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REPORT

on the Commission Green Paper on the review of Council Regulation (EEC) No 4064/89
(COM(2001) 745 – C5-0159/2002 – 2002/2067(COS))

Committee on Economic and Monetary Affairs

Rapporteur: Luis Berenguer Fuster

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PROCEDURAL PAGE

By letter of 14 December 2001, the Commission forwarded to Parliament its Green Paper on the review of Council Regulation (EEC) No 4064/89 (COM(2001) 745 – 2002/2067(COS)).

At the sitting of 11 April 2002 the President of Parliament announced that he had referred the Green Paper to the Committee on Economic and Monetary Affairs as the committee responsible and the Committee on Legal Affairs and the Internal Market for its opinion (C5-0159/2002).

The Committee on Economic and Monetary Affairs appointed Luis Berenguer Fuster rapporteur at its meeting of 19 February 2002.

The committee considered the Commission Green Paper and the draft report at its meetings of 26 March, 15 April, 22 May, 3 June and 4 June 2002 .

At the last meeting it adopted the motion for a resolution by 33 votes unanimously.

The following were present for the vote: Christa Randzio-Plath, chairwoman; José Manuel García-Margallo y Marfil, Philippe A.R. Herzog and John Purvis vice-chairmen; Luis Berenguer Fuster (for Pervenche Berès), rapporteur; Hans Udo Bullmann, Bert Doorn (for Renato Brunetta), Jonathan Evans, Enrico Ferri (for Generoso Andria pursuant to Rule 153(2)), Ingo Friedrich, Carles-Alfred Gasòliba i Böhm, Lutz Goepel (for Astrid Lulling), Lisbeth Grönfeldt Bergman, Mary Honeyball, Brice Hortefeux, Christopher Huhne, Pierre Jonckheer (for Alain Lipietz), Othmar Karas, Giorgos Katiforis, Piia-Noora Kauppi, Christoph Werner Konrad, Thomas Mann (for Mónica Ridruejo), Ioannis Marinos, David W. Martin, Hans-Peter Mayer, Miquel Mayol i Raynal, Ioannis Patakis, Fernando Pérez Royo, Mikko Pesälä (for Karin Riis-Jørgensen), Alexander Radwan, Peter William Skinner, Ieke van den Burg (for Robert Goebbels) and Theresa Villiers.

The opinion of the Committee on Legal Affairs and the Internal Market is attached.

The report was tabled on 4 June2002 .

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

MOTION FOR A RESOLUTION

European Parliament resolution on the Commission Green Paper on the review of Council Regulation (EEC) No 4064/89 (COM(2001) 745 – C5-0159/2002 – 2002/2067(COS))

The European Parliament,

– having regard to the Commission Green Paper on the review of Council Regulation (EEC) No 4064/89 (COM(2001) 745 – C5-0159/2002[1]),

– having regard to Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings[2], as amended by Council Regulation (EC) No 1310/97[3],

– having regard to the statements recorded in the minutes of the meeting at which the Council adopted Regulation (EC) No 1310/97,

– having regard to Commission Regulation (EC) No 447/98 of 1 March 1998 on the notifications, time limits and hearings provided for in Council Regulation (EEC) No 4064/89[4],

– having regard to the Commission's successive annual Competition Policy Reports, in particular the reports for the years 1998, 1999, and 2000, and to Parliament's resolutions on those reports,

– having regard to Rule 47(1) of its Rules of Procedure,

– having regard to the report of the Committee on Economic and Monetary Affairs and the opinion of the Committee on Legal Affairs and the Internal Market (A5-0217/2002),

A. whereas merger control policy is a mainstay of competition policy and has intensified rapidly in recent years,

B. whereas competition policy is one of the methods laid down in the Treaty for attaining the Union's objectives, particularly those set in Lisbon, and whereas, therefore, it should concern itself not only with protecting consumer interests against abuses of dominant position, but also with the competitiveness of European economies and enterprises in the context of globalisation.

