

Evaluation of procedural and jurisdictional aspects of EU Merger Control

Fields marked with * are mandatory.

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I. Introduction

Preliminary Remark: The following questionnaire has been drafted by the Services of the Directorate General for Competition in order to collect views on some procedural and jurisdictional aspects of EU merger control. The questionnaire does not necessarily reflect the views of the European Commission and does not prejudge its future decisions, if any, on further action on these aspects.

A. Purpose of the consultation

The purpose of the present consultation is to gather information on particular aspects of the performance of EU merger control. This consultation invites citizens, businesses, associations, public authorities and other stakeholders to provide feedback on their experience/knowledge of issues under scrutiny and what action, if any, should be taken in this regard.

Input from stakeholders will be used in a Staff Working Document to evaluate procedural and jurisdictional aspects of EU merger control. The Commission will carefully analyse the outcome of this consultation and previous consultations as well as the findings of the evaluation as a whole before deciding whether it should take further action.

B. Background

Merger control constitutes one of the instruments of EU competition law. Its main objective is to ensure that competition in the internal market is not distorted by corporate reorganisations in the form of concentrations.

In recent years (particularly in 2009 and from 2013 onwards), the European Commission has taken stock and assessed the functioning of different aspects of EU merger control and identified possible areas for refinement, improvement and simplification.

In particular, the European Commission adopted in 2014 the White Paper "Towards More Effective EU Merger Control (the "White Paper", COM(2014) 449 final). The White Paper confirmed that EU merger control works well and that no fundamental overhaul of the system is needed, but envisaged specific amendments in order to make it more effective.

The key proposals of the White Paper were the following:

1. Introducing a light and tailor-made review of acquisitions of non-controlling minority shareholdings which could harm competition;
2. Making case referrals between Member States and the Commission more business-friendly and effective;
3. Making procedures simpler for certain categories of mergers that normally do not raise competition concerns; and
4. Fostering coherence and convergence between Member States with a view to enhance cooperation and to avoid divergent decisions in parallel merger reviews conducted by the competition authorities of several Member States.

Based on the White Paper, the Commission carried out a public consultation. Respondents mostly agreed that the EU merger control system overall works well but welcomed the White Paper's proposals in relation to the streamlining of the case referral system and simplification.

Recently, a debate has emerged among stakeholders and competition experts on a new topic, namely the effectiveness of the current turnover-based jurisdictional thresholds of EU merger control. These jurisdictional thresholds are set out in Article 1 of the Merger Regulation and determine which transactions have a Union dimension and are reviewed, in principle, by the European Commission.

Some stakeholders have raised the question of whether the turnover-based jurisdictional thresholds allow capturing, under EU merger control rules, all transactions which can potentially have an impact in the internal market. This question may be particularly significant for transactions in the digital economy, but also in other industry sectors, such as pharmaceuticals, where acquisition targets may not have always generated substantial turnover yet, but nevertheless are highly valued and constitute, or are likely to become, an important competitive force in the relevant market(s).

Moreover, recent experience in enforcing the EU merger control rules has shown that certain technical aspects of the procedural and investigative framework for the assessment of mergers may merit further evaluation. Some of these aspects had already been identified in the 2014 Commission Staff Working Document accompanying the White Paper.

Scope of the Evaluation

It therefore appears opportune to build upon the work undertaken so far in the context of the White Paper and prior consultations and complement it by evaluating the following procedural and jurisdictional aspects of EU merger control in more detail:

1. Simplification: the treatment of certain categories of cases that do not generally raise competitive concerns, as set out in the Merger Regulation,^[1] the Implementing Regulation,^[2] and the Commission Notice on simplified procedure;^[3]
2. Functioning of the turnover-based jurisdictional thresholds set out in the Merger Regulation in light of highly valued acquisitions of target companies that have not yet generated substantial

turnover;

3. Functioning of the case referral mechanisms set out in the Merger Regulation, the Implementing Regulation and the Commission Notice on case referral;
4. Certain technical aspects of the procedural and investigative framework for the assessment of mergers.

[1] Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation), OJ L 24, 29.01.2004, p. 1.

[2] Commission Regulation (EC) No 802/2004 of 21 April 2004 implementing Council Regulation (EC) No 139/2004, OJ L 133, 30.04.2004, p. 1, as amended.

[3] Commission Notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EC) 139/2004, OJ C 366, 14 December 2013, p.5 and its Corrigendum to the Commission notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EC) No 139/2004, OJ C 011, 15 January 2014, p 6 (the "Commission Notice on simplified procedure").

II. Practical Guide to fill in the questionnaire

Please respond to all questions that you have knowledge about. Feel free to skip those questions that you cannot answer or are unsure about.

Replying to the questions:

- Questions with a radio-button are "single choice": only one option can be chosen.
- Questions with a check-box are "multiple choice": several answers can be chosen.
- Questions showing an empty box are free text questions.
- Depending on your answer to a given question, some additional questions may appear automatically asking you to provide further information. This, for example, is the case when the reply "Other" is chosen.
- Please use only the "Previous" and "Next" buttons to navigate through the questionnaire (do not use the backwards or forward button of the browser).

Saving your draft replies

- The questionnaire is split into several sections.
- At the end of each section you have the possibility to either continue replying to the remaining sections of the questionnaire (clicking on "Next") or saving the replies made so far as a draft (clicking on "Save as Draft").
- If you chose "Save as Draft", the system will:
 - show you a message indicating that your draft reply has been saved,
 - give you the link that you will have to use in order to continue replying at a later stage,
 - give you the possibility to send you the link by email (we encourage you to use this option).

- You can then close the application and continue replying to the questionnaire at a later stage by using the said link.

Submitting your final reply

- The submission of the final reply can only be done by clicking the "Submit" button that you will find in the last section "Conclusion and Submission".
- Once you submit your reply, the system will show you a message indicating the case identification number of your reply ("Case Id"). Please keep this Case Id. number as it could be necessary in order to identify your reply in case you want to modify it at a later stage.
- You will also be given the opportunity to either print or download your reply for your own records.

