



Council of the  
European Union

Brussels, 13 April 2021  
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**COVER NOTE**

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From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	26 March 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject:	REGULATORY SCRUTINY BOARD OPINION : Evaluation of procedural and jurisdictional aspect of EU merger control
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Delegations will find attached document SEC(2021) 156 final.

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Encl.: SEC(2021) 156 final



EUROPEAN COMMISSION

Brussels, 22.01.2021  
SEC(2021) 156 final

**REGULATORY SCRUTINY BOARD OPINION**

**Evaluation of procedural and jurisdictional aspects of EU merger control**

{SWD(2021) 66 final}

{SWD(2021) 67 final}



EUROPEAN COMMISSION  
Regulatory Scrutiny Board

Brussels,  
RSB/

## **Opinion**

**Title: Evaluation of procedural and jurisdictional aspects of EU Merger Control**

**Overall opinion: POSITIVE**

### **(A) Policy context**

EU merger control aims to ensure that major corporate reorganisations do not result in lasting damage to competition and consumer welfare in the internal market. The EU Merger Regulation of 2004 grants the Commission exclusive jurisdiction to review such concentrations.

The purpose of the evaluation is to assess the procedural aspects of EU merger control. It focusses on two issues identified by stakeholders and the Commission:

- (1) whether the existing turnover-based thresholds allow the Commission to appropriately capture and review all relevant concentrations;
- (2) whether initiatives to simplify the EU merger regime adopted in 2013 have reduced burden without affecting effective merger control.

### **(B) Summary of findings**

**The Board notes the additional useful information provided in advance of the meeting and commitments to make changes to the report.**

**The Board gives a positive opinion. The Board also considers that the report should further improve with respect to the following aspects:**

- (1) **The report does not appropriately justify the limited scope of the exercise and why it does not look also at related substantive issues. It contains forward-looking elements, which go beyond the aim of an evaluation.**
- (2) **The report does not assess whether coherence has been ensured in the acceptance of referral requests and to what extent there is an ensuing risk of uneven merger control in the EU.**
- (3) **The report does not sufficiently quantify the cost savings for notifying business and competition authorities, resulting from the simplification measures and the referral mechanism.**
- (4) **The report does not explain why results of the public consultation conducted in**

**2016/2017 are still relevant.**

**(C) What to improve**

- (1) The report should assess if the scope agreed five years ago at the start of the evaluation is still up to date. It should explain whether the separation between procedural and substantial aspects of merger control is appropriate to allow for a proper assessment of the efficiency and effectiveness of the framework. For example, why is there no need to review whether the horizontal and vertical market share thresholds under the simplified procedure are still appropriate?
- (2) The report should identify weaknesses of the existing framework without proposing solutions, which go beyond the scope of an evaluation.
- (3) The report should align its conclusions on the effectiveness of the threshold system (complemented by the referral system) with the presented evidence. It should assess whether coherence has been ensured in the acceptance of referral requests, and to what extent there is an ensuing risk of uneven merger control in the EU.
- (4) On efficiency, the report should better explain the functioning of the referral system, including the current application of Article 22. It should analyse the combined effects of the substantial interpretation of the rules and the procedural aspects of referral rules in terms of the efficiency of the process for allowing the Commission to review cases which are substantially relevant and should fall under its assessment.
- (5) The report should better quantify the cost savings for notifying business and competition authorities, resulting from the simplification measures and the referral system. It should also be transparent about any limitations of quantification and their reasons. It should explain how such data gaps could be overcome in the future.
- (6) The report should better describe the sources of evidence that led to the conclusion that the public consultation results of 2016/2017 are still relevant.

*Some more technical comments have been sent directly to the author DG.*

**(D) Conclusion**

**The DG may proceed.**

**The DG must take these recommendations into account before launching the interservice consultation.**

Full title	<b>Evaluation of procedural and jurisdictional aspects of EU Merger Control</b>
Reference number	2017/COMP/003
Submitted to RSB on	4 November 2020
Date of RSB meeting	20 January 2021