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Date: 18/06/2021 17:02:15

Questionnaire on Revision of certain procedural aspects of EU merger control

Fields marked with * are mandatory.

Introduction

Responding to the questionnaire

You can contribute to this consultation by filling in the online questionnaire. If you are unable to use the online questionnaire, please contact us using the email address below.

The questionnaire is available in English, French and German. You can submit your responses in any official EU language.

For reasons of transparency, organisations and businesses taking part in public consultations are asked to register in the EU's Transparency Register.

How to answer?

You are invited to reply to this public consultation by filling out the EUSurvey questionnaire online. The questionnaire is structured as follows:

The first part of the questionnaire concerns general information on the respondent.

The second part focuses on policy options for a possible revision of the Notice on Simplified Procedure, and the Implementing Regulation as set out in section B of the Inception Impact Assessment, namely regarding (a.) the categories of simplified cases, (b.) the review of simplified cases, (c.) the review of normal cases and (d.) the possibility to use electronic notifications. This is the main part of the questionnaire. It aims at gathering information and views from stakeholders to assess the impact of the policy changes that the Commission is exploring.

The third part of the questionnaire addresses other issues and elements to be considered during the impact assessment phase.

The Commission will summarise the results in a report, which will be made publicly available on the Commission's Better Regulation Portal.

To facilitate the analysis of your reply, we would kindly ask you to keep your answers concise and to the point. You may include documents and URLs for relevant online content in your replies. You are not required to answer every question. You may respond ‘no opinion' to questions on topics where you do not have particular knowledge, experience or opinion or simply do not answer if this option is not available. Where applicable, this is strongly encouraged in order to ensure that the evidence gathered by the Commission is solid.

You are invited to read the privacy statement attached to this consultation for information on how your personal data and contribution will be dealt with.

You have the option of saving your questionnaire as a ‘draft’ and finalising your response later. In order to do this, click on ‘Save as Draft’ and save the new link that you will receive from the EUSurvey tool on your computer. Please note that without this new link you will not be able to access the draft again and continue replying to your questionnaire. Once you have submitted your response, you will be able to download a copy of your completed questionnaire.

Whenever there is a text field for a short description, you may answer in maximum 2000 characters.

Questions marked with an asterisk (*) are mandatory.

To avoid any confusion about the numbering of the questions, please note that you will be asked some questions only if you choose a particular reply to the respective previous one(s).

No statements, definitions, or questions in this public consultation may be interpreted as an official position of the European Commission. All definitions provided in this document are strictly for the purposes of this public consultation and are without prejudice to definitions the Commission may use under current or future EU law or in decisions.

In case you have questions, you can contact us via the following functional mailbox: COMP-SIMPLIFICATION_IMPACT_ASSESSMENT@ec.europa.eu

If you encounter technical problems, please contact the Commission's CENTRAL HELP-DESK.

Publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

Anonymous

Only your type of respondent, country of origin and contribution will be published. All other personal details (name, organisation name and size, transparency register number) will not be published. If you choose to submit an anonymous reply, we ask you not to refer to your identity in any of your replies.

Public

Your personal details (name, organisation name and size, transparency register number, country of origin) will be published with your contribution.

Please note that your replies and any attachments you may submit will be published in their entirety even if you chose 'Anonymous'. Therefore, please remove from your contribution any information that you will not want to be published.

About you

* Language of my contribution

- ○ Bulgarian
- ○ Croatian
- ○ Czech
- ○ Danish
- ○ Dutch
- ◉ English
- ○ Estonian
- ○ Finnish
- ○ French
- ○ German
- ○ Greek
- ○ Hungarian
- ○ Irish
- ○ Italian
- ○ Latvian
- ○ Lithuanian
- ○ Maltese
- ○ Polish
- ○ Portuguese
- ○ Romanian
- ○ Slovak
- ○ Slovenian
- ○ Spanish
- ○ Swedish

* I am giving my contribution as

- ○ Academic/research institution
- ○ Business association

- (●) Company (other than law firm or economic consultant)
- ( ) Consumer organisation
- ( ) EU citizen
- ( ) Economic consultant
- ( ) Non-EU citizen
- ( ) Law Firm/ Lawyer
- ( ) Public authority
- ( ) Trade union
- ( ) Other

* First name

Philippe

* Surname

Adriaenssens

* Email (this won't be published)

philippe.adriaenssens@ert.eu

* Organisation name

255 character(s) maximum

European Round Table for Industry (ERT)

* Organisation size

- (●) Micro (1 to 9 employees)
- ( ) Small (10 to 49 employees)
- ( ) Medium (50 to 249 employees)
- ( ) Large (250 or more)

Transparency register number

255 character(s) maximum

Check if your organisation is on the transparency register. It's a voluntary database for organisations seeking to influence EU decision-making.

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*

Country of origin

Please add your country of origin, or that of your organisation.

- Afghanistan
- Åland Islands
- Albania
- Algeria
- American Samoa
- Andorra
- Angola
- Anguilla
- Antarctica
- Antigua and Barbuda
- Argentina
- Armenia
- Aruba
- Australia
- Austria
- Azerbaijan
- Bahamas
- Bahrain
- Bangladesh
- Barbados
- Belarus
- Djibouti
- Dominica
- Dominican Republic
- Ecuador
- Egypt
- El Salvador
- Equatorial Guinea
- Eritrea
- Estonia
- Eswatini
- Ethiopia
- Falkland Islands
- Faroe Islands
- Fiji
- Finland
- France
- French Guiana
- French Polynesia
- French Southern and Antarctic Lands
- Gabon
- Georgia
- Libya
- Liechtenstein
- Lithuania
- Luxembourg
- Macau
- Madagascar
- Malawi
- Malaysia
- Maldives
- Mali
- Malta
- Marshall Islands
- Martinique
- Mauritania
- Mauritius
- Mayotte
- Mexico
- Micronesia
- Moldova
- Monaco
- Mongolia
- Saint Martin
- Saint Pierre and Miquelon
- Saint Vincent and the Grenadines
- Samoa
- San Marino
- São Tomé and Príncipe
- Saudi Arabia
- Senegal
- Serbia
- Seychelles
- Sierra Leone
- Singapore
- Sint Maarten
- Slovakia
- Slovenia
- Solomon Islands
- Somalia
- South Africa
- South Georgia and the South Sandwich Islands
- South Korea
- South Sudan

- (●) Belgium
- ( ) Belize
- ( ) Benin
- ( ) Bermuda
- ( ) Bhutan
- ( ) Bolivia
- ( ) Bonaire Saint Eustatius and Saba
- ( ) Bosnia and Herzegovina
- ( ) Botswana
- ( ) Bouvet Island
- ( ) Brazil
- ( ) British Indian Ocean Territory
- ( ) British Virgin Islands
- ( ) Brunei
- ( ) Bulgaria
- ( ) Burkina Faso
- ( ) Burundi
- ( ) Cambodia
- ( ) Cameroon
- ( ) Canada
- ( ) Cape Verde
- ( ) Cayman Islands
- ( ) Germany
- ( ) Ghana
- ( ) Gibraltar
- ( ) Greece
- ( ) Greenland
- ( ) Grenada
- ( ) Guadeloupe
- ( ) Guam
- ( ) Guatemala
- ( ) Guernsey
- ( ) Guinea
- ( ) Guinea-Bissau
- ( ) Guyana
- ( ) Haiti
- ( ) Heard Island and McDonald Islands
- ( ) Honduras
- ( ) Hong Kong
- ( ) Hungary
- ( ) Iceland
- ( ) India
- ( ) Indonesia
- ( ) Iran
- ( ) Montenegro
- ( ) Montserrat
- ( ) Morocco
- ( ) Mozambique
- ( ) Myanmar /Burma
- ( ) Namibia
- ( ) Nauru
- ( ) Nepal
- ( ) Netherlands
- ( ) New Caledonia
- ( ) New Zealand
- ( ) Nicaragua
- ( ) Niger
- ( ) Nigeria
- ( ) Niue
- ( ) Norfolk Island
- ( ) Northern Mariana Islands
- ( ) North Korea
- ( ) North Macedonia
- ( ) Norway
- ( ) Oman
- ( ) Pakistan
- ( ) Spain
- ( ) Sri Lanka
- ( ) Sudan
- ( ) Suriname
- ( ) Svalbard and Jan Mayen
- ( ) Sweden
- ( ) Switzerland
- ( ) Syria
- ( ) Taiwan
- ( ) Tajikistan
- ( ) Tanzania
- ( ) Thailand
- ( ) The Gambia
- ( ) Timor-Leste
- ( ) Togo
- ( ) Tokelau
- ( ) Tonga
- ( ) Trinidad and Tobago
- ( ) Tunisia
- ( ) Turkey
- ( ) Turkmenistan
- ( ) Turks and Caicos Islands

