

MERGER WORKING GROUP

Report: Information requirements for merger notification

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This report provides some basic knowledge on MWG members' information requirements for initial merger notification. It also aims to provide some context concerning the type of review procedure, flexibility mechanisms and tools for obtaining supplementary information once the notification is completed before national competition authorities.

More extensive information is annexed to this document and divided into four tables:

- Table A – merger notification procedural steps
- Table B – content of standard merger notification forms:
 - o Part 1 : description of the transaction
 - o Part 2 : description of the companies
 - o Part 3 : description of the markets

This report provides a comparative overview of the state of play of information requirements for merger notifications amongst MWG members, following the same four-fold categorization used to draw up the annexed tables. It has been elaborated on the basis of the replies of 28 national competition authorities (NCA) to a questionnaire sent out on September 2014, and updated prior to publication on **April 2016**¹.

¹ AT, BE, BG, CY, CZ, DE, DK, EE, ES, FI, FR, EL, HR, HU, IE, IT, LV, LT, MT, NL, PL, PT, RO, SK, SI, SE, UK and NO.

I. Procedural steps for merger notification

While at European level a notification form is mandatory, each Member State can decide for its own jurisdiction whether to rely on mandatory notification forms, recommend such forms (AT), make them fully optional, or to abstain from using one altogether (DE).

A. Pre-notification stage

The majority of surveyed jurisdictions has a **pre-notification stage** (26; CY and HR have no pre-notification stage).

The procedure is mostly **not formalised** (21 jurisdictions), although soft-law instruments sometimes mention the possibility of contacts (BG, CZ, DE, EL, NL and SE) or even recommend that contacts be made (BE, DK, FI, FR, LV, SI, and UK) within certain deadlines (e.g. 2 weeks before notification in BE and UK). A few NCAs clarified that they do accept pre-notification contacts in practice (e.g. AT, EE, EL, LV and LT). The specificities/characteristics of this stage depend on each individual case (DK and FI). A few competition authorities underlined that pre-notification occurs in very limited circumstances (AT, DE and PL), e.g. cases which *prima facie* raise serious competition concerns (AT, DE and PL).

Provided that the parties engage a pre-notification contact, the absence of regulation at this stage entails that NCAs enjoy a wide discretion, and may provide informal and non-binding answers to the parties' questions (NL and ES). Some NCAs further underlined they are under no obligation to comply with the parties' request of a meeting in these cases (NL). There is no mandatory pre-notification in any Member State, and in most Member States there is no expectation that pre-notification contacts take place. Therefore, the merging parties enjoy wide discretion whether to use this instrument.

The issues most frequently discussed in the pre-notification stage are jurisdictional, primarily linked to the interpretation of the Competition Act and the obligation to notify (CZ, EL, NL, PL, PT and SE), or procedural, including whether to use a standard notification form or a short form, and the information required (BG and MT). Some NCAs also mentioned substantive issues as a focus of the pre-notification contacts: in fact, pre-notification may also allow to discuss the contents of the draft notification or the methodology of an *ad hoc* economic study intended to be submitted together with the notification (FR), to ensure that notifications are complete at the time of an actual submission (e.g. BG, CZ, LT, PT and UK). Therefore, parties have the possibility to submit a draft notification form (CZ, DK, ES, FR, DE, HU, LV, LT, LI, NL, PT, SE and UK) or can submit a presentation of the operation that describes the parties, the planned operation, the markets concerned, the competitors and the market shares of the parties (e.g. FI, FR, HU and PT).

In the absence of standard notification form, one NCA stressed that the focus of pre-notification discussions as well as the first phase investigation as a whole aims at identifying competition issues or on the contrary, the absence of such (DE). In appropriate cases, the competition authority itself explains what kind of information may be helpful at this stage in order to make a preliminary assessment or in order to prepare the subsequent investigation (DE). Pre-notification is completely flexible in AT. The focus lays on addressing potentially problematic issues, clarifying which information is needed for the notification and - where applicable - if a merger has to be notified at all (PT). Information provided by the parties varies and ranges from draft notifications to simple descriptions of the transaction as well as markets concerned. A waiver from the parties to exchange information with other competition

authorities in the context of multijurisdictional filings may be requested as early as the pre-notification stage (PT).

7 competition authorities (HU, IE, IT, MT, PT, RO and ES) have a “formalised” system, whereby pre-notification procedures are mentioned and to a certain extent regulated in a legal instrument. Pre-notification procedures are typically less cumbersome than the standard notification procedure/form and provide for some degree of flexibility to adjust to the peculiarities of this phase, as time-frame and modalities of the pre-notification stage are commonly agreed by the competition authority and the parties (e.g. HU, IE and IT).

Formalised pre-notification mechanisms often provide a relatively detailed indication of the information that the parties need to provide at this stage (HU, IE, IT and RO), which may include a brief description of the merger (HU, IE, IT and RO), its envisaged impact on competition (HU and IE), the type of control (RO), the markets affected by the transaction (HU, IE and IT), the identification of markets where the parties are active (IE and RO) and their market shares (HU, IT and RO), as well as whether the transaction has been brought to other competition authorities’ attention (IT). In some jurisdiction a written document needs to be supplied to the competition authority for pre-notification purposes (HU, IE and IT).

The pre-notification request generally contains a description of the undertakings and the transaction, a brief description of the affected markets and the position of the parties, as well as the possible impact on competition in these markets, and the indication whether the operation has been or ought to be brought to the attention of the competent authorities in other countries.

B. Alternate forms

15 competition authorities have an **alternate notification form** - short forms (AT, BE, HR, CZ, DK, ES, FI, EL, IT, LV, MT, PT, RO, SK and NO). The eligibility conditions vary in each jurisdiction, but revolve *grosso modo* around some predefined circumstances, whereas no specific conditions are foreseen in a number of jurisdictions.

Eligibility conditions are often linked to the aggregate market share of the merging parties, and include:

- Absence of horizontal or vertical overlaps between the commercial activities of the parties (BE, CZ, DK, EE, ES, EL, HR, LV, PT, RO, SK and NO);
- In case of horizontal overlaps, aggregate market share below a given threshold, which may range between 15% (AT, CZ, DK, EE, EL, ES, HR, HU², LV, PT, NO and SK) and 25% (BE and IT);
- As regards vertical relationships, the relevant threshold triggering short form notification ranges from 15% (LV) to 25% (AT, BE, CZ, DK, EE, EL, HR, HU, PT and NO) or 30% (SK).

² HU uses a 2 in 1 Form: first part (Chapters I-V.) of this is obligatory for all cases; however the second part (chapters VI-VII.: detailed information on markets and competition: rivals, costumers, suppliers, barriers to entry and exit, stucture of cost etc.) only need to be answered in more complicated cases (in which eligibility conditions are met). In HU the distinction between simplified and full proceedings is based on market shares, i.e. 20% in horizontal, and 30% in vertical relations. However, the notification form uses 5% lower (i.e. 15% and 25%) thresholds in order to catch all potentially problematic cases.

In IT, in case of vertically related markets short form notifications are available only where none of the parties will have a post-merger market share exceeding 40%. However, for both horizontal and vertical overlaps short form notifications are always possible when the target's share on the affected markets is below 1%.

In PT and ES, whereas in case of horizontal overlaps the relevant market share ceiling is set at 15%, short form notification is also possible when the aggregate share of parties active on the same market is between 15% and 25% (up to 30% in ES), provided the incremental market share resulting from the notified transaction is below 2%. Moreover, simplified notification is also possible when parties operate on neighbouring markets and their individual or combined market share is below 25%.

