JOINT STATEMENT BY THE EUROPEAN COMPETITION NETWORK ("ECN")

ON THE IMPLEMENTATION OF MERGER CALL-IN MECHANISMS

1. The Competition Authorities of the ECN share the goal of preventing concentrations between undertakings that could harm competition in their respective territories and within the EEA.

2. In recent years, it has become evident that some concentrations that do not meet mandatory notification thresholds might nonetheless have a significant impact on competition, to the detriment of consumers and, more broadly, of competitive market dynamics.[1] Notably, notification thresholds relying solely on the turnover achieved by the merging parties may not capture all potentially harmful concentrations.

3. To address these shortcomings, an increasing number of Member States of the EEA have decided to include into their national law a '*call-in mechanism*' as a complementary tool to their respective notification thresholds.[2] This Joint Statement focuses solely on this instrument, without implying that such a solution should be introduced nor pre-empting other possible legislative solutions (e.g. thresholds based on the value of the transaction or market shares of the merging companies).

4. The call-in mechanism allows competition authorities, under certain conditions, to assert jurisdiction over concentrations whose competitive impact may be harmful to actual or potential competition but otherwise would not be scrutinised. This instrument operates as a targeted tool to be used on a case-by-case basis by national enforcers, in compliance with the clearly defined applicable legal framework and the scope of legal competences granted by national legislators. Therefore, jurisdictions who wish to introduce a 'call-in' mechanism should strike a proportionate balance between effective merger control enforcement and legal certainty as well as predictability, while alleviating the administrative burden for businesses and competition authorities.

5. Experience in EEA Member States that have introduced the call-in mechanism shows that these mechanisms have proven useful by enabling interventions in problematic concentration cases.[3]

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[1] Examples of such include acquisitions of start-ups ('killer acquisitions'), roll-up strategies, mergers involving highly concentrated local markets, and concentrations in low-turnover industries.

[2] Currently, 9 EU Member States have adopted legislation introducing the call-in mechanism: Bulgaria, Denmark, Hungary, Ireland, Italy, Latvia, Lithuania, Slovenia, Sweden. In addition, Iceland and Norway have also introduced call-in mechanisms, and 12 others are considering it - Belgium, Cyprus, Czechia, Finland, France, Greece, Luxembourg, Malta, the Netherlands, Portugal, Romania, Slovakia. Furthermore, it is noted that some Member States have national call-in mechanisms since a long time (notably Sweden since 1997 and Lithuania since 2004).

[3] E.g., Lithuanian cases in 2021 on online ticket distribution (prohibition) and in 2022 on maintenance and repair of lifting equipment (cleared in phase II subject to remedies); Italian case in 2024 on non-metallic minerals - Cement and concrete production and sales sector (cleared in phase II subject to remedies); Icelandic case of 2021 on *medical imaging (x-ray etc.)* (prohibition) or case of 2024 on *fiber network* (abandoned by parties).

6. The introduction of a call-in mechanism is coherent with the intent of European co-legislators, who aimed at facilitating the identification and monitoring of sub-threshold concentrations by introducing an obligation for gatekeepers to inform the Commission of their intended acquisitions in the digital sector, as defined in the Digital Markets Act, and by requiring the Commission to transmit to the Member States the information provided by gatekeepers.[4]

7. Furthermore, the OECD Recommendation on Merger Review provides that States should '*[c]onsider having appropriate tools to review mergers that do not meet notification thresholds but could result in harm to competition*'.[5]

8. These references reinforce the importance of legislation that ensures effective and efficient merger control tools for competition authorities, such as national call-in mechanisms, modelled as closely as possible on common ECN principles and on general principles of law, including those of legal certainty and predictability.

9. To this end, the exercise of call-in mechanism should be limited to concentrations that would not be assessed under any other national notification thresholds in force but which, *prima facie*, could still lead to material anticompetitive effects[6] in the relevant territory ("*Material Scope*"). To enhance legal certainty, national legislators may introduce additional criteria to determine the eligibility for activating the call-in mechanism, in particular, local nexus such as present or foreseeable activities *in loco* or with local effects, or additional thresholds based on turnover, transaction value, or market share.

10. The possibility to exercise a call-in mechanism should in principle be limited to a pre-defined period ("*Temporal Scope*").[7]

11. Furthermore, jurisdictions who wish to introduce a '*call-in*' mechanism should strongly consider assessing the need to complement it with soft law instruments reinforcing legal certainty and predictability and reducing potential uncertainties. This could be achieved through, e.g., informal guidance, voluntary notification and/or the possibility to engage in consultations, to enable undertakings to better anticipate potentially problematic transactions and self-assess the likelihood of the transaction becoming subject to merger control review. Likewise, to minimise undue additional administrative burden for businesses and competition authorities, adequate internal procedural rules could be implemented or adapted accordingly.

12. Having regard to the above, the Competition Authorities of the ECN acknowledge that call-in mechanisms can be an appropriate, useful and effective tool to protect competition in their respective territories and within the EEA.

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[4] Regulation No 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 ('DMA'), Article 14.

[5] OECD, Recommendation of the Council on Merger Review, OECD/LEGAL/0333 (available here).

[6] The exact standard may vary from Member State to Member State.

[7] Most Member States are bound by specific time limits. In Italy, for example, the national competition authority may require a notification within 6 (six) months from the closing of the transaction.