SIMPLIFIED MERGER PROCEDURE
The French Experience

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Outline

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Reasons for Adopting a Simplified Procedure (1/2)

- Background: 3 merger thresholds:
  - General thresholds: 150 M€ worldwide turnover by all undertakings concerned and 50 M€ by at least 2 undertakings concerned individually in France
  - Retail-specific thresholds: 75 M€ worldwide turnover / 15 M€ individually in retail sector in France
  - Overseas territories-specific thresholds: 75 M€ worldwide turnover / 15 M€ individually in overseas territory

- 2009-2010 period:
  - Approximately 200 merger filings per year
  - A constant stream of 2 types of cases makes up approximately half of the Authority's caseload:
    - Small retail mergers filed under the retail-specific threshold
    - Acquisitions by investment funds
  - Numerous unproblematic cases make up a heavy burden on the Authority's Mergers Unit's limited resources
Reasons for Adopting a Simplified Procedure (2/2)

* From 2011:
  * Adoption of simplified procedure as from January 2011
    - Scope: retail mergers and acquisitions by investment funds
    - Simplified procedure adopted as a matter of practice, no law or formal guidelines
    - Objective: fast-track the treatment of unproblematic cases and improve the allocation of internal resources
  * Statistics:
    - 2011: simplified procedure applied in 40% of all merger cases
    - 2012: 48% of all merger cases
Criteria for Using the Simplified Procedure

● Investment funds criterion:
  ▪ The simplified procedure applies when the acquiring company has no activities in the target’s market(s) (no horizontal effects), on upstream or downstream markets (no vertical effects) or on closely related markets (no conglomerate effects)

● Retail mergers criterion:
  ▪ Merger reported under the retail-specific threshold (but does not reach the general thresholds)
  ▪ Merger does not bring about a change in either supermarket chain affiliation (for supermarket mergers) or carmaker affiliation (for mergers between automobile distributors)
Content of Merger Filings under the Simplified Procedure

- Certain pieces of information may be omitted or simplified:
  - financial information
  - market definition in retail cases
  - market shares in acquisitions by investment funds

- Information required in simplified merger filings:
  - Retail mergers:
    - detailed description of relevant stores’ catchment areas
    - distribution contracts must be provided
    - rules applicable in the relevant distribution network
  - Acquisition by investment funds:
    - detailed description of the structure of ownership of the relevant investment funds: ultimate control must be clearly identified
    - a list of all subsidiaries controlled by the relevant investment funds and their activities
Procedural Differences Between the Standard and the Simplified Procedure

- **Fast-track review**
  - The application of the simplified procedure is informally determined upon the receipt of each merger filing by the Head of the Mergers Unit
  - In general, there are no pre-notifications in simplified proceedings
  - Mergers are reviewed within 15 working days instead of 25

- **Simplified decisions**
  - 2 pages
  - Contain an abbreviated description of the merging companies, the merger, the sectors concerned and the lack of competition concerns

- **Opting out of the simplified procedure**
  - Informal decision at the Mergers Unit’s discretion
  - Reasons: competition concerns, complaints, novel legal issues
Differences in the Review Process Compared to the Normal Procedure

● Focused substantive review
  - Retail mergers: horizontal effects (market shares) in local markets (target supermarket’s catchment area)
  - Acquisitions by investment funds: lack of overlapping or related activities

● Role of merging parties
  - Information requirement, albeit lower than in the normal procedure, must be met: legal time-limits do not start before all the required information is received
  - Limited involvement otherwise (no “state-of-play” meetings)

● Role of third parties
  - Shorter timeframe for 3rd party complaints (10 working days instead of 15)
  - Limited involvement: no formal consultation
Simplified Procedure’s Impact

- Better allocation of the Competition Authority’s Mergers Unit’s resources
  - “Standardized” review
  - Shorter decisions
  - Concerns approximately half of all mergers reported to the French Competition Authority
- Faster review also benefits merging firms
- Feedback on simplified procedure
  - Feedback solicited in context of 2012-2013 revision of the Authority’s mergers guidelines
  - Generally favorable feedback: calls for extension
Future Evolution of the Simplified Procedure

● Suggested additional situations in which the simplified procedure could be used:
  - mergers of companies with low market shares
  - mergers that consist in change from joint to sole control

● Reasons for not adopting suggested changes in France:
  - approximately half of all merger filings are already reviewed using the simplified procedure
  - using a market share criterion may be inherently uncertain: depends whether market definition is clearly settled
  - changes from joint to sole control sometimes raises competition issues: several major cases since 2009