European Commission
DG Competition, Unit A-2

Commission’s public consultation on White Paper Towards more effective EU merger control

Comments by the Ministry of Employment and the Economy, Finland

The Commission initiated a public consultation on White Paper “Towards more effective EU merger control” on 9 July 2014 (COM(2014) 449 final). The White Paper proposes expanding the Commission’s jurisdiction to include review of potential anti-competitive effects resulting from acquisitions of non-controlling shareholdings. The White Paper also proposes making the case referral system more efficient by streamlining the Article 4(5) procedure of the Merger Regulation and amending Article 22 so that it enhances adherence to the one stop shop principle.

The White Paper has been discussed in Finland within the government and with the stakeholders for example in a seminar dealing with the issue. There have been different opinions about the proposal on non-controlling minority shareholdings. However, the views on case referral and other simplification proposals have been positive. Recently also the Finnish Parliament gave its opinion about the White Paper.

Taking into account also the opinion of the Finnish Parliament the Ministry of Employment and the Economy states the following preliminary views.

We acknowledge the aim and the reasoning behind the proposal on minority shareholdings. There have been some cases where the Commission didn’t have effective tools to deal with an anti-competitive transaction and probably there will be some cases in the future, too. The Commission has also tried to take into account the administrative burden of the proposal for example by proposing “targeted transparency system”. However, if the Commission will proceed with the proposal we would like to draw attention to the following aspects of the proposal.

The cost and benefit of the proposed minority shareholding system should be balanced and excessive administrative burden for companies should be avoided. At this stage, the Finnish
Parliament has questioned the urgent need for Commission’s jurisdiction in non-controlling minority shareholding acquisitions.

According to the proposal the Commission would be free to investigate a transaction, whether or not it has already been implemented, within 4-6 months following the information notice. As far as the legal certainty of the companies is concerned, it should be further elaborated whether the “prescription period” as long as 4-6 months is necessary.

We welcome the idea that the Commission will publish further guidance on the definition “competitively significant link” which will trigger the obligation to submit an information notice about the transaction.

We support the aim of the proposed modifications to the case referral system as the modifications will facilitate referrals in order to make the system more effective. We also welcome further streamlining and simplification of EU Merger procedures as explained in the White Paper and in the Staff Working Document accompanying the White Paper.

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