

ROADMAP			
TITLE OF THE INITIATIVE	Merger Simplification Project		
LEAD DG – RESPONSIBLE UNIT	COMP/A-2	DATE OF ROADMAP	1 / 2013
This indicative roadmap is provided for information purposes only and is subject to change. It does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content and structure.			

A. Context and problem definition

- (1) What is the political context of the initiative?
- (2) How does it relate to past and possible future initiatives, and to other EU policies?
- (3) What ex-post analysis of existing policy has been carried out? What results are relevant for this initiative?

(1)-(2) The initiative consists primarily in reviewing the Commission Notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EC) No 139/2004 (OJ C 56, 5.3.2005, p. 2 (“the Notice on a simplified procedure”). Under this notice, certain categories of mergers that prima facie do not raise competition problems may be notified to the Commission using a short notification form with more limited information requirements and may be authorised by the Commission following a lighter procedure without an extensive market investigation.

Under the current Notice on a simplified procedure, mergers can be treated according to the simplified procedure in particular where combined market shares are small (below 15% for horizontal overlaps and below 25% for vertical relationships) or where a joint venture has only limited turnover or assets. The initiative aims at a limited extension of the scope of the simplified procedure to other cases that, according to the Commission’s experience, are also unlikely to raise competition concerns.

Mergers treated under the simplified procedure are and will remain fully subject to the system of ex-ante merger control as provided for by Council Regulation (EC) No 139/2004 (OJ L 24, 29.01.2004, p. 1 (“the Merger Regulation”). They must be notified to the Commission, are reviewed by it and may only be implemented after the Commission has stated by decision that they do not raise serious doubts as to a possible impediment to competition.

In addition, the initiative aims at updating and streamlining the forms that merging parties must file with the Commission to notify a merger. These forms are annexed to Commission Regulation (EC) No 802/2004 implementing Council Regulation (EC) No 139/2004 (OJ L 133, 30.4.2004, p. 1 (“the Implementing Regulation”).

The initiative is a technical reform within the existing framework of EU merger control as defined by the Merger Regulation.

(3) DG Competition has carried out a targeted ex-post analysis of certain merger cases. The objective of this analysis was to determine which categories of cases that are currently not treated under the simplified procedure could be treated under that procedure in the future, given that they did not raise any competition concerns in the past.

To this end, DG Competition has selected merger cases of the years 2008 to 2010 (in total 850 cases) and reviewed a sub-sample of non-simplified merger cases for those years. DG Competition has assessed the distribution of those non-simplified cases in terms of market shares and outcome at the end of the phase I review. The distribution gives some insight into the nature of cases which from the outset would not lead to competition concerns after a phase-I review (further results are explained below). In order to establish sustainable market share thresholds for the application of the simplified procedure, the findings need to be reconciled with the framework of substantive competition analysis as well as practical case handling. In particular, it has to be taken into account that the distribution in terms of market shares reflects the situation verified during a phase-I review, but this does not necessarily reflect the submissions of the merging parties in the notification.

As regards the additional aim of updating and streamlining the forms that merging parties must file with the Commission to notify a merger, DG Competition has furthermore taken stock of, and reflected on the general experience gained with the application of the Merger Regulation. DG Competition has systematically analysed any room for improving and updating the forms. This exercise has led to the conclusion that the forms could and should be updated and streamlined, and it has informed the choice of the forms’ proposed modifications.

What are the main problems which this initiative will address?

Among stakeholders there has been some discussion how the Commission’s merger control procedures could

be further streamlined, in particular with respect to those cases that appear not to raise competition concerns. At the same time, there is a need to focus DG Competition's resources on merger cases that require more thorough analysis and have a real impact on competition and consumers.
Who will be affected by it?
Parties to mergers notified to the Commission and their legal and economic advisors, as well as customers and competitors of the merging parties will benefit from reduced requirements to provide information in merger cases.
Is EU action justified on grounds of subsidiarity? Why can Member States not achieve the objectives of the proposed action sufficiently by themselves? Can the EU achieve the objectives better?
Under the Merger Regulation, the EU has exclusive competence to examine mergers with an EU dimension. The initiative is set in the framework of that exclusive competence.

B. Objectives of the initiative

What are the main policy objectives?
The initiative aims at reviewing the Notice on a simplified procedure as well as updating and streamlining the required forms for notifying mergers to the Commission in order to streamline merger analysis for unproblematic cases, reduce administrative burden for businesses and focus DG Competition's resources on cases that require more thorough analysis.
Do the objectives imply developing EU policy in new areas?
No.

