

Commission pursues reform of minority shareholding rules

July 2014

The proposed reforms follow consultation on a Staff Working Document published in June 2013 in which the Commission outlined a range of options for addressing what it sees as two key areas for improvement of the EUMR (see BLP's consultation response [here](#)).

The White Paper also states that the Commission has a longer term ambition to create a "European Merger Area" in which the Commission and National Competition Authorities ("NCAs") would each apply the same substantive EU law in relation to merger control.

Comments on the proposals set out in the White Paper (full details of which can be found [here](#)) can be submitted to the Commission until **3 October 2014**. The Commission may then propose formal amendments to the EUMR.

Proposals regarding non-controlling minority shareholdings

The Commission considers there to be an "enforcement gap" in relation to acquisitions of non-controlling minority shareholdings, and that this could best be addressed through a **targeted transparency system**. This would apply as follows:

- an undertaking proposing to acquire a minority shareholding that qualified as a "**competitively significant link**" would be required to submit an **information notice** to the Commission;
- a transaction would have a "**competitively significant link**" where:
 - it involved the acquisition of a minority shareholding in a competitor or vertically related company; and
 - the acquired shareholding was (i) around 20% or (ii) between 5% and around 20%, but accompanied by additional factors such as rights which gave the acquirer a "de-facto" blocking majority, a seat on the board of directors, or access to commercially sensitive information on the target;
- the Commission would decide whether **further investigation** of the transaction was warranted, in which case the parties would be required to submit a full notification. Parties to a transaction would also be able to submit a full notification voluntarily;
- the Commission could consider proposing a **waiting period** (of, for example, 15 working days) once an information notice had been submitted, during which the parties would not be able to close the transaction;
- the Commission would be **free to investigate** a transaction, whether or not it had already been implemented, within a period of, for example, four to six months following submission of the information notice; and
- if the Commission initiated an investigation of a transaction which was already (fully or partially) implemented, it would have the power to issue **interim measures** in the form, for example, of a hold separate order.

These proposals borrow heavily from the UK's voluntary merger control regime, but leave certain questions unresolved. In particular, it is unclear what the consequences would be of failing to submit an information notice, and the concept of a "competitively significant link" is somewhat ambiguous at this stage.

What is clear is that the proposals are likely to increase the burden on businesses, which will be required to assess whether any acquisition of a shareholding of more than 5% may trigger the requirement to submit an information notice.

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Proposals regarding case referrals

The Commission's second tranche of proposals relates to the EUMR procedures for referral of cases from Member States to the Commission and vice versa.

In summary, the Commission proposes that:

- the current two-step process for notifying parties to request a referral to the Commission under Article 4(5) EUMR be abolished so that there is no requirement to provide a "reasoned submission" to the Commission before notifying a transaction to it;
- if the Commission accepts a request for a referral from one or more Member States under Article 22 EUMR, it will have jurisdiction to review the transaction for the whole EEA; and
- parties will no longer need to state that a transaction may "significantly affect competition in a market" in order for a case to qualify for a referral from the Commission to a Member State under Article 4(4) EUMR. Instead they will have to show that the transaction is likely to have its main impact in a distinct market in the Member State in question.

These proposals are likely to be broadly welcomed by businesses on the basis that they streamline the referral processes and enhance the one-stop-shop principle in EU merger control.