III. About you

Please provide your contact details below:

*1. Are you replying as:

- a private individual
- an organisation or a company
- a public authority or an international organisation

*The name of your organisation/ company/ public authority/ international organisation

Association of in-house competition lawyers (ICLA)

*Your full name

Paolo Palmigiano, Chair of ICLA

*Email address

Paolo.palmigiano@competitionlawyer.co.uk

*Organisation represented

1.1 Please indicate which type of organisation or company it is.

- Academic institution
- Non-governmental organisation
- Company/SME/micro-enterprise/sole trader
- Think tank
- Media
- Consumer organisation
- Industry association
- Consultancy/law firm
- Trade union

* 1.1.1 Please indicate which type of public authority or international organisation it is:

- EU national competition authority
- Government or Ministry
- International or European organisation
- Regulatory authority (other than a competition authority)
- Other public body

* 1.1.1.1 Is it a multinational enterprise (groups with establishments in more than one country)?

- YES
- NO

*1.1.2 How many employees does your company have?

- 1-9
- 10-49
- 50-249
- 250-499
- 500 or more

*1.2 Please provide a brief description of the activities of your organisation.

The In-House Competition Lawyers' Association ("ICLA") is an informal association of in-house competition lawyers across the world. The Association meets quarterly to discuss matters of common interest, as well as to share competition law knowledge. There are currently almost 300 members in 23 countries. The Association does not represent companies, but is made up of individuals as experts in this area of the law. This paper represents the views of some of its members only.

Because of their role, in-house competition lawyers have a clear interest in a simple and straightforward merger control regime that prioritises certainty, minimises costs, and does not represent a disproportionate demand on businesses' time and resources.

*1.3 Where are you based?

- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Iceland
- Ireland
- Italy
- Latvia
- Liechtenstein
- Lithuania
- Luxemburg
- Malta
- Netherlands
- Norway
- Poland
- Portugal
- Romania
- Slovak Republic
- Slovenia
- Spain
- Sweden
- United Kingdom
- Other

*Please specify.

2. Transparency Register ([Register now](#))

In the interests of transparency, the Commission asks organisations who wish to submit comments in the context of public consultations to provide the Commission and the public at large with information about whom and what they represent by registering in the [Transparency Register](#) and subscribing to its [Code of Conduct](#). If an organisation decides not to provide this information, it is the Commission's stated policy to list the contribution as part of the individual contributions. (Consultation Standards, see COM (2002) 704; Better Regulation guidelines, see SWD(2015)111 final and Communication on ETI Follow-up, see COM (2007) 127).

If you are a registered organisation, please indicate below your Register ID number when replying to the online questionnaire. Your contribution will then be considered as representative of the views of your organisation.

If your organisation is not registered, you have the opportunity to register now, please click on the link in the title. Then you can return to this page, continue replying to the questionnaire and submit your contribution as a registered organisation.

It is important to read the specific privacy statement available on the public consultation website for information on how your personal data and contribution will be used.

For registered organisations: indicate your Register ID number here:

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*3. Please choose from one of the following options on the use of you contribution:

- X My/our contribution can be directly published with my personal/organisation information (I consent to publication of all information in my contribution in whole or in part including my name/the name of my organisation, and I declare that nothing within my response is unlawful or would infringe the rights of any third party in a manner that would prevent publication).
- My/our contribution can be directly published provided that I/my organisation remain(s) anonymous (I consent to publication of any information in my contribution in whole or in part (which may include quotes or opinions I express) provided that this is done anonymously. I declare that nothing within my response is unlawful or would infringe the rights of any third party in a manner that would prevent publication. I am aware that I am solely responsible if my answer reveals accidentally my identity.
- My/our contribution cannot be directly published but may be included within statistical data (I understand that my contribution will not be directly published, but that my anonymised responses may be included in published statistical data, for example, to show general trends in the response to this consultation) Note that your answers may be subject to a request for public access to documents under Regulation (EC) No 1049/2001.

*4. Finally, if required, can the Commission services contact you for further details on the information you

have submitted?

YES

NO

IV. Questionnaire

IV.1. Simplification

In December 2013, the Commission adopted a package of measures aimed at simplifying procedures to the fullest extent possible without amending the Merger Regulation itself (the so called "Simplification Package"). In particular, the Simplification Package:

- Widened the scope of application of the so-called simplified procedure for non-problematic cases;
- Streamlined and simplified the forms for notifying mergers to the Commission.

Through the Simplification Package, which entered into force on 1 January 2014, the number of cases dealt with under the simplified procedure has increased by 10 percentage points from an average of 59% over the period 2004-2013 to around 69% of all notified transactions over the period January 2014 to September 2016).

According to the Commission Notice on simplified procedure ("the Notice"), the Commission in principle applies the simplified procedure to each of the following categories of concentrations:

- i. Transactions where two or more undertakings acquire joint control of a joint venture, provided that the joint venture has no, or negligible, actual or foreseen activities within the territory of the European Economic Area (EEA); such cases occur where: (i) the turnover of the joint venture and/or the turnover of the contributed activities is less than EUR 100 million in the EEA territory at the time of notification; and (ii) the total value of assets transferred to the joint venture is less than EUR 100 million in the EEA territory at the time of notification (see point 5 (a) of the Notice);
- ii. Transactions where two or more undertakings merge, or one or more undertakings acquire sole or joint control of another undertaking, provided that none of the parties to the concentration are engaged in business activities in the same product and geographic market, or in a product market which is upstream or downstream from a product market in which any other party to the concentration is engaged (see point 5 (b) of the Notice);
- iii. Transactions where two or more undertakings merge, or one or more undertakings acquire sole or joint control of another undertaking and both of the following conditions are fulfilled: (i) the combined market share of all the parties to the concentration that are engaged in business activities in the same product and

geographic market (horizontal relationships) is less than 20 %; (ii) the individual or combined market shares of all the parties to the concentration that are engaged in business activities in a product market which is upstream or downstream from a product market in which any other party to the concentration is engaged (vertical relationships) are less than 30 % (see point 5 (c) of the Notice);

iv. Transactions where a party is to acquire sole control of an undertaking over which it already has joint control (see point 5 (d) of the Notice);

v. Transactions where two or more undertakings merge, or one or more undertakings acquire sole or joint control of another undertaking, and both of the following conditions are fulfilled: (i) the combined market share of all the parties to the concentration that are in a horizontal relationship is less than 50 %; and (ii) the increment (delta) of the Herfindahl-Hirschman Index (HHI) resulting from the concentration is below 150 (see point 6 of the Notice).

The Notice sets out a number of safeguards and exclusions from the simplified procedure (see notably points 8 to 21). The Commission may decide not to accept a proposed concentration under the simplified procedure or revert at a later stage to a full assessment under the normal merger procedure.

