RESPONSE OF THE EUROPEAN COMPETITION LAWYERS FORUM TO THE JCRA CONSULTATION ON REFORM OF THE JERSEY MERGER CONTROL REGIME

1. INTRODUCTION

1.1 This Response is submitted on behalf of the ECLF in response to the JCRA's public consultation on proposed amendments to the Mergers and Acquisitions (Jersey) Order 2010. Further information on the ECLF and its membership (which comprises competition lawyers practising in Europe) is available on the ECLF website.[1]

1.2 We welcome the fact that the JCRA is reviewing the Jersey merger control regime and proposing amendments to the Competition (Mergers and Acquisitions) (Jersey) Order 2010. The current thresholds under the Order have raised issues of interpretation in a number of international merger cases, giving rise to uncertainties as to whether notifications may technically be required for transactions with little or no nexus with Jersey. It is in the interest of the international business community, the JCRA and consumers in Jersey to put in place new thresholds which are clear and easy to interpret and apply, and which can remove the current uncertainties. Setting thresholds at an appropriate level will also allow the JCRA to focus its resources on those deals that have the potential to significantly lessen competition in Jersey and harm the Jersey economy.

1.3 As the JCRA recognises, the current Order is not consistent with the ICN's Recommended Practice for Merger Notification and Review Procedures, the relevant provisions of which are set out at Annex 2. The Consultation Paper indicates that, in forming its proposals, the JCRA has reviewed international best practice and merger notification regimes in other jurisdictions, including small island economies. This Response is based upon the experiences of some ECLF members with the Jersey regime, as well as consideration of the ICN's Recommended Practices and merger control regimes in other island economies and small jurisdictions in Europe. We believe that it is important to learn in this way from experiences in other jurisdictions, we have therefore also included at Annex 3 a summary of the merger control thresholds in a number of other small island economies; also Annexes 4, 5, 6, 7 and 8 provide additional data on the merger control thresholds in a number of other jurisdictions for comparison purposes.

2. SUMMARY

2.1 The JCRA's proposal to retain a mandatory notification regime, but to replace the market share test with a combined turnover and asset test, should in principle provide greater legal certainty to merging parties. However, our primary concern is that the JCRA's proposal seeks to change its current "non-bright line" (share of supply-based)

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[1] See www.europeancompetitionlawyersforum.org. The members of the ECLF who have participated in the Working Group which has prepared this Response are identified at Annex 1. Other members of the ECLF have had an opportunity to comment on a draft of this Paper, although the submissions made in this Paper do not necessarily reflect the views of all members.

test, that is not compliant with ICN principles, with a new "bright line" (turnover/assets-based) test that is also not compliant with ICN principles. In particular, a bright-line test that nevertheless catches (a potentially large number of) “no overlap" transactions in which only one party has sales to Jersey customers would inevitably catch a large number of transactions that will simply never raise material competition issues in Jersey, the review of which is therefore a suboptimal use of the JCRA's resources. By definition, the proposed test catches transactions without any domestic horizontal overlap, and even the very small number of non-horizontal mergers that raise concerns would generally involve some level of activity (and therefore turnover) on the part of both acquirer and target in Jersey in order to pose a vertical or conglomerate concern in Jersey.

2.2 Our second concern is that it is extremely difficult to set a turnover or asset threshold that both captures the kinds of transactions the JCRA would want to review and screens out those that are a poor use of its scarce resources - without imposing unnecessary costs on businesses in respect of transactions with little, if any, nexus to Jersey.

2.3 For these reasons, we urge the JCRA to consider the flexibility of a voluntary regime, as set out in Part 3 below. Should a wholly voluntary regime not find favour, we would urge the adoption of a hybrid approach, with a voluntary regime at the very least applicable in respect of foreign-to-foreign mergers, in other words, those in which neither the acquirer nor the target has (material) assets in Jersey.

2.4 Although either a pure or hybrid voluntary regime would require changes in the primary legislation, this may well be a better solution than to revise the current thresholds under a mandatory notification regime. Moreover, a hybrid approach would allow the compulsory notification of genuine domestic-to-domestic transactions involving horizontal mergers of retailers, wholesalers or other providers based in Jersey; it would also allow compulsory notification of the acquisition of providers of essential services, which could include not only utilities providers but also providers of transport to or from Jersey. As noted at Part 5 below, we urge public consultation on the scope of any such "essential services".

2.5 We suggest that any mandatory notification thresholds – which could therefore be set relatively low, but would require at least two parties to achieve sales to Jersey customers and/or to hold assets in Jersey - would catch 80-95% or more of potentially problematic transactions from the perspective of protecting competition and consumers in Jersey.

2.6 These thresholds could be supplemented with the ability for merging parties in foreign-to-foreign transactions to notify (a small proportion of) mergers of "pure importers", to seek comfort from the JCRA where actual or perceived antitrust risks arise. As we envisage it, the JCRA could - as the UK, Australian, New Zealand and Singaporean authorities do - equally retain the power to investigate mergers falling outside any mandatory notification thresholds where it has reasons to believe that competition in Jersey might be harmed. Crucially, however, merging parties would not be subject to sanctions for failure to notify transactions that fall outside the mandatory notification thresholds. The experience of the jurisdictions mentioned above suggests that self-assessment and notification, coupled with the authority's *ex officio* power to investigate

a select number of cases of its own volition, can work very effectively, especially if resources are not diverted towards the review of large numbers of transactions that raise no issues.

2.7 If the JCRA feels unable to propose such a change in favour of either a wholly voluntary or hybrid part-mandatory, part-voluntary regime at this stage in the development of the regime, we alternatively urge the JCRA to propose amendments to the Order to ensure that a retained wholly mandatory regime is substantially more in line with the ICN Recommended Practices and international best practice; these issues are addressed further at Parts 4 to 6 below.

3. BENEFITS OF MOVING TO A VOLUNTARY NOTIFICATION REGIME

3.1 The JCRA states in the Consultation Paper that changes to the current thresholds should enable it "*to concentrate its resources on those mergers and acquisitions that have the greatest likelihood of substantially lessening competition in Jersey*".[2] It also recognises that another aim of the proposed changes "*is to make it easier for merged parties to know if they should notify*".[3] In its accompanying press release, the JCRA observed that the changes should "*reduce the number of large multi-national mergers being reviewed by the JCRA*", recognising that "*in terms of resolving any competition issues that may arise, international mergers are generally assessed by the competition authorities in larger jurisdictions which may be a more appropriate forum than the JCRA*" and that "*the added value to the Jersey economy for the JCRA to always review such mergers is less obvious*".

3.2 We believe that the realisation of these aims can be most effectively achieved in Jersey by the introduction of a voluntary notification regime, for the following reasons:

(i) The regulatory burden and cost placed on merging or acquiring parties, particularly in pure foreign-to-foreign transactions, would be less than under a mandatory notification regime. Voluntary notification would allow parties to determine whether it is appropriate not to notify transactions with little or no competitive impact on the Jersey economy. This would provide commercial certainty for transacting undertakings, with an ensuing positive effect on local investment (whilst not detracting from the possibility that the JCRA could deter and resolve anti-competitive transactions already completed, through the use of information gathering activities and the ability to impose hold-separate obligations); and

(ii) A voluntary system would permit the JCRA to focus its resources on those transactions most likely to harm the Jersey economy. Moreover, as we discuss in Part 4 below, the thresholds proposed in the Consultation Paper are

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[2] Consultation Paper, paragraph 3.

[3] Consultation Paper, paragraph 4.

unworkable given their inconsistency with the ICN Recommended Practices; however, if they are amended to accord with international best practice, a system of voluntary notification may more adequately allow the review of mergers which fall below any revised mandatory thresholds but which might nonetheless require scrutiny to ensure they have no anti-competitive effect on the Jersey market. A voluntary system would allow merging parties to determine whether it is appropriate to notify a transaction that does not raise genuine competitive concerns. In this way, the JCRA will be able to concentrate its resources on genuinely problematic mergers. At the risk of stating the obvious: commercial undertakings do not wish to avoid notification of mergers or acquisitions with anti-competitive effects in Jersey; rather, they are reluctant to notify non-problematic mergers which may hit mandatory thresholds on the basis of local turnover but where there are no substantive competition issues in Jersey.

3.3 The benefits of a voluntary regime have recently been discussed in the context of the BIS Consultation on UK Merger Reform.[4] Although the economies of the UK and Jersey are clearly different, we believe that the support shown by legal practitioners for the retention of the voluntary system in the UK gives weight to the ECLF's proposal for the introduction of a voluntary notification system in Jersey. In addition, we refer to the published response of the OFT which has many years of experience of dealing with voluntary merger notification: "*the [voluntary notification system] is a system that balances the ability to resolve and deter anti-competitive transactions that do most harm to competition, with a system that imposes a limited burden on business and provides the certainty that enables business to invest and innovate with confidence*".[5] Moreover, "*the OFT believes that the current voluntary notification system balances the need to identify, and prevent or remedy, anti-competitive mergers with the aim of avoiding undue regulatory burden on business and undue financial burden on the taxpayer.*"[6] Indeed, to the extent that the UK Government would be minded to introduce some form of compulsory notification, the OFT has stated that it considers a 'hybrid' model to be preferable to a full mandatory notification regime.

3.4 This support from legal practitioners (and the OFT) is based on the fact that a voluntary regime compensates for drawbacks by increased emphasis on intelligence functions and the ability to require hold-separate undertakings. Our understanding is that the JCRA is already well versed in tracking transactions notified abroad, for example in the UK and Europe, and that this monitoring function would enable transactions with potentially anti-competitive effects in Jersey to be picked up early.