- Central African Republic
- Chad
- Chile
- China
- Christmas Island
- Clipperton
- Cocos (Keeling) Islands
- Colombia
- Comoros
- Congo
- Cook Islands
- Costa Rica
- Côte d'Ivoire
- Croatia
- Cuba
- Curaçao
- Cyprus
- Czechia
- Democratic Republic of the Congo
- Denmark
- Iraq
- Ireland
- Isle of Man
- Israel
- Italy
- Jamaica
- Japan
- Jersey
- Jordan
- Kazakhstan
- Kenya
- Kiribati
- Kosovo
- Kuwait
- Kyrgyzstan
- Laos
- Latvia
- Lebanon
- Lesotho
- Liberia
- Palau
- Palestine
- Panama
- Papua New Guinea
- Paraguay
- Peru
- Philippines
- Pitcairn Islands
- Poland
- Portugal
- Puerto Rico
- Qatar
- Réunion
- Romania
- Russia
- Rwanda
- Saint Barthélemy
- Saint Helena Ascension and Tristan da Cunha
- Saint Kitts and Nevis
- Saint Lucia
- Tuvalu
- Uganda
- Ukraine
- United Arab Emirates
- United Kingdom
- United States
- United States Minor Outlying Islands
- Uruguay
- US Virgin Islands
- Uzbekistan
- Vanuatu
- Vatican City
- Venezuela
- Vietnam
- Wallis and Futuna
- Western Sahara
- Yemen
- Zambia
- Zimbabwe

The Commission will publish all contributions to this public consultation. You can choose whether you would prefer to have your details published or to remain anonymous when your contribution is published. **For the purpose of transparency, the type of respondent (for example, 'business association, 'consumer association', 'EU citizen') country of origin, organisation name and size, and its transparency register number, are always published. Your e-mail address will never be published.** Opt in to select the privacy option that best suits you. Privacy options default based on the type of respondent selected

* Contribution publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

- ○ **Anonymous**
  Only organisation details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published as received. Your name will not be published. Please do not include any personal data in the contribution itself if you want to remain anonymous.
- ◉ **Public**
  Organisation details and respondent details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published. Your name will also be published.

☑ I agree with the personal data protection provisions

* The main activities of your organisation:

Text of 1 to 2000 characters will be accepted

The European Round Table for Industry (ERT) is a forum that brings together around 60 Chief Executives and Chairmen of major multinational companies of European parentage.

* Please mark the countries/geographic areas where your main business is based.

between 1 and 33 choices

☑ Austria	☑ France	☑ Malta	☑ United Kingdom
☑ Belgium	☑ Germany	☑ Netherlands	☑ Others in Europe
☑ Bulgaria	☑ Greece	☑ Poland	☑ America
☑ Croatia	☑ Hungary	☑ Portugal	☑ Asia
☑ Cyprus	☑ Ireland	☑ Romania	☑ Africa
☑	☑	☑	☑

Czech Republic	Italy	Slovak Republic	Australia
☑ Denmark	☑ Latvia	☑ Slovenia	
☑ Estonia	☑ Lithuania	☑ Spain	
☑ Finland	☑ Luxembourg	☑ Sweden	

* Has your company/business been the addressee of a Commission decision under Article 6 or Article 8 of Council Regulation (EC) No 139/2004, or has it been another involved party (such as the target or seller) or has your company/business organisation acted as external counsel or economic consultant of an addressee of such decision?

between 1 and 8 choices

- ☑ Yes, Article 6.1.(a) decision
- ☑ Yes, Article 6.1(b) decision (simplified procedure)
- ☑ Yes, Article 6.1(b) decision (normal procedure)
- ☑ Yes, Article 6.1(b) in conjunction with Article 6.2 decision
- ☑ Yes, Article 8.1 decision
- ☑ Yes, Article 8.2 decision
- ☑ Yes, Article 8.3 decision
- ☑ None of the above

Policy options for revising the Commission Notice on Simplified Procedure and the Implementing Regulation (Commission Regulation (EC) No 802 /2004 implementing Council Regulation (EC) No 139/2004, as amended by Commission Implementing Regulation (EU) No 1269/2013)

The general objective pursued with this initiative is to improve the EU merger control procedures which aim at preventing lasting damage to competition in the internal market stemming from anti-competitive mergers. The specific objectives are to (i) better target the merger review process, allowing the Commission to focus its investigations on the cases that merit a more detailed review and (ii) reduce the administrative costs and burdens of the merger review process.

To pursue these objectives, the following policy options are considered.

B.1 Expanding the categories of simplified cases

According to the Notice on Simplified Procedure, the Commission in principle applies the simplified procedure to each of the following categories of concentrations:

i. Two or more undertakings acquire joint control of a joint venture, provided that the joint venture has no, or negligible, actual or foreseen activities within the territory of the European Economic Area

(EEA); such cases occur where: (i) the turnover of the joint venture and/or the turnover of the contributed activities is less than EUR 100 million in the EEA territory at the time of notification; and (ii) the total value of assets transferred to the joint venture is less than EUR 100 million in the EEA territory at the time of notification (see paragraph 5 (a) of the Notice);

ii. Two or more undertakings merge, or one or more undertakings acquire sole or joint control of another undertaking, provided that none of the parties to the concentration are engaged in business activities in the same product and geographic market, or in a product market which is upstream or downstream from a product market in which any other party to the concentration is engaged (see paragraph 5 (b) of the Notice);

iii. Two or more undertakings merge, or one or more undertakings acquire sole or joint control of another undertaking and both of the following conditions are fulfilled: (i) the combined market share of all the parties to the concentration that are engaged in business activities in the same product and geographic market (horizontal relationships) is less than 20 %; (ii) the individual or combined market shares of all the parties to the concentration that are engaged in business activities in a product market which is upstream or downstream from a product market in which any other party to the concentration is engaged (vertical relationships) are less than 30 % (see paragraph 5 (c) of the Notice);

iv. A party is to acquire sole control of an undertaking over which it already has joint control (see paragraph 5 (d) of the Notice);

The Commission may also apply the simplified procedure where two or more undertakings merge, or one or more undertakings acquire sole or joint control of another undertaking, and both of the following conditions are fulfilled: (i) the combined market share of all the parties to the concentration that are in a horizontal relationship is less than 50 %; and (ii) the increment (delta) of the Herfindahl-Hirschman Index (HHI) resulting from the concentration is below 150 (see paragraph 6 of the Notice).

