PROPOSALS FOR REFORM OF THE EC MERGER REGULATION
ON BEHALF OF THE EUROPEAN COMPETITION LAWYERS FORUM

(A) Introduction

1. This Paper is submitted on behalf of the European Competition Lawyers Forum (the "ECLF") in response to the European Commission's public consultation on the operation of the EC Merger Regulation[1] (the "ECMR"). The members of the ECLF comprise competition lawyers from around 80 law firms practising in Europe (the current active membership is listed at Annex 1).[2]

2. The ECLF welcomes the wide-ranging consultation being undertaken by the Commission on the functioning of the jurisdictional provisions in the ECMR. We also agree with the Commission's assessment that the jurisdictional thresholds and the referral mechanisms have worked well overall during the four years that the ECMR has been applied. However, we have some specific observations and suggested proposals for improvement that we have set out in this Paper.

3. In doing so, we have focused on the individual issues that our members have raised with each of the relevant Articles, as well as certain improvements that could be made to due process more generally. As part of the proposals for improvement that we have made in this Paper, we also provide at Annex 2 a revised version of the Commission's Form RS that reflects our comments.

4. The Commission should note that certain of the ECLF members submitted replies to the Commission's questionnaire on behalf of their individual firms ahead of the Commission's 1 December deadline last year. This paper should be considered separately from those responses.

(B) Articles 4(4) and 4(5)

Issues

5. In our experience, both Articles 4(4) and 4(5) are working well as a means of reallocating jurisdiction appropriately. At the same time, we consider that neither referral mechanism has been utilised to its fullest due to the significant procedural issues that act as a practical disincentive to their use.[3] The three main concerns we have with the effective functioning of both the Article 4(4) and the Article 4(5) referral systems are:

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[1] Council Regulation 139/2004/EC.

[2] All members of the ECLF have had an opportunity to comment on this Paper. However, the comments made do not necessarily reflect the views of each member.

[3] Separate from any practical disincentive, there also appears to be a reluctance on the part of the Commission to accept a request by the parties under Article 4(4) for a partial referral back to the national level where the Commission retains the rest of the case itself. As far as we are aware, there has only ever been one, relatively recent, instance of

(i) Overall the process is too long.

(ii) The information requirements of the Form RS are excessive.

(iii) The requirement to demonstrate that a transaction "*may significantly affect competition*" on a distinct market in a Member State acts as a deterrent in respect of Article 4(4) referrals.

6. Taken together, these factors operate as a substantial disincentive to the use of Articles 4(4) and 4(5).[4] The effect is to undermine one of the main aims identified by the Commission's last review of the ECMR, which was to introduce a more streamlined system of referrals and, therefore, could be improved.

Proposals

7. All of the above points can be addressed by only a limited number of amendments to the current system. In summary:

(i) The overall period given to the Commission under Article 4(4) for a decision whether to make a referral could be reduced from 25 to 20 working days.

(ii) The period given to the individual Member States under Article 4(5) to object to a referral could be reduced from 15 to 10 working days.

(iii) The information requirements of the Form RS could be simplified.

(iv) There should be no need for the parties to demonstrate a "*significant*" effect on competition under Article 4(4).

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such a referral: M.4611 *Egmont / Bonnier (Books)* (15 October 2007). This is in contrast to the Commission's approach under Article 9, where there are several recent examples of partial referrals having been made (e.g. M.5200 *Strabag / Kirchner* (15 September 2008)). We do not see that there should be any objection in principle to the Commission retaining jurisdiction over the residue of a transaction whilst at the same time making an Article 4(4) referral to a single Member State.

[4] In some cases, an NCA will inform the notifying parties during informal contacts that they may possibly or would definitely veto an Article 4(5) request if one was made. Similarly, even if no "testing the water" contact is taken up with the NCAs who have jurisdiction to review a transaction, the assessment by the notifying party and its competition counsel may still be that one or more countries may veto any such request. The Commission may not be aware of the nature and frequency of cases in which Member States have indicated to the parties that they would veto an Article 4(5) request, and may wish to increase its dialogue with the NCAs to gain a fuller understanding of such cases. While the ECLF is not advocating that Member State veto power should be withdrawn, this is a further disincentive in the use of Article 4(5). It often occurs in combination with one or more of the procedural hurdles discussed in paragraph 5 above, so that taken together these factors then swing a decision to remain at the national level.

