

# **Response to the Competition and Markets Authority's Consultations**

**(1) Mergers: Revised merger notice**

**(2) Guidance on initial enforcement orders  
and derogations in merger investigations**

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**Simmons & Simmons**

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The Simmons & Simmons LLP EU, Competition & Regulatory Group welcomes the opportunity to comment on the Competition and Markets Authority (**CMA**)'s proposals to amend its Merger Notice, as well as its proposed guidance in relation to initial enforcement orders and derogations in merger investigations (the **Guidance**). Our responses to both consultations are set out below.

As this response does not contain any information that is confidential to Simmons & Simmons LLP or our clients, we confirm that we are happy for it to be published on the CMA's website.

### The Revised Merger Notice

We welcome the CMA's effort to add clarity to the process of completing a Merger Notice e.g. by removing current question 21 and clarifying that an analysis of coordinated effects is only needed if requested by the CMA. The additional guidance on what the CMA requires in relation to internal documents and market share data is also helpful.

#### *Length and complexity of Merger Notice*

However, the CMA should be mindful of the onerous nature of completing a notification. Even with the additional guidance, the questions in the Revised Merger Notice are complex and often only accessible to specialist advisors. From our experience, completion of the Merger Notice is very time consuming and requires the parties to commit significant management time and produce large quantities of data, in order to answer all of the questions within the Merger Notice (even without any further requests for information from the CMA). This type of burden is disproportionate, particularly for smaller businesses or when a merger called in by the CMA raises no substantive issues. We also suggest that the CMA's filing fees be lowered for those small businesses who make notifications to the CMA.

We suggest that, whilst the CMA's additional guidance in the Revised Merger Notice is helpful, the CMA should critically consider the length and level of detail required by the questions in the Merger Notice (both current and Revised). The CMA should consider issuing a simplified version of the Merger Notice, for SMEs and/or for those transactions where the thresholds are met purely on technical grounds (similar to the European Commission's Simplified Form CO).

#### *Timing*

We appreciate the CMA's suggestion that the parties should consider the information they need to provide and discuss it with the CMA during pre-notification<sup>1</sup> and/or that some categories of information are not needed unless requested by the CMA.<sup>2</sup> However, timing is often very tight during pre-notification and Phase I review. Therefore, if the CMA were to disagree with the parties' assessment that certain data is not needed (either during pre-notification or Phase I review) then this adds time to the review process, as well as requiring the parties' to produce data and analysis in very short periods of time. Therefore, we suggest the CMA considers alternative means of asking for what it needs (and ensuring the information is indeed actually required), without imposing these obligations on parties with short time frames. For example, the CMA could make it much more clear what criteria it will apply in deciding what data it will require. Assembling data can be time consuming; so the CMA's current proposal could give parties the difficult choice of incurring expense and effort to gather unwanted data or risk extensive delay.

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<sup>1</sup> paragraph 21 of the Revised Merger Notice

<sup>2</sup> As with coordinated effects and information on conglomerate effects (question 21 of the Revised Merger Notice)

## Guidance on Initial Enforcement Orders

As a general point, we welcome the publication of guidance on the topic of initial enforcement orders and derogations. The clarity on timing is particularly helpful. However, the process of applying for derogations is complex and often lengthy and we therefore encourage the CMA to continue to produce guidance on this process.

### **Simmons & Simmons LLP**

#### **EU, Competition & Regulatory Group**

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