

Competition *policy brief*

The 2023 Merger Simplification Package: cutting red tape and refocussing resources

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Introduction

Under the EU Merger Regulation, intended concentrations by undertakings that meet certain established turnover thresholds must be notified to the Commission.¹ This allows the Commission to verify that these mergers would not significantly impede effective competition within the internal market.

In practice, over 90% of notified concentrations are found to raise no competition concerns, resulting in unconditional clearance. The Commission has therefore been seeking to focus its resources on potentially problematic cases, while reducing the administrative burden linked to those that are unproblematic.

In 2000, the Commission thus introduced a simplified procedure for categories of merger cases deemed from the outset not to raise competition concerns. For cases falling under this simplified procedure, less information is required from notifying parties (notably using a shorter notification form), and information sought from third parties is limited as the Commission does not conduct a comprehensive market investigation. This results in a significantly quicker review process, which is on average more than 5 weeks shorter (including pre-notification) than non-simplified cases. After notification, simplified decisions are usually adopted around working day 16, while decisions under the normal procedure usually take 25 working days (in unconditional phase I cases), 35 working days (in conditional phase I cases), or even longer in phase II investigations.²

In 2013,³ the Commission further extended the scope of the simplified procedure (e.g. it raised the market share thresholds for horizontal overlaps from 15% to 20% and for non-horizontal

relationships from 25% to 30%), and reduced the information required (e.g. only part of the Short Form CO must be completed for joint ventures with no activities in the EEA).

The Commission launched an evaluation in 2016 (the "Evaluation"),⁴ the results of which were published in a Staff Working Document in 2021.⁵ This document attested that the 2013 simplification package had successfully reduced the administrative burden, without negatively affecting the effectiveness of EU merger control. The streamlining resulted in substantial cost savings for both the

merging parties (46% fewer questions to be replied to and on average at least 25 working days less per simplified case) and the Commission (overall roughly 5 500 working days saved due to the

In a nutshell

On 1 September 2023, the European Commission's Merger Simplification Package will enter into force. It consists of a new Merger Implementing Regulation, Notice on Simplified Procedure, and Communication on the submission of documents.

The changes introduced aim to further reduce the administrative burden of merger notifications for merging parties and the Commission alike, which will allow for a refocussing of resources on complex cases.

The main changes of the 2023 Merger Simplification Package aim to (i) expand and clarify the categories of cases handled under the simplified procedure; (ii) streamline the review of simplified cases; (iii) streamline the review of cases under the normal procedure; and (iv) enable electronic document submissions.

The revised legal framework will enter into force on 1 September 2023.

¹ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation), OJ L 24, 29.1.2004, p. 1–22.

² This was concluded in the Staff Working Document of the evaluation of procedural and jurisdictional aspects of EU merger control (available at https://competition-policy.ec.europa.eu/document/download/fec9441a-3fca-4d51-851f-6a0e22a52b35_en) leading up to, and Impact Assessment Report (available at <https://ec.europa.eu/transparency/documents->

[register/detail?ref=SWD\(2023\)80](https://ec.europa.eu/transparency/documents-register/detail?ref=SWD(2023)80)) conducted in the context of, the 2023 Merger Simplification Package.

³ For more information on this, see https://ec.europa.eu/commission/presscorner/detail/en/IP_13_1214.

⁴ See https://ec.europa.eu/smart-regulation/roadmaps/docs/2017_comp_003_evaluation.pdf.

⁵ See https://competition-policy.ec.europa.eu/document/download/fec9441a-3fca-4d51-851f-6a0e22a52b35_en

shift of more cases to the simplified procedure).⁶ However, the Evaluation also revealed room for further improvement, suggesting additional types of unproblematic cases that could be brought under the simplified procedure. It also called for more clarity on when a case qualifying in principle for simplified treatment may nevertheless be reviewed under the normal procedure.

In response, the Commission launched an impact assessment in March 2021, to explore options for revising the Merger Implementing Regulation⁷ and the Notice on the Simplified Procedure.⁸ During this impact assessment, the Commission gathered evidence through (i) an open public consultation and consultations of stakeholders; (ii) discussions with stakeholders and national competition authorities in the EEA; and (iii) internal research to assess the risks and benefits of the different options.

