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Study on Merger Control Regulation in EU

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Abstract: The merger control regulation of EU is an achievement that member states yield to parts of sovereignty in order to defense monopoly, and economic concentration in European Common market. It not only reduces the conflicts among the member states' national law, but also effectively take Precautions against the creation of monopoly and market power in European common market. Now The EU merger control regulation has been a weapon that European Commission frequently apply in safeguarding competition order, which has lead to a significant influence in international market. The focus of this paper is the merger control regulation in the EU. Contents include the history of merger control regulation in the EU, definition of merger control, basic principles, authorities of EU merger control, notification, merger control Proceedings and merger remedies.

Keywords: Merger control; Concentration; ECMR; Notification; Merger remedies

1. Introduction

There are several reasons for firms to engage in Mergers and acquisitions (M&A).M&A is a common method that enterprises choose, in order to make profit and sustain their viability and profitability over time.M&A consolidates the ownership and control of business assets. Further reasons for enterprises engage in M&A include efficiencies arising from M&A, and the tendency of some countries to endorse the concept of "national champions". In addition, M&A provides the means to an enterprise to exit the industry while at the same time reap a monetary reward or compensation for the risks and the initial investments. Furthermore, M&A may also satisfy the ambitions of executives for more power and greater control. [1].

M&A constitutes a major potential means of restructuring, allowing a more efficient allocation of resources as market conditions and firm-specific capabilities change over time. This can enhance the competitiveness of the merging firms, leading to increased competition within the industry concerned and improved competitiveness of the industry on the world phase. Potentially, both consumers and producers can ultimately gain from that restructuring. However, M&A also dampen the competitive process, by reducing the number of effective competitors, by softening competition, by impeding entry, and by reducing the incentives to innovate. This can harm both domestic consumers and international competitiveness. [2].

The purpose of merger control lies in sustaining an effective and well-functioning internal market by effectively ensuring that reorganizations in the market will not induce an adverse impact on competition.

The focus of this paper is on the merger control in the EU. Contents include the history of merger control regulation in the EU, definition of merger control, basic principles, notification, the assessment of M&A and merger remedies.

2. History of Merger Control Regulation in the EU

As early as the establishment of ESCS (the EU's prototype), there were provisions of antitrust and cartels, without provision of merger. In order to establish a common market full of comprehensive economic cooperation in Europe, Treaty of European Community was signed in 1957.The original EC treaty did not include any specific provision for merger control. Articles 81 TEC (Article 101 TFEU) and Articles 82 TEC (Article 102 TFEU) focus on controlling the behaviour of undertaking rather than dealing with M&A. The Commission sought to persuade the Council to enact a merger control regulation, while at the same time attempted to apply Articles 81 TEC and Articles 82 TEC to prevent conduct arising from some M&A that had an adverse impact on competition. The application of Articles 81 TEC and Articles 82 TEC on M&A entails certain drawbacks. Articles 81 TEC can not apply: tacit coordination is not prohibited by the article. Furthermore, Articles 81 TEC is not applicable to agreements whose purpose is the acquisition of total or partial ownership of an enterprise or the reorganization of the ownership of enterprise. As far as Articles 82 TEC is concerned, its shortcomings relate to the fact that it applies to concentrations already enjoying a dominant position. A transaction that creates a dominant position, as may be the case with a M&A, falls outside the ambit of Articles 82 TEC. In addition, concentration may qualify for examination under a number of national merger control system .Multiple notification of the same transaction increases legal certainty, effect and cost for undertakings and may lead to conflicting assessments.

Motivated by such shortcomings, the Council adopted Council Regulation 4046/89(original ECMR) on 21 December 1989. This regulation came into force on 21 September 1990.The regulation became one of the three pillows of EU competition law, together with Article 85 TEC and Article 86 TEC.

Original ECMR has been amended for several times. The first amendment is in 1997, in which the concept of joint enterprise was amended. The second amendment, which is also the latest amendment, is Council Regulation (EC) No139/2004 of 20 January 2004 on the control of concentrations between undertakings. In the meanwhile, Commission Regulation amending Regulation (EC) No 802/2004 implementing Council Regulation (EC) No139/2004 on the control of concentrations between undertakings was signed, too. These regulations came into force on 1 May, 2004. The most important difference between the recast ECMR and original ECMR is the change of substantive legal test from the traditional dominance test to the SIEC test. Apart from substantive reforms, procedural and jurisdictional reforms were adopted in the recast ECMR[3].