The 2014 White Paper made further-reaching proposals for amendments to the Merger Regulation that would make procedures simpler:

- This could be achieved for example by excluding certain non-problematic transactions from the scope of the Commission's merger review, such as the creation of joint ventures that will operate outside the European Economic Area (EEA) and have no impact on European markets;
- Moreover, notification requirements for other non-problematic cases - currently dealt with in a 'simplified' procedure - could be further reduced, cutting costs and administrative burden for businesses.

These proposals are still being assessed. Your response to the following questions will contribute to that assessment.

1. The Merger Regulation provides for a one stop shop review of concentrations. Several categories of cases that are generally unlikely to raise competition concerns and falling under point 5 or 6 of the Notice (see above) are treated under a simplified procedure. To what extent do you consider that the one stop shop review at EU level for concentrations falling under the simplified procedure has created added value for businesses and consumers? Please rate on a scale from 1 to 7.

(1 = "did not create much added value"; 7 = "created much added value"):

	1	2	3	4	5	6	7
Your rating	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>				

Please explain.

The one –stop shop review of concentration is welcomed by the business community as it provides clarity and has reduced unnecessary administrative burden.

Further simplification of the treatment of certain categories of non-problematic cases

2. In your experience, and taking into account in particular the effects of the 2013 Simplification Package, has the fact that the above mentioned categories of merger cases are treated under the simplified procedure contributed to reducing the burden on companies (notably the merging parties) compared to the treatment under the normal procedure?

(i) Mergers without any horizontal and vertical overlaps within the EEA or relevant geographic markets that comprise the EEA, such as worldwide markets (transactions falling under point 5b of the Notice);

YES

NO

OTHER

Please explain

The treatment of transactions falling under point 5b of the Notice has contributed to reducing the burden on companies. However, as mentioned further below, we see merit in further simplification

(ii) Mergers leading only to limited combined market shares or limited increments or to vertical relationships with limited shares on the upstream and downstream markets within the EEA or relevant geographic markets that comprise the EEA (transactions falling under point 5c or point 6 of the Notice);

YES

NO

OTHER

The treatment of transactions falling under point 5c or 6 of the Notice has contributed to reducing the burden on companies. A greater number of merging companies have been able to avoid the burden of full notification. However, we are concerned, as we mentioned in previous submissions, about the increased administrative burden in completing the new Short Form CO. In particular, the requirement to consider ‘plausible markets’ under Section 7 of the short Form CO and the need to produce all internal documents under section 5.3 and market share estimates for parties and competitors for every reportable market. In our experience, significant time is already spent in pre-notification discussions considering potential market definitions. We consider that this imposes a significant burden on notifying parties which have to spend significant time and resources in transactions that do not raise competition concerns

(iii) Joint ventures with no or limited activities (actual or foreseen), turnover or assets in the EEA (transactions falling under point 5a of the Notice);

YES

NO

OTHER

Please explain

Previously we welcomed the proposal to limit the Commission's jurisdiction to review concentrations that do not have any "impact" in the EEA such as full function joint ventures located and operating outside the EEA. This is consistent with the ICN's Recommended Best Practices for Merger Notification Procedures which state that:

- a. jurisdiction should be asserted only over those transactions that have an appropriate nexus with the jurisdiction concerned; and
- b. merger notification thresholds should incorporate appropriate standards of materiality as to the level of "local nexus" required for merger notification.

However, the Commission should now consider, based on recent experience, whether this requirement to notify, even if only with a short form CO, is inefficient and whether the filing requirements for transactions that have no nexus to the EU joint ventures located and operating outside the EEA with no effect on EEA markets should not be subject to any notification requirement.

Of course, exempting these transactions from the one-stop shop at EU level might lead to multiple filings at national level. A mechanism should be considered to avoid this

(iv) Transactions where a company acquires sole control of a joint venture over which it already has joint control (transactions falling under point 5d of the Notice).

YES

NO

OTHER

Please explain

The treatment of transactions falling under point 5d of the Notice has contributed to reducing the burden on companies.

3. As indicated, the Commission may decide not to accept a proposed concentration under the simplified procedure or revert at a later stage to a full assessment under the normal merger procedure. Have you dealt with or otherwise been involved in merger cases notified to the European Commission in the last five years that changed from simplified treatment under the Notice to the normal review procedure?

(i) In the pre-notification phase:

YES

NO

Please explain under which category of simplified cases (listed in question 2 above) it initially fell and the reasons underlying the change to the normal procedure.

(ii) Post notification:

YES

NO

Please explain under which category of simplified cases (listed in question 2 above) it initially fell and the reasons underlying the change to the normal procedure.

4. Have you dealt with or otherwise been involved in any merger cases which fell under the relevant categories of cases listed in question 2 and was thus potentially eligible for notification under the simplified procedure but where, from the outset, the parties decided to follow the normal review procedure?

YES

NO

Please explain under which category of simplified cases it fell and the reasons why the case was notified under the normal procedure.

ICLA members or their advisors who are responding to the consultation will provide examples in their responses

5. Based on your experience, do you consider that, beyond the types of cases listed in question 2, there are any other categories of cases that are generally not likely to raise competition concerns but do not currently benefit from the simplified procedure?

- YES
- NO
- OTHER

Please explain

6. The main objective of the Merger Regulation is to ensure the review of concentrations with an EU dimension in order to prevent harmful effects on competition in the EEA. Do you consider that the costs (in terms of workload and resources spent) incurred by businesses when notifying the cases that fall under the simplified procedure (listed in question 2 above) have been proportionate in order to achieve this objective of the Merger Regulation?

- YES
- NO
- OTHER

Please explain your answer with respect to each of the categories of cases listed in question 2 above.

- Transactions falling under point 5a of the Notice:

- YES
- NO

Please explain.

ICLA has always supported the removal of any filing requirement for transaction under point 5a of the Notice that have no nexus with the EU. A removal of this unnecessary burden would significantly reduce costs incurred by businesses.

- Transactions falling under point 5b of the Notice:

- YES
- NO

Please explain.

Without horizontal or vertical overlaps, transactions under point 5b of the Notice are unlikely to produce effects in the EEA. Such transactions should not be subject to filing requirements.

- Transactions falling under point 5c or point 6 of the Notice:

- YES
- NO

Please explain.

Since its introduction, ICLA has expressed concerns about the increased administrative burden of producing internal documents as in Section 5.3 of the Short Form CO. This involve, in our experience, significant burden and costs on companies. In some instances, documents provided might not be useful for the Commission's assessment. A better approach would be to reduce this requirement but leaving the Commission open to request these documents if necessary and during the pre-notification discussion or during the Phase I review.

