



Procedural rules and case handling DG COMP's experience

**EU China competition week
October 2016, Haikou**

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Outline of the presentation

- **Procedures and tools**
- **Organisation DG Comp's directorate on merger and antitrust**
- **Main principles**
- **Case studies**
 - Water sector in France.
 - ABF/GBI merger
 - Cement in Germany and Spain
 - An ongoing case : Beer and retail
- **Provisional Conclusion**



Procedural rules and case handling Procedures and tools (1)

- **Differences between merger and antitrust procedures**
 - Mergers: prospective assessment, strict time limits, triggered by parties, high number of cases/decisions.
 - Antitrust (article 101 and 102 TFUE) : Retrospective assessment, no time limits, triggered by Commission or complainants (except leniency), low number of cases.



Procedural rules and case handling- Procedures and tools(2)

- **However, similar assessment tools are used**
 - Guidelines on definition of the relevant market are defined and used for merger and antitrust.
 - Commitment procedures (article 9 of Regulation 1/2003) in antitrust is inspired by merger remedies.
 - Guidelines on application of Article 102 and Guidelines on horizontal or non-horizontal merger guidelines refer to the same concepts (barriers to entry, buyer power, foreclosure).
 - Comparable evolution : more economic assessment in mergers, effect-based approach in antitrust.



Organisation DG Comp's directorate on merger and antitrust

- **The example of Directorate E**

- 3 antitrust units : E1 (pharmaceutical products), E2 (industrial products) and the Food Task Force (food and retail) and one merger unit E4 (industry, mining and consumer goods).
- Headed by a Director M. Paul Csiszar.
- Regular discussions and sharing of experience
- Working together : "decloisonnement", exchange of staff

Procedural rules and case handling: Principles

- **If we find evidence of anticompetitive conduct in a merger case, we can use this evidence in an antitrust case but...**
 - Procedures have to be clearly separated (rights of defence).
 - Documents cannot be transferred from one merger file to an antitrust file.
 - Need to request again (or seize) these documents
 - Merger control may help to launch or shape antitrust investigation.
 - Antitrust investigation may help to focus the investigation



Procedural rules and case handling: Case study

- **Water sector in France (2008-2009)**
 - Several mergers notified in 2008-009 in water distribution in France (major players acquiring local companies)
 - Indications of cartels behaviour during the merger investigation (signalled by customers) with documents.
 - Cartel investigation launched in 2010 with downraids
 - No evidence found - Investigation closed in 2013.
 - Presumably documents were destroyed



Procedural rules and case handling: Case study

- **Merger ABF/GBI in yeast (2008)**
 - Merger between two of the three main yeast suppliers in France, Spain and Portugal
 - Indications of cartels behaviour during the merger investigation signalled by customers. Previous cartels fined in France and Turkey
 - Merger control found risk of creation or strengthening of coordinated effects in Spain and Portugal
 - Clearance with remedies – divestment of GBI's assets in Spain and Portugal, leading to the creation of a new independent player.



Procedural rules and case handling: Case study

■ Cement mergers in Germany and Spain (2013-2014)

- At the time of the mergers, ongoing cartel investigation as regards cement in Europe
- Two cement players, Holcim and Cemex, swapping assets in Germany, Spain and Czech Republic
- Concerns that the mergers will enable Parties to reach more easily terms of coordination.
- Both mergers investigated on coordinated effects : Risk considered high but no evidence found. Documents probably destroyed (retention policy).
- Both mergers cleared unconditionnally – because of market structure in Germany and Spain



Procedural rules and case handling: Case study

- An ongoing case : Beer and retail



Provisional Conclusion

- In DG Comp's experience, numerous interactions between antitrust and merger procedures and staff cooperate well.
- However, procedures have to remain separate
- Difficult to use same evidence in both procedures... and companies are more cautious in documents management.
- Dysfunctional market structures can be improved by merger control through remedies implementation... but only as far remedies are merger-specific.



Thanks!