Recently, Rules applicable to merger control mainly include Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings, Commission Regulation (EC) No 802/2004 of April 2004 implementing Council Regulation (EC) No 139/2004 amended by Commission Regulation (EC)No 1033/2008 of 20 October 2008 and its annexes, some notices and guidelines. Besides, DG competition also provide several best practice guidelines, which is of no legal validity, but helpful for legal and business community.

3. Definition of Merger

Two or more companies combine together, generally by offering the stockholders of one company securities in the acquiring company in exchange for the surrender of their stock. This is the original definition of merger. However, the antitrust law does not care to way of enterprises combination, it focuses on the negative influence on the competition. The term “merger” in antitrust law covers all the situations where an enterprise can produce a dominant influence on another enterprise. In EU competition law, the term “concentration” is used instead of merger. Though the both terms have different meaning in economics, they share the same meaning in EU merger control regulation. In addition, the original name of EC control regulation is European Community Merger Regulation. The definition of Concentration in 139/2004 is as following. Firstly, a concentration shall be deemed to arise where a change of control on a lasting basis result from:(a) the merger of two or more previously independent undertakings or parts of undertakings, or (b) the acquisition, by one or more persons already controlling at least one undertaking, or by one or more undertakings, whether by purchase of securities or assets, by contract or by any other means, of direct or indirect control of the whole or parts of one or more other undertakings.

Secondly, control shall be constituted by rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking. Finally, the creation of a joint venture performing on a lasting basis all the functions of an autonomous economic entity shall constitute a concentration [4].

The term “concentration” includes M&A and creation of a joint venture. It is expedient to define the concept of concentration in such a manner as to cover operations bringing about a lasting change in the control of the undertakings concerned and therefore in the structure of market. DG competition considers that the core element of merger is the issue of control. The purchase of stock is not sufficient, without getting the control of the company. The decisive element is the veto power of shareholder. If minority shareholders can change the decision of majority shareholders, the minority shareholders control the enterprise.

4. Basic Principles and Features of EU Merger Control

The main principles and features of EU merger control include the following 4 points:

Firstly, concentrations with a Community dimension defined in this Regulation shall be notified to the Commission prior to their implementation and following the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest.

Secondly, the Directorate-General for competition undertakes the obligation of examination of notification. DG shall examine the notification as soon as it is received and make a decision. Though prior notification has a time-limit, which is a shortcoming, it gives a certain degree of certainty to enterprises. Those enterprises can foresee the time of exam.

Thirdly, the Commission should be given exclusive competence to apply this Regulation, subject to review by the Court of Justice. The Member States should not be permitted to apply their national legislation on competition to concentrations with a Community dimension, unless this Regulation makes provision therefore. The relevant powers of national authorities should be limited to cases where, failing intervention by the Commission, effective competition is likely to be significantly impeded within the territory of a Member State and where the competition interests of that Member State cannot be sufficiently protected otherwise by this Regulation.[6]

Fourthly, the importance of substantive test in the assessment of merger is immense.SIEC test is a combination of original dominance and SLC test. The new test is outlined in Article 2(3)of the Recast ECMR, which state that "A concentration which would not significantly impede effective competition in the common market or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position, shall be declared compatible with the common market. Otherwise, it shall be declared incompatible with the common market" [5].

Fifthly, the EU merger control system is a administration system. On one hand, The Anti - monopoly Authority have quasi-legislative powers and quasi-judicial powers. For example, the Commission is competent to make rules of merger control, investigate, prosecute and judge. This system greatly improves the efficiency of the Commission in merger control. On the other hand, the Commission shall subject to hearing procedure, judicial review of the court, which may ensure that the Commission legitimately exercise its powers.

Finally, the whole system of EU merger control is based on evaluation of competition. DG competition make a decision, only considering the factors of competition, instead of politics or other aspects. The Council and Parliament share the final say on new EU law proposed by the commission.

5. Authorities of EU Merger Control

5.1. The European Council

The European Council, also informally known as the EU Council, this is where national ministers from each EU country meet to adopt laws and coordinate policies. It's the apex of EU authority. There are no fixed members .At each Council meeting, each country sends the minister for the policy being discussed. Both the original and recast ECMR come out in this way.

5.2. The European Commission

The European Commission is one of the main institutions of the European Union. It represents and upholds the interests of the EU as a whole. It drafts proposals for new European laws. It manages the day-to-day business of implementing EU policies and spending EU funds.

