
Ladies and gentlemen,

Robert Bosch GmbH (RB), a leading global supplier of technology and services, operates Venture Capital activities through Robert Bosch Venture Capital GmbH (RBVC). RBVC invests worldwide in innovative start-up companies at all stages of their development. Its investment activities focus on technology companies working in areas of business of current and future relevance for Bosch above all automation and electrification, energy efficiency, enabling technologies, and healthcare systems.

This letter serves the purpose to raise some key concerns of RB as a corporate venture capital (CVC) investor in respect of the White Paper. A broader view taken by the European VC/PE industry is described in detail in the EVCA PAE’s response to the White Paper.

The proposed “targeted transparency system” is likely to result in most CVC investments meeting the proposed merger control thresholds in contrast to the Commission’s assertion that “SMEs and micro-enterprises are not directly affected by the proposals” (see Executive Summary of Impact Assessment) for the following reasons:

- A key source of funding to start-ups and SMEs is venture capital, which is typically provided by a group of co-investors, including angels, venture
funds, corporate venture units, etc. CVC involves investments on behalf of the parent corporation. It would not be uncommon in VC financing transactions for SMEs to have, at least, two co-investors which meet the Merger Regulation’s turnover thresholds, thereby triggering notification requirements according to the proposed rules.

- The proposals take no account of any minimum turnover of the target company.
- VC investors often invest in start-ups that operate in certain focus areas and sectors where the fund has a wide depth of knowledge, and CVC in sectors where the affiliates of the corporate are already active, resulting with a high likelihood in “vertically related companies”.
- A VC investment by a single investor might regularly not meet the 20% equity shareholding threshold, particularly when a VC syndicate is involved, however, it is common practice that major investors have the right to nominate a board director or board observer to safeguard their investment. As a result, most VC investments would satisfy the Commission’s vague tests for “competitively significant links”.

It follows that, if the anticipated rules were enacted, even such transactions could fall under the Merger Regulation that are innocuous from a competition perspective. Such situation could have detrimental implications on the VC ecosystem in Europe generally, and the start-ups and SME trying to raise funding in particular:

- Investment targets often work on disruptive technologies and business models and commonly operate in “stealth mode” until they are ready to enter the market and compete with more established players. The publication requirement would be detrimental to their business models and have a negative impact on competition.
- VC investments are targeted in most cases at still cash-flow-negative SMEs and often investors have only a few weeks to conduct due diligence and negotiate terms before an investee company runs out of money. Formal merger control proceedings with inherent standstill obligation (such as Art. 7 (1) Merger Regulation) may delay the injection of funds and could thus have fatal consequences for a SME in the EEA.
- Because of the negative cash flow situation it is unlikely that investors would be willing to advance funds that they might not be able to recover. Although there are typically no competition concerns, the need for legal certainty would render the second “prescription period” effectively an extension of the waiting period.
- Increased costs for small companies with limited resources and negative cash flow, the legal uncertainty for VC firms and investees as well as the higher investment risks introduced by the delays are likely to significantly discourage VC investments in European start-ups.
We believe that the Commission’s existing toolkit is adequate to address the rare competition issues that may be raised by the acquisition of non-controlling minority shareholdings.

Compared with the US VC market, the European VC market remains underdeveloped. To grow new businesses into robust and competitive European companies, access to VC funding is vital. VC funds, many partly financed by the European Investment Fund (EIF), typically acquire minority, non-controlling interests in young, unlisted companies and these investments do not typically raise competition concerns, given the small size of the investment target and the small amounts involved in most transactions. Thus, there is no credible competition policy rationale for imposing new antitrust review procedures on VC transactions.

Furthermore, the effects of the envisaged changes of the Merger Control Regulation run contrary to the political goals envisaged in the 2013 Communication “Entrepreneurship Action Plan” (COM 2012 795 final) as they would make financing of start-ups through VC much more difficult.

If the Commission nonetheless proceeds with further regulation, we would propose the following changes that address the above-mentioned concerns:

- The requirement to notify details of a proposed transaction, including the proposed investment terms, on a public register should be removed and confidentiality of the terms of a venture transaction and of the nature of a start-up business be preserved.
- VC Investments into companies with European Union (“EU”) wide turnover of less than EUR 50 million should be excluded, regardless of the investors’ turnover.
- The vague tests for “competitively significant links” should be replaced by clear, objective criteria, further addressing the specific situation of CVC where Chinese Walls are already put in place to avoid potentially harmful exchange of information with the operating units of large corporations.
- In relation to vertical links: if these are not completely exempted from a new regime, only vertical links that exceed certain thresholds should be considered. In other words, a vertical link would be disregarded if the product/service supplied between the investor and investee was below a reasonable threshold; for example, EUR 10 million per year in absolute terms or below 5% of the investor’s total purchases or sales.
- The 20% equity shareholding threshold should be increased to at least 25%, and the Merger Regulation should not cover non-controlling investments below 25%.
- Each non-controlling minority investment should be considered as a separate transaction. This shall also apply when several investors invest in the same transaction, however act independently from each other.
- The 15-day waiting period should be removed.
- The proposal that the Commission should be able to re-open a transaction for a period of 4-6 months after completion should be removed.

Yours sincerely

Robert Bosch GmbH