C. whereas the Commission itself has stressed in a recent communication that striking a balance between enterprise policy objectives and competition policy objectives is a major concern of its policy, the success of which will help to create a favourable environment for economic growth (SEC (2002) 528),

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[1] Not yet published in OJ.
[2] OJ L 395, 30.12.1989, p. 1; corrected version in OJ L 257, 21.9.1990, p. 13.
[3] OJ L 180, 9.7.1997, p. 1.
[4] OJ L 61, 2.3.1998, p. 1.

D. whereas Council Regulation (EEC) No 4064/89 stipulates that after an initial implementation period and in the light of the experience acquired, the Commission must review the criteria and thresholds applicable to enable the Council to amend the Regulation in accordance with Article 202 of the Treaty,

E. whereas the review also stems from the need to respond adequately to the challenges entailed in greater integration of European markets and a wider economic playing field, as reflected in the substantial increase in global concentration transactions,

F. whereas globalisation is having a far-reaching effect on economic conditions and making new demands on the adaptability of businesses. Strong competitiveness is an essential requirement if European businesses are to achieve higher growth and increased employment. This in turn imposes more stringent demands in terms of restructuring and flexibility. The fact that competition is increasingly taking place in a rapidly changing global economy must also be taken into account in the context of acquisition control by taking a long-term, dynamic view in appraisals. This is particularly a problem for the small countries of the EU at a time when national mergers are being used as a way of increasing global competitiveness,

G. whereas the forthcoming enlargement of the Community to include the applicant countries will pose an additional challenge in the immediate future for the efficient operation of the European merger control arrangements,

H. whereas the review must seek to identify possible flaws in the control system in force, thereby enabling European industry to carry on its business and to grow,

I. whereas the Commission and the Member States should be encouraged to coordinate their activities regarding concentrations,

J. whereas the Commission is required to assess the operation of the merger control system applying to companies involving a Community dimension and whereas the last review failed to produce the expected results, especially where Article 1(3) was concerned,

1. Applauds the good performance of Regulation (EEC) No 4064/89 and notes with satisfaction that the current review has begun as provided for in the Green Paper on amendment of the rules governing concentrations; deplores the fact, however, that certain matters raised in the Green Paper, first and foremost replacement of the dominance test and issues related to judicial redress, may be held over until other occasions in the future when the Regulation is reviewed again;

2. Shares the Commission's concern at the proliferation of multiple registrations and at the fact that this trend will be heightened still further by the enlargement of the EU. Draws attention once again to the costs and administrative burdens which a simultaneous registration with various national competition authorities entails;

3. Agrees with the Commission that the transnational dimension of concentration transactions must continue to be the criterion serving to determine whether the Commission or the national competition authorities (NCAs) should have jurisdiction and that the system set out in Article 1(2) must remain couched in its present wording;

believes, however, that the two-thirds rule should be revised and interpreted in a narrower sense because, in reality, the transactions to which it applies have a dimension extending beyond the territory of a single Member State;

4. Endorses the proposal to replace the current complex threshold system provided for in Article 1(3) with a simpler criterion whereby responsibilities would be assigned automatically; believes that such a criterion, if it were introduced, would clarify and simplify the system, make for more uniform assessment criteria, and add to legal certainty, all of which is necessary in order to deal properly with a business concentration affecting several Member States;

5. Takes the view that the above criterion must in every case be applied subject to the subsidiarity principle laid down in the Treaty and that the referral requirements set out in Articles 9 and 22 of the Regulation should be reworded accordingly;

6. Considers that, partly in view of the need for legal certainty for the parties involved, the amendment of Article 9 must aim to achieve an efficient and transparent division of responsibilities between the Commission and the Member States in the appraisal of concentrations and:

(a) Agrees with the Commission that two of the requirements currently applying should be abolished, namely the requirement that a dominant position must be shown to have been created or strengthened on a market and that the latter does not form a substantial part of the common market (Article 9(a) and the second part of Article 9(b));