Two of the most important functions of the Commission are proposing new laws and enforcing European law. The Commission is the enforcement agency of EU competition law, and is liable for merger control

The Commission was divided into different directorates generals. The Directorate General which is liable for merger control is called the forth DG or DG competition. There are 7 directorates under each DG and several units under each directorate. There is a commissioner out of the 20 commissioner who is only responsible for competition matters. As to merger control, MTF (Merger Task Forces) is liable. There are 4 operating units in MTF, every operating unit has 8 to 9 case-handlers. From the structure of knowledge, the percentage of staffs with law and economic background is half and half.

5.3. The Hearing Officers

The position was set according to Article 18 of Merger regulation in 1982, aiming to respect the right of defense of parties involved. According to Article 18,if the Commission is going to take action against the parties involved in merger, it shall inform the parties of right of hearing. The implement of merger regulation in 1998 ruled the triangular and other meetings, procedure of hearing, professional secrecy. In May, 2001, the commission strengthens the power of the hearing officers. From then on, the hearing officers did not belong to DG competition any more, they only listen to the orders from the Commission.

6. Notification

6.1. Pre-notification

In DG Competition's experience the pre-notification phase of the procedure is an important part of the whole review process. DG Competition will therefore always give notifying parties and other involved parties the opportunity, if they so request, to discuss an intended concentration informally and in confidence prior to notification.

Pre-notification contacts provide DG Competition and the notifying parties with the possibility, prior to notification, to discuss jurisdictional and other legal issues. They also serve to discuss issues such as the scope of the information to be submitted and to prepare for the upcoming investigation by identifying key issues and possible competition concerns at an early phase.

Pre-notification discussions are held in strict confidence. The discussions are a voluntary part of the process and remain without prejudice to the handling and investigation of the case following formal notification. However, the mutual benefits for DG Competition and the parties of a fruitful pre-notification phase can only materialize if discussions are held in an open and co-operative atmosphere, where all potential issues are addressed in a constructive way.

Pre-notification contacts should preferably be initiated at least two weeks before the expected date of notification. The extent and format of the pre-notification contacts required is, however, linked to the complexity of the individual case in question. In more complex cases a more extended pre-notification time limit may be appropriate and in the interest of the notifying parties. In all cases it is advisable to make contact with DG Competition as soon as possible as this will facilitate planning of the case.[7]

6.2. Persons Entitled to Submit Notification

To ensure effective control, undertakings should be obliged to give prior notification of concentrations with a Community dimension following the conclusion of the agreement, the announcement of the public bid or the acquisition of a controlling interest.

Notification shall be submitted by the persons or undertakings referred to in Article 4(2) of regulation (EC) No139/2004, "A concentration which consists of a merger within the meaning of Article 3(1)(a) or in the acquisition of joint control within the meaning of Article 3(1)(b) shall be notified jointly by the parties to the merger or by those acquiring joint control as the case may be. In all other cases, the notification shall be effected by the person or undertaking acquiring control of the whole or parts of one or more undertakings."

Where notifications are signed by representatives of persons or of undertakings, such representatives shall produce written proof that they are authorized to act.

Joint notifications shall be submitted by a joint representative who is authorized to transmit and to receive documents on behalf of all notifying parties.

6.3. Submission of Notification

Notifications shall be submitted in the manner prescribed by Form CO as set out in Annex I. Under the conditions set out in Annex II, notifications may be submitted in Short Form as defined therein. Joint notifications shall be submitted on a single form.

The supporting documents shall be either originals or copies of the originals; in the latter case the notifying parties shall confirm that they are true and complete.

Notifications shall be in one of the official languages of the Community. For the notifying parties, this language shall also be the language of the proceeding, as well as that of any subsequent proceedings relating to the same concentration. Supporting documents shall be submitted in their original language. Where the original language is not one of the official languages of the Community, a translation into the language of the proceeding shall be attached.

6.4. Information and Document to be Provided

Notifications shall contain the information, including documents, requested in the applicable forms set out in the Annexes. The information shall be correct and complete.

The Commission may dispense with the obligation to provide any particular information in the notification, including documents, or with any other requirement specified in Annexes I and II where the Commission considers that compliance with those obligations or requirements is not necessary for the examination of the case.