C. Options

(1) What are the policy options (including exemptions/adapted regimes e.g. for SMEs) being considered? (2) What legislative or 'soft law' instruments could be considered? (3) How do the options respect the proportionality principle?
(1) The initiative considers: <ul style="list-style-type: none"> • extending the scope of the simplified merger procedure for non-problematic cases (whilst strengthening the existing safeguards that ensure that cases that raise specific competition issues will still be subject to the full merger procedure) in the following manner: <ul style="list-style-type: none"> ○ raise the relevant market share thresholds for mergers with limited horizontal overlaps or vertical relationships to 20% and 30%, respectively, ○ introduce a possibility for simplified treatment of horizontal mergers with very small increments in market share in line with the "safe harbours" established in the Commission's Horizontal Merger Guidelines (Commission's Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings [OJ C 31, 5.2.2004, p. 5]), • updating, streamlining and in particular reducing the information requirements for notifying a merger or making a request to refer a merger case to the Commission or to a Member State currently laid down in the forms annexed to the Implementing Regulation (Form CO, Short Form and Form RS).
(2) The initiative would be carried out by: <ul style="list-style-type: none"> • reviewing the Notice on a simplified procedure, • amending the notification forms (and therefore the Implementing Regulation to which the forms are annexed).
(3) The option considered fully respects the proportionality principle, since it would amount to reducing administrative burden on notifying parties (as well as indirectly on third parties) and updating information requirements.

D. Initial assessment of impacts

What are the benefits and costs of each of the policy options?
The initiative aims at reducing administrative burden for merging companies in cases that are unlikely to raise competition concerns, without decreasing the effectiveness of EU merger control for cases which raise concerns.

In addition, the initiative would enable the Commission to focus DG Competition's resources on merger cases that require more thorough analysis and have a real impact on competition and consumers.

On the basis of DG Competition's review of certain past merger cases and the modifications considered under this initiative, DG Competition would expect the current initiative to result in an increase in the relative share of merger cases treated under the simplified procedure, as well as in reduced administrative burden for merging parties.

The simplified procedure represents an important part of EU merger control, is business friendly and allows the Commission to keep its merger control workload at a manageable level. During the period 2008-2010, simplified cases represented on average 56% of DG Competition's merger cases. For the years 2011 and 2012, this share was slightly above 60%. Notifications under the simplified procedure require significantly less resources from both the companies involved and DG Competition than the merger control process for normal cases.

According to DG Competition's approximations, based on insights from merger cases from 2008-2010, DG Competition would expect that the initiative considered may allow approximately an additional 10% of merger cases to qualify for treatment under the simplified procedure (due to data imperfections in particular for the treatment of horizontal mergers with small market share increments, this forecasts remains an approximate estimate). Based on the share of simplified cases in recent years, this may bring the overall share of simplified cases to around 70 % of all mergers notified to the Commission (with normal procedure cases accounting for the rest). The considered extension of the simplified procedure would therefore facilitate the burden of a significant number of companies that notify a concentration to the Commission.

In addition to shifting certain merger cases from the normal to the simplified procedure, the initiative of updating and streamlining the notification forms will reduce the burden of the merging undertakings. First, the market share threshold for "affected markets" – markets for which comprehensive information has to be submitted – will be increased in line with the revised thresholds for horizontal overlaps and vertical relationships mentioned in the Notice on a simplified procedure. Second, the modifications to the forms will alleviate the amount of information required. The impact of these modifications is difficult to quantify. However, to the extent that they constitute a net reduction of the information required, DG Competition expects the initiative to lead to significant benefits.

Since the initiative aims at reducing administrative burden, there are no direct costs involved. The safeguards proposed will ensure that no cases raising competition concerns escape the Commission's scrutiny, thereby preventing consumer harm or threats to competitiveness. Even after extension of the simplified procedure, the cases falling into the categories of the simplified procedure will still remain within the safe harbours set out in the Commission's substantive guidance documents (Horizontal Merger Guidelines as quoted before and Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings (OJ C 265, 18.10.2008, p. 6)).

Could any or all of the options have significant impacts on (i) simplification, (ii) administrative burden and (iii) on relations with other countries, (iv) implementation arrangements? And (v) could any be difficult to transpose for certain Member States?

The option considered will have a positive impact on simplification and reducing administrative burden. It would primarily affect the resources companies need to invest to submit a complete notification to the Commission under the Merger Regulation, not the resources required during the subsequent investigation.

Experience shows that every merger case is different and so are the resource requirements for the companies involved and the Commission for each case. In order to roughly estimate the expected burden reduction for companies, DG Competition has therefore relied on assumptions concerning the shifting of ultimately unproblematic merger cases from the normal procedure to the simplified procedure (not taking into account cases leading to a phase II investigation or to commitments in phase I). DG Competition has based these rough estimations on assumptions about standard merger cases under the simplified procedure and the normal procedure and the involvement of external legal advisors.

