

## Adapt merger control to the challenges of globalisation Improvement suggestions from Afep

The companies take note of the relative “isolation” in which DG Competition (DG COMP) is working; it is notably in charge of concentrations - the only type of operation referred to in this note.

In order to better integrate the increasingly global economic signification of this type of operation, and considering the rather opaque procedure, it seems useful to introduce better checks and balances. To do so, the Commission must take more collegial decisions while taking better account of the impacts in areas other than competition (competitiveness, employment, international trade, etc.).

While the Treaty is to remain the structuring framework in the field of competition, the Merger Regulation No 139/2004, the Merger Guidelines or the Commission's Rules of Procedure should be amended to introduce more collegial work between DGs and deadlines and conditions compatible with the economic reality.

To this end, Afep proposes ways of improvement that should result in priority in modifications of the *soft law* or of the Commission's approaches on mergers (a) and, in the alternative, in changes of Regulation No 139/2004 (b).

### 1. Changes in *soft law* or in the Commission's approach

- a. **Merger control must take into account distortions of competition in third countries.** The takeover of European companies by third-countries companies should be analysed, in particular the **status of the latter** (public companies) or the **aids/subsidies received in their country of origin**. The Commission must beforehand collect specific information. To this end, EU trade agreements with third-countries must require transparency of subsidies and state aids.
- b. **The analysis of the relevant market led by the Commission must consider not only competition at a global level, but also the potential future competition, in a timeline consistent with the economic reality** (remove the reference to the two-year deadline in the guidelines on horizontal mergers). This would allow a more dynamic and long-term approach of competition, at the world level, which would take into account both the well-being of the consumer and the economic reality to which European stakeholders are confronted.

### 2. Changes in Regulation No 139/2004

- a. DG COMP should rely on internal expertise and more especially on other Directorate-General to broaden its analysis and ensure an efficient collegiality of decisions:
  - **Reinforce the interservice consultation upon notification**, and not only on the draft decision. Other relevant DGs should be fully involved in DG COMP's inquiry, notably DG GROW, DG TRADE and DG EMPL,
  - Increase **transparency in the decision process within the College** of Commissioners,
  - **Better take into account efficiency gains** (possibly with the establishment of an independent panel of experts, economists and lawyers for the assessment of efficiency

gains)<sup>1</sup> generated by mergers thanks to clarification of the law. If it is already possible to progress on this point without modifying the texts, it is necessary to **legalize this process, by amending the merger regulation to take into account in the competition analysis the significant positive contributions of the mergers to the existing policies.** Such an efficient tool does already exist in European texts encouraging **important projects of common European interest ("IPCEI")**.

- b. Create an **effective remedy** against merger decisions by organising "fast track" procedures better adapted to the realities of business life: the Court of First Instance ("CFI") should be able to pronounce its decisions within a maximum of 1 year after referral. The sending date of the referral file should be the starting point for the computation of this period.
  
- c. **Frame instruction times and requests for documents/information in reasonable timeline and volume.** To do so, teams appointed to these operations must have a sufficient level of expertise (seniority and longevity) to understand the complexity of the sectors and markets impacted by the operation under review.

#### About AFEP

Since 1982, Afep brings together large companies operating in France. The Association, based in Paris and Brussels, aims to foster a business-friendly environment and to present the company members' vision to French public authorities, European institutions and international organisations. Restoring business competitiveness to achieve growth and sustainable employment in Europe and tackle the challenges of globalisation is Afep's core priority. Afep has around 115 members. More than 8 million people are employed by Afep companies and their annual combined turnover amounts to €2,600 billion.

Afep is involved in drafting cross-sectoral legislation, at French and European level, in the following areas: economy, taxation, company law and corporate governance, corporate finance and financial markets, competition, intellectual property and consumer affairs, labour law and social protection, environment and energy, corporate social responsibility and trade.

#### Contact:

Emmanuelle Flament-Mascaret, Director for Business Affairs and IP / [concurrence@afep.com](mailto:concurrence@afep.com)  
Jérémie Pélerin, Director of European Affairs / [j.pelerin@afep.com](mailto:j.pelerin@afep.com)

---

<sup>1</sup> See, as an example, the [French report IGF/CGE on the competition policy \(April 2019\)](#)