

Explanation of AMO SR answers to PUBLIC QUESTIONNAIRE: Consultation on Evaluation of  
procedural and jurisdictional aspects of merger control

**PART 1 Simplification**

Question 8.1 – 8.3, 10, 13

The list of cases treated under simplified procedure seems to sufficiently cover all types of cases which are non-problematic in general. EU merger legislation itself (as well as most national merger rules) provides for exemptions from the simplification and return to the non-simplified notification, if certain conditions are met.

It shows the necessity to have the general jurisdiction over such cases even with more reduced burden (on case by case basis) put on companies regarding notification requirements.

More specifically to the question no. 13. The Office emphasizes the advantage of one-stop shop for mergers which would otherwise create the necessity of multinational filings. Extra EU JVs are also subject to merger review under merger legislation of many member states. Excluding the possibility to notify to the Commission could lead to the situation that many multinational transactions would have to be notified at national level of several member states, which would create bigger administrative and cost burden on companies. Other argument concerns JVs whose parent companies hold significant positions at the same (vertically connected) market and without more information about the business, goals etc. of JV the competition authority cannot assess if it has clearly only extra-territorial effects.

.....

Further reduction of notification requirements is not preferred as a general rule for or certain categories of cases. There are several arguments with which the AMO SR supports this position.

One is the same as is for the answer above, that within these categories of cases there can be individual candidates for reversion to the non-simplified notification and in-depth review of the merger. Even the possible additional rule for ex-officio and ex post investigation by the competition authority (which is the other part of proposal) would not be sufficient alternative to the current system, as this is designed as to be set up for other types of transactions (the criterion value of transaction).

The other argument is that the undertakings often define the relevant market and provide all the information without thinking about other plausible alternative market definition. Further general simplification in the form of self-assessment in this regard would lead to more difficult assessment on both sides.

In the current system the other possibility to narrow notification requirements exists - upon request raised by the parties in the notification itself or in the pre-notification discussion. This tool is often used in our procedure and at the same time it can be decided on case by case basis depending on the nature of each specific case.

**PART 2 – Jurisdictional thresholds**

Questions 18 – 22

In our view the decision to widen the jurisdiction by setting additional criteria for notification should be carefully examined and the selection of specific criteria reasoned.

Purely turnover criteria for notification could lead to the situation that some transaction would not meet such criteria and some of them could be competitively significant. On the other hand there is a question of legal certainty which should be weighed when considering any additional criteria.

On the level of member states we see that there are such transactions, not necessarily only from the pharma sector, or start ups, but from different sectors of economy, which do not fall under jurisdiction because of turnover thresholds. This does not necessarily mean that notification thresholds are too high, the typical feature of such transactions is the lower - turnover industry but at the same time its local significance (relevant market geographically limited to the part of the country or to some radius around production facility covering parts of several countries). From our perspective if the AMO SR would think about any additional notification criteria, it would not prefer sector-specific solution. The other argument in favor of the uniform additional criteria (if any) for all sectors of economy is that it can be difficult to identify all potential industries (and/or transactions) as candidates for additional notification criteria, thus creating disbalance when choosing only some industries. For these reasons the AMO SR holds the position that any additional criteria should be applicable to all industries under same conditions.

From our perspective „the value of transaction“ has some practical restraints. The main is that often when the undertakings decide to merge, they notify only in the form of their intention without having set up details of the transaction or the value of transaction is not clearly readable from the transaction contract as it can depend on some future activities (not administered at the time of notification of the merger). With this having in mind this criterion would have to be inevitably complemented with some additional rules thus creating more complicated system.

Then there is the question of setting more open system, in parallel to the existing notification criteria, of an ex officio investigation of any merger, if there could be seen a risk of the negative impact from the perspective of the Commission, within clearly stated time limit plus the possibility of voluntary notification.

To sum up we see the space for an additional jurisdiction but the way must be carefully examined. The purpose should be to create system which allows some flexibility but with sufficient level of legal certainty.