Consequently, on 20 April 2023, the Commission adopted a new Merger Implementing Regulation⁹ and a new Notice on a Simplified Procedure.¹⁰ These changes overhaul the assessment of simplified cases and the notification process, and include among other updates a brand-new notification form for simplified cases. The Commission has also updated and streamlined the other three notification forms annexed to the Implementing Regulation. Furthermore, the Commission adopted on that same day a new Communication on the submission of documents,¹¹ providing for electronic submissions by default.

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What are the objectives of the 2023 Merger Simplification Package?

The primary aim of the 2023 Merger Simplification Package is to establish, based on the Commission's decisional practice, a set of criteria that accurately identify cases unlikely to raise competition concerns. This is typically associated with factors such as the level of market shares or the increment brought about by the transaction.

In light of prior experience, the 2023 Merger Simplification Package also seeks to identify the level of information necessary for the Commission to clearly rule out competition concerns. This pertains to information regarding the concerned companies' activities or notifying parties' assessment of jurisdiction or relevant markets, among others.

All the while, the 2023 Merger Simplification Package aspires to ensure that this simplification does not lead to a relaxation of EU

merger control standards. It strives to guarantee that no cases requiring a review under the normal procedure are inadvertently missed.

These objectives, similarly to the simplification initiatives that preceded the 2023 Merger Simplification Package, fit in a broader aim of refining the merger review process, enhancing its speed and adaptability to the complexity of each case. This allows the Commission to channel its investigative efforts towards cases warranting more detailed reviews, which is all the more important because, building on acquired experience, case assessments have grown increasingly sophisticated.

How are the objectives of the 2023 Merger Simplification Package achieved?

To accomplish the goals of the 2023 Merger Simplification Package, the Commission revised the legal framework covering merger control procedures, notably the Implementing Regulation and its annexes as well as the Notice on Simplified Procedure. The new legal texts now provide clearer rules and guidance, and simplify procedures where appropriate.

Based on the results of the Evaluation, the Impact Assessment identified several policy options for further simplification: (i) the expansion and clarification of case categories treated under the simplified procedure; (ii) the streamlining of the review process for cases under the simplified procedure; (iii) the optimisation of the review process for cases under the normal procedure; and (iv) the facilitation of electronic document submissions.

Main changes in the legal texts

Expanding and clarifying the categories of simplified cases

First, to expand and clarify the categories of cases covered by the simplified procedure, the Notice on Simplified Procedure has been broadened to include **two new categories of cases that can benefit from simplified treatment** on top of the existing ones (point 5 Notice on Simplified Procedure). The simplified procedure now also applies by default to cases where:

- a. Under all plausible market definitions, the individual or combined upstream market share of the parties to the concentration is below 30% and their purchasing share of the upstream inputs is below 30%; and
- b. Under all plausible market definitions, the individual or combined upstream and downstream market shares of the parties to the concentration are below 50%, the HHI delta is

⁶ As established in the Evaluation Staff Working Document.

⁷ Commission Implementing Regulation (EU) No 1269/2013 of 5 December 2013 amending Regulation (EC) No 802/2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ L 336, 14.12.2013, p. 1–36.

⁸ Commission Notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EC) No 139/2004, OJ C 366, 14.12.2013, p. 5–9.

⁹ Commission Implementing Regulation (EU) 2023/914 of 20 April 2023 implementing Council Regulation (EC) No 139/2004 on the control of

concentrations between undertakings and repealing Commission Regulation (EC) No 802/2004, C/2023/2400, OJ L 119, 5.5.2023, p. 22–102.

¹⁰ Commission Notice on a simplified treatment for certain concentrations under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings 2023/C 160/01, C/2023/2401, OJ C 160, 5.5.2023, p. 1–10.

¹¹ Communication from the Commission Communication pursuant to Articles 3(2), 13(3), 20, and 22 of Commission Implementing Regulation (EU) 2023/914 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings and repealing Commission Regulation (EC) No 802/2004 2023/C 160/02, C/2023/2402, OJ C 160, 5.5.2023, p. 11–13.

below 150, and the smaller undertaking in terms of market share is the same in the upstream and downstream markets.

Second, the Commission has **introduced flexibility clauses** in the new Notice on Simplified Procedure (points 8 and 9 Notice on Simplified Procedure). These give the Commission, upon request of the notifying party/ies, the discretion to treat under the simplified procedure concentrations which *a priori* do not fall under any of the categories of cases qualifying for simplified treatment by default (set out in point 5 Notice on Simplified Procedure). Concretely, the new Notice on Simplified Procedure includes flexibility clauses for each of the following:

- a. Horizontal overlaps where the combined market share of the parties to the concentration is 20-25%, and vertical relationships where the individual or combined upstream and downstream market shares of the parties are 30-35%;
- b. Joint ventures with turnover and assets between EUR 100 and 150 million in the EEA; and
- c. Vertical relationships where the individual or combined market shares of the parties to the concentration do not exceed 50% in one and 10% in the other vertically related market.

