Basic information

2002/2067(COS) COS - Procedure on a strategy paper (historic)	Procedure completed
Economic concentrations: revision of the Merger Regulation (EEC) No 4064/89. Green Paper **Subject** 2.60.04 Economic concentration, mergers, takeover bids, holding companies	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
ECON Economic and Monetary Affairs	BERENGUER FUSTER Luis (PSE)	19/02/2002

Committee for opinion	Rapporteur for opinion	Appointed
JURI Legal Affairs and Internal Market	GIL-ROBLES GIL-DELGADO José María (PPE-DE)	26/02/2002

Council of the European Union

European Commission

Commission DG	Commissioner
Competition	

Key events

Date	Event	Reference	Summary
11/12/2001	Non-legislative basic document published	COM(2001)0745	Summary
11/04/2002	Committee referral announced in Parliament		
04/06/2002	Vote in committee		Summary
04/06/2002	Committee report tabled for plenary	A5-0217/2002	
03/07/2002	Debate in Parliament		
04/07/2002	Decision by Parliament	T5-0369/2002	Summary
04/07/2002	End of procedure in Parliament		
12/11/2003	Final act published in Official Journal		

Technical information	
Procedure reference	2002/2067(COS)
Procedure type	COS - Procedure on a strategy paper (historic)
Procedure subtype	Commission strategy paper
Legal basis	Rules of Procedure EP 148
Stage reached in procedure	Procedure completed
Committee dossier	ECON/5/16111

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, single reading		A5-0217/2002	04/06/2002	
Text adopted by Parliament, single reading		T5-0369/2002 OJ C 271 12.11.2003, p. 0381-0582 E	04/07/2002	Summary

European Commission

Document type	Reference	Date	Summary
Non-legislative basic document	COM(2001)0745	11/12/2001	Summary

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES0862/2002 OJ C 241 07.10.2002, p. 0130	17/07/2002	

Economic concentrations: revision of the Merger Regulation (EEC) No 4064 /89. Green Paper

2002/2067(COS) - 04/07/2002 - Text adopted by Parliament, single reading

The European Parliament adopted a resolution drafted by Luis BERENGUER FUSTER (PES, Spain) on the Commission's Green Paper. (Please refer to the document dated 04/06/02.) In view of the need for legal certainties, it stated the following: -Parliament agreed that two of the requirements currently applying should be abolished, namely the requirement that a dominant position must be shown to have been created on a market and that the latter does not from a substantial part of the common market; -the time-limits for requesting a referral should be shortened, though the process could be completed in two weeks if the above-mentioned requirements were abolished; -the Commission should be allowed to refer cases to the Member States on its own initiative, if the notifying parties are agreeable to this; -it is necessary to decide on a case-by-case basis whether a concentration should be referred to a national competition authority when the final decision on the matter rests with the political authorities; -the Member State to which a concentration with a Community dimension has been referred must apply Community law to that concentration; -the Commission must adopt guidelines on the referral criteria , improving transparency and legal certainty. Parliament went on to state that the fundamentals of the Member States'

competition legislation must be mutually agreed as soon as possible before enlargement. The candidate countries must be involved. Finally, Parliament expressed its support for the procedural changes regarding the commitments to be entered into by the parties to resolve the competition problems posed by a transaction.

Economic concentrations: revision of the Merger Regulation (EEC) No 4064 /89. Green Paper

2002/2067(COS) - 11/12/2001 - Non-legislative basic document

PURPOSE : to present the Green Paper on the Review of the Merger Regulation. CONTENT : Council Regulation 4064/89/EEC is known as the Merger Regulation. It sets out rules applicable to large concentrations, the market impact of which is presumed to go beyond any single Member State. In order to deal with the necessity for a level playing field following the establishment of the internal market, it conferred exclusive jurisdiction on the Commission over "concentrations with a Community dimension." Since its adoption, the EU has expanded to 15 states, and is facing further enlargement. There are also the challenges posed by global mergers, monetary union, market integration and the need to cooperate with other jurisdictions. A greater number of pre-merger control regimes are being introduced across the globe with a consequent increase in the costs associated with multiple filing requirements. In addition, whilst many national merger control systems largely follow the principles of the Merger Regulation, various degrees of discrepancy persist, notably in terms of procedure. All these factors lead to the need to revise the overall system of European merger control, so that the Commission and each national authority can use resources for protecting competition in the Community whilst at the same time reducing any unnecessary burden on industry in terms of compliance costs and increasing legal certainty. This is particularly true for medium-sized companies which do not meet the current thresholds of the Merger Regulation, but who still remain subject to multiple national filings. The paper discusses: 1) Jurisdictional issues : - Community dimension : the jurisdictional criteria contained in Article 1(3) have not solved the problem of multiple filing. Of particular concern is the trend indicating an increase in multiple filings to three or more Member States. Enlargement will exacerbate this trend. The Commission proposal focuses on the amendment of Article 1(3) and the introduction of an automatic Community competence over cases subject to multiple filing requirements to three or more Member States. There is a generally positive attitude towards a simplification of the test for an Article 9 referral - perhaps by disjoining the referral request from evidence of a threat of creation or strengthening of a dominant position or by eliminating the need to establish that the requested market is not a "substantial" part of the common market. This would allow cases whose effects do not extend beyond national borders to be more readily referred. The Commission would also refer cases to Member States when the establishment criteria are met. Article 22 should be modified along the same lines. - The concept of "concentration" has been reassessed. The paper discusses minority shareholdings and strategic alliances, and the possibility of extending the Merger Regulation to partial function production JVs. In the end it proposes amending current provisions on multiple transactions in order to ensure more effective application of the merger control rules to three specific types of such transactions and also questions the application of the regulation to certain venture capital transactions. 2) Substantive issues : - The Merger Regulation uses the concept of market dominance. The main alternative merger control test is that of substantial lessening of competition. The paper launches a debate on the respective merits of the two tests. - Simplified procedure : this concerns the Commission's 2000 Notice. This practice might be consolidated into a "block exemption" regulation, so that regulatory burden is removed from transactions harmless to competition. 3) Procedural issues : - Commitments : the most important proposal in the field of procedure concerns a reorganisation of the time schedule for the submission and discussion of commitments in the first and second phases of investigation, with a view to allowing more time for making considered contributions. The paper proposes a stop-the-clock provision. This would operate at the parties' request, thereby avoiding any ex officio prolongation of the procedure. - Due process : a number of issues are investigated, relevant to the investigation, the adoption of decisions and the right to judicial review. Ensuring transparency at each step is of paramount importance. The Green Paper discusses other procedural issues concerning the notification triggering event, as well as the "standstill obligation" in Article 7. It invites comments on electronic filing, submission of notification copies direct to Member States, and filing fees.