



Simplified Procedure in EU Merger Control

EUTCP AML Competition Week

Xi'An China

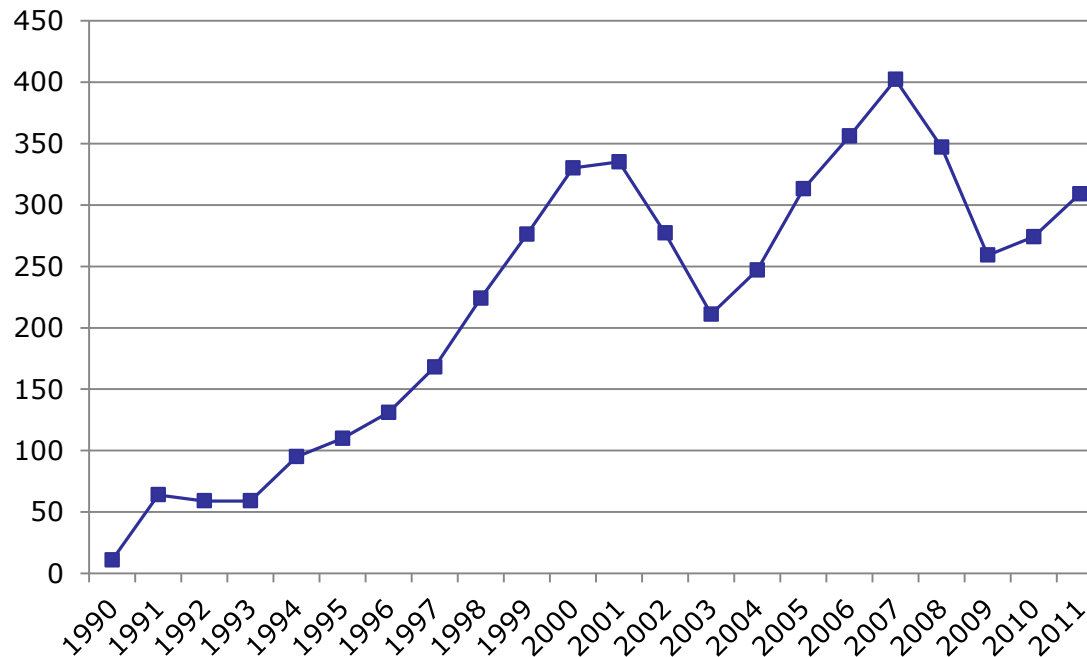
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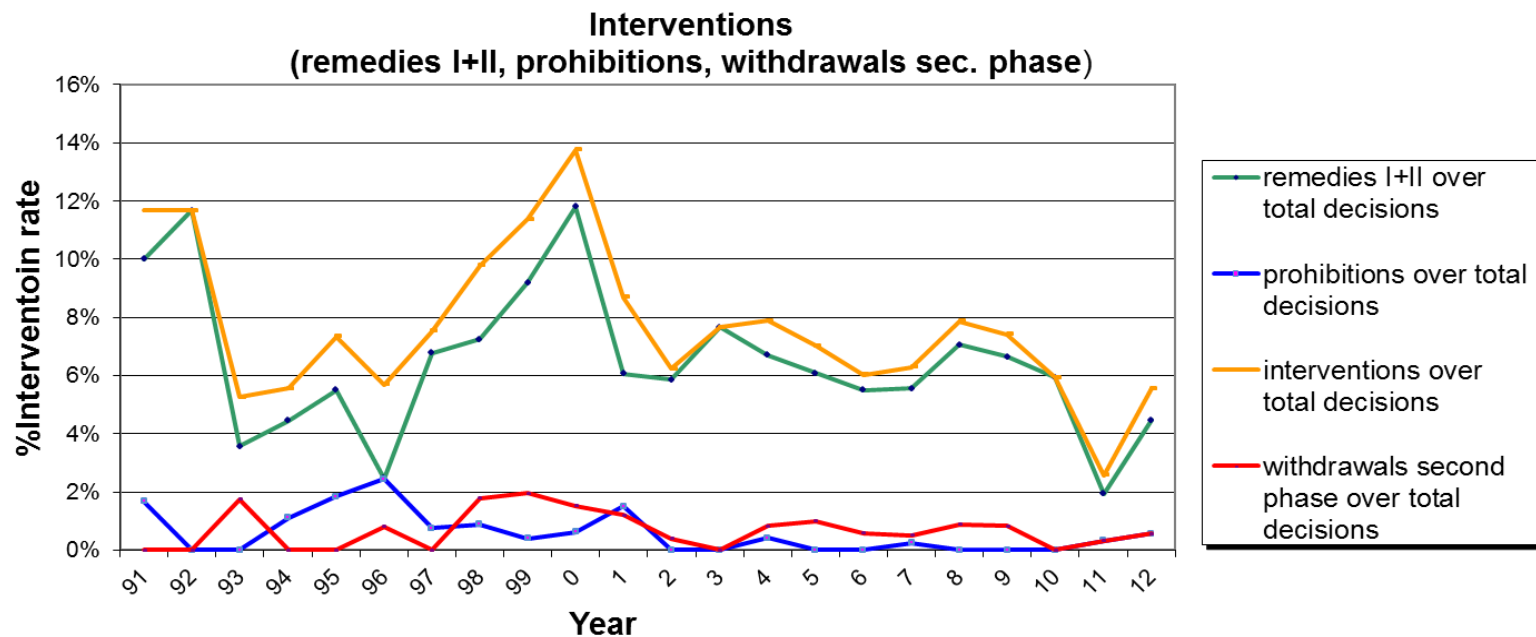
The views expressed are personal to the speaker

