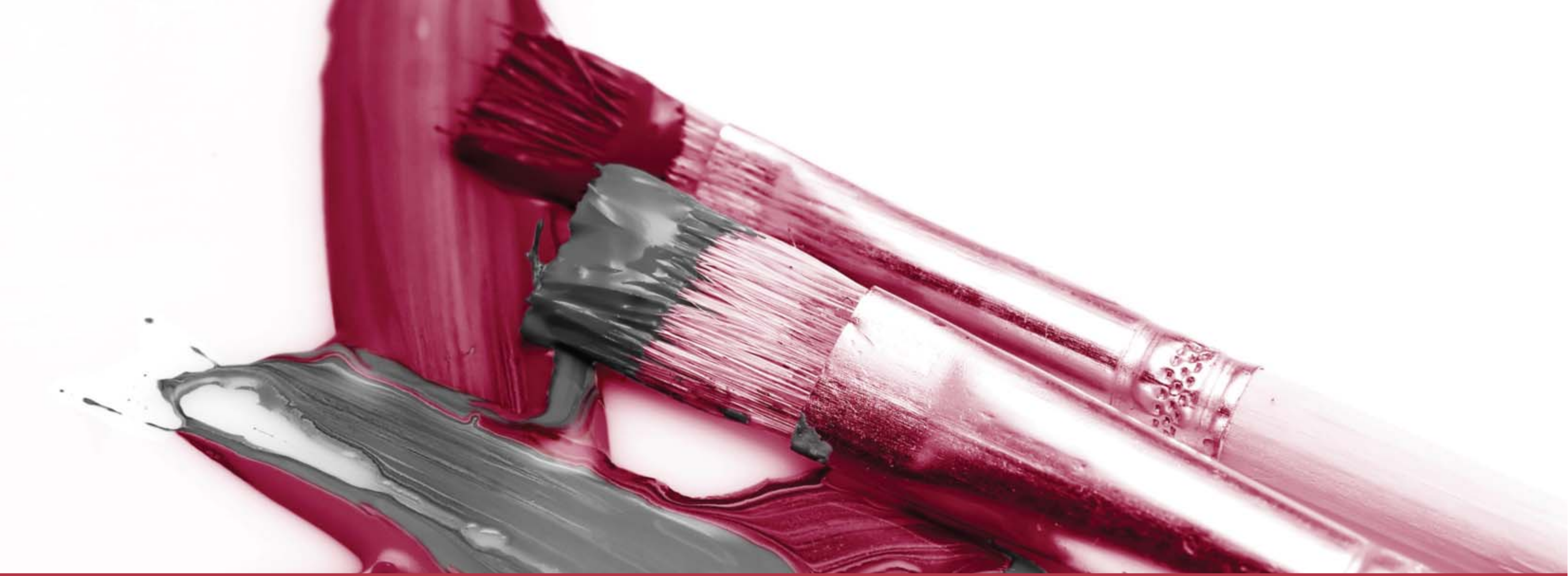

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The International Comparative Legal Guide to:

Merger Control 2015

11th Edition

A practical cross-border insight into merger control issues

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EDITORIAL

Welcome to the eleventh edition of *The International Comparative Legal Guide to: Merger Control*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of merger control.

It is divided into two main sections:

Four general chapters. These are designed to provide readers with a comprehensive overview of key issues affecting merger control, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in merger control in 51 jurisdictions.

All chapters are written by leading merger control lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Nigel Parr and Catherine Hammon of Ashurst LLP for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.co.uk.

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EU Merger Control Reform: Expanding Jurisdiction to Capture Minority Shareholding Acquisitions

Davina Garrod

Jennifer Harvey

Akin Gump Strauss Hauer & Feld

Introduction

As Margrethe Vestager's position as Commissioner for Competition has now been confirmed, she will decide whether the EU Commission ("Commission") moves forward with the proposals to reform the EU Merger Regulation ("EUMR").[1] A decade since the last major overhaul of the EUMR, Commissioner Almunia initiated the reform last summer with a public consultation.[2] The most controversial proposal was a potential extension of the EUMR to include jurisdiction to review non-controlling minority interests.[3] The proposals for reform at the time were rather vague.