For merging companies, the estimated reduction in fees for external legal advisors due to shifting a standard merger case from the normal procedure to the simplified procedure – up to the moment of notification – would be expected to lie in the range of one third to one half of the hours worked and fees of the external legal advisors.

In addition, companies could expect a reduction in the preparatory work necessary to provide their legal advisors with information to prepare a notification. The estimated reduction of in-house work – up to the moment of notification – would be expected to be at least as big as the difference for external legal advice.

In any event, the amount of information required for a Short Form CO notification (simplified procedure) certainly is and will be significantly smaller than for a normal Form CO notification.

These reductions would apply to each of the approximately 10% of cases shifted from the normal to the simplified procedure as a result of the proposed initiative.

In addition to shifting certain merger cases from the normal to the simplified procedure, the initiative of updating and streamlining the forms that merging parties must file with the Commission to notify a concentration will also

<p>entail the benefits of a net reduction of the resources required from companies, again in terms of hours worked and fees of external legal advisors as well as preparatory work in the merging companies themselves. The two effects, a reduction of the number of "affected markets" and related information requirements in the Form CO and the updating and streamlining of all forms, will lead to a significant net reduction of the information required on a concentration and its relevant markets. The precise impact of these aspects is however difficult to estimate.</p> <p>The initiative mainly concerns implementation arrangements of the EU Merger Regulation. There will be no impact on relations with other countries. Since the options do not require transposition into national law, no difficulties in that respect can arise.</p>
<p>(1) Will an IA be carried out for this initiative and/or possible follow-up initiatives? (2) When will the IA work start? (3) When will you set up the IA Steering Group and how often will it meet? (4) What DGs will be invited?</p>
<p>The initiative solely aims at reducing the administrative burden for non-problematic cases without changing the ability of the Commission to intervene in cases raising concerns, and an indication of the significance of the burden reduction will be given in an explanatory memorandum accompanying the public consultation. A full separate impact assessment does not appear necessary for the initiative, in particular for the following reasons:</p> <p>First, the modifications envisaged merely consist in an extension of an existing procedure laid out in the current Notice on a simplified procedure. The extension is proposed on the basis of the experience gained in recent years that a number of categories of cases generally do not raise any competition concerns.</p> <p>Second, the criteria of the simplified procedure would even after the proposed extension fully remain within the limits of Commission's substantive guidance documents for EU merger control, in particular within the limits of the Commission's guidelines on the assessment of horizontal mergers and the Commission's guidelines on the assessment of non-horizontal mergers.</p> <p>Third, the initiative is aimed at a net reduction in the administrative burden for undertakings and the Commission arising from the application of the EU Merger Regulation.</p>
<p>(1) Is any option likely to have impacts on the EU budget above € 5m? (2) If so, will this IA serve also as an ex-ante evaluation, as required by the Financial Regulation? If not, provide information about the timing of the ex-ante evaluation.</p>
<p>No.</p>

<p>E. Evidence base, planning of further work and consultation</p>
<p>(1) What information and data are already available? Will existing IA and evaluation work be used? (2) What further information needs to be gathered, how will this be done (e.g. internally or by an external contractor), and by when? (3) What is the timing for the procurement process & the contract for any external contracts that you are planning (e.g. for analytical studies, information gathering, etc.)? (4) Is any particular communication or information activity foreseen? If so, what, and by when?</p>
<p>(1) DG Competition has reviewed a sample of past merger cases to determine which categories of cases that are currently not treated under the simplified procedure could qualify for being treated under that procedure in the future, given that they did not raise any competition concerns.</p> <p>According to our approximations, based on average figures for the years 2008-2010, out of about 300 mergers notified to the Commission per year, approximately 70% instead of approximately 60% of cases would potentially qualify for simplified treatment under the option considered. Taking into account the safeguards considered, none of the category of cases that under the options considered could in the future be treated under the simplified procedure did raise any competition concerns in 2008-2010.</p> <p>(2) No further information needs to be gathered. (3) Not applicable. (4) A public consultation on concrete proposals is foreseen for spring 2013.</p>
<p>Which stakeholders & experts have been or will be consulted, how, and at what stage?</p>
<p>DG Competition has been in a regular dialogue with stakeholders (business community, in-house lawyers and law firms) on possible options for the streamlining of the merger control procedure in a number of dedicated conferences and meetings during the last years. The initiative has also been developed on the basis of those discussions.</p>

Member States will be consulted in an Advisory and Expert Committee. A public consultation of the concrete proposals for the modification of the Implementing Regulation and the Notice on a simplified procedure is foreseen as the next step in spring 2013.