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[4] BIS Consultation on Merger Reform: A Competition Regime for Growth : A Consultation on Options for Reform (March 2011).

[5] A Competition Regime for Growth : A Consultation on Options for Reform: The OFT's Response to the Government's consultation (June 2011), paragraph 1.19.

[6] OFT Response, paragraph 3.3.

3.5 We believe that if the ECLF's proposal for a voluntary regime were be introduced, the level of the proposed threshold outlined in the Consultation Paper would be of less concern (provided, as discussed in Part 4 below, that a dual-limb test were introduced), as merging parties would be able to assess when it would be appropriate not to notify a transaction that genuinely does not raise competitive concerns.

3.6 As a final point, we note that a number of island economies – the UK, Australia, New Zealand and Singapore – operate voluntary regimes. Singapore is the most recent island economy to choose a voluntary regime and is, in some ways, most akin to Jersey. Perhaps what these regimes share is a sense of proportionality and focus of scarce resources that emphasises extensive investigation of the relatively few cases that do raises competition issues (many of which are domestic-domestic, or foreign-domestic, rather than foreign-to-foreign transactions) rather than incurring public and private resources on a much larger number of transactions that self-evidently do not raise any competition issues.

4. PROPOSED AMENDMENTS TO THE JURISDICTIONAL THRESHOLDS

A. The move from the share of supply test to a turnover and assets test

4.1 Notwithstanding the arguments for voluntary notification set out in Parts 2 and 3, we also consider below the proposed amendments to the mandatory notification system as contemplated within the parameters of the Consultation Paper.

4.2 The JCRA's proposal envisages abolishing the current "share of supply test" (which potentially involved assessing merging parties' respective share of the supply or purchase of each product and service they supply or provide in Jersey) and instead introducing a combined local turnover and asset test. If the JCRA continues to operate a mandatory notification regime, we welcome the JCRA's proposal to move away from the current "share of supply" test towards more objectively quantifiable criteria. The need for mandatory notification merger regimes to use objectively quantifiable criteria is well documented. As noted by the JCRA at paragraph 4 of the Consultation Paper, this should limit the burden placed on transacting undertakings (whilst ensuring that mergers and acquisitions which would result in a substantial restriction of competition in Jersey are caught).

4.3 The proposed amendments do, however, raise four issues which need to be reviewed and addressed if the JCRA is to achieve the objectives of improving certainty and complying with the ICN Recommended Practices. These are: (i) the proposal for a combined threshold test; (ii) the concept of turnover; (iii) the setting of an appropriate threshold level; and (iv) the proposal for an asset test. These points are discussed in more detail below.

B. The proposed combined threshold test

4.4 The proposed turnover test is stated as: "*where, in the most recent financial year, total turnover in Jersey of all of the undertakings involved in the merger or acquisition is at least £2 million*."[7]

4.5 This combined turnover test should be reconsidered for at least three reasons, namely:

(i) The JCRA has indicated concern that the existing Order is inconsistent with the ICN Recommended Practices; however, the proposed single combined test will also be inconsistent with this benchmark;

(ii) The use of a threshold which can be met by only one party is very rare within Europe and does not accord with international best practice. It would effectively give the JCRA universal jurisdiction to review virtually all deals carried out anywhere in the world by multinational groups present in Jersey; and

(iii) False positives; this threshold is liable to catch a large number of mergers and acquisitions which do not raise competitive issues and will strain the resources of the JCRA.

ICN consistency

4.6 The proposed turnover threshold, which does not differentiate between the turnover of an acquiring undertaking and that of the acquired undertaking, is inconsistent with recommendation I(C) of the ICN Recommended Practices and related comments. The ICN recommends that determination of a transaction's nexus to a jurisdiction should be, "*based on activity within that jurisdiction, as measured by reference to the activities of at least two parties to the transaction in the local territory and/or by reference to the activities of the acquired business in the local territory"* (emphasis added).[8] The JCRA's proposed combined threshold, which can be met by the turnover of only one party, is inconsistent with this recommendation.

4.7 The ICN notes that an approach which requires significant local activities by each of *at least two* parties to the transaction as a predicate for notification represents an appropriate local nexus and, specifically, that:

(i) Notification should not be required solely on the basis of the acquiring firm's local activities. This view was reiterated by the ICN Merger Working Group in its 2008 report to the ICN Annual Conference, "Setting Notification

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[7] The ECLF notes that this wording is ambiguous and potentially interpreted either as a single combined turnover test, whereby all parties together must have turnover in Jersey of £2 million, or as an individual threshold whereby each party must have turnover in Jersey of £2 million. Our understanding is that a combined turnover test is proposed, and our comments in the remainder of this Paper are based on this premise.

[8] ICN Recommended Practices, Section I(C).

Thresholds".[9] Since the JCRA's proposed amended thresholds do not differentiate between the turnover of the acquiring undertaking and the acquired undertaking, the threshold could be triggered solely by virtue of the acquiring firm's turnover (i.e. the thresholds would catch transactions where the acquiring firm already has turnover in Jersey of £2 million).[10] This is not in accordance with the ICN Recommended Practices which note that, as the likelihood of adverse effects from transactions in which only the acquirer has the requisite nexus is remote, the burdens associated with a notification requirement are not usually warranted.

(ii) If the local nexus requirement can be satisfied by the activities of the acquired business alone, the requisite threshold should be *sufficiently high* so as to ensure that notification will not be required for transactions lacking a potentially material effect on the local economy.[11] The Consultation Paper does not address this issue specifically by reference to the acquired business, given that the currently proposed turnover/asset threshold could be satisfied by the acquiring business or the acquired business (or both). However we note that the threshold looks particularly low when compared with the few regimes which do solely use a combined threshold or a threshold by reference to either one of the parties (details of European jurisdictions which use such an approach are set out at Annex 5). These jurisdictions are discussed at paragraphs 4.11 - 4.14 below.

4.8 Practically speaking, the requirement to notify a transaction where the acquirer alone has turnover in Jersey of £2 million creates an excessive regulatory burden on international businesses and runs counter the declared objective of the proposed amendment to the Order to enable the JCRA to concentrate its resources on those mergers and acquisitions that have the greatest likelihood of substantially lessening competition in Jersey. It could technically require them to notify very small acquisitions and/or acquisitions of companies outside of, and with no competitive effects in, Jersey (or to run the risk of offending the JCRA should they disregard the mandatory notification requirement).[12] The price of setting thresholds to capture the possibility that an acquisition of a target firm outside of Jersey may remove a potential entrant to the Jersey market would be to impose unnecessary transaction costs on the overwhelming

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[9] ICN Merger Working Group Notification & Procedures Subgroup, "Setting Notification Thresholds for Merger Review", Report to the ICN Annual Conference, April 2008 at page 14.

[10] ICN Recommended Practices, I(C), Comment 3. By reasoning that "*the JCRA have assumed that the acquired party is in general the smaller of the two parties in such transactions and as such the turnover of the acquiring business is likely to be higher than that of the acquired business*", the JCRA has explicitly contemplated a situation where the thresholds can be met solely on the basis of the acquiring party's turnover threshold.

[11] ICN Recommended Practices, I(C), Comment 2.

[12] Indeed, the fact that filing fees would be payable for such notifications means that the Jersey regime could be characterised as an attempt to impose an extraterritorial tax on foreign businesses, thereby reducing the incentives for multinational groups to consider Jersey as a place for business.

majority of transactions which do not pose any appreciable risks of competitive harm in Jersey. For example, such a test would appear to require multinational groups which happen to have sales of £2 million (and some minor assets) in Jersey to notify the JCRA of any acquisitions, no matter how small, anywhere else in the world (even if all the target's sales are in markets far away from the Channel Islands).[13] Accordingly, a threshold which can be satisfied by the acquiring party alone should only be set where the authority would otherwise be deprived of jurisdiction, the threshold is very high and there are other objectively-based limiting filters.[14] The proposed thresholds do not meet these requirements: the £2 million threshold is not "very high" and there are no objectively limiting filters. Any concerns about the behaviour or practices of a firm already dominant in a Jersey market should not be dealt with by a mandatory merger notification regime but could instead be addressed by the JCRA *ex post,* using Jersey's abuse of dominance legislation and procedures.[15]

International precedents

4.9 The ICN recommends that when setting thresholds, *"similarly situated jurisdictions may provide useful guidance*". The Consultation Paper explicitly states that the proposed amendments are based upon a review of the merger regimes of other jurisdictions. Annex B and Annex C of the Consultation Paper purport to provide a review of international best practice.

4.10 As a preliminary point, we note that the data provided at Annex C of the Consultation Paper contains a number of errors; for example, Indonesia, Nigeria and the UK are listed as having mandatory regimes.[16] We invite the JCRA to reconsider the proposed

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[13] We note that the proposed asset test (which we address at paragraphs 4.26 et seq. below) could also be satisfied solely by the acquiring party and does not therefore add sufficient local nexus to alleviate this concern.

[14] ICN Recommended Practices I(C) Comment 4.

[15] ICN Recommended Practices I(C) Comment 4.