In addition to the conditions mentioned above, in AT a standard form notification will be required if the transaction may give rise to the creation or strengthening of a dominant position. It should however be noted that in AT the merger notification form is not obligatory but only recommended in order to facilitate a speedy investigation by the NCA as all information considered necessary is available. Information requirements stipulated in the law are by contrast very limited.

In some Member States, the alternative form is available, *inter alia*, in case of acquisition of joint control over a joint venture which is not (or is only to a small degree) active on the national market (BE, DK, EE, ES³, HR, MT⁴, RO and NO), or if a party acquires sole control over an undertaking which it already controls jointly (BE, CZ, DK, EE, ES, EL, HR, RO, SK and NO).

In FI, mergers which have a negligible impact on the national market qualify for short form notification.

In DE, there is no short form. This is due to the extremely limited information requirements of notifications in general. The use of notification forms is neither mandatory nor usual. The limited info requirements are clearly set out in the German Competition Act and are the same for simple as well as for complex cases. Information requirements are generally limited to what is absolutely necessary. One could say that every notification is basically a "short form notification". In addition, the German system is very flexible, in particular in cases that clearly do not raise any competition issues.

Finally, in the UK, if there is no (material) overlap between the parties' activities (nor any non-horizontal concern), there is no need to notify a merger which meets the jurisdictional thresholds: this voluntary approach obviates the need for a '*short-form*' notification.

C. Information waivers

Merging parties may sometimes request that the notification is regarded as complete even though some of the information specified in the notification form has not been supplied.

Indeed, in several Member States any requirements contained in the notification form (or in the competition act: DE) can be **waived** by the competition authorities (or the competition

³ In ES, the joint venture should not be or expect to be active on the Spanish territory unless the estimated turnover is below six millions euros.

⁴ In MT, the joint venture is supposed to have a marginal impact on the national territory if: a) the national turnover of the joint venture and/or of the activities conferred thereto is less than 698,812.02 euros and b) the total value of transferred assets is less than 698,812.02 euros.

prosecutor: BE), if such information is not considered necessary for the competitive assessment of the transaction (AT, CZ⁵, DE, DK, EE, ES, EL, HR, HU, IE, LV, LT, MT, NL, PL, PT⁶, RO, SI, SK, UK and NO). In FI, waivers can be granted in the context of pre-notification contacts. The IE competition authority, in pre-notification stage, may give conditional approval for specific sections of the form: for instance, where there is no overlap between the parties' activities, it is usual practice to request an exemption from completing the section which requires a description of the conditions of competition in relation to markets where there is a horizontal or vertical overlap.

Moreover, some competition authorities may waive any information which the parties are unable to provide, due to objective reasons (AT, BG, EL, DE, IT, LV, LT, MT, PL and SK). If such information is however necessary for the merger assessment, the LV competition authority may allow the parties to submit the relevant documents at a later stage, and will tolerate slight inaccuracies regarding relevant markets and market shares. In such cases, the BG competition authority requires estimate of the relevant data together with the sources on which it has been based.

A more detailed definition of information which can be waived is provided by FR and PT. In FR, firms that carry out a significant number of notifiable mergers each year can provide a summary containing the general information that is likely to be repeated in all the notifications of the coming year; moreover, when the merger is notifiable exclusively on the basis of the specific "retail" thresholds, the definition of the upstream supply markets and the assessment of the market shares of the buyer and of the target thereon can be omitted; finally, when the buyer is not present in the same markets where the target(s) operate(s), or in upstream, downstream or related markets, if the delimitation of the relevant markets concerned is sufficiently obvious such as to imply the absence of any overlap or of vertical and related links between these markets or when the merger is notified solely on the basis of specific "retail" thresholds and does not result in a change in the stores' trade names, reduced financial information may be provided and market definition/market share, as well as information on "significant contractual links" with third parties can be omitted.

In PT, the following can be waived: a) in the description of the concentration, any financial or other support received by the parties for the implementation of the operation, as well as analyses, reports, studies or other documents; b) in the control structure, members of the governing bodies of undertakings where the merging parties have minority shareholdings; c) in the affected markets, the amounts and values, in import and exports, for product/services involved in the last 3 years, the transport cost, the production capacity and utilization, the development of prices, the importance of public procurement, the need for heavy investments, R&D and market development stages; d) any information on supply and demand structure; e) information on efficiency gains.

In CY, no information requirement envisaged in the notification form can be waived.

As far as the procedure for information waivers is concerned, most jurisdiction have no specific rules (AT, BG, CZ, EE, ES, HR, HU, IE, IT, LV, NL, PT SE, SI and NO). However, parties

⁵ In CZ, explicit mention is made to the possibility of releasing the parties from their obligation to produce translated versions of some documents.

⁶ In PT, without prejudice of requesting it in a latter stage of the procedure if it is considered necessary for the assesment of the merger.

are often either encouraged (DE, IT, LV and MT) or required (DK, EL, LT and SK) to motivate their request for a waiver.

AT, BG and DE may waive information requirements on a case-by-case basis. Since there is either no notification form (DE) or the notification form is not obligatory but only recommended, waivers are therefore very flexible if they do not concern the very limited information requirements stipulated in the law. In DE, waivers are typically granted informally. Because the focus is not on ensuring that notifications are complete, but on identifying competition issues, in most cases there is no formal decision on waivers.

By contrast, in FR waivers are only available when the conditions set out *ex ante* are met. In PL, the undertakings applying for a waiver must prove that they took appropriate steps and due care to secure the relevant information and documents. They should provide estimates and – if they are able to acquire the information and the documents at a later stage – they must inform the competition authority.

Waivers are sometimes granted in the context of pre-notification discussions (FI, HU, SE and UK). The SE competition authority normally replies to a waiver request formulated in this phase within 1-2 days.

D. Specific information within forms

More detailed information appears to be required in relation to markets which may be affected by the transaction⁷.

In several Member States, this additional information concerns specific sections of the form which need to be completed (AT, BE, CZ, FI, FR, HU, LT, MT, PL, SI and NO). For instance, in CZ this limitation applies to information concerning total size of the market, market shares of the undertakings concerned, structure of supply and demand, market entry R&D, cooperative agreements and associations of undertakings. In HU, if there are no affected markets there is no need to provide customers and suppliers lists, detailed market description, expected post-merger changes and estimates of competitors' market shares.

Other Member States require more detailed information in the same sections of the notification form (AT, BG, DK, HR, LV, NL, SE and UK), such as market shares and market information in LV or market definition, market participants and their contact details in NL. In DE the competition act requires market shares figures only if they exceed 20 %. In practice, market shares figures are only requested by the competition authority in relation to markets on which the transaction may have an impact. If this is the case parties usually provide market share figures also below 20 %. In SE different sets of information are required for potentially affected markets and “concerned” markets. In SI, data on controlled undertakings must only be submitted if they are active on affected markets.

In PT, some sections of the form have to be filled in only if the notification concerns a joint venture.

Other specific information requirements within the forms are peculiar to individual countries. In DE, the competition act requires to include the identification of an individual on the national territory who is authorised to accept service of legal documents, when merging parties have no registered seat in Germany . In other countries, they include any competition restraints

⁷ The notion of “*affected markets*” is defined below in part IV.A.1.

ancillary to the transactions (IT); indication as to whether the company is part of a group, or is a financial institution, or whether the notification relates to a joint venture (AT and NL); conversion into euros of any figures expressed in foreign currencies (IT).

