From: Markus Brune
Sent: Friday, June 3, 2022 3:53 PM
To: COMP A2 MAIL <COMP-A2-MAIL@ec.europa.eu>
Cc: [redacted]; Fabian Pape
Subject: AW: HT.6038 - Simplification of merger procedures - public consultation on revised draft Merger Implementing Regulation and Simplified Procedure Notice

Dear colleagues,

Thank you very much for giving us the opportunity to express our views on the simplification project. The Bundeskartellamt welcomes the further simplification and flexibilisation of the procedure and supports the proposals put forward.

As you might know, German law does not require that a form, comparable to the Form CO, or the Simplified Form CO is used. The requirements in German law for a notification to be complete are very low (cf. Section 39 para. 3 of the GWB).
The Bundeskartellamt is satisfied with this provision, and we have not proposed any changes to the legislator. The German approach is very flexible, and it allows a notification containing only a minimum of information in cases where more information is not needed in order to confirm that the concentration does not raise competitive concerns. In more complicated cases, the information needed in addition to the legally required data has to be established by the Bundeskartellamt on a case-by-case basis.

Although the Bundeskartellamt disposes in general of the necessary legal means to obtain such information in due time of the proceedings and do not experience major difficulties in our merger practice so far, it is correct that the German solution bears a higher risk that parties which are unwilling to cooperate with the competition authority may choose an approach to file a notification with the bare minimum of information required by the law and to not comply with additional requests for information in due time. In such a case, it is difficult to reject the notification as incomplete and the issues will have to be dealt within the merger procedure time limits.

Therefore, we understand that other jurisdictions choose a different approach and require a (simplified) Form CO with specified information requirements. Having this in mind, we think that the changes proposed by the Commission improve the balance between, on the one hand, the aim of reducing the administrative burden for the parties, and on the other hand, the need for the Commission as the relevant competition authority to receive all the information that is needed in order to assess the case without delays. In any case, it must be made sure that the Commission receives all the information it needs to assess the case, ideally without the need to request further information from the parties.

Also, we welcome the introduction of an electronic notification as a general rule. In Germany, we offer the parties the possibility to file the notification both electronically as well as by conventional means (mail or fax). An increasing number uses the electronic filing possibilities, but the ratio of electronic files could still be improved. Against this background, we welcome the electronic filing „by default“. As technical problems can never be excluded, it appears appropriate to allow for notifications by other means in exceptional cases.
One minor point: if a notification is filed electronically in PDF format, it seems preferable to demand a „converted“ file (as opposed to a „scanned print-out“). If a scanned document is submitted, a part of the benefits of digitalization in working with the electronic file will be lost. From our experience using an OCR-functionality to remedy this issue requires additional time and effort and will produce a work product inferior to a converted file.

Best regards
Fabian Pape and Markus Brune

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