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COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT

Accompanying the documents

COMMISSION IMPLEMENTING REGULATION (EU) .../... implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings and repealing Commission Regulation (EC) No 802/2004

COMMISSION NOTICE on a simplified treatment for certain concentrations under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings

{C(2023) 2400 final} - {C(2023) 2401 final} - {SEC(2023) 251 final} -
{SWD(2023) 80 final}

Executive summary sheet
Impact assessment accompanying the revised Regulation implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the ‘ Implementing Regulation ’), its annexes comprising the notification forms (Form CO, Short Form CO, Form RS and Form RM, together the ‘ annexes ’) and the Commission Notice on a simplified procedure for treatment of certain concentrations (‘ Notice on simplified procedure ’)
A. Need for action
What is the problem and why is it a problem at EU level?
<p>The evaluation of procedural and jurisdictional aspects of EU merger control showed that overall the 2013 amendments to the Implementing Regulation and the Notice on simplified procedure (the ‘2013 simplification package’) have been effective in reducing administrative burden without negatively affecting the effectiveness of EU merger control. However, the evaluation also revealed some room for further simplifying EU merger procedures.</p> <p>Concretely, the evaluation made clear that there may be additional cases that are typically unproblematic but are currently not captured by the simplified procedure.</p> <p>Furthermore, it showed that information requirements in notification forms may be too extensive in certain circumstances.</p> <p>The Notice on simplified procedure may also not be clear enough in identifying the special circumstances in which cases that meet the requirements for simplified treatment may nonetheless require a more detailed review.</p> <p>Lastly, the Communication on the Implementing Regulation prescribes the format of merger notifications as ‘[o]ne signed original on paper’. However, due to the exceptional measures taken in the COVID-19 pandemic, the Commission has been accepting notifications in digital format. This is a practice that has been widely preferred by notifying parties and the Commission.</p> <p>Given that EU competition law, including EU merger control, is an exclusive competence of the European Union, this is a problem that requires action at EU level.</p>
What should be achieved?
<p>The general objective of this initiative is to revise the Implementing Regulation, its annexes and the Notice on simplified procedure. They should provide clearer rules and guidance that are fit-for-purpose and simplify procedures where appropriate to reduce the administrative burden on parties and the Commission.</p> <p>Concretely, this initiative aims to: (i) better target the merger review process, enabling the Commission to focus its investigations on the cases that deserve a more detailed review; and (ii) reduce the administrative costs and burden of the merger review process.</p>
What is the added value of action at EU level (subsidiarity)?
The subsidiarity principle does not apply as the EU has exclusive competence in the field of competition.
B. Solutions
What are the various options to achieve the objectives? Is there a preferred option or not?
<p>A number of policy options have been identified for further simplification: (i) expanding and clarifying the categories of cases treated under the simplified procedure; (ii) streamlining the review of cases treated under the simplified procedure; (iii) streamlining the review of cases treated under the normal procedure; and (iv) sending documents electronically.</p> <p>Three policy options have been identified to expand and clarify the categories of cases treated under the simplified procedure, which could be implemented cumulatively. Option 1: Introduce a flexibility clause in the Notice on simplified procedure that gives the Commission the discretion to treat cases under the simplified procedure in certain circumstances. Option 2: Add new categories of cases that could benefit from simplified treatment, in particular for certain vertical relations. Option 3: Review the scope and interpretation of the safeguards and exclusions included in the Notice on simplified procedure.</p> <p>Options 1, 2 and 3 are not mutually exclusive and could thus be introduced cumulatively. The impact</p>

assessment report concludes that the preferred option is to combine options 1, 2 and 3.

Three policy options have been identified to streamline the review of cases treated under the simplified procedure. Option 1: Maintain the current information requirements but replace the Short Form CO with a streamlined tick-the-box form. Option 2: Introduce a streamlined review of jurisdiction in simplified cases with a tick-the-box list of statements on the basic facts relevant for the jurisdictional assessment without the need to provide underlying evidence. Option 3: Introduce a streamlined review of the competitive assessment for simplified cases without overlaps between the activities of the parties, with a tick-the-box list of statements on the basic facts relevant for the assessment without the need to provide underlying evidence. Options 2 and 3 would mean limiting certain information requirements and would therefore constitute an alternative to option 1 for certain parts of the notification forms. The impact assessment report concludes that the preferred option is to combine options 2 and 3.

