European Commission
DG Competition, Unit A2
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COMMENTS ON THE WHITE PAPER "TOWARDS MORE EFFECTIVE EU MERGER CONTROL"

The EU Commission has suggested in its White Paper "Towards more effective EU merger control" a review of the acquisitions of non-controlling minority shareholdings, which could harm competition. Confederation of Finnish Industries EK (hereinafter "EK") appreciates the opportunity to give a contribution to this White Paper.

To go straight to the point, EK does not support the proposition. EK considers it to be very rare that a minority shareholding would cause any distortion of competition. That is something the Commission has admitted in its White Paper. Creating a new review system, even a light one, would be disproportionate considering the administrative burden to companies in one side, and the benefits of the new review system on the other side.

EK is worried that the suggested system, if implemented, would reduce investments, mergers and economic activity in EU. That would be highly unwelcome in the circumstances at hand.

The Commission has estimated that the suggested review would cause only 20-30 notices per year. That might be true, but is not a right figure to look at. EK estimates that there would be hundreds of mergers per year, where parties would have to spend a lot of effort and resources in order to find out whether they have to make a notice or not. It is predictable that many of them would make a notice just in case, in order to avoid a risk of fault analyses. This would cause administrative burden to Commission as well as to companies.
In other words, considering the very small amount of the problems concerning minority shareholdings, the suggested measures would be highly oversized and might have remarkable unexpected consequences.

In addition to this overall opinion, EK has some detailed comments concerning the suggested system which would at least need to be taken into consideration, should it be implemented after all.

Legal security

The Commission suggests that it should have a right to take a merger into investigation even six months after the parties have made a notice and completed a merger. This would be completely unbearable. EK considers that the period should be much shorter, from 1 to 2 months at maximum.

The size of the shareholdings

EK considers that the suggested thresholds concerning the portion of the shareholdings are too low throughout. The portion of, for example, 5-10 per cent would not normally cause any competition concerns. EK is in the opinion that the review should only apply to mergers where the portion is closer to 50 per cent.

The tools for self-evaluation

In EK’s opinion, the tools given in White Paper are not clear enough for evaluating whether a merger gives reason to make a notice or not. That is, it is not easy to recognise in which circumstances you have the right to affect the strategic decisions of a target company, or where you receive too much and too sensitive information about the target company. The guidelines for that should be elaborated thoroughly.

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The Confederation of Finnish Industries EK is the leading business organisation in Finland. It represents the entire private sector, both industry and services, and companies of all sizes. EK’s member companies represent more than 70 percent of Finland’s gross domestic product and over 95 percent of exports from Finland. EK has 28 different branch federations with a membership of 16,000 companies in all, which employ about 950,000 employees.