

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

If you chose "Other", please specify.

Text of 1 to 2000 characters will be accepted

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ICLA is not a business/economic operator. ICLA members work for companies which are active in a wide range of sectors. This submission represents the position of ICLA and does not necessarily represent the views of all of its individual members.

* First name

Ief

* Surname

Daems

* Email (this won't be published)

ief.daems@inhousecompetitionlawyers.com

* Organisation name

255 character(s) maximum

Association of Inhouse Competition Lawyers (ICLA)

* 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.

- | | | | |
|---|--|--|--|
| <input type="radio"/> Afghanistan | <input type="radio"/> Djibouti | <input type="radio"/> Libya | <input type="radio"/> Saint Martin |
| <input type="radio"/> Åland Islands | <input type="radio"/> Dominica | <input type="radio"/> Liechtenstein | <input type="radio"/> Saint Pierre and Miquelon |
| <input type="radio"/> Albania | <input type="radio"/> Dominican Republic | <input type="radio"/> Lithuania | <input type="radio"/> Saint Vincent and the Grenadines |
| <input type="radio"/> Algeria | <input type="radio"/> Ecuador | <input type="radio"/> Luxembourg | <input type="radio"/> Samoa |
| <input type="radio"/> American Samoa | <input type="radio"/> Egypt | <input type="radio"/> Macau | <input type="radio"/> San Marino |
| <input type="radio"/> Andorra | <input type="radio"/> El Salvador | <input type="radio"/> Madagascar | <input type="radio"/> São Tomé and Príncipe |
| <input type="radio"/> Angola | <input type="radio"/> Equatorial Guinea | <input type="radio"/> Malawi | <input type="radio"/> Saudi Arabia |
| <input type="radio"/> Anguilla | <input type="radio"/> Eritrea | <input type="radio"/> Malaysia | <input type="radio"/> Senegal |
| <input type="radio"/> Antarctica | <input type="radio"/> Estonia | <input type="radio"/> Maldives | <input type="radio"/> Serbia |
| <input type="radio"/> Antigua and Barbuda | <input type="radio"/> Eswatini | <input type="radio"/> Mali | <input type="radio"/> Seychelles |
| <input type="radio"/> Argentina | <input type="radio"/> Ethiopia | <input type="radio"/> Malta | <input type="radio"/> Sierra Leone |
| <input type="radio"/> Armenia | <input type="radio"/> Falkland Islands | <input type="radio"/> Marshall Islands | <input type="radio"/> Singapore |
| <input type="radio"/> Aruba | <input type="radio"/> Faroe Islands | <input type="radio"/> Martinique | <input type="radio"/> Sint Maarten |
| <input type="radio"/> Australia | <input type="radio"/> Fiji | <input type="radio"/> Mauritania | <input type="radio"/> Slovakia |
| <input type="radio"/> Austria | <input type="radio"/> Finland | <input type="radio"/> Mauritius | <input type="radio"/> Slovenia |
| <input type="radio"/> Azerbaijan | <input type="radio"/> France | <input type="radio"/> Mayotte | <input type="radio"/> Solomon Islands |
| <input type="radio"/> Bahamas | <input type="radio"/> French Guiana | <input type="radio"/> Mexico | <input type="radio"/> Somalia |

