

A lighter load for EU merger filings

Transactions that are notifiable to the European Commission under the EU Merger Regulation will become subject to simpler procedures and lighter information requirements, as a result of changes announced by the Commission.

A welcome step

The EU Merger Regulation (EUMR) imposes greater information requirements on notifying parties than many other merger control regimes, such as that of the US. That is the case even for transactions raising no competition concerns.

In order to make the filing burden more proportionate to the issues raised by notified deals, the Commission has announced two sets of changes to its filing procedures.

A broader simplified procedure

First, the Commission has widened the scope of transactions qualifying for review under the Commission's "simplified procedure", which requires the submission of much less information than the standard filing route.

It has done so principally by increasing the market share thresholds below which the procedure is available, from 15% to 20% for markets in which the merging parties compete and from 25% to 30% for vertically related markets (ie where one of the companies sells an input to a market where the other is active). The Commission has also introduced a new threshold which applies simplified treatment to transactions between competitors with a combined



"The Merger simplification package shows that we are listening to our stakeholders. It is the most comprehensive reform of our merger procedures to date and will make them much simpler. This will reduce the administrative burden and cost for business at a time when it needs it most."

Joaquín Almunia, Commission Vice President in charge of competition policy

market share of up to 50%, where the increase in market share due to the merger is small.

The Commission estimates that 60-70% of all filings will now be subject to the simplified procedure - 10% more than previously.

Changes to the filing forms

The second set of changes involves the reduction of information required by the "Form CO" filing forms, particularly in simplified procedure cases.

Key issues

- How has the Commission streamlined its filing procedures?
- Which transactions will now qualify for simplified treatment?
- How have filing burdens been reduced?
- Have any information requirements increased?

For example:

- parties to joint ventures with no EU activities will need only to provide turnover figures and a brief description of the joint venture and their activities; and
- the market share thresholds above which markets are deemed to be "affected" by a transaction (and therefore subject to additional information requirements) have been increased to the same levels as the simplified procedure thresholds.

It will also be easier, in principle, to obtain waivers from the obligation to provide certain categories of information. Time will tell if this results in quicker pre-notification discussions, as the Commission hopes. For cases in which the parties have no competitive relationships, the Commission considers that no pre-

notification contacts will be required at all.

The new forms will apply from 1 January 2014.

Comment

The move to reduce filing requirements is a welcome step and should reduce time, costs and legal fees in a significant number of cases.

In some important respects, however, the information burden will actually increase. In particular, the filing forms will now require more internal documents to be submitted. The Commission has responded to

criticism of its original plans by implementing a smaller increase in the scope of required internal documents, and limiting the circumstances in which they must be supplied. Nevertheless, the burden will still be considerably higher than before.

Parties notifying with the standard (non-simplified) form will also now be required to provide information on all markets that might "plausibly" be affected. The Commission considers that this simply reflects pre-existing practice (it already applied in simplified procedure cases), and has

sought to give some guidance on how this plausibility criterion will be applied. However, its introduction as a formal requirement is likely to make it even more difficult to resist requests by Commission case teams for information on the basis of market definitions that notifying parties do not consider to be commercially reasonable.

The Commission has yet to announce its intentions with regard to a separate initiative aiming at widening the scope of the EUMR to cover non-controlling minority interests.

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