Third, the new Notice on Simplified Procedure includes a clearer and more detailed list of **safeguards**, i.e. circumstances in which a concentration that technically qualifies for simplified treatment nevertheless could be investigated under the normal procedure (e.g. cases in which (one of) the parties has/have plans to expand in markets in which the other party is active, or in which (one of) the parties is/are recent entrant(s) in markets where their activities overlap).

Streamlining the review of simplified cases

The new Short Form CO, the notification form for simplified cases, has been redesigned to a **“tick-the-box format”**, featuring primarily multiple-choice questions and tables for the notifying parties to fill out. The aim of these changes is to make the notification of simplified cases faster and less burdensome for notifying parties as well as for the Commission.

The Short Form CO also streamlines the Commission’s questions regarding jurisdictional and substantive assessment of the concentration. For the jurisdictional assessment (Section 6 Short Form CO) the notifying parties must choose among a list of statements (e.g., related to voting or veto rights, or to full-functionality). Regarding the substantive assessment of the concentration, the Short Form CO provides multiple-choice questions (e.g., for the category of simplified treatment or for the safeguards) and tables (e.g., tables with i.a. market shares for all horizontal overlaps, non-horizontal relationships and vertical relationships with upstream market shares below 30%, and downstream purchasing shares below 30%).

Importantly, these changes are implemented without jeopardising enforcement. For less straightforward situations, the Short Form CO provides free text boxes for clarification and includes the

necessary checks. Moreover, the list of safeguards included in the Short Form CO functions as a screening tool for merging parties and the Commission, to identify potential areas of complexity that may lead the Commission to require a review under the normal procedure (e.g., cases where there will remain fewer than three competitors with market shares above 5%, or cases that include important innovators).

Finally, the Notice on Simplified Procedure now provides for **two categories of cases that can benefit from “super-simplified” treatment**. These are cases involving joint ventures whose activities are exclusively located outside the EEA (point 5(a) Notice on Simplified Procedure), and those with no horizontal overlaps or non-horizontal (i.e., vertical or conglomerate) relationships between merging parties’ activities (point 5(c) Notice on Simplified Procedure). The information required for these cases is significantly reduced and merging parties are advised to directly notify without pre-notification contacts, thereby saving time.

Streamlining the review of non-simplified cases

The Simplification Package also streamlines the review of normal cases. Changes were made to the Form CO, the notification form for non-simplified cases, to reduce administrative costs and time.

First, the new Form CO now provides clear instructions to notifying parties for requesting waivers, eliminating certain information requirements. There is now a separate section on waivers, setting out in more detail under which circumstances notifying parties can request a waiver, and how.

Second, the Commission has eliminated altogether certain information requirements in Section 8 of the current Form CO, concerning “Cooperative Agreements”, “Trade between Member States and imports from outside the EEA”, and “Trade associations”.

Third, the Commission has introduced a new Section 7 in the Form CO for those markets that benefit from the flexibility clauses of the new Notice on Simplified Procedure. The information for those markets is to be submitted in the form of tables and is much more limited than for markets falling outside of the scope of the flexibility clauses (e.g. sections 6, 8, 9 and 10 of the Form CO do not need to be completed).

Fourth, the new Form CO includes summary tables requiring information on horizontally and vertically affected markets, as well as tables requesting information on pipeline products. With these latter tables, the Commission seeks to standardise information requests. Indeed, it is not only asking for market shares and underlying methodology, the parties’ activities, contact details for competitors, etc. for horizontal overlaps and vertical relationships, but also for specifics about the parties’ and their competitors’ pipeline products and their stage of development. This is particularly relevant in sectors where innovation is a key parameter of competition.

Introducing electronic notifications

In the context of the Covid-19 pandemic, since May 2020, the Commission has temporarily accepted, and in fact encouraged merger notifications in digital format. Based on this experience and to promote the Commission's digital transformation, the Commission has taken the opportunity of this simplification exercise to solidify this practice with permanent rules on digital transmission of documents, signed by valid electronic signatures, in the context of EU merger control proceedings.