[16] Nigeria has not yet implemented any merger control system, existing rules in this country only require that M&A deals between companies incorporated in the country are notified to the stock market regulator; Indonesia has a voluntary ex-ante merger control system without thresholds, the mandatory system is only an ex-post control. Other errors include: first, the incorrect application of exchange rates largely overstate the actual threshold in several jurisdictions and, more in particular, figures for each of Denmark, Spain, Greece, Indonesia (ex-post control), Ukraine, Taiwan, and Serbia appear to be simply incorrect; second, the figure used for the Canadian "one company with" is, in fact, the worldwide aggregate figure, and not the individual figure; third, the figure against Poland for aggregate domestic (£10.7 million) is, in fact, the figure for a de minimus exemption based on the target company's turnover in Poland - the actual aggregate domestic figure is €50m; fourth, the regimes in Slovenia and Argentina are not premised solely on aggregate domestic turnover - in Slovenia there is also a limb which requires the target to have domestic turnover of €1 million and in Argentina there are multiple exceptions that in practice require that target has a significant presence in the country; fifth, the table does not account for multiple alternative thresholds (for example, Bulgaria's threshold can be met by two companies meeting the threshold or, alternatively, the target); sixth, the table does not take into account that most jurisdictions with thresholds that are based on the aggregate turnover of one or more parties also apply a local effects doctrine whereby target or at least two parties should have a local presence in the country, e.g. Argentina, Austria, Italy, and Germany; and seventh, the regime for Malta, in addition to the aggregate domestic threshold, also requires each of the undertakings concerned to have a domestic turnover of at least 10%. of the combined turnover in Malta.

combined threshold test after a closer analysis of other regimes and taking into account more accurate information about the thresholds applied in "similarly situated jurisdictions". These inaccuracies appear to have led the JCRA to propose a threshold test that has been abandoned[17] or is being amended[18] in the few countries where it has ever been applied.

4.11 The Consultation Paper highlights three European countries with a turnover threshold which can be met by either one of the parties to a transaction. While we are in fact aware of eight European jurisdictions (nine including Greenland), as identified at Annex 5, with a turnover threshold which can be met by either one of the parties to a transaction,[19] at least 21 European countries use a mechanism which determines jurisdiction by reference to the turnover of each of at least two parties, and six European countries determine jurisdiction by reference to the target only (see Annex 4).[20] As regards the countries in Annex 5, it must be stressed that several countries in these list have either developed a local test doctrine (whereby only concentrations without a strong local nexus are notified)[21] or submitted draft amendments to modify thresholds.[22]

4.12 In addition, there are four jurisdictions (Czech Republic, Denmark, Slovakia and Turkey) which have alternative threshold tests. The first threshold test for three of these jurisdictions[23] is an aggregate turnover test combined with a requirement for each of at least two parties to have turnover of *x* in the relevant jurisdiction. The second alternative threshold test either refers to turnover of target alone (Czech Republic) or, in the case of Denmark, Slovakia and Turkey, stipulates that at least one party has worldwide turnover of *x* and at least one other party has domestic turnover of *y*. It is worth noting that for this second limb, the threshold level is significantly higher than the corresponding level which must be met by each of at least two of the parties.

4.13 The current state of national competition regimes in Europe does not, therefore, provide support for a single, combined turnover threshold, but instead adds further weight to the ICN Recommended Practices and support for a position where the turnover threshold be applied separately to each of (at least two of) the merging entities.

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[17] Inter alia, Germany, Latvia, and Malta.

[18] Inter alia, Cyprus, and Ukraine.

[19] Albania, Austria, Cyprus, Greenland, Italy, Macedonia, Montenegro, Serbia and Ukraine. The threshold level in these jurisdictions is considered at paragraphs 4.22 et seq. below.

[20] In Czech Republic the test is either by reference to the domestic turnover of each of at least two parties, or the domestic turnover of the target. We have therefore included it in Annex 4 as both an example of a jurisdiction where the threshold can be met by just the target and as an example of a European country with an alternative threshold test.

[21] Inter alia, Austria and Italy.

[22] Inter alia, Cyprus and Ukraine.

[23] Czech Republic, Denmark and Slovakia.

4.14 In line with the JCRA approach, we have also conducted a survey of other island economies around the world (Annex 3), the findings of which reinforce the conclusion that the threshold test in Jersey should be applied separately to each of (at least two of) the merging entities. Of the other island economies which employ a turnover threshold, Malta, Iceland, the Faroe Islands, and the French Départements d'Outre-Mer (and some of the Collectivités d'Outre-Mer) use a threshold test which takes account of the domestic turnover of each, of at least two, of the merging entities. Only Greenland and Cyprus use a test which can be satisfied by only one of the parties; however, the latter is taking steps to correct this. Furthermore, we consider it relevant to draw the attention of the JCRA to the jurisdictional test developed by Malta, a country that applies a relatively low combined turnover threshold but does not require the notification of deals without a material local nexus. After several years of experience applying a threshold similar to the one being proposed by the JCRA, the Maltese authorities introduced a second threshold that is well suited for a small economy: each of the undertakings concerned should have turnover in Malta equivalent to at least 10% of parties' combined turnover in Malta. This is an innovative turnover-based threshold that is easy to apply, requires the presence of at least two parties in the island and, more importantly, adjusts itself automatically to the size of the deal, capturing only those deals with a material impact.[24]

False positives

4.15 As the JCRA observes in the Consultation Paper, *"even a relatively high turnover threshold would still capture many international mergers*". We query whether a combined threshold of £2 million turnover in Jersey represents a "relatively high" threshold (see below, paragraph 4.22), although we note that this figure is based upon an exercise of historical benchmarking undertaken by the JCRA. The suggested use of an asset test to screen mergers which do not have a high likelihood of substantially lessening competition in Jersey, is, for the reasons discussed in further detail below, an unsuitable screening mechanism.

4.16 We submit that a more appropriate mechanism for identifying transactions which affect competition in Jersey would be, as the ICN has recognised, *"[a] notification system that focuses on the parties' combined domestic revenues plus the domestic revenues of at least two parties*". This is borne out by international experience, for example, in Belgium (as set out in Annex 6). The experience from Belgium's merger threshold reforms shows that a two-limb turnover threshold which examines the domestic turnover of each of at least two of the merging entities should have the effect of catching only mergers which could raise substantive competition concerns within the country. There is no obvious reason to suppose that the same would not be true for Jersey; the only difference between the reform process in Belgium and Jersey would be with regard to

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[24] As the turnover of each party must represents at least 10% of the combined turnover of the parties in Malta, in small deals (e.g. £2 million of combined turnover) each party must have £200,000 or more in the island, but in large deals (e.g. £15 million of combined turnover) each party must have £1.5 million or more in Malta.

the setting of an appropriate level of the combined and individual notification thresholds to reflect Jersey's comparatively smaller economy.

4.17 Another country offering precedent for the benefits of a dual-limb test is Germany, who amended their previous single-party threshold to a dual-limbed test to respond to the fact that, under the previous legislation, many concentrations with limited impact in Germany had to be notified to the BKartA (on average only about 4% of the notifications led to Phase II assessments), resulting in legal and administrative fees for the undertakings concerned and an increased workload for the BKartA in assessing unproblematic cases. The purpose of the reform was therefore to concentrate the BKartA's merger control work on cases of significance for the German economy and to exclude cases with only marginal competitive effects in Germany.[25]

4.18 We therefore recommend that, in addition to the combined turnover test, there should be separate thresholds relating to turnover in Jersey for each of at least two of the parties. This proposal: (i) conforms with the ICN Recommended Practices; (ii) is supported by current practices in the majority of European jurisdictions and certain island economies (see Annex 3 and Annex 4); and (iii) should generate a sufficient local nexus to avoid the capture of non-problematic transactions. Setting such thresholds will also remove the requirement for a separate asset test as proposed by the JCRA (although we discuss, in Part 5, potential approaches for regimes involving so-called "essential services").

C. The concept of turnover

4.19 In parallel with setting appropriate notification thresholds, it is important that the JCRA adopts clear and sensible guidance as to the relevant turnover to be used to determine whether a turnover threshold has been reached. It is understood that the JCRA has previously, in practice, interpreted the concept of turnover in Jersey to include sales of products made outside Jersey but then imported into Jersey by a third party (so-called "indirect sales" in Jersey) when calculating the current share of supply test. We believe that the new thresholds should focus only on turnover derived from direct sales into Jersey for the following reasons:

(i) Even the current Order refers to "the supply…of goods…supplied to…persons in Jersey" (at paragraphs 2(a), 3(b) and 4 of the Order). It does not state that supplies made to persons outside Jersey should be deemed to be made in Jersey if they are subsequently supplied by another person in Jersey;

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[25] A concentration must be notified in Germany if: the combined worldwide turnover of the parties to the concentration exceeds €500 million; domestic turnover of at least one party exceeded €25 million; and the domestic turnover of another party exceeded €5 million. The previous thresholds were: a combined worldwide turnover of more than €500 million; and one undertaking generated a turnover of more than €25 million in Germany.

(ii) Taking into account turnover derived from indirect sales would have the effect of double-counting a party's sales. For example, if a party supplies goods to a wholesaler in the UK, who then exports those goods to Jersey, that party would be treated as though it had supplied the same goods both in the UK directly (e.g. for the purposes of whether the UK's merger control thresholds are satisfied) and in Jersey (indirectly);

(iii) Taking into account indirect sales also has the disadvantage that it can prevent the parties from being able to self-assess their notification obligations, as an undertaking has no clear visibility as to the final destination of its products once it has sold them to a customer. This information is certainly not available from the parties' accounts which are the general source of data for ascertaining whether multiple filings may be required for international deals. Further, the obligation to identify indirect sales to Jersey is not in line with the ICN Recommended Practices which highlight the need for clear thresholds based on information that is readily accessible to the merging parties; and

(iv) We are not aware of any other merger regime anywhere in the world which regards indirect sales outside the jurisdiction as relevant for the jurisdictional purposes of ascertaining whether domestic turnover or market share thresholds are satisfied.