Shorten the referral process

8. We would propose three changes to improve the present issues with delay and legal uncertainty. First, we believe that the current 15 working day period that the Member States have to consider the Form RS under both Articles 4(4) and 4(5) is unnecessarily long for what is essentially an administrative jurisdictional decision. This delay appears particularly incongruous when compared with the time allowed under the ECMR for the whole of a Phase I investigation. We therefore consider that the period could be shortened to 10 working days without any prejudice to the Member States.

9. Second, further delay and uncertainty for the parties arises from the fact that the trigger event for starting the current 15 working day period under both Articles 4(4) and 4(5) lacks clarity. The everyday reliance on electronic communication, as well as the much closer cooperation which has been developed between the Commission and the NCAs within the context of the ECN, mean that it is no longer necessary to delay the start of the waiting period until the date of actual receipt of the Form RS by each NCA. Instead, the time periods should begin on the first working day following the date of receipt of a complete Form RS by the Commission (so providing the parties with a greater element of transparency over their deal timetables).

10. Third, we consider that in consequence, once an NCA has agreed to a proposed referral under Article 4(4), the overall period from the initial submission of the Form RS for the Commission to decide whether or not to make the requested referral could be reduced to a maximum of 20 working days (if not just 15 working days) and not the 25 working days allowed at present under Article 4(4). It is not apparent to us why the Commission should require longer for this decision, given it is a largely procedural matter .

Reduce the information requirements of the Form RS

11. As regards the burden placed on the parties by the requirements of the Form RS, we consider that the amount of information asked for is currently excessive. We have attached at Annex 2 a revised version of the Commission's Form RS that reflects our comments. The changes being suggested are intended to simplify the information requirements of the Form RS, so they are limited solely to information needed to determine whether a concentration meets the procedural criteria such that a referral is appropriate.

Remove the requirement to demonstrate a significant affect on competition

12. The requirement to demonstrate that a transaction "*may significantly affect competition*" on a distinct market in a Member State, acts as a deterrent in respect of Article 4(4) referrals as it puts the parties in a position where they effectively have to admit that the case raises substantive competition law concerns. For reasons of legal certainty there are good arguments for amending Article 4(4) to reflect the Commission's position described in its

Notice on Case Referral.[5] We therefore propose removing the requirement to demonstrate a "*significant*" effect on competition. Instead, all that would be required from the parties would be to show that the focus of the merged entity's activities is likely to be felt mainly in one Member State: i.e., the requirement would be to "… *inform the Commission, by means of a reasoned submission, that the concentration may affect competition in a market within a Member State which presents all the characteristics of a distinct market* …". A consequential amendment would also need to be made to sub-section 6.2 of the Form RS.

(C) Article 9

Issues

13. We consider that the current administrative process in terms of the review timetable leads to significant uncertainty for merging parties.

Proposals

14. Consistent with our concerns in relation to Article 4, we consider that the current 15 working day period permitted for Member States to make an Article 9 request is unnecessarily long. We suggest that this period could sensibly reduced from 15 working days to 10 working days without prejudice to the individual Member States.

15. We also consider that there is also a good case for harmonising the overall possible length of time for the Commission to reach a conclusion on jurisdiction under Article 9 with the provisions of Article 4(4). Under Article 4(4) the Commission currently has to reach a decision within a maximum of 25 working days (although see our recommendation above that this period should be reduced to 20 working days). Under Article 9(4)(a), however, the Commission either has to take a decision "*as a general rule*" within 35 working days or, where it has initiated Phase II proceedings under Article 6(1)(c), the Commission has a possible 65 working days under Article 9(4)(b) to decide on a referral request.[6] This disparity with Article 4(4) is not desirable and it is unclear why it should be necessary. In practice, the time available to the Commission to make a decision under both Article 4(4) and Article 9 could be reduced to 15 working days, as from the receipt of the Form RS in the case of Article 4(4) and as from the day being informed by a Member State in the case of Article 9. We have highlighted the discrepancy between the different referral mechanisms at Annex 3.

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[5] Paragraph 17 of the Notice states that what needs to be indicated in the reasoned submission: "… *may be no more than preliminary in nature, and would be without prejudice to the outcome of the investigation. While the parties are not required to demonstrate that the effect on competition is likely to be an adverse one, they should point to indicators which are generally suggestive of the existence of some competitive effects stemming from the transaction*".

[6] As far as we are aware, all of the Commission's Article 9 decisions under the ECMR have fallen under Article 9(4)(a) rather than 9(4)(b) and the Commission has not exceeded the 35 working day period in any of those cases, despite having the theoretical ability to take longer to reach a decision.

