



## CLIENT MEMORANDUM

# European Commission Amends Merger Guidelines: Now Requires Remedy Proposals to be Submitted on a Standard Form

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On October 22, 2008, the European Commission issued revised guidelines on remedies in merger control. Most notably, the updated rules require parties to submit information relating to proposed remedies in a new form (known as a "Form RM") to aid the Commission in determining whether such action will eliminate competition concerns. The amendments do not break significant new ground, but rather primarily act to formalize the procedure that had developed over the years. However, in certain respects the new guidelines potentially raise the bar for remedies in some instances.

To form the basis of a decision pursuant to Article 6(2) or Article 8(2) of Merger Regulation (EC) No. 139/2004, a proposal for commitments must now be accompanied by additional information responsive to requests specified in Form RM. This essentially requires parties to submit the same information previously given to the Commission through a letter

or memorandum in a more structured format. As a general matter, Form RM obliges parties to provide "detailed information on the content of the commitments offered, the conditions for their implementation and showing their suitability to remove any significant impediment of effective competition."

The guidelines also make clear that divestiture of a stand-alone business is still the preferred remedy in many cases. To that end, the bulk of Form RM is designed to promote the detailed disclosure of information relating to the operation of the business to be divested. Such information allows the Commission "to assess the viability, competitiveness and marketability of the business by comparing its current operation to its proposed scope under the commitments."

The new guidelines do clarify a number of points and modify past practice to some degree. For example, they identify situations where the Commission may

require an up-front buyer as part of the remedy. The new guidelines also suggest that the Commission will only accept access remedies (to, for example, networks or infrastructure) if they achieve the same effect as a divestiture, suggesting that the Commission is raising the standard for such remedies. Finally, the new guidelines provide greater transparency on the role of the Trustee.

Through the new guidelines and Form RM, parties are now in a better position to ensure that the Commission will review and act upon their proposed remedies within the relevant time frames imposed by the EC Merger Regulation.

*If you have any questions concerning the issues addressed in this memorandum, please contact, in London:*

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