- Transactions falling under point 5d of the Notice:

- YES
- NO

Please explain.

7. To which extent have such costs (in terms of workload and resources spent) been reduced by the 2013 Simplification Package? Please explain.

The 2013 Simplification packages has been welcomed by the business community. It has increased the number of transactions benefitting from the simplified procedure. This has obviously lead to reduced costs for companies.

8. On the basis of your experience on the functioning of the Merger Regulation, particularly after the changes introduced with the 2013 Simplification Package, and your knowledge of the enforcement practice of the Commission in recent years, do you consider that there is currently scope for further simplification of EU merger control without impairing the Merger Regulation's objective of preventing harmful effects on competition through concentrations?

- YES
- NO

OTHER

If you replied yes or other, do you consider that there is scope for further simplification by, in particular:

8.1. Exempting one or several categories of the cases listed in question 2 above (and/or any other categories of cases) from the obligation of prior notification to the Commission and from the standstill obligation; in those cases, the Commission would not adopt a decision under the Merger Regulation;

YES

NO

Please explain.

To further simplify the merger procedure, it could make sense to exempt mergers that are very unlikely to lead to competitive restraints, such as mergers without any horizontal or vertical overlap.

8.2. Introducing lighter information requirements for certain categories of cases listed in question 2 above (and /or any other categories of cases), notably by replacing the notification form by an initial short information notice; on the basis of this information, the Commission would decide whether or not to examine the case (if the Commission does not to examine the case, no notification would need to be filed and the Commission would not adopt a decision);

YES

NO

Please explain.

The introduction of a lighter notification form for certain categories of transaction would help to reduce the burden on the individual companies. At the same time it still allows the Commission to receive some information if an assessment is needed. However, a short time limit for the Commission to decide whether or not to examine the case would be necessary or that would create considerable uncertainties for the parties.

8.3. Introducing a self-assessment system for certain categories of cases listed in question 2 above (and/or any other categories of cases); under such system, merging parties would decide whether or not to proceed to notify a transaction, but the Commission would have the possibility to start an investigation on its own initiative or further to a complaint in those cases where it considers it appropriate in so far as they may potentially raise competition concerns;

YES

NO

Please explain.

The introduction of a self-assessment system would create an element of uncertainty in the simplified merger proceeding. This may add additional burden to companies with lengthy self-assessments without any legal certainty. In addition, a self-assessment system would reduce the amount of precedents, making it even more difficult for companies to assess.

8.4. Other

YES

NO

Please explain.

In general, we do still see some room for further simplification with regard to the pre-notification phase, RFIs and document production in order to reduce the burden on companies, especially in unproblematic cases.

The pre-notification process can be helpful to structure the EU merger review process more efficiently in very complex cases, especially given the time limitation in a Phase 1 of the process. None the less the duration of the process and the amount of information requested could be reduced further.

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 by focusing on the critical issues/markets from the beginning and avoiding excessive voluminous data requests.

In this light also the questions in an RFI should be limited to the critical issues to 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.

The time limits for answering RFIs set by the Commission in general are very challenging and hard to meet without extraordinary effort from the business side. Even though the Commission will be willing to give short extension in most of the cases this will not alleviate the burden. It would be helpful, if the Commission could more closely align with the notifying parties to define which data is necessary and in which format certain data is readily available.

Receiving RFIs as third party to a EU merger control review can be just as burdensome as notifying party, but more of a challenge since in general the company will not have a team of employees devoted to the project. In order to reduce the burden information requests could be more limited in scope, but also more flexible with the format and methodology of the information that the

When replying to question 8, please take into account the benefits and potential risks involved in each particular measure. For example, by exempting from notification all cases without horizontal or vertical overlaps [see point (8.1) above], the Commission may not be able to examine certain concentrations that could raise competition concerns, for instance because of potential competition or conglomerate aspects. Conversely, in cases where Parties file only a short information notice [see point (8.2) above], the Commission may not have sufficient information to assess whether the merger should be examined because it could potentially raise competition concerns. Similarly, in a self-assessment system [see point (8.3) above], the Commission may not become aware of mergers that could potentially raise competition concerns; moreover, under such system, the Commission may decide to intervene against a transaction which has already been implemented, which may cause some businesses to notify in any event just to obtain legal certainty.

In case you identify any risks, please explain those and indicate whether you envisage any measure to address / mitigate such risks.

Further simplification of the treatment of extra-EEA joint ventures

9. The creation of joint ventures operating outside the EEA and having no effect on competition on markets within the EEA ("extra-EEA joint ventures") can be subject to review by the European Commission. In your experience, has this fact contributed to protecting competition and consumers in Europe?

- YES
- NO
- OTHER

Please explain

ICLA does not believe this review is necessary and in our experience it has not contributed to protecting competition and consumers in Europe.

10. Has this one stop shop review at EU level of extra-EEA joint ventures created added value for businesses and consumers?

- YES
- NO
- OTHER

Please explain

11. Do you consider that the costs (in terms of workload and resources spent) incurred by businesses when notifying extra-EEA joint ventures are adequate and proportionate in order to ensure an appropriate review of concentrations with an EU dimension in order to prevent harmful effects on competition in the EEA?

- YES
- NO
- OTHER

Please explain

A review of a transaction with no nexus to the EEA creates, in our view, costs that are not adequate or proportionate to prevent harmful effects on competition in the EEA.

12. To which extent have such costs been reduced by the 2013 Simplification Package? Please explain.

Any simplification of the burden does reduce costs for business but in our view those costs should be further reduced in this instance.

13. On the basis of your experience on the functioning of the Merger Regulation, particularly after the changes introduced with the 2013 Simplification Package, do you consider that the treatment of extra-EEA joint ventures is sufficiently simplified and proportionate in view of the Merger Regulation's objective of preventing harmful effects on competition through concentrations or is there scope for further simplification?

- The treatment of extra-EEA joint ventures is sufficiently simplified.
- There is scope for further simplification.

Further simplification could be realised by:

(i) Excluding extra-EEA joint ventures from the scope of the Merger Regulation;

- YES
- NO

Please explain your answer taking into account both the scope for cost-savings and the potential risk that the Commission may not have the possibility to examine joint ventures that may impact competition in the EEA in the future (for instance if the scope of activity of the joint venture is expanded at a later stage). Also consider the possibility that these transactions may be subject to control in one or several EU Member

States. In case you identify any risks, please indicate whether you envisage any measure to address / dispel such risks.

