

## Opinion of the Committee on Trade and Industry 2014/15:NU5

### Examination of the White Paper, ‘Towards more effective EU merger control’

#### Summary

In this opinion the Committee discusses the European Commission's White Paper, ‘Towards more effective EU merger control’ (COM(2014) 449 final). The White Paper contains the Commission's reflections on a variety of proposals for making EU merger control more effective. In stating its position, the Committee emphasises that it is generally well disposed towards measures to improve and simplify EU merger control and to make it more effective.

# Contents

Summary .....	
Contents.....	
The Committee's proposal for a decision by the Swedish Parliament	
Overview of the issue .....	
The issue and preparatory work .....	
Background .....	
Main features of the White Paper.....	
Examination by the Committee .....	
Examination of the White Paper on more effective EU merger control .....	
Commission White Paper.....	
Further information .....	
The Committee's position .....	
Annex	
List of documents examined	

# The Committee's proposal for a decision by the Swedish Parliament

## **White Paper on more effective EU merger control**

The Swedish Parliament takes note of the Committee's statement.

Stockholm, 16 October 2014 On behalf of the Committee on

Trade and Industry

*Jennie Nilsson*

The following members were involved in this decision: Jennie Nilsson (Social Democratic Party), Catharina Elmsäter-Svärd (Moderate Party), Hans Rothenberg (Moderate Party), Ingemar Nilsson (Social Democratic Party), Josef Fransson (Sweden Democrats), Cecilie Tenfjord-Toftby (Moderate Party), Christer Engelhardt (Social Democratic Party), Helena Lindahl (Centre Party), Lise Nordin (Green Party), Ann-Charlotte Hammar Johnsson (Moderate Party), Anna Wallén (Social Democratic Party), Mattias Bäckström Johansson (Sweden Democrats), Christer Nylander (Liberal People's Party), Birger Lahti (Left Party), Penilla Gunther (Christian Democrats), Mattias Jonsson (Social Democratic Party) and Per-Arne Håkansson (Social Democratic Party).

## Overview of the issue

### The issue and preparatory work

On 14 August 2014, in accordance with Chapter 10 Section 5 of the Parliament Act, the House referred the European Commission's White Paper on more effective EU merger control (COM(2014) 449 final) for examination by the Committee on Trade and Industry. On 29 September 2014 the Committee received the Government Offices' explanatory memorandum (2013/14:FPM110) concerning the White Paper. The Commission's consultation process on the White paper continued up to and including 3 October 2014.

### Background

EU merger control is part of the EU's work on bringing about a properly functioning internal market. Control is designed to ensure that there is competition in the market and that consumers do not suffer because of economic concentration in a market.

In 2004 the Commission conducted a thorough review of EU regulations governing the examination of mergers. This resulted in the Council's currently applicable Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the EC Merger Regulation). Five years later the Commission submitted a report (COM(2009) 281 final) to the Council on how the Regulation operated regarding the system, as laid down in the Regulation, for distributing cases between the Commission and the Member States. In December 2013 the Commission adopted a Simplification Package, Commission Implementing Regulation (EU) No 1269/2013, with a view to making EU merger control more effective.

### Main features of the White Paper

The White Paper, 'Towards more effective EU merger control' (COM(2014) 449 final) was presented by the Commission on 9 July 2014. The White Paper contains the Commission's reflections on a variety of proposals for making EU merger control more effective. The White Paper states that, in the Commission's view, the merger control system ought, in the long term, to be developed into one with a single set of rules for mergers. It should bring about equal conditions and reduce the risk of inconsistent results. However, what the Commission discusses in the White Paper are proposals it is considering putting forward in the short term. The Commission proposes, firstly, that EU merger control include the acquisition of non-controlling minority shareholdings and, secondly, that the rules governing referrals to the Commission be made more effective.

## Examination by the Committee

### Examination of the White Paper, 'Towards more effective EU merger control'

#### **The Committee's proposals in brief**

The Committee proposes that the Swedish Parliament take note of its opinion. The Committee would point out that it is generally well disposed towards measures to improve and simplify EU merger control and make it more effective.

#### **Commission White Paper**

##### *General*

In the White Paper, the Commission proposes that, in the longer term, the rules on EU merger control be developed in such a way as to form a single European merger control system. It also points out that in the short term, however, there are mainly two ways of using more limited amendments to improve the current Regulation, (EC) No 139/2004, on the control of concentrations between undertakings (the EC Merger Regulation). These are, firstly, to have EU merger control include the acquisition of non-controlling minority shareholdings and, secondly, to make the rules governing referrals to and from the Commission still more effective. The proposals in the White Paper are designed to make EU merger control more effective.

According to the White Paper, the vast majority of mergers investigated by the Commission do not give rise to competition concerns and are cleared by the Commission following an initial examination. In fewer than five per cent of cases, a more thorough investigation is launched in the light of concerns arising during the initial examination that the merger might impede effective competition. In most cases, such concerns are alleviated through remedies offered by the parties. The Commission also states that only 24 mergers have been prohibited since 1990, six of them since 2004. According to the White Paper, these amount to significantly less than one per cent of more than 5 000 notified mergers.