The evaluation showed that there may be some, albeit potentially limited, scope for further expansion of the categories of simplified cases or for introducing additional flexibility to the review of cases under the simplified procedure that do not fall under any of the current categories of simplified cases but where no competition concerns are likely. The system may also benefit from further clarifications as to which cases merit further review and should therefore not be subject to simplified treatment because of special circumstances.
Against this background, the following policy options concerning paragraphs 5, 6 and 8ff of the Notice on Simplified Procedure are considered (both options could be introduced cumulatively):

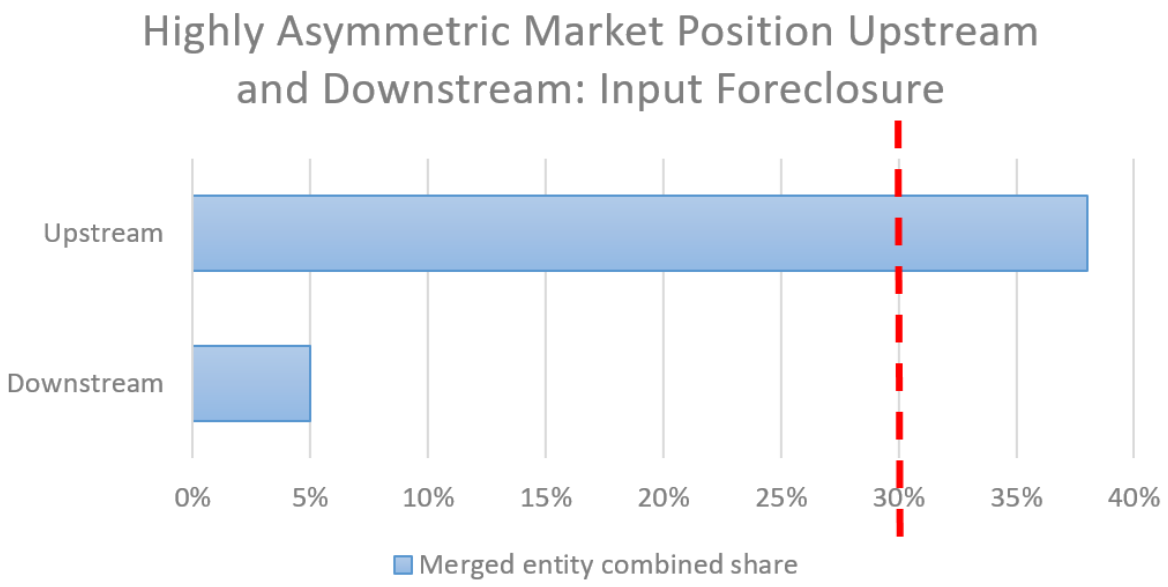
Option 1: Introducing a flexibility clause in the Notice on Simplified Procedure, giving the Commission discretion to treat additional cases under the simplified procedure under certain circumstances (for instance if the current market share thresholds of the Notice on Simplified Procedure are exceeded only slightly or in cases of joint ventures with turnover or assets value slightly exceeding EUR 100 million (e.g., up to a turnover of EUR 150 million).
Option 2: Adding new categories of simplified cases for certain vertical links:

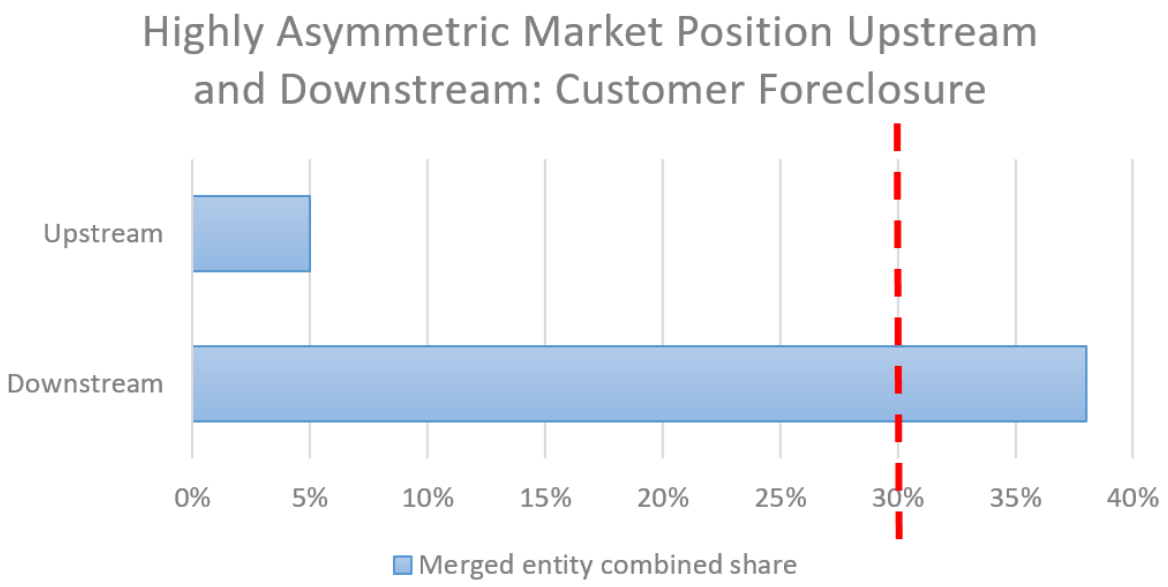
- Cases with highly asymmetric market positions upstream and downstream (as defined in the Guidelines on the assessment of non-horizontal mergers, paragraph 4, footnote 4), with an increased maximum market share in one market (e.g., <40%) but low market shares in the other market (e.g. <5%).

- Cases with high downstream sales shares (e.g., <50%) but relatively low purchasing share by downstream entity as customer on the upstream market (i.e. the percentage that the purchases of a specific input by the downstream entity represent of the overall demand of such input, e.g., <5% or <10%) while the upstream sales share remains beneath the current threshold (<30%).
- Cases with relatively high combined market shares but limited increments to a pre-existing vertical integration, for instance by applying a rule to vertical cases similar to the one for horizontal cases in point 6 of the Notice on Simplified Procedure.

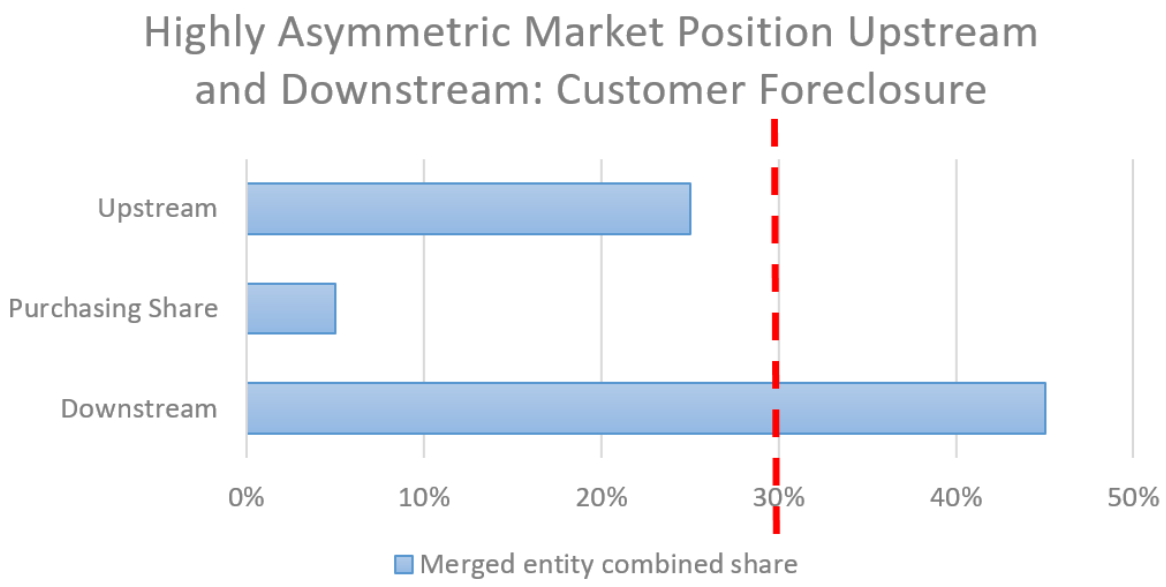
The following graphs illustrate which cases could fall under the scenarios discussed within Option 2:

- Cases with highly asymmetric market positions upstream and downstream

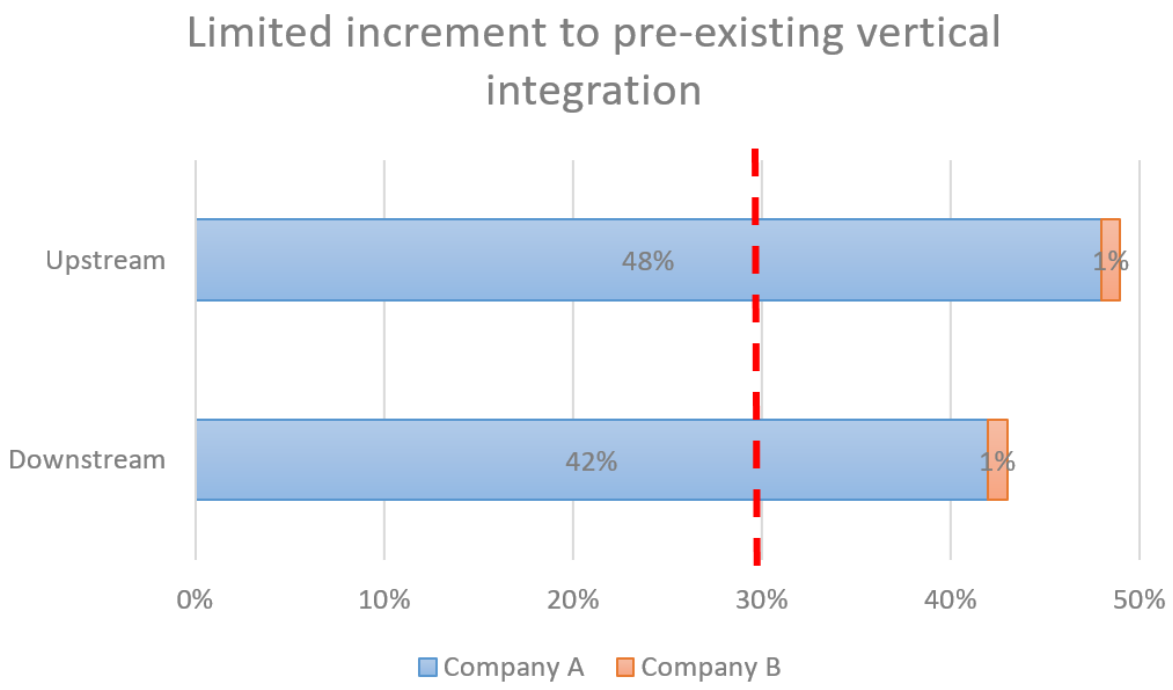




- Cases with high downstream sales shares but relatively low purchasing share by downstream entity as customer on upstream market



- Cases with relatively high combined market shares but limited increments to a pre-existing vertical integration



The present questionnaire also seeks to gather feedback in order to clarify certain aspects of the Notice on Simplified Procedure, namely on the scope and interpretation of the safeguards and exclusions in points 8ff of the Notice on Simplified Procedure.

1.1: Would the introduction of a flexibility clause in the Notice on Simplified Procedure for any of the following categories capture only cases that are generally unproblematic?

Categories of cases	Yes, these cases are generally unproblematic	No, these cases may be problematic
The market share thresholds laid down in paragraph 5 of the Notice on Simplified procedure are marginally exceeded (e.g., by up to 1%)	◉	○
The market share thresholds laid down in paragraph 5 of the Notice on Simplified procedure are exceeded by up to 5% (i.e., 20-25% for horizontal overlaps and 30-35% for vertical overlaps)	◉	○
Cases of joint ventures with turnover or assets value slightly exceeding EUR 100 million (e.g., up to a turnover of EUR 150 million)	◉	○

1.3 What would be the effect (in terms of reducing administrative burdens and costs) of introducing a flexibility clause for each of these categories? Please fill in the table indicating the scope of such effect (please take into account the potential effect of treating additional cases under the simplified procedure but also the potential effect of reducing the number of markets investigated in a case falling under the normal procedure).

	Significant reduction	Moderate reduction	No or negligible reduction
The market share thresholds laid down in paragraph 5 of the Notice on Simplified procedure are marginally exceeded (e.g., by up to 1%)	○	◉	○
The market share thresholds laid down in paragraph 5 of the Notice on Simplified procedure are exceeded by up to 5% (i.e., 20-25% for horizontal overlaps and 30-35% for vertical overlaps)	○	◉	○
Cases of joint ventures with turnover or assets value slightly exceeding EUR 100 million (e.g., up to a turnover of EUR 150 million)	○	◉	○
All the above combined (i.e. transactions slightly exceeding market share thresholds and slightly exceeding JV's turnover and assets value thresholds introduced together)	○	◉	○

1.4 Please provide reasons for your answer if you consider it appropriate

Text of 1 to 2000 characters will be accepted

For the borderline cases where the Commission chooses to exercise the discretion envisaged in 1.3 above, there would likely be a reduction in administrative burden and costs relative to the normal procedure. However, there will be no reduction in the burden of the simplified procedure itself, which is already considerable. As an element of discretion is also afforded to the Commission on how to treat these borderline cases, the extent to which all borderline cases would experience this reduced burden is likely to be varied.

A more effective approach would be to both raise the thresholds that qualify for the simplified procedure and introduce flexibility to allow cases above those thresholds to benefit from the simplified procedure. Limiting reform to introducing a small amount of flexibility within a limited range of cases falls short of materially reducing the burden on merging parties.

Given these points, the overall reduction of the burden on companies following these changes would only be moderate at best.

In any event it is important as a general principle to ensure that the level / exercise of Commission discretion does not come at the cost of legal certainty and accurate analysis and planning by businesses.

1.5 Would the introduction of each of the following categories in the Notice on Simplified Procedure capture only cases that are generally unproblematic?

Addition in categories of cases	Yes, these cases are generally unproblematic	No, these cases may be problematic	It depends on the thresholds introduced
Vertical cases with highly asymmetric market positions upstream and downstream: higher market shares upstream (e.g. up to 40%) but low market shares downstream (e.g. up to 5%)	●	○	○
Vertical cases with highly asymmetric market positions upstream and downstream: lower market shares upstream (e.g. up to 5%) but higher market shares downstream (e.g. up to 40%)	●	○	○
Vertical cases with high downstream sales shares but relatively low purchasing share by downstream entity as customer on the upstream market while the upstream sales share remains beneath the 30% threshold	●	○	○
Cases with relatively high combined market shares but limited increments (upstream, downstream or both) to a pre-existing vertical integration	●	○	○

1.9 What would be the effect (in terms of reducing administrative burdens and costs) of introducing each of the following categories of vertical cases? Please fill in the table indicating the scope of such effect (please take into account the potential effect of treating additional cases under the simplified procedure but also the potential effect of reducing the number of markets investigated in a case falling under the normal procedure).

	Significant reduction	Moderate reduction	No or negligible reduction

Vertical cases with higher market shares upstream (e.g. up to 40%) but low market shares downstream (e.g. up to 5%)	○	◉	○
Vertical cases with lower market shares upstream (e.g. up to 5%) but higher market shares downstream (e.g. up to 40%)	○	◉	○
Vertical cases with high downstream sales shares but relatively low purchasing share by downstream entity as customer on the upstream market while the upstream sales share remains beneath the 30% threshold	○	◉	○
Cases with relatively high combined market shares but limited increments to a pre-existing vertical integration	○	◉	○
All of the above introduced together	○	◉	○

1.10 Please provide reasons for your answer if you consider it appropriate

Text of 1 to 2000 characters will be accepted

Introducing new categories of case that qualify for the simplified procedure would be welcomed, and would be expected to reduce the administrative burden and costs for any cases benefiting from these new categories compared to the normal procedure. However, there will be no reduction in the burden of the simplified procedure itself, which is itself considerable.
A more effective approach could be to both raise the thresholds that qualify for the simplified procedure, expand it by new categories and introduce flexibility to allow cases above those thresholds to benefit from the simplified procedure.
As a result, the overall reduction of the burden on companies arising from the Commission's merger control processes would only be moderate following these reforms.

1.11 Do you consider that additional categories of simplified cases not included in the Commission's options discussed above should be included to capture generally unproblematic cases?