Other specific information requirements apply to mergers in some economic sectors: they include film distribution (IT)⁸, media (AT⁹, EL) and healthcare providers (NL).

Finally, there are some optional specific information requirements, such as information on efficiency gains (EL and UK) and countervailing buyer power (UK).

E. Additional information requests

In most Member States, if it is necessary for the assessment of a particular merger, the competition authority (AT, BG, CZ, DE, DK, EE, ES, FI, FR, EL, HR, HU, IE; IT, LT, LV, MT, NL, PL, PT, RO, SE, SK, SI, UK and NO) or the Competition Prosecutor (BE) can request information exceeding the scope provided in the forms: this might happen before initiating a procedure or during the investigation (e.g. BG, FI, FR, HR and LV), because the competition authority considers that more data or documents are necessary (CZ, DK, HU), such as in the event of new markets not dealt with in the past (SK). This is usually done by written notice, which sets a specific deadline to provide the information required (IE, HU, LV and PT), unless a deadline is provided for in the law (10 days in ES, although this term can be modified if necessary). Failure to comply with such a notice can lead – in some instances - to a delay in the statutory timetable (EE and PT) and to penalties (PT).

Finally, in some cases the competition authority explicitly reserves the right to require a full notification (e.g. CZ, CY, EE, HR and LV).

⁸ In Italy, any merger or acquisition must be notified, as a result of which “*in any one of the 12 main towns within film distribution zones , an undertaking would hold, directly or indirectly, a market share larger than 25% of the turnover from film distribution and, simultaneously, more than 25% of the operating movie theatre.*”

⁹ The AT Cartel Act includes special provisions for media mergers. A merger could also be prohibited if it impedes media plurality. In order to be able to investigate this aspect, additional information is asked for in the notification form.

II. The description of the transaction

Specific information about the transaction has to be provided in cases that meet certain criteria as identified in the previous chapter on procedural steps for merger notifications.

A. Documents bringing about the merger

In the vast majority of European jurisdictions (26 replies¹⁰), the notification of a merger entails the transmission to competition authorities of a copy of all documents and agreements concerning the relevant transaction, including a copy of the offer in case of public takeover bids.

In DE, such information is not part of the mandatory content of a notification. It is only required later on during the investigation in the limited number of cases in which it is necessary for the assessment. This approach limits the administrative burden placed on companies and also helps to limit the resources that the competition authority uses in a standard first phase investigation.

3 respondents (LT, LV and SI) clarified that these copies need to be certified. HR explained that the original or a certified copy of the document bringing about the merger needs to be submitted, or a certified translation if the original text of the document bringing about the merger is not written in Croatian."

B. Legal and financial aspects of the transaction

All jurisdictions require that the notifying parties provide information concerning some legal and financial aspects of the merger. While some of these information requirements are common to several Member States, others appear to have a more limited reach.

The **nature/description of the transaction** has been quoted in 26 replies¹¹, sometimes coupled with a brief explanation of its economic and financial structure (e.g. BE, EE, FI, EL, HR, MT, PT, SI).

Several competition authorities also mentioned the **structure of ownership and control** resulting from the notified merger (21 replies)¹².

Other information requirements are relatively less common. 17 competition authorities require the parties to indicate the **expected date of relevant events** in the completion of the transaction (a merger timeline: BE, BG, HR, CY, DK, EE, FI, LV, LT, MT, PL, PT, RO, SK, SI, SE and UK). 11 respondents highlighted the need to disclose **any financial support** received by merging undertakings¹³: in 3 cases, however, such information requirement is limited to public funds (CZ, PL and ES).

¹⁰ In EL, such information is also not required. As regards AT, in general the transmission of a copy of documents bringing about the merger is not required, but the AT competition authority can request these documents, if needed..

¹¹ In FR the parties are required to provide "a presentation of the legal and financial aspects of the transaction". In DE, the parties need to identify the "type of concentration". This involves very basic information about how ownership/control is altered by the transaction.

¹² The exceptions are BG, FR, DE (see above fn 9), SK and NO.

¹³ BE, CY, CZ, ES, HR, MT, PL, PT, RO, SK, SI.

10 replies refer to the **value of the transaction** (BE, DK, EE, FR, EL, HR, RO, SK, SI and SE). An identification of the **economic sectors concerned** by the notified merger is required by 9 competition authorities, i.e. BE, EE, ES, DK (making reference to the NACE codes), HR, IE, MT, RO and SI.

Other information requirements appear more country-specific. They include references to structural changes in the affected groups brought about by the transaction, potential investors and parties that expressed an interest, the process and the considerations underpinning the selection of the parties to the transaction, and the form of initiation of the concentration process (HU), as well as details on consideration (ES, IE and UK), description of the business activities affected (AT, EE and FI) conditions which the implementation of the mergers is subject to (BG, EL and IT).

C. Other information requirements

22 competition authorities require the notifying parties to illustrate the **strategic and economic rationale** for the transaction.

Merger notification will include information on **ancillary restraints** in 14 Member States (AT, CY, CZ, EE, FI, HU, IE, IT, LV, MT, NL, PT, SI and ES). In some cases, however, notification of ancillary restraints is optional (e.g. FI).

In 21 jurisdictions the merging parties are required to state whether the merger is subject to **notification in other Member States**, namely AT, BG, CY, DK, EE, FI, FR, HR, HU, IE, LT, NL, PL, PT¹⁴, RO, SK, SI, ES, SE, UK and NO¹⁵. In DE, parties are encouraged (in an information leaflet) to identify other jurisdictions where the merger has been notified, or is intended to be notified, while there is no obligation to do so. In CZ, parties are not required to state in which other Member States the merger is subject to notification, but usually they identify these other Member States. While some competition authorities require that parties provide a waiver to exchange information with other competition authorities in Member States where the merger is subject to notification (e.g. IT), in other jurisdictions such waiver is only optional (e.g. PT and UK).

Proof of **power of attorney** to represent the merging parties is requested, according to national law rules, in 21 jurisdictions (BE, BG, CY, CZ, EE, ES, FI, FR, HR, HU, IT, LV, LT, MT, NL, PL, PT, RO, SK, SI and UK) and may be requested by SE on an ad hoc basis. In AT, the notification form does not ask for the proof of the power of attorney explicitly and in principle it is sufficient that a lawyer claims to have a mandate.

25 respondents¹⁶ confirmed that **supporting documents** prepared in the context of the transaction need to be attached to the notification. These documents may be broadly classified in two categories: 1) internal documents relating to the preparation of the transaction, such as board meetings' minutes, and 2) reports, market studies and analyses carried out in relation to the notified merger. This information requirement is sometimes subject to the conditions that there is at least one affected market (e.g. IT, MT and SE) or that there is an overlap in the merging parties' activities (IE).

¹⁴ PT requires to identify in which jurisdiction the operation is subject to notification.

¹⁵ FR, PL, SK and IE also require the indication of timing of other notifications.

¹⁶ These jurisdictions are BE, BG, HR, CY, CZ, DK, EE, FI, FR, EL, HU, IE, IT, LT, MT, NL, PL, PT, RO, SK, SI, ES, SE, UK and NO.

In AT, reports, market studies and analyses that support the market definition of the parties need to be attached. Supporting documents prepared in the context of the transaction are not requested upfront but might be asked for in individual cases.