The Commission shall without delay acknowledge in writing to the notifying parties or their representatives receipt of the notification and of any reply to a letter sent by the Commission

6.5. Effective Date of Notification

Notifications shall become effective on the date on which they are received by the Commission. Where the information, including documents, contained in the notification is incomplete in any material respect, the Commission shall inform the notifying parties or their representatives in writing without delay. In such cases, the notification shall become effective on the date on which the complete information is received by the Commission[8].

7. Merger Control Proceedings

7.1. The First Phase

As soon as the EU Commission received the notification, he will publish the notification on EU Official Journal and inform member states of this notification in 3 days. The review time limit of first phase is 25 working days, according to 139/2004.

The main purpose of first phase is to determine whether to merger is compatible with the common market.

After preliminary investigation, the Commission can make three kinds of decision. According to Article 6 of 139/2004, firstly, when the Commission concludes that the concentration notified does not fall within the scope of this Regulation, it shall record that finding by means of a decision. Secondly, when the Commission finds that the concentration notified, although falling within the scope of this Regulation, does not raise serious doubts as to its compatibility with the common market, it shall decide not to oppose it and shall declare that it is compatible with the common market. A decision declaring a concentration compatible shall be deemed to cover restrictions directly related and necessary to the implementation of the concentration. Finally, where the Commission finds that the concentration notified falls within the scope of this Regulation and raises serious doubts as to its compatibility with the common market, it shall decide to initiate proceedings.

So far, 95% of notifications were ended in the first phase, only less than 5% of them were reviewed in the second phase.

7.2. The Second Phase

For those mergers which may be incompatible with common market, the Commission shall conduct a comprehensive, thorough and meticulous review. The second phase is also called the substantive review phase.

Together with 139/2004, Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings came into force. This guideline provides an framework for review in the second phase (Figure 1).

The second phase is the main procedure in the antitrust review, the time limit is 90 working days. If the enterprise submits a commitment 55 working days after the start of the second phase, the time limit shall be extended to 105 working days.

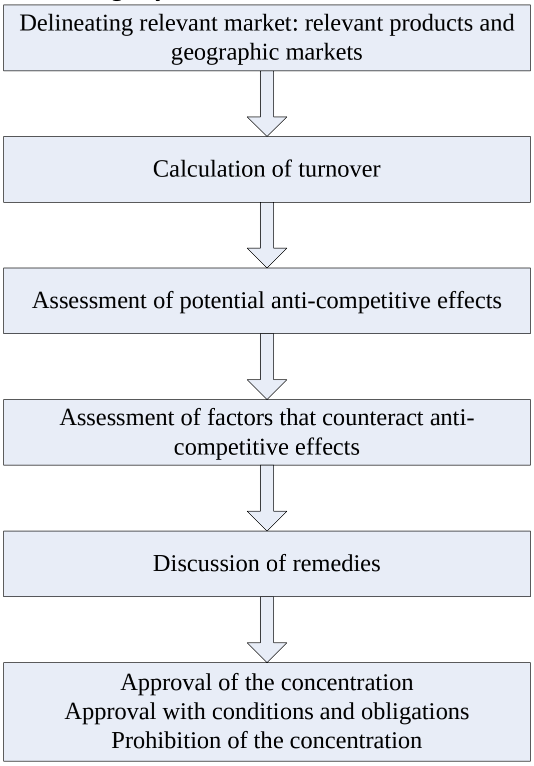

Figure 1. The process of substantive antitrust review of M&A

After the substantial review, the Commission can also make three kinds of decision. Firstly, if the Commission thinks a concentration would not significantly impede effective competition in the common market, he shall make approve the concentration. Secondly, if the Commission thinks a concentration would not significantly impede effective competition in the common market after the enterprise's submission of commitment, he shall approve the concentration. Thirdly, if the Commission thinks the concentration would significantly impede effective competition, in the common market or in a substantial part of it, he shall prohibit the concentration.

7.3. Remedies Discussions

When the parties are informed that the Commission intends to maintain in its final decision that the concentration raises competition concerns for a specific market, it is for the parties to propose commitments.

As stated above, the Commission in both phase I and phase II, in addition to providing a forum for discussing issues related to the investigation also serves to discuss possible remedy proposals. Detailed guidance on the requirements for such proposals is set out in the Commission Notice on remedies acceptable under Council Regulation (EEC) No 4064/89 and under Commission Regulation (EC) No 447/98. In particular, the Remedies Notice sets out the general principles applicable to remedies, the main types of commitments that have previously been accepted by the Commission, the specific requirements which proposals of remedies need to fulfill in both phases of the procedure, and guidance on the implementation of remedies. As regards the design of divestiture commitment proposals, the notifying parties are advised to take due account of the Commission's "Best Practice Guidelines on Divestiture Commitments".

