

Dear Ms. Norris,

We are delighted that the JCRA is considering the adoption of notification thresholds based on objectively quantifiable criteria, as recommended in the ICN's Recommended Practices for Merger Notification & Review Procedures. We had the pleasure of speaking with Michael Byrne about the proposed amendments last month at the ICN annual conference in the breakout session on notification thresholds. We would be happy to continue that conversation or offer support in a more formal way, such as a letter on behalf of the ICN, if you think that would be useful as you move forward in your consultation process.

In the meantime, as chair of the ICN Notification & Procedures Subgroup, we wanted to reiterate our support for the elimination of the current share of supply test, but suggest that the proposed notification thresholds be clarified to make explicit that 1) the local turnover or assets of at least two parties to the transaction is required to trigger a notification obligation – or if triggered by a single firm, the sale/assets of the acquired party is required, and 2) the relevant local activities of the acquired party are limited to the local sales or assets of the business(es) being acquired. As currently drafted, the thresholds leave open the possibility that if the acquiring undertaking alone has local turnover of £2 million or above and satisfies one of the local asset tests, notification could still be required, which is inconsistent with the ICN recommendation on nexus. We also are concerned that the asset tests may be overly broad and ambiguous and, if a local asset test is retained, suggest that further consideration be given to crafting a clear, objective and significant local asset test.

All the best,

Cynthia Lagdameo & Maria Coppola