

Summary of replies to the public consultation on the White Paper
"Towards more effective EU merger control"

INTRODUCTION

1. A public consultation on the White Paper "Towards more effective EU merger control" was launched on 09 July 2014 and closed on 17 October 2014. The White Paper takes stock of the functioning of the EU Merger Regulation¹ 10 years after the last reform and makes policy proposals for a number of amendments to that regulation. The Commission received comments from a large number of stakeholders: 92 submissions in total. These included: 21 contributions of public authorities of 15 Member States and 1 EFTA State² (13 contributions from National Competition Authorities ("NCAs")), 7 contributions from Governments of Member States and EFTA States and 1 contribution from a national parliament), 13 contributions from companies, 22 contributions from law firms, 11 contributions from law associations, 17 contributions from industry associations and 8 contributions from academia, economic consultancies, international organisations and other associations.
2. This note intends to summarise the main comments received during the public consultation. It is structured according to the main issues that were raised by respondents to the public consultation. As regards each individual issue, the most frequently given answers are reproduced first. Regarding some issues, the replies of Member States are presented separately from the replies of private stakeholders.

EXECUTIVE SUMMARY OF THE CONTRIBUTIONS

A. MINORITY SHAREHOLDINGS

The White Paper proposes to extend the scope of the Merger Regulation to a limited number of potentially anti-competitive acquisitions of non-controlling minority shareholdings (mainly involving competitors or vertically related companies reaching the turnover thresholds of the regulation). Companies wishing to acquire such a stake would have to file a short information notice, on the basis of which the Commission could decide whether to require a full notification and start an investigation. Member States would also be able to request a referral.

1) General comments

3. Public authorities from Member States acknowledge that anti-competitive effects of acquisitions of minority shareholdings may constitute a problem that should be addressed but there are

¹ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ L 24, 29.1.2004, p. 1).

² References to "Member States" also refer to the EFTA State's contribution unless otherwise specified.

different views as to the preferred way to deal with this problem. Some of the public authorities that replied to the consultation welcomed the initiative to extend the merger control rules to acquisitions of non-controlling minority shareholdings. Some other public authorities would welcome a deeper analysis of the costs and consequences, since they consider that a very large number of transactions would be caught under the proposed system, and seek further clarifications on certain procedural aspects of the proposal.

4. A minority of public authorities consider that the Commission has not fully justified the need for the reform, nor whether the anticompetitive effects resulting from the acquisition of non-controlling minority shareholdings can be addressed through the antitrust rules of Articles 101 and 102 TFEU. In particular, one national competition authority questions the existence of an enforcement gap which is not currently covered by the three existing national systems that do review minority shareholdings (Austria, Germany and United Kingdom).
5. This view is shared by a majority of private stakeholders (business associations, companies, law firms and lawyers' associations) that do not consider that there is a gap of sufficient scope as to call for new regulation. According to these stakeholders, the most potentially problematic cases of minority shareholding acquisitions can be dealt with by the existing rules (i.e. the EU Merger Regulation, Articles 101/102 TFEU and/or national merger control rules) and the few cases not yet covered by those would not justify imposing additional administrative burden on businesses and the Commission. In this context, stakeholders point out that (i) theories of harm in relation to minority shareholdings only apply in very limited circumstances and there is not enough empirical evidence of these existing in practice and that (ii) the proposed system would capture many more than the 20-30 cases per year that, according to the Commission's estimate, would require the submission of an information notice to the Commission under the proposed new system for the review of acquisitions of non-controlling minority shareholdings.
6. Several stakeholders note that, in case the proposal is adopted, Member States are likely to follow the lead of the Commission, which would lead to a significant burden for smaller companies all over the EU.
7. Many private stakeholders therefore consider the proposals as disproportionate. Some point out that new regulation on structural links may have a chilling effect on investment, in particular as regards private equity and venture capital (VC) transactions and investment which are a key feature for the financing and growing of new technologies, start-ups and smaller companies, They also highlight that VC investments are not only being carried out by financial investors but also by subsidiaries of industrial groups (corporate VC), which often invest in start-ups with

activities more closely related to the parent company's business, making it more likely that such investments may create a competitively significant link for a substantial number of cases.