Although it is for the notifying parties to formulate suitable remedies proposals, DG Competition will provide guidance to the parties as to the general appropriateness of their draft proposal in advance of submission. In order to allow for such discussions, a notifying party should contact DG Competition in good time before the relevant deadline in Phase I or Phase II, in order to be able to address comments DG Competition may have on the draft proposal.[9]

7.4. Legal Consequences of Violation of Review Procedure

Merger control procedures are mandatory for all concentrations with a Community dimension, just as notification. Such concentrations shall not be implemented until it has been declared compatible with the common market pursuant to a Commission decision. According to relevant articles in EU merger control regulation, the Commission may require the undertaking concerned to dissolve the concentration, in particular through the dissolution of the merger or the disposal of all the shares and assets acquired, so as to restore the situation prevailing prior to the implementation of the concentration; in circumstance where restoration of the situation prevailing before the implementation of the concentration is not possible through dissolution of the concentration, the Commission may take any other measure appropriate to achieve such restoration as far as possible. Besides, the Commission may by decision impose fines not exceeding to 10% of the aggregate turnover of the undertaking concerned. In fixing the amount of the fine, regard shall be had to the nature, gravity and duration of the infringement.

8. Merger Remedies

This part provides an overview of the various types of remedy and their characteristics. A diagrammatic representation of the universe of merger remedies is shown below. Remedies are conventionally classified as either structural or behavioral. The basis of this classification is whether the remedy changes the market structure or limit enterprises' behavior. This basic classification is determined by the merger control itself. Unlike monopoly agreement and abuse of dominant market position, merger control focus on the change of market structure caused by merger, which may have an anti-competitive effect. For example, if there are only two enterprises in a relevant market, the merger of the two enterprises will certainly eliminate the competition in the market. Structural remedies are generally one off measures that seek to restore or maintain the competitive structure of the market. Behavioral remedies are normally ongoing measures that are designed to regulate or constrain the behavior of merger parties. Some remedies, such as those relating to access to intellectual property rights, may have features of structural or behavioral remedies depending on their particular formulation. Structural remedies are the fundamental remedies. The conditions of structural remedies are specific and certain. The effect of structural remedies is long-term. Meanwhile the cost is relatively low. Behavioral remedies focus on controlling the act of merger parties. It's a persistent, long-term process. So the cost is high. The merger remedy options can proposed by the merger parties or the authority in different countries. The authority will generally only use behavioral remedies as the primary source of remedies in a merger review where structural remedies are not feasible, or where the SLC is expected to have a short duration, or behavioral measures will preserve substantial relevant customer benefit that would be largely removed by structural measures.

8.1. Structural Remedies

Structural remedies are a generic term. Divestiture is the most frequently used way as a structural remedy. Structural remedies can be replaced by divestiture or divestiture commitment.

In essence, a divestiture seeks to remedy a substantial lessening of competition (SLC) by either creating a new source of competition through disposal of a business or set of assets to a new market participant or strengthening an existing source of competition through disposal to an existing market participant independent of the merger parties. To be effective in restoring or maintaining rivalry in a market where the authority has decided that there is a SLC, a divestiture remedy should involve the sale of an appropriate divestiture package to a suitable purchaser through an effective divestiture process.

8.2. Divestiture Risks

Divestitures may be subject to a variety of risks that may limit their effectiveness in addressing an SLC. It is helpful to distinguish between three broad categories of risks that may impair the effectiveness of divestiture remedies as follows:

Composition Risks-these are risks that the scope of the divestiture package may be too constrained or not appropriately configured to attract a suitable purchaser or may not allow a purchaser to operate as an effective competitor in the market.

Purchaser Risks-these are risks that a suitable purchaser is not available or that the merger parties will dispose to a weak or otherwise inappropriate purchaser.

Asset Risks-these are risks that the competitive capability of a divestiture package will deteriorate before completion of divestiture, for example through loss of customers or key members of staff.

