



DANISH COMPETITION AND CONSUMER AUTHORITY

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

MOFCOM

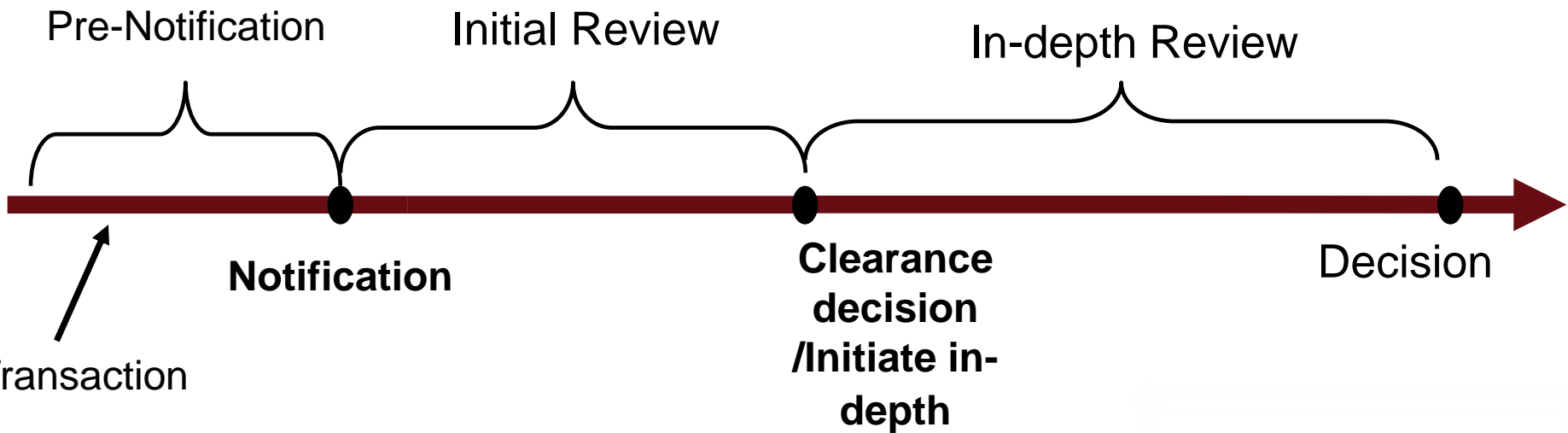
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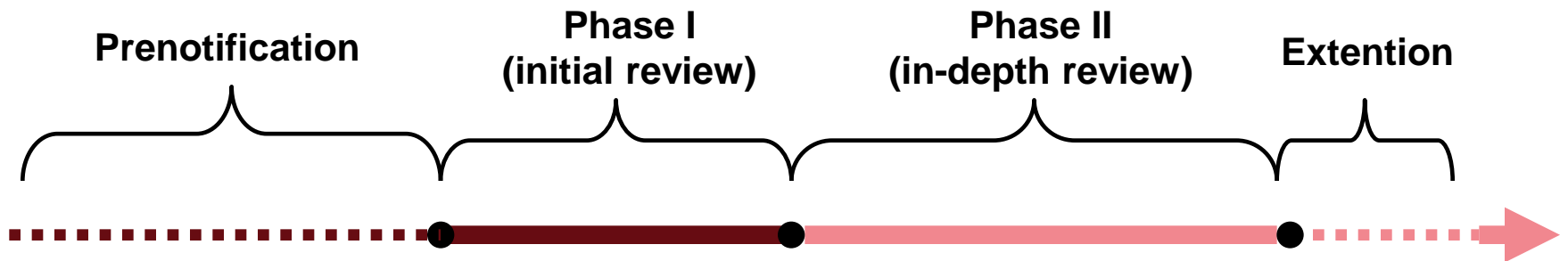
Agenda

1	The different stages of a merger case
2	Initiation of a merger investigation
3	Timing
4	EU or NCA?
5	Using files/information from previous mergers in same sector
6	Multiple notifications – international cooperation

1. The different stages of a merger case



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?

From EU to NCA	
Before notification	After notification
➤ The notifying parties may request referral	➤ NCA may request referral

From NCA to EU	
Before notification	After notification
➤ The notifying parties may request referral	➤ NCA may request referral if the concentration affects trade between Member States

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



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Thank you for your attention

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