



REGULATORY RISK UPDATE

European Commission reduces notification burden for more mergers

SUMMARY

The European Commission ("**Commission**") has announced its plans to both reshape the simplified merger notification process within the framework of the EUMR¹ in order to extend the option of simplified notification to more merging businesses and, to reduce the administrative burden on all merger notifications, **with effect from 1 January 2014**. This will bring benefits for both businesses, their advisors and for the Commission.

BACKGROUND

As part of the Commission's on-going review of its processes, a consultation carried out by the Commission earlier in 2013 has prompted changes to the existing process with a view to reducing costs and preparatory work for businesses notifying transactions. In addition, the Commission carried out targeted analysis of 850 completed mergers that were notified with a Form CO (full version) but that perhaps could have benefited from the simplified procedure given they did not raise any competition concerns.

The new "simplification package" broadens the applicability of the simplified notification procedure and reduces the amount of information merging businesses are required to submit. In addition, model texts have been drafted for use by merging businesses to address any competition law concerns as a result of the merger. These will facilitate the notification process and reduce

the time and cost burdens for businesses notifying a transaction.

THE CURRENT REGIME

The Commission has the duty to assess mergers and acquisitions where the businesses concerned have turnover over certain thresholds in order to prevent concentrations that could significantly hinder effective competition in the EEA or any part of it. Qualifying mergers must be notified, reviewed, and may only be implemented after Commission approval. The notification of a qualifying transaction is either made by way of Short Form CO (the simplified procedure) or the more comprehensive Form CO.²

THE NEW REGIME

From 1 January 2014 the Commission will require less information to be supplied on the Short Form CO. In addition, the criteria to qualify for the simplified procedure have been relaxed as follows:

- For markets in which merging businesses compete (**horizontal mergers**), combined market shares of **less than 20%** will qualify. This is an increase from 15% under the current regime.
- Where a merging business sells goods or services to a market in which another merging business operates (**vertical mergers**), combined market shares of **less**

¹ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings.

² In response to the consultation, the Commission has also reduced the administrative burden on merging businesses required to submit a Form CO (the full merger notification form).

than 30% will qualify. This is an increase from 25% under the current regime.

- The third and final change is that, if the combined market share of the merging businesses is between 20% and 50%, but there is little resultant change to the market concentration³, then the merger will qualify for the simplified procedure. This is a new development and will apply where there is only a small incremental increase in market share.

The Commission states that, by reference to mergers submitted between 2008 and 2010, as a result of these changes a further 10% of mergers are likely to qualify for the simplified procedure from 1 January 2014.

ADMINISTRATIVE BURDEN REDUCED FOR ALL MERGERS

As mentioned above, the Commission has eliminated information requirements it found unnecessary from both the Form CO and Short Form CO. In the case of joint ventures that are active entirely outside the European Economic Area, there will be a "**super-simplified notification**" where merging businesses need only describe the transaction, their activities, and provide turnover figures so that the Commission can establish jurisdiction. In addition, as previously, during the pre-notification discussions the merging businesses can, on a case-by-case basis, request waivers from the Commission to provide certain categories of information that have been identified in the Form CO and Short Form CO.

Mergers that do not benefit from the simplified procedure will likely benefit from the increased market share thresholds, as these also determine the "affected markets" for which the parties are required to submit data in their notification.

SIMPLER PRE-NOTIFICATION

The Commission has also addressed the administrative burden at the so-called "pre-notification" stage, which is when the parties wishing to notify a merger engage in preliminary discussions with the Commission. These assist in ensuring the Commission is provided with the information it needs but can be time-consuming (they can take from two weeks to several months). The Commission recognises the importance of pre-notification communications to the quality of the submissions that it receives. However, under the new simplified package **pre-notification communications will no longer be necessary for those mergers between businesses with no horizontal overlap or vertical link.**

MODEL COMMITMENT TEXTS

Finally, if the Commission considers a qualifying merger raises competition concerns, the merging businesses would usually consider making commitments to address these concerns. In response to this practice, the Commission has developed model texts based on its experience for the divestiture of assets, and also for the establishment of a mandate for the trustees who will monitor the implementation of the commitments. These texts will serve to facilitate the commitments process for the parties and the Commission, and accordingly will reduce any associated delays.

CONCLUSION

Businesses should welcome the Commission's revised simplified procedure. It will save time and reduce costs with more streamlined administrative procedure. Ultimately, this should enable businesses to proceed quicker with transactions which do not pose major anti-trust problems. This new approach will also allow the Commission to devote additional resources to those merger reviews which require a more detailed assessment.



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³ This is measured by reference to the change in the Herfindahl index, before and after the merger.

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