The incentives of merger parties may serve to increase the risks of divestiture. Merger parties may have an incentive to make divestiture to weaker competitors of less competitive assets or businesses and may also allow the competitiveness of divestiture packages to decline during the divestiture process. Divestiture risks can be overcome, at least in part, through the design of the divestiture trustees. [10]

8.3. Divestiture of a Viable and Competitive Business

The divested activities must consist of a viable business that, if operated by a suitable purchaser, can compete effectively with the mergered entity on a lasting basis and that is divested as a going concern. For the business to be viable, it may also be necessary to include activities which are related to markets where the Commission did not identify competition concerns if this is required to create an effective competitor in the affected markets.

The business has to include all the assets which contribute to its current operation or which are necessary to ensure its viability and competitiveness and all personnel which is currently employed or which is necessary to ensure the business' viability and competitiveness. Personnel and assets which are currently share between the business to be divested and other businesses of the parties, but which contribute to the operation of the business or which are necessary to ensure its viability and competitiveness, also have to be included. Otherwise, the viability and competitiveness of the business to be divested would be endangered.

Once a purchaser is identified after adoption of an authorization decision, some of the assets or personnel included in the divested business may not be needed by the proposed purchaser. In the purchaser approval process, the authority may, upon request by the parties, approve the divestiture of the business to the proposed purchaser without one or more assets or parts of the personnel if this does not affect the viability and competitiveness of business to be divested after the sale, taking account of the resources of the proposed purchaser.[11]

8.4. Alternative Divestiture Commitments: Crown Jewels

In certain cases, the implementation of the parties' preferred divestiture option might be uncertain in view, for example, of third parties' preemption rights or uncertainty as to the transferability of key contracts, intellectual property rights, or the uncertainty of finding a suitable purchaser within a very short time period. In such circumstances, the authority cannot take the risk that, in the end, effective competition will not be maintained. Accordingly, the authority will only accept such divestiture commitments under the following conditions:(a) absent the uncertainty, the first divestiture proposed in the commitments would consist of a viable business, and (b) the parties will have to propose a second alternative divestiture which the parties will be obliged to implement if they are not able to implement the first commitment within the given time frame for the first divestiture. Such an alternative commitment normally has to be a 'crown jewel', for example, it should be as least as good as the first proposed divestiture in terms of creating a viable competitor once implemented, it should not involve any uncertainties as to its implementation and it should be capable of being implemented quickly in order to avoid that the overall implementation period exceeds what would normally be regarded as acceptable in the conditions of the market in question. In order to limit the risks in the interim period, it is indispensable that interim preservation and holding separate measures apply to all assets included in both divestiture alternatives. Furthermore, the commitment has to establish clear criteria and a strict time-table as to how and when the alternative divestiture obligation will become effective and the authority will require shorter periods for its implementation. [12]

8.5. Transfer to a Suitable Purchaser

The intended effect of the divestiture will only be achieved if and once the business is transferred to a suitable purchaser in whose hands it will become an active competitive force in the market. The potential of a business to attract a suitable purchaser is an important element already of the Commission's assessment of the appropriateness of the proposed commitment. In order to ensure that the business is divested to a suitable purchaser, the commitment have to include criteria to define its suitability which will allow the authority to conclude that the divestiture of the business to such a purchaser will likely remove the competition concerns identified.

The standard purchaser requirements are the following: (a) the purchaser is required to be independent of and unconnected to the parties; (b) the purchaser must possess the financial resources, proven relevant expertise and have the incentive and ability to maintain and develop the divested business as a viable and active competitive force in competition with the parties and other competitors; (c) the acquisition of the business by a proposed purchaser must neither be likely to create new competition problems nor give rise to a risk that the implementation of the commitments will be delayed. Therefore, the proposed purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the business to be divested.

The standard purchaser requirements may have to be supplemented on a case-by case basis. An example is the requirement, where appropriate, that the purchaser should be an industrial, rather than a financial purchaser. The commitments will normally contain such a clause where, due to the specific circumstance of the case, a financial buyer might not be able or might not have the incentives to develop the business as a viable and competitive force in the market even considering that it could obtain the necessary management expertise and therefore the acquisition by a financial buyer would not remove the competition concerns with sufficient certainty. [13]

8.6. The Monitoring and the Divestiture Trustee

As the authority can not, on a daily basis, be directly involved in overseeing the implementation of the commitments, the parties have to propose the appointment of a trustee to oversee the parties' compliance with the commitments. The monitoring trustee will carry out its tasks under the supervision of the authority and is to be considered the authority's'eyes and ears'. The authority may give orders and instructions to the monitoring trustee in order to ensure compliance with the commitments, and the trustee may propose to the parties any measures it considers necessary for carrying out its tasks. The parties, however, may not issue any instructions to the trustee without approval by the authority.