16. Finally, it would also be helpful for both transparency and legal certainty if the deadline for Member States to make a request were calculated from the first working day following the date of receipt of a complete Form CO by the Commission (and not from the date of receipt by the Member States).

(D) Article 22

Issues

17. There are a number of issues with the application of Article 22 by the Commission, not least regarding the legal uncertainty created for the merging parties. We consider the three main points of concern to be:

(i) In order to make a referral request it is not necessary for the NCA to have jurisdiction to review a transaction under its own national law.[7]

(ii) It is possible that the same transaction will be subject to merger control investigations both at national and EU level: once by the relevant NCAs and subsequently by the Commission.[8]

(iii) Article 22 may be used late in the process; several months after certain NCAs have cleared the merger.

Proposals

18. Our proposals to address these issues are as follows:

(i) Member States should not retain the right to refer cases to the Commission under Article 22 when they do not have jurisdiction to review them under their own national system of merger control.

(ii) The Commission should not generally accept a referral request once one or more NCAs have already taken jurisdiction over a concentration (unless there are specific reasons; e.g., the substantive competition issues in the referring Member States are different from those already being investigated by the relevant NCAs).

(iii) It should only be possible for a referral request to be made to the Commission within 15 working days of a concentration being notified to the NCAs in two or three Member States.

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[7] For example, Case M.3796 *Omya / J.M. Huber PCC* (19 July 2006).

[8] For example, Case M.4465 *Thrane & Thrane / Nera* (21 March 2007).

Member States must have jurisdiction under their own national law

19. The ECMR should be amended to make clear that the NCAs of the Member States do not retain the right to request a referral to the Commission under Article 22 when they do not have jurisdiction under their own national law to review a case. The original reason for the Article 22 mechanism (the need to provide for transactions to be reviewed in situations where one of the Member States potentially affected lacks a system of domestic merger control) effectively no longer exists; only Luxembourg still falls into this category. While in practice some NCAs have exercised self-restraint and not made Article 22 requests in such circumstances, the risk of Article 22 being used in this way is real. It should not be possible for a concentration to be notifiable pursuant to Article 22, where it does not meet the relevant turnover (or other) thresholds that exist under national merger control legislation.

20. In the interests of legal certainty, the Commission should also revise its Jurisdictional Guidelines to make clear that it will refrain from accepting referral requests in cases where the Member State has implemented its own merger control system and the transaction does not meet those national merger control thresholds.

21. An additional benefit of these changes would be to harmonise Article 22 more closely with Article 4(5); only those NCAs which would have had jurisdiction to veto a pre-notification referral request by the parties would have the jurisdiction to request (or join a request for) a post-notification referral to the Commission. Even so, it would remain open to the Commission to agree to such an Article 22 request from only one NCA (which would have had jurisdiction under its national rules), whereas the parties can only seek such an outcome under Article 4(5) if at least three NCAs would have had jurisdiction.

Merger control investigation should not happen at both national and EU level

22. The ECMR also gives the Commission jurisdiction to review a concentration even if the transaction has already been cleared in one or more Member States. As a result, it is entirely possible that the same transaction will be subject to a merger control investigation twice – first by the relevant NCA and second by the Commission. This creates legal uncertainty for the parties as well as a significant and unnecessary associated burden both in terms of time and cost. We consider that the Commission should further revise its Jurisdictional Guidelines to make clear that if one or more NCAs have already taken jurisdiction and investigated a transaction then it will not do so. The only exceptions should be if material new evidence emerges or new substantiated competition concerns are raised that have not already been reviewed by the NCAs and taken into consideration in their substantive analysis of the transaction.

Administrative certainty is required

23. The final area of concern is that of administrative certainty. At present, the clock starts running on the ability of the individual Member States to make an Article 22 referral request within 15 working days of a concentration being notified or "… *if no notification is required, otherwise made known …*" of the existence of a concentration. This raises a particular issue as regards certainty in respect of the UK where there is no mandatory notification regime. It also makes it possible for Member States to use Article 22 late in the overall review process;

for example, where the NCA would have limited jurisdiction to impose remedies because the merging parties have no, or limited, physical presence within that Member State. An alternative that would provide greater transparency and certainty to the merging parties would instead be to have the period start from when three Member States have already been notified.[9] To make such a change workable in practice, however, would require some form of mandatory publication of national filings (and monitoring of such publication by both the NCAs and the Commission). One possibility would be to publish received notifications on the ECN intranet.