ICLA believes that any notification of extra-EEA joint venture is not necessary and increases the burden for companies. We are not entirely into agreement with the concern about possible expansion of activities of the JV in the future. At the moment, the merger regulation does not deal with mergers entirely outside the EEA which later expand their activities in the EEA. So we are not sure why this should be a concern for JVs outside the EEA. We are however concerned if eliminating the one –stop shop for these transactions would lead to multiple filing at national level. We therefore advocate further clarifications on the possible structuring of a system that avoids multiple filings for these transactions, for example extra-EEA JVs could be deemed compatible with the single market automatically or on the basis of a simple information notice sent to DG Comp. Other options of course could be considered.

(ii) Introducing, for the treatment of extra-EEA joint ventures, an exemption from notification, or a light information system, or a self-assessment or any other system?

YES

NO

Please explain your answer, taking into account both the scope for cost-savings and any potential risk. In case you identify any risks, please indicate whether you envisage any measure to address/ dispel such risks.

While we welcome an exemption from notification, any other system that reduces certainty for the business (such as self-assessment) would not be welcomed.

(iii) Other.

Please explain.

IV.2. Jurisdictional thresholds

The Merger Regulation only applies to concentrations of a Union dimension, which are those where the undertakings concerned meet the different relevant turnover thresholds set out in Article 1 of the Merger

Regulation.

Article 1 of the Merger Regulation

Scope

1. *Without prejudice to Article 4(5) and Article 22, this Regulation shall apply to all concentrations with a Union dimension as defined in this Article.*

2. *A concentration has a Union dimension where:*

(a) the combined aggregate worldwide turnover of all the undertakings concerned is more than EUR 5 000 million; and

(b) the aggregate Union-wide turnover of each of at least two of the undertakings concerned is more than EUR 250 million,

unless each of the undertakings concerned achieves more than two-thirds of its aggregate Union-wide turnover within one and the same Member State.

3. *A concentration that does not meet the thresholds laid down in paragraph 2 has a Union dimension where:*

(a) the combined aggregate worldwide turnover of all the undertakings concerned is more than EUR 2 500 million;

(b) in each of at least three Member States, the combined aggregate turnover of all the undertakings concerned is more than EUR 100 million;

(c) in each of at least three Member States included for the purpose of point (b), the aggregate turnover of each of at least two of the undertakings concerned is more than EUR 25 million; and

(d) the aggregate Union-wide turnover of each of at least two of the undertakings concerned is more than EUR 100 million,

unless each of the undertakings concerned achieves more than two-thirds of its aggregate Union-wide turnover within one and the same Member State.

4. [...]

5. [...]

Recently, a debate has emerged on the effectiveness of these turnover-based jurisdictional thresholds, specifically on whether they allow capturing all transactions which can potentially have an impact on the internal market. This may be particularly significant in the digital economy, where services are regularly launched to build up a significant user base before a business model is determined that would result in

significant revenues. With significant numbers of users, these services may play a competitive role. Moreover, relevant business models may involve collecting and analysing large inventories of data that do not yet generate significant turnover (at least in an initial period). Therefore, players in the digital economy may have considerable actual or potential market impact that may be reflected in high acquisition values, although they may not yet generate any or only little turnover. Acquisitions of such companies with no substantial turnover are likely not captured under the current turnover-based thresholds triggering a notification under the EU Merger Regulation, even in cases where the acquired company already plays a competitive role, holds commercially valuable data, or has a considerable market potential for other reasons. It has been suggested to complement the existing turnover-based jurisdictional thresholds of the EU Merger Regulation by additional notification requirements based on alternative criteria, such as the transaction value. The perceived legal gap may not only concern the digital industry, but also other industry sectors, such as the pharmaceutical industry. There have been indeed a number of highly valued acquisitions, by major pharmaceutical companies, of small biotechnology companies, which predominantly research and develop new treatments that may have high commercial potential, and do not yet generate any or only little turnover.

Moreover, the question of whether there is a legal gap needs to be assessed in the context of the case referral system in EU merger control. Even in instances where a merger does not have Union dimension based on the turnover of the merging parties, the Commission may obtain jurisdiction through a referral. According to Article 4(5) of the Merger Regulation, the parties to a merger may ask for referral of a case from the level of Member States to the Commission before it is notified, if the case is notifiable under the national merger control laws in at least three Member States and if the additional criteria set out in Article 4 (5) of the Merger Regulation are met. Also, according to Article 22 of the Merger Regulation, national competition authorities may request the referral of a case to the Commission after notification, if the specific conditions of Article 22 of the Merger Regulation are met.

This section of the questionnaire gathers your views on the existence of a possible enforcement gap of EU merger control, and what would be its possible dimension and relevance. Moreover, this section also requests your views on possible policy responses, if such were to be warranted.

14. In your experience, have you encountered competitively significant transactions **in the digital economy in the past 5 years** which had a cross-border effect in the EEA but were not captured by the current turnover thresholds set out in Article 1 of the Merger Regulation and thus fell outside the Commission's jurisdiction? [1]

[1] A well-known example of these transactions is the acquisition in 2014 of WhatsApp by Facebook, which fell outside the thresholds of Article 1 of the Merger Regulation but was ultimately referred to the Commission pursuant to Article 4(5) thereof. Information on merger cases reviewed by the European Commission is accessible via the search function on DG COMP's website at http://ec.europa.eu/competition/elojade/isef/index.cfm?clear=1&policy_area_id=2.

- YES
- NO
- OTHER

- **If yes**, please describe the characteristics of such transactions.

- **If yes**, please give concrete examples.

- **If yes**, please estimate how many of those transactions take place per year.

- **If yes**, do you consider that those transactions would typically qualify for a pre-notification referral under Article 4(5) of the Merger Regulation or a post-notification referral under Article 22 of the Merger Regulation? Please explain.

- **If no or other**, please explain your answer.

ICLA does not consider that at this stage there is sufficient evidence to conclude that there have been competitively significant transactions in the digital, pharmaceutical or any other industry in the past 5 years that had a cross-border effect in the EEA but were not caught by the EU Merger Regulation, and therefore require the EU Merger Regulation (“EUMR”) to be updated.

