk/en/competition/legislation/bekendtgoerelser/bekendtgoerelser-kronologisk/executive-order-no-480-of-15-june-2005-on-the-notification-of-mergers/.
[45] See the competition authority's website for links to documents on its merger guidelines and merger procedures at http://www.tca.ie/MergersAcquisitions/MergersAcquisitions.aspx.
[46] http://www.cfc.gob.mx/english/index.php?option=com_content&task=blogcategory&id=180&Itemid=327.
[47] See the Swedish Competition Act at http://www.notisum.se/rnp/sls/lag/20080579.HTM and a general information page on mergers and a new competition act at http://www.kkv.se/t/Page____4015.aspx. Information is available in English on the new competition act at http://www.kkv.se/t/Page____4394.aspx and on the merger control page at http://www.kkv.se/t/Page____912.aspx.
[48] The United States provides the requirements for statements of noncompliance at 16 CFR 803.3.

information for the filing parties, the identification of overlapping revenue codes and, in some cases, limited information on previous acquisitions.

As in the United States, Germany's competition law requires a minimal amount of information in the initial filing. However, the filing parties can submit this information in any format, although the German Bundeskartellamt published an optional notification form in 2006. The German system also requires categories of information as outlined in Section I, namely a description of the transaction as well as basic information on the parties and of all affiliates. The filing parties must also provide market shares for all markets in which their shares exceed 20%.

Both jurisdictions focus on limited, objective and available information with the exception of the market share information requirement in Germany. This requirement calls for a calculation of the parties' market shares when they exceed 20%, even if those markets are not affected by the transaction. As discussed above, however, this provision is often subject to discretionary waiver.

3. Procedure for Supplementing the Notification

In the United States and Germany, when the parties have submitted a complete notification, the waiting period begins to run and the competition authority must determine whether it needs additional information to conduct an initial review. The waiting period is not tolled (that is, the clock is not stopped) by the additional voluntary information requests or additional voluntary submissions by the parties in either jurisdiction.

In the United States, the information in the notification will be used for an initial screening of the transaction. If this initial screening leads the agencies to conclude that the transaction poses no competitive issues, they do not need additional information from the parties (and if a party has so requested, early termination of the premerger waiting period will be granted). If, however, the initial screening reveals possible competitive issues, the investigating agency will seek additional voluntary submissions (described below) from the parties. While the parties are not required to provide this information, it is in their interest to do so, as it may enable the agency to resolve any outstanding questions about the transaction without the need to proceed to a second stage investigation.

In Germany, the initial filing provides a basic overview of the parties and their business activities, and the Bundeskartellamt may ask for additional information on any overlapping activities. The request is voluntary, though the Bundeskartellamt can also issue a formal information request, which requires a response. In practice, filing parties tend to volunteer relevant information beyond the minimum required by law and usually include in their filings additional information on overlap products or vertically or otherwise related activities, in particular, information on market share and barriers to entry and expansion.

4. Types of Information Typically Provided in Supplemental Submissions

In the United States, the supplemental information sought usually relates to the parties' products, strategic and marketing plans, and lists of customers and competitors. Both the Federal Trade Commission ("FTC") and the Department of Justice ("DOJ") have issued

guidance regarding the types of information that they may seek voluntarily, which is available on the agencies' websites.[49] If the information submitted is sufficient to allay any competitive concerns, the agency will close its investigation and the parties may close the transaction once the waiting period has expired or the agencies grant early termination.

The level of detail of any additional information requested by the German Bundeskartellamt corresponds to the complexity of the transaction and the extent to which it raises material competition issues. Additional information requests usually concern questions on overlap products, on competitive conditions of overlap markets (e.g., data and methods for market share calculations for the parties and competitors and information on barriers to entry and expansion), and independent market studies, if available. The Bundeskartellamt has published an optional notification form on its website indicating the types of information that typically is requested in the course of a more detailed examination.[50]

5. Statistics Regarding the Initial Review Period

In the United States, the agencies conclude in more than 80% of transactions that the transaction raises no competitive concerns without seeking information from the parties beyond the limited amount of objective, readily available information that is required by the notification form. Supplemental information is sought voluntarily in the less than 20% of transactions that FTC or DOJ investigate beyond the initial screening. Given that approximately 3% of reportable transactions result in second stage investigations, the supplemental information is often helpful in persuading the investigating agency not to conduct such an investigation. In 2005-06, around 2% of all notifications resulted in a second stage investigation in Germany.[51] Generally, the German agency strives to clear non-problematic mergers as soon as possible after notification and in many cases does so well before the end of the initial review period.

D. VOLUNTARY NOTIFICATION SYSTEMS

1. Description

Another mechanism for flexibility is a voluntary notification system. Certain jurisdictions, including Australia, Chile, New Zealand, Singapore, and the United Kingdom have voluntary notification systems. These systems provide what is perhaps the ultimate flexibility – the freedom to decide whether to file any notification in the first instance and flexibility regarding the initial information requirements imposed on the parties.

