



Procedural matters in merger investigations

Simon VANDE WALLE

Case Handler
Unit C.5

EU-China Competition Week
October 2015

The views expressed are those of the speaker only and cannot be regarded as stating an official position of the European Commission.

Some abbreviations

- Council Regulation (EC) No 139/2004 ("Merger Regulation")
- Commission Regulation (EC) No 802/2004 ("Implementing Regulation")
- Commission Consolidated Jurisdictional Notice ("Jurisdictional Notice")
- Commission Notice on the rules for access to the Commission file ("Access to file notice")
- Best Practices on the conduct of merger control proceedings ("Best Practices")

Essential features

- Binding deadlines for decisions
- Safeguards to protect rights of defence of notifying parties
- Procedural rules laid down in different instruments
 - Institutional set-up
 - Flexibility to modify less important things more easily

Pre-notification

- Important part of the review process
- Helps avoid incomplete notifications
- Guidance in Best Practices:
 - Launched with Case Team Allocation Request (available on website)
 - Parties submit draft Form CO, possibly meetings
 - Case team normally reviews draft Form CO within five working days
 - Possibility to obtain waiver of requirement to provide certain information

Notification

- Merger Regulation: duty to notify concentrations above certain turnover thresholds (EU dimension)
- Jurisdictional Notice: detailed guidance on the concept of concentration and how to calculate turnover
- Implementing Regulation: how to notify (Form CO), which documents to submit
- Commission Communication: format and number of copies to submit

Notification – Form CO

- Annex to the Implementing Regulation
- If incomplete → declaration of incompleteness (Art. 5(2) Implementing Regulation)
- If inaccurate or misleading → considered as incomplete (Implementing Regulation, Art. 5(4)) + possible fines (Merger Regulation, Art. 14(1)(a))

Notification – Form CO

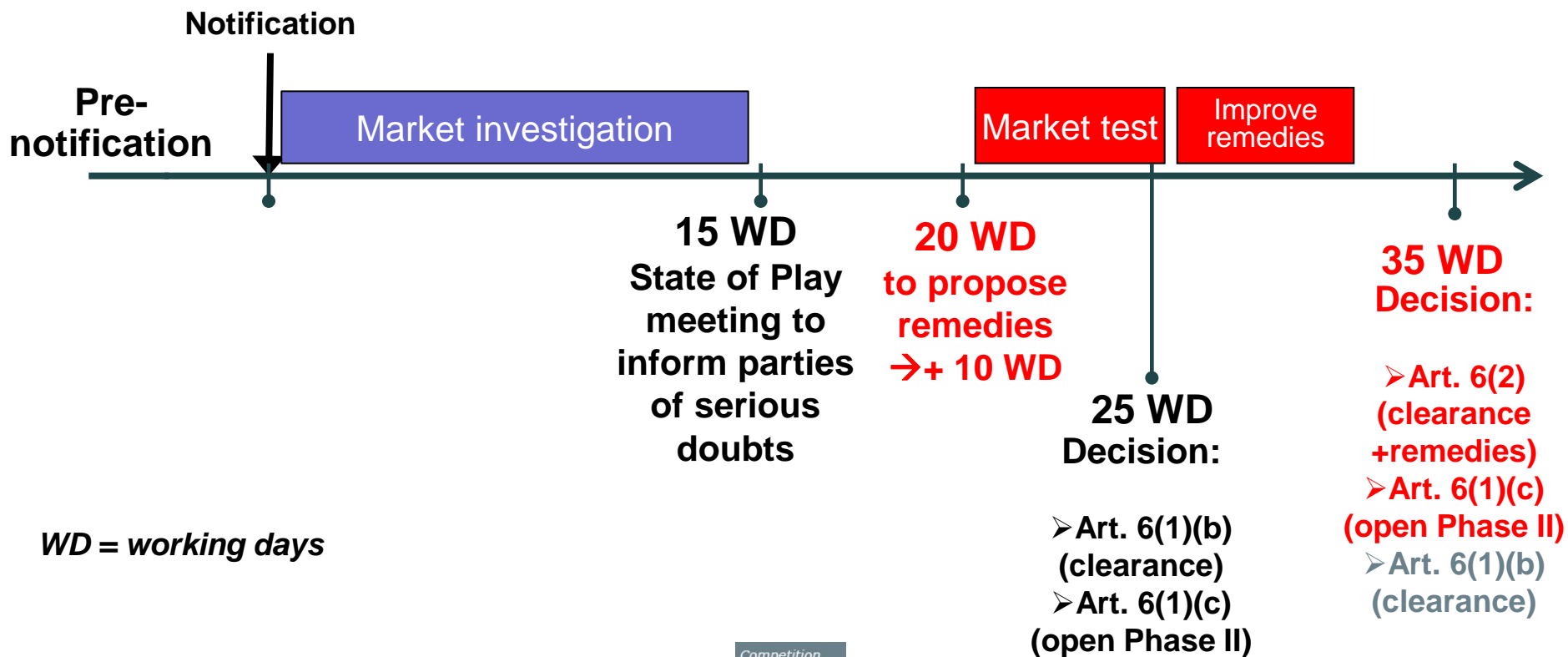
- Section 5.4 documents
- “affected markets” (section 6.3)
 - Horizontal relationship: 20% combined market share
 - Vertical relationship: 30% individual or combined market share
- “markets in which the operation may have a significant impact” (section 6.4)
 - 30% market share + potential competitor
 - 30% market share + important IP
 - 30% market share + closely related neighbouring market
- Contact details of competitors, customers, recent and potential entrants

Timelines

- 25 working days / 90 working days
- Extensions in case of remedies
- Extensions at the request or with the agreement of the parties (max. 20 working days)
- "Stop the clock" in case information is not provided

Phase I without remedies

with remedies



Phase II

