

I. About you

Please provide your contact details below:

*1. Are you replying as:

- ☐ a private individual
- ☒ an organisation or a company
- ☐ a public authority or an international organisation

*The name of your organisation/ company/ public authority/ international organisation

The UK Competition Law Association ("CLA"). The CLA is affiliated to the Ligue Internationale du Droit de la Concurrence.

*Your full name

David Went and Mark Clough QC

*Email address

went@exchangechambers.co.uk and mark.clough@dentons.com

* Organisation represented

1.1 Please indicate which type of organisation or company it is.

- ☐ Academic institution
- ☐ Non-governmental organisation
- ☐ Company/SME/micro-enterprise/sole trader
- ☐ Think tank
- ☐ Media
- ☐ Consumer organisation
- ☒ Industry association
- ☐ Consultancy/law firm
- ☐ Trade union

* 1.1.1 Please indicate which type of public authority or international organisation it is:

- ☐ EU national competition authority
- ☐ Government or Ministry
- ☐ International or European organisation
- ☐ Regulatory authority (other than a competition authority)
- ☐ Other public body

* 1.1.1 Is it a multinational enterprise (groups with establishments in more than one country)?

☐

YES

☐

NO

* 1.1.2 How many employees does your company have?

☐

1-9

☐

10-49

☐

50-249

☐

250-499

☐

500 or more

* 1.2 Please provide a brief description of the activities of your organisation.

Members of the CLA include barristers, solicitors, in-house lawyers, academics, and other professionals, including economists, patent agents, and trade mark agents. The main object of the CLA is to promote freedom of competition and to combat unfair competition. Further details on the CLA can be found on our website at <http://www.competitionlawassociation.org.uk>.

* 1.3 Where are you based?

☐

Austria

☐

Belgium

☐

Bulgaria

☐

Croatia

☐

Cyprus

☐

Czech Republic

☐

Denmark

☐

Estonia

☐

Finland

☐

France

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Germany

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Greece

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Hungary

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Iceland

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Ireland

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Italy

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Latvia

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Liechtenstein

☐

Lithuania

☐

Luxemburg

☐

Malta

☐

Netherlands

☐

Norway

- ☐ Poland
- ☐ Portugal
- ☐ Romania
- ☐ Slovak Republic
- ☐ Slovenia
- ☐ Spain
- ☐ Sweden
- ☒ United Kingdom
- ☐ Other

*Please specify.

2. Transparency Register ([Register now](#))

In the interests of transparency, the Commission asks organisations who wish to submit comments in the context of public consultations to provide the Commission and the public at large with information about whom and what they represent by registering in the [Transparency Register](#) and subscribing to its [Code of Conduct](#). If an organisation decides not to provide this information, it is the Commission's stated policy to list the contribution as part of the individual contributions. (Consultation Standards, see COM (2002) 704; Better Regulation guidelines, see SWD(2015)111 final and Communication on ETI Follow-up, see COM (2007) 127).

If you are a registered organisation, please indicate below your Register ID number when replying to the online questionnaire. Your contribution will then be considered as representative of the views of your organisation.

If your organisation is not registered, you have the opportunity to register now, please click on the link in the title. Then you can return to this page, continue replying to the questionnaire and submit your contribution as a registered organisation.

It is important to read the specific privacy statement available on the public consultation website for information on how your personal data and contribution will be used.

For registered organisations: indicate your Register ID number here:

Not applicable.

* 3. Please choose from one of the following options on the use of your contribution:

- ☒ My/our contribution can be directly published with my personal/organisation information (I consent to publication of all information in my contribution in whole or in part including my name/the name of my organisation, and I declare that nothing within my response is unlawful or would infringe the rights of any third party in a manner that would prevent publication).
- ☐ My/our contribution can be directly published provided that I/my organisation remain(s) anonymous (I consent to publication of any information in my contribution in whole or in part

(which may include quotes or opinions I express) provided that this is done anonymously. I declare that nothing within my response is unlawful or would infringe the rights of any third party in a manner that would prevent publication. I am aware that I am solely responsible if my answer reveals accidentally my identity.

- ☐ My/our contribution cannot be directly published but may be included within statistical data (I understand that my contribution will not be directly published, but that my anonymised responses may be included in published statistical data, for example, to show general trends in the response to this consultation) Note that your answers may be subject to a request for public access to documents under Regulation (EC) No 1049/2001.

*4. Finally, if required, can the Commission services contact you for further details on the information you have submitted?

☒ YES

☐ NO

II. Questionnaire

II.1. Simplification

In December 2013, the Commission adopted a package of measures aimed at simplifying procedures to the fullest extent possible without amending the Merger Regulation itself (the so called "Simplification Package"). In particular, the Simplification Package:

- Widened the scope of application of the so-called simplified procedure for non-problematic cases;
- Streamlined and simplified the forms for notifying mergers to the Commission.

Through the Simplification Package, which entered into force on 1 January 2014, the number of cases dealt with under the simplified procedure has increased by 10 percentage points from an average of 59% over the period 2004-2013 to around 69% of all notified transactions over the period January 2014 to September 2016).

According to the Commission Notice on simplified procedure ("the Notice"), the Commission in principle applies the simplified procedure to each of the following categories of concentrations:

- Transactions where two or more undertakings acquire joint control of a joint venture, provided that the joint venture has no, or negligible, actual or foreseen activities within the territory of the European Economic Area (EEA); such cases occur where: (i) the turnover of the joint venture and/or the turnover of the contributed activities is less than EUR 100 million in the EEA territory at the time of notification; and (ii) the total value of assets transferred to the joint venture is less than EUR 100 million in the EEA territory at the time of notification (see point 5 (a) of the Notice);
- Transactions where two or more undertakings merge, or one or more undertakings acquire sole or joint control of another undertaking, provided that none of the parties to the concentration are engaged in business activities in the same product and geographic market, or in a product market which is upstream or downstream from a product market in which any other party to the concentration is engaged (see point 5 (b) of the Notice);
- Transactions where two or more undertakings merge, or one or more undertakings acquire sole or joint control of another undertaking and both of the following conditions are fulfilled: (i) the combined market share of all the parties to the concentration that are engaged in business activities in the same product and geographic market (horizontal relationships) is less than 20 %; (ii) the individual or combined market shares of all the parties to the concentration that are engaged in business activities in a product market which is upstream or downstream from a product market in which any other party to the concentration is engaged (vertical relationships) are less than 30 % (see point 5 (c) of the Notice);
- Transactions where a party is to acquire sole control of an undertaking over which it already has joint control (see point 5 (d) of the Notice)
- Transactions where two or more undertakings merge, or one or more undertakings acquire sole or joint control of another undertaking, and both of the following conditions are fulfilled: (i) the combined market

share of all the parties to the concentration that are in a horizontal relationship is less than 50 %; and (ii) the increment (delta) of the Herfindahl-Hirschman Index (HHI) resulting from the concentration is below 150 (see point 6 of the Notice).

