

Reply to the Attention of A. Neil Campbell
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Our File No. 69459
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VIA EMAIL to consultazione.concentrazioni@agcm.it

Giovanni Pitruzzella
Chairman
Autorità Garante della Concorrenza e del Mercato
Piazza G. Verdi, 6/A
00198 Rome, Italy

Dear Sig. Pitruzzella:

Re: Consultation on Prior Notification of Concentrations

We write on behalf of the Merger Streamlining Group (the “Group”), whose membership consists of multinational firms with a common interest in promoting the efficient and effective review of international merger transactions.¹ The cornerstone of the Group’s activity has been to work with competition agencies and governments to help implement international best practices in merger control, with particular focus on the *Recommended Practices for Merger Notification Procedures* (“*Recommended Practices*”) of the International Competition Network (“ICN”),² of which the Autorità Garante della Concorrenza e del Mercato (“AGCM”) is a member.

The Group’s work projects have included two major surveys on compliance with the *Recommended Practices*, as well as submissions to the European Commission, the US Antitrust Modernization Commission, and to competition agencies in twenty other jurisdictions (including the United Kingdom, Russia, Brazil, India, China, Japan, Portugal, Spain, and Germany), to promote reforms consistent with the *Recommended Practices*. As you may know, the MSG has also provided submissions to the Italian Government and the AGCM, including most recently in connection with the merger control reforms implemented as of January 1, 2013.

The Group appreciates the opportunity to provide these comments to the AGCM in the spirit of constructive engagement, based on our members’ very substantial experience with multinational merger transactions.

¹ The current members of the MSG include BHP Billiton, Bombardier, Chevron, Danaher, GE, Novartis, Oracle, Procter & Gamble, SAB Miller, Siemens, and United Technologies.

² International Competition Network, *Recommended Practices for Merger Notification Procedures*, available online at <<http://www.internationalcompetitionnetwork.org/uploads/library/doc588.pdf>>.

I. The 2013 Reforms

The Group welcomed the reforms to the Italian merger control regime which were implemented at the beginning of 2013. In particular, the Group was supportive of the change from the old disjunctive test for merger notification to the current conjunctive test requiring that: (i) the undertakings party to a transaction have an aggregate turnover in Italy exceeding €482 million, **and** (ii) the target entity have an aggregate turnover in Italy exceeding €48million. This change brought the Italian merger notification regime into greater alignment with the ICN *Recommended Practices*, which require that merger control only be exerted over transactions with a sufficient local nexus to the reviewing jurisdiction, and that this local nexus should be “measured by reference to the activities of at least two parties to the transaction in the local territory.”³

II. Further Proposed Amendments To Merger Notification Thresholds In Italy

The Group understands that the AGCM now proposes to lower the target entity’s domestic turnover threshold from €48 million to €10 million, and to clarify that at least two undertakings to the concentration must meet this threshold. We understand that the motivation for these reform proposals relates to a decline in the number of merger filings made to the AGCM under the revised thresholds in 2013.

The 2013 reforms are still very recent, and the Group believes that the brief one-year period in which the revised thresholds have been in place is not likely to provide sufficient time to accurately assess the longer-term effects of the revised thresholds. This is particularly true given the current global, and domestic Italian, economic conditions which have resulted in reduced M&A activity levels generally.

The MSG encourages the AGCM to retain the current merger notification thresholds, which create a material local nexus to Italy for notifiable transactions, consistent with both the ICN *Recommended Practices* and numerous other EU Member States. As noted in the *Recommended Practices*, the materiality of the local nexus is a central consideration and ICN members are strongly discouraged from requiring notification of transactions which do not have a sufficient local nexus.⁴

Notably, many other EU Member States (as well as numerous other jurisdictions) have adopted substantially higher domestic turnover thresholds than the AGCM’s proposed €10 million figure, despite having much smaller economies than Italy. For example:

- Belgium requires notification where each of at least two parties to a transaction have turnover in Belgium in excess of €40 million.

³ *Recommended Practice I.C.*

⁴ *Recommended Practice I.B., Comment 1; see also Recommended Practice I.C., Comment 2.*

- The Netherlands requires notification where each of at least two parties to a transaction have turnover in the Netherlands in excess of €30 million.
- Sweden requires notification where each of at least two parties to a transaction have turnover in Sweden in excess of approximately €21 million.
- Finland requires notification where each of at least two parties to a transaction have turnover in Finland in excess of €20 million.

Similarly, we note that Switzerland, although not an EU Member State, requires notification where each of at least two parties to a transaction have turnover in Switzerland in excess of CHF 100 million (*i.e.*, approximately €82 million at current exchange rates).

Historically, the AGCM's merger control regime resulted in a substantial number of mergers being notified to the AGCM, of which few appear to have raised any serious competition concerns. For example, we understand that in 2010, 495 mergers were filed with the AGCM, of which only 12 (*i.e.*, only 2%) were reviewed in-depth.⁵ Only one of these mergers was challenged and ultimately resolved through remedies. The Group believes, as stated in the *Recommended Practices*, that a threshold which is too low "imposes unnecessary transaction costs and commitment of competition agency resources without any corresponding enforcement benefit."⁶ We believe that, if adopted, the current reform proposals to lower Italy's merger notification thresholds may lead to such a result, and therefore encourage the AGCM to retain the existing thresholds.

* * *

Thank you very much for considering the Group's views. We would be pleased to discuss this submission with you or your colleagues further, at your convenience.

Yours very truly,



A. Neil Campbell



Casey W. Halladay

Copy to: Members of the Merger Streamlining Group

⁵ See *Global Competition Review*, "Rating Enforcement: The Annual Ranking of the World's Leading Competition Authorities", 14:6 (June 2011) at 84.

⁶ *Recommended Practice I.B*, Comment 1; see also *Recommended Practice I.C*, Comment 2.