8. In this context stakeholders often assume that under the proposal a transaction would have EU dimension if the acquirer together with any other controlling or minority shareholder in the same target reaches the turnover thresholds, regardless of the turnover of the target firm itself, which would make it more likely that also investments in targets with rather small turnover might reach the thresholds. Consequently, several stakeholders propose that the Commission should only consider as parties for the purpose of turnover calculation the acquirer and the target, not other co-investors.
9. If a new enforcement system were to be put in place, most private stakeholders would therefore prefer a self-assessment system with the possibility of voluntary notification, combined with clear rules limiting the type of transactions covered (only above a certain level of shareholding and influence, for instance). Several stakeholders argue that the system should only apply to transactions between competitors and should exclude vertically related companies.
10. A number of public authorities explicitly indicate that the proposed targeted transparency system is their preferred option, although a similar number of public authorities express their opposition to the proposed system. Some of the latter would prefer a full notification system while others would favour a self-assessment system with the possibility of voluntary notification.
11. As an alternative to the options proposed, some private stakeholders suggest that the Commission develop an enforcement framework to deal with minority shareholding acquisitions under Articles 101/102 TFEU. Stakeholders also suggest that, if the EU Merger Regulation were to be amended so as to cover also acquisitions of minority shareholdings, the Commission should offer further guidance on how it would apply the amended regulation to this type of transactions.
12. On the other hand, a few companies and business associations do agree that there is a case for filling the gap and generally support the proposals, provided that indeed further guidance would be issued by the Commission on how to apply the amended regulation.

II) Jurisdiction: The definition of a competitively significant link

According to the White Paper, the Merger Regulation should be extended to include acquisitions of minority shareholdings creating a "competitively significant link" (CSL), i.e. acquisitions of stakes in a competitor or vertically related company that reach a defined level of shareholding

and/or are accompanied by certain specified rights (such as information rights, veto rights below the level of control or board representation).

a) Replies of national authorities and Member States

13. Many public authorities consider that there are uncertainties regarding some of the basic concepts of the proposed criteria to determine jurisdiction. A number of respondents question whether the proposed criterion of competitively significant link is sufficiently clear for undertakings to identify and they urge the Commission to clearly define the concepts that apply to this criterion.
14. A few national competition authorities point to the difficulties to establish whether a company is a competitor or not without a proper market definition. The assessment of the competitive relationship between the parties is considered to be linked to the definition of a relevant market and not to a sector. A few public authorities consider that it would be more sensible to target only cross-shareholdings in competing companies and not in vertically related companies.
15. One of the national competition authorities that already assess minority shareholding acquisitions under its national law considers the criteria for the determination of a competitively significant link as correct but asks for clarifications whether relationships of potential competition qualify as a competitively significant link and whether voting rights percentages should be included in addition to capital stakes.
16. Respondents overall agree on the need to define a clear and precise threshold in order to avoid uncertainties and to allow companies to determine without any doubt which transactions are caught by the proposed system. One authority questions whether it is appropriate to introduce safe harbours, given that an ability to materially influence may not only result directly from a shareholding, but also from other factors, such as special rights granted to the acquirer or board representation. Therefore, it proposes to set out rebuttable presumptions below and above certain shareholdings.
17. Respondents point to a number of additional aspects that would require further clarification such as: the outcome of the Commission's actions following the investigation, the methods for the calculation of turnover of the companies involved, the possibility for the Commission to decide that an information notice is not complete or the possible penalties for failure to submit an information notice.

