

Simplified Procedure of Merger Review

Procedural Provisions

Susan Ning

Partner and Head of Antitrust & Competition

KING & WOOD MALLESONS

24 October 2013

OVERVIEW

I Review period of Simplified Procedure

II Communication with parties

III Information to be provided

IV Form and content of the decision in Simplified Procedure

Review Period of Simplified Procedure (1/2)

1. Practices in other jurisdictions

- (1) EU practice: Cases subject to Simplified Procedure shall be cleared within 25 working days (Phase I review) from the date of notification.
- (2) France practice: Cases subject to Simplified Procedure are usually cleared within 15 working days.
- (3) Germany: “Fast track” cases are usually cleared in max. 1 - 2 working days.
- (4) Portugal: The review period of case subject to Simplified Procedure is 20 working days, but in practice, cases are usually cleared around 19 working days.

Review Period of Simplified Procedure (2/2)

2. Suggestions for China

- Review period: “30 +15” days
- Cases subject to Simplified Procedure should generally be cleared within 30 days. If the review can not be finished within 30 days, the extension should not be longer than 15 days.
- 30 days is in accordance with the length of Phase I review period provided in Article 25 of AML. In addition, considering some unexpected circumstances that may occur in the internal procedure of Anti-monopoly Bureau of MOFCOM, review period of Simplified Procedure can be extended for another 15 days when necessary.

Communication with parties (1/2)

EU practice

- Pre-notification communication
- State of play meetings

Objective

- Contribute to the quality and efficiency of the review process.

Form

- Meetings at the Commission's premises or if appropriate by telephone or videoconference.



Communication with parties (2/2)

2. Suggestions for China:

- As to the cases involving complex issues, MOFCOM may contact the parties proactively or by the parties' requests in order to resolve the complex issues (if any) in the cases subject to Simplified Procedure.
- Communication with the parties can be carried out prior to notification or during the review period.
- Form of communication: Fax, face to face meeting, conference call or videoconference etc.

Information to be provided (1/2)

1. EU practice

Short Form CO	Form CO
<ul style="list-style-type: none"> • Description of the concentration • Information about the parties • Details of the concentration • Ownership and control • Supporting documentation • Market definitions (including product markets and geographic markets) • Market share • Cooperative effects of a joint venture • Declaration 	<ul style="list-style-type: none"> • Description of the concentration • Information about the parties • Details of the concentration • Ownership and control • Supporting documentation • Market definitions (including product markets and geographic markets and the affected markets) • Market share of the affected market • General conditions in affected markets, Structure of supply and demand, Market entry, Research and development, Cooperative Agreements and Trade associations • Efficiencies of concentration • Cooperative effects of a joint venture • Declaration

Detailed information of affected market is not required in Short Form CO, while it is required in the Normal Form CO. And market definition and market share are required in both Short Form CO and Normal Form CO.

Information to be provided (2/2)

2. Suggestions for China:

- To facilitate the informatization work of MOFCOM, we suggest use uniform Notification Form.
- Substantial information such as market definition and market share generally cannot be waived. Relevant market definition (including product market and geographic market) should be clear, and market share should also be provided as it may affect the applicability of simplified procedure. But as to the cases involving the establishment of an overseas JV without business in China, or purchase of shares or assets of a foreign company without business in China, if the parties do have difficulties in providing market share, they can apply for a waiver.
- Other non-substantial information such as market demand structure and supply structure may also be waived upon MOFCOM's consent based on the parties' application.
- Any other information that is indeed difficult to be provided by the parties may also be waived upon MOFCOM's consent based on the parties' application. The parties may also communicate with MOFCOM to determine the scope of information that should be submitted.

Form and content of the decision in Simplified Procedure (1/3)

1. EU practice:

(1) Publication of the fact of notification

- Information to be published in the Official Journal (OJ) of the European Union include names of merger parties, their country of origin, the nature of the merger, the economic sectors involved, and an indication that the merger may qualify for Simplified Procedure on the basis of the information provided by the notifying parties.

(2) Publication of the short-form decision

- Once cleared, EU Commission will publish the short-form decision in the OJ, and the decision will be published on DG Competition's Internet website for a limited period. The decision shall contain all the information of the merger case published in the Official Journal at the time of notification.

Form and content of the decision in Simplified Procedure (2/3)

2. Suggestion for China

(1) Notice of a case subject to Simplified Procedure

- If MOFCOM decides to apply Simplified Procedure to a notification, it should expressly write down this decision on the official acceptance notice to the notifying parties.

(2) Publication of cases subject to Simplified Procedure (1/2)

- ***Timing:*** *[One week]* after the official acceptance of a case subject to Simplified Procedure, MOFCOM should publish on its website the fact of application of Simplified Procedure and disclose essential information of the case.
- ***Content of publication:*** Names of the parties, nature of the case, industry involved and the indication that the case has been qualified for Simplified Procedure based on the statements provided by the parties.

(Note: The period in the brackets can be adjusted by MOFCOM as it considers appropriate.)

Form and content of the decision in Simplified Procedure (3/3)

(2) Publication of cases subject to simplified procedure (2/2)

• **Period of Publication**: *[Two weeks]*. During the publication period, the opinion seeking process can be closed if no objection raises from any third parties.

(Note: The period in the brackets can be adjusted by MOFCOM as it considers appropriate.)

(3) Seeking opinion from third parties

• For case subject to simplified procedure, MOFCOM can decide not to seek opinion from other government agencies, trade associations, competitors and consumers.

(4) Form of decision

• Written notice of the Decision should be issued to notifying parties.

Thank you!

Susan Ning

Email: susan.ning@cn.kwm.com

Website: www.kwm.com

KING & WOOD MALLESONS

24 October 2013