(b) Does not believe that the time-limits for requesting a referral should be shortened, though it could be completed in two weeks, as proposed, if the above-mentioned requirements were abolished;

(c) believes that the Commission should be allowed to refer cases to Member States on its own initiative, provided the notifying parties are agreeable to this;

(d) points out to the Commission that it is necessary to determine on a case-by-case basis whether a concentration should be referred to a national competition authority when the final decision on the matter rests with the political authorities;

(e) The Member State to which a concentration with a Community dimension has been referred must apply Community law to that concentration;

(f) calls on the Commission to adopt guidelines on referral criteria in accordance with Article 9 of Regulation 4064/89 in order to improve transparency and legal certainty;

7. Considers that Article 22 should be amended by laying down arrangements analogous to those to be employed for the purposes of Article 9; also takes the view that the operation of the new European competition authority network must be continuously assessed; believes that, if this produces successful results, it could provide a solution

to some of the problems described in the Green Paper (for example, multiple notifications or joint referrals provided for in Article 22(3));

8. Maintains that the fundamental provisions of the Member States' competition legislation need to be mutually agreed as soon as possible, and in any event before the forthcoming enlargement, since this is essential if jurisdiction is to be assigned, and the actions of the Commission and the national competition authorities coordinated, in a coherent way; it is of great importance that the candidate countries should become involved in this as well;

9. Considers that, should the notion of concentration be finally enlarged, special attention should be attached to the capacity of exercising decisive influence on the market that certain agreements between companies might entail, as this possibility will determine the final treatment of an operation as an agreement under article 81 or as a concentration under the Merger Regulation. In any case, the possible effects that the current proposal of modification of Regulation 17/1962 could have on the required analysis of this kind of operations (i.e. the disappearance of the current notification system), must be borne in mind;

10. Considers that Articles 3(3) and 5(5) should be harmonised, basing the group concept on the principles underlying Article 3(3).

11. Considers that the current use of the "dominance test" produces very similar results to those obtained using the "significant lessening of competition test" (SLC test); but believes it necessary above all to balance this type of analysis with an overall economic and social assessment evaluating verifiable efficiency gains deriving from concentrations and stresses that, nothwistanding the advantages which the SLC test might bring from the point of view of dynamics, the disadvantages in terms of legal uncertainty imply that the substitution, should the case arise, should be made with the necessary caution;

12. Requests that, when the relevant market is defined, greater account should be taken of dynamic trends and the context of globalisation;

13. Requests that, for mergers in innovatory sectors, a balance should be sought between the need for economies of scale in the research and development sector, the need for European industry to make up lost ground and maintaining reasonable competition;

14. Considers that, when evaluating the benefits resulting from a concentration, attention should focus especially on the benefits to the economy in general and the consumer in particular;

15. Acknowledges the specific nature of Venture Capital investments and considers that some of these investments do not give rise to a concentration and should therefore be exempt under Article 3 (5) of the Council Regulation (EEC) No 4064/89

16. Supports the procedural changes proposed regarding the commitments to be entered into by the parties to resolve the competition problems posed by a transaction; maintains, however, that suspension of the procedure must translate into simple and effective rules and time-limits entailing no damage to any party concerned;

17. Considers that the necessary amendments should be made to Article 4(1) to incorporate the current practices referred to in paragraphs 182 and 183 of the Green Paper. 18. Notes that there is not sufficient data provided to give an opinion on the possibility of giving equivalent treatment to public bids and other acquisitions through the stock exchange.

19. Firmly supports the proposal to simply the calculation of deadlines, using the concept of 'working days' in all cases, as this would enhance transparency and legal certainty, provided that a timetable of working days is published annually for this purpose, to avoid the uncertainty that would arise from the differences in public holidays between Member States and even between regions.