b) Replies of private stakeholders

18. Many respondents consider that there remain uncertainties on how to apply the concept of a competitively significant link between companies. Since competitors are defined as players active in the same sector, several respondents find the concept of sector too vague for companies to be able to interpret it and request that the concept of competitor be limited to firms present in the same relevant product and geographic market. Several respondents also consider that the concept of competitively significant link should exclude vertical relationships as in some cases of minority shareholding acquisitions it could be difficult for the parties to determine whether they are active on two vertically related markets, whereas the probability of competitive harm in those situations is minimal.
19. A number of stakeholders question the suggestion in footnote 67 of the Staff Working Document that a competitively significant link could also be created through acquisition of a minority shareholding by one company that does not itself compete with the target but already owns another minority stake in a competitor of the target.
20. Some respondents welcome the proposal to amend Article 3(5) of the Merger Regulation to specify that restructuring transactions carried out by financial institutions in the normal course of business and for a limited period of time would not create competitively significant links. Others question the proposal to limit the extension of the banking clause to restructuring transactions, arguing that any transaction which would not be deemed a concentration if it were to involve an acquisition of control, should also not be deemed to create a competitively significant link if it only involves the acquisition of a minority stake.
21. The majority of the respondents comment on the proposed thresholds for the Commission to have jurisdiction over minority shareholding acquisitions and find them either too low or too vague. Generally, the respondents consider that the acquisition of a minimum shareholding of 15-20% that the Commission considers in the White Paper as sufficient to create a competitively significant link even if not accompanied by additional rights should be increased to 25%, as this would correspond to a share that confers minority veto rights under the company law of the majority of Member States. The safe harbour of 5% is considered as too low and there are several proposals to increase it either to 10% or to 15-20%.
22. Several respondents consider that, to be used as a jurisdictional trigger, additional rights that qualify shareholding acquisitions between 5% and 20% as the creation of a competitively significant link should be clearly defined in the Merger Regulation and explained in further guidance. For instance, clarification was requested regarding the legal concept of *material influence* and how it is different from *decisive influence*. As regards information rights, it is

suggested that the threshold for access to commercially sensitive information should be high and should clearly exceed what is publicly available or the type of information to which every shareholder has a right of access.

III) Procedure

i) The targeted transparency system

Under the targeted transparency system proposed in the White Paper, an undertaking would be required to submit an information notice to the Commission if it proposes to acquire a minority shareholding that qualifies as a "competitively significant link".

a) Replies of national authorities and Member States

23. A number of public authorities explicitly state that the proposed targeted transparency system is their preferred option, although some of them propose certain variations.

24. On the other hand, a similar number of public authorities express their opposition to the targeted transparency system. Some do so because they prefer a formal notification system, while others would favour a self-assessment system with the possibility of voluntary notification. In particular, some criticize the low legal certainty for companies derived from the long limitation period of 4 to 6 months and so consider that voluntary notifications would be submitted in most cases. Others consider that the system would have an impact on a large number of transactions and note that the introduction of a targeted transparency system for the control of acquisitions of minority shareholdings at EU level would raise the question of whether a similar system should be introduced at national level in order to harmonise procedures at EU and national level.

b) Replies of private stakeholders

25. Of those stakeholders that comment on the issue, an overwhelming majority is in favour of a self-assessment system with the possibility of voluntary notification as such a system would result in less administrative burden and cost for businesses compared to the targeted transparency system proposed. Most respondents advocate the possibility of voluntary notifications in order to obtain legal certainty for potentially problematic transactions.

26. One respondent notes that in Germany a similar system works because, in order to reduce legal uncertainty, everyone files voluntarily even when it is not clear if a notification is required. However, a few respondents consider the targeted transparency system to be useful in furnishing parties with a degree of legal certainty provided that the Commission and Member States are bound by a strict timetable within which to request a notification and/or referral.