Number of merger notifications



- Steady growth in the first decade => strain on Commission's resources

DG Competition's enforcement



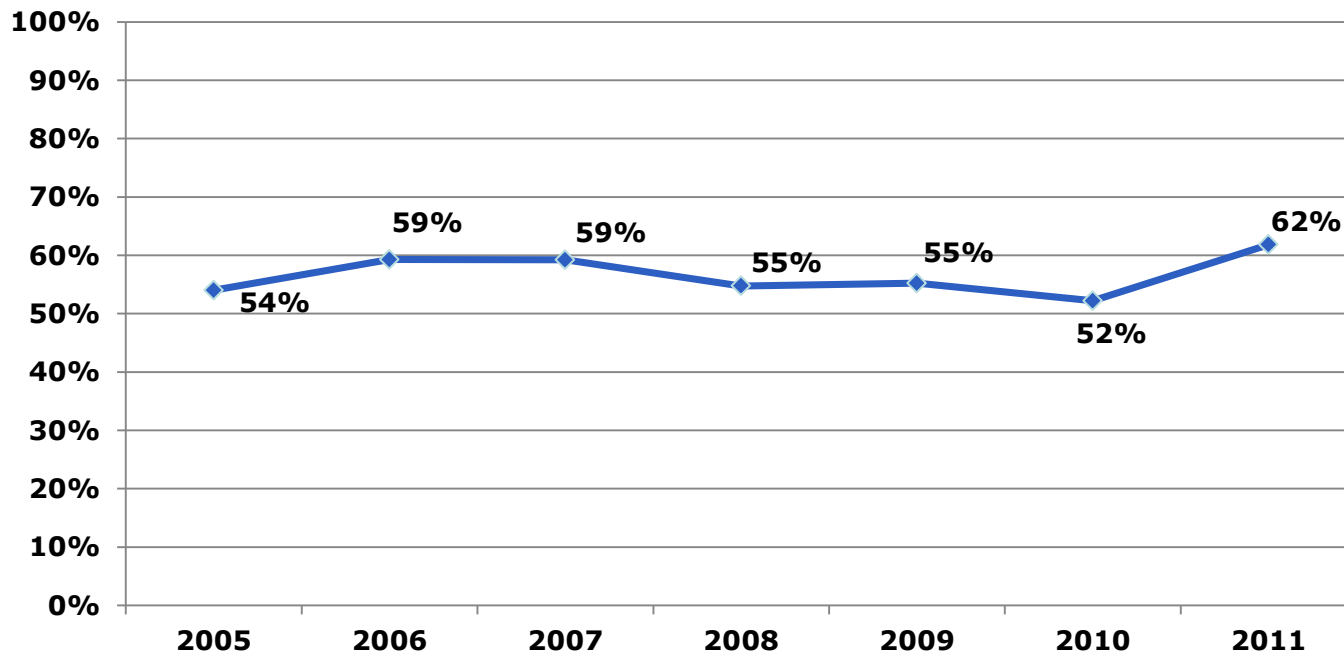
- Vast majority of concentrations require no intervention (i.e. no remedies or prohibition)
- Many notified transactions raise no competition concerns from the outset