One year on, the Commission has published a White Paper[4] covering those proposals in more detail, and with a narrower focus on a particular regime proposal: the "targeted transparency system". The deadline for responses was 3 October 2014. The refined proposals contained in the White Paper come amidst continued opposition from businesses and the investor community, and are of particular concern to investors acquiring minority shareholdings in businesses active on the same or closely related markets, and to firms acquiring minority interests in joint ventures or other strategic alliances. Depending upon consultation feedback, the Commission may put forward a legislative proposal to revise the EUMR as early as next year, with entry into force in 2016/2017.

Why Capture Acquisitions of Non-controlling Minority Shareholdings?

The Commission refers both in its previous consultation and in the White Paper to an "enforcement gap" in EU merger control. Under the current EUMR, the Commission only has jurisdiction to review an acquisition of "control" (defined as "decisive influence") over another undertaking. Although this does enable the Commission to review pre-existing minority shareholdings held by one of the merging parties in the context of a notification of acquisition of control, it cannot review a standalone acquisition of a non-controlling minority shareholding. Thus, the Commission has had to address any potentially harmful minority shareholdings by reviewing them alongside acquisitions of control.

The UK, Germany and Austria already have jurisdiction to review certain acquisitions of non-controlling minority shareholdings. In light of the experiences of these Member States, and elsewhere, the Commission is now of the view that the harm arising from certain acquisitions of non-controlling minority shareholdings calls for an expansion of the EUMR. The White Paper sets out various theories of harm associated with acquisitions of minority shareholdings based upon the generally accepted theories of harm associated with acquisitions of control.

Unilateral Effects

As regards acquisitions of shareholdings in competitors, the financial incentives theory of harm and the corporate rights theory of harm are identified in the White Paper. An acquirer of a minority shareholding in a competitor will be more likely to unilaterally raise prices and/or restrict output given that it will benefit from any customers that switch to the competitor in which it holds shares. This may be more harmful where the acquisition is accompanied by corporate rights in that competitor as they can either influence them to also raise prices or to compete less effectively. The White Paper provides several case examples of these unilateral effects theories of harm.

In *Siemens/VA Tech*,[5] the Commission was concerned about a horizontal overlap between SMS Demag (in which Siemens held a non-controlling minority shareholding), and one of VA Tech's subsidiaries. Via its shareholding in SMS Demag, Siemens had rights relating to information, consultation and voting. The Commission considered whether, from a financial point of view, the merged entity might have less of an incentive to bid aggressively in the tenders in which SMS Demag had a realistic prospect of winning. It also found that there would be a substantial weakening of competition between the merged entity and SMS Demag as a result of the rights held by Siemens in it. The Commission's concerns were resolved by commitments from Siemens to appoint independent trustees on SMS Demag's boards and committees and to limit the extent to which it would receive confidential information.

In *Ryanair/Aer Lingus*,[6] the full acquisition of Aer Lingus by Ryanair was prohibited by the Commission in June 2007. However, Ryanair had acquired a non-controlling stake in Aer Lingus of 29.4% which the Commission could not challenge under the EUMR. The stake was eventually reviewed by the UK competition authorities in 2010 to 2013.[7] The UK Competition Commission found that, as a result of the rights it had acquired in Aer Lingus and therefore to influence its commercial policy, Ryanair could weaken it as an effective competitor. Further, using its minority stake it could impede or prevent Aer Lingus from being acquired by, or combining with, another airline. The Competition Commission therefore required Ryanair to sell its 29.8% stake in Aer Lingus down to 5%, and prohibited it from being represented on the board.

Co-ordinated Effects

Co-ordinated effects may also arise from acquisitions of minority shareholdings, as they may facilitate co-ordination. Not only is the

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incentive to co-ordinate increased because the acquirer will internalise part of the benefits from co-ordination, but their ability to co-ordinate may also be enhanced through increased transparency. This will of course depend on the extent to which the acquirer has information rights in the target and the strategic nature of such information. The White Paper cites *VEBA/VIAG*[8] as an example where the Commission considered co-ordinated effects. This merger coincided with a merger of RWE and VEW which, if both mergers had taken place, would have led to a complex web of interconnected controlling and non-controlling minority shareholdings in the German energy market. The Commission's concerns were resolved through commitments. It is worth noting here that the Commission has, in general, very rarely found co-ordinated effects concerns in merger cases, as is acknowledged in the White Paper itself.[9] It is therefore questionable whether the Commission would readily find co-ordinated effects in acquisitions of minority shareholdings if the EUMR were to be expanded.