4.20 Indeed, including a party's indirect sales as part of the threshold requirement for filing in Jersey would appear to run contrary to the ICN's Recommended Practices which provide that merger control authorities should not assert jurisdiction over transactions with no nexus with the jurisdiction concerned (in terms of appreciable activity in the local territory). It is best practice, across Europe, for turnover calculations to only consider direct sales into the relevant country; Annex 7 details some illustrative examples where the direct nature of such sales is explicitly stated.

4.21 We therefore believe that any domestic turnover calculations should only consider turnover derived from sales made by the parties in Jersey.

D. The need for an appropriate turnover threshold

4.22 We recognise that the size of the Jersey economy, as well as the exercise of benchmarking of historical transactions, has informed the JCRA's proposed £2 million threshold. This threshold level would be of particular concern if the JCRA were to interpret "turnover in Jersey" as including turnover derived from indirect sales. In any event, the proposed £2 million level appears low when compared to other jurisdictions which operate: (a) a domestic turnover threshold which can be met by either one of the parties (for a list of these jurisdictions, see Annex 5); and (b) thresholds based on the domestic turnover of at least two parties to the transaction or the target (for a list of these jurisdictions, see Annex 4).

4.23 By way of example, the alternative jurisdictional tests in Serbia offer support for the proposition that, where a threshold can be satisfied by one party alone, the threshold level should be higher than if a threshold is required to be satisfied by each of at least two parties. The test in Serbia is: *"*(i) combined worldwide turnover of c. £90m (€100m);

and at least one undertaking has turnover in Serbia of c. £9m (€10m); or (ii) combined turnover in Serbia of c. £18m (€20m); and at least two undertakings each have turnover in Serbia of c. £0.9m (€1m)"(emphasis added).

4.24 Of the two island economies which use a test which can be satisfied by only one party, Greenland has adopted a threshold of c. £12 million and Cyprus a threshold of £3 million. Both are significantly higher than the JCRA's proposed threshold of £2 million.

4.25 We therefore encourage the JCRA, if a mandatory regime is maintained, to reconsider the threshold level in light of the above.

E. The proposed asset test

4.26 If the combined threshold test is satisfied, the proposed asset test is intended to screen those proposed international mergers where parties may generate sales locally but have no active local presence, thereby allowing the JCRA to concentrate its resources on mergers with the greatest likelihood of lessening competition in Jersey. The JCRA proposal envisages that this test would be satisfied only *where one or more of the parties to the merger or acquisition:*

(a) has employees working in Jersey; or

(b) has a registered subsidiary, representative or branch office in Jersey; or

(c) holds a level of influence over local agents or facilities.

4.27 Whilst establishing a nexus to Jersey is in line with ICN Recommended Practices, the ECLF believes that the proposed asset test is flawed for the following reasons (each of which is considered in further detail below):

(i) The third limb is not objective and is therefore not fully compliant with the ICN Recommended Practices;

(ii) There is limited precedent for such a test in other small island economies, or in Europe more generally; and

(iii) It is unnecessary to achieve the JCRA's aim of screening international mergers which generate turnover locally, but have no active local presence.

ICN non-compliance

4.28 Section II of the ICN's Recommended Practices highlights the need for clarity and simplicity in notification thresholds, so as to permit parties to readily determine whether a transaction is notifiable. In particular, authorities should use clear, understandable, easily administrable and bright-line tests based on objectively quantifiable criteria.

Whilst the first two limbs of the asset test are objective, the final limb is ambiguous and not objective.[26]

4.29 Additionally, since the asset test can be met by the "assets" of only one of the parties to a proposed transaction, the asset limb of the notification threshold is also subject to the same criticisms as the turnover threshold (set out at paragraph 4.8 above).

Limited precedent

4.30 Of the other island economies identified in Annex 3, only Greenland has a concept similar to the asset test; however, this test is more objective than a concept of *"level of influence"* (essentially being limited to an exemption for all transactions where neither party is located there). More widely, within Europe there are only five countries (in addition to Cyprus) which have a similar concept: Ireland, Croatia, Macedonia, Montenegro, and Ukraine; again, all of these use far clearer and more objective criteria than "*level of influence*" (Annex 8).

Unnecessary

4.31 The purported aim of the asset threshold is to avoid a mandatory notification regime catching international mergers which generate turnover locally but have no active local presence.[27] However, as set out at paragraph 4.29, since the asset test can be met by the "assets" of only the acquiring firm, the thresholds will still bring to the JCRA's review numerous transactions with no impact whatsoever on Jersey's markets. Furthermore, as indicated, a mixture of combined domestic revenues and the domestic revenues of at least two parties to the transaction can be used much more effectively to target transactions with a significant domestic impact.

4.32 We therefore recommend the removal of the asset test and the introduction of a dual-limbed turnover test comprising an aggregate limb and a limb which focuses on each of at least two of the parties' turnover in Jersey. This will provide a more objective and clear-cut method of ensuring that only relevant transactions are subject to a mandatory notification requirement. If the JCRA is unwilling to introduce a dual limbed turnover threshold instead of the proposed turnover and asset threshold, the JCRA should base this threshold exclusively on the presence of companies registered in Jersey or, at least, remove the concept of "*influence*" from the asset test.

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[26] Level of influence is a subjective criterion, with the illustrative examples of situations which might lead to a finding of a level of influence (namely, long-term exclusivity arrangements, whether involving access or rights to storage or distribution facilities) themselves subjective and unclear. For example, how long-term is long-term? How important should the storage or distribution facilities be; does this entail a concept analogous to the EU's essential facilities doctrine?

[27] At paragraph 17 of the Consultation Paper, the JCRA states that *"[i]t is the case that even a relatively high turnover threshold would still capture many international mergers, the parties to which often generate a turnover locally but have no active local presence, selling into Jersey through independent agents.* The ECLF notes that a party which sells into a jurisdiction through a genuine agent *would* have sales (and therefore direct turnover) in that jurisdiction.

5. PROPOSALS REGARDING MERGERS INVOLVING ESSENTIAL SERVICES

5.1 There are certain services and infrastructure assets that may be of particular importance to the Jersey economy, and sectors in which it may be necessary to ensure, for the benefit of Jersey residents and consumers, that all mergers or acquisitions with the potential for anti-competitive effects can be reviewed by the JCRA. For the reasons explained at Parts 2 and 3 above, we believe that a voluntary notification regime may be better suited to the Jersey economy than a mandatory notification regime. That said, if the JCRA continues to operate a mandatory notification regime, as explained in Part 4 above we believe that the proposed aggregate test should be supplemented by a requirement for each of the acquiring and acquired, or merging, undertakings to have turnover in Jersey, which will provide an appropriate local nexus. However, whichever of these regimes is preferred, the ECLF recognises that the JCRA may be particularly concerned to identify so-called "essential services" sectors or industries, or particular assets or infrastructure which are of strategic importance to the Jersey economy, where mergers or acquisitions could potentially affect competition in Jersey, even where only one of the undertakings involved has local turnover.

5.2 We consider that the JCRA could be granted the authority to review non-notifiable mergers in respect of designated essential services sectors or industries, or essential assets. We also note that under the Competition (Jersey) Law 2005, the JCRA has the power to review undertakings which it has reasonable cause to suspect are involved in anti-competitive activities.

5.3 Alternatively, if this approach is unacceptable for the JCRA, it may be appropriate, in the interests of certainty, to put in place a separate notification threshold for certain designated essential services and/or infrastructure. This approach has already been adopted in The Netherlands, where the Ministry of Economic Affairs has the jurisdiction to lower thresholds for particular sectors (and has done so in the healthcare industry). In France, lower thresholds are applied to domestic transactions in the retail sector.[28] We do not offer a view as to any alternative merger thresholds for essential services. However, in line with international best practice and with the aim of achieving certainty for transacting undertakings, we consider that:

(i) Any alternative notification thresholds for designated essential services could be mandatory (even if for other areas of the economy Jersey were to move to a voluntary regime, as proposed at Parts 2 and 3 above);

(ii) Any alternative notification thresholds so introduced should include, in accordance with the ICN Recommended Practices, reference to activities or assets of the target in Jersey; and

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[28] The standard notification thresholds in France are a combined worldwide turnover of €150m with at least two parties each having turnover in France of c. €50m; in contrast, notification thresholds in the retail sector are set at (for mergers or acquisitions where at least two parties operate one or several retail outlets in France) combined worldwide turnover of €75m with at least two parties each having turnover in France of €15m (turnover from retail activities only).

(iii) Any essential services test should not apply to pure foreign-to-foreign transactions (i.e. to mergers or acquisitions where the presence of both parties in Jersey is solely through importers).

5.4 It is our view that any sectors or industries (or particular assets and/or infrastructure) which are of particular importance to the Jersey economy, or to the provision of essential services to Jersey, could be clearly designated as "essential services" sectors by an Order of Jersey's Minister for Economic Development";[29] and that there should be no ambiguity over the sectors, industries, and/or assets or infrastructure subject to any alternative notification regime.

5.5 When considering the industries, infrastructure or assets that could be subject to an alternative essential services notification regime, we start from the premise that any such provisions would be strictly limited to relevant identified sectors. In addition, we believe that sectors considered essential to the health of the Jersey economy are already identified by law in the form of sectors subject to regulation, i.e. the postal and telecoms sectors. It is arguable as a matter of policy, consistent with a liberalised society, that only those essential services which are already subject to regulation in Jersey (i.e. licensed activities) should be subject to a separate mandatory notification regime (and defined as essential services by an Order).