- ◉ Yes
- ○ Yes, but only if additional safeguards are introduced at the same time
- ○ No
- ○ No opinion

* 1.12 If yes, please explain which additional categories of cases would merit a review under the simplified procedure and, where applicable, describe the additional safeguards that should be introduced at the same time to help to identify those cases that may be problematic and therefore should be treated under the normal procedure.

Text of 1 to 2000 characters will be accepted

EU merger control is the most prominent of the competition regimes worldwide that claim jurisdiction over the formation of joint ventures with no local nexus, based on the turnover of JV parents within the EEA. This has the effect of catching JV transactions that have no relevance to the EEA, often between merging parties

that are not competitors within the EEA. Furthermore, there are instances where local regulators in jurisdictions where the JV will be active approve the merger, whilst EC approval is still outstanding. The delay that this can create for transactions that have no EEA nexus is disproportionate and should be avoided.

There is an opportunity through reform of the simplified procedure to fix this situation. A local nexus requirement should be introduced to provide that, where a joint venture has no local nexus in the EEA, it is not subject to EU merger control.

1.13 Are the safeguards and exclusions in paragraphs 8ff of the Notice on Simplified Procedure sufficient and adequate to identify transactions a priori falling under the current categories of simplified cases, but which may be potentially problematic and therefore may merit a closer examination under the normal procedure? Please take into account potential horizontal, vertical or conglomerate effects in your reply.

- ○ Yes, they are sufficient and adequate
- ○ No, further or clearer safeguards and/or exclusions would be desirable
- ◉ No, they are excessive
- ○ No opinion

* 1.14 If you answered no to the previous question, please explain what additional (clearer) safeguards and/or exclusions should be introduced or what safeguards or exclusions are not needed.

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Market definition safeguards (paragraphs 8 & 12 of the Simplified Procedure Notice)
In practice, where the formation of a JV with no nexus in the EEA falls under EU merger control jurisdiction, it is unnecessary for merging parties to produce detailed market definition information on markets that are not relevant to the EEA. However, paragraphs 8 & 12 of the Simplified Procedure Notice emphasise that parties must provide clear market definitions along with supporting data, and that - where markets or market shares are difficult to identify - the EC may not allow the simplified procedure to be followed. Whilst the safeguards generally (though not universally) talk about “relevant markets”, they would be improved by explicitly recognising that the need to identify markets in the context of formation of a JV only applies where the JV has or will have an EEA presence.

Joint to sole control safeguards (paragraph 17 of the Simplified Procedure Notice)
Where neither the EC nor the NCAs have reviewed an original acquisition of joint control, the EC may decide that a case should follow the normal procedure rather than the simplified procedure. The lack of previous review should not be relevant to the EC’s considerations as it does not speak to the impact on competition that the acquisition of sole control may have now. Furthermore, there may be cases where the formation of the joint venture did not fall under the jurisdiction of the EC or NCAs, whereas the move from joint to sole control does. As a result, it is excessive for the EC to treat this as a reason to move a merger review onto the normal procedure and this safeguard should be removed.

JV’s without EEA nexus (proposed addition to the Simplified Procedure Notice)

The EC should clarify that, where a joint venture has no local nexus in the EEA, it is exempt from even the simplified procedure and is not subject to EU merger control.

1.15 Please rank the likelihood that each of the following factors could have a negative impact on competition (and therefore should be relevant for the decision whether a case merits a closer investigation under the normal procedure) despite being eligible for assessment under the simplified procedure:

	Unlikely impact on competition in all cases	Potential impact on competition in certain cases	Likely impact on competition in certain cases
Number of competitors remaining	◉	○	○
Strength of the competitors remaining, including whether their market share exceeds the increment brought about by the transaction	◉	○	○
Shares thresholds are exceeded in terms of capacity shares or production shares	◉	○	○
One of the merging parties is a recent entrant (entered the market in the last three years)	◉	○	○
One of the merging parties is an important innovator in the overlapping markets	◉	○	○
The Transaction gives rise to pipeline-to-pipeline (two products that are still being developed) or pipeline-to-marketed products (one product still in development but the other already available) overlaps	◉	○	○
Vertical overlaps exceed thresholds in distant levels of the value chain (in terms of market shares, capacity shares or production shares)	◉	○	○
The activities of the merging parties overlap in highly differentiated products	◉	○	○

1.16 Feel free to provide reasons for your answer if you consider it appropriate.

Text of 1 to 2000 characters will be accepted

Where a transaction otherwise falls within the simplified procedure, that is generally conclusive on the question of whether or not the transaction can impact competition – the other factors listed here which are clearly relevant to competitive assessments more generally do not alter that prima facie conclusion.

1.17 Are there additional safeguards not considered in question 1.15 that you consider necessary to introduce?

○ Yes

- [x] No

B.2 Streamlining the review of simplified cases

The evaluation showed that, while the Simplification Package overall contributed to reducing the pre-notification phase in simplified cases, there still remain some practical constraints to shortening the pre-notification phase further and to making full use of the invitation made in the 2013 Simplification Package to notify certain categories of cases directly without pre-notification. Clarifying certain information requirements could be useful in that respect, for instance by standardising simplified notifications further through tick-the-box forms that require fewer descriptions and allow for faster processing by the Commission. Furthermore, the Commission's assessment could be further streamlined by relying on statements of fact made by the merging parties under Article 4 of the EU Merger Regulation, without a need for further explanations or underlying evidence, in particular with respect to the assessment of jurisdictional questions in simplified cases and of the competitive assessment in cases without overlaps.

The following policy options are considered (the options could in principle be introduced cumulatively; options 2 and 3 would entail limiting certain information requirements and would therefore constitute an alternative to option 1 for certain parts of the notification forms):

Option 1: Maintaining the current information requirements but replacing the current notification form ("short Form CO") by a streamlined tick-the-box form, in full or in part.

Option 2: Introducing a streamlined review of jurisdiction in simplified cases with a tick-the-box list of statements on the basic facts relevant for the jurisdictional assessment, without the need to provide underlying evidence, thereby reducing or removing the need for pre-notification contacts on questions of jurisdiction.

Option 3: Introducing a streamlined review of the competitive assessment for simplified cases without overlaps with a tick-the-box list of statements on the basic facts relevant for the assessment, without the need to provide underlying evidence, thereby reducing or removing the need for pre-notification contacts on the assessment.

2.1 Are the current information requirements and format of the Short Form CO adequate and proportionate for the analysis of simplified cases?

- [ ] Yes
- [x] No, the information requirements are excessive/less information should be requested in the Short Form CO
- [ ] No, the information requirements are insufficient/more information should be requested in the Short Form CO
- [ ] No, the current format (mainly descriptive text as opposed to a tick the box form) of the Short Form CO is neither adequate nor proportionate.
- [ ] No opinion

*

2.2 If you answered “No” to the previous question, and as applicable, please explain (i) which information request(s) could be excluded from the Short Form CO or (ii) which additional information would be required in your view or (iii) how the format of the Short Form CO should be changed.