Finally, a short non-confidential **summary of the transaction** is required for publication in 18 jurisdictions (AT, BE, BG, DK, EE, FR, EL, HR, HU, IE, IT, LT, PL, PT, RO, SK, SE, and NO), with some CAs explicitly limiting its length to 500 words (BE, DK, HU, LT and SE) or 2 pages (HR). In FI, a short non-confidential summary of the transaction for publication is not required, but such a summary is directly prepared by the FI competition authority based on the non-confidential information contained in the notification form. In DK and PT, a non-confidential version of the notification is also required.

III. The description of the parties

A. Accounts and annual reports

In a vast majority of jurisdictions (22 replies¹⁷) a copy of the most recent **annual report and financial statements** of the undertakings concerned must be attached to the merger notification. A few competition authorities require such documents covering a longer period like in the case of IT, LT, SI and PT¹⁸ in which it is necessary to provide annual reports and accounts for the last 3 years of all the parties, or in PL where it is necessary to provide annual reports and accounts for the last 2 years.

In some cases, notification forms specify that consolidated financial statements must also be produced, if available (e.g. BG, CZ, FR, PL and PT). In the case of FI the latest annual report must concern each party and each entity or foundation part of the same group of companies involved. In SK the parties may indicate where reports and financial statements are available and accessible.

The DK competition authority must additionally be provided with relevant documents whenever the undertakings concerned have been sold or acquired after the conclusion of the last reported financial year, while in the UK both the acquirer and the target should deliver the last set of monthly management accounts.

B. Previous ownership and control

23 respondents¹⁹ highlighted that the notifying parties are required to provide **a list of all undertakings belonging to the same economic group**, including those controlling the parties directly or indirectly, as well as undertakings controlled by the parties or their parents which are active in the same affected markets. In other jurisdictions (HR, IT and SE) this requirement appears to be limited to undertakings who have direct or indirect control links with the undertakings concerned (i.e. controlling and controlled undertakings), whilst in others it may extend to all undertakings in the group, irrespective of whether they are active in the affected markets (IE and PT).

In AT, all companies that are linked according to the legal definitions have to be listed. This also includes companies where at least 50% of the management or of the supervisory board/board of directors is identical.

11 competition authorities²⁰ also require an illustration of the **ownership and control structure** of the undertakings concerned prior to the merger²¹, while in 11 jurisdictions (BE, CY, DK, FI, EL, MT, NL, PT, SI, ES and SE) parties are called to specify the nature and means of control for each connected undertaking in the same economic group, which are active in the same affected markets.

In the UK, the description of the merging parties should include their ultimate ownership and identify any natural or legal persons who directly or indirectly control them or has material influence thereon. In NO, the illustration of the parties' organizational structure encompasses

¹⁷ AT, BE, BG, CY, CZ, DK, EE, ES, FI, FR, EL, HR, HU, IE, LV, MT, NL, PL, PT, RO, SE, UK and NO.

¹⁸ In PT, not required in simplified/short notification form.

¹⁹ AT, BE, BG, CY, CZ, DE, DK, EE, ES, FI, FR, EL, HR, HU, LV, LT, MT, NL, PL, RO, SE, SK and SI.

²⁰ AT, CZ, EE, FI, HU, IE, IT, LT, PT, RO and SK.

²¹ For information requirements concerning the post-merger ownership and control structure, please refer to the previous section of this report.

the identification of undertakings belonging to the same corporate group. In PT the merging parties should name the members of their managing bodies, and produce the articles of association of the acquirer and the target.

In BG, information concerning ownership and control has to be presented in the form of organizational charts reflecting the situation prior to and after the concentration, indicating the respective shareholder interest.

C. Economic and financial information - Turnover data

Most replies (26)²² underlined the need to provide the competition authority with **turnover data** of the merging parties. In 21 cases, it is sufficient to indicate the turnover in the last financial year (AT, BE, BG, CY, CZ, DE, DK, EE, FI, EL, HR, HU, IE, LV, LT, NL, PL, PT²³, SK, SI, ES and NO), whilst some jurisdictions require turnover figures for the last 3 years (IT, FR, PT and RO).

All these 26 replies state that national turnover data is required for the notification, while worldwide turnover figures are required in 22 Member States²⁴, EU-wide turnover in 9²⁵, EEA-wide turnover in PT and EFTA-wide turnover is necessary in BG. In some Member States, the parties must provide turnover figures for each EU countries (BG, CZ) and EFTA countries (BG). In FR and PT it is required such information covering a period of the last 3 years.

Other information requirements concerning turnover are specific to individual jurisdictions. In IT, the parties must indicate the turnover resulting from internal sales (i.e. sales to subsidiaries and parent companies).

CZ requires national and worldwide turnover figures to be broken down with a view to eliciting: a) the turnover of the undertakings concerned; b) the turnover of the entity which will control the undertakings concerned post-merger; c) the turnover of each of the entities controlled by the undertakings concerned; d) the turnover of each of the entities controlled by the entity which will control the undertakings concerned post-merger and e) the turnover of each of the entities jointly controlled by entities in a) to d). However, such a break-down turnover figures is not required with regard to turnover achieved by the parties in individual EU countries.

RO requests a break-down of turnover figures according to categories of activities and products.

In CY, the parties are required to provide details concerning the level of profits after taxes for all undertakings concerned, as well as the number of their employees within CY and abroad.

Finally, in FI, information about public financial support received for the ordinary activities of each party to the concentration is necessary and whenever the turnover figures have been adjusted to reflect accounting periods different than one year, as well as the sale, acquisition or suspension of business operations, account must be given of the grounds of such adjustment.

²² AT, BE, BG, CY, CZ, DK, EE, ES, FI, FR, DE, EL, HR, HU, IE, IT, LV, LT, MT, NL, PL, PT, RO, SK, SI and NO.

²³ In PT, this applies only for the simplified/ short notification form.

²⁴ AT, BE, BG, CY, CZ, DK, DE, EE, ES, FI, FR, EL, HR, HU, IE, IT, LV, NL, PL, PT, RO and SK.

²⁵ AT, BE, DK, DE, ES, FR, HU, IT and RO.

D. Previous operations

9 respondents²⁶ stated that the merging parties are required to **disclose all acquisitions** of undertakings operating in affected markets made by entities belonging to their economic groups in the last 3 years. In some jurisdictions (EE, FI and PL) the relevant period is only 2 years, or not specified (PT).

In PT, information on previous operations must be provided insofar as those operations are related to the notified transaction and/or may be relevant for its assessment.

In some Member States, this information requirements extend to all acquisitions (in the last 3 years for ES, FR and MT; 2 years for PL), while in other Member States it applies to any **acquisition** in undertakings active in affected markets, which occurred in the last 3 years (AT, BE,LT and PT).

In SK, only mergers involving the parties or other entities belonging to the same group and affecting the national territory, which occurred in the last 3 years, should be described in the notification form.

In the UK, the parties are required to submit brief details of any transactions undertaken by the merging parties in the last 2 years, which involve products or services in any of the candidate markets.

In HU, for the purpose of assessing the turnover thresholds, the parties are called to identify any mergers between the purchaser's and the seller's groups which took place in the last 2 years and were not subject to the CA's review. (similar to the second subparagraph of Article 5(2) of Regulation 139/2004) . Besides the rule above, in HU the parties need to describe any closed or ongoing proceedings of competition authorities, conducted in the last 2 years before the concentration, involving the direct participants

E. Financial and personal links

Most jurisdictions mandate that the merging parties provide information about **financial interests short of control** they might have in other undertakings active in the markets affected by the transaction²⁷.

17 competition authorities require that the notification include a list of all entities in which the undertakings concerned or the economic group they belong to individually or jointly have 10% or more of voting rights, issued share capital and other securities²⁸. In PT, all financial interests below the 50% threshold must be disclosed in the notification form.