Two policy options have been identified to streamline the review of cases treated under the normal procedure. Option 1: Modify the structure of the current notification form and add an overview table of all affected markets. Option 2: Identify opt-out parts in Section 8 of the Form CO to be waived by the Commission at the request of the parties.

The impact assessment concludes that the preferred option is a combination of both options via concrete proposals to simplify the structure of the Form CO and make waivers easier. The simplification includes proposals to: (i) limit the information requirements for markets that benefit from the flexibility clauses; (ii) remove certain information requirements in Section 8 of the current Form CO; (iii) introduce overview tables facilitating the submission of the required information on potential horizontal overlaps; and (iv) identify certain sections suitable for waivers requests.

Two policy options were identified for submitting documents electronically. Option 1: Electronic notifications followed by paper originals without delay. Option 2: Accept fully digital transmission of documents, including transmission of notifications, using digital signatures.

The two options are alternatives. The impact assessment report concludes that the preferred option is option 2.

What are different stakeholders' views? Who supports which option?

Both private and public stakeholders overall welcomed all policy options presented. Most of them acknowledged that the changes will: (i) make merger control less costly and time-consuming for businesses; and (ii) reduce the Commission's administrative burden without significant under-enforcement risks. This applies to both simplified and non-simplified cases. Public stakeholders also flagged the significance of safeguards (exceptions for the simplified procedure) as they limit any risk of under-enforcement.

On expanding and clarifying the categories of cases treated under the simplified procedure, both private and public respondents supported introducing the flexibility clause and the additional categories of vertical cases as they are perceived as generally unproblematic. On introducing additional safeguards, public stakeholders welcomed their introduction in general. Private stakeholders recognised that most of the safeguards could have a potential or likely impact on competition in certain cases. However, in some of the replies received during the second public consultation, private stakeholders expressed a need for caution on a number of the safeguards included at that point. They indicated that information on certain safeguards cannot be supplied in the proposed 'yes/no' format because they imply a subjective judgement or are too vague. They also point out that some safeguards require gathering detailed information that would be burdensome and unjustified for simplified cases. All stakeholders generally welcomed the proposals to further streamline the review of simplified and non-simplified cases.

C. Impacts of the preferred option

What are the benefits of the preferred option (if any, otherwise of main ones)?

On expanding and clarifying the categories of cases treated under the simplified procedure, the preferred options would capture approximately 11 additional cases under the simplified procedure. This is 9.5% of non-simplified cases and 2% of the overall number of simplified cases. Furthermore,

for non-simplified cases, the preferred options would capture a significant number of markets/segments that would not need to be assessed in detail. In particular, approximately 14% of all horizontal overlaps and up to 19% of all vertical relationships assessed under the normal procedure in the period assessed could have benefited from the different options, so a detailed assessment and market investigation would not have been required for these markets. The simplified procedure enables parties to concentrations to provide less information and obtain a clearance decision faster than under the normal procedure. The main benefits of the preferred option would be reduced costs for notifying parties, less time required to obtain a clearance, and less Commission resources needed to deal with unproblematic cases.

On the streamlining of the review of simplified cases, the preferred options will mean parties to concentrations can provide less detailed explanations on jurisdiction and substantive assessment. The main benefits of the preferred option would be reduced costs for notifying parties, less time required to obtain a clearance, and less Commission resources spent on unproblematic cases.

On the streamlining of the review of non-simplified cases, the preferred options will mean parties to concentrations can provide less information overall. The main benefits of the preferred options would be reduced costs for notifying parties and less Commission resources spent processing non-critical information.

On introducing electronic submission of documents, the preferred option will enable parties to concentrations to submit documents faster. The main advantage of the preferred option would be the speed of the process and the removal of unnecessary burden on parties to concentrations to notify cases and make submissions to the Commission.

What are the costs of the preferred option (if any, otherwise of main ones)?

The preferred options will reduce costs for preparing notifications of clearly unproblematic cases and/or markets for parties to concentrations and will also reduce enforcement costs for such cases and markets.

Will there be significant impacts on national budgets and administrations?

No impact on budget.

Will there be other significant impacts?

No other significant impacts.

D. Follow-up

When will the policy be reviewed?

The Commission plans to monitor the policy on a continuous basis through its own enforcement practice, analysing the cases received and dealt with within the EU merger control framework, as well as that of National Competition Authorities.

The Commission will also continue to engage directly with stakeholders, e.g. via informal discussions, to understand any difficulties encountered by businesses when applying the revised rules and to assess whether these rules provide an appropriate level of legal certainty.