27. A few other respondents argue that, if a mandatory system is needed, it is preferable to have a transparency system instead of a notification system, provided the Commission takes measures to limit the scope of the competitively significant link so as not to catch minority shareholding acquisitions for investment purposes. Respondents also point out that any reform should be complemented by clear guidance on what transactions are considered potentially harmful and which safe harbours apply.

ii) Reporting requirements

The information notice that undertakings would be required to submit to the Commission under the proposed system would contain the following information: information relating to the parties, their turnover, a description of the transaction, the level of shareholding before and after the transaction, any rights attached to the minority shareholding and some limited market share information. The Commission would decide whether further investigation of the transaction is warranted. Under the proposed system, the parties would only be required to submit a full notification if the Commission decided to initiate an investigation and the Commission would only issue a decision if it had initiated an investigation.

a) Replies of national authorities and Member States

28. The few public authorities that commented on the content of the information notice overall agree that the requested information should be limited to what is necessary to initiate an investigation. In particular, it is suggested that it would be useful to have information on the parties' activities, possible overlaps as a result of the competitively significant link as well as the parties' rationale for submitting an information notice.

29. As regards internal documents, it is considered that the information requirements should be limited to documents prepared for the purpose of the specific transaction to avoid disproportionate burden. Market share information that makes it necessary to define a market should not be required as this inevitably implies a significant analysis by the parties.

b) Replies of private stakeholders

30. Many respondents believe that the information should be limited to the parties, a short description of their activities and the corresponding NACE codes, a description of the transaction and the turnover. Some respondents suggest that the form for case allocation requests for full mergers be used as an example. A few respondents explicitly agree with the proposal that either market shares or internal documents should be provided.

31. Some respondents argue that, if an information notice is required it should be limited to the limited information required under the German system. A few respondents expressed a preference for the adoption of a US-style system of reporting that relies on internal documents.

iii) Waiting and limitation periods

The White Paper proposes a 15 working day waiting period once an information notice has been submitted, during which the parties would not be able to close the transaction and during which the Member States have to decide whether to request a referral. The White Paper also proposes a limitation period of 4 to 6 months following the information notice, during which the Commission would be free to investigate a transaction, whether or not it has already been implemented.

a) Replies of national authorities and Member States

32. The issue of the waiting and limitation periods was addressed by most public authorities and it gives rise to a variety of opinions.

33. As regards the initial waiting period of 15 working days, while some authorities find it appropriate, some consider it to be too short and others consider that a waiting period or a standstill obligation is not necessary for this type of transactions. One suggestion made is, for example, that the 15 working day waiting period should be removed and replaced by a prescription period of 25 working days, thereby aligning the prescription period with the legal deadline for the Commission to take a decision in case of a voluntary notification.

34. Regarding the period of 4 to 6 months to investigate a transaction, most of the contributions advocate a shorter period or generally question the need for a limitation period at all. One proposal suggests that a single waiting period of 1-2 months should replace the 15 working days waiting period and the 4-6 months prescription period.

b) Replies of private stakeholders

35. Many respondents do not see the need for a waiting period as they consider that acquisitions of minority shareholdings are easier to undo than full mergers. A stand-still obligation is seen as disproportionate as a large number of benign transactions would be subject to this obligation.

36. Several respondents consider that the proposed system with a 15 working day waiting period and a 4-6 months prescription period would go against the Commission's repeated efforts to make administrative procedures less burdensome for business. Respondents suggest reducing the waiting period to 10 or even 2-3 working days. One respondent suggests that a waiting period could be acceptable, if the 4-6 months period is reduced to 25 working days, as in the case

of a Phase I review following a normal notification of a merger. In this situation, parties would have the incentives to notify voluntarily as they would have legal certainty and they would not be worse off than with an unproblematic notification in a normal merger procedure.

B. REFERRALS

The White Paper includes a number of proposals to improve the functioning of the referral mechanisms under Articles 4(4), 4(5) and 22 of the EUMR by streamlining the processes and reducing the administrative burden on parties,

General comments

37. The overall majority of the stakeholders that commented on the issue welcome the Commission's proposals to facilitate current referral mechanisms. The proposed reform of Article 4(5) is generally welcomed as is the proposed reform of Article 4(4).

38. The public authorities overall expressed support for the substantive proposals regarding Article 22, although with some comments on procedural aspects. On the other hand, a number of law firms and associations are of the view that Article 22 is no longer necessary and should be removed.

