



Session III – Timing in merger investigations

EU-China Competition Week

Chengdu, China

20 October 2014

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The views expressed are personal to the speaker

Overview

- *Legal deadlines under the EU Merger Regulation*
 - **Phase I**
 - **Phase II**
- *Possibilities for extension of the legal deadlines*
- *"Stop-the-clock" decisions*
- *Advantages and challenges of legal deadlines*

Phase I

Pre-notification

*Discussions on
jurisdiction,
draft Form COs,
start of market
investigation possible*

Notification

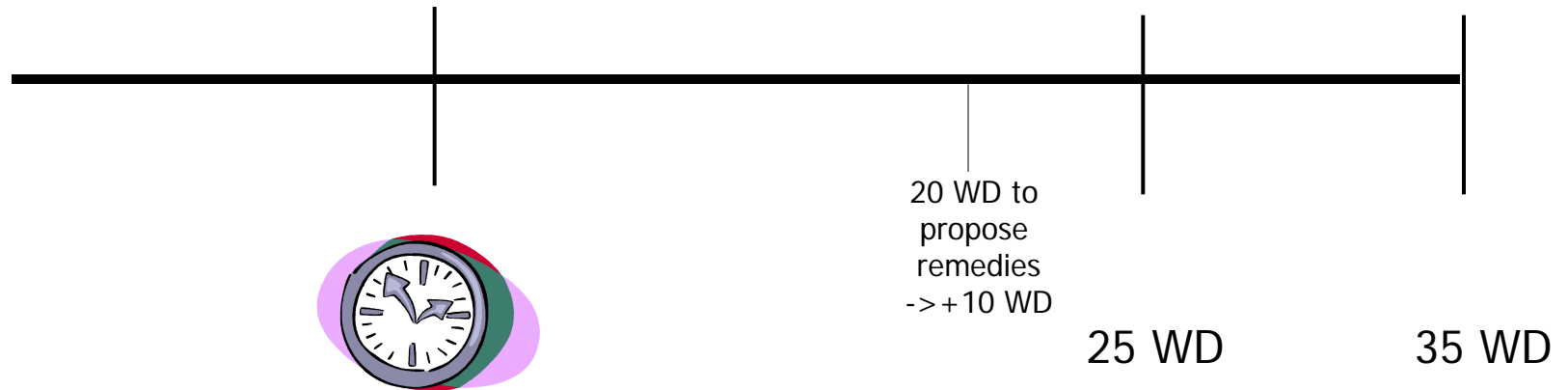
Decision

Art. 6(1)(b)
(Clearance)

Art. 6(1)(c)
(Phase II)

Art. 6(1)(c)
(Phase II)

Art. 6(2)
(Clearance with
remedies)



Phase II

Final Decision

Start of Phase II

6(1)(c) decision

Statement of Objections

6-8 weeks after 6(1)(c)

In-depth Investigation
4-6 weeks time

Hearing

Advisory
Committee

10 WD for parties
to reply to SO

65 WD to
propose
remedies

Art. 8(1)
(Clearance without remedies)
Art. 8(2)
(Clearance with remedies)
Art. 8(3)
(Prohibition)

Extension of legal deadlines

- *Incompleteness decision in Phase I (clock re-starts when Form CO complete)*
- *Remedies : 10 WD in Phase I; 15 WD in Phase II (if remedies submitted after day 55)*
- *Possibility of extension under Article 10(3) in Phase II:*
 - Extension with the agreement of the parties
 - Can be done more than once
 - 20 WD maximum
- *Stop-the-clock decision (essentially in Phase II)*

Stop-the-clock decision (1)

- *Legal deadline suspended when the Commission has to adopt a decision under Article 11(3) ("stop-the-clock decision")*
 - The information required by decision is necessary
 - The information has not been provided (or not provided in full) by the legal deadline in the request for information
 - Information was requested first through a request for information by simple letter under Article 11(2)
 - (rare) Alternatively, information was requested by a decision pursuant to Article 11(3) decision owing to circumstances for which one of the undertakings involved in the concentration is responsible

Stop-the-clock decision (2)

- *Time-limit suspended between:*
 - the expiry of the time-limit set out in the simple request for information and receipt of the complete and correct information; or
 - The expiry of the time-limit set out in the Article 11(3) decision and receipt of the complete and correct information
- *Examples of recent stop-the-clock*

Advantages and challenges of legal deadlines

- *Advantages of strict legal deadlines:*
 - Quick decision-making and clear planning (cooperation of other services)
 - Legal certainty and predictability
 - Leverage in remedy negotiations
- *Challenges of deadlines:*
 - Some investigative tools are resource- and time-intensive (key is anticipation and planning)
 - Some flexibility when key information is required for the assessment and more time is needed for thorough investigation (including regarding suitability of remedies): exceptional stop-the-clock decisions