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Soulie Bunch, Cabinet d'avocats d'affaires basé à Paris et Lyon

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Merger Control: The European Commission further cuts red tape for merging businesses

On April 20, 2023, the European Commission adopted a new merger control simplification package to further simplify its procedures for reviewing mergers.

This package is expected to bring significant benefits for businesses and advisers in terms of preparatory work and related costs.

The new rules will apply as from September 1, 2023.

It should be preliminarily recalled that the European Commission (the “*Commission*”) has *inter alia* the duty to assess mergers and acquisitions involving companies with a turnover above certain thresholds and to prevent concentrations that would significantly impede effective competition in the European Economic Area or any substantial part of it.

Over the years, the Commission has sought to focus its investigations on cases likely to have a significant impact on EU businesses and citizens and adopted a number of measures to streamline and simplify the merger review process for unproblematic cases.

The package adopted on April 20, 2023 is a further step in this direction. It includes:

- a revised merger implementing regulation^[1],
- a notice on simplified procedure^[2], and

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- a communication on the transmission of documents^[3].

It aims at simplifying and expanding the scope of the Commission's review process of simplified cases, seeking to reduce the amount of information required for notifying any and all transactions, and optimizing the transmission of documents.

The main changes introduced by the 2023 merger simplification package are outlined below.

Expansion of the number of cases which can be treated under the simplified procedure

The notice on simplified procedure identifies two new categories of cases that can benefit from simplified treatment. These are cases where under all plausible market definitions:

- The individual or combined upstream market share of the merging parties is below 30% and their combined purchasing share is below 30%; and
- The individual or combined upstream and downstream market shares of the merging parties are below 50%, the market concentration index ('HHI delta') is below 150, and the company with the smallest market share is the same in the upstream and downstream markets.

The Commission also now has discretion to treat certain cases under the simplified procedure even if they do not fall under any of the default categories for such treatment.

Lastly, the notice on simplified procedure provides a clearer and more detailed list of circumstances in which the Commission may investigate a case that technically qualifies for simplified treatment under the normal review procedure.

Streamlining of the review of simplified cases

The implementing regulation introduces a new notification form ("tick-the-box" Short Form CO) for simplified cases. This form includes primarily multiple-choice questions and tables, and streamlined questions on both the jurisdictional and substantive assessment of cases.

The notice on simplified procedure also identifies categories of cases that can benefit from a "*super-simplified*" treatment, whereby parties are invited to notify directly without prior engagement with the Commission.

Streamlining of the review of non-simplified cases

The implementing regulation reduces and clarifies the information requirements in the notification form for non-simplified cases (Form CO).

This form now includes clearer information on waiver possibilities, introduces tables for information on

affected markets, and eliminates certain information requirements.

Optimization of the transmission of documents to the Commission

The communication on the transmission of documents introduces electronic notifications by default for optimization purposes.

All of these changes are also expected to simplify pre-notification contacts overall, further reducing the time needed for these discussions.

During the presentation of these new measures, Mrs. Margrethe Vestager, Executive Vice-President in charge of competition policy, indicated that:

“Reducing administrative burden is a Commission-wide priority. The 2023 Merger simplification package adopted today widens the scope of our simplified procedure to review unproblematic mergers. The new rules also make the notification process significantly easier for the parties to the benefit not only of companies and advisors but also of the Commission, which will be able to focus its resources on the most complex cases.”

As such, the 2023 merger simplification package must contribute to achieving the Commission’s objective to reduce reporting requirements and administrative red tape by 25%, as announced in its communication “Long-term competitiveness of the EU: looking beyond 2030”^[4] published on March 16, 2023.

[1] Available here [https://ec.europa.eu/transparency/documents-register/detail?ref=C\(2023\)2400&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=C(2023)2400&lang=en)

[2] Available here: [https://ec.europa.eu/transparency/documents-register/detail?ref=C\(2023\)2401&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=C(2023)2401&lang=en)

[3] Available here: [https://ec.europa.eu/transparency/documents-register/detail?ref=C\(2023\)2402&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=C(2023)2402&lang=en)

[4] Available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52023DC0168&from=EN>

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