



European Commission Adopts Simplification Plan Under the EU Merger Regulation

December 6, 2013

On December 5, 2013, the European Commission published its newly adopted plan simplifying merger control review in the EU (the “Plan”). The Plan is expected to be applicable as of January 1, 2014.

The Plan offers three key simplifications to merger review in the EU:

- *It Increases the Transactions that Will Qualify for Simplified Review* – The Plan increases the market share thresholds under which a transaction qualifies for a simplified filing (known as the “Short Form CO”):
 - (i) For transactions involving horizontal overlaps, parties may submit a Short Form CO so long as their combined market share is less than 20% (as opposed to the current 15% threshold); and
 - (ii) For transactions involving actual or potential vertical relationships, parties may submit a Short Form CO so long as their individual or combined market share is less than 30% (as opposed to the current 25% threshold).

In addition, the European Commission may also agree to apply the simplified procedure for transactions where both the parties’ combined market share is below 50% and the increase in market share is limited (*i.e.*, HHI delta of less than 150).

These changes are expected to enable approximately 60-70% of the transactions notified to the European Commission to fall under the simplified review (approximately 10% more than today).

- *It Reduces the Information Required For the Short Form CO and the Regular Form CO* – The Plan states it will reduce the scope of the information to be provided under both the Short Form CO and the regular Form CO, though the scale of the reduction will still depend on the practices of individual case teams.

However, the Plan also introduces new information requirements for Hart-Scott-Rodino item 4(c) and 4(d)-type documents:

- (i) For transactions qualifying for a Short Form CO where there is a horizontal overlap or vertical relationship between the parties in the EEA, the notifying parties will have to submit the documents prepared by or for, or received by, any board member or other persons exercising similar functions, or the shareholders’ meeting, analyzing the notified concentration. This requirement did not exist for

- previous Short Form CO filings and could limit the availability of the simplified procedure where such documents include market shares that exceed the permitted thresholds;
- (ii) For transactions qualifying for a regular Form CO (*i.e.*, where the combined market share exceeds 20 or 30%, depending on whether there is a horizontal overlap or a vertical relationship), the notifying parties will have to provide, in addition to board documents previously required, copies of analyses, reports and the like from the past two years assessing competition-related issues such as market shares, competitors or sales growth, though parties will continue to be able to negotiate limits on such documents with the Commission case team assigned to review the transaction.
- *Expedited Pre-Notification Process* – Because it reduces the scope of the information required, the Plan is expected to result in shorter pre-notification contacts with the European Commission. Furthermore, the new Short Form CO expressly indicates that for transactions where there are no horizontal overlaps and no vertical relationships between the parties, the notifying parties may submit their filing immediately, with no pre-notification.

Although the Plan aims at simplifying the merger review process under the EU Merger Regulation, it is unclear at this stage the extent to which it will alleviate the information burdens on notifying parties, and for transactions which do not raise substantive concerns.

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