



European Commission

# Competition

*International Seminar on Supplementary Rules of Anti-Monopoly Law  
Xiamen, September 2011*

## **Simplified procedure: EU Practice**

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## Preliminary remarks

- EU's jurisdiction over mergers based on turnover thresholds
  - No presumption of market power
- Experience shows that certain categories of cases do not tend to raise competitive concerns
- Establishment of a simplified procedure:
  - Ease the burden on the Parties and the Commission
  - Make EU control more focused and effective



## Significant advantages

- Less information requested from Parties
  - Use of Short Form CO
- Generally no market investigation
  - Publication of notification and deadline for comments
- Succinct decision
  - No precise market definition or detailed assessment

## But...

- Need for an appropriate pre-notification phase
  - Assess whether the case is eligible
  - Discard potential special circumstances that may require detailed assessment
- Timing constraints if need to revert to normal procedure



## Reference texts

- Main text:
  - Commission Notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EC) No 139/2004 (*OJ C-56 of 5.3.2005, p. 32*)
- To be read in the context of the broader regulatory framework:
  - Merger Regulation 139/2004 (*OJ L-24 of 29.1.2004, p. 1*)
  - Consolidated Jurisdictional Notice (*OJ C-95 of 16.4.2008, p. 1*)



## Categories of simplified cases (1)

- Paragraph 5(a) cases: JV with negligible activities in the EEA
  - Creation of a JV or joint acquisition of an existing company
  - Turnover of the JV (or contributed activities) < 100 MEUR in the EEA
  - Total value of assets transferred to the JV < 100 MEUR in the EEA
- Paragraph 5(b) cases: no horizontal overlaps or vertical relations
  - Mergers or acquisitions of sole or joint control
  - None of the parties to the concentration are engaged in business activities in the same product and geographical market, or in a product market which is upstream or downstream of a product market in which any other party to the concentration is engaged



## Categories of simplified cases (2)

- Paragraph 5(c) cases: minor horizontal overlaps or vertical relations (no “affected” markets)
  - Mergers or acquisitions of sole or joint control
  - Two or more of the parties are active in the same product and geographical market (horizontal relationships) provided that their combined market share  $< 15 \%$ ; or
  - One or more of the parties are active in a product market upstream or downstream of a product market in which any other party is engaged (vertical relationships), provided that none of their individual or combined market shares  $> 25 \%$
- Paragraph 5(d) cases: move from joint to sole control over the target company



## Assessment of eligibility of cases

For categories 5(b) and 5(c) cases, market definition is key:

- Examine all plausible alternative market definitions and obtain relevant data
- Difficulties if markets have not been defined in the past or market shares are difficult to be determined
- Some 5(d) cases may require closer investigation (e.g. no competition authority reviewed the previous acquisition of joint control)



## Safeguards and exclusions

- Simplified procedure is typically rejected if:
  - Relevant markets are difficult to be defined or market shares difficult to be determined (e.g. lack of official statistics)
  - Case involves legal issues of general interest
  - Special circumstances:
    - Risk of conglomerate effects
    - Parties operate in new or little developed markets
    - Parties operate in markets with high barriers to entry, a high degree of concentration of with known competition problems





## Procedural provisions

- Pre-notification contacts
- Publication of the fact of the notification
- Deadline for interested parties to submit observations
- Short form decision
- Shorter “voluntary” deadlines
- Possibility to revert to normal procedure:
  - In particular, if a Member State or a third party expresses substantiated concerns about the notified concentration



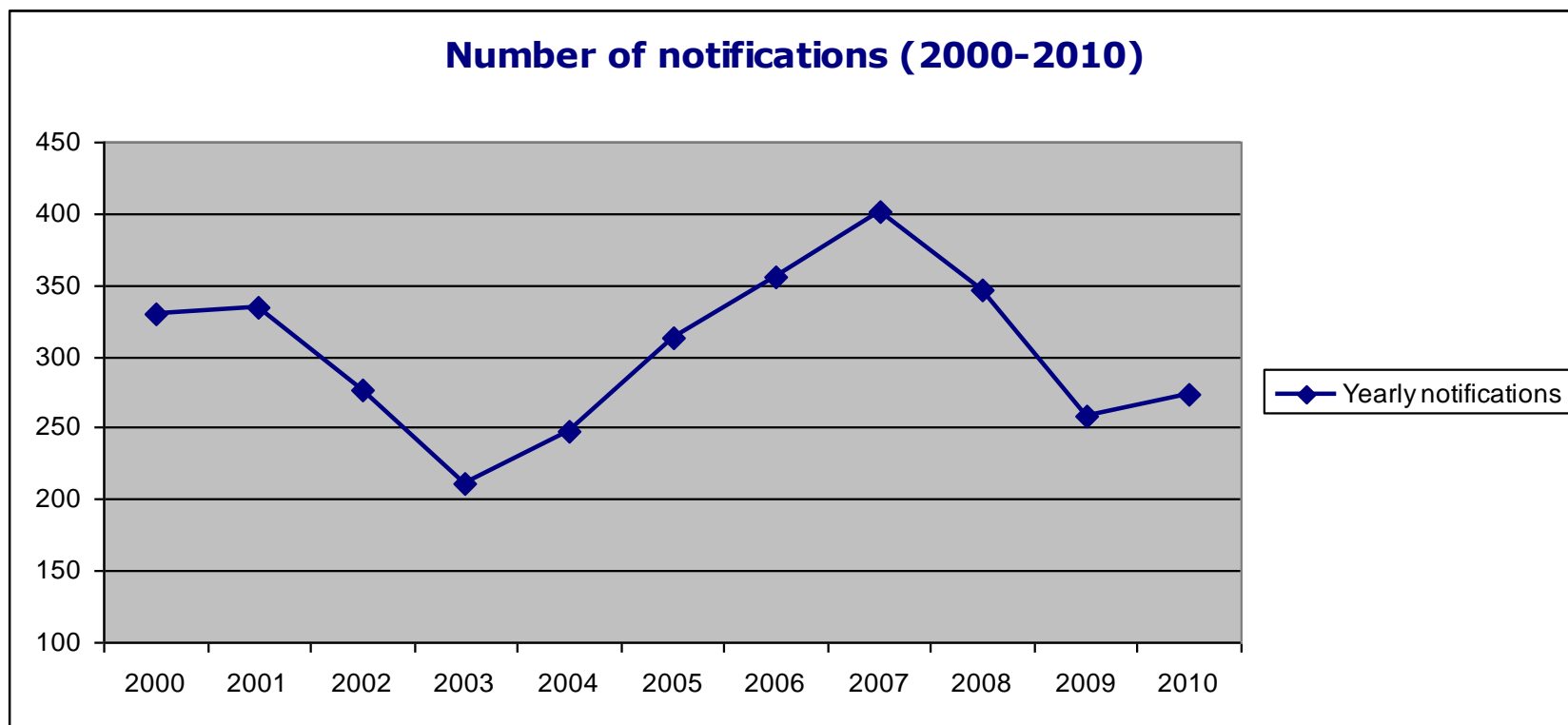
## Simplified procedure and referrals

- Simplified procedure is not applied if:
    - A Member State requests the referral of a notified concentration
    - The case had been referred to the EU by one or several Member States

(post-notification referrals pursuant to Articles 9 and 22 EUMR)
  - By contrast, pre-notification referral requests do not prevent the application of the simplified procedure
- (pre-notification referrals pursuant to Articles 4(4) and 4(5) EUMR)



## Evolution of merger notifications





## Simplified cases 2007-2010