In IE, the competition authority must be informed of any shareholdings of more than 10% held by the undertakings concerned in a competitor or potential competitor. A potential competitor is defined as an undertaking that operates upstream or downstream in an area of overlap, or plans to enter the area of overlap or has developed or pursued such plans in the past 2 years.

In FR, all financial interests held by the undertakings concerned the groups to which they belong and their shareholders in other companies should be listed in the notification form, if

²⁶ AT, BG CZ, DK, EL, IT, NL, RO, SI and SE.

²⁷ BE, BG, CY, CZ, DK, EE, EL, ES, FI, FR, HR, HU, IE, IT, LT, LV, MT, NL, PT, RO, SE, SI, and SK.

²⁸ BE, CY, CZ, DK, EE, ES, FI, EL, HR, IT, LT, MT, NL, RO, SK, SI and SE. In IT, the threshold is 5% for listed companies.

such participations confer directly or indirectly a blocking minority or allow appointing at least one member of the board of directors.

In HU, the parties are required to describe their interests in independent entities with reference, *inter alia*, to percentage of ownership, controlling rights, rights to appoint elect or remove managers and ability to influence the decisions of such entities.

Finally, in NO the notifying parties should provide an overview of their interests outside the group, but within the business area affected by the concentration.

Disclosure of **personal links** between the merging parties or the economic groups they belong to and other undertakings operating on the affected markets is also required in 19 jurisdictions²⁹. In particular, the notifying entities have to identify the members of managing and/or supervisory bodies of undertakings belonging to their economic groups, who hold managing positions in independent entities active in the affected markets.

However, there is no perfect overlap as to the offices triggering the disclosure requirement, with jurisdictions referring to board of directors (CY, DK, EL, MT, RO, SK and SI), board of management (CZ, DK, ES, IT, HR, LT, SK, SI and SE), managing bodies (BG, LT and RO), directing bodies (EE), executive bodies (BE), governing bodies (FI, EL and PT), operative management (FI and EL), supervisory bodies (BE, CZ, ES, EL, HR, LT, MT, SK and SI) or any other body legally representing the undertaking (SI).

In HU, personal overlaps (including the same person holding executive official positions in more than one entity) are reported to the competition authority in the context of the description of existing links between the merging parties and any other independent undertaking.

²⁹ BE, BG, CY, CZ, DK, EE, ES, FI, EL, HR, IT, LT, LV, MT, PT, RO, SK, SI and SE.

IV. The description of the markets

A. Market data

1. Affected markets

In a significant number of jurisdictions (25 entries), market data collected at the merger notification stage concern the various markets which are affected by the transaction at stake³⁰.

However, the **criteria used to identify markets which are worth looking into** are rather diverse. Most Member States (17 respondents) require merging parties to submit data relating to horizontally affected market (i.e. where the combined market share of the merging parties exceed a certain threshold) and vertically affected markets (i.e. vertically connected markets where the combined market share of the merging parties exceed a certain threshold).

The relevant threshold for horizontally affected markets is often 15% (AT, CY, CZ, DK, EE, ES, FI, HR, HU, IT, MT, NL, RO, SK and SI), whereas it is 20% in LT and PL and 25% in BE and FR. In BG and IE, any horizontal overlap is sufficient to trigger information requirements.

The relevant threshold for vertically affected markets is often set at 25% (AT, BE, CZ, CY, DK, EE, ES, FR, HR, HU, IT, MT, RO and SI), while it is 20% in FI and NL and 30% in LT, PL and SK. Once again, in BG and IE any vertical overlap is sufficient to trigger information requirements.

In several Member States, affected markets may also include other related markets where the merger may lead to conglomeral effects (EE, FR, FI and HU), to the creation or strengthening of a dominant position (AT and BG) or have a significant impact (BE, DK and HR³¹).

The notification forms sometimes exemplify when a market may be considered potentially affected by the merger or when a significant impact is likely to occur. In particular, mergers with potential competitors or with undertakings holding important IP rights are considered relevant when the market share of the other party exceeds 25% in DK and SI and 30% in LT and SK. The same applies to mergers in closely related markets (ES, DK, LT and SK) or directly related markets where the individual or joint market share of the merging entities exceeds 25% (EE). Finally, in IT data must be supplied about all markets where the acquired entity has a market share above 25%, irrespective of any horizontal overlaps or vertical links.

In LT and AT, some information concerning the business activities and the market shares of the parties is also collected for non-affected markets. In ES, if the merger has been notified because of the companies' market share, even if there are no affected markets, the information about market size and market share is required.

It is worth noting that Member States refer to the notion of affected markets by using a vast range of terminologies which do not necessarily have the same meaning from a jurisdiction to another. This includes references to “potentially affected markets”, “neighbouring markets”, “related markets”, “closely related markets”, “influenced markets” or “relevant markets”.

³⁰ AT, BE, BG, CY, CZ, DK, EE, EL, ES, FI, FR, HR, HU, IR, IT, LT, LV, MT, NL, PL, PT, RO, SK, SI, SE and NO. Only IE and UK appear to make no reference to the notion of affected markets in the merger review regimes. In DE, only market share data (and the basis for its calculation) must be provided, and only if market shares reach at least 20 percent.

³¹ For those markets, information need to be provided only upon request of the HR CA.

2. Market shares and other market information

25 respondents underlined that parties are required to provide information about **market shares**³². Market shares need to be calculated in value and volume³³. In most cases, data on market shares must be provided for the last 3 years (AT, BE, CZ, DK, EE, ES, FI, HR, HU, IT, LV, LT, MT, PT, RO, SK, SI and SE), with the exception of PL and UK (2 years), EL (5 years), DE (1 year) and BG (1 year; 2 years if the merger may create or strengthen a dominant position). FR, IE, NL and NO do not specify the relevant time period for the collection of market shares data. In DK, FI and EL whenever the merging parties plan to launch new product or to expand in the affected markets, they are required to provide an estimate of the development of their market share over the following 3 years³⁴.

Information concerning the **total size of markets** in value and volume needs to be supplied in 23 jurisdictions (AT, BE, BG, CY, CZ, DK, EE, ES, FI, FR, EL, HR, HU, IT, LV, LT, MT, NL, PL, PT, RO, SK and SE)³⁵. The relevant data must also usually be provided for the last 3 years (5 years for EL; 2 years in PL, in BG 1 year or 2 years if the merger may create or strengthen a dominant position; CY does not indicate any time frame). When the relevant geographic market is different than national in scope, ES, IT, CZ, PL and PT also require data at national level concerning the size of the market.

In EE, FI and PT, merging parties are called to estimate the potential future development of market size (such prognostic exercise is limited to the following 3 years in FI and PT).

18 replies mention data concerning the **total sales of the parties** in value and volume terms (AT, BE, BG, CZ, DK, EE, FI, EL, HR, IT, LT, MT, PL, PT, RO, SK, SI and SE). Once again, this information is normally required for the three last financial years (2 years in PL; 5 years in EL; in BG 1 year or 2 years if the merger may create or strengthen a dominant position; CY and NO do not indicate any time frame). When the relevant geographic market is different than national in scope, IT, CZ, PL and PT also require data at national level concerning the sales of the merging parties.

A number of jurisdiction also require information on the total value, volume and source of **imports** (CY, CZ, DK, EE, FI, EL, HR, IT, LT, LV, MT, PL, PT, RO, SK, SI and SE), at times identifying the proportion of such imports which derives from the parties and the economic group they belong to (CY, CZ, DK, EE, HR, LT, MT, PL and RO) or breaking down the relevant data according to the country of origin or destination (CY, EE, FI, EL and SI).