The Notice sets out a number of safeguards and exclusions from the simplified procedure (see notably points 8 to 21). The Commission may decide not to accept a proposed concentration under the simplified procedure or revert at a later stage to a full assessment under the normal merger procedure.

The 2014 White Paper made further-reaching proposals for amendments to the Merger Regulation that would make procedures simpler:

- This could be achieved for example by excluding certain non-problematic transactions from the scope of the Commission's merger review, such as the creation of joint ventures that will operate outside the European Economic Area (EEA) and have no impact on European markets;
- Moreover, notification requirements for other non-problematic cases - currently dealt with in a 'simplified' procedure - could be further reduced, cutting costs and administrative burden for businesses.

These proposals are still being assessed. Your response to the following questions will contribute to that assessment.

1. The Merger Regulation provides for a one stop shop review of concentrations. Several categories of cases that are generally unlikely to raise competition concerns and falling under point 5 or 6 of the Notice (see above) are treated under a simplified procedure. To what extent do you consider that the one stop shop review at EU level for concentrations falling under the simplified procedure has created added value for businesses and consumers? Please rate on a scale from 1 to 7.

(1 = "did not create much added value"; 7 = "created much added value"):

	1	2	3	4	5	6	7
Your rating	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please explain.

The CLA welcomes the fact that the European Commission has always sought to minimise the administrative burden on notifying parties and third parties arising from merger control proceedings. In the CLA's view, the new simplified procedure (and accompanying Short Form CO) introduced in January 2014 has resulted in less burden for notifying parties. However, the CLA considers that more could be done to reduce the information burden on notifying parties. Please see further below in relation to the different categories of mergers.

Throughout the CLA's responses, the CLA adheres to the terms as defined in this consultation document.

Further simplification of the treatment of certain categories of non-problematic cases

2. In your experience, and taking into account in particular the effects of the 2013 Simplification Package,

has the fact that the above-mentioned categories of merger cases are treated under the simplified procedure contributed to reducing the burden on companies (notably the merging parties) compared to the treatment under the normal procedure?

(i) Mergers without any horizontal and vertical overlaps within the EEA or relevant geographic markets that comprise the EEA, such as worldwide markets (transactions falling under point 5b of the Notice);

- ☒ YES
☐ NO
☐ OTHER

Please explain

In the CLA's view, the Commission's reducing – through the current simplified procedure and Short Form CO – the amount of information required to be supplied to the Commission for concentrations where there are no horizontal or vertical overlaps between the parties has certainly reduced the regulatory burden, especially on notifying parties. This includes, for example, removal of the need to provide any internal documents pursuant to Section 5.3 of the Short Form CO and removal of the need to define product and geographic markets pursuant to Section 6 of the Short Form CO.

The regulatory burden has also been reduced through the Commission's explicitly recognising that pre-notification discussions may not necessarily be helpful in cases where there are no reportable markets within the meaning of Section 6 of the Short Form CO.

In relation to pre-notification discussions, however, there can be some uncertainty on the part of the notifying parties as to whether the Commission case team will in fact accept a Short Form CO as complete (for example, where there is no clear market definition precedent) and this can lead to notifying parties choosing to engage in pre-notification discussions in all but the most clear-cut of cases. The CLA considers that it would be beneficial to have a more streamlined pre-notification process (as short as a week or even a few days following appointment of the case team) to deal with cases that appear not to give rise to reportable markets.

(ii) Mergers leading only to limited combined market shares or limited increments or to vertical relationships with limited shares on the upstream and downstream markets within the EEA or relevant geographic markets that comprise the EEA (transactions falling under point 5c or point 6 of the Notice);

- ☒ YES
☐ NO
☐ OTHER

Please explain

The CLA considers that making more transactions eligible for the simplified procedure and Short Form CO has certainly reduced the regulatory burden, especially on notifying parties. This is particularly the case for (a) those horizontal mergers where the parties' applicable market shares exceed 15% but are below 20% and (b) those vertical mergers where the parties' applicable market shares exceed 25% but are below 30%.

There is nevertheless a considerable amount of information that needs to be provided under Sections 6 and 7 of the Short Form CO. As regards the provision of information on reportable markets in Section 7 of the Short Form CO, while it may be possible in individual cases to obtain waivers from providing certain information responsive to Section 7 of the Short Form CO (and indeed other Sections of the Short Form CO), the CLA considers that there is insufficient consistency on the part of different case teams in deciding what information needs to be provided for the Short Form CO to be deemed complete. In the CLA's view, it would be helpful if the Commission could provide further guidance on this area with a view to achieving more transparency in the process, consistency across different cases and case teams, and proportionality. Guidance could, for example, be based on market share levels – with very limited information being required in response to Section 7 of the Short Form CO and no requirement to provide internal documents pursuant to Section 5.3 of the Short Form CO where certain market share levels are not exceeded. In addition, the requirement to provide information on “all plausible alternative market definitions” in simplified cases has increased burdens on businesses, in particular where case teams have insisted on provision of data on the basis of market definitions that are merely theoretically plausible (but not considered likely in the industry) in relation to transactions that clearly do not raise competition concerns. The CLA would advocate that this requirement is reconsidered or guidance be provided to ensure a consistent and proportional application of this information requirement.

The CLA considers that Section 5.3 of the Short Form CO (requirement to provide internal documents) should be removed since it is inappropriate and unnecessary given that transactions eligible for the Short Form CO and simplified procedure do not raise competition concern and it is inconsistent with the stated aim of the Simplification Package of reducing the regulatory burden. The Commission could of course always request such documents in any specific cases where warranted (but provided such requests are consistent across cases and proportionate). If the Commission is not minded to remove the Section 5.3 requirement for internal documents, the CLA considers that this section is drafted more widely than is necessary for the Commission to obtain the information it requires for purposes of adequately assessing notified concentrations. It seems to the CLA that, rather than requesting all relevant internal documents “analysing the transaction”, it would be sufficient to request such documents that “analyse competitive conditions in the reportable markets.” This may in any event be implicit in the information request but it would be helpful to make this explicit.

