



European Commission Proposes Amendments to Premerger Notification Regime

Posted by Kobi Kastiel, Co-editor, HLS Forum on Corporate Governance and Financial Regulation, on Tuesday April 16, 2013

Editor's Note: The following post comes to us from [Franco Castelli](#), attorney at Wachtell, Lipton, Rosen & Katz focusing on antitrust aspects of U.S. and cross-border mergers, acquisitions, and joint ventures. This post is based on a Wachtell Lipton memorandum by Mr. Castelli.

Last week, the European Commission announced proposed amendments to the notification forms that companies must complete to report mergers subject to antitrust review in the EU, with the stated intention of reducing burdens on filing parties. If adopted, the proposed changes would reduce the amount of information parties must provide in transactions that are unlikely to raise competitive concerns.

The EC proposes to expand the categories of mergers that are eligible for review under a simplified procedure that allows companies to file “short form” notifications with more limited information requirements. Under the proposed changes, the simplified procedure would apply to all mergers that result in the combined firm holding a market share of less than 20% in any market in which both parties are active, up from the current threshold of 15%. In addition, at the EC’s discretion, filing parties would be permitted to use the “short form” when a merger results in a small market share increase, even if the combined firm’s market share exceeds 20%. For vertical mergers, the market share threshold for the simplified procedure would increase from 25% to 30%. The EC estimates that, as a result of these changes, an additional 10% of all reportable mergers could be reviewed under the simplified procedure, with significant benefits—in terms of both time and costs—for companies no longer required to complete the full notification.

The EC also proposes to reduce the burden on filing parties in transactions that do not qualify for the simplified procedure, by raising the market share thresholds that trigger requirements for detailed market information. For these “long form” transactions, however, the proposed changes also add a new category of documents that must be submitted with the notification form. Filing parties are already required to submit certain documents related to the notified transaction. The proposed revision would additionally require submission of all documents prepared for any

director in the past three years that analyze competitive conditions in markets affected by the merger—whether or not the documents were prepared in connection with the transaction at issue. Such a requirement could result in burdensome document productions for merging parties.

Premerger filings in the EU can add significantly to the time necessary to complete mergers and acquisitions. Broader availability of the EC's simplified procedure is a welcome development, as experience shows that merging parties benefit from the reduced time and expense of "short form" filings. The addition of a burdensome document requirement for "long form" transactions serves as a reminder that internal planning documents play a large role in merger investigations, and that parties must at all times be mindful of what their documents say about industry competition. Whether under the simplified procedure or not, the time and effort required to prepare merger notifications and obtain European antitrust clearance will remain considerable, and careful strategy and planning will remain critical to the expeditious approval of transactions in the EU.