5.6 However, we recognise that there may be other non-licensed sectors, such as retail, transport (for example, airlines and ferries servicing the island) and utilities, or certain assets and infrastructure, which, although not regulated, are of particular importance to the Jersey economy and could sensibly be designated as essential services. We are however concerned that any such sectors, and their parameters, be clearly defined by an Order, and only designated as essential services after a period of public consultation.

5.7 To reiterate, any essential services merger test should only be applicable where at least the target or seller has turnover or assets in Jersey (without this, they cannot be said to be of essential importance to Jersey); the regime should therefore not be applicable to pure foreign-to-foreign transactions.

6. PROPOSALS FOR EXEMPTIONS

6.1 We welcome the JCRA's proposal that, given the nature of the Jersey market and the role of financial services in the local economy, certain types of transactions be exempted from notification, as they are unlikely to raise competitive concerns. Those exemptions provided for in other jurisdictions, and with which we agree, include:

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[29] Currently regulated services in Jersey include the postal and telecommunication sectors.

- Where credit institutions, financial institutions or insurance companies acquire shares in another company for the purpose of resale where voting rights are not exercised and resale occurs within one year;

- Asset securitisation transactions; and

- Intra-group transfers of assets.

6.2 Another option, as in the USA, would be to exempt several categories of transactions because of their low likelihood of raising competitive concerns (for example, amongst others, intra-person transactions where the acquirer already holds 50% or more of the voting securities of the target, and further increases its shareholding).

29 June 2011

ANNEX 1: MEMBERS OF THE ECLF WORKING PARTY ON THE JCRA CONSULTATION

The European Competition Lawyers Forum (ECLF) is a group of leading competition lawyers from firms across Europe. It was founded in 1994 at the suggestion of certain officials within the European Commission's DG Competition to provide a forum for senior practitioners and officials to engage in an open dialogue on topical competition law issues and to discuss areas for reform. From time to time, the ECLF forms working parties on particular issues of interest and submits papers to contribute to the debate on topical issues.

The Members of the ECLF Working Party on the JCRA Consultation have been as follows:

- John Boyce and Daniela Bowry-Blum, Slaughter and May
- Julian Joshua, Steptoe & Johnson
- Massimo Merola and Omar Diaz, Bonelli Erede Papparlardo
- Luis Moscoso Del Prado Gonzalez, Uría Menéndez
- Simon Priddis, Freshfields Bruckhaus Deringer
- Simon Pritchard, Allen & Overy

ANNEX 2: EXTRACT FROM THE ICN RECOMMENDED PRACTICES FOR MERGER NOTIFICATION PROCEDURES

I. Nexus to Reviewing Jurisdiction

A. Jurisdiction should be asserted only over those transactions that have an appropriate nexus with the jurisdiction concerned.

WORKING GROUP COMMENTS
Original Comments (September 2002)

Comment 1: Jurisdictions are sovereign with respect to the application of their own laws to mergers. In exercising that sovereignty, however, jurisdiction should be asserted only with respect to those transactions that have an appropriate nexus with the reviewing jurisdiction.

B. Merger notification thresholds should incorporate appropriate standards of materiality as to the level of "local nexus" required for merger notification.

WORKING GROUP COMMENTS
Original Comments (September 2002)

Comment 1: In establishing merger notification thresholds, each jurisdiction should seek to screen out transactions that are unlikely to result in appreciable competitive effects within its territory. Requiring merger notification as to such transactions imposes unnecessary transaction costs and commitment of competition agency resources without any corresponding enforcement benefit. Merger notification thresholds should therefore incorporate appropriate standards of materiality as to the level of "local nexus" required, such as material sales or assets levels within the territory of the jurisdiction concerned.

Comment 2: This "local nexus" approach would not preclude the use of ancillary thresholds based on worldwide activities of the parties as an additional prerequisite, but worldwide revenues or assets should not be sufficient to trigger a merger notification requirement in the absence of a local nexus (e.g., revenues or assets in the jurisdiction concerned) exceeding appropriate materiality thresholds.

Comment 3: The "local nexus" thresholds should also be confined to the relevant entities or businesses that will be combined in the proposed transaction. In particular, the relevant sales and/or assets of the acquired party should generally be limited to the sales and/or assets of the business(es) being acquired.

C. Determination of a transaction's nexus to the jurisdiction should be based on activity within that jurisdiction, as measured by reference to the activities of at least two parties to the transaction in the local territory and/or by reference to the activities of the acquired business in the local territory.

WORKING GROUP COMMENTS
Original Comments (September 2002)
Amended (June 2003)

Comment 1: Notification should not be required unless the transaction is likely to have a significant, direct and immediate economic effect within the jurisdiction concerned. This criterion may be satisfied if each of at least two parties to the transaction have significant local activities. Alternatively, this criterion may be satisfied if the acquired business has a significant direct or indirect presence on the local territory, such as local assets or sales in or into the jurisdiction concerned.

Comment 2: Many jurisdictions require significant local activities by each of at least two parties to the transaction as a predicate for notification. This approach represents an appropriate "local nexus" screen since the likelihood of adverse effects from transactions in which only one party has the requisite nexus is sufficiently remote that the burdens associated with a notification requirement are normally not warranted. To the extent that the "local nexus" requirement can be satisfied by the activities of the acquired business alone, the requisite threshold should be sufficiently high so as to ensure that notification will not be required for transactions lacking a potentially material effect on the local economy.

Comment 3: Notification should not be required solely on the basis of the acquiring firm's local activities, for example, by reference to a combined local sales or assets test which may be satisfied by the acquiring person alone irrespective of any local activity by the business to be acquired. Likewise, the relevant local activities of the acquired party should generally be limited to the local sales or assets of the business(es) being acquired.

Comment 4: It is possible that competitive issues might be presented when a local, dominant firm acquires a significant foreign potential competitor that lacks significant sales in the jurisdiction. However, the use of notification thresholds based solely on the acquiring firm’s local activities to cover these exceptional cases will impose unnecessary transaction costs on a much larger number of transactions that do not pose any appreciable risk of competitive harm. Accordingly, the adoption of notification thresholds premised solely on the acquiring firm's local activities should be considered only if the competition agency would otherwise be deprived of jurisdiction over such transactions (i.e., where the jurisdiction’s laws preclude the agency from challenging non-notifiable transactions). If a jurisdiction adopts such notification criteria, the applicable notification thresholds should be set at a very high level. If such thresholds are insufficient to minimize unnecessary filings, other objectively-based limiting filters should be adopted.

II. Notification Thresholds

A. Notification thresholds should be clear and understandable.

WORKING GROUP COMMENTS
Original Comments (September 2002)

Comment 1: Clarity and simplicity should be essential features of notification thresholds so as to permit parties to readily determine whether a transaction is notifiable. Given the increasing incidence of multi-jurisdictional transactions and the growing number of jurisdictions in which notification thresholds must be evaluated, the business community, competition agencies and the efficient operation of capital markets are best served by clear, understandable, easily administrable, bright-line tests.

B. Notification thresholds should be based on objectively quantifiable criteria.

WORKING GROUP COMMENTS
Original Comments (September 2002)

Comment 1: Notification thresholds should be based exclusively on objectively quantifiable criteria. Examples of objectively quantifiable criteria are assets and sales (or turnover). Examples of criteria that are not objectively quantifiable are market share and potential transaction-related effects. Market share-based tests and other criteria that are more judgmental may be appropriate for later stages of the merger control process (such as determinations relating to the amount of information required in the parties' notification and to the ultimate legality of the transaction), but such tests are not appropriate for use in making the initial determination as to whether a transaction is notifiable.

Comment 2: The specification of objective criteria will require a jurisdiction to explicitly identify several elements. First, the jurisdiction must identify the measurement tool -- e.g., assets or sales. Second, the jurisdiction must identify the scope of the geographic area to which the measurement tool is applied -- e.g., national or worldwide. Third, the jurisdiction must specify a time component. In the case of certain measurement tools, such as revenues, sales, or turnover, the time component will be a period over which the measurement should be taken -- e.g., a calendar year. In the case of other measurement tools, such as assets, the time component will be a particular date as of which the measurement should be taken. In either case, the above referenced criteria may be defined by reference to pre-existing, regularly-prepared financial statements (such as annual statements of income and expense or year-end balance sheets).

Comment 3: The specified criteria should be defined in clear and understandable terms, including appropriate guidance as to included and/or excluded elements, such as taxes and intracompany transfers (as to sales), depreciation (as to assets), and material events or transactions that have occurred after the last regularly-prepared financial statements. Guidance should also be given as to the proper geographic allocation of sales and/or assets. To facilitate the merging parties' ability to gather multi-jurisdictional data on a consistent basis, jurisdictions should seek to adopt uniform definitions or guidelines with respect to commonly used criteria.

C. Notification thresholds should be based on information that is readily accessible to the merging parties.

WORKING GROUP COMMENTS
Original Comments (September 2002)

Comment 1: The information needed to determine whether notification thresholds are met should normally be of the type that is available to the parties in the ordinary course of business.

Comment 2: Notwithstanding Comment 1, the merging parties can reasonably be required to report their revenues or assets by jurisdiction even if they do not maintain data in that form in the ordinary course of business. As previously discussed, however, parties should be given appropriate guidance as to the methodology to be applied in developing the specified data. This is particularly important where information must be reported in a manner that is not consistent with a merging party's normal business practices.