20. Points out that the recording of oral submissions may lead to the disappearance of informal contacts, which are very valuable, without providing the same guarantees as the written procedure;

21. Wishes to highlight the fact that there is no separation between the investigating and decision-making authorities, a situation which Parliament regards as hard to reconcile in principle with the basic requirement of legal certainty. Further improvements should therefore be made to the current system with appeal to the Court of First Instance. At the same time investigations should be launched with a view to the reform of the system of authorities;

22. Considers it especially necessary for the simplified procedure to be laid down in Regulation (EEC) No 4064/89;

23. Notes that officials responsible for the appraisal of concentrations should have sufficient experience and specialist knowledge to ensure that the procedures can be carried out efficiently within the tight timetable laid down. The mobility policy for officials of the Commission must not be allowed to prejudice this.

24. Instructs its President to forward this resolution to the Council and Commission.

SHORT JUSTIFICATION

After nearly twelve years in operation, Regulation (EEC) No 4064/89, on merger control, can be said to have been a notable success, having become one of the mainstays of Union competition policy. Its strict but flexible enforcement by the competition authorities has given equal satisfaction to every part of the business world and, moreover, been considered a real milestone by lawyers on both sides of the Atlantic.

The principal achievements are twofold. On the one hand, there is the principle of exclusive jurisdiction in matters of Community interest, the 'one-stop shop' principle. Secondly, there is the speed, effectiveness, and impartiality of the control system laid down, which has in addition constantly benefited from further input in the form of guidelines published in Commission communications.

Under the terms of Regulation (EEC) No 4064/89 itself, the Commission has to review the operation of the system at periodic intervals. The last alterations were made under Council Regulation (EC) No 1310/97, which introduced a new set of jurisdictional thresholds designed to foster the principle of exclusive jurisdiction. Notwithstanding the initial intention, the change has failed to produce the expected results.

It was against this background that the Commission, on 11 December 2001, submitted the Green Paper on the review of the Merger Regulation, in which it proposes solutions to jurisdictional, substantive, and procedural matters.

However, the underlying aim of the review is to provide the necessary response to the new challenges resulting from greater integration of European markets and economic globalisation, the immediate effect of which has been to increase the number and complexity of the cases that the Commission is being called upon to examine. The need to cooperate and work together with the authorities of the Member States and the additional challenge posed by the forthcoming enlargement of the Union add another dimension to the review.

Given these challenges, the rapporteur believes that certain points, in particular harmonisation of the fundamental provisions of national and Community legislation, should be tackled in parallel to the review in the strict sense. The Commission and Council should determine the most appropriate bases and procedures with a view to embarking on such harmonisation because there is no specific legal basis in the Treaties under the heading of competition policy.

In general, the heart of the current reform can be said to be jurisdictional matters and especially the alterations to the threshold system introduced under the 1997 reform in Article 1(3) of the Regulation. The Commission is keenly aware that no change which it might wish to make should undermine *'effective, efficient, fair and transparent control of concentrations at the most appropriate level, in accordance with the principle of subsidiarity'*, and the rapporteur applauds this attitude.

Notification thresholds: Article 1

There is no doubt that the system set out in Article 1(3) needs to be simplified and clarified in order to be genuinely effective, the aim being that the principle of exclusive jurisdiction should cover as many cases as possible with a Community dimension, that is to say, those in which the impact on the markets extends beyond the frontiers of a single Member State. The Commission believes that the best solution would be to assign responsibility to the Community automatically when the same transaction had to be notified in three or more Member States.

The rapporteur realises that the above proposal implies a substantial change in the criterion used to identify Community interest. However, the advantages that this solution would bring in terms of transparency, legal certainty, and a smaller administrative burden for companies far outweigh the drawbacks that might arise for national competition authorities in particular. Furthermore, the proposal would reduce the risk of inconsistency in the decisions that different authorities make take regarding the same transaction. The resulting loss of sovereignty should not be considered harmful, because application of Article 9 has proved its worth on many occasions.