<input type="radio"/> Bahrain	<input type="radio"/> French Polynesia	<input type="radio"/> Micronesia	<input type="radio"/> South Africa
<input type="radio"/> Bangladesh	<input type="radio"/> French Southern and Antarctic Lands	<input type="radio"/> Moldova	<input type="radio"/> South Georgia and the South Sandwich Islands
<input type="radio"/> Barbados	<input type="radio"/> Gabon	<input type="radio"/> Monaco	<input type="radio"/> South Korea
<input type="radio"/> Belarus	<input type="radio"/> Georgia	<input type="radio"/> Mongolia	<input type="radio"/> South Sudan
<input checked="" type="radio"/> Belgium	<input type="radio"/> Germany	<input type="radio"/> Montenegro	<input type="radio"/> Spain
<input type="radio"/> Belize	<input type="radio"/> Ghana	<input type="radio"/> Montserrat	<input type="radio"/> Sri Lanka
<input type="radio"/> Benin	<input type="radio"/> Gibraltar	<input type="radio"/> Morocco	<input type="radio"/> Sudan
<input type="radio"/> Bermuda	<input type="radio"/> Greece	<input type="radio"/> Mozambique	<input type="radio"/> Suriname
<input type="radio"/> Bhutan	<input type="radio"/> Greenland	<input type="radio"/> Myanmar /Burma	<input type="radio"/> Svalbard and Jan Mayen
<input type="radio"/> Bolivia	<input type="radio"/> Grenada	<input type="radio"/> Namibia	<input type="radio"/> Sweden
<input type="radio"/> Bonaire Saint Eustatius and Saba	<input type="radio"/> Guadeloupe	<input type="radio"/> Nauru	<input type="radio"/> Switzerland
<input type="radio"/> Bosnia and Herzegovina	<input type="radio"/> Guam	<input type="radio"/> Nepal	<input type="radio"/> Syria
<input type="radio"/> Botswana	<input type="radio"/> Guatemala	<input type="radio"/> Netherlands	<input type="radio"/> Taiwan
<input type="radio"/> Bouvet Island	<input type="radio"/> Guernsey	<input type="radio"/> New Caledonia	<input type="radio"/> Tajikistan
<input type="radio"/> Brazil	<input type="radio"/> Guinea	<input type="radio"/> New Zealand	<input type="radio"/> Tanzania
<input type="radio"/> British Indian Ocean Territory	<input type="radio"/> Guinea-Bissau	<input type="radio"/> Nicaragua	<input type="radio"/> Thailand
<input type="radio"/> British Virgin Islands	<input type="radio"/> Guyana	<input type="radio"/> Niger	<input type="radio"/> The Gambia
<input type="radio"/> Brunei	<input type="radio"/> Haiti	<input type="radio"/> Nigeria	<input type="radio"/> Timor-Leste
<input type="radio"/> Bulgaria	<input type="radio"/> Heard Island and McDonald Islands	<input type="radio"/> Niue	<input type="radio"/> Togo
<input type="radio"/> Burkina Faso	<input type="radio"/> Honduras	<input type="radio"/> Norfolk Island	<input type="radio"/> Tokelau
<input type="radio"/> Burundi	<input type="radio"/> Hong Kong	<input type="radio"/> Northern Mariana Islands	<input type="radio"/> Tonga

◉ Cambodia	◉ Hungary	◉ North Korea	◉ Trinidad and Tobago
◉ Cameroon	◉ Iceland	◉ North Macedonia	◉ Tunisia
◉ Canada	◉ India	◉ Norway	◉ Turkey
◉ Cape Verde	◉ Indonesia	◉ Oman	◉ Turkmenistan
◉ Cayman Islands	◉ Iran	◉ Pakistan	◉ Turks and Caicos Islands
◉ Central African Republic	◉ Iraq	◉ Palau	◉ Tuvalu
◉ Chad	◉ Ireland	◉ Palestine	◉ Uganda
◉ Chile	◉ Isle of Man	◉ Panama	◉ Ukraine
◉ China	◉ Israel	◉ Papua New Guinea	◉ United Arab Emirates
◉ Christmas Island	◉ Italy	◉ Paraguay	◉ United Kingdom
◉ Clipperton	◉ Jamaica	◉ Peru	◉ United States
◉ Cocos (Keeling) Islands	◉ Japan	◉ Philippines	◉ United States Minor Outlying Islands
◉ Colombia	◉ Jersey	◉ Pitcairn Islands	◉ Uruguay
◉ Comoros	◉ Jordan	◉ Poland	◉ US Virgin Islands
◉ Congo	◉ Kazakhstan	◉ Portugal	◉ Uzbekistan
◉ Cook Islands	◉ Kenya	◉ Puerto Rico	◉ Vanuatu
◉ Costa Rica	◉ Kiribati	◉ Qatar	◉ Vatican City
◉ Côte d'Ivoire	◉ Kosovo	◉ Réunion	◉ Venezuela
◉ Croatia	◉ Kuwait	◉ Romania	◉ Vietnam
◉ Cuba	◉ Kyrgyzstan	◉ Russia	◉ Wallis and Futuna
◉ Curaçao	◉ Laos	◉ Rwanda	◉ Western Sahara
◉ Cyprus	◉ Latvia	◉ Saint Barthélemy	◉ Yemen

- ☐ Czechia
- ☐ Lebanon
- ☐ Saint Helena
Ascension and
Tristan da
Cunha
- ☐ Zambia
- ☐ Democratic
Republic of the
Congo
- ☐ Lesotho
- ☐ Saint Kitts and
Nevis
- ☐ Zimbabwe
- ☐ Denmark
- ☐ Liberia
- ☐ Saint Lucia

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

ICLA is an informal association of in-house competition lawyers with currently more than 450 members across the globe. The Association does not represent companies but is made up of individuals as experts in the area of competition law.