Vertical Mergers

As regards acquisitions of minority shareholdings in a vertically related company, the Commission cites foreclosure as a possible source of competitive harm. By holding a share in a company that is active in an upstream or downstream market, an acquirer may have the incentive to foreclose competitors in those markets either by limiting competitors' access to the target's inputs or access to the target as a customer. This will be highly dependent on the market position of the target and the acquirer's influence over its decisions.

In *IPIC/MAN Ferrostaal*,[10] the target held a 30% minority shareholding in Eurotecnica, a supplier of the input technology for melamine production, of which the acquirer was the main producer. The minority shareholding gave the target influence over Eurotecnica's melamine licensing and engineering businesses as well as extensive information rights. The Commission found that not only would this likely have a deterrent effect on the licensing practice for current and future customers of Eurotecnica (given the information which might end up in the hands of their competitors), but also the parties might foreclose potential new entrants from the market for the production of melamine. MAN Ferrostaal committed to divest its entire minority shareholding in Eurotecnica in order to resolve the Commission's concerns.

The Targeted Transparency System

While the Commission is keen to ensure that the harm arising from problematic acquisitions of non-controlling minority shareholdings is captured, it is also mindful of the administrative burden on companies by simply extending the current regime to such acquisitions. As a result, and following on from the responses received by the Commission to its consultation last year, the White Paper proposes a "targeted transparency system". The idea is that this would complement the EUMR with a light touch regime for minority shareholdings, as well as fitting in with national merger control regimes. It builds on the transparency system set out in the previous consultation, but is targeted at those transactions which appear *prima facie* problematic for competition.

It is light touch and targeted in the sense that parties would need to submit a short "information notice" in circumstances where they acquire a narrow category of potentially problematic minority shareholding: a "competitively significant link". The Commission would then decide within 15 working days, based on the information notice, whether it wants to call the case in for a full notification. If the Commission does call it in, this would initiate the usual Phase I procedure. If not, parties would be free to complete their transaction (but remain subject to the prescription period – see more detail below).

Competitively Significant Link

The Commission has attempted to focus the notification requirement on transactions which are *prima facie* problematic. It has therefore exempted acquisitions of minority shareholdings in companies that operate in unrelated markets. Accordingly, in order to trigger the "information notice" requirement, the acquisition of shares must be either in a competitor or a vertically related company. This makes sense given that the various theories of harm described above would not materialise unless the acquirer and target operate in the same or vertically related markets.

In order to increase legal certainty, the Commission proposed shareholding thresholds. For a shareholding to amount to a competitively significant link, it must either be:

- around 20% and above; or
- between 5% and around 20% and accompanied by other "additional factors" such as rights which give the acquirer a "*de-facto*" blocking minority, a seat on the board of directors or access to commercially sensitive information of the target.

Whether an acquisition of shares amounts to a competitively significant link would be for parties to self-assess. The Commission has indicated that it would produce guidance, similar to the Consolidated Jurisdictional Notice,[11] to guide parties in determining whether certain arrangements amount to "additional factors" which would bring their acquisition within the remit of a competitively significant link.

Examples of potentially notifiable investments include:

- an airline seeking to acquire a 20% or more stake in a company owning a competing airline (covering the *Ryanair/Aer Lingus* situation);
- a private equity house whose portfolio includes food companies, seeking to acquire a 9% stake in a German-based food packaging company, together with the right to nominate a member of the German company's Board;
- an investment bank or hedge fund with various investments in pharmaceutical and medical device companies, increasing its stake in a hospital group or pharmacy chain to 6%, with access to commercially sensitive information on the target; and
- a TV broadcaster acquiring 17.9% in a competing TV company where its stake gives it a *de facto* blocking minority thereby enabling it to influence the target's strategic decision-making (covering the *BSkyB/ITV* situation[12]).