Moreover, CLA is aware that for certain companies (e.g., private equity, the provision of financial statements responsive to section 5.2 of the Short Form CO can be highly sensitive. Typically, such financial statements do not contain information of relevance to the Commission because they do not consolidate revenues of the portfolios or provide information on the business activities of the portfolios. While it can be possible to obtain waivers from the need to provide such financial statements, the experience of members of the CLA is that case teams do not take a consistent approach so that a derogation solution leaves companies exposed to arbitrary treatment. The CLA would therefore recommend that there no longer be an obligation to provide financial statements if such statements do not provide consolidated accounts and/or information of the portfolio activities.

(iii) Joint ventures with no or limited activities (actual or foreseen), turnover or assets in the EEA (transactions falling under point 5a of the Notice);



YES



NO



OTHER

Please explain

In relation to joint ventures that are active entirely outside the EEA, the CLA considers that the “super-simplified notification” (as it was described by the Commission at the time of introducing the current simplified procedure) has reduced the regulatory burden particularly for notifying parties (with a need now only to describe the transaction, the parties’ business activities, and to provide the turnover figures for jurisdictional purposes).

As regards joint ventures active within the EEA but subject to the simplified procedure, the CLA considers that the comments in response to 2(i) and (ii) of this consultation above apply.

(iv) Transactions where a company acquires sole control of a joint venture over which it already has joint control (transactions falling under point 5d of the Notice).

- ☒ YES
- ☐ NO
- ☐ OTHER

Please explain

The CLA is of the view that the reduced information requirements for concentrations where a company acquires sole control of a joint venture over which it already has joint control has reduced the regulatory burden particularly on notifying parties in the same way as set out in response to questions 2(i), (ii), and (iii) of this consultation above.

However, the CLA further considers that switches from joint to sole control rarely raise competition concerns and so it should be possible to reduce the information requirements for such transactions particularly in terms of the information requested in Section 7 of the Short Form CO without compromising the Commission's review of such transactions. While it is of course possible to make requests for waivers in individual cases, further guidance from the Commission in this area would aid transparency and consistency.

3. As indicated, the Commission may decide not to accept a proposed concentration under the simplified procedure or revert at a later stage to a full assessment under the normal merger procedure. Have you dealt with or otherwise been involved in merger cases notified to the European Commission in the last five years that changed from simplified treatment under the Notice to the normal review procedure?

(i) In the pre-notification phase:

☐ YES

☒ NO

Please explain under which category of simplified cases (listed in question 2 above) it initially fell and the reasons underlying the change to the normal procedure.

The working party group of the CLA responding to this consultation does not have applicable recent experience.

(ii) Post

notification:

☐ YES

☒ NO

Please explain under which category of simplified cases (listed in question 2 above) it initially fell and the reasons underlying the change to the normal procedure.

The working party group of the CLA responding to this consultation does not have applicable recent experience.

4. Have you dealt with or otherwise been involved in any merger cases which fell under the relevant categories of cases listed in question 2 and was thus potentially eligible for notification under the simplified procedure but where, from the outset, the parties decided to follow the normal review procedure?

☐ YES

☒ NO

Please explain under which category of simplified cases it fell and the reasons why the case was notified under the normal procedure.

Not applicable.

5. Based on your experience, do you consider that, beyond the types of cases listed in question 2, there are any other categories of cases that are generally not likely to raise competition concerns but do not currently benefit from the simplified procedure?

- ☐ YES
☒ NO
☐ OTHER

Please explain

The simplified procedure is available for transactions where, although the parties' combined market share exceeds 50%, the increment (delta) of the Herfindahl-Hirschman Index (HHI) resulting from the concentration is below 150 and (see point 6 of the Notice). The CLA considers that this concession has had limited impact as the specified HHI delta is so narrowly drawn. The CLA would therefore invite the Commission to consider increasing the HHI delta.

6. The main objective of the Merger Regulation is to ensure the review of concentrations with an EU dimension in order to prevent harmful effects on competition in the EEA. Do you consider that the costs (in terms of workload and resources spent) incurred by businesses when notifying the cases that fall under the simplified procedure (listed in question 2 above) have been proportionate in order to achieve this objective of the Merger Regulation?

- ☒ YES
☐ NO
☐ OTHER

Please explain your answer with respect to each of the categories of cases listed in question 2 above.

- Transactions falling under point 5a of the Notice:

- ☒ YES
☐ NO

Please explain.

Broadly speaking, the CLA considers that the costs incurred (in terms of workload and resources spent) incurred by businesses when notifying cases that fall under the simplified procedure have been proportionate in order to achieve the objective of the Merger Regulation. At the same time, the CLA recognises that there are hundreds of concentrations notified to the European Commission each year where it is clear from the outset that no competition concerns arise. To the extent that the notification procedures can be further streamlined (for example, through further guidance on what information can be waived when market shares are below a certain level in reportable markets), this would be beneficial to merging companies and to the Commission. Please see more generally the responses to questions 2(i), (ii), and (iii) of this consultation for ways in which the notification process might be further streamlined.

- Transactions falling under point 5b of the Notice:

☒ YES
☐ NO

Please explain.

Please see the response above to transactions falling under section 5(a) of the Notice.

- Transactions falling under point 5c or point 6 of the Notice:

☒ YES
☐ NO

Please explain.

Please see the response above to transactions falling under section 5(a) of the Notice.

- Transactions falling under point 5d of the Notice:

☒ YES
☐ NO

Please explain.

Please see the response above to transactions falling within section 5(a) of the Notice.

7. To which extent have such costs (in terms of workload and resources spent) been reduced by the 2013 Simplification Package? Please explain.

The CLA does not have any information readily responsive to this question.

8. On the basis of your experience on the functioning of the Merger Regulation, particularly after the changes introduced with the 2013 Simplification Package, and your knowledge of the enforcement practice of the Commission in recent years, do you consider that there is currently scope for further simplification of EU merger control without impairing the Merger Regulation's objective of preventing harmful effects on competition through concentrations?

☒ YES
☐ NO
☐ OTHER

If you replied yes or other, do you consider that there is scope for further simplification by, in particular:

8.1 Exempting one or several categories of the cases listed in question 2 above (and/or any other categories of cases) from the obligation of prior notification to the Commission and from the standstill obligation; in those cases, the Commission would not adopt a decision under the Merger Regulation;

The CLA considers that some businesses, out of a desire for legal certainty, would not favour exempting the categories of cases listed in question 2 of this consultation from the obligation of prior notification to the Commission if this would result in the Commission not adopting a decision under the Merger Regulation. The CLA considers that such businesses may prefer to continue with the existing notification system for the categories of cases listed in question 2 above but with more streamlined processes where possible and as identified in response to question 2 above. That said, the CLA equally considers that the proposition discussed in question 8.2 of this Consultation below may find favour with some businesses. (Please note that we deal separately below with extra-EEA joint ventures in response to question 9 of this consultation.)