39. Regarding Article 9, some private respondents suggest that it should be eliminated or that the current possibility for a referral after initiation of Phase II is unjustified.

Article 4(4)

The White Paper proposes adapting the substantive test in Article 4(4) so that parties are no longer required to claim that the transaction may "significantly affect competition in a market" in order for a case to qualify for a referral. Instead it would be sufficient to show that the transaction is likely to have its main impact in a distinct market in the Member State in question.

a) Replies of national authorities and Member States

40. A few public authorities have explicitly commented on the proposal regarding Article 4(4) and almost all of them welcome it. Only one authority expresses its disagreement since it considers the requirement for a significant impact on competition in a market necessary to guarantee that the referral tool is used only when there is a real competition problem.

b) Replies of private stakeholders

41. A few private respondents comment on the proposal regarding Article 4(4) and almost all of them welcome it. In particular, some respondents support the change if the purpose of this change is to encourage the parties to rely more frequently on this provision.

Article 4(5)

The Commission proposes abolishing the current two-step procedure in order to speed up Article 4(5) referrals and make them more efficient while maintaining the ability of Member States to veto a request in the event that they consider it necessary.

a) Replies of national authorities and Member States

42. The proposed reform of Article 4(5) is generally welcomed by the public authorities, in particular the elimination of the two-step procedure. Among the authorities that agree with the proposal, one authority further proposes to lower the threshold to request a referral when at least two national competition authorities are competent instead of three, at least for cross-border mergers. Several authorities stress the importance of early communication between the Commission and the national competition authorities.

b) Replies of private stakeholders

43. The proposed reform of Article 4(5) is generally welcomed by private stakeholders, although there are suggestions that the 15 day waiting period should be reduced to 5-10 days. Some respondents also suggest that the number of Member States initially capable of reviewing a concentration should be reduced from 3 to 2. There are some concerns that exchanges of information between national competition authorities should be limited to what is strictly necessary so that sensitive information is not made available to multiple national competition authorities.

Article 22

The White Paper proposes to amend the procedure under Article 22 as follows: (i) One or more Member State(s) that are competent to review a transaction under their national law could request a referral to the Commission within 15 working days of the date it was notified to them (or made known to them); (ii) The Commission would be able to decide whether or not to accept a referral request. If the Commission decided to accept a referral request, it would have jurisdiction for the whole of the EEA and (iii) If one (or more) competent Member State (s) opposed the referral, the Commission would renounce jurisdiction for the whole of the EEA, and the Member States would retain their jurisdiction.

i) General remarks

a) Replies of national authorities and Member States

44. Respondents overall express their support to the substantive proposals regarding Article 22, although with some remarks on procedural aspects. One public authority believes that it would be appropriate to review whether a formal right of the EFTA States to submit an independent request for a post-notification referral to the Commission should be considered during the revision of the EUMR. It further submits that the rights of the EFTA States should be aligned with the rights of the EU Member States.

b) Replies of private stakeholders

45. A large number of law firms and associations are of the view that Article 22 is no longer necessary and should be repealed. Most of those that commented on this issue do not support the proposal to grant the Commission jurisdiction for the entire EEA once a case is referred. These respondents consider that the Commission's jurisdiction should not extend beyond the Member States that would be competent under national law to review the transaction. However, a minority of the respondents does agree that the Commission should have jurisdiction over the entire EEA, in particular if this is necessary to assess the effect of the transaction in the Member States that are competent.