Interestingly, the concept of a competitively significant link neither follows the UK nor the German approach. The UK regime enables the Competition and Markets Authority ("CMA") to review acquisitions of "material influence", a concept which focuses on the acquirer's ability materially to influence policy relevant to the behaviour of the target entity in the marketplace. The CMA takes a case-by-case approach to this assessment, having regard to all the circumstances of the case. Although there are indicative levels of shareholding for which presumptions apply,[13] there are no concrete thresholds as proposed in the White Paper.

In addition, the CMA takes a different approach to agreements between the acquirer and the target than that set out in the White Paper. The White Paper proposes that any agreements which coincide with the acquisition, such as co-operation agreements and

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joint purchasing agreements, should not be taken into account in the assessment. This is in contrast to the CMA's concept of material influence as the CMA states in its guidance that it: "*...may also consider whether any other factors, such as agreements with the company, enable the acquirer materially to influence policy.*"[14]

In Germany, the Bundeskartellamt ("BKA") has jurisdiction over different types of concentration, including both an acquisition of a 25% (economic or voting) shareholding and otherwise an acquisition of "competitively significant influence" in another company. As in the UK, this requires a case-specific analysis of the factual circumstances of the transaction, and specifically whether there are any "plus factors" present (in addition to the shareholding) such as board representation. There is no threshold above or below which competitively significant influence is or is not found, but the lower the shareholding the more plus factors are required for the BKA to have jurisdiction. For example, in *A-TEC Industries AG/Norddeutsche Affinerie AG*,[15] the BKA found that the acquisition of 13.75% of the target's share capital (conferring a *de facto* blocking minority) amounted to competitively significant influence because it was accompanied by the right to appoint three of 12 board members and the acquirer was the only shareholder with market expertise.

The approach proposed in the White Paper for the EUMR is a more formalistic one to that in the UK and Germany. It may be that a case-by-case analysis, taking into account a very large range of factors, is less suited to an EU-wide regime where a large number of transactions would require a tailored assessment. Further, a case-by-case approach may also be less suited to a quasi-mandatory regime where sanctions apply for failing to submit an information notice. A more bright-line approach to jurisdiction may be justified in such a system, in order to give parties certainty as to whether they are breaching an obligation, even if it means that it does not perfectly capture all harmful acquisitions.

Information Notice

If parties conclude that their transaction amounts to an acquisition of a competitively significant link, they would be required to submit an information notice. In this sense, the regime being proposed is quasi-mandatory. The Commission has not elaborated on the precise scope of the information notice in the White Paper, but proposes that it would be shorter than the Form CO and the Short Form CO, and contain "*information relating to the parties, their turnover, a description of the transaction, the level of shareholding before and after the transaction, any rights attached to the minority shareholding and some limited market share information*".[16]

The White Paper also states that the information notice would need to include "*some essential market information about the parties and their competitors or internal documents that allow for an initial competitive assessment*".[17] It seems that the Commission is weighing up the approach of requiring market share information versus internal documents, taking into account which would be most informative for their assessment of whether to require full notification as well as the relative information burden. Although it may seem a simple task to submit some limited market share information, it is clear from current practice that this could lead to much back and forth with the Commission on which are the most appropriate market definitions, as well as difficulties calculating market shares, which would undermine the intended streamlined nature of the information notice.

The Commission will also be mindful of the fact that, as currently envisaged, this information will need to be sufficient for Member States to determine whether they will make a referral request under Article 9 EUMR. It remains to be seen how burdensome the submission of an information notice would be.

The White Paper does not specify the consequences of failing to submit an information notice. It is likely that there would be a similar sanction as for failure to submit a Form CO, something the Commission is continuing to take seriously as can be seen from the recent fine in the case of *Marine Harvest/Morpol*.[18]

15-Day Waiting Period

The White Paper proposes a 15-working-day period from submission of the information notice for the Commission to decide whether or not to call a transaction in for a full notification. This period would be suspensory, and therefore parties would need to wait for approval (or confirmation that no further notification is required) by the end of this period before they are able to complete their transaction.