(E) Articles 1(2) and 1(3)

Issues

24. The experience of the ECLF members is that the turnover thresholds are, on the whole, working well. A specific concern arises, however, in relation to the requirement to notify acquisitions of joint control of undertakings outside the EEA where there is little or no actual or potential effect on competition within the EEA.

Proposals

25. Having considered various options that may address this concern[10], we believe that the simplest solution is a procedural change rather than an amendment to the ECMR. We propose continuing with the present system, so avoiding a general deemed clearance for these type of deals, but to significantly reduce the information requirements thereby reducing the burden on both the parties and the Commission. This could be achieved either through the creation of a shorter short Form CO or, as permitted by Article 4(2) of the Implementing Regulation (No. 802/2004), through the routine use of waivers to dispense with the obligation to provide detailed information in these type of cases (the Commission's "Best Practices" guidelines could be amended to this effect).

(F) Other improvements in due process

26. Aside from the specific concerns detailed above in relation to the referral mechanisms and jurisdictional thresholds, we have a number of comments on the functioning of the ECMR more generally. We have set out below our views on four procedural aspects of the ECMR process where we consider there to be scope for improvement.

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[9] A further issue arises in respect of Member States with a post-closing notification regime such as Greece. In theory, the Greek NCA would be entitled to request a referral pursuant to Article 22 within 15 working days of the submission of the post-closing notification.

[10] These included options such as a legislative change to the ECMR to create a carve-out for these type of joint venture arrangements or the Commission routinely granting a derogation from the suspensory obligations pursuant to Article 7(3).

(i) Dealing with jurisdictional queries

27. In the experience of the ECLF members, there is a general lack of responsiveness to jurisdictional queries on the part of DG Competition when proposed transactions raise challenging jurisdictional issues. For example, queries in relation to issues such as the calculation of turnover, whether a joint venture is full-function or not or whether a number of transactions are interdependent. The Commission's Jurisdictional Notice is helpful, but it does not address all eventualities and the fact that it can take many weeks for DG Competition to respond to a question gives rise to significant uncertainty for the parties and their advisers. We propose that the Commission should, therefore, set a clear administrative timetable for responding to jurisdictional queries, including input from Legal Services if it is considered necessary, in its "Best Practices" guidelines.

(ii) Simplified procedure cases

28. We consider that the simplified procedure is generally working well and is a highly beneficial mechanism for reducing costs and complexity in cases which do not give rise to substantive concerns. However, there are two areas where the Commission's approach can be inconsistent and gives rise to concern.

29. The first is the time taken to reach a decision on the applicability of the simplified procedure to a transaction. The experience of our members is that a decision on the applicability of the simplified procedure can take several weeks following the initiation of pre-notification discussions (indeed, this can happen even after notification). In the interim, there may be little indication from the case team as to whether they may ultimately require the submission of a full Form CO, even when the conditions for a Short Form CO notification are met. This means that, in the absence of clear guidance, the parties are either unnecessarily obliged to work up a long form notification or risk being left with significant timing and information gathering concerns if the case team decides the simplified procedure does not apply. There have also been cases where the Commission specifically required a notification be on a full Form CO but subsequently processed the case under the simplified procedure. We consider that the Commission should instead set a clear timetable for taking a decision on the simplified procedure in its "Best Practices" guidelines. A decision could be taken within 10 working days of receiving an acceptable draft Short Form CO.

30. The second point is with regard to timing. The Notice on Simplified Procedure states that: "*The Commission will endeavour to issue a short-form decision as soon as practicable following expiry of the 15 working day period during which Member States may request referral of a notified concentration pursuant to Article 9 of the EC Merger Regulation*." In practice, however, a decision may not be forthcoming until the end of the Commission's full 25 day period. To address this, we would welcome the Commission amending its Notice to state that it will aim to issue its decision by the Day 17 of the process.

(iii) Due process

31. In general, we consider that there is room for improvement in relation to the Commission's procedures for information and data gathering, including the approach taken to Article 11 requests. All of our members have noted a significant increase in the number and volume of

information requests received once a notification has been duly submitted. This is notwithstanding often several months of detailed pre-notification discussions. We understand that case teams need to be able to demonstrate that their decisions are robustly supported by the evidence in order to reduce the risk of successful third party appeals, particularly where there is a complainant. However, we consider that this desire to "appeal-proof" the Commission's decision can lead to overly burdensome information gathering (with commensurate financial burdens, and greater uncertainty, on businesses) and is not now necessary in light of the ECJ's judgment in IMPALA regarding the "*standard of reasoning*" required from the Commission.[11]

