

Timing issues in merger review

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I. Time Pressure

II. Risks under Time Pressures

III. Rules and Practices in China

IV. Suggestions

I. Time Pressure

M&A, by nature, is very time-sensitive. Both enforcement agencies and parties will face timing issues.

(i) Parties

window of opportunity: failure of transactions

financial loss:

(ii) Agencies

Statutory periods:

Internal timetables:

Pressure from parties:

Pressure from the outside:

II. Risks under Time Pressures

In particular, there are more risks for those cases which are complicated or have competition concerns under time pressures.

(i) Rely on biased information

Due to information asymmetry, new market in which case handlers don't have experience, etc.

(ii) Time-constraint on market investigation

Sufficient investigation and analysis could be difficult

(iii) Economic analysis

e.g., to simplify their economic models or reduce their econometric analyses.

(iv) Remedies

Under the statutory periods, it is difficult to make an overall assessment on the remedy proposals.

Up-front buyer problem:

(v) Rights of defense or information

(vi) Risk to fail to complete merge review

III. Rules and Practices in China

(i) **Strict time limit**

Statutory periods:

Phase 1, 30 days

Phase 2, 90 days

Phase 2 can be extended by 60 days under the following circumstances:

- (i) the parties agree to extend the time limit;*
- (ii) the documents or materials submitted are inaccurate and need further verification;*
- (iii) other significant events occurred after notification.*

Lack of “stopping the clock”

time-constraint:

natural days vs. working days: holidays

revoke and re-file: few cases

Short-staffed:

(ii) Advantages and disadvantages of rules on timing

Advantages: predictability

Disadvantages: lack of flexibility

(iii) Practices to cope with time-pressure

To encourage the parties to file as early as possible and carry out pre-notification consultation;

To formulate the criteria for simplified cases and encourage the parties to apply for publication on website;

To start market investigation on important issues at early stage;

To keep communication with the parties timely and efficiently;

A good internal organization (timetable, clear goals and communication, etc.)

IV. Suggestions

Pre-notification consultation:

“Stopping the clock”:

Positive cooperation from the parties:

More efforts made to improve efficiency :

Exchange “best practices” with other jurisdictions:

Thank you for your attention!

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