It is not absolutely clear why the Commission considers this to be necessary, particularly given the very small number of potentially problematic transactions. One reason for the time period proposed appears to be to ensure that the regime is fully compatible with the Member States' merger control regimes, particularly Germany and Austria. This is because the 15-working-day period would also apply to Member States as the deadline for submitting an Article 9 request, which is in line with the current 15-working-day deadline following receipt of a Form CO.[19]

A suspensory waiting period of 15 working days would, however, likely cause significant difficulty for the many transactions of this type which occur in capital markets. The nature of minority shareholding acquisitions is such that they often occur in capital markets, and a delay of 15 working days (which in practice is likely to be longer given the time for preparation of the information notice) risks hampering such transactions, and in turn market liquidity. The White Paper acknowledges this by proposing to adapt the wording of Article 7(2) EUMR to allow acquisitions of shares via a stock exchange without observing the 15-working-day waiting period. This proposal, if expressly applied to stakes acquired also on other platforms, such as Multilateral Trading Facilities (e.g. BATS Chi-X Europe), would further increase the efficiency of the wider capital markets, as Europe continues to drag itself out of recession.

Prescription Period

Not only does the Commission propose a 15-working-day waiting period during which parties are prohibited from completing an acquisition, but also a "prescription period" of four to six months following submission of the information notice during which the Commission may call in the case. The Commission considers such a period necessary to enable complainants to come forward. The White Paper also justifies this measure by stating that it would reduce the risk of the Commission starting precautionary investigations during the 15-working-day period so as not to be prevented from investigating a transaction later on in case complainants come forward. In effect, the introduction of the prescription period would allow the Commission to implement a higher threshold for calling in a case at an earlier stage.

Although parties may already complete their transaction following the 15-working-day period, the Commission proposes having the power to implement interim measures, such as hold separate orders, once a case has been called in during the prescription period. The

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White Paper does not go into detail on the extent of such interim measures but there is a risk that the Commission could impose such orders in every case.

Other Procedural Provisions

The White Paper proposes that other aspects of the EUMR would apply to acquisitions of non-controlling minority shareholdings in a similar way to acquisitions of control, including the following:

- the same turnover thresholds would apply;
- the same substantive test (significant impediment of effective competition – the "SIEC" test) would apply;
- for acquisitions of a non-controlling interest in a joint venture, the regime would similarly apply only to "full-function" joint ventures; and
- Article 3(5)(a) (the "banking" clause) would apply so that certain transactions carried out by financial institutions for a limited period of time would not require notification.

The Commission's View of the Impact

The Impact Assessment[20] published alongside the White Paper assesses the various procedural options against the following criteria:

- preventing harm to competition and consumers;
- legal certainty;
- administrative burden on businesses;
- public enforcement costs; and
- consistency with the existing EU/Member States' merger control systems and allocation to the most appropriate authority.

The Impact Assessment concludes that the targeted transparency system is the most suitable of the procedural options because it captures potentially problematic cases while avoiding unnecessary administrative burden on businesses.

It is true that the targeted transparency system achieves a certain balance between requiring a Full Form CO for each minority shareholding acquisition and capturing the problematic cases. However, the Commission's arguments against a voluntary system in its Impact Assessment are somewhat misunderstood. It scored relatively low on 'preventing harm' given that it would not necessarily capture all problematic transactions. The public enforcement costs are also stated to be higher than under the other options because the Commission would have to set up a mergers intelligence function for screening transactions. However, this assessment does not seem to adequately take into account the fact that a potentially harmful acquisition would often be the subject of a complaint to the competition authority. The Commission would therefore not be reliant on any mergers intelligence function to detect and remedy such deals.