The question as to whether an “enforcement gap” exists is addressed in the explanatory materials provided in the Questionnaire at Part IV.2. and set out that “*debate has emerged on the effectiveness of turnover-based jurisdictional thresholds, specifically on whether they allow capturing all transactions which can potentially have an impact on the internal market*” (emphasis added). In following the EU’s ‘Better Regulation’ principles, we trust that any expansion of the EU Merger Regulation’s thresholds (and thus the ambit of the regulatory regime of mergers at the EU level) be thoroughly evidence-based, identifying clearly the importance of the problem to be addressed, and with any proposed measures complying with principles of inter alia necessity and proportionality. In this context, respectfully, ICLA would emphasise that the basis for a reform of the EU Merger Regulation cannot be the intention that “*all transactions which can potentially have an impact on the internal market*” be captured. Regulation must be thoughtful and effective but cannot strive to be all-encompassing. Indeed, if the purpose were to be to capture all the transactions referenced, the Commission could easily achieve this by removing the thresholds entirely and requiring all concentrations to be subject to its jurisdiction.

In terms of the Commission’s analysis, a step-by-step approach would appear advisable. In its analysis, the Commission may first wish to focus on acquiring substantial evidence which demonstrates a need for a regulatory expansion. Should the Commission identify such, it could then assess appropriate measures to address that need in a second step. It would seem premature to already at this stage consult on potential measures, when the need is yet to be determined.

The regulatory framework in the EU, including competition laws and related procedures are followed closely globally. A significant number of jurisdictions have copied and mimicked the regime established in Brussels. The Commission continues to inspire emerging jurisdictions, which is very positive. It is therefore important to always consider the effects that the implementation of EU rules (or reforms to existing rules), are likely to have on the EU’s global partners. As its international effects should not be underestimated, any increase in the regulatory burden in the EU may therefore be a cause of significant concern for business, not only from an EU point of view, but also globally.

Sufficient concerns?

As mentioned, ICLA does not consider that there is at this stages sufficient evidence to justify referring to a so-called ‘enforcement gap’. Currently, there is a balanced system in place that allows the European Commission to review transactions that trigger the EUMR notification thresholds, or have transactions referred for review based on Member State thresholds. ICLA considers that this system works well, and that it allows European competition authorities to capture those deals that have an impact on competition in the EEA, either at a European or national level.

Any potential ‘fears’ – if granted – about losing out on referrals in the future, due to changes in Member States or the configuration of the European Union as such, should be addressed by reviewing the referral system, and not determine additional notification requirements.

It should also be reminded that the overall notification and referral process is the outcome of a carefully considered system, balancing out the goals and objectives of the EUMR against the burdens imposed by the notification system. As explained above, while great efforts have been undertaken to simplify this process, and even though further improvements are welcome, on balance this system has proven to work well. The first question therefore remains whether concerns are sufficiently significant to risk upsetting this balance.

Right approach?

Were the Commission to conclude based on its assessment that indeed there is sufficiently robust evidence that there is an ‘enforcement gap that requires modifying the EUMR and impose additional notification requirements, it should carefully assess how best to do so. The mere fact that a transaction is captured by a regulatory approval process causes risk, uncertainty and substantial cost for companies. Introducing value-based thresholds will significantly increase such burdens, with little benefit – if any – to EU merger control.

It is worth emphasising that the value of a transaction does not in and of itself provide any information about the potential pro- or anti-competitive effects of a transaction, and therefore whether a competition agency should have a particular interest in reviewing “high-value deals”.

Acquisition valuation is driven by a number of factors. Economies of scale or supply chain efficiencies can lead to operating synergies through e.g. cost savings or higher growth. Financial synergies can include tax savings that the combined entity can benefit from (but which the individual companies, separately, would not). Also, increased size may increase the ability to acquire debt, and the combination of firms may allow for available cash of one party (e.g. the purchaser) to be allocated to the other party’s R&D projects or commercial opportunities which require funding to materialize. The strong managerial resources coupled with another party’s business (which may lack such resources) can also bring with it better performance and increase value. These are but a few examples which affect and influence deal valuations.

ICLA fears that establishing a value-based threshold also risks capturing a great number of deals that have no impact in the EU/EEA. It is therefore crucial to define local nexus requirements which exactly capture those deals that have an impact in the EEA. If the Commission moves to assessing appropriate measures for any “enforcement gap” it should consider the Recommended Practices of the ICN and the views of the OECD, to ensure that any proposed measures would comply with the important principles of these organisations.

Notably, the OECD takes an unfavorable view of transaction value-based thresholds: “*the value of the transaction is unsuitable to determine whether a transaction will have an impact on a specific jurisdiction.*”¹ The OECD recommends that a transaction value-based threshold should “*not [be] applied on its own*” but instead “*coupled with additional notification criteria better suited to establish local nexus.*” The “*two main tools used to ensure local nexus in these cases are rules requiring the transaction to have local effects, and exemptions that take into account local turnover or assets.*”¹

The ICN’s *Recommended Practices* state that merger control jurisdiction “*should be asserted only with respect to those transactions that have an appropriate nexus with the reviewing jurisdiction.*”¹ Moreover, notification thresholds should “*incorporate appropriate standards of materiality as to the level of “local nexus” required for merger notification.*” This “*local nexus*” threshold should be sufficiently high so that transactions which are unlikely to have a material effect on the domestic economy do not require notification.¹

To the extent that any thresholds were to be based on transaction-value alone, it is difficult to ascertain how such thresholds would have a material nexus to the EU and thus comply with the OECD and ICN guidance.

Finally, in case the Commission were to conclude that (i) there is robust evidence of an ‘enforcement gap’; (ii) that such gap should be addressed by revising the EUMR thresholds; and (iii) that such revision would entail the introduction of a value-based threshold, we urge the Commission to issue another consultation to discuss the technical details, and conduct an ‘impact assessment’ to ensure it is well informed about the potential impact of such system. In such scenario, alternative information systems should also be considered (such as for example a clearly defined version of the ‘light information’ system referred to above) – in order to minimize the additional burdens on companies, and avoid disrupting growth and innovation in the EU.

15. In your experience, have you encountered competitively significant transactions **in the pharmaceutical industry in the past 5 years** which had a cross-border effect in the EEA but were not captured by the current turnover thresholds set out in Article 1 of the Merger Regulation and thus fell outside the Commission's jurisdiction? [1]

[1] An example of such transactions is the 2015 acquisition of Pharmacyclis by AbbVie.

- YES
- NO
- OTHER

- **If yes**, please describe the characteristics of such transactions.

- **If yes**, please give concrete examples.

- **If yes**, please estimate how many of those transactions take place per year.