Following the same reasoning, the 'two-thirds' rule laid down in Article 1(2) should be reworded so as to allow scope for case-by-case assessment to determine whether it should be applied to individual transactions.

Referral to Member States: Article 9

The rapporteur agrees with the Commission that this arrangement must be made easier for NCAs to use and the wording of the relevant provisions simplified accordingly. He therefore fully supports the proposal to do away with the requirements laid down in Article 9(a) and the second part of subparagraph (b). He greatly welcomes the idea that, when cases have been referred to them, NCAs should be allowed to apply Community law if they so wish.

He does not believe, however, that it is necessary to shorten the existing time-limits for requesting referral of a case. The limits afford an opportunity for the Commission and NCAs alike to think, as they need to do because what they have to consider is not just the consequences of a request for referral, but also, as far as the Commission is concerned, the advisability of referral, especially if it is given the option of referring a case on its own initiative.

NCAs should likewise be able to make use more readily of joint referral to the Commission as provided for in Article 22. Member States should be encouraged to play a more active role that should not be confined to their involvement in the Advisory Committee. The arrangement in question has in fact hardly been used except as a result of the cooperation that NCAs have recently been pursuing independently.

Broader legal concept of concentration

The concept of concentration should be extended to encompass other categories of transactions that could in practice adversely affect the competition conditions on the markets. However, the assumptions put forward by the Commission are in effect working hypotheses offering a basis for discussion. To determine what constitutes the legal definition of an economic concentration is a complicated task in general terms and can be accomplished accurately only with reference to individual cases.

One particularly significant matter is acquisitions of minority shareholdings by competitors, which are not covered by the Regulation as it now stands but pose a serious problem to the extent that they restrict competition when they take place on highly concentrated markets.

In addition, the concept of concentration should be broadened to include what the Commission calls 'multiple transactions', a term that it uses to cover operations which, viewed singly, fall outside the scope of the Regulation but would be subject to control if they were considered together. Among the operations in this category are exchanges of assets (swap-type transactions), creeping take-overs, and the acquisition of joint control of one part of a company and sole control of another part. If a change were made along the lines proposed, the wording of Article 5(2), second subparagraph, would have to be revised.

Article 3(5) should be revised as proposed where given categories of venture capital investments are concerned.

Assessment criteria: dominance test

Regarding the proposal to replace the present dominance test with what is termed the 'significant lessening of competition' (SLC) test, the point to stress is that, in general, the results obtained from both tests are very similar. In spite of the greater flexibility and accuracy of the latter test, it is also necessary to consider the undoubted advantages in terms of clarity, precision, and rigour in many transactions that could otherwise be approved only on the basis of complex and at times contradictory arguments. That is why, if it were eventually to be decided to alter the assessment criteria, the change would have to be approached with the necessary caution, on account of the problems entailed as regards legal certainty, and ought perhaps to be confined initially to those cases in which the dominance criterion alone could not be used to analyse a transaction.

In any event, when a concentration transaction might lead to oligopolistic coordination, the assessment criteria to be observed in such a case should be clarified and publicised more widely.

Benefits

As regards the benefits or increases in efficiency that might result from a concentration, it is beyond dispute that the companies involved stand to gain a great deal. The potential benefits for the markets and hence the consumers directly affected are another matter altogether. When assessing this subject it is important to bear in mind that the goals related to the competitiveness of European industry have to be brought into balance with the aim of maintaining the necessary effective competition on the markets, because the benefits that would initially be passed on to consumers would otherwise ineluctably disappear in the medium term, with no possibility of reversing the tide.

Procedural aspects

The simplified procedure has demonstrated its effectiveness and advantages as a way of dealing with concentration transactions posing no significant competition problems. The proposal to draw up a block exemption regulation is not the right option, bearing in mind the difficulties that it would cause because it would not guarantee the necessary transparency. It would in any case be preferable for the existing guidelines to be incorporated into the text of

Regulation (EEC) No 4064/89.