In the previous consultation, the Commission had used the Zephyr Database to estimate that between 2005 and 2011 there were 91 transactions involving minority stakes that potentially merited competition review. These transactions were primarily in the banking sector. The Impact Assessment built on this work and again used the Zephyr database to come up with some estimates. The Commission estimates that the targeted transparency system would result in 20 to 30 acquisitions of minority shareholdings per year requiring the submission of an information notice. This appears to be a very low estimate, and calls into question whether the Commission has fully understood the implication of the proposed reform.[21]

Articles 101 and 102 TFEU

In addition to the rare incidences of harm, another argument against reforming the EUMR to capture non-controlling minority shareholdings is that the harm described above may be dealt with using Articles 101 and 102 TFEU. However, the Commission sets out in the White Paper why it does not consider these tools to be appropriate. As regards Article 101 TFEU, the Commission considers that an acquisition of a shareholding would not always amount to an "agreement". In particular, this would be difficult to show in the case of an acquisition of shares via a stock exchange. As regards Article 102 TFEU, the circumstances in which the Commission could intervene would also be narrow given that the acquirer would have to hold a dominant position and the acquisition would need to constitute an abuse.

Although it is true that only using Articles 101 and 102 TFEU would to a certain extent limit the Commission's ability to intervene, one could argue that this is appropriate given that there are only limited instances in which harm in fact arises from an acquisition of a non-controlling minority shareholding. However, this argument may not hold given that the transactions which would fall outside the scope of Article 101 and 102 TFEU are not necessarily those which are the most competitively benign. Indeed, the two minority shareholding cases in which the UK authorities intervened involved hostile acquisitions of listed companies, and therefore it would be difficult to show an "agreement".

Further, a review under Articles 101 or 102 TFEU would only take place *ex post*, often taking two to four years for an infringement finding (with possible appeals). Any harm arising from the acquisition may therefore already have taken place.

The International Context

UK, Germany and Austria

As set out above, a number of EU Member States already have merger control jurisdiction over acquisitions of non-controlling minority shareholdings. Both the regulators and other stakeholders, particularly in the UK and Germany, have been engaging actively with the Commission to share their experience. The final outcome of the Commission's proposals will be of high importance to the UK, Germany and Austria, in particular. They will likely lose jurisdiction over a set of transactions which, at least in Germany, have previously represented a disproportionately large group of interventions. Between 2005 and 2012, minority shareholding cases represented 4.1% of notifications in Germany, but represented 12.5% of all prohibition decisions.

These Member States may likely support the general expansion of the Commission's jurisdiction to cover non-controlling minority shareholdings, given that they are clearly of the view that they merit scrutiny. However, they will doubtless want to ensure that appropriate measures are put in place to allow referrals of cases which have their nexus in their Member State. They may, for example, take issue with being afforded only one opportunity to make an Article 9 referral request, on the basis of a short information notice. The Commission has previously been very strict in its interpretation of the Article 9 thresholds, and therefore Member States may consider that an information notice does not provide sufficient information. The danger is that they will argue for a more detailed information notice.

It is also unclear from the White Paper at which point a Member State is able to commence an investigation into an acquisition of a

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non-controlling minority shareholding. It does not specifically state that a Member State would be precluded from doing so following a decision by the Commission not to call in a transaction upon receipt of an information notice. Nor is it clear whether, for example, a Member State would retain jurisdiction to review acquisitions of shareholdings below 5%. Such details will be important, both from the point of view of parties considering entering into such transactions and for the Member States with jurisdiction over them.

Other EU Member States

Although only the UK, Germany and Austria currently have jurisdiction over acquisitions of non-controlling minority shareholdings within the EU, it is likely that if and when the EUMR is amended to capture such transactions, other Member States will follow suit. The impact of the reform may therefore be more far-reaching than is immediately apparent from the proposals.

Rest of the World

Certain jurisdictions outside the EU also have a regime which captures such acquisitions. In Canada and Japan, for example, the competition authorities may review acquisitions of a 20% shareholding.

In the US, Section 7 of the Clayton Act also allows the competition regulators to review minority shareholdings. It prohibits acquisitions of assets or shares where "*the effect of such acquisition may be substantially to lessen competition or to tend to create a monopoly*". This prohibition can apply to both acquisitions of control and acquisitions of non-controlling minority shareholdings. There are no thresholds for shareholdings above which a transaction can be reviewed, nor is there a concept of "material influence" (or equivalent). Instead, parties are required to notify a transaction if it meets the "size of transaction" test (and the "size of person" test, if applicable). There are, however, many complicated exemptions from the filing requirement, including for acquisitions of 10% or less of a company's share capital "solely for the purpose of investment". This exemption is not applicable where the acquisition is in a competitor, which approximates to the proposal in the White Paper for a competitively significant link.

