Control of concentrations between undertakings. EC Merger Regulation

2002/0296(CNS) - 18/06/2009 - Follow-up document

The main purpose of this Commission Staff Working Paper is to discuss the operation of the thresholds, as set out in the EC Merger Regulation, in allocating cases between the Community level and the national level pursuant to the objectives of a "one-stop-shop", the "more appropriate authority", and the need to achieve a "level playing field". It also aims to report on the operation of the pre- and post-notification referral mechanisms provided for in the Regulation.

The Commission concludes that, overall, the **jurisdictional thresholds** and the set of **corrective mechanisms** have provided an appropriate legal framework for allocating cases between the Community level and the Member States. This framework has, in most cases, been effective in distinguishing cases that have Community relevance from those with a primarily national nexus, in pursuit of the objectives of "one-stop-shop" and the principle of the "more appropriate authority".

Moreover, the **pre-notification referral mechanisms** have considerably enhanced the efficiency and jurisdictional flexibility of merger control in the EU. These mechanisms have improved the allocation of cases between the Commission and the Member States and have contributed to avoiding unnecessary duplication and inconsistent enforcement efforts. However, there is scope for further improvements of the current system of case allocation. For example, the business community has expressed concern with regard to the way the referral system operates.

In addition, the **post-notification mechanisms** have proven to continue to be useful corrective instruments, also after the introduction of pre-notification referrals. Nevertheless, the business community's concern regarding the timing and cumbersomeness of the procedures extend also to these mechanisms.

Lastly, the public consultation has suggested that efforts towards **further convergence of the various national rules** governing merger control and their relation to Community rules should be envisaged in order to alleviate difficulties encountered in the context of multiple filings.