

# CLIENT UPDATE

## EU MERGER CONTROL: NEW NOTIFICATION PROCEDURES IN EFFECT

### LONDON

Timothy McIver  
tmciver@debevoise.com

### FRANKFURT

Daniel Wiedmann  
dwiedman@debevoise.com

### SUMMARY

A number of reforms designed to simplify certain aspects of the EU merger control process came into effect from January 1, 2014.

There are three main changes. First, the scope of the simplified review procedure under the EU Merger Regulation (the “EUMR”) has been widened. Second, the amount of information required by the European Commission (the “Commission”) has decreased with respect to some items (although it appears it could actually increase with respect to others). Finally, the relevant notification forms have been updated to streamline the entire process.

### EXPANDED SCOPE FOR SIMPLIFIED PROCEDURE

Under the EUMR, transactions that do not raise competition concerns qualify for a simplified notification process and review. The main benefit of the simplified procedure is that it reduces the amount of information that has to be provided by the parties. It typically also allows for a faster pre-notification process. The reform package has expanded the scope of this so-called short-form procedure as follows:

- for markets where the companies compete (“horizontal markets”), mergers below a 20% combined market share will now qualify for the simplified procedure (instead of the current 15%);
- for mergers where one of the companies is upstream or downstream of a market where the other company is active (“vertically related markets”), mergers below a 30% combined market share (instead of the current 25%) will qualify; and
- if the combined market shares of two merging companies are between 20% and 50%, but the actual increase in market shares due to the merger is nominal, the merger may also be assessed under the simplified procedure.

The Commission has predicted that up to 60-70% of cases will now be notifiable under the simplified procedure, which would be a c.10% increase from the previous regime.

The Commission has also implemented a so-called “super-simplified notification” procedure for joint ventures that are active entirely outside of the EEA. For those cases, companies will only have to describe the transaction and their business activities, and to provide the turnover figures that the Commission needs to establish jurisdiction. However, extra-territorial joint ventures do still require notification.

## **INFORMATION REQUIREMENTS**

The reform package has also introduced new notification requirements to reduce the amount of information required in some areas, although increasing it in others.

One significant change is that parties to a transaction that qualifies for the simplified procedure and where there are horizontal or vertical overlaps in the EEA will need to provide copies of all presentations prepared by, or for, any members of the board of management, the board of directors, the supervisory board or the shareholders’ meeting. At the same time, for non-simplified cases, the reforms increase the threshold of what constitutes an “affected market” and the merging parties will only have to submit detailed information for those markets where the market share actually exceeds the new simplified procedure thresholds. If a full Form CO notification is required, however, the parties will now also be required to submit all internal documents prepared in the two years preceding the transaction that assess any of the “affected markets”.

The Commission has at the same time taken steps to encourage the merging parties to request waivers for certain categories of information and has identified those it considers may be good candidates for such requests.

## **SHORTER PRE-NOTIFICATION PROCESS**

Although not a requirement, it is a standard part of the process to spend time in discussions with the Commission before submitting the formal notification. The reforms have sought to shorten this potentially lengthy process, primarily through the expanded scope of the simplified procedure. In addition, the Commission has said that simplified cases that do not give rise to any horizontal overlap or vertical link between the parties in the EEA can be notified without any pre-notification contact. Based on 2008-2010 figures, this concerns around 25% of cases that qualify for a simplified review.

## **CONCLUSION**

The reforms to EU merger control are welcome to the extent they will increase the number of mergers that benefit from a simplified review. In particular, the introduction of the “super-simplified notification” procedure for certain joint ventures is a long-overdue improvement. However, it remains to be seen whether the changes will actually reduce the in-house workload and costs associated with the notification procedure.

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Please do not hesitate to contact us with any questions.

January 3, 2014