If the notification requirement was maintained, the CLA would be in favour of removing the standstill obligation for all categories of cases currently eligible for the Short Form CO. This would give notifying parties the option to close transactions prior to obtaining the clearance decision. The Commission would continue to have powers to remedy significant competition concerns in the unlikely event such concerns arose in a case that the notifying parties believed fell within the simplified procedure criteria and was eligible for the Short Form CO, and the risk of closing prior to obtaining a clearance decision would therefore rest with the notifying parties.

As an alternative to removing the standstill obligation, the CLA considers that the first-phase review timetable for simplified procedure cases could be reduced from 25 working days to 15 working days (at the very least in those cases involving no reportable markets and joint ventures active outside the EEA).

☒ YES

☐ NO

Please explain.

8.2 Introducing lighter information requirements for certain categories of cases listed in question 2 above (and/or any other categories of cases), notably by replacing the notification form by an initial short information notice; on the basis of this information, the Commission would decide whether or not to examine the case (if the Commission does not to examine the case, no notification would need to be filed and the Commission would not adopt a decision);

☒ YES

☐ NO

Please explain.

For the reasons already provided in response to question 2 of this consultation above, the CLA considers that the Commission should consider where it is possible to reduce further the information requirements for concentrations that clearly raise no competition concerns. While some businesses may not advocate moving to a system of an initial short information notice and the Commission deciding whether or not to examine the case (particularly if this would mean that the Commission would not then adopt a decision), the CLA considers that some businesses may favour this option. If the Commission has examined a transaction based on an initial short-form information notice with no standstill obligation and/or a shorter waiting period after which a transaction is deemed to be cleared, this may be regarded as providing adequate legal certainty (with an actual decision adding little more value).

8.3 Introducing a self-assessment system for certain categories of cases listed in question 2 above (and/or any other categories of cases); under such system, merging parties would decide whether or not to proceed to notify a transaction, but the Commission would have the possibility to start an investigation on its own initiative or further to a complaint in those cases where it considers it appropriate in so far as they may potentially raise competition concerns;

☐ YES

☒ NO

Please explain.

Again, for reasons of legal certainty, the CLA considers that it would be preferable to continue with the existing notification requirement for cases eligible for the simplified procedure. For extra-EEA joint ventures, however, please see our response to question 9 below.

8.4 Other

☐ YES

☒ NO

Please explain.

Not applicable.

When replying to question 8, please take into account the benefits and potential risks involved in each particular measure. For example, by exempting from notification all cases without horizontal or vertical overlaps [see point (8.1) above], the Commission may not be able to examine certain concentrations that could raise competition concerns, for instance because of potential competition or conglomerate aspects. Conversely, in cases where Parties file only a short information notice [see point (8.2) above], the Commission may not have sufficient information to assess whether the merger should be examined because it could potentially raise competition concerns. Similarly, in a self-assessment system [see point (8.3) above], the Commission may not become aware of mergers that could potentially raise competition concerns; moreover, under such system, the Commission may decide to intervene against a transaction which has already been implemented, which may cause some businesses to notify in any event just to obtain legal certainty.

In case you identify any risks, please explain those and indicate whether you envisage any measure to address / mitigate such risks.

As discussed above, the CLA considers that there would merit in removing the standstill obligation from cases eligible for the simplified procedure. Notifying parties would then have the choice as to whether to await the Commission's clearance decision prior to closing the transaction or to close ahead of obtaining clearance. If the notifying parties chose to close ahead of obtaining clearance, this would need to be at the notifying parties' own risk with the Commission entitled to seek remedies in the unlikely event that the Commission identified serious competition concerns during the review period.

9. The creation of joint ventures operating outside the EEA and having no effect on competition on markets within the EEA ("extra-EEA joint ventures") can be subject to review by the European Commission. In your experience, has this fact contributed to protecting competition and consumers in Europe?

- ☐ YES
- ☒ NO
- ☐ OTHER

Please explain

The CLA is unaware of any case in which the Commission identified a substantial impediment to effective competition in the EEA caused by the establishment of an extra-EEA joint venture that was reviewed by the Commission following merger notification. The CLA is also unaware of any Article 101/102 TFEU case that the Commission has initiated on the basis of information provided in a merger filing related to the creation of an extra-EEA joint venture.

The CLA believes that there is little evidence to suggest that review of the creation of extra-EEA joint ventures by the Commission under the Merger Regulation has contributed to protecting competition and consumers in Europe.

Further, it is unclear that there exists any possible theory of harm that could not be addressed equally well by either enforcement of Article 101 TFEU, Article 102 TFEU or the merger control regime of those jurisdictions directly affected by the creation of the extra-EEA joint venture. In such exceptional cases where merger control might be the appropriate remedy, the CLA notes that Member States are already able to refer to the Commission's review transactions that do not meet the Article 1(2) Merger Regulation turnover thresholds but that threaten significantly to affect competition within the territory of the Member State(s) using the procedure set out in Article 22 Merger Regulation.

Research undertaken for purposes of providing this response suggests that only around 100 transactions have been cleared following adoption of the Notice on simplified procedure for treatment of certain concentrations under Council Regulation (EC) No 139/2004 2005/C 56/04 (the "2005 Notice") on the basis of paragraph 5(a) of that 2005 Notice or paragraph 5(a) of the 2013 Notice. The CLA considers it implausible that only 100 full function extra-EEA joint ventures have been entered into during this period where the undertakings concerned had turnover sufficient to trigger the filing thresholds set out under Article 1(2) Merger Regulation.

Furthermore, the CLA is unaware of any enforcement action under the Article 14(2) Merger Regulation procedure taken or contemplated by the Commission for failure to notify a full-function extra-EEA joint venture where the undertakings concerned had sufficient turnover to trigger the merger filing thresholds set out in Article 1(2) Merger Regulation.

In the CLA's view, these two factors suggest that:

- (a) The requirement to notify extra-EEA joint ventures where the parents' turnover is sufficient to trigger the filing threshold is widely ignored; and
- (b) Lack of enforcement activity means that undertakings that comply with this required are effectively penalised for their compliance since they incur costs (i.e., in terms of legal fees and management time) which are not incurred by non-compliant undertakings.

10. Has this one stop shop review at EU level of extra-EEA joint ventures created added value for businesses and consumers?

- ☒ YES
☐ NO
☐ OTHER

Please explain

Subject to the comments in response to question 9 of this consultation above, the CLA believes that the one-stop-shop review at EU level of extra-EEA joint ventures has created significant added value for businesses and consumers insofar as it circumvents the notification requirement to National Competition Authorities ("NCAs") in multiple Member States and in EFTA Member States for extra-EEA joint ventures in cases where the turnovers of the parents within the jurisdiction are sufficient to trigger filing thresholds in the Member State/EFTA Member State.