The Commission ought to have dealt in greater depth with application of the 'standstill' clause set out in Article 7 to particular forms of acquisition of shares on securities markets and especially 'hostile take-overs', since this is an area in which the criteria need to be more clear cut.

The changes proposed by the Commission relating to 'commitments to disinvest' and specifically the proposal to suspend a procedure for a limited period – the 'stop-the-clock' provision – should translate into simple and effective rules of the game and time-limits that should entail no damage to notifying companies, bearing in mind that a concentration transaction needs to be resolved quickly.

Regarding the option of increasing the Commission's investigative powers in a concentration procedure, the rapporteur would point out that business concentrations are not prohibited acts and therefore cannot be brought within the scope of the investigation procedure normally followed in connection with Articles 81 and 82.

Ensuring that the interests of the parties concerned are properly represented and protected throughout a preliminary investigation is a constant of any administrative procedure. The rapporteur believes that when the Commission conducts a preliminary investigation, the different arrangements comprising the procedure offer even-handed protection. However, given the fact that the investigating body and the decision-making body are one and the same, and the important economic implications ensuing when a transaction is prohibited, the current system of appeals to the Court of First Instance should be improved.

28 May 2002

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET

for the Committee on Economic and Monetary Affairs

on the Green Paper on the review of Council Regulation (EEC) No 4064/89
(COM(2001) 745 – C5-0159/2002 – 2002/2067 (COS))

Draftsman: José María Gil-Robles Gil-Delgado

PROCEDURE

The Committee on Legal Affairs and the Internal Market appointed José María Gil-Robles Gil-Delgado draftsman at its meeting of 26 February 2002.

It considered the draft opinion at its meetings of 13 may 2002 and 28 may 2002..

At last meeting it adopted the following conclusions unanimously.

The following were present for the vote: Giuseppe Gargani, chairman; Ioannis Koukiadisand Bill Miller, vice-chairmen; José María Gil-Robles Gil-Delgado, draftsman; Paolo Bartolozzi, Maria Berger, Philip Charles Bradbourn (for The Lord Inglewood), Carlos Carnero González (for François Zimeray, pursuant to Rule 153(2)), Bert Doorn, Janelly Fourtou, Evelyne Gebhardt, Fiorella Ghilardotti, José María Gil-Robles Gil-Delgado, Piia-Noora Kauppi (forNicole Fontaine), Kurt Lechner, Klaus-Heiner Lehne, Neil MacCormick, Toine Manders, Helmuth Markov (for Alain Krivine, pursuant to Rule 153(2)), Arlene McCarthy, Manuel Medina Ortega, Elena Ornella Paciotti (for Carlos Candal), Renate Sommer (for Malcolm Harbour, pursuant to Rule 153(2)), Astrid Thors (for Diana Wallis), Marianne L.P. Thyssen, Rijk van Dam (for Ole Krarup), Rainer Wieland and Joachim Wuermeling.

SHORT JUSTIFICATION

Council Regulation EEC/4064/89 on the control of concentrations between undertakings ('the Merger Regulation') entered into force on 21 September 1990. It was subsequently amended by Regulation EC/1310/97. During its eleven years of application, the regulation has established control over concentrations with a Community dimension, an area where the Commission has sole jurisdiction. The review of the regulation will tackle new challenges such as global mergers, monetary union, market integration, enlargement and the need to cooperate with other jurisdictions.

The review takes the form of a Commission Green Paper published on 11 December 2001, which puts forward solutions relating to jurisdictional, substantive and procedural issues.

Some of these proposals seem to meet requirements that experience has shown to be necessary. Others, however, seem to be dictated by theoretical considerations or a desire to experiment, rather than established needs. In addition, the Green Paper fails to provide the data necessary for assessing the potential impact of some of these changes.

Your draftsman feels that the guiding principle in this area should be caution. A system which functions reasonably well and which practical experience and case law have been fine-tuning should only be amended where strictly necessary. For example:

1. There is no need to amend the thresholds laid down in Article 1(2) of the Regulation to determine whether a concentration has a ***Community dimension***, or the exemption for undertakings achieving more than two-thirds of their turnover within a single Member State.