If the parties do not succeed in finding a suitable purchaser within the first divestiture period, then in the trustee divestiture period, the divestiture trustee will be given an irrevocable and exclusive mandate to dispose of the business, under the supervision of the commission, within a specific deadline at no minimum price to a suitable purchaser.

The commitments will set out that the parties shall support and inform the divestiture trustee and cooperate with the trustee in the same way as this is foreseen for the monitoring trustee. For the divestiture, the parties have to grant to the divestiture trustee comprehensive powers of attorney, covering all stages of the divestiture.

8.7. Behavioral Remedies and Access Remedies

In a number of cases, the EU Commission has accepted remedies foreseeing the granting of access to key infrastructure, network, key technology, including patents, know-how or other intellectual property rights, and essential inputs. Normally, the parties grant such assess to third parties on a non-discriminatory and transparent basis.

Commitments granting non-discriminatory access to infrastructure or network of the merging parties may also be submitted in order to ensure that competition is not significantly impeded as a result of foreclosure. In past EU commission decisions, commitments have foreseen the granting of access to pipelines and to telecom or similar networks. The authority will only accept such commitments if it can be conclude that these commitments will be effective and competitors will likely use them so that foreclosure concerns will be eliminated.

Similarly, the control of key technology or intellectual property (IP) rights may lead to concerns of foreclosure of competitors which depend on the technology or IP rights as essential input for the activities in a downstream market. In such circumstances, commitments to grant competitors access the necessary information may eliminate the competition concerns. Similarly, in sectors where players commonly have to cooperate by licensing patent to each other, concerns that the merged entity would no longer have the incentive to provide licenses to the same extent and under the same conditions as before may be eliminated by commitments to grant licenses on the same basis also in the future. It has to be further ensured that the terms and conditions under which the licenses are granted do not impede the effective implementation of such a license remedy. [14]

8.8. The Termination or Change of Long-term Contracts

The change in the market structure resulting from a proposed concentration can cause existing contractual arrangements to be inimical to effective competition. This is in particular true for exclusive long-term supply agreements if such agreements foreclose either, upstream, the input for competitors or, down-stream, their access to customers. Where the merged entity will have the ability and the incentives to foreclose competitors in this way, the foreclosure effects resulting from existing exclusive agreements may contribute to significantly impeding effective competition.

In such circumstance, the termination or change of existing exclusive agreements may be considered appropriate to eliminate the competition concerns. However, the available evidence must allow the commission to clearly determine that no de facto exclusivity will be maintained. Furthermore, such change of long-term agreements will normally only be sufficient as part of a remedies package to remove the competition concerns identified.

Conclusion

After systematic study of EU merger control regulations, I get the following 3 findings. Firstly, the value of EU merger control is the integration of EU market, which is in conformity with the economic trend of the whole world. EU merger control not only protects the market share of their own enterprises in member states, but also allows a more efficient allocation of resources as market conditions and firm-specific capabilities change over time. Secondly, the jurisdiction of EU merger control establishes a mature system of the distribution of competence of EU and those member states. Besides, The extra-territorial jurisdiction of EU merger control regulation is established by 〞Effect Doctrine〞.Finally, EU merger control is kind of administration leading model. This model gives the administrative agencies a lot discretion, but The Court of Justice shall have unlimited jurisdiction within the meaning of Article 229 of the Treaty to review decisions whereby the Commission has fixed a fine or periodic penalty payments; it may cancel, reduce or increase the fine or periodic penalty payment imposed.

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[11] Article 23-26 of 〝Commission notice on remedies acceptable under Council Regulation(EC) No 139/2004 and under Commission Regulation(EC)No 802/2004"

[12] Article 44-45 of 〝Commission notice on remedies acceptable under Council Regulation(EC) No 139/2004 and under Commission Regulation(EC)No 802/2004"

[13] Article 47-49 of 〝Commission notice on remedies acceptable under Council Regulation(EC) No 139/2004 and under Commission Regulation(EC)No 802/2004"

[14] Article 62-66 of 〝Commission notice on remedies acceptable under Council Regulation(EC) No 139/2004 and under Commission Regulation(EC)No 802/2004.