Procedural Provisions of a Simplified Procedure for Merger Control

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1 Comparison btw Ordinary and Simplified Procedures

Ordinary Procedure	Simplified Procedure
The Anti-monopoly Authority shall conduct a preliminary review of the declared concentration of business operators, make a decision whether to conduct further review and notify the business operators in written form within 30 days upon receipt of the documents and materials;	?（<30）for preliminary review, and decide on whether to further review OR Complete the review within the preliminary review stage Not yet provided
Where the Anti-monopoly Authority decides to conduct further review, they shall, within 90 days from the date of decision, complete the review, make a decision on whether to prohibit the concentration; Under certain circumstances, the Anti-monopoly Authority may notify the business operators in written form that the time limit may be extended to no more than 60 days.	Decision within ? days Not yet provided

1 Provisions by other Countries

Country	Ordinary Procedure	Simplified Procedure
EU	25 days, may extend to 35	Less than 25 days
USA	30 day waiting period	May shorten waiting period
Japan	First stage 30 days	Less than 30 days
Korea	30 days, may extend to 90	15 days
Canada	14-45 days	May request termination
Mexico	35 working days	15 working days
Brazil	2-6 mo., 330 days if necessary	30 days
Belgium	First stage 40 days	20 days
Austria	First stage 4 weeks	14 days
Czech Rep.	Firs stage 30-45 days	20 days
Denmark	First stage 25 days	Within 25 days
Romania	First stage 45 days	30 days

1 Brief Summary

Whether or not they have set a time limit on a simplified procedure, the provisions in many countries have abided by the following principles:

1.Applicant may request to accelerate the review procedure, to be considered by the enforcement agencies.

2.Enforcement agencies can decide on the review deadline on a case-by-case basis.

3.The time limits to apply a simplified procedure and to reach a decision after its application are shorter than those of an ordinary procedure.

4.Is it imperative to complete the review in a preliminary stage? Or should a simplified procedure be split into preliminary review and further review stages?

2 Contact with the parties

◆EU：Regardless of whether a simplified procedure is applicable, "pre-notification contacts are extremely valuable to both the notifying parties and the Commission".

◆Romania：notifying parties must abide by the rules of the Competition Council, and register, generally before the notification, the request for a simplified procedure.

◆USA：HSR Act provides for the time limit of the accelerated review procedure for several bankruptcy purchases and all takeover bids (15 day waiting period). Notifying parties may also request the termination of the waiting period, and if the transaction does not entail material anti-trust issues, requests are generally granted.

2 Contact with the parties

China has established a system of pre-notification contacts in “Guidelines for Reporting Mergers of Undertakings” , in particular, Article 1 of the guidelines specifies the three conditions for a pre-notification appointment: (1) business operator must have already requested appointment in written form. (2) The written request must contain information on the applicant, the application matter, overview of the transaction, matters to be discussed, and contact person. (3)Business operator should provide the necessary documents and materials relevant to the appointment.

2 Contact with the parties

Ordinary Procedure	Simplified Procedure
MOFCOM encourages the notifying party to actively submit any document and material helpful for MOFCOM to examine and decide on the concentration as early as possible. (Article 4 of "Guidelines for the Examination of Mergers of Undertakings")	Not provided
Business operators participating in concentrations may make written statements and arguments concerning the relevant declaration issues by letter or fax, and MOFCOM shall listen to the statements and arguments of the party concerned. (Article 5 Ibid)	Not provided
MOFCOM may initiate hearings on its own accord or as response to the request of the relevant parties, make investigations, collect evidence, and listen to the opinions of the relevant parties. When holding a hearing, MOFCOM shall notify in advance the participants of the hearing in written form. Written opinions of the participants should be submitted to MOFCOM before the hearing. (Article 7 Ibid)	Not provided

2 Contact with the parties

Article 18 of COUNCIL REGULATION (EC) No 139/2004 on the control of concentrations between undertakings explicitly states that before taking any decision on revoking the approval of a merger or declaring the merger to be incompatible with the Common Market, the Commission shall give the persons, undertakings and associations of undertakings concerned the opportunity, at every stage of the procedure up to the consultation of the Advisory Committee, of making known their views on the objections against them; and the Commission shall base its decision only on objection on which the parties have been able to submit their observations.

2 Contact with the parties

Moreover, the Commission's guidelines on "Best Practices on the conduct of EC merger control proceedings" particularly designed a system of "State of Play meetings with notifying parties", specifying the 5 different points in which the notifying party may attend meetings with the Commission in the form of meetings, or by telephone and videoconference:

2 Contact with the parties

(1) Before the expiry of 15 working days into Phase I, if the Commission believes that there are "serious doubts" on whether the Merger is compatible with the Common Market, it should offer the notifying party an opportunity of attending a State of Play meeting. In addition to informing the notifying parties of the preliminary result of the initial investigation, this meeting provides an opportunity for the notifying parties to prepare the formulation of a possible remedy proposal in Phase I.

(2) Normally within 2 weeks following the Phase I decision that the merger may not be incompatible, a State of Play meeting should be held. The notifying parties should provide DG Competition with their comments over the Phase I decision, and discuss relevant issues of the Phase II procedure.

(3) Before the issuing of a Statement of Objections (SO), a State of Play meeting should be held. The notifying parties may provide comments on and be informed of DG Competition's preliminary view on the outcome of the Phase II investigation.

2 Contact with the parties

(4) Following the reply to the statement of objections, a State of Play meeting should be held, to provide notifying parties with an opportunity to understand DG Competition's position after it has considered their reply and heard them at an Oral Hearing, and also to serve as an serve as an opportunity to discuss the scope and timing of possible remedy proposals.

