3 October 2014

Ref: HT 3053

The Danish Shipowners’ Association (“DSA”) appreciates the Commission’s continuously review and invitation to stakeholders to comment on the Commission’s thoughts on improvements of the current regime set out in the EU Merger Regulation No 139/2004/EC (“Merger Regulation”). In September 2013, the DSA submitted a response letter to the previous consultation and the Merger Regulation remains important to our members. We have reviewed the SWD (2014) 221 final, White Paper document on a more effective EU merger control dated 9 July 2014 and have the following comments:

1) In the DSA’s view, introduction of a regime to investigate structural links will be harmful to business and impose disproportionate administrative burdens on EEA companies

The DSA remains critical to the proposed regime on acquisition of minority shareholdings. It is beneficial to the EEA to maintain a business environment where acquisition of shares, either via the stock exchange or via share purchase agreements, can take place without involvement of the competition authorities. Such examination imposes further burdens on EEA companies and will act as a barrier on investments and growth, which are crucial factors for continued economic recovery in Europe and the rest of the world.

The DSA agrees that the three principles set out in the White Paper for introducing changes to the current merger regime should: i) capture potentially anti-
competitive acquisitions; ii) avoid unnecessary and disproportionate burdens; and iii) fit with the EU and national merger regimes currently in place.

The Commission should thus be careful to expand the area for examination of minority shareholding acquisitions if these principles are not met.

The DSA believes that the targeted transparency system is not - in its scope of competence - sufficiently targeted to only catch problematic minority acquisitions. The DSA is also still unconvinced that the perceived gap is of such magnitude that it is proportionate to introduce this “toolkit”. It is our assessment that the Commission has not been able to demonstrate that the principles are fully met. We will elaborate further on our concerns below.

Furthermore, the DSA would also like to voice its concerns regarding the very likely copy-cat effects that the adoption of minority acquisition rules will have on other member states and countries outside the EEA. It is undeniable that other jurisdictions in the past have looked at the Commission’s merger control rules when adopting their own and that they will follow in the Commission’s footsteps this time as well and adopt their own minority acquisition rules based on what the Commission adopts. This will lead to an enormous burden in regard to costs and timing. Resource wise this initiative will be challenging too, especially for companies who might not have the legal or financial resources to manage a whole new regulatory layer. The DSA also believes that there is an apparent risk that some jurisdictions will not succeed in setting the right scope of competence/jurisdiction at all.

2) Self-assessment system is the preferred model

As already mentioned, the DSA is concerned that the problems with extending the merger regime to also include minority acquisitions, as identified by participants to the previous public consultation, have not appropriately been taken into account when giving priority to a targeted transparency system and that the system is too far reaching in regard to the perceived gap.

If the Commission is able to justify that the examination of structural links is absolutely inevitable, the DSA agrees that any regime should only capture the actual problematic cases where an acquisition of minority shareholdings could harm competition.

The DSA hence considers that the Commission should first explore less burdensome alternatives to the proposed targeted transparency system and therefore the extension of the merger regime should not go further than an introduction of a self-assessment system, which has proven successful in the UK.
Such a system would also more accurately meet the three principles identified by the Commission.

In order to enhance the transparency of the self-assessment system, the DSA recommends that the Commission should issue substantive guidance on the theories of harm and when parties should notify minority acquisitions.

3) Comments to the targeted transparency system

As already mentioned, the DSA considers the target transparency system to be entirely disproportionate and to create uncertainty for business. If the Commission despite these deficiencies adopts this system, there is a crucial need to make it less burdensome on the parties. More specifically, several elements of the targeted transparency system must be amended in order to reduce the administrative burdens to a reasonable level:

- **The thresholds:** The thresholds should only capture transactions where substantial influence is gained and we believe that setting the lower threshold at 5% is not proportionate. Instead we suggest setting the lower threshold at 15% which more fairly reflects the possibility of the minority shareholder being able to actually exercise some sort of substantial influence in the company. Below such threshold, companies should not need to worry about a subsequent investigation by the Commission.

- **Standstill obligation:** It is not necessary, practical or business friendly to have a 15 working days standstill obligation for something which will not equal control in any way. A minority acquisition will not be difficult to unwind and therefore there is no need to copy the standstill obligation imposed on the acquisition of control.

- **Limitation period:** 4-6 months would be entirely excessive, especially considering that the Commission will have the possibility to impose interim measures. It would create an environment where companies would not be able to fully take advantage of their economic investment due to an uncertainty whether the Commission will start an investigation or not. This will lead to an inefficient use of resources and the limitation period should therefore be kept to a minimum and never longer than one month.

- **Information notice:** The description of the information to be included in the information notice will result in a substantial burden on the parties and it should therefore be sufficient to provide a basic description of the market.
• Turnover calculation: It needs to be clarified which rules will apply in regard to turnover calculation for minority acquisitions and more specifically for joint ventures.

4) Joint Ventures

The DSA fully supports the initiative to exclude joint ventures with activities exclusively outside the EEA and not affecting competition within the EEA and finds that this proposal should be given priority.

It is, however, important that the potential positive outcome of this initiative is not hampered by in the future having to submit notifications in several Member States instead. Therefore, the DSA strongly encourages the Commission to work with the Member States to find a harmonized solution to this problem and avoid increasing the risk of the burdens on companies.

5) Time Limits

The DSA notes that under item 188 in the accompanying Commission Staff Working Document it is suggested that the maximum number of working days by which the Phase II deadline may be extended is increased from 20 to 30. The DSA does not support such a step. Inserting an increased flexibility for such extensions creates a risk that the maximum 30 days will become the norm if introduced. The DSA suggests that the current rules are maintained as the additional 20 working days should be sufficient in order to enable the Commission to carry out a full review.

If you have any questions related to the above or wish us to elaborate further, please do no hesitate to contact me.

Yours faithfully,

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