The US authorities apply a very similar substantive test to acquisitions of control and acquisitions of minority shareholdings (i.e. whether there is a reasonable probability of a substantial lessening of competition), and have intervened in several cases of acquisitions of minority shareholdings.

Conclusion and Next Steps

The White Paper was published in the final months of Commissioner Almunia's term. It will therefore fall to Commissioner Vestager to decide whether to move forward with the implementation of these proposals in the form of a legislative proposal. Her approach is likely to be significantly influenced by, *inter alia*, Carles Esteva Mosso (Deputy Director-General Mergers, DG Competition). It will also be shaped to a certain degree by the responses the Commission receives to the White Paper, both from stakeholders and from the Member States.

In any event, the envisaged reform to the EUMR would require an amendment to primary legislation, requiring unanimity in the European Council as well as consent from the European Parliament. Any implementation of such a reform is therefore unlikely to take place before the end of next year.

Endnotes

1. Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ L 24, 29.1.2004, p. 1).
2. See Commission Staff Working Document "Towards more effective EU merger control", SWD (2013) 239 final.
3. The reform proposals also include changes to the referral mechanism between the Commission and Member States and some other technical improvements to the EUMR.
4. COM(2014) 449 final: White Paper "Towards more effective EU merger control". The White Paper was published alongside several supporting documents including a Staff Working Document (SWD(2014) 221 final: Commission Staff Working Document accompanying the document "White Paper – Towards more effective EU merger control") and an Impact Assessment (SWD(2014) 217 final: Commission Staff Working Document – Impact Assessment – accompanying the document "White Paper – Towards more effective EU merger control"). For the purposes of this article, the term "White Paper" is used to refer to both the White Paper and the Staff Working Document.
5. M.3653 *Siemens/VA Tech*.
6. M.4439 *Ryanair/Aer Lingus*.
7. Competition Commission Report: Ryanair Holdings plc and Aer Lingus Group plc: A report on the completed acquisition by Ryanair Holdings plc of a minority shareholding in Aer Lingus Group plc (28 August 2013).
8. COMP/M.1673 - *VEBA/VIAG*.
9. COM(2014) 449 final: White Paper "Towards more effective EU merger control", paragraph 10.
10. COMP/M.5406 - *IPIC/MAN Ferrostaal AG*.
11. Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (OJ C 95, 16.4.2008, p. 1).
12. OFT Report: Acquisition by British Sky Broadcasting Group plc of 17.9% in ITV plc; Report to the Secretary of State for Trade and Industry (14 December 2007) and *British Sky Broadcasting Group plc v the CC and the Secretary of State* [2008] CAT 25.
13. The CMA sets out in its guidance that it may examine any shareholding of 15% or more in order to see whether the holder might be able materially to influence the company's policy. It also states that a shareholding of less than 15% might, exceptionally, attract scrutiny where other factors indicating the ability to exercise material influence over policy are present. See Mergers: Guidance on the CMA's jurisdiction and procedure, Competition and Markets Authority, 2014, paragraph 4.20.
14. Mergers: Guidance on the CMA's jurisdiction and procedure, Competition and Markets Authority, 2014, paragraph 4.26.
15. B5 - 198/07 – *A-Tec Industries AG / Norddeutsche Affinerie AG*.

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16. COM(2014) 449 final: White Paper "Towards more effective EU merger control", paragraph 49.
17. SWD(2014) 221 final: Commission Staff Working Document accompanying the document "White Paper - Towards more effective EU merger control", paragraph 104.
18. The Commission imposed a fine of €20 million on the parties for failure to notify in Case No COMP/M.7184 – *Marine Harvest/ Morpol*.
19. In the case of Germany and Austria, it is true that a voluntary system may lead to complications as a completed transaction might be referred to these jurisdictions which have mandatory and suspensory regimes.
20. SWD(2014) 217 final: Commission Staff Working Document – Impact Assessment – accompanying the document "White Paper - Towards more effective EU merger control".
21. There were very few transactions during most of the relevant period due to the Financial Crisis.

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