1. General remarks

The White Paper puts forward proposals aiming at making EU merger control more effective. These proposals relate to two different issues:

- the ex-ante control by the Commission of certain acquisitions of non-controlling minority shareholdings;
- more streamlining the rules for transferring merger cases from Member States to the Commission en vice versa.

(a) Non controlling minority shareholders

The BCA has doubts on the necessity of introducing ex-ante control by the Commission of certain acquisitions of non-controlling minority shareholdings. It is possible that even in case of a voluntary regime, the burden will outweigh the anticipated benefit given the relatively small number of minority transactions with the potential to raise competition concerns. For this reason, the BCA is not sure it should be a priority for the Commission to tackle these acquisitions. At least, on a Belgian level the BCA does not intend to propose to the legislator to extend the merger control regime in Belgium to this kind of acquisitions.

We also think the Commission is rather ambitious in targeting not only the participations in competitors, but also in firms active in a vertically related market or closely related markets. The Commission estimates the additional case load at up to 25-30 cases per year but it is not clear how this estimation has been done.

If the Commission wishes is to enlarge the scope of merger control to the control of the acquisition of minority shareholdings, the BCA thinks priority could be given to cross-shareholdings between competitors because in these cases we could expect the most competitive harm.

The BCA has, however, no objection to the proposed amendments.

(b) Referral mechanisms

The BCA has always supported the Commission in its efforts to reach more convergence and cooperation between and amongst the Commission and the Member States. For this reason we support the proposals of the Commission concerning the referral issues.
2. Remarks of a technical nature

2.1. Minority shareholdings

The Commission proposes to use the concept of the “competitor”. From experience we know that introducing this concept depending on that of the definition of the relevant market, will lead to more legal uncertainty for the companies and in the end provoke more voluntary notifications "just to make sure".

Secondly, it is not clear why the Commission proposes a period of 4 to 6 months for clarification. Why should this be different from normal procedures?

2.2. Referrals

The ambition of the Commission with this White Paper is, as said in the title, to render EU merger control more effective. In the light of this, the BCA agrees with the amendment proposed by the Commission whereby the Commission will obtain full jurisdiction (over all member states) in case of post-notification referrals from Member States to the Commission (article 22).

For the Belgian Competition Authority,

Prof. em. Dr. Jacques Steenbergen - President