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

between 1 and 33 choices

- | | | | |
|---|---|---|--|
| <input type="checkbox"/> Austria | <input type="checkbox"/> France | <input type="checkbox"/> Malta | <input checked="" type="checkbox"/> United Kingdom |
| <input checked="" type="checkbox"/> Belgium | <input checked="" type="checkbox"/> Germany | <input checked="" type="checkbox"/> Netherlands | <input checked="" type="checkbox"/> Others in Europe |
| <input type="checkbox"/> Bulgaria | <input type="checkbox"/> Greece | <input type="checkbox"/> Poland | <input type="checkbox"/> America |
| <input type="checkbox"/> Croatia | <input type="checkbox"/> Hungary | <input type="checkbox"/> Portugal | <input checked="" type="checkbox"/> Asia |
| <input type="checkbox"/> Cyprus | <input type="checkbox"/> Ireland | <input type="checkbox"/> Romania | <input type="checkbox"/> Africa |
| <input type="checkbox"/> Czech Republic | <input checked="" type="checkbox"/> Italy | <input type="checkbox"/> Slovak Republic | <input type="checkbox"/> Australia |
| <input checked="" type="checkbox"/> Denmark | <input type="checkbox"/> Latvia | <input type="checkbox"/> Slovenia | |
| <input type="checkbox"/> Estonia | <input type="checkbox"/> Lithuania | <input checked="" type="checkbox"/> Spain | |
| <input checked="" type="checkbox"/> Finland | <input type="checkbox"/> Luxembourg | <input checked="" type="checkbox"/> 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

- | | |
|---|---|
| <input type="checkbox"/> Yes, Article 6.1.(a) decision | <input type="checkbox"/> Yes, Article 8.1 decision |
| <input type="checkbox"/> Yes, Article 6.1(b) decision (simplified procedure) | <input type="checkbox"/> Yes, Article 8.2 decision |
| <input type="checkbox"/> Yes, Article 6.1(b) decision (normal procedure) | <input type="checkbox"/> Yes, Article 8.3 decision |
| <input type="checkbox"/> Yes, Article 6.1(b) in conjunction with Article 6.2 decision | <input checked="" type="checkbox"/> 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):

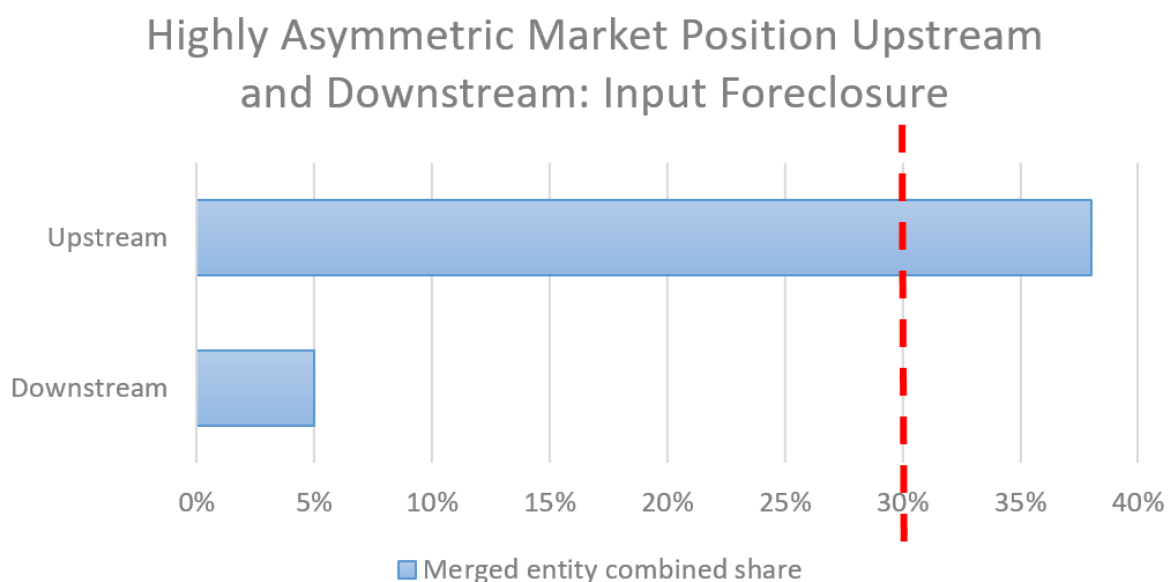
Option 1: Introducing a flexibility clause in the Notice on Simplified Procedure, giving the Commission discretion to treat additional cases under the simplified procedure under certain circumstances (for instance if the current market share thresholds of the Notice on Simplified Procedure are exceeded 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:

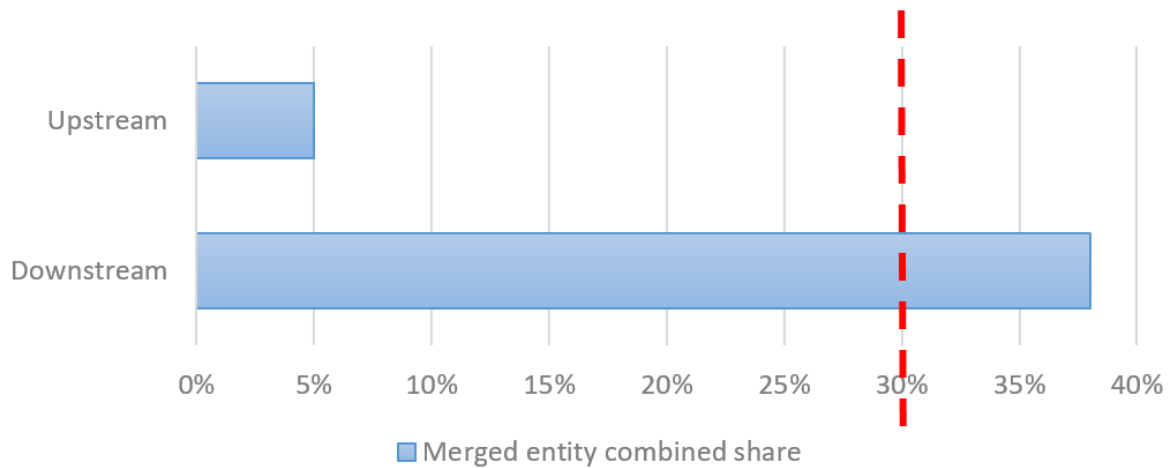
- Cases with highly asymmetric market positions upstream and downstream (as defined in the Guidelines on the assessment of non-horizontal mergers, paragraph 4, footnote 4), with an increased maximum market share in one market (e.g., <40%) but low market shares in the other market (e.g. <5%).
- Cases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

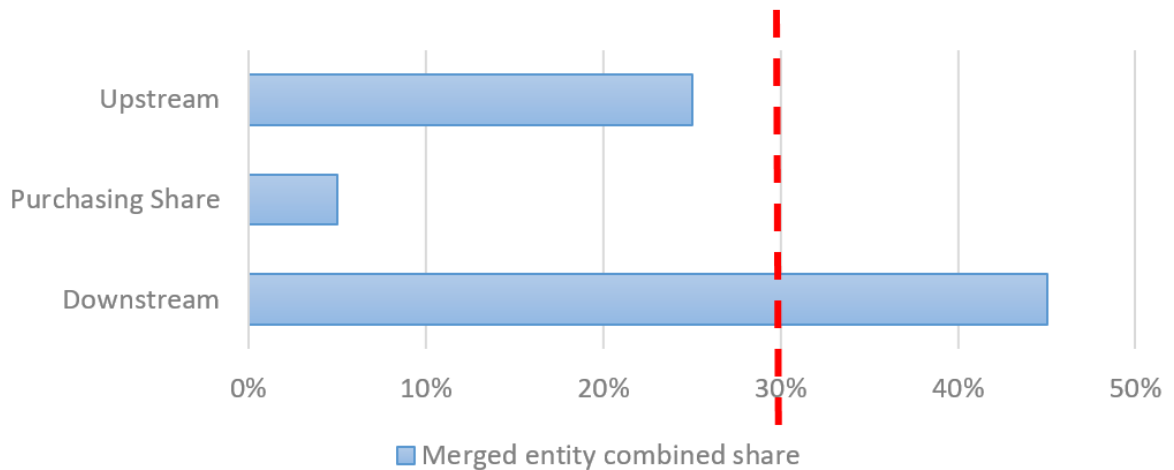


Highly Asymmetric Market Position Upstream and Downstream: Customer Foreclosure



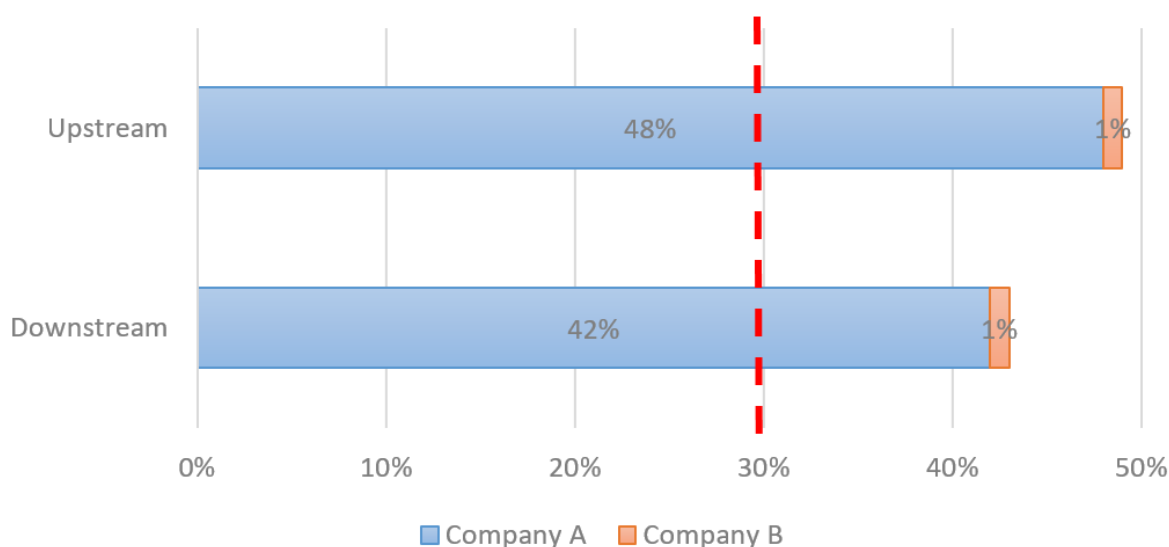
- Cases with high downstream sales shares but relatively low purchasing share by downstream entity as customer on upstream market

