Response to Question 14

We do not consider that there have been any competitively significant transactions in the digital economy in the past 5 years which had a cross-border effect in the EEA that were not caught by the EU Merger Regulation.

More importantly, introducing additional notification requirements based on alternative criteria such as the transaction value bears significant risks. Given burdens associated with Form CO notifications under current EUMR rules for transactions notifiable based on turnover, expanding the set of notifiable transactions to capture a large number of additional transactions would create significant burdenson companies both in terms of cost and timing, and we question whether such expansion is consistent with the EU's overall growth and jobs agenda.

As indicated above, the main objective of the Merger Regulation is to ensure the review of concentrations with an EU dimension in order to prevent harmful effects on competition in the EEA. To achieve this goal, the Commission must find a balance to ensure that the costs involved in submitting as well as reviewing those transactions do not outweigh the benefits, and are proportionate in order to achieve the objective of the Merger Regulation. In casu, we do not consider that such balance would be achieved, as the Commission is capturing a number of transactions that is multiple times beyond the single-digit number of yearly transactions that the Commission ideally would like to consider. Depending on the scope of the proposed framework, Cisco could envision that it would need to notify approximately 5 transactions per year if a value threshold of EUR 400million were to be introduced without any significant local nexus requirement. It goes without saying that numbers easily add up when considering all similarly situated companies.

Businesses such as ours that are often engaging with and acquiring innovative start-ups will have to bear significant additional financial costs in order to support any additional notification thresholds (for example, costs for external representation in a phase 1 clearance decision may easily run up to EUR 750,000). Furthermore, and maybe even more importantly, having to put such transactions on hold for up to half a year or more may be highly detrimental in fast-moving technology sectors, where disruptive innovation – developed either internally or through acquisitions – is key in order to remain competitive and survive.

Moreover, bearing in mind the need for the Commission to balance out the costs of a full Form CO notification against the goals of the EUMR, we do not consider that at this point in time transactions such as those referred to by the Commission carry a significant competition risk that could not be remedied otherwise. In addition, we understand that the ECN already provides a mechanism for the Commission to be consulted where a transaction is considered to have cross-border effects in the EEA and is caught by the merger review rules of one or more Member States but not by the EUMR.

Therefore, prior to considering introducing new thresholds, we invite the Commission to gather evidence and conduct a proper risk-assessment, to determine whether the proposed measures are necessary to achieve the overall goals of the EUMR. Doing so is good practise, and we also applaud the Commission for taking the time and reaching out to businesses to provide feedback and views. Any substantial changes to the EUMR can only be made if there is sufficient and robust evidence of a systemic problem, and – similar to the outcome of the review in relation to minority shareholding – should be abandoned if the outcome of that process is not supportive of the proposed measures.

If the Commission were to come to the conclusion that it would want to entertain discussions around introducing additional notification thresholds, in particular based on the value of the transaction, Cisco urges the Commission to take into account at least the following factors. We also hope that the Commission would allow companies to comment on more specific proposals if it were to proceed with a review of EUMR along the lines proposed above.

- Any potential additional thresholds should be set to capture only those transactions the Commission is concerned about, and avoid creating excessive burdens on companies by broadening the scope too widely. Therefore, in case of a value of transaction notification requirement, any value-threshold should be sufficiently high in order not to trigger notifications for hundreds of deals that clearly do not have a detrimental impact on competition in the EEA;

- There must be clarity around the definitions about how to calculate the 'value' of a transaction;

- In order for there to be an effect on cross-border trade in the EEA, there must be a clear local nexus requirement. Such nexus must be clearly defined, and relate to assets or revenue of two or more parties to the transaction in the EEA, in order to give businesses sufficient visibility as to whether a transaction is potentially caught by the notification requirements or not. The mere requirement for a concentration (as referred to in Q21) to be "likely to produce a measurable impact within the EEA" seems inappropriate, even when complemented with explanatory guidance. The definition should be sufficiently clear from the beginning, in order to avoid speculation and ensure legal certainty (we note that the EUMR also defines the specific turnover thresholds that should be achieved to trigger in a notification, and does not leave those thresholds to a guidance document). Furthermore, we are surprised about the Commission's proposal to use "industry specific criteria" – as this seems a pretext to impose significantly higher burdens on some sectors compared to others, without there being any evidence of a need to do so in order to maintain competitiveness in the EEA. To the extent those targeted sectors would include the digital industry, we are concerned that the Commission's approach will lead to stifling innovation in a sector that potentially has one of the largest growth opportunities for Europe.