Going forward, the transmission of documents to and from the Commission, including merger notifications, shall take place in principle through digital means (see Article 22 of the new Merger Implementing Regulation and the Communication on submission of documents).

What are the benefits of these changes?

The Commission expects that by broadening and clarifying the categories of simplified cases, **approximately 10% of cases that previously required notification under the normal procedure will now be handled under the simplified procedure.** This means that **at least 80% of all notified cases will be reviewed under the simplified procedure going forward.**

Moreover, the revised categories are expected to significantly affect the assessment of non-simplified cases as well. These new categories are anticipated to encompass a substantial number of markets or segments that previously required detailed assessment. According to the Commission's estimates, **approximately 14% of all horizontal overlaps and up to 19% of all vertical relationships that were traditionally assessed under the normal procedure will no longer require an extensive market investigation.**

Furthermore, the streamlined review of simplified and non-simplified cases will require less information from notifying parties overall, and information requirements will be more structured. This streamlining will enable notifying parties to understand and predict more precisely what information is needed, and how they can request waivers from certain information requirements. The information burden would likewise be reduced on third parties, who would have to respond to fewer market investigations given the expanded categories of cases handled under the simplified procedure.

Overall, the changes introduced by the 2023 Merger Simplification Package will bring significant benefits, in the form of considerable cost reduction for notifying parties, less time required to obtain clearance, and fewer Commission resources to address unproblematic cases. It is expected that each additional case processed under the simplified procedure, and possibly also under

the non-simplified procedure, could save notifying parties hundreds of thousands of euros.¹²

The benefits are further amplified with the introduction of electronic document submissions. Merging parties will be able to submit documents more conveniently and swiftly, eliminating the need for paper, and this for both simplified and non-simplified cases. For notifications alone, this equals an amount of roughly 2 000 to 3 000 pages for each simplified case, and up to 20 000 pages per non-simplified case, that no longer would have to be printed and posted to Brussels.

What was the feedback of the legal and business community on the 2023 Merger Simplification Package?

As part of its Impact Assessment, the Commission consulted stakeholders, to gather and incorporate the views of the legal and business community on its revised legal framework of procedures.

These consultations were met with positive feedback overall; stakeholders from both the private and public sectors expressed their satisfaction with the Commission's proposals to further simplify the review of simplified and non-simplified cases. They welcomed the introduction of the new categories of simplified cases, endorsed the implementation of the flexibility clauses, and acknowledged and supported the introduction of safeguards to limit any risk of under-enforcement.

Constructive comments were also shared during these consultations, leading to several adjustments to the legal texts. For instance, some stakeholders suggested the occasional use of free-text boxes in the Short Form CO for clarifications when necessary. In response, the Commission incorporated additional text boxes in the Short Form CO in relevant sections, such as at the end of section 6 to allow for additional explanations on jurisdiction. Furthermore, several stakeholders requested for the list of safeguards to be made as objective as possible. They also pointed out that some safeguards included in the draft Short Form CO required detailed information, which they deemed burdensome and unnecessary for cases that in principle qualify for simplified treatment. To address these comments, the Commission revised the final list of safeguards, removing from the checklist those safeguards that had been flagged as challenging to assess based on tick-the-box questions. For instance, a safeguard querying whether the parties own or control important technological, financial, or competitively valuable assets was eliminated from the list.

Both private and public stakeholders considered that the changes proposed by the Commission's 2023 Merger Simplification Package will indeed make merger control less costly and time-consuming for businesses.

¹² See Impact Assessment Report (available at [https://ec.europa.eu/transparency/documents-register/detail?ref=SWD\(2023\)80](https://ec.europa.eu/transparency/documents-register/detail?ref=SWD(2023)80)) conducted in the context of the 2023 Merger Simplification Package.

Conclusion

The 2023 Merger Simplification Package brings a substantial advancement in alleviating where possible the procedural burdens within merger control for unproblematic cases. This, in turn, facilitates a more focused examination of cases that warrant greater scrutiny.

The full impact of the 2023 Merger Simplification Package will become increasingly evident following its implementation on 1 September 2023. Anticipated benefits include considerable cost savings and a smoother, faster merger control process, particularly for cases that are less likely to raise competitive concerns.

More information on the 2023 Merger Simplification Package can be found on [DG COMP's website](#). DG COMP has also published a [Q&A](#) with clarifications and practical information on the adopted legal texts and their purpose.