Some voluntary notification systems prescribe certain information requirements. For others, the level of detail required will usually depend on the complexity of the matter and the potential competition concerns raised. In most of the voluntary jurisdictions surveyed, the antitrust authorities have the ability to compulsorily require the production of information by

[49] Recommended Practice V.B. comment 4 states that competition agencies that use discretionary supplementation should consider providing guidance on the types of information that they commonly request for the purpose of determining whether a transaction presents material competitive concerns. The FTC provides guidance on supplemental submission at http://www.ftc.gov/bc/hsr/hsrguidance.shtm and the DOJ offers guidance at http://www.usdoj.gov/atr/public/220237.htm.

[50] Available at http://www.bundeskartellamt.de/wDeutsch/merkblaetter/Fusionskontrolle/MerkblFusion.php (Formular zur Anmeldung eines Zusammenschlusses beim Bundeskartellamt (in German only)).

[51] See Activity Report 2005/2006 (Short version), p. 26-27, available at http://www.bundeskartellamt.de/wEnglisch/download/pdf/07_Kurz_TB_e.pdf.

the parties pursuant to statutory information gathering powers. These powers provide an incentive for parties to voluntarily provide all relevant information to the antitrust authority.[52]

The flexibility that characterizes voluntary notification systems is reflected in other aspects of these jurisdictions' merger reviews, including the absence of certification/legalization requirements in terms of 'perfecting' a notification and the ability of agencies to request further information during the course of a review. It is common for agencies to request further information from the merging parties during the course of a review of matters that may raise competition concerns. This allows the information request to focus on the competition concerns, helping to minimize the amount of information requested from the merging parties and the resultant burden.

2. Forms for Voluntary Notification

New Zealand and Singapore mandate the use of prescribed notification forms while the United Kingdom and Australia allow parties to choose between submitting an informal or formal notification. Under the informal process, there are no forms prescribing initial information requirements for parties seeking a review. However, in both jurisdictions, the competition authorities have provided guidelines as to the initial information that parties should provide. [53]

Chile currently has no particular requisites for a merger notification. Rather, information requirements are considered case-by-case. However, the Antitrust Court has recently prepared a draft court decree that prescribes a list of information to be provided in all merger filings. The final text of the decree is expected in mid-2009.

E. Other Mechanisms for Flexibility and Approaches to Minimize Burden

Questionnaire responses noted other ways that jurisdictions provide flexibility and minimize burden in initial notification requirements, including pre-notification consultations, limiting translation requirements, and limiting authentication and certification requirements.

1. Exemption from Filing Form Requirements

In Canada, parties may request an exemption from merger notification by requesting an Advance Ruling Certificate (ARC). Pre-merger consultation can often determine whether the transaction will qualify for an ARC. If so, the filing parties need only submit a letter instead of a pre-merger notification form. There is no set list of information required to be supplied in support of an ARC request. Given that the decision to issue an ARC is based largely on information provided by the parties in the request letter, the parties generally supply information relevant to the proposed merger and its effect on competition.

[52] If such notification is filed, waivers also may be used to provide flexibility as to information requirements as described above.

[53] For Australia, see the ACCC's *Merger review process guidelines 2006* and the *Merger Guidelines, November 2008,* available at http://www.accc.gov.au/content/index.phtml/itemId/809866. For the United Kingdom, see the Office of Fair Trading's *Mergers - jurisdictional and procedural guidance: draft guidance consultation document, March 2008,* available at http://www.oft.gov.uk/shared_oft/consultations/oft526con.pdf.

In Canada, the vast majority of transactions appear to bypass the use of prescribed forms, opting instead to apply only for an ARC. Over the last four years, Canada has received 1081 filings/ARC applications. Nearly 73% of those applications used the ARC procedure.

2. Pre-notification Consultations

Recommended Practice V.C. states that jurisdictions should consider allowing pre-notification consultations, upon the request of the merging parties, to advise the parties on whether their transaction will be subject to notification obligations and, if so, what information will be needed.

According to the RPs, in jurisdictions that use a discretionary waiver as a mechanism for flexibility, pre-notification consultations should provide merging parties with the opportunity to seek a waiver of the obligation to produce requested information on the grounds that the burden of compiling and submitting the information outweighs its value to the competition agency (see RP V.C. comment 2).

Pre-notification consultations are common in many jurisdictions and build flexibility into the initial notification procedure. In the European Union, for example, filing parties typically meet with European Commission staff to discuss the transaction and its competitive impact, thus helping to determine what kind of form to use and to define the scope of the information necessary for a complete notification.

While substantive consultations regarding a transaction are less common before a premerger filing in the United States, the DOJ and the FTC welcome parties who wish to engage in such consultations to discuss possible competitive concerns with staff and to provide documents and information voluntarily that may assist staff in quickly and efficiently evaluating whether the proposed transaction raises competitive concerns.