2. The proposal to retain Article 9(2)(b), simplifying the procedure and introducing the possibility of a ***referral at the Commission's initiative*** is correct, but there is no need to shorten the deadlines.

3. The weaknesses identified with regard to ***Article 22(3)*** are not serious enough to justify the proposed changes, which are far from clear.

4. The proposed changes regarding the ***simplified procedure*** will not offer significant advantages and run the risk of circumventing the notification requirement, and are therefore not advisable.

5. Allowing notifications to be filed electronically is a good idea, if provision is made for checking the authenticity of signatures; however, shifting the requirement to notify the Member States directly to the notifying parties could prove an excessive burden, which would reduce legal certainty, and is therefore not advisable.

6. The proposed changes to the ***commitment*** procedure are acceptable; however, there is no need to amend Article 8(4).

7. The Green Paper does not contain sufficient data to justify the need to introduce ***filing fees***; the fact that some countries have them already is not sufficient reason.

8. The current ***procedure*** for examining questions of concentration offers reasonable

guarantees and does not require substantial amendment.

Accordingly, the following conclusions are proposed.

CONCLUSIONS

The Committee on Legal Affairs and the Internal Market calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to include the following points in its motion for a resolution:

Paragraph 1

1. Considers that there is not sufficient justification for the extension of ex ante control over mergers to new cases such as minority shareholdings by various competitors in a third company, strategic allowances, or partial-function joint ventures, or for amending Articles 3(5), 4(2) or 5(2).

Paragraph 2

2. Considers that Articles 3(3) and 5(5) should be harmonised, basing the group concept on the principles underlying Article 3(3).

Paragraph 3

3. Considers that the use of the dominance test to evaluate concentrations currently provides a large measures of legal certainty, and should therefore not be replaced by the criterion of 'substantial lessening of competition', which provides no appreciable advantage in terms of clarity and accuracy.

Paragraph 4

4. Considers that the 'efficiency' of a merger for the participants usually results in reduced efficiency for the economic system to which they belong because of the lessening of competition and should therefore not be used to authorise a merger which leads to a situation of dominance.

Paragraph 5

5. Considers that the necessary amendments should be made to Article 4(1) to incorporate the current practices referred to in paragraphs 182 and 183 of the Green Paper.

Paragraph 6

6. Notes that there is not sufficient data provided to give an opinion on the possibility of giving equivalent treatment to public bids and other acquisitions through the stock exchange.

Paragraph 7

7. Firmly supports the proposal to simply the calculation of deadlines, using the concept of

'working days' in all cases, as this would enhance transparency and legal certainty, provided that a timetable of working days is published annually for this purpose, to avoid the uncertainty that would arise from the differences in public holidays between Member States and even between regions.

Paragraph 8

8. Points out that the recording of oral submissions may lead to the disappearance of informal contacts, which are very valuable, without providing the same guarantees as the written procedure; considers that the calculation of fines as a percentage of turnover volume may result in a loss of legal certainty; for the same reason, is opposed to the application of Article 11(5) without a prior request for information.

Paragraph 9

9. Shares the Commission's concern at the proliferation of multiple registrations and at the fact that this trend will be heightened still further by the enlargement of the EU. Draws attention once again to the costs and administrative burdens which a simultaneous registration with various national competition authorities entails;

Paragraph 10

10. Shares the Commission's view that concentrations needing to be registered in more than one Member State should be regarded as concentrations with a Community dimension. Such concentrations should therefore be evaluated solely by the Commission. In such cases, therefore, a simple application to the Commission ("one-stop shop") may suffice;

Paragraph 11

11. Considers that in the context of the "one-stop shop" system, it is not desirable for the Commission's powers of referral in respect of concentrations with a Community dimension to be transferred to national competition authorities.