As well as removing the need for multiple filings, the Merger Regulation process also has additional advantages over filings to certain NCAs, including:

- (a) Lack of a filing fee;
- (b) Ability of the merging parties to make submissions in one of several languages; and
- (c) A statutory timetable which is shorter than the statutory timetable in several Member States.

The CLA also sees benefits for consumers from the one-stop-shop in that multiple NCAs' resources are not taken up with simultaneous evaluation of the same extra-EEA joint ventures and can therefore be used more productively.

11. Do you consider that the costs (in terms of workload and resources spent) incurred by businesses when notifying extra-EEA joint ventures are adequate and proportionate in order to ensure an appropriate review of concentrations with an EU dimension in order to prevent harmful effects on competition in the EEA?

- ☐ YES
☒ NO
☐ OTHER

Please explain

As noted in its answer to question 9 above, the CLA does not believe that review by the Commission of certain extra-EEA joint ventures has protected competition or consumers, nor that there exists a realistic scenario where competition or consumers in the EEA were threatened as a result of the creation of an extra-EEA joint venture in which a merger control obligation was the best tool to protect competition or consumers in a hypothetical case.

A blanket merger control obligation on all extra-EEA joint ventures whose parent undertakings meet the filing thresholds therefore appear to the CLA to be a disproportionate cost incurred by businesses and a disproportionate use of the Commission's resources. The CLA takes the view that this is especially the case where Member States are already able to refer for the Commission's review under Article 22 EUMR transactions that do not meet the turnover thresholds set out in Article 1(2) EUMR but that threaten significantly to affect competition within the territory of the Member State(s).

12. To which extent have such costs been reduced by the 2013 Simplification Package? Please explain.

The September Simplification Package did not remove the filing requirement for extra-EEA joint ventures but rather reduced the information that merging parties need to provide in certain circumstances under what the Commission referred to at the time as a “super-simplified procedure”.

In the experience of the CLA, the need no longer to provide detailed market share information has greatly reduced costs. Such detailed information is often not held by the undertakings concerned and requires extensive and costly research.

above, there appears to be a requirement in certain member states for extra-EEA joint ventures to be notified where local filing thresholds are triggered. The CLA envisages that, unless the filing requirement for extra-EEA joint ventures is also removed in these jurisdictions, the overall administrative burden on businesses may actually increase if Article 1 Merger Regulation were amended to exclude entirely the creation of extra-EEA joint ventures, as a greater number of filings overall might be required.

The CLA notes that the Commission has turnover information for merging parties broken down by each EU and EFTA Member State for every merger filing made under the EUMR for the creation of an extra-EEA joint venture. It will be able to verify whether merging parties would, on aggregate, needed to have made more filings through removal of the one-stop-shop review provided by the Merger Regulation if the creation of an extra-EEA joint venture had not been included in the Article 1 Merger Regulation filing requirement.

The CLA considers that another potential way of dealing with extra-EEA joint ventures would be to enact a block exemption covering such transactions. This would provide clearance without the need to notify which would retain the one-stop-shop benefits and allow the Commission a time-limited period to assess whether this is causing any issues.

13. On the basis of your experience on the functioning of the Merger Regulation, particularly after the changes introduced with the 2013 Simplification Package, do you consider that the treatment of extra-EEA joint ventures is sufficiently simplified and proportionate in view of the Merger Regulation's objective of preventing harmful effects on competition through concentrations or is there scope for further simplification?

- ☒ The treatment of extra-EEA joint ventures is sufficiently simplified.
- ☐ There is scope for further simplification.

Further simplification could be realised by:

(i) Excluding extra-EEA joint ventures from the scope of the Merger Regulation;

- ☒ YES
- ☐ NO

Please explain your answer taking into account both the scope for cost-savings and the potential risk that the Commission may not have the possibility to examine joint ventures that may impact competition in the EEA in the future (for instance if the scope of activity of the joint venture is expanded at a later stage). Also, consider the possibility that these transactions may be subject to control in one or several EU Member States. In case you identify any risks, please indicate whether you envisage any measure to address / dispel such risks.

(ii) Introducing, for the treatment of extra-EEA joint ventures, an exemption from notification, or a light information system, or a self-assessment or any other system?

☒ YES

☐ NO

Please explain your answer, taking into account both the scope for cost-savings and any potential risk. In case you identify any risks, please indicate whether you envisage any measure to address/ dispel such risks.

The CLA suggests that amending Article 1 Merger Regulation to allow parties to make a voluntary filing where an extra-EEA joint venture was being formed would result in the desired reduction in the administrative burden on competition authorities (i.e., both the Commission and NCAs) and businesses through the retention of the one-stop-shop for evaluation of extra-EEA joint ventures.

CLA envisages that there are two situations where the undertakings concerned in the creation of an extra-EEA joint venture would wish to make a voluntary Merger Regulation filing, namely:

- (a) Where, absent the one-stop-shop, multiple merger filings would be required to various NCAs; and
- (b) Where there was the possibility of a Member State making a reference under Article 22 Merger Regulation to the Commission for it to evaluate the creation of the extra-EEA joint venture.

The CLA notes that a voluntary filing system works well in the United Kingdom where merging parties will notify a transaction voluntarily if they believe that the Competition and Markets Authority may investigate the transaction following completion and competition concerns might arise.

The ability to make a voluntary filing could be restricted by appropriate criteria being applied, for example to cases where the transaction was reviewable in one or more Member States or to cases where the turnover of the undertakings concerned was in excess of the filing thresholds in Article 1(2) Merger Regulation.

In order to avoid creating a situation where the notification of the formation of an extra-EEA joint venture was subject to a longer statutory timetable to the formation of an EEA joint venture, merging parties would need to be able to make a voluntary filing without having first to make a reasoned submission under Article 4(5) Merger Regulation.

Finally, if the Commission chose to move to such a voluntary filing regime for extra-EEA joint ventures, the CLA would advocate (a) removing the standstill obligation for such cases and (b) reducing the first phase review period from 25 working days to 15 workings.

(iii) Other.

Please explain.

Not applicable.

II.2. Jurisdictional thresholds

The Merger Regulation only applies to concentrations of a Union dimension, which are those where the undertakings concerned meet the different relevant turnover thresholds set out in Article 1 of the Merger Regulation.

Article 1 of the Merger Regulation

Scope

1. Without prejudice to Article 4(5) and Article 22, this Regulation shall apply to all concentrations with a Union dimension as defined in this Article.