46. Most of the law firms and associations that comment on the issue agree that only competent Member States should be able to make a referral request or veto a proposed referral. Several respondents suggested that an early information exchange system between the Commission and the national competition authorities should be put in place.

ii) Information Notice

The White Paper proposes that the national competition authorities circulate early information notices for multi-jurisdictional or cross-border cases or cases concerning markets that are prima facie wider than national as soon as possible after a Member State receives the notification or otherwise learns of the transaction. The NCA would indicate in this notice if it is considering making a referral request.

a) Replies of national authorities and Member States

47. Very few public authorities comment on the proposal to circulate an early information notice and they express very different views in this regard. Some expressly welcome this proposal and the introduction of a reinforced reciprocal system for exchange of information. Other respondents do not deem this necessary or directly oppose it, while some others consider the ECA notice to

be sufficient. In particular, one national authority expresses concerns regarding the capacity of national competition authorities to obtain information on other EU Member States which might be affected by the transaction.

b) Replies of private stakeholders

48. A few private respondents comment on this issue and those that do note that the introduction of an information notice is an appropriate means of addressing the risk of an Article 22 referral request being made after one or more other Member States have issued a clearance decision, as long as the Information Notice is kept as short as possible to minimise the burden on the parties and as long as it is circulated as soon as possible. Some stakeholders request that such information exchange should be subject to the parties' agreement.

iii) Standstill obligation

In the information notice, the national competition authority would indicate if it is considering making a referral request. In that case, the notice would trigger the suspension of the national deadlines of all Member States which are also investigating the case. Alternatively, if the Commission itself believed that it could be the more appropriate authority it would invite the Member State to request a referral under Article 22(5) and such an invitation would equally suspend all national deadlines.

a) Replies of national authorities and Member States

49. Only one national competition authority expresses concerns regarding the standstill obligation as it considers that an abusive use of this tool might lead to an excessive intrusion in the national deadlines of the national competition authorities. Another national competition authority, on the contrary, expressly welcomes the suspension of national deadlines up to 15 working days.

b) Replies of private stakeholders

50. The general view from the private stakeholders that comment on this issue is that the proposed procedure should be shortened to be more in line with the current procedure. Some respondents specifically suggest that the 15 day waiting period should be shortened (either to 10 or 5 working days). Some respondents propose that the 15 day waiting period should run from the date the notice is circulated.

iv) EEA-wide jurisdiction (See introduction to the reform of Article 22 above)

a) Replies of national authorities and Member States

51. There is overall agreement with this proposal, although there are some divergent opinions regarding partial referrals: some national authorities expressly welcome the elimination of partial referrals, whereas others consider this to be a step back. A few authorities advocate for the Commissions' discretion to decide whether to accept a partial referral or not. One national competition authority, however, considers the possibility for a single Member State to impose a complete veto on EEA-wide jurisdiction to be too severe.

b) Replies of private stakeholders

52. Most of the law firms and associations that comment on this issue are of the view that the Commission should not extend jurisdiction beyond the Member States that would be competent under national law to review the transaction once a case is referred. However, a strong minority of respondents agree that the Commission should have jurisdiction over the entire EEA, in particular if this was necessary to assess the effect of the transaction in the Member States that are competent. Some respondents do agree that the Commission should obtain jurisdiction over the whole of the EEA so as to remove the risk of parallel investigations and that the enforcement of the "one-stop-shop" principle would prevent diverging decisions by NCAs.

Further proposals on the referral mechanisms

a) Replies of national authorities and Member States

53. A number of national competition authorities go further and propose amendments to the procedure under Article 9 EUMR. In particular some request that the substantive test for Article 9 referrals be lowered.

C. MISCELLANEOUS

The White Paper and the Staff Working Document include some proposals to improve and streamline some further provisions of the Merger Regulation, with a view to simplifying procedures.

The White Paper proposes excluding the creation of a full-function joint venture located and operating totally outside the EEA (and which would not have any impact on markets within the EEA) from the scope of the Merger Regulation.

54. The overwhelming majority of respondents welcome the proposal to exclude from the EUMR joint ventures exclusively operating outside the EEA. In particular, one public authority proposed that JVs that are not reasonably expected to have turnover in the EEA during a reasonable period (i.e. 1 to 3 years) should be excluded from the definition of a concentration within the meaning of the Merger Regulation.

The possibility to exempt from mandatory prior notification certain categories of transactions that normally do not raise any competition concerns, which could be subject to a procedure similar to the

"targeted transparency system" envisaged above for dealing with acquisitions of non-controlling minority shareholdings was also proposed in the White Paper.