Text of 1 to 2000 characters will be accepted

The Short Form CO info requirements are excessive and need streamlining. Sections 1–3 could be streamlined and replaced with a tick-the-box approach. Information requests could be excluded from the Short Form CO:
Annex 3: Competitor contact details should not be requested where it is obvious from the facts the merger will not impact competition
Section 5+Attachments E&F: Where it is obvious from the facts there can be no impact on competition within the EEA as a result of the merger,it is disproportionate to require internal documentation from the parties (especially if not be available in an EEA language)
Section 6&7: The Short Form CO should not require details on every feasible alternative market without any materiality threshold. In many industries(e.g. insurance & pharmaceuticals)there can be different plausible markets. Furthermore, the Short Form CO takes no account of the potentially negligible presence of the merging parties in a given market, and requires excessive detail regardless of how immaterial the parties’ presence in that market is. This requirement can create a greater burden than in the full Form CO, as the full Form CO is at least focused on affected markets. A market should only need to be addressed in Sections 6&7 where the parties’ turnover in the market exceeds a certain de minimis value threshold(variable depending on the nature of the market) If this turnover threshold is not met,any discussion of the market should be unnecessary and irrelevant to the competitive assessment. Where turnover exceeds this de minimis threshold, Sections 6&7 should be amended to include an appropriate market share threshold for a “reportable market” and to make clear that only markets with a share above that threshold need to be considered in Sections 6&7. A threshold of 15% for horizontal cases and 25% for vertical cases is appropriate
Section 8: repeats often info provided in Section 1&3. Replace it with a tickbox section with optional comment boxes

2.3 Is the Short Form CO template easy to fill out, clear and user friendly?

- ○ Yes
- ◉ No
- ○ No opinion

2.4 Would you replace the current Short Form CO by a tick-the-box form?

- ◉ Yes, in full
- ○ Yes, but only for some parts
- ○ No
- ○ No opinion

2.6 Please describe any improvements you would suggest to the current format of the Short Form CO.

Text of 1 to 2000 characters will be accepted

Replacement of the Short Form CO with a tick-the-box form would have many advantages. This would allow the EC to specify the key points it needs from the parties, focusing the notification process on these key points rather than relying on extensive narrative. Such an approach would streamline preparation for the parties and speed up (or remove the need for) pre-notification. It would also streamline the EC's review of matters that have no or limited EEA nexus and save time for both the parties and the EC.

For some key sections around the competitive assessment (Sections 6, 7 and 8) a tick-the-box approach could include comment boxes where the parties can explain to the EC why a certain box has been ticked. This would act as a safeguard to ensure that relevant information is not excluded.

We would suggest that, unless explicitly requested, there should be no expectation that the parties will provide additional evidence with the revised form (e.g. presentations on the transaction, or details to support market definition). It would then be open to the EC to request such evidence should it feel a case merits such a request, whilst reducing the burden on those cases where further evidence is not required.

2.7. Would the following options entail any risk for effective enforcement of merger control rules (e.g. the Commission may not receive sufficient information to assess whether a transaction should be reviewed under the simplified procedure or not) or any other risk?

	Yes, it would entail such risks	No, it would not entail such risks	No opinion
Maintaining the current information requirements but replacing the short Form CO by a streamlined tick-the-box form	○	●	○
Introducing a streamlined review of jurisdiction in simplified cases with a tick-the-box list of statements on the basic facts relevant for the jurisdictional assessment, without the need to provide underlying evidence	○	●	○
Introducing a streamlined review of the competitive assessment for simplified cases without overlaps with a tick-the-box list of statements on the basic facts relevant for the assessment, without the need to provide underlying evidence	○	●	○

2.9 What would be the effect in terms of reducing information requirements for businesses of introducing each of the following options? Please fill in the table indicating the scope of such effect.

	Significant reduction	Moderate reduction	No or negligible reduction

Maintaining the current information requirements but replacing the current notification form (“short Form CO”) by a streamlined tick-the-box form, in full or in part.	○	◉	○
Introducing a streamlined review of jurisdiction in simplified cases with a tick-the-box list of statements on the basic facts relevant for the jurisdictional assessment, without the need to provide underlying evidence, thereby reducing or removing the need for pre-notification contacts on questions of jurisdiction.	◉	○	○
Introducing a streamlined review of the competitive assessment for simplified cases without overlaps with a tick-the-box list of statements on the basic facts relevant for the assessment, without the need to provide underlying evidence, thereby reducing or removing the need for pre-notification contacts on the assessment.	◉	○	○
All of the above introduced together	◉	○	○

2.10 Please provide reasons for your answer if you consider it appropriate.

Text of 1 to 2000 characters will be accepted

The current information requirements for the Short Form CO are too burdensome for non-problematic mergers. Introducing a tick-the-box form and removing the narrative requirements in the Short Form CO will marginally reduce the burden on the parties and slightly streamline the preparation time required. However, keeping the same information requirements would mean the burden on the parties remains large.

Moving towards a tick-the-box approach on the jurisdictional and competitive assessments will result in larger reductions in the burden on parties, and reduce the need for pre-notification contact with the EC. This will have a positive impact on the Parties by reducing the burden in terms of information provided, and by streamlining and speeding up the simplified procedure.

2.11 What would be the effect in terms of reducing the average time needed to obtain a clearance decision in unproblematic cases of introducing each of the following options? Please fill in the table indicating the scope of such effect.

	Significant reduction	Moderate reduction	No or negligible reduction
Maintaining the current information requirements but replacing the current notification form (“short Form CO”) by a streamlined tick-the-box form	○	◉	○
Introducing a streamlined review of jurisdiction in simplified cases with a tick-the-box list of statements on the basic facts relevant for the jurisdictional assessment, without the need to provide underlying evidence, thereby reducing or removing the need for pre-notification contacts on questions of jurisdiction	◉	○	○
Introducing a streamlined review of the competitive assessment for simplified cases without overlaps with a tick-			

the-box list of statements on the basic facts relevant for the assessment, without the need to provide underlying evidence, thereby reducing or removing the need for pre-notification contacts on the assessment	◉	○	○
All of the above introduced together	◉	○	○

2.12 Please provide reasons for your answer if you consider it appropriate.

Text of 1 to 2000 characters will be accepted

The current information requirements for the Short Form CO are too burdensome for non-problematic mergers. Introducing a tick-the-box form and removing the narrative requirements in the Short Form CO will marginally reduce the burden on the parties and slightly streamline the preparation time required. However, keeping the same information requirements would mean the burden on the parties remains large.

Moving towards a tick-the-box approach on the jurisdictional and competitive assessments will result in larger reductions in the burden on parties, and reduce the need for pre-notification contact with the EC. This will have a positive impact on the Parties by reducing the burden in terms of information provided, and by streamlining and speeding up the simplified procedure.

2.13 Do you consider that additional measures not included in the Commission's current options should be introduced to further streamline the treatment of simplified cases?

- ◉ Yes
- ○ No
- ○ No opinion

* 2.14 If yes, please explain which additional measures should be introduced and, if applicable, which additional safeguards should be introduced with them to ensure effective merger control enforcement.

Text of 1 to 2000 characters will be accepted

(see response to question 1.12) EU merger control is the most prominent of the competition regimes worldwide that claim jurisdiction over the formation of joint ventures with no EEA local nexus, based on the turnover of JV parents within the EEA. The delay this can create for transactions that have no EEA nexus is disproportionate and should be avoided. A local nexus requirement should be introduced to provide that, where a joint venture has no local nexus in the EEA,it is not subject to EU merger control
If the EC considers that additional safeguards would be appropriate here, at the very most such mergers should be subject to a new super-simplified procedure rather than the full simplified procedure. A super-simplified procedure would provide safeguards–for example,the EC could require that such transactions fill out an ultra-short form notification containing a tick-box form listing the parties,the JV and its lack of presence within the EEA,along with some assurance that the JV is not going to enter the EEA market within 3 years. A "positive silence" rule could also be introduced for clearance of these types of case where, assuming no complaints over the case after a set period of time, the matter would be deemed cleared by the EC.This time period could be set at 15 days, to give time for Member States to comment on the merger–after which time, if the parties have had no word from the EC,the matter would be considered cleared.
Two other areas that would benefit from streamlining are:(i) the communications between the Commission

and the NCAs related to the eventual referrals of a case to/from NCAs;and (ii) in the deadline for the Commission to decide to ask the parties for an ordinary Form CO.Both processes should happen as promptly as possible,to avoid merging parties having to switch from a simplified procedure to an ordinary procedure at the very end of the simplified procedure,effectively penalising the companies for a delayed analysis by EC/NCA

B.3 Streamlining the review of non-simplified cases

Based on the experience gained by the Commission in its enforcement practice over the years, the Evaluation results showed that some information requirements in non-simplified cases could be streamlined. In particular, it could be appropriate to introduce modifications to the structure of the notification form and to reduce information requirements that may not be needed in specific case constellations.