2. A concentration has a Union dimension where:

(a) the combined aggregate worldwide turnover of all the undertakings concerned is more than EUR 5 000 million; and

(b) the aggregate Union-wide turnover of each of at least two of the undertakings concerned is more than EUR 250 million,

unless each of the undertakings concerned achieves more than two-thirds of its aggregate Union-wide turnover within one and the same Member State.

3. A concentration that does not meet the thresholds laid down in paragraph 2 has a Union dimension where:

(a) the combined aggregate worldwide turnover of all the undertakings concerned is more than EUR 2 500 million;

(b) in each of at least three Member States, the combined aggregate turnover of all the undertakings concerned is more than EUR 100 million;

(c) in each of at least three Member States included for the purpose of point (b), the aggregate turnover of each of at least two of the undertakings concerned is more than EUR 25 million; and

(d) the aggregate Union-wide turnover of each of at least two of the undertakings concerned is more than EUR 100 million,

unless each of the undertakings concerned achieves more than two-thirds of its aggregate Union-wide turnover within one and the same Member State.

4. [...]

5. [...]

Recently, a debate has emerged on the effectiveness of these turnover-based jurisdictional thresholds, specifically on whether they allow capturing all transactions which can potentially have an impact on the internal market. This may be particularly significant in the digital economy, where services are regularly launched to build up a significant user base before a business model is determined that would result in significant revenues. With significant numbers of users, these services may play a competitive role. Moreover, relevant business models may involve collecting and analysing large inventories of data that do not yet generate significant turnover (at least in an initial period). Therefore, players in the digital economy may have considerable actual or potential market impact that may be reflected in high acquisition values, although they may not yet generate any or only little turnover. Acquisitions of such companies with no substantial turnover are likely not captured under the current turnover-based thresholds triggering a notification under the EU Merger Regulation, even in cases where the acquired company already plays a competitive role, holds commercially valuable data, or has a considerable market potential for other reasons. It has been suggested to complement the existing turnover-based jurisdictional thresholds of the EU Merger Regulation by additional notification requirements based on alternative criteria, such as the transaction value. The perceived legal gap may not only concern the digital industry, but also other industry sectors, such as the pharmaceutical industry. There have been indeed a number of highly valued acquisitions, by major pharmaceutical companies, of small biotechnology companies, which pre- dominantly research and develop new treatments that may have high commercial potential, and do not yet generate any or only little turnover.

Moreover, the question of whether there is a legal gap needs to be assessed in the context of the case referral system in EU merger control. Even in instances where a merger does not have Union dimension based on the turnover of the merging parties, the Commission may obtain jurisdiction through a referral. According to Article 4(5) of the Merger Regulation, the parties to a merger may ask for referral of a case from the level of Member States to the Commission before it is notified, if the case is notifiable under the national merger control laws in at least three Member States and if the additional criteria set out in Article 4 (5) of the Merger Regulation are met. Also, according to Article 22 of the Merger Regulation, national competition authorities may request the referral of a case to the Commission after notification, if the specific conditions of Article 22 of the Merger Regulation are met.

This section of the questionnaire gathers your views on the existence of a possible enforcement gap of EU merger control, and what would be its possible dimension and relevance. Moreover, this section also requests your views on possible policy responses, if such were to be warranted.

14. In your experience, have you encountered competitively significant transactions **in the digital economy in the past 5 years** which had a cross-border effect in the EEA but were not captured by the current turnover thresholds set out in Article 1 of the Merger Regulation and thus fell outside the Commission's jurisdiction? [1]

[1] A well-known example of these transactions is the acquisition in 2014 of WhatsApp by Facebook, which fell outside the thresholds of Article 1 of the Merger Regulation but was ultimately referred to the Commission pursuant to Article 4(5) thereof. Information on merger cases reviewed by the European Commission is accessible via the search function on DG COMP's website at http://ec.europa.eu/competition/elojade/isef/index.cfm?clear=1&policy_area_id=2.

- ☐ YES
- ☒ NO
- ☐ OTHER

- **If yes**, please describe the characteristics of such transactions.

- **If yes**, please give concrete examples.

- **If yes**, please estimate how many of those transactions take place per year.

- **If yes**, do you consider that those transactions would typically qualify for a pre-notification referral under Article 4(5) of the Merger Regulation or a post-notification referral under Article 22 of the Merger Regulation? Please explain.

- **If no or other**, please explain your answer.

The working party of the CLA assigned to respond to this consultation has not encountered any such transactions outside the Facebook/Whatsapp transaction. The CLA notes that, notwithstanding that the Facebook/Whatsapp transaction fell below the Merger Regulation turnover thresholds, the transaction was ultimately reviewed by the Commission pursuant to Article 4(5) of the Merger Regulation and cleared at the end of the first phase review process.

Another case not having a Community dimension under the current Merger Regulation turnover criteria is Amadeus/Navitaire (M.7802). The UK Competition and Markets Authority referred the transaction to the Commission under Article 22(1) of the Merger Regulation, with Austria, Germany, and Spain also joining the United Kingdom's request.

The CLA considers that transactions with a competitive impact in the EEA would typically be caught either by the Merger Regulation or merger control regimes of EEA NCAs (with referrals possible under Articles 4(5) and 22(1) of the Merger Regulation) and that there is therefore no obvious reason to expand the jurisdiction of the Commission. (Some members of the CLA have, however, pointed out that Google/Wave, a \$1 billion acquisition that was reviewed by the US Federal Trade Commission, did not appear to be subject to the discretionary referral powers under the Merger Regulation and so have queried whether it may be arbitrary to leave the Commission's potential jurisdiction to review such technology transactions to the referral mechanisms with EU/EEA Member States.)

In addition to the existing referral mechanisms, the CLA considers that large deal size is not necessarily an indicator of competitive significance and highlighting that many high value deals that do meet the thresholds are cleared unconditionally in Phase I. It would also be difficult to design appropriate alternative thresholds that adequately establish local nexus with the result that any such threshold is likely to give rise to over-inclusivity (i.e., many entirely benign transactions falling within the scope of the Merger Regulation) and/or legal uncertainty, thereby increasing costs and burdens for merging parties in a manner wholly disproportionate given the absence of any real "gap".

In short, the CLA does not believe that there is an issue that needs remedying through expanding the Commission's jurisdiction under the Merger Regulation.

15. In your experience, have you encountered competitively significant transactions **in the pharmaceutical industry in the past 5 years** which had a cross-border effect in the EEA but were not captured by the current turnover thresholds set out in Article 1 of the Merger Regulation and thus fell outside the Commission's jurisdiction? [1]

[1] An example of such transactions is the 2015 acquisition of Pharmacyclis by AbbVie.