55. The few respondents that address this issue overall agree that a targeted transparency system could be applied to certain cases falling under the simplified procedure, although the application of this system would entail the same burden as for the acquisition of non-controlling minority shareholdings. One respondent, however, was of the view that the information notice should be narrowly tailored and that it should only contain a summary of information on the parties, their turnover, a description of the transaction, the level of shareholding to be acquired and the rights attached to the shareholding.

56. A few national competition authorities, however, question the proposal to apply the new procedural rules proposed by the White Paper for the acquisition of minority shareholdings to certain forms of concentrations.

The Staff Working Document proposes to amend Article 5(4) of the Merger Regulation to explicitly articulate the methodology for calculating a joint venture's relevant turnover.

57. Both public and private respondents that address this issue consider that there is a need to clarify turnover calculation of joint ventures that these rules only apply to the creation of a newly-created full-function joint venture and only parent companies which have a competitively significant link in the joint venture in question are counted as undertakings concerned for the purposes of applying the turnover thresholds. In case of interrelated transactions, the information notice should only be submitted on behalf of the acquirer which meets the EUMR thresholds and creates a competitively significant link.

The Staff Working Document highlights the need to tailor the scope of Article 5(2)(2) of the Merger Regulation to only capture cases of "real" circumvention of the merger control rules by staggered transactions.

58. One public authority notes that the Commission would likely be able to consider the transactions as one single concentration at the time of the first transaction without having recourse to this provision. On the other hand, of the few private stakeholders commenting on this issue, the majority welcomes the proposal.

The Staff Working Document proposes the amendment of the Merger Regulation in order to include the possibility to revoke referral decisions based on deceit or false information.

59. One public authority appreciates the effort to regulate such a situation but it notes that a Member State in the meantime might have approved the concentration under its national merger control rules. The European Commission should consider how to best solve any issues arising from such situations. Some private stakeholders also disagree with the proposal for

reasons of legal certainty and point out that the possibility of fines provides for sufficient sanctions.

The Staff Working Document introduces the possibility to modify Article 8(4) of the Merger Regulation to align the scope of the Commission's power to require dissolution of partially implemented transactions incompatible with the internal market with the scope of the suspension obligation.

60. In this regard, some public authorities consider that it would be more logical to amend Article 8(4) to allow the Commission to compel divestments of non-controlling minority shareholdings in the context of a takeover bid when the concentration was prohibited. Some stakeholders would support the proposal only in the context of introducing merger control for non-controlling minority shareholdings or, to the contrary, are of the view that such a measure would make the proposed amendment to Article 8(2) superfluous.

The Staff Working Document proposes the amendments of the Merger Regulation to allow appropriate sanctions against parties and third parties that receive access to non-public commercial information about other undertakings for the exclusive purpose of the proceeding but disclose it for other purposes.

61. Some support was found among public authorities for the proposal to introduce the possibility of imposing sanctions against parties which gain access to non-public information in the course of merger proceedings and disclose or use such information for other purposes.

The Staff Working Document highlights the need to clarify in the Merger Regulation that "parking transactions" should be assessed as part of the acquisition of control by the ultimate acquirer.

62. Some private stakeholders who comment on this issue agree with the proposal to amend the EUMR to clarify that parking transactions should be assessed as part of the acquisition of control by the ultimate acquirer. Others however disagree and argue that the question should be left for the case law of the EU Courts.

Further proposals/other remarks outside the scope of the White Paper:

63. Some public authorities would like to see the way in which the Commission takes into account the opinion of the Advisory Committee and the way the opinion is published improved, either through an amendment of the Merger Regulation or by changing the Working Arrangements for Advisory Committees agreed between the Commission and the national competition authorities of Member States. The government of one Member State would like the Commission to revisit geographic market definition. Despite their general support for the proposed reforms, certain respondents advocate for the adoption of more ambitious and far-reaching measures in order to achieve a true "European Area" for merger control.