Highly Asymmetric Market Position Upstream and Downstream: Customer Foreclosure



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

Limited increment to 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%)	<input checked="" type="radio"/>	<input type="radio"/>
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)	<input checked="" type="radio"/>	<input type="radio"/>
Cases of joint ventures with turnover or assets value slightly exceeding EUR 100 million (e.g., up to a turnover of EUR 150 million)	<input checked="" type="radio"/>	<input type="radio"/>

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).

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	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%)	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
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)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Cases of joint ventures with turnover or assets value slightly exceeding EUR 100 million (e.g., up to a turnover of EUR 150 million)	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
All the above combined (i.e. transactions slightly exceeding market share thresholds and slightly exceeding JV's turnover and assets value thresholds introduced together)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

Text of 1 to 2000 characters will be accepted

There are currently many cases that require a full review process, even though there is only a marginal impact on competition. To create efficiencies and save time and costs for both the European Commission as well as the business community, we believe the scope of the simplified procedure should be expanded significantly. For example, in addition to cases meeting the specific criteria of the simplified procedure, companies should be allowed to submit – and the Commission able and willing to accept – a case for simplified procedure based on the lack of any appreciable effect of the transaction on competition, even if the thresholds to qualify for the simplified procedure are not met. Companies could engage in pre-notification discussion with the Commission and present their arguments as to why they should benefit from the simplified procedure.

While we welcome any reductions of administrative burden and cost savings from a principal perspective, even if only moderate, the measures proposed in Question 1.3 above alone will not have a significant impact. A more holistic review of the simplified procedure thresholds is required.

At the same time, we also note that administrative burdens even under simplified notification procedures remain very substantial. The Commission should therefore aim to streamline the Short Form CO and reduce the relevant information requirements. See our response to Question 1.10 below.

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%)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
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%)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
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	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Cases with relatively high combined market shares but limited increments (upstream, downstream or both) to a pre-existing vertical integration	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

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%)	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Vertical cases with lower market shares upstream (e.g. up to 5%) but higher market shares downstream (e.g. up to 40%)	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
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	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Cases with relatively high combined market shares but limited increments to a pre-existing vertical integration	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
All of the above introduced together	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

Text of 1 to 2000 characters will be accepted

As indicated in response to Question 1.4 above, to create efficiencies and save time and costs for both the European Commission as well as the business community, we believe the scope of the simplified procedure should be expanded significantly. While we welcome any reductions of administrative burden and cost

savings from a principal perspective, even if only moderate, the measures proposed in Question 1.9 above alone will not have a significant impact. A more holistic review of the simplified procedures thresholds is required. For example, in addition to cases meeting the specific criteria of the simplified procedure, companies should be allowed to submit – and the Commission able and willing to accept – a case for simplified procedure based on the lack of any appreciable effect of the transaction on competition, even if the thresholds to qualify for the simplified procedure are not met. Companies could engage in pre-notification discussion with the Commission and present their arguments as to why they should benefit from the simplified procedure.

Furthermore, we also note that administrative burdens even under simplified notification procedures remain very substantial. We therefore would like to argue that there should not only be an expansion of the application of the simplified procedure, but also a reduction in the burden imposed on notifying parties under such procedures. For example, the Commission should seek to focus on the most relevant markets only, without requiring data input on all plausible markets. See our responses -in particular to Question 2.2- below.

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 rules capture joint ventures with no local nexus, based on turnover of the JV parents within the EEA. Being required to notify those transactions puts an unproportionate burden on companies. The current review could be an opportunity to resolve this issue, by inserting a local nexus requirement for joint ventures. Where a joint venture has no local nexus to the EEA, it should not be subject to EU merger control.

In addition, as mentioned earlier in response to Question 1.4 and 1.10, the Commission could also accept, on a case-by-case basis, to receive filings under the simplified procedure in other cases where it is clear that – despite not meeting the criteria for the simplified procedure – the transaction will not have any appreciable effect on competition.

