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# EU Commission Proposes to Simplify Merger Control Procedures

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## EU Commission Launches Public Consultation on Proposed Simplification Measures to EU Merger Control Procedures, Including Simplified Treatment of Non-Complex Cases

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### SUMMARY

The Commission has now launched its long-awaited consultation on proposed simplification measures to EU merger control procedures. This includes draft revised notification forms and a draft revised version of the Notice on Simplified Procedure. The Commission's aim is to simplify the procedure for straightforward cases that are unlikely to give rise to competition concerns, and to focus the Commission's resources on the most complex and relevant cases.

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### I. EU COMMISSION PROPOSAL FOR SIMPLIFIED MERGER CONTROL REGIME

Approximately 93% of the transactions notified to the Commission do not give rise to competition concerns and receive unconditional clearance.<sup>1</sup> Given this background, the Commission is seeking to reduce the administrative burden on its merger control resources and launched a long-awaited public consultation on the simplification of EU merger control procedures on 6 May 2022. This is a pre-cursor to new rules coming into force in 2023 which will be a welcome development for merging parties to transactions.

The Commission's public consultation is open to all interested parties and solicits feedback from stakeholders on:

- 1. Adding new categories of cases benefitting from a simplified procedure and "flexibility clauses":** The Commission considers there to be scope for expanding and clarifying the categories of simplified cases and proposes to add two new categories of cases where:

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- a. Under all plausible market definitions, the individual or combined upstream market share of the parties to the transaction is below 30% and their combined purchasing share is below 30%; and
- b. Under all plausible market definitions, the individual or combined upstream and downstream market shares of the parties to the transaction are below 50% and the HHI<sup>2</sup> delta is below 150 and the smaller undertaking in terms of market share is the same in the upstream and downstream markets.

The Commission is also considering introducing a “flexibility clause” which would allow (but not require) the Commission to review transactions under the simplified procedure where:

- a. The transaction gives rise to horizontal overlaps but the combined market share of the parties is 20%-25% and, for vertical relationships, where the individual or combined upstream and downstream market shares of the parties are 30%-35%;
- b. The transaction relates to a joint venture with turnover and assets between EUR 100 million and 150 million in the EEA; and
- c. The transaction gives rise to vertical relationships and the individual or combined market shares of the parties to the transaction do not exceed 50% in one market and 10% in the other market.

The Commission is also soliciting stakeholder feedback on proposed revisions to the Notice on Simplified Procedure to include a clearer and more detailed list of the circumstances when a transaction that technically qualifies for simplified treatment has to be investigated as a non-simplified case.

- 2. Revised information requirements for simplified cases (Short Form CO):** The Commission proposes to simplify the Short Form CO to reduce the burden on notifying parties and to make it easier to provide information in a form useful to the Commission. This includes proposals to revise the Short Form CO to include multiple choice style answer options (rather than open text boxes) and a proposal for a new category of cases that can benefit from “super-simplified treatment” with even less disclosure requirements and no need for pre-notification contacts with the Commission.<sup>3</sup> This would include transactions involving joint ventures with no turnover or assets in the EEA and all cases where there are no horizontal overlaps or non-horizontal relationships between the merging parties’ activities.
- 3. Revised information requirements for non-simplified cases (Form CO):** The Commission proposes to revise the Form CO to include new, clear instructions on waivers to provide certain information, limiting information requirements for markets that benefit from the “flexibility clauses” (see above), new tables for providing information on horizontal overlaps and vertical relationships involving pipeline products, and eliminating certain other information requirements altogether (e.g., regarding trade associations).
- 4. Replacing the old notification system with a new electronic system:** The Commission proposes to make the current (temporary) notification regime by which it accepts electronic notifications permanent. Going forward, transmission of documents to and from the Commission, including notifications, would take place in principle through digital means.

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## II. A WELCOME DEVELOPMENT

These proposals are a welcome development for merging parties who have to grapple with increasingly onerous and burdensome notification requirements, particularly on large cross-border transactions.

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Between the proliferation of merger control and foreign investment screening regimes around the world, the Commission's proposal to simplify the merger review process – particularly for non-problematic transactions with no significant impact on competition within the EEA – will certainly come as a breath of fresh air for investors.

Interested parties are invited to submit their comments on the draft rules by 3 June 2022.

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### ENDNOTES

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- 1 See Commission, "Revision of Merger Implementing Regulation and Revision of the Commission Notice on Simplified Procedure – Explanatory note", available at [https://ec.europa.eu/competition-policy/public-consultations/2022-merger-simplification\\_en](https://ec.europa.eu/competition-policy/public-consultations/2022-merger-simplification_en) (last accessed on 19 May 2022).
- 2 Herfindahl-Hirschman Index.
- 3 Super-simplified cases would not have to complete Sections 8 to 11 of the Short Form CO and would be invited to notify these transactions directly without pre-notification contacts.

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