32. We believe that much of the volume of requests could be reduced as a result of the Commission engaging in greater dialogue and communication with the parties; in particular before it sends out formal Article 11 requests (or data requests from the Commission's Chief Economist's Team). This could be achieved, for example, by providing a draft request to the parties as early on as possible. There is also scope for the Commission to give better directions to the parties regarding the information it wishes to access. In addition, the Commission should work with the parties to agree a sensible timetable for responding to any information request.[12]

33. Moreover, it appears to be that the Commission is increasingly using "stop the clock" to obtain more time to undertake investigations and substantive analysis (often of an economic nature) that can and should properly have been conducted during pre-notification and/or in the time periods allowed by the ECMR.

34. As regards Article 11(3) decisions where the parties have been found to have provided incomplete information, we consider that the Commission's "Best Practices" guidelines should require the case team to first provide the parties with early warning to enable them to complete the information before the clock is stopped. The Commission should also refrain from threatening substantial fines for late responses to information requests unless there are exceptional reasons for doing so (i.e., evidence of the parties acting in bad faith). We further believe that the merging parties should have an effective means of legal recourse by which to challenge such decisions.

35. These are areas that could all be the subject of a parallel review of the Commission's "Best Practice" guidelines, given these were last revised to reflect the introduction of the ECMR five years ago. The parameters of such a review could usefully be extended to other associated issues concerning the Commission's information gathering powers, including its fining provisions and the extent to which third parties should be under an obligation to respond to information requests.

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[11] See Case C-413/06 *Bertelsmann AG and Sony Corporation of America v IMPALA* (judgment of 10 July 2008) at paragraphs 157 to 183.

[12] The importance of this is demonstrated by the degree of discretion that the CFI has accepted that the Commission has in terms of the extent of information it may require (limited by reference to the view that the Commission could reasonably have held as to what is necessary). See Case T−145/06 *Omya AG v Commission*.

(iv) Commitments procedure

36. Our final concern is with regard to the imbalance at Phase II between the timing of the response to the Statement of Objections ("SO") and that for submission of remedies. At present, the SO is typically issued around eight to ten weeks after the start of the Phase II investigation. The parties are then normally given two weeks in which to respond in order to rebut the issues raised by the Commission. The parties also have the possibility of an oral hearing and/or a "state of play" meeting with the case team following the reply to the SO (which serves as a basis for discussing the scope and timing of any remedial commitments). At the same time, however, the parties must submit commitments not more than 65 days from the day on which Phase II proceedings were initiated.[13]

37. This often results in a very truncated and labour intensive back-end to the review process as the parties have to deploy resources both to counter the Commission's findings whilst at the same time pulling together a remedies package. In practice, this means that the response to the SO and preparation for any hearing or meeting has to be conducted in parallel with drafting commitments. Realistically it is not possible to conduct any meaningful preparation ahead of the SO, before the Commission's concerns are fully known. As a result, the parties' ability to present their best case and to put together the best commitments package is compromised. This is exacerbated by the unnecessary intellectual tension whereby the parties are having to advance arguments attacking the Commission's findings in the SO on the one hand whilst offering remedies that implicitly accept the findings on the other. Constructive engagement with the Commission on remedies would also work better were the parties and the Commission already to have played out their differences on the substantive issues.

38. Moreover, given the requirement in the Implementing Regulation to show "*exceptional circumstances*", there is no certainty that, were the parties to run out of time, remedies proposed after Day 65 can or will be accepted by the case team[14]; nor is there any obligation on the case team to accept commitments offered after the legal deadline.[15]

39. We have two proposals to meet these procedural defects. The first is to start the period for remedies to be offered from the issue of the SO and not to count from the start of Phase II proceedings being initiated. This would give the merging parties total certainty that they could prepare the response to the SO and conduct any follow-up meeting with the case team before then drafting a remedies package that was fully rooted in the outstanding competition concerns identified by the Commission. We accept that a period of 65 days from the issue of the SO would be excessive but consider that a shorter period of 40 working days would be reasonable. This would allow for a structured conclusion to Phase II with the response to

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[13] Article 19(2) of the Implementing Regulation.

[14] See Article 19(2) of the Implementing Regulation and paragraph 88 of the Remedies Notice.

[15] See Case T-87/05 EDP v Commission [2005] ECR II-3745 at para 161.

the SO, oral hearing, state of play meeting and final submission of remedies to happen consecutively instead of in parallel.