(5) Before the Advisory Committee meets, a State of Play meeting should be held, to discuss relevant issues, including formulating improvements to remedies proposal.

Through institutional design, the Commission not only ensures that the notifying parties is able to offer its comments in a timely manner, but also introduces flexibility in the competition enforcement mechanism, i.e. business operators may communicate effectively with the enforcement agencies, which benefits competition enforcement in the future.

2.1 Contact with the parties

The revised guidelines on “Best Practices on the conduct of EC merger control proceedings” puts emphasis on effective pre-notification contacts with the notifying parties. Through State of Play and trilateral meetings, the system ensures the parties’ right to information and right of defence, and that the Commission’s decision is based on a high degree of transparency and solid proofs. In DG Competition’s experience the pre-notification phase of the procedure is an important part of the whole review process, and DG Competition finds it very useful to have pre-notification contacts with notifying parties. As the entire process is voluntary, DG Competition will always give notifying parties the opportunity, if they so request, to discuss an intended concentration informally and in confidence prior to notification, and to discuss jurisdictional and other legal issues, as well as the scope of the information to be submitted , in order to prepare for the upcoming investigation by identifying key issues and possible competition concerns at an early stage. In cases in which notifications have been declared incomplete, usually there were no or very limited pre-notification contacts. Accordingly, pre-notification contacts may ensure the completion of notification forms and supporting documents, and avoid situations in which a incomplete notification causes a loss in time.

2 Contact with the parties

The EU's experience has shown that pre-notification contacts are very useful both to the notifying party and the Commission. Through pre-notification contacts, the Commission can ascertain the information that should be submitted. Generally, pre-notification contacts should preferably be initiated at least two weeks before the expected date of notification. The forms of contact may include discussions in meetings, involving issues regarding the scope of submitted information, jurisdictional and other issues.

In a simplified procedure, the notifying party may submit a complete form as a basis for detailed discussion by both sides, and the Commission may decide on whether the short form is applicable.

2 Contact with the parties

China should also emphasize on contacts with the parties at particular points in time during a simplified procedure, and offer the parties the opportunity to present their views and defend their case. The time, manner, and content of this arrangement should be stipulated in detail.

3 Nature and amount of necessary information

EU: “the parties should provide information on all plausible alternative market definitions during the pre-notification phase…Where it is difficult to define the relevant markets or to determine the parties‘ market shares, the Commission will not apply the simplified procedure… it can normally be assumed that concentrations falling into the categories [in which a simplified procedure is applicable] will not raise serious doubts as to their compatibility with the common market.”

3 Nature and amount of necessary information

In the EU, the notifying party shall submit one original and 35 copies of the Short Form and the supporting documents to the Commission's Directorate-General for Competition. The notifying party must confirm that copies of the original documents are true and complete.

3 Nature and amount of necessary information

Contents of the Short Form: 9 sections (11 sections for the complete form)

Including Description of the concentration, Information about the parties, Details of the concentration, Ownership and control, Supporting documentation, Market definitions (product and geographic) , Information on markets, Cooperative effects of a joint venture, and Declaration.

Indicators necessary to a substantial review, including HHI index and increments, import market share, market demand structure, market access, research and development agreements, global status, and merger efficiency, are all exempted from notification (firms have difficulty gathering these specialized information), which greatly reduces the burden of notification.

(See COMMISSION REGULATION (EC) No 802/2004 of 7 April 2004, p22)

4 Nature and content of the written decision

In the EU, Phase I decision on whether to approve or oppose a merger is made by the Directorate-General for Competition according to the suggestions made by its staff members, the merger supervision offices (currently the anti-trust offices of various sectors) , and the legal staff. Under Phase II, the final decision on whether or not to impose remedies or to oppose the merger shall be made by all Directorate-Generals of the Commission, by simply majority if necessary.

4 Nature and content of the written decision

Before deciding on the compatibility of the merger or imposing a fine, the Commission shall consult with the Advisory Committee. The Commission attaches great importance to, but is not bound by the written opinion of the Advisory Committee. The Commission shall, according to the Merger Regulation, publish in the Official Journal on attached conditions or obligations of a merger decision, declarations of incompatibility, measures to be taken to restore competition conditions should the merger be completed prior to notification, or revoking of a compatibility decision. Under the condition of protecting business secrets, the published notice should include the parties' names, and state the main content of the decision.

4 Nature and content of the written decision

According to Article 8 Clause 6 of the Merger Regulation, if the compatibility decision is based on incorrect information obtained by deceit, or if the undertakings concerned commit a breach of an obligation attached to the decision, the Commission may revoke the decision.

Should a decision be revoked in this way, the Commission may take a decision on compatibility, compatibility with attached conditions or obligations, or incompatibility, without being bound by the Phase I and Phase II time limits.

Can decisions made in a simplified procedure also be revoked in this way?

Contact with the parties

Ordinary Procedure	Simplified Procedure
During the examination process, MOFCOM may take counsel with units or individuals including relevant governmental departments, trade associations, undertakings, and consumers.	Should opinions from other sources be sought?
MOFCOM shall make a decision on whether or not to prohibit a concentration within the time limit prescribed in Article 26 of the AML and notify the declaring party in written form. With respect to concentrations not to be prohibited, MOFCOM may decide whether or not to impose restrictive conditions to reduce the impact of the concentration on competition. Before the MOFCOM makes a decision whether or not to conduct further examinations, undertakings participating in the concentration shall not execute concentration. If MOFCOM decides not to prohibit such concentration or fails to make any decision, the undertakings participating in the concentration may execute concentration.	The decision made under a simplified procedure is closely related to the standard to apply the simplified procedure (market shares and cooperative effects of a joint venture) . This is because the standard to apply the simplified procedure determines the harmful effects of the concentration on competition.

THANK YOU