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.

Text of 1 to 2000 characters will be accepted

In line with our response to Question 1.12 above, the relevant thresholds should be updated to make it clear that there is no need to notify joint ventures that do not have a local nexus with the EEA.

Furthermore, it is excessive to require a normal review process in case of a change from joint control to sole control when the acquisition of joint control was previously not reviewed by the European Commission or a national competition authority. The lack of a previous review does not speak to the impact that such transaction may have on competition. This exception should therefore be removed, such that simplified procedures remain applicable for these types of transactions.

Finally, the statement that the Commission will revert to a normal review procedure because third parties have expressed concerns would need to be clarified, such that only those concerns that are plausible and may result in potential competition law concerns should cause the Commission to require a full Form CO notification.

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	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Strength of the competitors remaining, including whether their market share exceeds the increment brought about by the transaction	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Shares thresholds are exceeded in terms of capacity shares or production shares	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
One of the merging parties is a recent entrant (entered the market in the last three years)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

One of the merging parties is an important innovator in the overlapping markets	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
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	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Vertical overlaps exceed thresholds in distant levels of the value chain (in terms of market shares, capacity shares or production shares)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The activities of the merging parties overlap in highly differentiated products	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

Text of 1 to 2000 characters will be accepted

While these factors may be relevant to the competitive assessment, they should not be considered as having a prima facie impact on competition such that they should be considered part of the assessment as to whether a transaction benefits from a simplified review procedure.

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

- ☐ Yes
- ☒ 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
- ☒ 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

It is important to bear in mind that the types of transactions that benefit from a simplified notification procedure are highly unlikely to raise any competition law concerns. ICLA therefore considers that the information requested for these types of transactions must be further streamlined, in order to limit the administrative burdens as much as possible, and save time and costs not only for the notifying parties but also for the European Commission.

We include some suggested simplifications below:

- There should be no need to provide competitor contact details in case there are no reportable markets or where it is obvious from the facts that there is no impact on competition.
- Where it is obvious from the facts that there is no impact on competition within the EEA, there should also be no requirement to provide internal documents from the parties to the transaction.
- There should be no need to provide market data for every plausible market. At the very least, the Short Form CO should introduce a level of materiality when requiring that details be provided on those possible alternative markets. Providing such details can be very burdensome when the parties only have a negligible presence in a certain market, while eventually being irrelevant to the broader competitive assessment.
- Section 6 and 7 of the Short Form CO should only be completed where the parties have a certain presence in the market in question.

More generally, in terms of format of the Short Form CO, while we agree that 'tick the box' formats can simplify the notification procedure, there should be room to provide comments for each question such that parties can specify and provide clarifications where needed.

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

* 2.5 If you replied "yes, but only for some parts", please indicate which ones.

Text of 1 to 2000 characters will be accepted

ICLA would support the European Commission's proposal to streamline the current Short Form CO template by a tick-the-box list on the basic facts relevant for the assessment (policy option 3), as long as the notifying parties are capable to make further comments on the specific points streamlined by the tick-the-box format. Providing a specific space for comments and clarifications will be important to allow parties to nuance the information provided, where relevant, and ensure that a proper competitive analysis is carried out by the Commission. It will also avoid redundant and burdensome RFIs whilst promoting the simplification of the current format.

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

Please see our responses to Questions 2.2 and 2.5 above.

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	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
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	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
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	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

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.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
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.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
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.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
All of the above introduced together	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

Text of 1 to 2000 characters will be accepted

While we believe that a 'tick-the-box' format can help to streamline information requirements, as indicated in response to Question 2.5 above, it is important that the tick-the-box format shall be accompanied by another space or box where the notifying parties can introduce further comments or clarifications when appropriate.

Furthermore, in order to create efficiencies and reduce burdens for both the Commission and the notifying parties, it is critical that the Short Form CO is streamlined, and related information requirements significantly reduced. See in particular our response to Question 2.2 above. This is also the reason why we believe (as indicated in response to Question 2.9 above) that a simple format change will only result in a negligible effect.

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	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
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	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
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	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
All of the above introduced together	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

Text of 1 to 2000 characters will be accepted

Streamlining the Short Form CO template by a tick-the-box list on the basic facts relevant for the competitive assessment may help speed up the time to obtain clearance. As mentioned in response to Question 2.10 above, in order to reduce the time required to obtain clearance more substantially, it would be important to streamline the Short Form CO and significantly reduce the related information requirements.