- ☐ YES
☒ NO
☐ OTHER

- **If yes**, please describe the characteristics of such transactions.

- **If yes**, please give concrete examples.

- **If yes**, please estimate how many of those transactions take place per year.

- **If yes**, do you consider that those transactions would typically qualify for a pre-notification referral under Article 4(5) of the Merger Regulation or a post-notification referral under Article 22 of the Merger Regulation? Please explain.

16. In your experience, have you encountered competitively significant transactions **in other industries than the digital and pharmaceutical sectors in the past 5 years** which had a cross-border effect in the EEA but were not captured by the current turnover thresholds set out in Article 1 of the Merger Regulation?

- ☐ YES
☒ NO
☐ OTHER

- **If yes**, please describe the characteristics of such transactions.

- **If yes**, please give concrete examples.

- **If yes**, please estimate how many of those transactions take place per year.

- **If yes**, do you consider that those transactions would typically qualify for a pre-notification referral under Article 4(5) of the Merger Regulation or a post-notification referral under Article 22 of the Merger Regulation? Please explain.

17. In your experience and in light of your responses to the previous questions (14 to 16), are the possible shortcomings of the current turnover-based jurisdictional thresholds of Article 1 of the Merger Regulation (in terms of possibly not capturing all competitively significant transactions having a cross-border effect in the EEA) sufficiently addressed by the current case referral system (including the pre-notification referrals to the Commission under Article 4(5) of the Merger Regulation and the post-notification referral to the Commission under Article 22 of the Merger Regulation)?

- ☒ YES
☐ NO
☐ OTHER

Please explain.

While the CLA is aware that a deal-size threshold is used in other jurisdictions, the CLA does not believe that there are any shortcomings in the current turnover-based jurisdictional thresholds of Article 1 of the Merger Regulation. In any event, to the extent that any transaction with cross-border effects falls below the turnover thresholds of Article 1 of the Merger Regulation, such a transaction can be dealt with under national merger control regimes or pursuant to the current referral system (including Article 4(5) and Article 22 of the Merger Regulation). The current referral system (subject to potential modifications discussed in response to question 24 below of this consultation) ensures that the best-

18. Do you consider that the current absence, in the Merger Regulation, of complementary jurisdictional criteria (i.e. criteria not based exclusively on the turnover of the undertakings concerned) impairs the goal of ensuring that all competitively significant transactions with a cross-border effect in the EEA are subject to merger control at EU level?

- ☐ YES
☒ NO
☐ OTHER

- **If yes**, please also indicate which are, in your opinion, the complementary jurisdictional criteria whose absence may impair the above-mentioned goal. Please also take into account, in your reply, the Commission's objective of not imposing undue burdens on businesses.

- **If no or other**, please explain.

The CLA considers that the merger control regime at the EU and national level is entirely adequate to deal with any transaction raising cross-border issues. Indeed, the CLA considers that it is unlikely that a transaction raising competition concerns within the EEA would not be caught either by the Merger Regulation or national merger control regimes (with the possibility of referrals as between the Commission and NCAs to ensure that the best place authority deals with the transaction).

19. In particular, do you consider that the current absence, in the Merger Regulation, of a complementary jurisdictional threshold based on the value of the transaction ("deal size threshold") impairs the goal of ensuring that all competitively significant transactions with a cross-border effect in the EEA are subject to merger control at EU level?

- ☐ YES
- ☒ NO
- ☐ OTHER

Please explain.

20. If you replied yes to question 19, which level of transaction value would you consider to be appropriate for a deal size threshold? Please explain your answer.

Not applicable. However, if the Commission is minded to proceed with a jurisdictional test based on transaction value, the CLA considers that a balance should be struck such that only the most significant transactions are caught and to avoid undue filing burdens.

21. If you replied yes to question 19, what solutions do you consider appropriate to ensure that only transactions that have a significant economic link with the EEA ("local nexus") would be covered by such a complementary threshold? In responding, please consider that the purpose of this deal size threshold would be to capture acquisitions of highly valued target companies that do not (yet) generate any substantial turnover.

- ☐ A general clause stipulating that concentrations which meet the deal size threshold are only notifiable if they are likely to produce a measurable impact within the EEA, complemented by specific explanatory guidance.
- ☐ Industry specific criteria to ensure a local nexus.
- ☐ Other

Please explain your response and provide examples where appropriate.

Not applicable. The CLA generally considers that it is very difficult to design appropriate thresholds that adequately establish local nexus and therefore any thresholds are likely to be too broad and/or give rise to legal uncertainty.

However, if the Commission were minded to introduce a jurisdictional threshold based on transaction value, the CLA considers that implementing industry specific criteria may potentially give rise to jurisdictional complexity.

22. If you replied yes to question 19, would you see a need for additional criteria limiting the scope of application of this deal size threshold in order to ensure a smooth and cost-effective system of EU merger control?

- ☐ YES
☐ NO
☐ OTHER

- Please state if any of the following criteria would be appropriate to ensure the desired efficiency [multiple answers are possible]:

- ☐ A minimum level of aggregate worldwide turnover of all undertakings concerned.
- ☐ A minimum level of aggregate Union-wide turnover of at least one of the undertakings concerned.
- ☐ A maximum level of the worldwide turnover of the target business, in cases where the latter does not meet the Union-wide turnover thresholds (with the aim of only covering highly valued transactions where the target has a strong potential for instance to drive future sales but not cases where the target already generates significant turnover but outside of the EEA).
- ☐ The requirement that the ratio between the value of the transaction and the worldwide turnover of the target exceeds a certain multiple. (Example: transaction value = EUR 1 billion, worldwide turnover of the target = EUR 100 million, ratio/ multiple = 10. The aim of this requirement would be to identify transactions where the valuation of the target company exceeds its annual revenues by several multiples, which could signal high market potential of the target.).
- ☐ Other.

Please explain your answer.

Not applicable.

II.3. Referrals

The division of competence between the Commission and the EU Member States is based on the application of the turnover thresholds set out in Article 1 of the Merger Regulation and includes three corrective mechanisms.

The first corrective mechanism is the so-called "two-thirds rule". Pursuant to this rule, notification under the Merger Regulation is not required if each of the parties concerned realises more than two thirds of its EU-wide turnover in one and the same Member State, even if the general thresholds under Articles 1(2) and 1(3) of the Merger Regulation are met. The objective of this rule is to exclude from the Commission's

jurisdiction certain cases which contain a clear national nexus to one Member State.

The second corrective mechanism is the pre-notification referral system introduced in 2004. This mechanism allows for the re-allocation of jurisdiction to the Member States under Article 4(4) of the Merger Regulation or to the Commission under Article 4(5) if certain conditions are fulfilled. The initiative for requesting such a referral prior to notification lies in the hands of the parties. However, pre-notification referrals are subject to approval by the Member States and the Commission under Article 4(4) and by the Member States under Article 4(5) of the Merger Regulation.

