



# EU merger control – The simplification project

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4 June 2013, Zagreb

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# Objectives of review

- EU merger control works well...
  - Efficient system, based on *ex-ante* notifications,
  - Effective to catch anti-competitive mergers,
  - Ensures transparency by publishing all decisions,  
... but always room for improvements
- Review focusses on information and procedural considerations for notification (simplified/normal procedure; notification forms)
- Commission expects significant positive effects in terms of costs and resources for businesses, advisors and Commission

# Commission analysis

- Review of all merger cases from 2008, 2009 and 2010 (phase I outcome of all non-simplified cases)

	# of cases	% of all cases
<b>Total number of cases in sample (2008-2010)</b>	<b>850</b>	<b>100%</b>
<b>Normal (i.e. non-simplified) cases</b>	<b>374</b>	<b>44%</b>
<b>Simplified cases</b>	<b>476</b>	<b>56%</b>

- Systematic review of "forms"  
(Form CO, Short Form CO and Form RS)

# Commission proposal for consultation

- Proposed content of the simplification package:
  1. Extension of the simplified merger procedure (Simplified notice, Short Form CO)
  2. Streamline, reduce, standardise and update information required to notify a concentration/reasoned submission (Implementing Regulation, Forms: Short, CO, RS)
- Streamline procedures, cut red tape for business and advisors and focus Commission resources

# Simplified notice: Proposed modifications

Extending the scope of the simplified procedure...

... while keeping its simplicity,

... respecting the substantive safe harbours in  
Commission guidance documents, and

... staying within the limits revealed by the analysis of  
past case practice.

# Simplified notice: Proposed modifications

1. Increased market share thresholds
  - 20% for horizontal overlaps (instead of current 15%)
  - 30% for vertical relationships (instead of current 25%)
2. New criterion: horizontal cases where HHI delta smaller than 150 and combined market share below 50%
  - Examples for  $\Delta\text{HHI} = 150$ :
    - A 25% + B 3%
    - X 37.5% + Y 2%
  - Combined with new informational safeguards in Short Form
3. Clarifications: Joint ventures and parents

# Form CO: Basic requirements

Form CO should request information necessary in particular:

- To start a Commission investigation,
- That could be completed in phase I, and
- That forms the basis to draft a sound decision, including dynamic aspects of competition

# Form CO: Main modifications proposed

Streamlining structure and wording; reducing content

- Affected markets: moving thresholds up to 20% (horizontal overlaps) and 30% (vertical relationships)
- Market definition: "plausible" alternatives (harmonisation of product and geographic market; no must-have geographic levels)
- Streamlining discussion of supply and demand factors
- ✂ cross-directorships, HHI figures, various sub-questions, etc.
- Pre-identified information categories for waivers



# Form CO: Main modifications proposed

Updating of information sought:

- Encouraged:
  - International cooperation
  - Quantitative economic evidence
- Relevant internal documents
- Elements of dynamic competition (innovation)

# Short Form CO: Basic requirements

Short Form CO should request the information necessary to put Commission in a position to:

- Conclude on jurisdiction;
- Get necessary level of comfort to exclude competition concerns and the need to investigate; and
- Handle the case throughout simplified procedure (internal reporting, adoption of clearance decision)

# Short Form CO: Main modifications proposed

Differentiated, targeted requirements by case category:

- No reportable markets:
  - only explain transaction, turnover and business;
  - Specifically for extra-EEA JVs: only explain JV's business and why no effects in EEA
- Horizontal or vertical relationships:
  - refining of current requirements;
  - need for market definition and minimum market information.
- $\Delta$  HHI < 150: additional information to exclude factors mentioned in Horizontal Merger Guidelines

# Form RS: Basic requirements

- Information necessary to assess whether pre-notification referral request is appropriate/admissible:
  - Legal requirements:
    - Article 4(4): Union dimension; affected market – national/narrower
    - Article 4(5): No Union dimension; capable of review by 3+ MS
  - Additional factors:
    - More appropriate authority/nexus of the case

# Form RS: Main modifications proposed

- Streamlining:
  - ✓ Market size; market shares
  - ✗ HHI figures; information on customers, suppliers, cooperation agreements
- More information on crucial matters:
  - Union dimension: systematic breakdown of turnover
  - Concentration: nature of transaction
  - Geographic market: plausible alternatives

# Expected impact of proposals on EU merger control

- Expect significant positive effect – "customer"-friendly
- Expect ca. 10% of cases to shift from normal to simplified procedure – resulting share ca. 70%
  - Preliminary estimate: companies' savings expected in the range of ca. 1/3 – 1/2 of the hours/fees for lawyers and preparatory work in-house up to time of notification
- Net reduction of information required in all cases (normal and simplified)
  - Impact difficult to quantify
- Focussing Commission's resources on significant cases

# State of play and outlook

- ✓ Commission Services' internal analysis and reflexions
- ✓ First consultation of Member States
- ✓ Commission adoption of proposal for public consultation
- **Public consultation and review of feedback**
- Analysing and incorporating feedback from consultation
- Adoption of final proposal



# Thank you

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