

# **Simplification of Merger Control Process**

Further simplification could be introduced with regard to the general pre-notification phase, RFIs and document production in order to reduce the burden on companies, especially in unproblematic cases.

## **Pre-notification**

The pre-notification process is a crucial process for the Commission and the parties to structure the EU merger review process more efficiently in very complex cases, especially given the very time limitation in a Phase 1 of the process. Therefore it is critical the Commission and the parties engage in a dialogue on structuring the process at an early stage. This may also help to reduce the duration of the process and to better focus the amount of information requested.

These improvements could be made on the duration of the pre-notification process to make sure that it is not abused to effectively double the time limits imposed by the EU merger control regime. This can be done in particular by focusing on the critical issues/markets and avoiding excessive voluminous data requests.

## **Requests for Information**

Focus on the critical issues/markets in RFI would also help avoiding RFIs that are disproportionate in scope, timing and/or extension. In particular:

- RFIs ask for a huge amount of documents requiring even the instruction, by the parties, of forensic experts helping to manage the collection procedure.
- The time period for some RFIs is so long –asking for information up to 5 years ago. Sometimes it is not possible, or very difficult and costly, to provide a complete reply.
- Format requested often is different from the way the data is kept by the business, which leads to lengthy and burdensome reconstruction or conversion into new format of existing data.
- Not all the information required seems relevant for the merger review as it exceeds the object of the investigation. Some documents required also contain information not related to the object of the investigation which is sometimes highly sensitive and confidential.

Especially when your company is asked as third party, the company does not have a team of employees devoted to the project, which makes it more difficult to meet the very short deadlines of extensive questionnaires.

Questionnaires may also be more challenging, where they are not closely related to your company's core activities and questions do not really correspond to the companies data. Then investigations and collection about the operation, markets affected, etc. end up being even more burdensome.

Therefore, it would be highly appreciated if the Commission would follow a more flexible approach, discussing with the companies in advance or letting the companies only answer questions about which the company is genuinely concerned and/or it can really contribute to the Commission analysis. This approach would provide more meaningful contributions for the

Commission, helping better in its analysis.

Sometimes it is difficult to provide the information with the format, methodology, splitting, extension that the Commission requires. It may be because the company have the information in its systems within other format, splitting, etc. The time and efforts consumed for turning the information into the formatting required by the Commission are really disproportionate with regards the result. In many occasions the Commission could obtain better conclusions with the data provided by the company in their original format.

In this light also RFIs should be limited to the critical points and avoid excessive data requests on each and every market potentially involved. There should be prior engagement with the notifying parties to ensure the availability of data in general and the format, amount and timeframe it can be delivered. Having more focus in the RFIs and limiting the data requested will also help to meet the very challenging time limits for responding to an RFI.

### **Role of Chief Economist Team**

Chief Economist Team's approach to cases can intensify the mentioned effects because its inclination to try to also find more economic concerns instead of developing an objective analysis on the economic effects of the transaction. It should approach cases in a more neutral way from a check-and balances perspective.