The following policy options are considered (both options may be introduced cumulatively):

Option 1: Introducing modifications to the structure of the current notification form by separating sections for factual information and for advocacy (where the Parties could summarize their main arguments, on a voluntary basis) and by introducing a table with an overview of all affected markets.

Option 2: Identifying opt-out sections in section 8 of the Form CO to be waived by the Commission at the request of the Parties if appropriate, on a case-by-case basis.

The Commission will simultaneously explore whether certain additions should be made to the notification form for questions that the Commission asks regularly through requests for information, in order to provide increased transparency and predictability for notifying companies.

The Commission will simultaneously assess whether the notification forms for referrals could benefit from limited streamlining.

3.1 Are the current information requirements and format of the Form CO adequate and proportionate for the analysis of non-simplified cases?

- ○ Yes
- ◉ No, the information requirements are excessive for all non-simplified cases /less information should be requested in the Form CO in all non-simplified cases.
- ○ No, the information requirements are excessive for certain non-simplified cases/less information should be requested in the Form CO in certain non-simplified cases.
- ○ No, the information requirements are not sufficient/more information should be requested in the Form CO for all non-simplified cases.
- ○ No, the information requirements are not sufficient/more information should be requested in the Form CO for certain non-simplified cases

- ○ No, the current format of the Form CO is neither adequate nor proportionate.
- ○ No opinion

* 3.2 If no, and as applicable, please explain (i) which information requirements(s) could be excluded from the Form CO or (ii) which additional information would be required in your view or (iii) how the format of the Form CO should be changed.

Text of 1 to 2000 characters will be accepted

The EU merger control process is often amongst the most burdensome worldwide. Lengthy pre-notification,a data and narrative heavy Form CO and extensive requests for internal documents result in a process that is more labour intensive and timeconsuming than elsewhere (e.g. US)
The Form CO does not distinguish between cases that result in competition concerns,which may require either remedies or a Phase 2 investigation,and the larger pool of cases that clearly will not result in competition concerns. For such non-problematic cases,the level of detail requested in the Form CO is excessive. The Form CO should be more focused on markets that will genuinely be of interest for the competition assessment,rather than requiring exhaustive details on all technically affected markets and sub-segments(including proving which markets and sub-segments are/not affected).This is particularly the case when it comes to demonstrating that competition concerns do not arise in “affected markets”–essentially a requirement to prove a negative,even in cases where it is obvious that competition concerns do not arise. The EC should revise the concept of “affected markets” in the Form CO,raising the market share threshold for what constitutes an affected market from 20% to 30% for horizontal overlaps. The detailed info requested in Sections 7&8 of the Form CO,and the sub-sections in Sections 1,3&5 on affected markets should only be required for markets meeting these revised thresholds. This reflects that the EC rarely finds horizontal competition concerns in markets where combined horizontal shares are below 30%.Another area where the Form CO and EU merger control process are burdensome is on internal document requests. The requirements in Section 5 subsection 5.4 and further internal document requirements set out in RFIs,should be greatly reduced. Internal docs should only be requested when EC has exhausted less burdensome methods of gathering data. See the ERT Expert Paper for more info.

3.3 Is the Form CO template easy to fill out, clear and user friendly?

- ○ Yes
- ◉ No
- ○ No opinion

3.4 Please describe any improvements you would suggest to the current format of the Form CO.

Text of 1 to 2000 characters will be accepted

The Form CO does not distinguish between cases that result in competition concerns(ie those which may require either remedies and/or a Phase 2 investigation),and the larger pool of cases that will not. For the latter group of cases,the level of detail requested in the Form CO is clearly excessive. The Form CO should be more focused on markets that will genuinely be of interest for the competition assessment, rather than requiring exhaustive details on all technically affected markets and sub-segments (including proving which markets and sub-segments are not affected) This is particularly the case when it comes to demonstrating that competition concerns do not arise in “affected markets”–essentially a requirement to prove a negative, even in cases where it is obvious that competition concerns do not arise. The EC should revise the concept of “affected markets” in the Form CO,raising the market share threshold for what constitutes an affected

market from 20% to 30% for horizontal overlaps. The detailed information requested in Sections 7&8 of the Form CO, and the sub-sections in Sections 1,3&5 on affected markets should only be required for markets meeting these revised thresholds. This reflects the reality that the Commission rarely finds horizontal competition concerns in markets where combined horizontal shares are below 30%. In addition, the small size of the increment should be grounds to opt-out of all of Section 8-for example,where horizontal shares are above 30%,but the increments are less than 5% Another area where the Form CO and EU merger control process more generally are excessively burdensome is on internal document requests. The internal document requirements in Section 5 subsection 5.4, and further internal document requirements set out in RFIs,should be greatly reduced. Internal documents should only be requested where the EC has exhausted other,less burdensome methods of gathering data. For further info, please see the Expert Paper

3.5 Would identifying opt-out sub-sections in section 8 of the Form CO – to be waived by the Commission at the request of the Parties if appropriate, on a case-by-case basis – entail any risk for effective enforcement of merger control rules (e.g. the Commission may not receive sufficient information to assess whether a transaction would raise competition concerns or not)?

- ○ Yes, it would entail risks for effective enforcement
- ◉ No, it would not entail risks for effective enforcement
- ○ No opinion

3.7 Which sub-sections in Section 8 of the Form CO are good candidates to be ear-marked as potential opt-out sub-section?

Text of 1 to 2000 characters will be accepted

It is important to recognise that Section 8 is not the only excessively burdensome part of the Form CO or wider normal review procedure. The Form CO and wider merger control process is in need of revision in a number of aspects - including around the burden of document requests, the way in which third party market testing is handled and the length of review periods.
All of Section 8 should be “opt-out” at least where combined market shares on horizontal and vertical markets are below 30%. The concept of affected market should be updated by raising the market share threshold for what constitutes an affected market from 20% to 30% for horizontal overlaps. Cases where shares are only slightly above 30% should also be “opt-out”. In addition, the small size of the increment should be grounds to opt-out of all of Section 8 - for example, where horizontal shares are 30% or more, but the increments are less than 5%.

In addition, all parts of Section 8 should be “opt-in” only for relevant industries (as demonstrated by the fact they are in practice already often left blank) or where they are not relevant to the competition analysis. For example:

Research and development
For some markets, research and development is not a significant driver of competition (e.g. certain financial markets), which makes it a good candidate to be opt-in only.

Trade between Member States and imports from outside the EEA
For some markets, transport costs may not be relevant (e.g. digital markets or financial markets) and whilst imports represent an important constraint in some markets, for other markets imports may not be relevant (e.g. out of home eating). As a result, this sub-section may be a good candidate to be opt-in only.

Trade associations
Not all industries have trade associations (either upstream or downstream). Accordingly, it may be appropriate for this sub-section to be opt-in only.

3.8 What would be the effect (in terms of reducing administrative burdens and costs) of introducing each of the following options? Please fill in the table indicating the scope of such effect.

	Significant reduction	Moderate reduction	No or negligible reduction
Introducing modifications to the structure of the current notification form by separating sections for factual information and for advocacy (where the Parties could summarize their main arguments, on a voluntary basis)	○	○	●
Identifying opt-out sections in section 8 of the Form CO to be waived by the Commission at the request of the Parties if appropriate, on a case-by-case basis	○	●	○
All of the above introduced together	○	●	○

3.9 Please provide reasons for your answer if you consider it appropriate

Text of 1 to 2000 characters will be accepted

It would be artificial and counterproductive to split out factual information from advocacy within the Form CO, and the proposal is inherently flawed. The parties' understanding of the facts typically forms a crucial part of the advocacy,and the two are essentially inseparable. Changing the structure of the Form CO to split out factual information from advocacy would not reduce the burden on parties;parties will still want to present advocacy alongside plain statements of fact and indeed may struggle with where to allocate different types of information. Furthermore,advocacy is necessary to contextualise the facts and ensure the position is properly understood–splitting the facts from the advocacy would result in misunderstandings by the EC and a potentially compromised review process. As a practical matter,splitting the two would also result in a longer, more repetitive Form CO. As discussed above in response to 3.7,all of Section 8 should be "opt-out",given not all sections will always be relevant to the Form CO. Furthermore,at least where combined market shares on horizontal and vertical markets are below 30%,Section 8 should be opt-out. The concept of affected market should be updated by raising the market share threshold for what constitutes an affected market from 20% to 30% for horizontal overlaps. Cases where shares are only slightly above 30% should also be "opt-out" In addition, the small size of the increment should be grounds to opt-out of all of Section 8-for example, where horizontal shares are 30% or more,but the increments are less than 5%. This would reduce the burden on the parties in cases where Section 8 was not required. Regardless,in many cases parts of Section 8 are likely already excluded from submitted Form COs where those sub-sections are not relevant to the EC' s assessment The resulting reduction in burden on the parties of this is appreciated but immaterial in comparison to the overall burden of the Form CO information requirements

3.10 Do you consider that additional measures not included in the Commission's current options should be introduced to further streamline the treatment of non-simplified cases?

