Organizing a merger investigation from the perspective of EU national competition authority: The EU experience II

MOFCOM

Alessandra Tonazzi, Special Advisor for International Affairs, Italian Competition Authority and Caroline Eggert Frydenberg, Head of Section, Danish Competition and Consumer Authority
**Agenda**

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1. The different stages of a merger case

- Pre-Notification
- Initial Review
- In-depth Review
- Notification
- Clearance decision
- Initiate in-depth
- Decision
- Transaction
2. Initiation of a merger investigation

» Allocation of caseteam

» Simple merger
  » 1 casehandler

» ”Normal” merger
  » Depends – but at least 1 lawyer and 1 economist (on average 4-5)
  » External advisors? Primarily used by the notifying parties
2.1. Initiation of a merger investigation – Pre-notification phase

» What can this phase be used for?

» Discuss with the parties and initiation of authority’s work:
  » Whether or not a planned transaction is a merger
  » What information is necessary for the actual notification
  » Preliminary discussions on market definitions, theories of harm, and potential remedies.
  » Start planning the handling of the notification
  » Start research

» IF parties make use of pre-notification, it may lead to a more efficient review of the merger; e.g. preventing in-depth analysis
3. Timing

» Time is of the essence

» Draft a case specific timeline ASAP

» Based on a standard – incl. mandatory deadlines and relevant tasks

**Examples of mandatory deadlines**

- If simplified notification
  ⇒ requirements met?
- Deadline for Phase I-decision/
  decision to initiate Phase II
- Deadline for Phase II-decision

**Examples of relevant tasks**

- Allocation of case team
- Stamp, date & acknowledge receipt
- Assess information in notification
  ⇒ complete? (e.g. paid filing fee, all the information required by the filing form submitted, the relevant documents required submitted, documents legible?)
  ⇒ jurisdiction?
  ⇒ the parties & their products/services
  ⇒ initiate market investigations
  ⇒ potential theories of harm
- Access to file requests (*i.e.* parties & non-parties requesting to see (some of) the authority’s case file)
- Issuance of Statement of Objections (*i.e.* the authority’s outline to the parties stating the identified competition issues)
## 4. EU or NCA?

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<tr>
<th>From EU to NCA</th>
<th>From NCA to EU</th>
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<tr>
<td><strong>Before notification</strong></td>
<td><strong>Before notification</strong></td>
</tr>
<tr>
<td>✓ The notifying parties may request referral</td>
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</tr>
<tr>
<td><strong>After notification</strong></td>
<td><strong>After notification</strong></td>
</tr>
<tr>
<td>✓ NCA may request referral</td>
<td>✓ NCA may request referral if the concentration affects trade between Member States</td>
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5. Using files/information from previous mergers in same sector

» Sectors with frequent mergers (and antitrust cases)
  » Gathering information in general
  » Updating when assessing cases
  » Using information re market players from previous cases, if applicable
  » Using analysis from previous cases, if applicable

» Danish experience:
  » Investigative offices organized by sector (including merger review)
  » Often the same case team will review the mergers in a sector
  » E.g. the Danish banking sector
    » Every year collecting relevant turnover information
    » Often using information and analysis from recent cases in the banking sector

» Italian experience:
  » Investigative offices organized by sector (including merger review)
  » Often the same case team will review the mergers in a sector (example banking recent wave of mergers in the Italian market)
6. Multiple notifications – international cooperation

» European Competition Authorities (ECA)
  » New Best Practices
    » Identifies key steps where NCAs should cooperate
      » Exchanging information re timing
      » Exchanging information re market definition
      » Exchanging information re remedies

» Danish experience:
  » Nordic cooperation agreement
    » May discuss and exchange confidential information and analysis in merger cases
    » Limited experience
    » Normal procedure requesting the information from the parties themselves

» Italian experience:
  » Routinely co-operation, both informal and formal, with both EC and other NCAs on matters such as timing and substantive analysis
  » Limited experience in co-operation on remedies
Thank you for your attention

Alessandra Tonazzi, Special Advisor for International Affairs, Italian Competition Authority
E-mail: alessandra.tonazzi@agcm.it and tel. no. +39 06 85821472

and

Caroline Eggert Frydenberg, Head of Section, Danish Competition and Consumer Authority
E-mail: carf@kfst.dk and tel.no. +45 41 71 50 52