- **If yes**, do you consider that those transactions would typically qualify for a pre-notification referral under Article 4(5) of the Merger Regulation or a post-notification referral under Article 22 of the Merger Regulation? Please explain.

- **If no or other**, please explain your answer.

Please see our response to Q14 above

16. In your experience, have you encountered competitively significant transactions **in other industries than the digital and pharmaceutical sectors in the past 5 years** which had a cross-border effect in the EEA but were not captured by the current turnover thresholds set out in Article 1 of the Merger Regulation?

- YES
- NO
- OTHER

- **If yes**, please describe the characteristics of such transactions.

- **If yes**, please give concrete examples.

- **If yes**, please estimate how many of those transactions take place per year.

- **If yes**, do you consider that those transactions would typically qualify for a pre-notification referral under Article 4(5) of the Merger Regulation or a post-notification referral under Article 22 of the Merger Regulation? Please explain.

- **If no or other**, please explain your answer.

Please see our response to Q14

17. In your experience and in light of your responses to the previous questions (14 to 16), are the possible shortcomings of the current turnover-based jurisdictional thresholds of Article 1 of the Merger Regulation (in terms of possibly not capturing all competitively significant transactions having a cross-border effect in the EEA) sufficiently addressed by the current case referral system (including the pre-notification referrals to the Commission under Article 4(5) of the Merger Regulation and the post-notification referral to the Commission under Article 22 of the Merger Regulation)?

- YES
 NO
 OTHER

Please explain.

We do not consider that at this point in time there are any 'shortcomings' in the current EUMR turnover-based jurisdictional thresholds that need to be addressed – in particular when considered in combination with the existing merger control regimes at Member State level and the case referral mechanisms. We refer to our response to Q14 above.

18. Do you consider that the current absence, in the Merger Regulation, of complementary jurisdictional criteria (i.e. criteria not based exclusively on the turnover of the undertakings concerned) impairs the goal of ensuring that all competitively significant transactions with a cross-border effect in the EEA are subject to merger control at EU level?

- YES
 NO
 OTHER

- **If yes**, please also indicate which are, in your opinion, the complementary jurisdictional criteria whose absence may impair the above-mentioned goal. Please also take into account, in your reply, the Commission's objective of not imposing undue burdens on businesses.

- **If no or other**, please explain.

19. In particular, do you consider that the current absence, in the Merger Regulation, of a complementary jurisdictional threshold based on the value of the transaction ("deal size threshold") impairs the goal of ensuring that all competitively significant transactions with a cross-border effect in the EEA are subject to merger control at EU level?

- YES
- NO
- OTHER

Please explain.

Please see our response to Q14

20. If you replied yes to question 19, which level of transaction value would you consider to be appropriate for a deal size threshold? Please explain your answer.

21. If you replied yes to question 19, what solutions do you consider appropriate to ensure that only transactions that have a significant economic link with the EEA ("local nexus") would be covered by such a complementary threshold? In responding, please consider that the purpose of this deal size threshold would be to capture acquisitions of highly valued target companies that do not (yet) generate any substantial turnover.

- A general clause stipulating that concentrations which meet the deal size threshold are only notifiable if they are likely to produce a measurable impact within the EEA, complemented by specific explanatory guidance.
- Industry specific criteria to ensure a local nexus.
- Other

Please explain your response and provide examples where appropriate.

22. If you replied yes to question 19, would you see a need for additional criteria limiting the scope of application of this deal size threshold in order to ensure a smooth and cost-effective system of EU merger

control?

- YES
- NO
- OTHER

- Please state if any of the following criteria would be appropriate to ensure the desired efficiency [multiple answers are possible]:
 - A minimum level of aggregate worldwide turnover of all undertakings concerned.
 - A minimum level of aggregate Union-wide turnover of at least one of the undertakings concerned.
 - A maximum level of the worldwide turnover of the target business, in cases where the latter does not meet the Union-wide turnover thresholds (with the aim of only covering highly valued transactions where the target has a strong potential for instance to drive future sales but not cases where the target already generates significant turnover but outside of the EEA).
 - The requirement that the ratio between the value of the transaction and the worldwide turnover of the target exceeds a certain multiple. (Example: transaction value = EUR 1 billion, worldwide turnover of the target = EUR 100 million, ratio/ multiple = 10. The aim of this requirement would be to identify transactions where the valuation of the target company exceeds its annual revenues by several multiples, which could signal high market potential of the target.).
 - Other.

Please explain your answer.

IV.3. Referrals

The division of competence between the Commission and the EU Member States is based on the application of the turnover thresholds set out in Article 1 of the Merger Regulation and includes three corrective mechanisms.

The first corrective mechanism is the so-called "two-thirds rule". Pursuant to this rule, notification under the Merger Regulation is not required if each of the parties concerned realises more than two thirds of its EU-wide turnover in one and the same Member State, even if the general thresholds under Articles 1(2) and 1(3) of the Merger Regulation are met. The objective of this rule is to exclude from the Commission's jurisdiction certain cases which contain a clear national nexus to one Member State.

The second corrective mechanism is the pre-notification referral system introduced in 2004. This mechanism allows for the re-allocation of jurisdiction to the Member States under Article 4(4) of the Merger Regulation or to the Commission under Article 4(5) if certain conditions are fulfilled. The initiative for requesting such a referral prior to notification lies in the hands of the parties. However, pre-notification

referrals are subject to approval by the Member States and the Commission under Article 4(4) and by the Member States under Article 4(5) of the Merger Regulation.

The third corrective mechanism is the post-notification referral system whereby one or more Member States can request that the Commission assess mergers that fall below the thresholds of the Merger Regulation under certain conditions (Article 22 of the Merger Regulation). Conversely, a Member State may, in cases that have been notified under the Merger Regulation, request the transfer of competence to the national competition authorities under certain conditions (Article 9 of the Merger Regulation).

In relation to the current case referral mechanism foreseen by the Merger Regulation, the White Paper proposals aimed at making case referrals between Member States and the Commission more business-friendly and effective.