##### *Acquisition of non-controlling minority shareholdings*

In the White Paper, the Commission points out that, under the current rules on merger control, it is unable to take action against the acquisition of a minority shareholding in businesses where such acquisition is unrelated to an acquisition of control. This applies even if the acquisition gives rise to competition problems. To address these problems, the Commission recommends that a 'targeted' transparency system be introduced whereby the parties

would make an assessment and submit an information notice to the Commission in cases where there was a competitively significant link between the parties. According to the White Paper, the system would provide the Commission with information about potentially problematic acquisitions, without causing an unnecessary and disproportionate administrative burden for businesses and national competition authorities (NCAs).

According to the Commission, the system would be used only when the minority shareholdings enabled the acquirer to exercise substantial influence over the target company's business policy and behaviour in the marketplace or gave them access to commercially sensitive information. The system would also mean that the parties would have to submit a full notification only if the Commission decided to initiate an investigation. According to the White Paper, the Commission could also consider proposing a waiting period of, for example, 15 working days within which the parties would not be permitted to conclude the transaction.

#### *Referral of cases*

The EC Merger Regulation has established a 'one-stop-shop' system whereby concentrations with an EU dimension (as defined by the turnover thresholds laid down in Article 1) are reviewed exclusively by the Commission, thus avoiding multiple review procedures at Member State level. While the turnover thresholds serve as a test for whether a merger is likely to have a European and cross-border dimension, the Commission may, under the EC Merger Regulation, also refer the case to one or more Member States, and vice versa. The White Paper states that greater convergence between the Commission and NCAs and among the NCAs is important for creating a level playing field in the market and avoiding inconsistent outcomes. In the White Paper, the Commission therefore proposes certain modifications to the case referral system in order to facilitate referrals and make the system more effective, without altering it fundamentally.

In the matter of pre-notification referrals from the Member States to the Commission, the White Paper states that, during the last ten years, the Member States have only in a few cases objected to a request to refer a case to the Commission. The Commission therefore proposes that the parties should be able to notify the merger directly to the Commission for examination instead of, as now, having first to inform the Commission in a reasoned submission. According to what is proposed in the White Paper, the Member States will however, in the future too, be able to object to a case being referred.

With regard to the rules on pre-notification referrals from the Commission to the Member States, the White Paper proposes that the substantive test for referrals be clarified and adapted so that the parties are no longer required to claim that the transaction may 'significantly affect competition in a market'. According to the White Paper proposal, showing that the transaction was likely to have its main impact in a distinct market in the Member State in question would suffice.

The Commission also proposes that only Member States that are competent to review a transaction under their national law be able to request a referral to the Commission. In order to prevent problems arising from a Member State's requesting a referral after another Member State has already taken a decision to approve a transaction, it is proposed that, after receiving a notification, the NCAs should circulate early information notices for cross-border cases. Such notices must

state whether the NCA is considering issuing a referral request. Under the proposal, the Commission would also be able to invite the Member State to request a referral. In such cases, the notice would cause the national deadlines in all the Member States investigating the case to be extended.

#### *Miscellaneous*

The Commission also states in the White Paper that there are reasons for further simplifying certain provisions of the EC Merger Regulation. The White Paper states that the Merger Regulation could be amended so that the creation of a full-function joint venture located and operating totally outside the EEA and with no impact on markets within the EEA would fall outside the scope of the Regulation. According to the White Paper, the Commission could be empowered to exempt from notification certain categories of transaction that normally do not raise any competition concerns.

### **Further information**

#### *Government Offices' explanatory memorandum*

The Government Offices' explanatory memorandum (2013/14:FPM110) concerning this White Paper states that the Government is generally well disposed towards measures that may make the framework of competition law more effective and improve competition.

Regarding the consequences for Sweden of what is presented in the White Paper, the explanatory memorandum states that the Swedish Competition Act (2008:579) contains rules on examining, and intervening against, concentrations between undertakings. Like the examination procedure, the Act's substantive rules are adapted to EU rules in this area. According to the explanatory memorandum, the prospect cannot be excluded of possible amendments to the Merger Regulation warranting amendments to the Swedish Competition Act. The memorandum also deems that the budgetary consequences of the Commission's proposal will be confined to such amendments to Swedish legislation as the proposal may entail.

*Previous discussion in the Swedish Parliament*

In the spring of 2014 the Committee discussed the Swedish Government's bill, Better Competition Enforcement (Gov't Bill 2013/14:135, Report 2013/14:NU25), in which the Government proposed that the Swedish Competition Authority should provisionally be able to suspend the deadlines applied on examination of mergers. The Committee endorsed the bill and, in the position it adopted, emphasised that there was a need to introduce new provisions governing the Competition Authority's merger examinations.

**The Committee's position**

The Committee can begin by stating that EU merger control is a significant part of the work on bringing about a properly functioning internal market. In the light of what the Committee has previously said about better competition enforcement in connection with mergers (Report 2013/14:NU25), the Committee would emphasise that it is generally well disposed towards measures to improve and simplify EU merger control and make it more effective. In the Committee's view, it is important for healthy competition to be maintained and for consumers not to suffer because of economic concentration in a market. Finally, the Committee would emphasise how important it is for the Commission to draft future bills in this area in such a way that they do not entail increased administrative costs for businesses.

The Committee thus proposes that the Swedish Parliament take note of its opinion.



ANNEX

**List of documents examined**

The European Commission's White Paper, 'Towards more effective EU merger control' (COM(2014) 449 final).