



Recent developments in EU Merger Control

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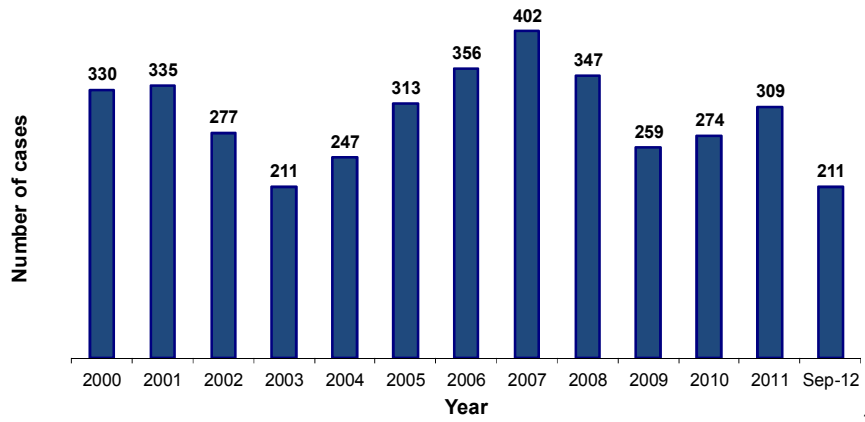
Agenda

- Snapshot at current EU merger control
- SIEC test and effects-based approach: theory and practice
- Role of economics
- Quantitative analysis
- Conclusion

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Yearly number of cases (2000 – Sep 2012)



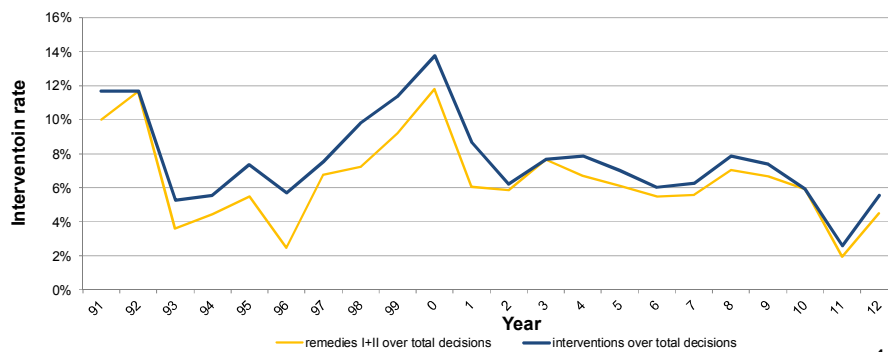
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Enforcement results - interventions

Number of interventions over number of notified cases (remedies phase I or II, prohibitions, withdrawals)



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Significant cases (2010-2012)

Prohibitions <i>M.5830 OLYMPIC / AEGEAN AIRLINES</i> <i>M.6166 DEUTSCHE BÖRSE / NYSE EURONEXT</i>	Phase I clearances subject to conditions (Art. 6(2)) <i>M.5650 T-MOBILE / ORANGE / UK JV</i> <i>M.5655 SNCF / LCR / EUROSTAR</i> <i>M.5669 CISCO / TANDBERG</i> <i>M.5721 OTTO / PRIMONDO</i> <i>M.5865 DB / ARRIVA</i> <i>M.5778 NOVARTIS / ALCON</i> <i>M.5661 ABBOTT / SOLVAY PHARMA</i> <i>M.5756 DFDS / NORFOLK</i> <i>M.5927 BASF / COGNIS</i> <i>M.5865 TEVA / RATIOPHARM</i> <i>M.5953 RECKITT BENCKISER / SSL</i> <i>M.5978 GDF / INTERNATIONAL POWER</i> <i>M.5984 INTEL / MCAFEE</i> <i>M.6093 BASF / INEOS / STYRENE JV</i> <i>M.6258 TEVA / CEPHALON</i> <i>M.6447 IAG / BMI</i> <i>M.6455 SCA / GEORGIA-PACIFIC EUROPE</i> <i>M.6459 SONY et al. / EMI MUSIC PUBLISHING</i> <i>M.6503 LA POSTE / SWISS POST / JV</i> <i>M.6512 DS SMITH / SCA PACKAGING</i> <i>M.6611 ARLA FOODS / MILK LINK</i>
Phase II clearances subject to conditions (Art. 8(2)) <i>M.5675 SYNGENTA / MONSANTO SUNFLOWER SEED BUSINESS</i> <i>M.5658 UNILEVER / SARA LEE BODY CARE</i> <i>M.6203 WESTERN DIGITAL IRELAND / VIVITI TECHNOLOGIES</i> <i>M.6266 J&J / SYNTHES</i> <i>M.6458 UNIVERSAL MUSIC GROUP / EMI MUSIC</i> <i>M.6286 SÜDZUCKER / ED&F MAN</i> <i>M.6410 UTC / GOODRICH</i>	
Phase II unconditional clearances <i>M.5907 VOTORANTIM / FISCHER / JV</i> <i>M.6101 UPM / MYLLYKOSKI AND RHEIN PAPIER</i> <i>M.6106 CATERPILLAR / MWM</i> <i>M.6214 SEAGATE TECHNOLOGY / SAMSUNG HDD BUSINESS</i> <i>M.6314 TELEFONICA UK / VODAFONE UK / EVERYTHING EVERYWHERE / JV</i>	
Phase II withdrawals <i>M.5969 SCJ / SARA LEE</i> <i>M.6362 CIN / TIRRENIA BUSINESS BRANCH</i>	