In CZ and PT, the parties are called to estimate the extent to which markets are affected by transportation costs or other non-tariff barriers. SK requires the parties to provide a comparison of price levels for products in the affected markets in neighbouring countries³⁶.

³² CY and UK are exceptions.

³³ DE is an exception as it does not specify how market shares are calculated. This depends on what is appropriate with regard to the markets concerned. However, information on which basis market shares are calculated has to be provided

³⁴ 3 to 5 years in FI and EL.

³⁵ Since DE requires information about the basis on which market shares are calculated, information about market sizes are typically also provided

³⁶ The same information is requested by other NCAs in the context of the structure of supply – see below paragraph IV.L.

Finally, some jurisdictions mandate that the data and/or estimates supplied by the parties be supported by the grounds and sources of calculation they are based upon (DE, FI, EE EL, LT, PT, RO and NO).

B. Information on Competitors

All but one respondent require the merging parties to provide some information on the **market shares of competitors**. In DE, such information is not formally required but typically provided for on a voluntary basis.

In some jurisdictions the notifying entities must identify competitors holding a market share of at least 5% and provide estimates of their market shares (AT, BE, DK, EE, ES, EL, HR, LT, RO, SK and SI). Competitors' market share data need to be supplied for the last 3 years in AT, BE, ES, HR, LT, RO, SK and SI, and for 5 years in EL. DK, and EE do not indicate any relevant time frame. In DK, it is necessary to identify at least 5 competitors (even if some of them do not meet the 5% threshold).

In other Member States, the competitors' market share threshold triggering information requirements is set at 10%: CZ, IT, LV, MT, NL and PL. Competitors' market share data need to be supplied for the last 3 years in CZ IT and LV, and for 2 years in PL.,NL and MT do not indicate any relevant time frame. In IT and PT, only the 5 largest competitors need to be identified. When the relevant geographic market is different than national in scope, PL also requires data at national level concerning the competitors' market shares.

8 respondents (BG, FI, IE, IT, NL, PT, SE and NO) highlighted that merging parties need to provide market share data concerning the 5 largest/main competitors (in the case of IE, both nationally and worldwide). Such data should cover the last 3 years in FI, IT, PT and SE, and 1 year in BG, while IE, NO and NL do not indicate the relevant time frame. The 10 main competitors should be identified in the UK, providing their contact details and an estimate of their market shares.

Other information requirements concerning competitors appear to be country-specific. Market shares of all main competitors should be supplied in HU³⁷ (3 years) and FR (no time frame), while in CY all competitors' market shares need to be estimated. For information on market entry and exit refer to section IV.E.

Finally, IT requires information on the ownership and control structure of competitors, while in IE notifications must include an estimate of the national turnover of competitors in the affected markets.

C. Information on Customers

In all but one jurisdiction (DE), merger notification must include information concerning the parties' main customers and suppliers.

21 competition authorities require the identification of the 5 **most important/largest customers** (AT, BE, BG, CY, CZ, DK, EE, FI, EL, HR, IE, IT, LV, LT, MT, NL, RO, SK, SI, SE and NO).

³⁷ However, as stated above, in HU the second part of the notification form containing such questions need to be answered if the horizontal or vertical overlap between the parties' activities exceeds 15% or 25% respectively. Same goes to all detailed information on relevant markets and conditions of competition (etc. information on costumers, suppliers, barriers to entry and exit, switching, structure of cost).

In 3 cases the requirement extends to the 10 most important customers (HU, PT and UK), and in 1 jurisdiction to the minimum is 3 customers (PL). Finally, FR and ES request information concerning “main” customers, without mentioning any specific numbers.

Identification of main customers is usually required for the last year (23 entries), but the relevant time frame is sometimes 2 years (HU and PL) or 3 (FI and PT). In IE and PL main customers at national level should also be identified.

When identifying their main customers, the merging parties are often requested to indicate the formers’ individual shares of total sales (BE, BG, CY, CZ, DK, EE, EL, ES, FI, FR, HU, HR, IT, LT, MT, NL, PL, PT, RO, SK, SI, SE and NO). Once again, there are country-specific oscillations concerning the relevant time frame, ranging from 1 year (19 replies) to 2 years (PL) and 3 years (EE, FI, PT and SI).

D. Information on Suppliers

The classification of information requirements concerning the parties’ **main suppliers** follows the same pattern, with minor variations. Identification of the merging parties’ 5 main suppliers is required in 23 jurisdictions (AT, BE, BG, CY, CZ, DK, EE, FI, EL, HU, HR, IE, IT, LV, LT, MT, NL, RO, SK, SI, SE, UK and NO), while the 3 main suppliers need to be identified in PL, and the 10 most important ones in PT. In FR and ES reference is made merely to “main” suppliers.

The relevant time frame concerning information about suppliers is usually 1 year (23 replies) extending to 2 years (HU, PL) or 3 (FI, PT). In IE, also the 5 main suppliers at national level should be identified in the notification.

In 23 jurisdictions, merging parties are required to indicate their suppliers’ individual shares of total sales (BE, BG, CY, CZ, DK, EE, ES, FI, FR, EL, HU, HR, IT, LT, MT, NL, PL, PT, RO, SK, SI, SE and NO), for a period of time ranging from 1 year (19 entries) to 2 years (PL) or 3 years (FI, PT and SI).

E. Information on Cooperation Agreements

Information requirements concerning **co-operation agreements** are mentioned by 23 respondents (AT³⁸, BE, BG, CZ, DK, EE, ES, FI, FR, EL, HR, IE, IT, LT, MT, NL, PL, PT³⁹, RO, SE, SK, SI, UK and NO).

14 jurisdictions require the merging parties to specify to what extent horizontal or vertical cooperation agreements exist in the affected markets (BE, CZ, DK, FI, EL, HR, IT, LT, MT, PL, RO, SK, SI and SE). In HU, agreements which may have a decisive influence on the market operation of the participating undertakings or of other market actors have to be described.

³⁸ While there is no explicit question about cooperation agreements in AT, the current relationship between the parties (buyer, seller) has to be specified if there are affected markets. Furthermore, the demand structure of the market, including the importance of sales agreements, has to be specified for the affected market.

³⁹ In PT, although there is no explicit reference to co-operation agreements, the notification form requires that the merging parties describe and characterize the factors that influence entry and exit in the relevant market(s), namely distribution agreements (exclusive, selective, etc.) or other forms of marketing: duration of the contracts signed between undertakings present in the market. Also where applicable, it requires a description of the channel/networks in existence for the distribution of the products/provisions of the services that are part of the relevant market(s).

In 21 cases, parties are called to provide details concerning the cooperation agreements they are engaged in. However, while in 6 jurisdictions this requirement apparently encompasses all cooperation agreements concluded by the parties in the affected markets (EE, ES, FR, IE, NL and SK), other NCAs only ask information relating to the “most important” cooperation agreements of the parties (BE, BG, CZ, DK, EE, EL, HR, IT, LT, MT, PL, RO, SI, SE and NO). In FR, the parties have to provide a list and a description of all undertakings with which they have significant and long-standing contractual relationships.

Copies of such agreements need only to be submitted in BE, EE, ES, EL and LT.