Comment 3: Local currency values will generally be superior to other economic measures for purposes of establishing financial criteria in notification thresholds -- parties are more likely to maintain their financial data in the ordinary course by reference to currency values, and published data relating to currency values are generally readily accessible and available through standard international sources. It is recognized, however, that jurisdictions facing volatile local currency fluctuation may need to adopt more dynamic economic measures, such as monthly wage multiples. The general preference for local currency values is not intended to preclude a jurisdiction from expressing financial criteria in its notification thresholds by reference to a generally-recognized global trading currency if it chooses to do so. In all events, however, the relevant criteria should be clearly defined (including applicable rules pertaining to currency conversion), transparent and readily accessible by merging parties whether or not domiciled in the local jurisdiction.

ANNEX 3: SMALL ISLAND ECONOMIES WITH MERGER CONTROL (RANKED IN ORDER OF SIZE OF POPULATION)[30]

Country	Population[31]	GDP (£) (purchasing power parity)[1]	Threshold
Singapore	4,740,737	£178.6 billion (2010 estimate)	Voluntary notification; CCS can investigate but guidelines state that the CCS is unlikely to intervene in a merger situation unless: (1) Combined market share of 40% or more; or (2) Combined market share of 20% to 40%; and the three largest firms have a combined post-merger market share of 70%. Specialist sectors: telecommunications, electricity and piped gas, newspapers and other publications, banking and designated financial institutions, casinos, marine or port services and facilities, and air transport.
New Zealand[32]	4,290,347	£72.8 billion (2010 estimate)	Voluntary notification; No notification thresholds, but Authority only likely to have concerns where there may be a substantial lessening of competition. Guidelines include indicative "safe harbours": (1) Combined market share of 40% or less, unless concentrated market; or (2) Combined market share of 20% or less, in a concentrated market.

[30] By way of comparison, Jersey has a population of 94,161 and GDP of £ £3.1 billion (2005 estimate).

[31] Unless otherwise specified, all data is taken from the CIA World Factbook (available at https://www.cia.gov/library/publications/the-world-factbook/index.html) and the populations are estimates for July 2011.

[32] Under review: the Commerce Commission issued consultation on Mergers and Acquisitions Guidelines in February 2011.

Country	Population[31]	GDP (£) (purchasing power parity)[1]	Threshold
Jamaica	2,868,380	£14.6 billion (2010 estimate)	No specific merger control regime but economic concentrations are analysed under the Fair Competition Act in terms of dominance.
Mauritius	1,303,717	£10.7 billion (2010 estimate)	Voluntary prior-notification where: (1) Combined market share of 30% or more on a relevant market; or (2) One of the parties has market share of 30% or more on a relevant market; and the Commission has reasonable grounds to believe that the merger situation has resulted in or is likely to result in a substantial lessening of competition within any market for goods and services. Special sector: petroleum.
Cyprus	1,120,489	£14.2 billion (2010 estimate)	Mandatory pre-notification if: (1) At least two parties each have worldwide turnover of c. £3m (€3.4m); and (2) At least one party carries on business in Cyprus (that is, it must have sales in Cyprus, either through a subsidiary or a branch); and (3) Combined turnover in Cyprus of c. £3m (€3.4m). Special rules for broadcasting and press.
Fiji	883,125	£2.0 billion (2010 estimate)	No notification requirement. However, the Minister of Commerce may (on application by any person), make a declaration concerning a transaction where it results in: (1) Acquirer gaining or strengthening a dominant position; and (2) No public benefit.

Country	Population[31]	GDP (£) (purchasing power parity)[1]	Threshold
Réunion (French DOM)	827,000 (2009 estimate) (Source: Wikipedia)	£12.9 billion (2008 estimate) (Source: Wikipedia)	Even if the transaction is below the French domestic thresholds, it will still be subject to mandatory notification to the French competition authority if: (1) Combined worldwide turnover of c. £65 (€75m); and (2) At least two parties each have turnover in Réunion of c. £13m (€15m).
Malta	408,333	£7.2 billion (2010 estimate)	Mandatory pre-notification if: (1) Combined turnover in Malta of c. £2m (€2.3m); and (2) Each of the undertakings concerned has turnover in Malta equivalent to at least 10% of parties' combined turnover in Malta. This second threshold is to the best of our knowledge a unique feature of Malta. It is supposed to prevent a scenario whereby a buyer that reaches the first threshold should notify any deal carried out abroad or with negligible effects in the country. Likewise, this second threshold prevents the notification of the acquisition of a Maltese company by a company with no sales or just negligible sales in the island.
Guadeloupe (French DOM)	405,500 (2008) (Source: Wikipedia)	£6.8 billion (2006) (Source: Wikipedia)	Even if the transaction is below the French domestic thresholds, it will still be subject to mandatory notification to the French competition authority if: (1) Combined worldwide turnover of c. £65m (€75m); and (2) At least two parties each have turnover in Guadeloupe of c. £13m (€15m).

Country	Population[31]	GDP (£) (purchasing power parity)[1]	Threshold
Martinique (French DOM)	397,730 (2007) (Source: Wikipedia)	£6.9 billion (2008 estimate) (Source: Wikipedia)	Even if the transaction is below the French domestic thresholds, it will still be subject to mandatory notification to the French competition authority if: (1) Combined worldwide turnover of c. £65 (€75m); and (2) At least two parties each have turnover in Martinique of c. £13m (€15m).
Iceland	311,058	£7.3 billion (2010 estimate)	Mandatory pre-notification if: (1) Combined turnover in Iceland of c. £10m; and (2) At least two parties each have turnover in Iceland of c. £1m Post merger notification may be required for mergers not meeting the above thresholds if the Authority believes that there is significant probability that merger can substantially reduce competition. This is subject to combined turnover in Iceland of c. £5m. Foreign-to-foreign transactions: Merger control will only be applied when the transaction has, or is intended to have, an effect in Iceland. Special sectors: for non-EEA residents: fishing, energy exploitation rights, real estate and airlines.
Barbados	286,705	£3.8 billion (2010 estimate)	Mandatory pre-notification if individual or combined market share of 40% of any market. Foreign-to-foreign transactions: Merger control will only be applied when a merger has an effect on a market for goods and services to be supplied in Barbados (and imports, where appropriate). Occasionally it may be appropriate to define a market broader than Barbados (for example Caribbean-wide).

Country	Population[31]	GDP (£) (purchasing power parity)[1]	Threshold
Mayotte (French DOM)	194,000 (2009 estimate) (Source: Wikipedia)	£0.8 billion (2005 estimate) (Source: Wikipedia)	Even if the transaction is below the French domestic thresholds, it will still be subject to mandatory notification to the French competition authority if: (1) Combined worldwide turnover of c. £65m (€75m); and (2) At least two parties each have turnover in Mayotte of c. £13m (€15m).
Greenland	57,670	£1.2 billion (2009 estimate)	Mandatory post-notification if combined turnover of parties and affiliates exceeding c. £12m. NB: Foreign-to-foreign transactions: Merger control will only be applied where at least one of the parties is located in Greenland.
Faroe Islands	49,267	£1.0 billion (2008 estimate)	Mandatory pre-notification if at least two parties each have turnover in Faroe Islands of c. £0.5m If above threshold is met, notification is mandatory. However, it may be possible to use short form notification provided Competition Council grants permission. In addition, if parties have a combined turnover in Faroe Islands of more than c. £9m long form notification is required.
Saint Martin (French COM)	30,615	N/A	Even if the transaction is below the French domestic thresholds, it will still be subject to mandatory notification to the French competition authority if: (1) Combined worldwide turnover of c. £65m (€75m); and (2) At least two parties each have turnover in Saint Martin of c. £13m (€15m).

Country	Population[31]	GDP (£) (purchasing power parity)[1]	Threshold
Saint Barthélemy (French COM)	7,367	N/A	Even if the transaction is below the French domestic thresholds, it will still be subject to mandatory notification to the French competition authority if: (1) Combined worldwide turnover of c. £65m (€75m); and (2) At least two parties each have turnover in Saint Barthélemy of c. £13m (€15m).
Saint Pierre et Miquelon (French COM)	5,888	29.5 million (2003 estimate)	Even if the transaction is below the French domestic thresholds, it will still be subject to mandatory notification to the French competition authority if: (1) Combined worldwide turnover of c. £65m (€75m), and (2) At least two parties each have turnover in Saint Pierre et Miquelon of c. £13m (€15m).

ANNEX 4: THRESHOLDS IN CERTAIN EUROPEAN COUNTRIES

A. European countries (mandatory notification regimes) with separate domestic thresholds for at least two of the parties

Country	Threshold
Belgium	Mandatory prior-notification if: (1) Combined turnover in Belgium of c. £90m (€100m); and (2) At least two parties each have turnover in Belgium of c. £35m (€40m).
Bosnia Herzegovina	Mandatory prior-notification if: (1) Combined worldwide turnover of c. £45m (KM 100m); and (2) Each of at least two parties have turnover of c. £4m (KM 8m) in Bosnia Herzegovina or share of more than 40% of the relevant market. (In practice, only the second limb is considered when the transaction applies to local companies - although it is unclear whether the Authority is competent to interpret the legislation in this way).
Croatia	Mandatory prior-notification if: (1) Combined worldwide turnover of c. £120m (HRK 1000m); and (2) At least one of the undertakings concerned has its seat or a subsidiary in Croatia; and (3) Each of at least two parties has turnover in Croatia of c. £12m (HRK 100m).
Estonia	Mandatory prior-notification if: (1) Combined turnover in Estonia of c. £5m (EEK 100m); and (2) At least two parties each have turnover in Estonia of c. £1.5m (EEK 30m).