The third corrective mechanism is the post-notification referral system whereby one or more Member States can request that the Commission assess mergers that fall below the thresholds of the Merger Regulation under certain conditions (Article 22 of the Merger Regulation). Conversely, a Member State may, in cases that have been notified under the Merger Regulation, request the transfer of competence to the national competition authorities under certain conditions (Article 9 of the Merger Regulation).

In relation to the current case referral mechanism foreseen by the Merger Regulation, the White Paper proposals aimed at making case referrals between Member States and the Commission more business-friendly and effective.

Those proposals essentially consist of:

1. Abolishing the two step procedure under Article 4(5) of the Merger Regulation, which requires that parties first file a Form RS and then the Form CO, if they would like the Commission to deal with a case that is notifiable in at least three Member States, but does not meet the jurisdictional thresholds of the Merger Regulation;
2. Specific modifications concerning the post-notification referrals from Member States to the Commission under Article 22 of the Merger Regulation, namely
 - an expansion of the Commission's jurisdiction to the entire EEA if it accepts a referral request under Article 22 of the Merger Regulation (currently the Commission only obtains jurisdiction in those Member States that join the referral request),
 - and a renouncement of jurisdiction over the entire EEA, if one or several Member States oppose the referral request, and
3. The removal of the requirement under Article 4(4) of the Merger Regulation pursuant to which parties have to assert that the transaction may "significantly affect competition in a market" in order for a case to qualify for a referral. Showing that the transaction is likely to have its main impact in a distinct market in the Member State in question would suffice. Removing the perceived "element of self-incrimination" may lead to an increase in the number of Article 4(4) requests.

23. Do you consider that the current case referral mechanism (i.e. Articles 4(4), 4(5), 9, and 22 of the Merger Regulation) contributes to allocating merger cases to the more appropriate competition authority without placing unnecessary burden on businesses?

☐ YES

☒ NO

☒ OTHER

Please explain.

For the reasons identified by the Commission above in terms of the cumbersome and lengthy referral process, the CLA considers that the current case referral mechanism does place unnecessary burden on businesses.

24. If you consider that the current system is not optimal, do you consider that the proposals made by the White Paper would contribute to better allocating merger cases to the more appropriate competition authority and/or reducing burden on businesses?

- ☒ YES
☐ NO
☐ OTHER

Please explain.

The CLA considers that the proposals put forward by the Commission in the White Paper and summarised above would indeed contribute to allocating merger cases better to the more appropriate competition authority and reducing burden on businesses.

The Form RS procedure is generally regarded as a cumbersome procedure and so abolishing the two-stop procedure under Article 4(5) of the Merger Regulation would be a welcome development.

The CLA agrees that it makes sense for the Commission to have jurisdiction over the entire EEA where an Article 22 Merger Regulation referral request is accepted and no Member State with jurisdiction over the transaction challenges the referral request. This is a natural extension of the one-stop-shop principle and would give rise to greater legal certainty.

The CLA equally considers that it makes sense to remove the requirement under Article 4(4) of the Merger Regulation for merging parties to assert that a transaction may “significantly affect competition in a market” in order for a case to qualify for a referral.

25. Do you consider that there is scope to make the referral system (i.e. Articles 4(4), 4(5), 9, and 22 of the Merger Regulation) even more business friendly and effective, beyond the White Paper's proposals?

- ☐ YES
☒ NO
☐ OTHER

Please explain.

II.4. Technical aspects

The 2014 Commission Staff Working Document (2014 SWD) accompanying the White Paper identified additional technical aspects of the procedural and investigative framework for the assessment of mergers where experience has shown that improvement may be possible. The SWD included the following proposals:

- Modifying Article 4(1) of the Merger Regulation in order to provide more flexibility for the notification of mergers that are executed through share acquisitions on a stock exchange without a public takeover bid.
- Amending Article 5(4) of the Merger Regulation to clarify the methodology for turnover calculation of joint ventures.
- Introducing additional flexibility regarding the investigation time limits, in particular in Phase II merger cases.
- Modifying Article 8(4) of the Merger Regulation to align the scope of the Commission's power to require dissolution of partially implemented transactions incompatible with the internal market with the scope of the suspension obligation (Article 7(4) of the Merger Regulation).
- Tailoring the scope of Article 5(2)(2) to capture only cases of real circumvention of the EU merger control rules by artificially dividing transactions and to address the situation where the first transaction was notified and cleared by a national competition authority.
- Clarification that "parking transactions" should be assessed as part of the acquisition of control by the ultimate acquirer.
- Amending the Merger Regulation to allow appropriate sanctions against parties and third parties that receive access to non-public commercial information about other undertakings for the exclusive purpose of the proceeding but disclose it or use it for other purposes.
- Amending the Merger Regulation to clarify that referral decisions based on deceit or false information, for which one of the parties is responsible, can also be revoked.

26. Do you consider that there is currently scope to improve the EU merger control system and that each of the proposals contained in the 2014 SWD would contribute to achieving this purpose?

The CLA agrees it makes sense to adapt the criterion of "good faith intention" in order to allow merging parties to make a Form CO notification before the level of shareholding required to exercise control is acquired.

27. Based on your experience, are there any other possible shortcomings of a technical nature in the current Merger Regulation? Do you have any suggestions to address the shortcomings you identified?

Not applicable.

28. One of the proposals contained in the 2014 SWD relates to the possibility of introducing additional flexibility regarding the investigation time limits. In this regard, have you experienced any particularly significant time constraints during a Phase 2 merger investigation, in particular in those cases where a Statement of Objections had been adopted (for example, for remedy discussions following the adoption of the Statement of Objections)?

- ☐ YES
☒ NO
☐ OTHER

Please consider, inter alia, the time needed for the Commission to carry out its investigation and for the notifying parties to make legal and economic submissions, exercise their rights of defence and to propose and discuss commitments.

29. In the light of your reply to question 28 above, do you consider that the current distinction between remedies presented before or after working day 55 since the opening of phase II proceedings, on which depends the extension of the procedure by 15 additional working days, is working well in practice?

- ☐ YES
☐ NO
☒ OTHER

Please explain.

Not applicable.

III. Submission of additional information

Please feel free to upload a concise document, such as a position paper, explaining your views in more detail or including additional information and data. The maximal file size is 1MB. Please note that the uploaded document will be published alongside your response to the questionnaire which is the essential input to this open public consultation. The document is an optional complement and serves as additional background reading to better understand your position.