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

To streamline the treatment of simplified procedures, extraterritorial transactions that take place outside the EEA shall be excluded from the scope of application. As mentioned above, JVs with no local nexus in the EEA that are nevertheless notifiable due to the parties' turnover in the EU should be taken out of the remit of the Commission's merger control rules, as there is no impact on the internal market that justifies the need for such review. Alternatively, in case the Commission decides to maintain extraterritorial transactions within the scope of the simplified procedure, we ask to significantly simplify notification requirements (limited to information about the joint investors, the purpose of the JV, and a brief explanation why it does not have an impact in the EEA) and introduce stricter time limits for the Commission's review. Limiting the time period would avoid scenarios in which the competition authority of the country or countries where the transaction is going to have effects cleared the transaction, but the transaction is still pending the Commission's approval.

Stricter time limits should be introduced especially in two situations: (i) for communications between the Commission and the NCAs related to the eventual referrals of the case to/from NCAs; and (ii) for the Commission to decide to ask the parties for an ordinary Form CO. The latter should avoid the risk of having to switch from a simplified to an ordinary process at the very end of the simplified procedure. The current deadline of 15 working days is significant, in particular if the parties will be required to revert to a normal procedure on that basis.

Last, in order to speed up the review of the transaction subject to the simplified procedure, we propose to include a "positive silence" clause whereby, if the Commission does not give an answer within an established period of time after the day of notification (e.g., 15 working days), the transaction is presumed to be cleared.

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

In the vast majority of cases, we find that the information requested in connection with the Form CO in non-simplified cases is excessive and too broad. In our experience, the amount of information to be provided has increased significantly over the last years, especially in the context of internal document requests under section 5.4. This is very burdensome on the filing parties' internal and financial resources, but also often has effect on the timing of the notification and subsequent review of the transaction. This also creates risk of incompleteness for companies, e.g. in relation to market studies or other documents that are not related to the transaction and that parties may not have identified in preparation of the filing.

Therefore, we would welcome streamlining the process by focusing on concerns in key markets that are critical in the context of the concrete transaction rather than a broad information collection on all potential markets. Especially in Phase 2, the analysis should be progressive, i.e., refining the analysis and limiting the theories of harm and the markets where there could be concerns. For instance, concerns disregarded in a Phase 1 should not be re-opened in a Phase 2 unless new factual information appears. Therefore, information requested along the process should focus on more narrow areas of analysis as the procedure evolves, rather than keeping a broad scope of information envisaged for analysis from the beginning to the end.

Time periods for data requests to the notifying parties are sometimes too long (up to 5 years in some requests). Whilst this creates a significant burden on companies to collect, the data gathered becomes outdated, even not meaningful, as it no longer reflects the reality of the company that seeks to engage in the proposed transaction. It would be preferable to limit data requests to the year prior to the one in which the

transaction takes place.

For the remainder of our response, please see Q5.2.

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 templates' user friendliness can be improved in particular for cases which do not create competitive concerns (Phase 1 cases). For these cases, the Form CO requires a significant amount of detailed information to be collected, and is burdensome to be filled out. This not only implies a huge workload, but also increases the costs that notifying parties should assume upfront to get approval from the European Commission.

Furthermore, it should also be noted that information requested is not always readily available or collected in the format requested by the Commission, and the efforts made for turning the information into the formatting needed are costly, time-consuming and often disproportionate to the relevance of the exercise. It would therefore be helpful if there is more flexibility to discuss the format in which data is being provided, based on how it is readily available, tracked or stored within the company.

Please also see our response to Question 3.2 above.

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 earmarked as potential opt-out sub-section?

Text of 1 to 2000 characters will be accepted

In general, potentially each sub-section in Section 8 could be a good candidate, as they may not be important or substantially contribute to the assessment of the transaction under investigation. From a proportionality and efficiency perspective it could even make sense to treat the sub-sections in Section 8 as optional (with an opt-in mechanism), such that those sections should only be completed if deemed useful by

the parties or DG COMP. In particular the sections “Research and development”, “Trade between Member States and imports from outside the EEA”, “Cooperative agreements” and “Trade associations” could be good candidates for such opt-in sections.

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)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
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	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
All of the above introduced together	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

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

Text of 1 to 2000 characters will be accepted

Introducing a new structure in the form by separating facts from advocacy would be very artificial given there is no clear line between both. Given the co-dependency of facts and advocacy, it does not make sense to separate them and it would pose additional burden and duplication for the parties.

Opt-out sections in section 8, as identified in response to Question 3.7 above, would reduce the burden on the parties, since it directly reduces the amount of information that needs to be collected upfront. This is even more true when the requested information is not available in the requested format and would require additional effort to collect and put together in the requested format.

That being said, these measures would only have a moderate impact, and a more holistic revision of the Form CO and related information requirements is necessary to achieve more significant efficiencies in terms of costs and administrative burdens for the Commission and notifying parties. See in particular our response to Question 3.2 above.