Country	Threshold
Finland	Mandatory prior-notification if: (1) Combined worldwide turnover of c. £300m (€350m); and (2) At least two parties each have turnover in Finland of c. £18m (€20m).
France	Mandatory prior-notification if: (1) Combined worldwide turnover of c. £130m (€150m); and at least two parties each have turnover in France of c. £45m (€50m). Special thresholds apply for the retail trade sector: Any concentration involving at least two parties operating one or several retail trade outlets in France is notifiable if: (1) Combined worldwide turnover of £65.95m (€75m); and (2) At least two parties each have turnover in France of £13.19m (€15m) from retail activities.
Germany	Mandatory prior-notification if: (1) Combined worldwide turnover of c. £440m (€500m); and (2) At least one party has turnover in Germany of c. £22m (€25m); and (3) At least one other party has turnover in Germany of c. £4.5m (€5m).
Greece	Mandatory prior-notification if: (1) Combined turnover of c. £130m (€150m) worldwide; and (2) At least two parties each have turnover in Greece of c. £13m (€15m).

Country	Threshold
Hungary	Mandatory prior-notification if: (1) Combined turnover of c. £50m (HUF 15,000m) in Hungary; and (2) At least two parties each have turnover of c. £2m (HUF 500m) in Hungary.
Iceland	Mandatory prior-notification if: (1) Combined turnover in Iceland of c. £10m (ISK 2 bn); and (2) At least two parties each have turnover in Iceland of c. £1m (ISK 200m). A merger can require post merger notification if the Authority believes there is a risk of SRC; simplified notification available if certain conditions are met.
Ireland	Mandatory prior-notification if: (1) At least two parties each have worldwide turnover of c. £35m (€40m); (2) At least two parties each carry on business in any part of the island of Ireland (i.e. including Northern Ireland); and (3) At least one party has turnover in the Irish Republic of c. £35m (€40m). Interpretative Notice (amended in December 2006) states that the Competition Authority understands the phrase 'carries on business in any part of the island of Ireland' to include: (1) Any undertaking that has a physical presence on the island of Ireland (including a registered office, subsidiary, branch, representative office or agency) and makes sales or supplies services, or both, to customers on the island of Ireland; or (2) Any undertaking that has made sales into the island of Ireland of at least c. £2m in the most recent financial year (even if it has no physical presence on the island of Ireland).

Country	Threshold
Latvia	Mandatory prior-notification if: (1) Combined turnover in Latvia of c. £30m (LV 25m); and each of at least two parties has a turnover of c. £2m (LV1.5m) in Latvia; or (2) Combined market share in the relevant market exceeds 40%; and each of the two merger participants has a turnover of £2m (LV 1.5m) in Latvia. Foreign-to-foreign transactions: merger control will be applied only when the Latvian market will be affected by the merger, i.e. when the business activities of at least one of the merger participants takes place in Latvia
Lithuania	Mandatory prior-notification if: (1) Combined worldwide turnover of c. £8m (Lt 30m); and (2) At least two parties each have worldwide turnover of c. £1m (Lt 5m). NB In relation to foreign companies, the turnover is only that derived from sales in Lithuania.
Malta	Mandatory pre-notification if: (1) Combined turnover in Malta of c. £2m (€2.3m); and (2) Each of the undertakings concerned has turnover in Malta equivalent to at least 10% of parties' combined turnover.
Netherlands	Mandatory prior-notification if: (1) Combined worldwide turnover of c. £100m (€113.45m); and (2) Each of at least two parties has turnover in the Netherlands of c. £26m (€30m). Special sector: healthcare.

Country	Threshold
Norway	Mandatory prior-notification if: (1) Combined turnover in Norway of c. £5m (NOK 50m); and (2) At least two parties each have turnover in Norway of c. £2m (NOK 20m). Special sectors: finance, media and energy.
Portugal	Mandatory prior-notification if: (1) Combined turnover in Portugal of c. £130m (€150m); and at least two parties each have turnover in Portugal of c. £2m (€2m); or (2) Creation or strengthening of combined market share in Portugal of 30% or more (even if no overlap).
Romania	Mandatory prior-notification if: (1) Combined worldwide turnover of c. £9m (€10m); and at least two parties each have turnover in Romania of c. £3.5m (€4m).
Spain	Mandatory prior-notification if: (1) Combined turnover in Spain of c. £210m (€240m); and at least two parties each have turnover in Spain of c. £55m (€60m); or (2) Creation or strengthening of combined market share in Spain of 30%, or acquisition of target which has 30% market share (even if no overlap).[33]

[33] This threshold will not apply when target's turnover in Spain was under €10m in the last financial year, provided that the parties' individual or combined market share is under 50%.

Country	Threshold
Sweden	Mandatory prior-notification if: (1) Combined turnover in Sweden of c. £95m (SEK 1000m); and (2) At least two parties each have turnover in Sweden of c. £19m (€200m) .
Switzerland	Mandatory prior-notification if: (1) Combined worldwide turnover of c. £1,500m (CHF 2000m); and at least two parties each have turnover in Switzerland of c. £70m (CHF 100m); or (2) Combined turnover in Switzerland of c. £360m (CHF 500m); and at least two parties each have turnover in Switzerland of c. £70m (CHF 100m) .

B. European countries whose turnover thresholds can be met just by the target

Country	Threshold
Bulgaria	Mandatory prior-notification if: (1) Combined turnover in Bulgaria of c. £11m (BGN 25M); and (2) Either (a) at least two parties each have turnover in Bulgaria of c. £1m (BGN 3m); or (b) target has turnover in Bulgaria of c. £1m (BGN 3m).
Czech Republic	Mandatory prior-notification if: (1) Combined turnover in Czech Republic of c. £55m (CZK 1500m); and at least two parties each have turnover of c. £9m (CZK 250m) in Czech Republic; or (2) Target has turnover in Czech Republic of c. £55m (CZK 1500m), and at least one other party has worldwide turnover of c. £55m (CZK 57m).
Italy	Mandatory prior-notification if: (1) Combined turnover in Italy of c. £415m (€472m); or (2) Target has turnover in Italy of c. 41m (€47m).
Poland	Mandatory prior-notification if: (1) Combined worldwide turnover of c. £880m (€1000m); or

	(2) Combined turnover in Poland of c. £44m (€50m). However, no filing is required if the target[34] has turnover in Poland of less than c. £9m (€10m) in the previous two years.
Slovenia	Mandatory prior-notification if: (1) Combined turnover in Slovenia of c. £30m (€35m); and (2) Either (i) Target has turnover in Slovenia of c. £0.9m (€1m); or (ii) in cases of joint ventures of at least two parties, including affiliated companies, have turnover in Slovenia of c. £0.9m (€1m). In addition a merger may be notifiable if it falls below the threshold but parties have 60% of the relevant market.
Spain	Mandatory prior-notification if: (1) Combined turnover in Spain of c. £210m (€240m); and at least two parties each have turnover in Spain of c. £53m (€60m); or (2) Creation or strengthening of combined market share in Spain of 30%, or acquisition of target which has 30% market share (even if no overlap).[35]

[34] Applicable to acquisitions, not mergers or JVs.

[35] This threshold will not apply when target's turnover in Spain was under €10m in the last financial year, provided that the parties' individual or combined market share is under 50%.

C. European countries with alternative threshold tests

Country	Threshold
Austria	Mandatory prior-notification if: (1) Combined worldwide turnover of c. £264m (€300m); (2) Combined turnover in Austria of c. £26m (€30m); and (3) At least two parties each have worldwide turnover of c. £4m (€5m) However, even if the above thresholds are met, transaction is not notifiable if: (a) Only one of the parties has turnover of c. £4m (€5m) within Austria; and (b) all other parties have combined worldwide turnover of less than c. £26m (€30m).
Bulgaria	Mandatory prior-notification if: (1) Combined turnover in Bulgaria of c. £11m (BGN 25m); and (2) Either: (a) at least two parties each have turnover in Bulgaria of c. £1m (BGN 3m); or (b) target has turnover in Bulgaria of c. £1m (BGN 3m).
Czech Republic	Mandatory prior-notification if: (1) Combined turnover in Czech Republic of c. £55m (CZK 1500m); and at least two parties each have turnover of c. £9m (CZK 250m) in Czech Republic; or (2) Target has turnover in Czech Republic of c. £55m (CZK 1500m), and at least one other party has worldwide turnover of c. £2m (CZK 57m).
Denmark	Mandatory prior-notification if:

	(1) Combined turnover in Denmark of c. £106m (DKK 900m); and at least two parties each have turnover in Denmark of c. £12m (DKK 100m); or (2) At least one party has turnover in Denmark of c. £500m (DKK 3.8bn); and at least one of the other parties has worldwide turnover of c. £500m (DKK3.8bn).
Slovakia	Mandatory prior-notification if: (1) Combined worldwide turnover of c. £40m (€46m); and at least two parties each have turnover in the Slovak Republic of c. £12m (€14m); or (2) At least one party has worldwide turnover of c. £40m (€46m); and at least one other party has turnover in the Slovak Republic of c. £17m (€19m).
Turkey	Mandatory prior-notification if: (1) Combined turnover in Turkey of c. £39m (NTL 100m); and at least two parties each have turnover of c. £2m (NTL 30m); or (2) Worldwide turnover of at least one party of c. £193m (NTL 500m); and at least one other party has turnover in Turkey of c. £2m (NTL 5m). However, there is no need to notify if there is no affected market, provided that the concentration does not refer to joint ventures.

