K&L GATES

TO: Directorate-General for Competition
– Unit A.2. –
Merger Case Support and Policy

FROM: K&L Gates LLP

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K&L Gates comments on the European Commission's consultation on further simplifications of procedures in merger control in the European Union

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I. General remarks

On 6 May 2022, the European Commission ("**Commission**") launched a public consultation on proposed simplification measures regarding merger procedures. The proposed changes aim to: (i) expand and clarify the categories of cases that can be treated under the simplified procedure; (ii) introduce refined safeguards so that the simplified procedure does not apply to cases that merit a more detailed review; (iii) ensure effective and proportionate information gathering, by introducing a new notification form for simplified cases, in a "tick-the-box" format; (iv) streamline the review of non-simplified cases by reducing and clarifying information requirements; and (v) Introduce electronic notifications and the possibility for the parties to submit certain documents electronically.

K&L Gates welcomes the Commission's proposals to revise the Merger Implementing Regulation with its annexes, and the Notice on Simplified Procedure. These initiatives will contribute to the removal of unnecessary administrative burdens on businesses and enable the Commission to more efficiently allocate its resources on cases that deserve a closer scrutiny.

II. Simplified procedure

The **extended scope of concentrations suitable for treatment under the simplified procedure** in Section II. A. is crucial for clarity and legal certainty and is a welcomed tool that will reduce unnecessarily burdensome filing requirements for the transactions that do not pose any competition concern. The Commission also proposes to **replace the Short Form CO** with primarily multiple choice questions and tables to be completed with short narratives and figures in the future. This again goes in the right direction of more targeted information requirements that will result in a reduced burden on businesses.

The introduction of **flexibility clauses** in Section II. B., points 8 and 9, is a positive development as it will allow the Commission to give simplified procedure treatment to transactions that do not meet the simplified procedure categories. However, the flexibility clauses may lead to greater uncertainty, which is contrary to the key principle of legal certainty and defies the underlying

objective of introducing a more transparent and predictable simplified procedure. We therefore encourage the Commission to establish clearer criteria for the flexibility clauses to assist the notifying party in its assessment of whether the transaction can fall within the scope of the simplified procedure.

The Commission's proposal to introduce **hybrid filings** to limit the information requirements for markets benefiting from the flexibility clauses is generally welcomed. This is expected to streamline the relevant sections of the current Form CO where these markets are considered affected and the applicable information requirements are much more extensive. To further facilitate this process, the Commission should also indicate when in the notification process the simplified treatment of markets benefiting from the flexibility clauses can be requested.

III. Data requests

The Commission suggests expanding data requests in the Form CO. In particular, **more information will be required on the source of the data that is available** and that is provided (e.g., data from CRM systems). We are concerned that businesses could face (even more) challenging and extensive data requests, particularly in complex cases involving complex data analysis. These higher data requirements would not only be **against the objective of a streamlined and simplified procedures** but also result in more burdensome, time consuming and costly proceedings.

IV. Procedural Rights

The Commission is extending the rights of third parties to receive non-confidential versions of the Statement of Objections ("**SO**"). The draft Implementing Regulation provides that where an SO has been issued, the Commission may send to third parties a non-confidential version of the SO or inform them of the nature and subject matter of the proceedings by other appropriate means. This would enhance transparency but could also incentivize **third party's challenges of notifiable transactions**.

If the Commission wants to enhance transparency, this should be done for both sides and we would thus encourage to also provide more information to the notifying party during the merger proceedings and not only in the context of the SO. This could take the form of a summary of the facts supporting the complaints lodged against the transaction in order to enable the notifying party to better address the potential concerns raised by third parties. Similarly, third parties who intervene in the proceedings should receive more clarity on the status of their complaints or investigation. This will result in better **visibility, transparency, accountability and overall balanced review process**.

V. Electronic transmission of documents

K&L Gates welcomes the **electronic transmission of documents** through digital means laid down in Article 22 of the draft revised Implementing Regulation.