

ALLEN & OVERY

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Sino-EU Workshop on Merger Review

中欧反垄断研讨会

Simplified Procedure

简易程序

Some thoughts from a practitioner on Procedure

从业者角度的一些想法



Why does the business community support a simplified procedure? 为什么业界支持简易程序



Why does a simplified procedure mean? 为什么工商业需要简易程序?



- **Criteria** for Simplified Procedure must be:

- 简易程序的标准:

- crystal clear (otherwise too much risk) 清楚了 (否则太多风险)
- objective, justifying the use of a simplified procedure (market shares, HHI) 客观, 说明为何应适用简易程序 (市场份额, HHI)
- predetermined in implementing measures 在执行措施中提前规定

- **Data** to be provided must be: 需提交的数据:

- clearly identified 清楚的界定
- limited and proportional to what is necessary for an efficient AML analysis (basic information on parties and concentration, market definition, market shares) 有限及一定比例的对开展有效反垄断分析必要的信息 (申报方集中的基本信息, 市场界定, 市场份额)
- consider granting waivers for other sections of the form 考虑免去申报表中的其他部分
- predetermined in implementing measures (clear sample form) 在执行措施中提前规定 (清楚的范表)

- **Review period** must be: 审查期应当:

- shorter – surely not longer than Phase 1 (considering shortening pre-acceptance period) 更短-不能长于阶段1
- predetermined in implementing measures 在执行措施中提前规定

- **Business Community** should not: 企业界不应当:

- refuse to answer the authority's questions 拒绝回答主管部门的问题
- expect that the authority will not “test” the parties' claim for a simplified procedure or could not reject it 期望主管部门不会“测试”申报方申请适用简易程序的主张或期望主管部门不会拒绝该主张
- decrease the level of cooperation as they would do in a normal proceeding 较正常程序来说减少合作的程度

- The **authority** may want to avoid: 主管部门应当避免:

- treating the pre-acceptance period as a purely administrative step (must resources for market analysis) 把立案前商谈作为单纯的行政步骤来对待 (应当为市场分析提供帮助)
 - unduly challenging the parties' claims* 不适当地质疑申报方的“主张”*
 - asking questions that would eventually require the same burden as in a normal proceeding* 提出某些问题, 该问题将最终使申报方承担和正常程序一样的负担*
 - meeting with parties unless the authority considers that the case does not qualify for a simplified procedure 与申报方开会除非主管部门认为该案不适用简易程序
 - changing its position after Phase 1 initiation (unless false or misleading information has been submitted) 在正式立案后改变决定 (除非提交了虚假或引人误解的信息)
 - letting external interference derail the process* 外界的干扰妨碍审查程序
- * unless based on genuine suspicions (to be disclosed with the parties) 除非基于向申报方披露的真实怀疑

Some suggestions from a practitioner 从业者的一些建议



Questions?
问题