40. An alternative to this approach would be to introduce a greater element of flexibility into the commitments process. This could be achieved by allowing for an automatic extension at the parties' request to the period during which remedies can be offered. This proposal does not diverge significantly from the current framework anticipated by Article 10(3), whereby a 20 working day extension to the final deadline may be granted by the Commission if the parties are of the opinion that more time is needed for the investigation of the competition concerns and for the corresponding design of appropriate commitments.[16] However, there are two main problems with the current design of Article 10(3): the first is that the parties may well have already used their extension at the beginning of Phase II. The second is that, unlike a request made at the initiation of Phase II, its grant is at the discretion of the Commission. We would instead propose the routine use of "stop the clock" at the beginning of proceedings where the merging parties request an extension. This change would be combined with giving the parties the unilateral power to use Article 10(3) to extend the final deadline if they consider it necessary.

(G) CONCLUSION

41. The ECLF welcomes this opportunity to put these written comments to the Commission ahead of our meeting on 11 March.

2 March 2009

Paper written by Philippe Chappatte and Timothy McIver of Slaughter and May.

ECLF Committee who actively worked on the paper consisted of:

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[16] The Remedies Notice is clear that such a request will have to be made before the end of the 65 working day period and goes on to state that "… *the Commission will normally not extend the period for adopting a final decision according to Article 10(3), subparagraph 1 where the request for extension is presented after the deadline for submitting remedies foreseen in the Implementing Regulation, i.e. after working day 65 (1)*."

Kyriakos Fountoukakos	**:**	**Herbert Smith**
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ANNEX 1

LAW FIRMS REPRESENTED IN THE ECLF

The ECLF aims to be the principal interface between specialist competition lawyers and the European Commission's Directorate General for Competition. It provides a forum through which members may express views on a range of policy and practice issues. Its current active membership includes competition specialists from the following firms:

A&L Goodbody

Addleshaw Goddard

Allen & Overy

Arnold & Porter

Ashurst

Baker & McKenzie

Beachcroft

Berwin Leighton Paisner

Bird & Bird

Bonelli Erede Pappalardo

Bredin Prat

Brick Court Chambers

BIICL

Camilleri Preziosi

Čechová & Partners

Cleary Gottlieb Steen & Hamilton

Clifford Chance

Cuatrecasas

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Olswang

Orrick Herrington & Sutcliffe

Panagopoulos Vainanidis Schina

Plesner

PLMJ

Procopé & Hornborg

Raidla Lejins & Norcous

Reed Smith

Roschier

S J Berwin

Schulte Riesenkampff

Shearman & Sterling

Sidley Austin

Simmons & Simmons

Skadden Arps Slate Meagher & Flom

Slaughter and May

Gerrit Schohe

Gianni, Origoni, Grippo & Partners

Gide Loyrette Nouel

Gleiss Lutz

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Janežič & Jarkovič

Jeantet Associes

Jones Day

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Latham & Watkins

Linklaters

Squire, Sanders & Dempsey

Stibbe

Sullivan & Cromwell

Thommessen

Thompson Hine

Uría Menéndez

Van Bael & Bellis

Vieira de Almeida

Vinge

Wardynski and Partners

White & Case

Willkie Farr & Gallagher

Wilmer Cutler Pickering Hale and Dorr

ANNEX 2

REVISED VERSION OF THE COMMISSION'S FORM RS

ANNEX 3

CURRENT REFERRAL TIMETABLES

Relevant provision	Request made by?	Notification	Initial deadline	Secondary deadline	Total period for a decision
Article 4(4)	Merging parties	Form RS	Member States have 15 working days to agree or object to the proposed referral.	n/a	Commission has maximum 25 working days from submission of Form RS.
Article 4(5)	Merging parties	Form RS	n/a	n/a	Member States have 15 working days to express disagreement.
Article 9	Member State (own initiative or at invitation of Commission)	Form CO	Member State has 15 working days to lodge a referral request.	n/a	Article 9(4)(a): Commission has to take a decision "*as a general rule*" within 35 working days of notification; or Article 9(4)(b): If it has initiated Phase II proceedings, the Commission has a possible 65 working days to decide.
Article 22	Member State(s)	National notifications	Member State has 15 working days to lodge a referral request from date of national notification or from when the concentration was "*made known*" to it.	Any other Member State can join request within 15 working days of being informed by Commission of initial request	Commission has maximum of either: (i) 40 working days from submission of required notification or Member State being informed (in the absence of a notification requirement), or (ii) 25 working days from initial referral request.