

# MOFCOM Merger Workshop

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## Simplified Procedure The Bundeskartellamt Experience

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# I. No Formalized Approach

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## German Act Against Restraints of Competition:

Art. 40 – Two phase proceedings

- Phase 1 – deadline one month after notification => no competitive concerns => informal clearance letter, no decision
- Phase 2 – deadline four month after notification, initiated if no clear results in phase 1 or competitive problems => always substantiated decision

# I. No Formalized Approach

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- Uniform notification requirements for all merger applications (Art. 39)- very lean
  - Pre-notification contacts not required and not the rule
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- ⇒ All applications are posted on the homepage
    - ⇒ Notifying parties names
    - ⇒ Affected markets
    - ⇒ Date of notification

## II. Statistics

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- Average 1.600 merger applications/year
- Average 95 % cleared in phase 1
- App. 60 case handlers dealing with all merger cases (and else...)
- Average of 27 merger cases/case handler/year

=> Very efficient and lean procedure!

# Digression – Notification Requirements

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- ✓ Names, company seat and business activity of parties to the merger
- ✓ Overall structure of notifying parties, i.e. affiliates names, seat and business activity
- ✓ Turnover (aggregated figure) in Germany, EU, World
- ✓ Market share data, if share exceeds 20 % on a market

# III. Methodology of Phase 1

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- Appraisal strictly on a case by case basis
  - case handlers specialize in industry sectors – industry knowledge facilitates appraisal
- Two different (informal) categories of phase 1 cases
  - „fast track“ cases – max. 1 – 2 working days
  - „normal“ cases – up to four weeks

# III. Methodology of Phase 1

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- Categories eligible for **„fast track“**
  - Acquisition by investment funds without portfolio overlaps or up-/downstream relations
  - Acquisitions without or with marginal overlaps/up-/downstream market contacts
  - Change of control (joint to sole control)
  - Change from previously (merger-)controlled minority shareholding to control
  - No generalized market share „presumptions“

# III. Methodology of Phase 1

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- Methodology of „fast track“
  - Quick check of plausibility of data given with the notification
  - Usually no additional market research
  - Very short internal report focussing on formal applicability of the law – standard form – and brief explanation of non-existent competitive effects
  - Decision by circulation procedure



# III. Methodology of Phase 1

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- Methodology of „normal“ Phase 1 procedure
  - Quick check of plausibility of data given with the notification
  - Request of additional information to notifying parties
  - Short and informal market investigation
  - Internal report covering formal applicability and – in due detail – investigative results
  - Decision by circulation procedure

# IV. How to ....

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....check the plausibility?

- ✓ Check inherent logic of notification  
(do the figures add up; no affiliates on the target's market or up-/downstream; compatibility with past notifications...)
- ✓ Internet search  
(media coverage, homepages)
- ✓ Past cases  
(data given/investigated in former cases in line with merger application and expected developments)

# IV. How to ....

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....request additional information by the parties?

- ✓ Standard questions:
  - ✓ turnover breakdown according to all hypothetical markets to be investigated (products and regions)
  - ✓ Names and contact persons (with contact details!) of the 5/10 most important competitors and customers
    - ✓ differentiated by hypothetical product and regional markets
  - ✓ hand in existing market studies/publications
- ✓ Not so standard but useful: Internal files on market/preparation of the merger

## IV. How to ....

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...do a short and informal market investigation?

- ✓ Internet research
- ✓ Phone calls, phone calls, phone calls...
  - ✓ to trade associations
  - ✓ to major competitors
  - ✓ to major customers
- ✓ Informal information requests
  - ✓ by letter - very brief and comprehensive questions
  - ✓ by e-mail
- ✓ (on site visits)

## IV. How to ....

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...efficiently lay down the results internally?

- ✓ Standard forms for final reports
- ✓ Check list for formal criteria
- ✓ Enclose all e-mails, reports on phone conversations etc.
- ✓ Internal report as comprehensive summary, referral to notes on phone conversations etc.
- ✓ Save the gathered overall market knowledge in an accessible form
  - ✓ folder for market studies
  - ✓ data base for important/useful contact persons
  - ✓ date base with links to product markets, legal problems, parties to the merger etc.

# V. Results

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- ✓ Satisfied „Customers“
- ✓ Optimized use of experience from former cases
- ✓ Responsible use of external resources
- ✓ Responsible use of internal resources
- ✓ More time for the interesting cases!

# Questions?

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Thank you for your attention!



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