Simplified Procedure

- Introduced in 2000 for certain concentrations not raising substantive concerns
- Revised in 2004, notably introducing a short-form notification

Impact

% of simplified cases



Advantages to the Commission

- Goal: "to make [EU] merger control more focused and effective"
- Prioritisation: helps to concentrate on large/problematic cases
- Administrative efficiency:
 - Usually no investigative steps (e.g. no information requests to customers, competitors, suppliers)
 - Internally, only one assessment note
 - Standardized brief decision of about 2 pages (vs. reasoned decisions in standard cases)

Advantages to the Parties

- Reduction of the notification burden (time and money)
 - Much lighter notification form: less information required on the markets, competitors, internal documents, etc.

Eligible Concentrations

Concentrations meeting one or more of the following criteria (Article 5 of the Simplified Procedure Notice):

- a) a joint venture has no/negligible economic activity in the European Economic Area (based on JV turnover (<EUR 100 million) and value of assets transferred to JV (<EUR 100 million));
- b) no horizontal overlap and no vertical relationship between the parties;
- c) the parties' combined market shares are less than 15% for horizontal overlaps or less than 25% (combined or individual) for vertical relationships; or
- d) a party acquires sole control over an undertaking it already controls jointly.

No automatic simplified treatment

- Some cases may be inappropriate for simplified treatment even if the above conditions are met.
- Possibility of simplified procedure is discussed with the parties during pre-notification.
- Also, at any point after the filing, the Commission may revert to standard procedure. The number of such cases is low but not insignificant.

Examples of Non-simplified Cases (I)

No simplified procedure, for example, where:

- difficult to define the relevant markets or determine the parties' market shares;
- novel legal issues of a general interest;
- one party is a new entrant or an important patent holder;
- high entry barriers, with a high degree of concentration or known competition problems;
- an issue of coordination or conglomerate effects; and
- substantiated concerns are expressed by a third party or a Member State (within 10 and 15 working days, respectively).

Examples of Non-simplified Cases (II)

Concerns from third parties are important indicators:

- Case M.5262 – *Bonnier/Schibsted/Retriever Sverige JV* (2009)
 - A JV in media and business information services
 - The JV turnover and asset thresholds for simplified procedure were met
 - However, a complaint was received concerning potential foreclosure of key input (media content) to competitors
 - Full notification requested => Phase II opened => transaction aborted
- Case M.5664 – *Bilfinger Berger/MCE* (2009)
 - Started as simplified since met the market share thresholds (Art 5(c))
 - Received complaints and critical comments from third parties
 - The investigation identified the parties' strong position in a previously non-identified market for installation of high-pressure pipes in Germany and Austria
 - Moved the case to standard procedure
 - The parties submitted divestment remedies within the deadline

Examples of Non-simplified Cases (III)

- Changes from joint to sole control: normally simplified (since diminution of the combined market power)
- But may raise concerns:

Cases M.1328 and M.5141 *KLM/Martinair* (1999 and 2009)

- KLM and Martinair were Dutch-based airlines
- KLM already owned 50% of Martinair and planned to acquire sole control
- Combination would remove the disciplining constraint of the other controlling party and strengthen KLM's market position
- 1st case: prohibition proposed; 2nd case: phase II opened with subsequent clearance

Case M.5272 - Sony/Sony BMG (2008)

- Change from sole to joint control over a music recording JV – normally simplified
- Contentious past: two previous clearances of the same JV (first clearance was annulled by the Court); vocal complainant
- Full notification requested => clearance in Phase I

Practical Issues - I

- Responsibility to provide correct and complete information rests with the notifying parties.
- Pre-notification contacts: at least 2 weeks before notification.
 - Time to identify any competition issues and determine whether Simplified Procedure is appropriate.
- Immediately after notification:
 - A summary published in EU Official Journal
 - The notification sent to Member States

=> Ensures transparency + opportunity to receive comments from third parties and Member States

Practical Issues - II

- Timetable: same as for a standard Phase I procedure (generally 25 working days)
- May clear earlier (but not earlier than 15 working days – period within which Member States can request a referral)
- Usually no active investigation undertaken

Practical Issues - III

- If the Commission reverts to standard procedure, the review deadline continues running.
- But if some necessary information is missing (e.g. on problematic markets), the Commission may declare the notification incomplete.
- In this case the deadline resumes from the moment when a complete notification is submitted.