F. Information on market entry and exit

Most notification forms require merging parties to supply rather detailed information concerning **market entry and exit**, with a view to assessing the existence and relevance of any barriers as well as the ability of potential competition to discipline the commercial behavior of current players. In DE, filing parties are not formally required to provide such information, but tend to volunteer additional information that is necessary to understand market conditions, in particular, with regard to barriers to entry.

Historical data on past entry, including the identification of any significant new entrants, is required in 23 jurisdictions (AT, BE, BG, CY, CZ, DK, EE, ES, FI, EL, HR, HU, IT, LT, MT, PL, PT, RO, SK, SI, SE, UK and NO). The majority of NCAs require such information to cover the 5 years preceding the notification, but such period is shortened to 3 years in EE, ES, FI, HU and NO. In BG, there is no precise indication as to the relevant time frame, as the parties should state whether significant entry occurred “in the last years”. DK, EE, LT, PL and SK also require information on market exit in the relevant period.

An indication of **market shares achieved by undertakings who entered** the market in the relevant time frame needs to be provided in BE, CZ, DK, FI, EL, HR, LT, MT, PL, RO, SK, SI and SE. Furthermore, an analysis of barriers to entry which were met by new entrants (including the parties) is required in 21 jurisdictions (BE, BG, CZ, DK, ES, EL, HR, HU, IT, LT, LV, MT, NL, PL, PT, RO, SE and SI).

In addition to historical references, merging parties are often required to engage in a **prognostic assessment as to whether market entry is likely** to occur in the future (AT, BE, BG, CY, CZ, DK, ES, FI, EL, HR, HU, IT, LT, MT, PL, PT, SE, SK, SI and UK). In most cases, the timeframe in which such entry is expected to happen has to be indicated in the form (BE, BG, CZ, DK, ES, FI, EL, HR, IT, LT, MT, SE, SK and SI). In a few instances, however, only entry which is likely to occur within a specific time needs to be mentioned (2 years in HU, 5 years in CY, sufficiently timely entry in PT and in the UK).

Other common – if not altogether general – information requirements concern the various **factors influencing entry** in the affected markets. Total cost of market entry is quoted in 18 replies (BE, BG, CY, CZ, DK, ES, FI, EL, HR, HU, IT, LT, MT, NL, PT, RO, SE and NO), on par with legal and regulatory barriers - including those created by patents or other intellectual property rights - (BE, BG, CZ, DK, ES, FI, FR, EL, HR, IT, LT, MT, NL, PT, SE, SI and NO).

15 competition authorities require a description of **access to sources of supply / raw material** (BE, BG, CZ, DK, FI, FR, EL, HR, IT, LT, MT, NL, PT, RO and SE), while the

importance of economies of scale is quoted in 12 replies (BE, BG, CZ, DK, FI, EL, HR, IT, LT, MT, NL, PT⁴⁰, RO and SE).

Other information requirements on market entry appear to be country-specific. For instance, an assessment of the importance of research and development needs to be provided in FR, while ES requires the parties to submit a detailed description of entry barriers, including in particular any restrictions on imports and on the creation of a distribution network. In PT the description of factors affecting entry must include references to exclusive and selective distribution agreements as well as the duration of contracts prevailing in the market.

With reference to imports, LT requests data on the value and volume of imports in the affected markets, as well as a description of quotas and other barriers which could affect such imports. In CZ, DK, EE, EL, FI, HR, LT, LV, MT and PT merging parties should provide estimates of the extent to which imports are affected by quotas, tariff and non-tariff barriers and transportation costs. The relevant data should cover a period of 3 years in SE. In LV, the merging parties should indicate the market share of imported goods.

G. Information on Distribution and After Sales Services

Most Member States require information concerning distribution and after sales services (AT, BE, BG, CY, CZ, DK, EE, EL, ES, FI, FR, HR, HU, IT, LT, MT, NL, PL, PT, RO, SE, SI, SK, UK and NO).

In CY, the description of distribution and service networks existing in the market needs to be complemented by a list of all undertakings belonging to the merging groups, which provide distribution or maintenance services to a significant extent.

In CZ, DK, EE, ES, EL, LT, MT, NL, NO, RO and SE the description of distribution and service systems should include an assessment of their significance and/or an indication of whether they are performed by third parties and/or undertakings belonging to the merging groups.

In HU, the parties are required to describe the typical terms of distribution contracts in the affected markets, and explain the relevant regulatory framework governing the manufacture and distributions of the products concerned, as well as any expected change in the pricing and distribution strategy post-merger.

The PT agency asks the merging parties to specify whether they use different distribution or service networks. In SE, the parties need to provide a description of how they produce and distribute the goods concerned, including the organization of production and the distribution network. Finally, in the UK an explanation of the supply chain is required, including distribution channels and underlining any differences between separate geographic areas where the activities of the merging parties overlap.

H. Information on Production Capacity

19 jurisdictions also require data on **production capacity**, most notably an estimate of total production capacity (BG, CZ, DK, FI, FR, IT, LT, NL, PL, PT, SE, SK, SI and NO)

⁴⁰ In PT, if the merging parties consider efficiency gains resulting from the concentration (e.g. cost economies, economies of scale, introduction of new products or improvements in the service or products) relevant to the assessment of the operation, they should provide information describing and demonstrating it.

In BE, EL, ES, MT and RO, parties are required to provide an estimate of total capacity at national level.

In 16 jurisdictions (BE, BG, CZ, DK, ES, FR, EL, IT, LT, MT, NL, PL, RO, SE, SK and SI) it is necessary to specify what share of production capacity can be attributed to each of the parties.

In BE, BG, DK, ES, FI, FR, EL, IT, LT, MT, NL, PL, PT, RO, SE, SK, SI and NO the parties should also specify to what extent available production capacity is already in use. In FR, parties must provide an assessment of production capacity utilization.

Finally, in 10 cases, the parties should identify the location and capacity of their manufacturing facilities (BE, BG, DK, ES, FI, EL, LT, RO, SK and SI)

In BE, BG, CZ, ES, FI, EL, IT, LT, MT, NL, PT, SE, SI and SK, the relevant information should be provided for the last 3 years prior to the transaction. For all other jurisdictions the time frame is 1 year. In BG the data must be provided for the last 2 years whenever the transaction may lead to creating or strengthening a dominant position.

Data on capacity, switching rates and variable profit margins should be provided in the UK only if the combined market share of the merging parties exceeds 15%.

I. Information on Research and Development

18 jurisdictions (BE, CY, CZ, DK, ES, EL, FR, HR, IT, LT, MT, NL, PL, PT, RO, SK, SI and SE) require the parties to elaborate on the **relevance of research and development** vis-à-vis the ability of firms to compete effectively in the affected markets in the long term. In FI, the assessment should be complemented by an estimate of the incidence of R&D on turnover. In EE and NO a mere description of R&D in the affected markets appears to be sufficient.

In BE, CY, CZ, DK, EE, ES, EL, HR, LT, MT, PL, RO, SK, SI and SE, parties are also called to explain the nature of research and development activities they carried out in the affected markets. FR requires an indication of R&D expenses sustained by the merging parties. In CY and ES merging parties must provide an estimate of the costs of such R&D activities as a percentage of their turnover.

Moreover, in CY, DK, EL, HR, MT, PL, RO, SE, SI and SK, parties need to describe the main innovations which are expected to result from the operation. Finally, the parties must state whether they are franchisers or patent holders or participate in know-how agreements in the affected markets.

J. Information on Trade Organisations

Information concerning the presence of **trade organisations** in the affected markets is required in most jurisdictions (except in DE and AT).

