Agency heads and senior officials are invited to join other ICN members on the margins of the OECD Global Forum to share perspectives on a critical element of effective merger control: notification rules. The discussions will use the ICN’s Recommended Practices for Merger Notification and Review Procedures to address traditional merger threshold issues as well as emerging issues with respect to the review of certain low turnover transactions.

9:00-9:15  Registration and coffee

9:15-9:30  Opening Remarks

Isabelle de Silva, President, Autorité de la concurrence

9:30-10:50  Session I: Designing Merger Thresholds

This session will address implementation of ICN Recommended Practices for Merger Notification and Review Procedures, focusing on nexus to the jurisdiction and notification thresholds.

9:30-10:10  Panel Discussion

The panel will open with a brief overview of the results of the 2016 self-assessment of ICN member conformity with the Recommended Practices. Participants then will discuss areas under consideration for revision to the Recommended Practices on nexus and thresholds, including clarification of materiality, definition of parties and scope of application, jurisdiction to review transactions that do not trigger a notification obligation, and an exception in the current set to review local dominant firm activity. [Panelists TBD]
**10:10-10:40 Table Talk**

Small group discussion led by table moderators and based on a set of discussion questions. A room facilitator will reserve a few minutes to solicit top takeaways from each table.

**Discussion Questions:**

- Views on ICN’s existing Recommended Practices on nexus to the jurisdiction and notification thresholds: Does your jurisdiction conform? If not, why not? Would the proposed changes encourage greater conformity in your jurisdiction (or others)? Are there areas that need additional detail? What might be improved?

- The Recommended Practices contain a limited exception from the two party or target test providing for the use of notification thresholds based solely on the acquiring firm’s local activities for cases in which a local, dominant firm acquires a significant foreign potential competitor lacking significant sales in the jurisdiction, and the agency is otherwise deprived of jurisdiction over the matter. Almost fifteen years later, experience suggests the need for this limited exception has not materialized, and that the exception should be closed. What is your view?

- How should we define a “party” in calculating the threshold? Should one of the two parties in a two party threshold test be the “target” or, in the case of a joint venture, the proposed joint venture?

- Are there additional related topics the ICN or OECD should address? For example, we have received suggestions for accompanying illustrative language. Should other complementary work product be developed?

- How can the ICN support its members in implementing the Practices?

**10:40-10:50 Session I Wrap Up**

**10:50-11:10 Coffee break**

**11:10-12:30 Session II: Challenges of the digital economy and low turnover transactions**

The effectiveness of purely turnover-based notification thresholds recently has been called into question with regard to certain sectors, e.g., digital services and pharmaceuticals, for failing to capture certain transactions involving targets with limited actual turnover that may raise competition concerns. This concern arises primarily when an agency’s authority to review and challenge proposed transactions is limited to those transactions subject to mandatory notification requirements, i.e., the agency is deprived of jurisdiction for transactions that do not meet the jurisdiction’s notification requirements. This session will explore different ways of addressing these challenges, including appropriate alternative criteria for notification and residual jurisdiction.
11:10-11:45  **Panel Discussion**

Some transactions fall below turnover-based thresholds because the target’s products are offered for free, or have yet to come to market, and generate little turnover (one example is Facebook/WhatsApp in 2014 in the digital sector). In such instances, the target’s value may not best be correlated to its sales and the value of the target’s sales may be a poor indicator of the merger’s significance for competition. Thus, in certain instances, turnover-based notification thresholds may have a ‘blind spot’ if relied on to assert jurisdiction. Panelists will examine the pros and cons of alternative criteria that may be considered to capture those transactions. [Panelists TBD]

11:45-12:15   **Table Talk**

Small group discussion led by table moderators and based on a set of discussion questions. A room facilitator will reserve a few minutes to solicit top takeaways from each table.

- Should reporting requirements be lowered or adapted to capture these transactions? What specific turnover or alternative criteria could be used to capture these transactions? Is the underlying information or data required to check whether these criteria are met readily available to companies active in the sectors concerned? Can past experience in jurisdictions using non-turnover-based thresholds help guide future reform in other jurisdictions? Can alternatives meet the need to provide objective factors for notification? Should sector-specific notification requirements be considered?

- What are the costs – to agencies and parties – of additional filings? Agencies may be concerned that the takeover of innovative firms by well-established tech or pharma companies may preempt potential competition. Does the prospect of these future anticompetitive effects outweigh the added administrative costs for merger control? What are the consequences in terms of the number of filings and their nexus to the jurisdiction and any potential harm if requirements are lowered or adapted?

- Are there any administrable limitations that could be placed on a threshold based on a one party or value of transaction turnover threshold? (e.g., different length or depth of an initial review, or providing for voluntary notifications for certain types of transactions?)

- Can the ability to review mergers below notification thresholds – residual jurisdiction – provide needed flexibility? Can it be limited by elements such as timetable for review or sectors to minimize concerns about legal certainty?

12:20-12:30   **Session II Wrap Up**

12:30-12:45  **Closing Remarks**