Those proposals essentially consist of:

1. Abolishing the two step procedure under Article 4(5) of the Merger Regulation, which requires that parties first file a Form RS and then the Form CO, if they would like the Commission to deal with a case that is notifiable in at least three Member States, but does not meet the jurisdictional thresholds of the Merger Regulation;

2. Specific modifications concerning the post-notification referrals from Member States to the Commission under Article 22 of the Merger Regulation, namely

- an expansion of the Commission's jurisdiction to the entire EEA if it accepts a referral request under Article 22 of the Merger Regulation (currently the Commission only obtains jurisdiction in those Member States that join the referral request),
- and a renouncement of jurisdiction over the entire EEA, if one or several Member States oppose the referral request, and

3. The removal of the requirement under Article 4(4) of the Merger Regulation pursuant to which parties have to assert that the transaction may "significantly affect competition in a market" in order for a case to qualify for a referral. Showing that the transaction is likely to have its main impact in a distinct market in the Member State in question would suffice. Removing the perceived "element of self-incrimination" may lead to an increase in the number of Article 4(4) requests.

23. Do you consider that the current case referral mechanism (i.e. Articles 4(4), 4(5), 9, and 22 of the Merger Regulation) contributes to allocating merger cases to the more appropriate competition authority without placing unnecessary burden on businesses?

- YES
 NO
 OTHER

Please explain.

As clarified in the answer to the following question, ICLA believes that the current case referral mechanism could be improved in order to eliminate unnecessary burden to businesses.

24. If you consider that the current system is not optimal, do you consider that the proposals made by the White Paper would contribute to better allocating merger cases to the more appropriate competition authority and/or reducing burden on businesses?

- YES
 NO
 OTHER

Please explain.

ICLA is broadly satisfied with the proposals made by the White Paper as they certainly contribute to better allocate merger cases and reduce burden placed on businesses.

In particular, as far as Article 4(5) is concerned ICLA welcomes the proposal to streamline the procedure for pre-notification referral to the Commission by the parties to a concentration, especially given the evidence that over the last decade only a few cases have been opposed by a Member State. These reforms will minimize the burden and costs on both the Commission and the parties; and make the possibility of using the European 'one stop shop' mechanism more appealing to businesses.

In particular, we support the proposals to:

- a. remove the requirement to submit both a Form RS and a Form CO; and
- b. shorten the consultation period and running this in parallel with the substantive review.

Given that the Commission will have already begun, and indeed, will have completed a significant amount of its work at Phase I, in our view it should be incumbent on Member States to show strong justification (e.g. legitimate national interest is at stake) before being able to oppose to avoid material duplication of effort and complexity. In the White Paper the Commission seems to imply that no justification is needed since a Member State is competent for the case. In our view, no requirement for a justification could limit the objectives of these reforms.

Furthermore, in relation to Article 22 we believe that the current conditions under which a Member State can refer a transaction to the Commission are too loosely defined. First, Member States need to be able to review the transaction under their own merger control rules in order to be able to refer it. Second, clear time limitations should be imposed that would bar any such referral in order to create legal certainty. In particular, if a transaction has been disclosed publicly, any Member State interested in a potential referral would need to have taken a referral decision within the 15-day waiting period. The Notice should be updated accordingly.

In addition, ICLA welcomes the principle that if the Commission is to accept jurisdiction on an Article 22 reference, it should review competition in the whole of the EEA. If this were not to be the case, parties can become embroiled in multiple proceedings within the EEA and there is the risk of potentially conflicting decisions and divergent remedies.

We believe that Member States should be required to show strong justification before being able to submit an opposition to limit the circumstances in which the laudable objectives of these reforms can

25. Do you consider that there is scope to make the referral system (i.e. Articles 4(4), 4(5), 9, and 22 of the Merger Regulation) even more business friendly and effective, beyond the White Paper's proposals?

- YES
 NO
 OTHER

Please explain.

ICLA considers that there is room to further ameliorate the referral system to make it even more business friendly and effective.

Specifically, an additional welcome reform would be that, if Member States do exercise their right to oppose, the relevant national competition authorities should accept the Form CO as sufficient to 'start the clock' on the national review. The Form CO is a comprehensive filing. It adds unnecessary burden, complexity and delay for parties to be required to replicate the content of the Form CO in the format required under national law. If the national competition authority feels that it requires any additional information, then this could be dealt with by way of a request for information.

IV.4. Technical aspects

The 2014 Commission Staff Working Document (2014 SWD) accompanying the White Paper identified additional technical aspects of the procedural and investigative framework for the assessment of mergers where experience has shown that improvement may be possible. The SWD included the following proposals:

- Modifying Article 4(1) of the Merger Regulation in order to provide more flexibility for the notification of mergers that are executed through share acquisitions on a stock exchange without a public takeover bid.
- Amending Article 5(4) of the Merger Regulation to clarify the methodology for turnover calculation of joint ventures.
- Introducing additional flexibility regarding the investigation time limits, in particular in Phase II merger cases.
- Modifying 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 (Article 7(4) of the Merger Regulation).
- Tailoring the scope of Article 5(2)(2) to capture only cases of real circumvention of the EU merger control rules by artificially dividing transactions and to address the situation where the first transaction was notified and cleared by a national competition authority.
- Clarification that "parking transactions" should be assessed as part of the acquisition of control by the ultimate acquirer.
- Amending 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 or use it for other purposes.
- Amending the Merger Regulation to clarify that referral decisions based on deceit or false information, for which one of the parties is responsible, can also be revoked.

26. Do you consider that there is currently scope to improve the EU merger control system and that each of the proposals contained in the 2014 SWD would contribute to achieving this purpose?

27. Based on your experience, are there any other possible shortcomings of a technical nature in the current Merger Regulation? Do you have any suggestions to address the shortcomings you identified?

28. One of the proposals contained in the 2014 SWD relates to the possibility of introducing additional flexibility regarding the investigation time limits. In this regard, have you experienced any particularly significant time constraints during a Phase 2 merger investigation, in particular in those cases where a Statement of Objections had been adopted (for example, for remedy discussions following the adoption of the Statement of Objections)?

- YES
- NO
- OTHER

Please consider, inter alia, the time needed for the Commission to carry out its investigation and for the notifying parties to make legal and economic submissions, exercise their rights of defence and to propose and discuss commitments.

29. In the light of your reply to question 28 above, do you consider that the current distinction between remedies presented before or after working day 55 since the opening of phase II proceedings, on which depends the extension of the procedure by 15 additional working days, is working well in practice?

- YES
- NO
- OTHER

Please explain.

Submission of additional information

Please feel free to upload a concise document, such as a position paper, explaining your views in more detail or including additional information and data. The maximal file size is 1MB. Please note that the uploaded document will be published alongside your response to the questionnaire which is the essential input to this open public consultation. The document is an optional complement and serves as additional background reading to better understand your position.