Several Member States require the identification of trade associations the parties are member of (BE, BG, CZ, DK⁴¹, EE, ES, FI, EL, FR, HR, IT, LT, MT, PL⁴², PT, RO, SK, SI, SE and NO), and the identification of the most important trade associations to which customers and

⁴¹ In DK, the requirement is phrased slightly differently, as the parties are asked to identify the trade associations of which they “and possibly their competitors” are members.

⁴² In PL, this is limited to associations of undertakings operating on the national territory.

suppliers of the parties belong (BE, BG, CZ, DK, FI, EL, HR, IT, LT⁴³, MT, RO, SK, SI and SE).

In FR, HU, IE, NL and UK, parties shall provide a list and contact details of professional organisations in the affected markets - whether or not they are members thereof). In HU, the requirement is apparently limited to national trade associations.

K. Structure of demand

All but one respondent confirmed that some information concerning the **structure of demand** must be provided when notifying a merger. In DE, such information is not formally required

While there is no complete convergence concerning the nature of the information required from the merging parties, common patterns may be identified, whereby the same sort of elements are considered relevant by a number of competition authorities.

First of all, 23 jurisdictions require information concerning the importance of **consumer preferences**, with specific reference to brand loyalty and/or product range (AT, BE, BG, CZ, DK, EE, ES, FI, FR, EL, HR, HU, IE, IT, LT, MT, NL, PL, PT, RO, SK, SI, SE and NO).

20 replies mention the degree of **customers' concentration** (AT, BE, BG, CZ, DK, ES, FI, FR, EL, HR, IT, LT, MT, NL, PL, PT, RO, SK, SI and SE), as well as the **segmentation of demand** in different groups (BE, BG, CY, CZ, DK, EE, ES, FI, EL, HR, IT, LT, MT, NL, PL, RO, SE, SI and UK) and 20 jurisdiction require indication about the **development stage of the market** (AT, BE, BG, CZ, DK, EE, ES, EL, HR, IE, IT, LT, MT, PL, PT, RO, SE, SI, SK and NO), i.e. whether the market is in its infancy, the take-off phase, maturity or decline. In some instances, this sort of analysis may be supplemented by a forecast of the growth rate of demand (for instance, in SE).

18 competition authorities require the parties to indicate the **importance of distribution contracts** in the affected markets (AT, BG⁴⁴, CZ, DK, EE, ES, EL, HR, IT, MT, PL, RO, SI, SE and NO), while information concerning the relevance of **switching costs** needs to be provided in 17 jurisdictions (BE, BG, DK, EE, ES, FI, EL, HR, HU, IE, LT, PT, RO, SE, SK, SI and NO).

Other relatively common information requirements concerning the structure of demand include the degree and significance of **product differentiation**, which is required by 12 NCAs (BE, BG, DK, ES, EL, HR, IE, LT, SI, SE, UK and NO), and the **share of demand which is expressed by public bodies**, that was mentioned in 14 replies (BE, CY, CZ, EE, FI, FR, EL, HR, IT, MT, PL, PT, RO and SI).

Finally, a number of information requirements appear specific to individual countries a forecast of the growth rate of demand (ES, IT and LT)⁴⁵; the ways customers purchase the product (SK) and buyer power (NO).

⁴³ In LT, this is limited to customer association to which consumers of the parties belong.

⁴⁴ In BG, such information need to be provided for the last two years whenever the transaction may lead to the creation or strengthening of a dominant position.

⁴⁵ In some jurisdictions, a forecast on the demand's growth rate is required from merging parties in the context of information about market entry and exit – see above.

L. Structure of supply

Information concerning the **structure of supply** is collected in the context of merger notifications by the vast majority of competition authorities (AT, BG, CY, CZ, DK, EE, ES, FI, FR, EL, HR, HU, IE, IT, LT, LV, MT, NL, PL, PT, RO, SE, SI, SK and UK).

The relevant information typically include a description of **distribution channels and customer service networks** (AT, CZ, EE, HR, IT, LT, NL, PL, PT, RO, SK and SI)⁴⁶, as well as the **nature and extent of vertical integration**, which is mentioned by 10 respondents (BG, CZ, DK, HR, LT, MT, NL, RO, SE, SI, SK and UK).

Otherwise, the landscape of information requirements concerning the structure of supply appears rather scattered. In BG, merging parties are required to describe their business relations with suppliers and explain to what extent they are expected to be altered as a result of the transaction. The CY agency asks the parties to identify possible segmentation of suppliers in different groups and indicate to what extent public authorities are suppliers of the undertakings concerned. In FI, notification requirements include the degree of suppliers' concentration, as well as the stage of market development and the estimated development of supply over the following 3 years.

An analysis of price levels prevailing in neighbouring countries is required in FI, CZ and NL. In DK, FI and SE parties must indicate whether in the 3 years⁴⁷ following the transaction they intend to launch new products in the affected markets, or expand production or sales capacity⁴⁸, or engage subcontractors; they are also required to provide estimates of their expected sales over the following 3 years. Other relevant information requirements include the cost structure of the industry (ES and HU), expansion plans (ES and UK), pipeline products and services (ES and FI), and the ways products are sold (SK and LT).

⁴⁶ Only distribution channels are mentioned in the reply from Norway.

⁴⁷ Three to five years in FI and EL.

⁴⁸ Plans to expand production capacity should also be part of the notification in RO, SK and SI.

V. Conclusions

In the vast majority of Member States, mergers are subject to formalised procedures which are usually based on notification requirements and the use of standard forms which have been developed at national level. The content and the structure of many such forms mirror – at least to a certain extent – the notification forms elaborated by the European Commission pursuant to Regulation EC 802/2004.

The German merger control system takes a somewhat distinct approach. Merging parties are not required to submit a notification form and mandatory information requirements are extremely limited. Additional information may be requested by the competition agency in the course of its investigation, inasmuch as it is necessary for the competitive assessment of the transaction. In practice additional information requests, if any, are very focused on the particular competition issues raised by an individual case. Given that many cases do not raise competition issues, additional information required from the parties is often very limited.

The present report highlights a significant level of convergence across EEA jurisdictions concerning the analytical framework for the appraisal of the competitive impact of mergers. A common taxonomy of broadly corresponding information requirements in the context of merger notification clearly emerges from the analysis of available data. Indeed, most European competition authorities request merging parties to provide the same categories of information, with a view to ensuring that the transaction's likely impact on competition is properly assessed.

However, when individual information requirements are examined in detail, differences can be detected in several areas. Whereas clusters of agencies asking the same piece of information can be identified for each wider category, there are also a number of country-specific requirements. Moreover, with regard to information required by several or most forms, the comparison has identified slightly diverging wordings, divergences in relevant time frames and varying levels of detail.

In the context of this report, it is not easy to determine whether the observed divergences reflect actual differences in perceptions as to the relative importance of specific information for the competitive assessment of mergers, or are – at least in part – merely accidental, e.g. due to language differences and variations in translations, given that the original language of most notification forms is not English. It is clear, however, that the discrepancies are not rooted in fundamental divergences about the economic underpinning of the merger review regime.

In principle, it could be argued that significant differences in the applicable information requirements could entail additional administrative burdens for merging parties notifying cross-border transactions in multiple jurisdictions. A clear and manageable presentation of the merger notification information requirements applicable in each European jurisdiction can partially alleviate such burdens, inasmuch as it would enable merging parties to save research and transaction costs. The publication of the attached tables serves this objective. The compilation of information requirements in national merger control proceedings can also be useful for national competition authorities when reviewing the content of their notification forms and consider how to further improve them.