In the voluntary notification systems of Australia, Singapore, and the United Kingdom, pre-notification discussions are also encouraged. In Australia, early consultation is considered important to the effectiveness of the informal system and is frequently undertaken by merging parties. In Singapore, merging parties can submit a request for a Pre-Notification Discussion (a "PND") to facilitate their preparation of an application and expedite the review process. In the United Kingdom, the Office of Fair Trading has indicated that use of a pre-notification phase to discuss an intended notification with the case team on a confidential basis is an important part of the merger review process. In certain circumstances, merging parties may also seek informal advice from the Office of Fair Trading to obtain information about the agency's views of likely competition issues in a future transaction.

3. Translation Requirements

While it is appropriate for jurisdictions to require notifications to be in an official language (although they may choose to accept them in additional languages), Recommended Practice V.D. comment 1 states that they should not require extensive translation of supporting documents, such as transactional materials and annual reports, submitted as part of the notification. Competition agencies should accept translated summaries, excerpts, and other means of reducing translation burdens, without prejudice to their ability to require full translations if the transaction appears to present competitive concerns.

While most jurisdictions require notification filings to be submitted in the official language or languages of the jurisdiction, there are differences as to translation requirements for supporting documents. One way that some jurisdictions, including Austria, Denmark, Finland, Germany, Israel, Lithuania, Sweden and Switzerland provide flexibility is by not requiring translations of English-language supporting documents. Another approach is that of the United States, where filing parties must submit translations of foreign language documents as part of the initial notification only if translations already exist, but there is no requirement that they be translated for submission with the initial filing.

4. Authentication and Certification Requirements

Recommended Practice V.D. comment 2 recognizes that jurisdictions are entitled to reasonable assurance of the validity of notifications and supporting information. According to the RPs, these assurances can and ordinarily should be achieved without requiring the parties' senior officials to provide personally for notarization or consularization. Most jurisdictions require that notification forms be signed by a lawyer or business person and several jurisdictions require the signature to be witnessed, in some cases by a lawyer or notary.

Jurisdictions with formal requirements relating to the certification of documents usually require foreign documents to be legalized.[54] The RPs advise that jurisdictions that require formal authentication should allow notification to be perfected on the basis of an appearance by duly authorized persons who reside in the jurisdiction. There are other mechanisms to reduce the time and costs of authentication and certification. For example, in Canada the *Competition Act* requires that the accuracy of notification forms be "certified on oath or solemn affirmation," but the Competition Bureau does not impose any additional formalities on merging parties as long as the certification is valid in the jurisdiction in which it was created. For example, the Bureau would accept a notification that includes a French language certificate created by a Belgian notary.

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The questionnaire and responses will be available on the ICN website at: http://www.internationalcompetitionnetwork.org/index.php/en/notification-and-procedures.

Other Subgroup reports designed to facilitate implementation of the ICN Recommended Practices include:

Implementation Report. The N&P subgroup gathered data on members' experiences with implementation and prepared a report identifying challenges agencies face in implementing the Practices and how they addressed these challenges. These 2005 materials are available at: http://www.internationalcompetitionnetwork.org/media/archive0611/050505Merger_NP_ImplementationRpt.pdf

[54] Legalization is the official confirmation that a signature, seal, or stamp on a document is genuine. Documents are usually legalized by the foreign ministry or a registrar's office in the jurisdiction in which they are created. The foreign ministry or a registrar's office checks that the signature, seal, or stamp on the document conforms to what they have on record. They then attach an apostille (a legal certificate for authenticating documents for use in foreign jurisdictions). The time and cost associated with this process varies among jurisdictions.

Implementation Handbook. This 2006 handbook contains examples of legislative provisions, guides, statements and notices, and press releases that conform to selected Principles and Practices. The handbook is available at: http://www.internationalcompetitionnetwork.org/media/library/conference_5th_capetown_2006/ImplementationHandbookApril2006.pdf

Setting Notification Thresholds for Merger Review. Building on the N&P Recommended Practice on Notification Thresholds, this 2008 paper explores the various approaches used to set notification thresholds and members' recent experience with threshold revisions. The objective of the paper is to provide guidance to agencies that plan to adopt or revise thresholds, in order to promote thresholds that are clear, understandable and easily administrable. This paper is available at: http://www.internationalcompetitionnetwork.org/media/library/mergers/Merger_WG_2.pdf

Defining Merger Transactions for Purposes of Merger Review. Building on the Transparency N&P Recommended Practice, this 2007 paper explores the various approaches jurisdictions have adopted to define the types of transactions that are potentially subject to notification and/or review. This paper is available at: http://www.internationalcompetitionnetwork.org/media/library/conference_6th_moscow_2007/23ReportonDefiningMergerTransactionsforPurposesofMergerReview.pdf