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SIEC test: Principles

- SIEC test:
 - Encompasses dominance – and more
 - Recital 25: also unilateral effects without dominance
 - Coordinated effects in principle unchanged
- Focus on the analysis of economic effects
 - More limited importance of structural factors (market definition and shares, etc.)
 - Impact on the competitive constraints in a market (substitution patterns, maverick, etc.)

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SIEC test: General impact in practice

- High degree of continuity in enforcement
 - Commission had already started focussing analysis on effects before introduction of SIEC test
 - Gradual improvement of the review
 - Realistic approach to economic effects
- No increase in intervention rate after introduction
 - Intervention rate stable
 - SIEC test influenced analysis "in both directions"
 - Targeted interventions

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Examples for application of SIEC test

- "Gap cases" – particularly important competitors (all approved subject to commitments)
 - Fortis/ABN Amro (2007)
 - Linde/BOC (2006)
 - T-Mobile/tele.ring (2006)
- Cases with differentiated (retail) products (both approved subject to commitments)
 - Kraft/Cadbury (2010)
 - Unilever/Sara Lee Body Care (2010)

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Role of economics in an individual case

- Economic analysis as an important tool in assessment
 - Conceptual/theoretic
 - Quantitative/empirical
 - Assessment based on concepts codified in Commission's guidelines
- Increased importance of economic analysis in practice
- Conceptual value added:
 - Guide the investigation
 - Also in evidence collection (qualitative and quantitative)

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Examples of cases where economic analysis played a prominent role

- TomTom / Tele Atlas (2008)
- Intel / McAfee (2011)
- Western Digital / Hitachi Storage (2011)
- Universal / EMI Music (2012)

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Quantitative analysis in EU merger control

- Quantitative analysis endorsed by Court (RyanAir)
- In practice:
 - Quantitative and qualitative evidence complements
 - Not substitutes
- Results of quantitative analysis to be:
 - Seen in the context of case
 - Integrated with all other (qualitative) evidence

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Conduct quantitative analysis in an individual merger case?

Some criteria to decide:

- Size of a case and status (time available)
- Relevant identifying events in history (variations)
- Availability of good data (quality, amount)

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Important pitfalls of quantitative analysis

- Underestimate data problems
- Overestimate possible analysis within deadlines

Possible solutions:

- Engage as early as possible
 - Including in dialogue between parties and DG competition focussed on quantitative analysis
- Planning (parties and authority; internal)
- Summary of current thinking: "Best practices for the submission of economic evidence and data collection"

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Costs and benefits of quantitative analysis

- A case needs to fulfil conditions to be suitable for data intensive, quantitative methods
- If case suitable, Commission experience is that quantitative analysis extremely helpful; significant added value – also for parties
- If case not suitable, costs of analysis might exceed benefits
- Always fall-back option to rely on qualitative analysis only, on the basis of sound economics

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Conclusion

- Stable and mature framework for EU merger control
- SIEC test balanced and effects-based (incl. efficiencies)
- Guidelines and Commission practice give legal certainty
- High continuity while further developing assessment – targeted interventions
- Main future challenges as always:
 - High complexity of cases
 - Review wealth of evidence within strict deadlines
- Data analysis helpful evidence, but just one source

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Thank you

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