- (●) Yes
- ( ) No

*3.11 If yes, please explain which additional measures should be introduced.

Text of 1 to 2000 characters will be accepted

We would propose several additional key reforms to the Commission's merger control processes.

Ensure that document requests to notifying parties are proportionate
The internal document requests the Commission makes are often excessive and very burdensome on companies. The Commission should focus more on what is essential and will be of use in the merger review. Parties must be able to exclude both privileged materials and information not relevant to the deal from documents provided to the Commission. Documents should then be reviewed in context, without single phrases being taken out of context.

Ensure quicker and more predictable timetables
The Commission must endeavour to speed up review processes (both formal and informal), which are often too long in simple cases. Key reforms would include agreeing to target timetables with the parties established at the outset of pre-notification, avoiding unjustifiably extended pre-notification and stop-the-clocks, and where necessary using formal powers to ensure merger review can continue over holiday periods.

Take a more flexible approach to market testing
The Commission's current approach to market testing is burdensome and inefficient, and may result in misleading impressions of the market. A key reform would be to move to a model of setting up calls with third parties during market testing, and asking relevant parties to sign-off on call notes in lieu of written questionnaire responses. Third parties should be free not to answer questionnaires where views are neutral. "Leading" questions should also be avoided.

Empower case teams to take a flexible, pragmatic approach to the investigation.
Case teams should be encouraged and empowered by the hierarchy to waive aspects of the EC process in appropriate cases – in particular where no competition concerns arise and there are no third party complaints.

These points are further particularised in the Expert Paper provided with this response.

3.12 Do you consider that the Form RS for referrals should be streamlined?

- (●) Yes, for both Article 4(4) and 4(5) referrals
- ( ) Yes, for 4(4) referrals only
- ( ) Yes, for 4(5) referrals only
- ( ) No
- ( ) No opinion

* 3.13 If yes, please explain which information you do not consider necessary for the assessment of referrals, identifying specific sections of the Form RS (please explain your answer with respect to both Article 4(4) and Article 4(5) referrals).

Text of 1 to 2000 characters will be accepted

Establishing jurisdiction should be a straightforward and streamlined process, to encourage merging parties to select the most appropriate venue for filing a merger in the EU. The Article 4(4) and 4(5) referral processes are in need of major revisions, as the Form RS is an unnecessary barrier to establishing jurisdiction.

The Form RS is burdensome on merging parties, requiring the provision of a large amount of information that is often not relevant to the question of jurisdiction. The large resource requirement for completing the Form RS and consequent time delay to reaching a final decision deters referral requests by merging parties, meaning that some mergers are not reviewed in the correct forum simply due to resource and timing concerns. Establishing jurisdiction should not require a lengthy submission that almost amounts to a substantive merger control filing, but this is currently the situation for Article 4(4) and 4(5) referrals due to the Form RS.

However, establishing the correct jurisdiction for review of a merger is a substantive matter, and so a tick-the-box form would not be an appropriate replacement for the Form RS. The Form RS should instead be replaced with a process whereby a short paper is submitted by merging parties seeking referral under either Article 4(4) or 4(5). To facilitate this, the EC should provide clear, streamlined guidance on the points the paper should include, focusing on the key factors defining the appropriate venue. This paper would address the key points on referral (currently set out in Section 5 of the Form RS) whilst reducing the burden on parties seeking referral, thereby encouraging use of the referral system.

3.14 Do you consider it appropriate to replace the current Form RS by a streamlined tick-the-box form, in full or in part?

- ○ Yes
- ◉ No
- ○ No opinion

B.4 Introducing electronic notifications

The Commission is currently allowing businesses to notify their merger cases electronically due to the Covid-19 restrictions. It would be beneficial to clarify the notification rules permanently in this respect to ensure safe, reliable and cost-efficient document transmissions.

The following policy options are considered (Options 1 and 2 are alternatives)

Option 1: Allowing electronic notifications to be followed by originals on paper without delay

Option 2: Introducing fully digital notifications, including digital signatures

4.1 Would you use electronic notifications, either followed by originals in papers or fully electronic notifications?

	Yes, I would use this system	No, I would not make use of this possibility	No opinion
Electronic notifications followed by originals on paper	◉	○	○
Fully electronic notifications, including digital signatures	◉	○	○

4.3 Please explain the main advantages/disadvantages of both options

	Advantages	Disadvantages
Electronic notifications followed by originals on paper	Utilises electronic notification thereby reducing costs and administrative burdens.	Reverses the efficiencies of electronic notifications by retaining the requirement of paper copies.
Fully electronic notifications, including digital signatures	More efficient process with reduced costs and less administration, as well as being more environmentally friendly.	None.

4.4 What would be the effect in terms of facilitating the notification of concentrations of introducing each of the following options? Please fill in the table indicating the scope of such effect.

	Significantly facilitated	Moderately facilitated	Not facilitated (or only minimally)
Allowing electronic notifications, to be followed by originals on paper without delay	○	◉	○
Allowing electronic notifications, introducing fully digital notifications, including digital signatures	◉	○	○

4.5 Please provide reasons for your answer if you consider it appropriate

Text of 1 to 2000 characters will be accepted

4.6 Do you consider that additional measures not included in the Commission's current options should be introduced to facilitate the notification of concentrations?

- ◉ Yes
- ○ No

* 4.7 If yes, please explain which additional measures should be introduced.

Text of 1 to 2000 characters will be accepted

The Commission's case management system is in need of updating, in particular to raise the size limits on submissions from their current level of 4GB per submission, 500 documents per submission and 100MB per document. These sizes are sometimes far below the levels required for more complex cases, and the EC should include flex for where greater amounts of material needs to be uploaded or should ask for less information so that the current limits are sufficient again.

For submission of necessary documents aside from the notification, such as Language Waivers and Powers of Attorney in favour of merging parties' legal representatives, the EC should retain the practice adopted during the COVID-19 pandemic of accepting electronic signatures, and not revert to requiring hard copies of such ancillary documents.

B.5 Additional information

5.1 Please feel free to upload a concise document, such as a position paper, explaining your views in more detail or including additional information and data. Please note that the uploaded document will be published alongside your response to the questionnaire which is the essential input to this open public consultation.

The document is an optional complement and serves as additional background reading to better understand your position.

Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

9b64acd1-a1f2-4e2b-8938-467f39e8a6cf/ERT_Expert_Paper_on_EU_Merger_Control.pdf

5.2 Do you have any further comments on this initiative on aspects not covered by the previous questions?

Text of 1 to 3000 characters will be accepted

There are several aspects which merits further former beyond the scope of this questionnaire. Please find the ERT Expert Paper attached with more ideas and suggestions on reforming merger control processes.

5.3 You may also provide additional information which may be relevant for this initiative (copies of any documents, reports, studies etc.). Please upload the information in files with a maximum size of 1 MB each, using the button below.

Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

* 5.4 Please indicate whether the Commission services may contact you for further details on the information submitted, if required.

- (●) Yes
- ( ) No

Contact

COMP-SIMPLIFICATION_IMPACT_ASSESSMENT@ec.europa.eu