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

One of the most effective ways to streamline non-simplified cases would be to focus on critical areas and relevant markets, i.e. those that are most likely to raise possible competition law concerns, at a very early stage. Parts that are unlikely to raise competition concerns could be 'ticked off' early in the process. This would limit the sometimes large number of possible product markets that parties need to provide detailed data on. See our response to Q3.2 above in this regard. These measures would not only reduce the overall administrative burden for the parties completing the Form CO, but also may help to speed up the review process and focus on the issues at hand – thus saving costs and resources also for the EC.

Over time we have also seen merger processes becoming less predictable and longer, in particular because of excessive pre-notification phases and the growing use of stop the clocks. Timely reviews are critical for businesses, in particular for cases that do not raise competition law concerns. And where more extensive reviews are required, it would be helpful to have a predictable timeline as early on in the pre-notification phase as possible.

Finally, third party questionnaires are often very burdensome, in particular where the relevant company does not have a specific or negative view on the transaction. The practice of setting up calls during the pre-notification stage and the possibility to review the minutes is much appreciated, and should be encouraged more broadly. It allows companies to provide feedback and respond to questions without having to spend extraordinary amounts of time. Parties that have engaged in such discussions should be able to focus in subsequent written RFIs on those sections they consider most relevant. Having other authorities that review the transaction simultaneously join such interviews may also be helpful to further streamline input provided by third parties.

See also our responses to Q3.2, Q3.4 and Q3.7.

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

In general, the Form RS's information requirements go beyond what may be needed for a mere jurisdictional decision. It would help to streamline and reduce the Form RS to what is indispensable for the jurisdictional decision.

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	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Fully electronic notifications, including digital signatures	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

* 4.2 If no, please explain the reasons why you would not make use of this possibility and whether any solution could be offered to allow electronic notifications.

Text of 1 to 2000 characters will be accepted

There does not seem to be much benefit in allowing electronic notifications if parties are required to follow up with originals on paper. See also our response to Q4.3 below.

4.3 Please explain the main advantages/disadvantages of both options

	Advantages	Disadvantages
Electronic notifications followed by originals on paper	Compared to an option whereby only paper submissions are allowed, this option allows to submit an electronic version and thus potentially gain the time that is required for physical paper submission (even though that would require the Commission to accept the electronic version as the final submission).	It requires additional useless paper consumption. Efficiencies that could be gained from allowing to submit the form electronically seem to be reduced quite substantially in case a follow-up paper submission is required.
Fully electronic notifications, including digital signatures	In addition to saving time and administrative costs, it also reduces paper and ink consumption, as well as CO2 emissions for delivery of paper copies. With increased remote working for Commission officials, it is unclear why a paper version would still be necessary.	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	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Allowing electronic notifications, introducing fully digital notifications, including digital signatures	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

Text of 1 to 2000 characters will be accepted

See our response to Question 4.3 above.

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

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

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

[Response to Q5.2] ICLA would like to express significant concerns about the Art 22 Guidance paper that the Commission recently adopted (Commission Guidance on the application of the referral mechanism set out in Article 22 of the Merger Regulation to certain categories of cases). We have serious questions about the legality of the proposed approach, and are concerned about the way in which it drastically undermines legal certainty and predictability. The proposal has a number of practical consequences that significantly

impacts businesses investing in M&A activities. Therefore, clear limits and further guidance on this new approach is needed in order to provide legal certainty and predictability to businesses when they engage in merger assessments and strategic development. We are currently in the process of preparing an ICLA position paper on the topic, which we will share with you as soon as it is finalized.

In the meantime, we appreciate the opportunity to have been able to provide input to this consultation, and we remain available to discuss any questions you may have in this regard.

[Continued Response to Q3.2] This streamlining is particularly relevant for cases that are unlikely to raise competition issues, or for markets in which the proposed transaction is unlikely to raise such concerns. This will enable a more efficient use of resources and contribute to speeding up the process. In order to achieve this goal, the Commission should consider raising the market share thresholds for the definition of affected markets under the Form CO, and only require details for those affected markets when those thresholds are met.

It would also be important to streamline information requests, both towards notifying parties as well as third parties. The practice of doing interviews with third parties during pre-notification stages should be encouraged, but it would also be helpful if that would allow those third parties to receive more streamlined questionnaires once the transaction is notified (or to give feedback only in case of concerns regarding the transaction).

In addition, it would be helpful if the Commission could systematically verify if there is an established point of contact for the companies to which third-party questionnaires are being sent, to avoid losing precious time due to questionnaires being lost in inboxes of business teams. ICLA has prepared an overview of key contact person(s) for a number of its members and it would be very useful if case teams and/or merger registry could systematically ensure that these key contacts are included in the outreach. We very much appreciate the Commission's efforts in this regard, but our members still experience that questionnaires are sent to other contacts within the company, without copying the contact identified for the merger registry.

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