ANNEX 5: COUNTRIES WHOSE DOMESTIC TURNOVER THRESHOLDS CAN BE MET BY ONLY ONE PARTY (OTHER THAN THE TARGET)

Country	Threshold
Albania	Mandatory prior-notification if: (1) Combined worldwide turnover c. £44m (LEK 7 bn); and at least one party has turnover in Albania of c. £1m (LEK 200m); or (2) Combined turnover in Albania of c. £3m (LEK 400m); and at least one party has turnover in Albania of c. £2m (LEK 200m)
Austria	Mandatory prior-notification if: (1) Combined worldwide turnover of c. £264m (€300m); (2) Combined turnover in Austria of c. £26m (€30m); and (3) At least two parties each have worldwide turnover of c. £4m (€5m) However, even if the above thresholds are met, transaction is not notifiable if: (a) Only one of the parties has turnover of c. £4m (€5m) within Austria; and (b) all other parties have combined worldwide turnover of less than c. £26m (€30m).
Cyprus	Mandatory pre-notification if: (1) At least two parties each have worldwide turnover of c. £3m (€3.4m); and (2) At least one party carries on business in Cyprus (that is, it must have sales in Cyprus, either through a subsidiary or a branch); and (3) Combined turnover in Cyprus of c. £3m (€3.4m). Special rules for broadcasting and press.

Country	Threshold
Greenland	Mandatory post-notification if: (1) Combined turnover of parties and affiliates exceeding c. £12m (US$20m). NB: Foreign-to-foreign transactions: merger control will only be applied where at least one of the parties is located in Greenland.
Italy	Mandatory prior-notification if: (1) Combined turnover in Italy of c. £415m (€472m); or (2) Target has turnover in Italy of c. 41m (€47m).
Macedonia	Mandatory prior-notification if: (1) Combined worldwide turnover of c. £9m (€10m); and at least one party is registered in Macedonia; or (2) Combined turnover in Macedonia of c. £2m (€2.5m); or (3) At least one party has market share of 40% or combined market share of 60% in relevant market.
Montenegro	Mandatory prior-notification if: (1) Combined turnover in Montenegro of £3m (€3m); or (2) Combined worldwide turnover of £13m (€15m); and at least one party is registered in Montenegro.

Country	Threshold
Serbia	Mandatory prior-notification if: (1) Combined worldwide turnover of c. £88m (€100m); and at least one undertaking has turnover in Serbia of c. £9m (€10m); or (2) Combined turnover in Serbia of c. £18m (€20m); and at least two undertakings each have turnover in Serbia of £1m (€1m). Possibility of ex officio investigation (even when above thresholds are not met) when parties' combined market share in Serbia exceeds 40%.
Ukraine	Mandatory prior-notification if: (1) Combined market share of 35% in the same or adjacent markets; or (2) Combined worldwide asset or sales value equivalent to c. £11m (€12m); and at least two parties have worldwide asset or sales value equivalent to c. £1m (€1m); and at least one party has asset or sales value in Ukraine of c. £1m (€1m).

ANNEX 6: THE BELGIAN EXPERIENCE[36]

Amendment	Problem with then existing threshold	Aims/goals of reform	Research conclusions	Threshold
1991 – introduction of mandatory merger review.				Combined worldwide turnover of c. €25m; and combined market share of over 20%.
March 1995 – First amendment.	Problem of a large number of notifications which posed no threat to Belgium.	Aimed to limit notifications and allow authority to rebalance enforcement resources.		Combined worldwide turnover of €75m; and combined market share of the parties exceeded 25%.
April 1999 – Second amendment.	Did not limit notifications. Non-legislative local effects test introduced as well, but parties notified on a fail safe basis	- Clear and objective test, based on turnover; - limit notifications to those having a material impact on the Belgian market; - local nexus, therefore turnover test should be Belgian only; - new threshold should be set at a sufficiently high level to free up resources; and - increase convergence with ECMR - should avoid problematic mergers escaping notification.	- Threshold test was combined, therefore, a filing was possible where one party met the threshold; - turnover was worldwide, therefore, had a limited local nexus; and - various problems associated with market share test.	Combined domestic turnover exceeded €25m; and at least two of the firms each had a turnover in Belgium of at least €10m.

[36] Information taken from International Competition Network, Merger Working Group, Notification & Procedures Subgroup, *Setting Notification Thresholds for Merger Review*, Report to the ICN Annual Conference, April 2008, Annex C

June 1999 – Third amendment.	Still too many notifications as a result of threshold being too low.			Increase thresholds to €40m and €15m.
July 2005 – Fourth amendment.		- Clear and objective; - Clear jurisdictional nexus; - threshold sufficiently high to ensure that only mergers with a significant local impact would be caught; - clear and accessible; and - ICN alignment.		Combined turnover of the parties in Belgium exceeds €100m; and each of at least two of the parties concerned has a turnover in Belgium of at least €40m.
The use of the two stage threshold test has proved to be successful and is perceived by staff to be working effectively and catching suitable mergers				

ANNEX 7: METHODS FOR CALCULATING TURNOVER – ILLUSTRATIVE EXAMPLES

Country	Method for determining threshold
Denmark	The turnover in Denmark, cf. Section 12 (1) of the Competition Act, shall comprise products sold and services provided to customers who are resident in Denmark at the time when the agreement was made. Source: Article 10 of the Executive order on the calculation of turnover in the Competition Act (Executive Order No. order No. 808 of 14 August 2009) available at http://www.konkurrencestyrelsen.dk/en/competition/legislation/
French DOMs and COMs	The geographical allocation of the turnover must be to the location where the competition is in effect, in other words, generally to the place where the customer is located. With regard to the sale of goods, the location where the contract was signed and the delivery location take precedence over the invoicing address. With regard to services, the location where they are provided must be taken into account. In the case of distribution networks involving independent members and coordinated by a network head (franchise networks, cooperatives, etc), the general provisions for the allocation of the sales figure included in paragraph 4 of Article 5 of Regulation (EC) n° 139/2004 apply. As a general rule, the network head's turnover does not include the sales to the public carried out by its members. On the other hand, it includes the sales carried out by the network head to its members in order to supply them, or the compensation for services provided that the network head invoices to its members. Source: Autorité de la concurrence, Merger Control Guidelines, paras 92 and 98, available at http://www.autoritedelaconcurrence.fr/doc/ld_mergers_final.pdf
Latvia	The net turnover of a market participant shall be calculated by adding the income from the activities, the sale of goods and the provision of services of the market participant in the territory of Latvia during the previous financial year, and deducting from the amount obtained as sales discount and other allocated discounts, as well as the value added tax and other taxes directly related to turnover Source: Part III of the Procedures for the Submission and Examination of a Full-form and Short-form Notification Regarding a Merger of Market Participants, available at http://www.kp.gov.lv/uploaded_files/ENG/E_mkn800.pdf
Lithuania	The aggregate income of an undertaking of a foreign state is calculated as the sum total of income, received on the product markets of the Republic of Lithuania Source: Article 10 (5) of the Law of Competition the aggregate turnover of foreign undertakings shall be calculated as the sum of turnover derived on the product markets of the Republic of Lithuania. When calculating the

	turnover of foreign undertakings derived on product markets of the Republic of Lithuania, the following shall be included: (i) total amounts derived from sales to undertakings registered in the Republic of Lithuania; (ii) total amounts of associated undertakings registered in foreign States derived from sales to the undertakings registered in the Republic of Lithuania; (iii) aggregate turnover of associated undertakings registered in the Republic of Lithuania. Source: Section 4 of the Procedure for the Submission and Examination of Notification on Concentration and of Calculation of Aggregate Turnover.
Portugal	The turnover includes the value of products sold and services provided to undertakings and consumers within the territory of Portugal. Source: Article 10(3) of the Legal Framework for Competition, available at http://www.concorrencia.pt/Download/descre18ix.pdf

ANNEX 8: EUROPEAN COUNTRIES WITH AN ASSET TEST

Country	Threshold
Croatia	Mandatory prior-notification if: (1) Combined worldwide turnover of c. £120m (HRK 1000m); (2) At least one of the undertakings concerned has its seat or a subsidiary in Croatia; and (3) Each of at least two parties has turnover in Croatia of c. £12m (HRK 100m).
Ireland	Mandatory prior-notification if: (1) At least two parties each have worldwide turnover of c. £35m (€40m); (2) At least two parties each carry on business in any part of the island of Ireland (i.e. including Northern Ireland); and (3) At least one party has turnover in the Irish Republic of c. £35m (€40m). Interpretative Notice (amended in December 2006) states that the Competition Authority understands the phrase 'carries on business in any part of the island of Ireland' to include: (1) Any undertaking that has a physical presence on the island of Ireland (including a registered office, subsidiary, branch, representative office or agency) and makes sales or supplies services, or both, to customers on the island of Ireland; or (2) Any undertaking that has made sales into the island of Ireland of at least c. £2m in the most recent financial year (even if it has no physical presence on the island of Ireland).
Macedonia	Mandatory prior-notification if: (1) Combined worldwide turnover of c. £9m; and at least one party is registered in Macedonia; or (2) Combined turnover in Macedonia of c. £2m; or

	(3) At least one party has market share of 40% or combined market share of 60% in relevant market.
Montenegro	Mandatory prior-notification if: (1) Combined turnover in Montenegro of c. £3m; or (2) Combined worldwide turnover of c. £13m; and (3) At least one party is registered in Montenegro.
Ukraine	Mandatory prior-notification if: (1) Combined market share of 35% in the same or adjacent markets; or (2) Combined worldwide asset or sales value equivalent to c. £11m; and (3) At least two parties have worldwide asset or sales value equivalent to c. £1m; and at least one party has asset or sales value in Ukraine of c. £1m.