



EU MERGER CONTROL

UNIMORE, Seminario di Diritto della Concorrenza – Modena, 11 April 2014

Mona Caroline Chammas
OECD - Competition Division



Structure of presentation

I. Merger Control in Competition Law Context

II. EU Merger Control



I. MERGER CONTROL IN COMPETITION LAW CONTEXT



Goals of Competition Law?

- Essential goals
 - Consumer welfare
 - Efficient competition process (\neq competitors)
 - Economic efficiency
 - Market integration (EU)
- Evolving goals and balancing
- Competition law \neq consumer law \neq corporate law



Early days of Competition Law



In the 1990's, competition law enforcement is still limited to a few jurisdictions around the world (US: since 1890, EU: since 1957)



Today's globalisation and worldwide enforcement of Competition Law



Nowadays, competition law enforcement is global (100+ jurisdictions around the world): growing risk of enforcement actions



Focus and branches of Competition Law?

Preventive:

1. Merger control

Curative:

2. Cartel/restrictive agreements

3. Abuses of dominance

→ 1-2-3 are rules applicable to « **undertakings** »
≠ State aid rules applicable to EU Member States



II. EU MERGER CONTROL



1. Why mergers & acquisitions (M&As)?

From the business perspective:

- ✓ Growth, increase revenues and share
- ✓ Increase production, capacity, distribution channels
- ✓ Geographic expansion
- ✓ Portfolio diversification
- ✓ Economies of scale (scale increase/operational efficiency)
- ✓ Economies of scope (efficient product diversification)
- ✓ Vertical integration
- ✓ Innovation
- ✓ Taxation



2. Why merger control?

From the competition policy perspective:



Competition authorities recognise the many beneficial effects of M&As:
pro-efficient,
pro-competitive,
pro-consumers.

BUT

Certain M&As may have adverse anti-competitive effects:
restrict competition,
raise entry barriers,
increase prices,
limit choice,...

→ Prevent M&As that may have such effects.

HOW?



3. EU Merger Control Regime

- Regulation 139/2004 on the control of concentrations between undertakings (“Merger Regulation”)
- Enforcement by European Commission (DG Competition):
http://ec.europa.eu/competition/mergers/overview_en.html
- Three key steps in merger control:

- A. Caught mergers? = concept of concentration
- B. Obligation to notify? = jurisdiction
- C. Effects on competition? = substantive analysis



3. Step A - Concept of concentration

Goal of step A: Does the deal constitute a “concentration” falling under competition law?

- Deal criteria that should trigger radar:
 - Change of control on a lasting basis
 - Decisive influence
 - Debate: minority shareholding

- Types of concentrations:

Deal structuring:

- Merger
- Acquisition
- Joint venture (JV)

Market positioning:

- Horizontal
- Vertical
- Conglomerate



3. Step B - Obligation to notify

Goal of step B: Should the planned concentration be notified to competition authorities?

Today's context:

- Business globalisation
- Multiplication of merger control regimes worldwide (approx. 80 countries)

➔ **Should planned concentration be notified and where?**

European Union?

Main EU notification threshold: **turnover WW €5B + EU €250M**

≥ threshold

- Notify European Commission
- « Form CO » filing
- **Opens EU merger review process:**
Phase 1 (25-35 WD) + Phase 2 (90-125 WD) for substantive analysis...

< threshold

- Check MS thresholds
- National filings (OR referral)

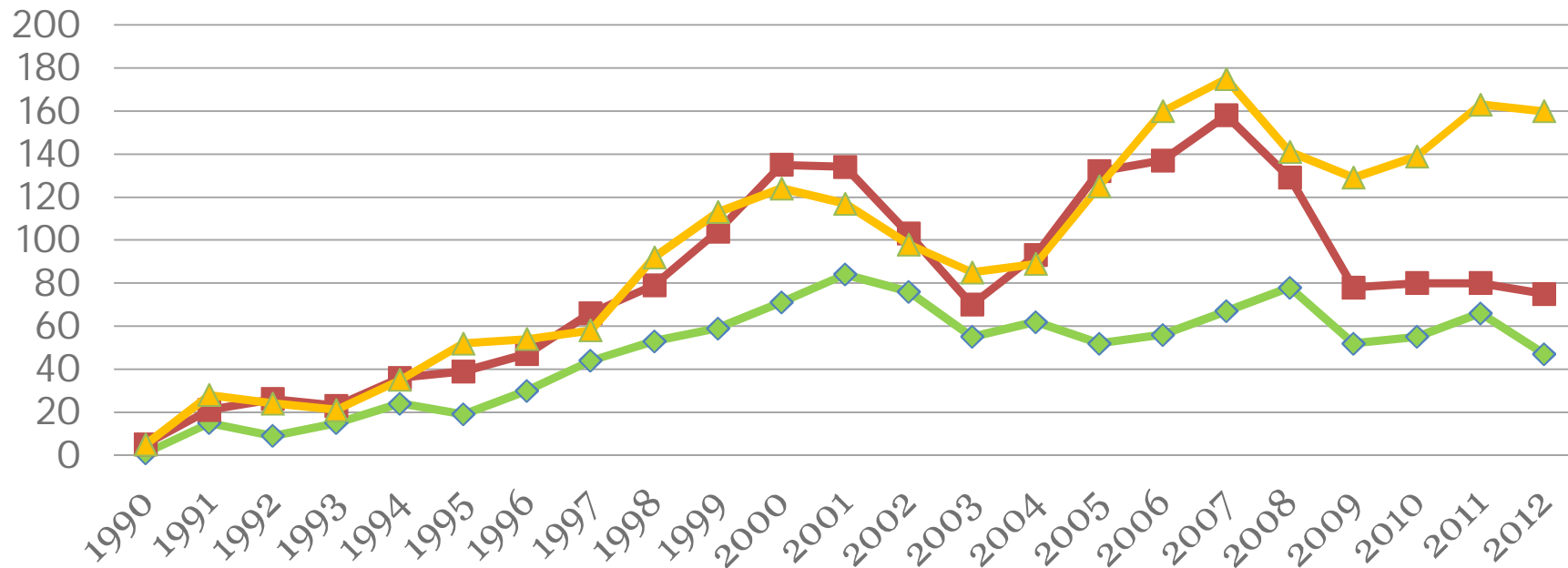
Rest of world?

Each country has own thresholds, notification requirements & timing



3. Step B - EU Merger Notification Statistics

Statistics: EU cross-border merger filings between 1991 and 2012



- ◆ 1. Mergers between companies headquartered in the same EU member state.
- 2. Mergers between companies headquartered in more than one EU member state.
- ▲ 3. Mergers involving at least one company based outside the EU, and with effects in the EU.

Source: DG Competition, OECD calculations



3. Step C - Substantive analysis

**Goal of step C: Does the concentration raise anticompetitive issues?
Will it be approved or prohibited?**

- SIEC test (EU):
Would the concentration **significantly impede effective competition?**
- Key steps & criteria:
 1. **Relevant markets:** product + geography (substitutability, price-elasticity)
 2. **Affected markets:** horizontal overlap, vertical relation
 3. **Market shares:** share + concentration levels (safe harbours)
 4. **Anticompetitive effects:**



- Unilateral effects: risk of dominant conduct, market power effects on price, output, choice, innovation, access,... //dominance abuse analysis



- Coordinated effects: risk of coordination among competitors //cartel analysis



4. Merger control outcomes

- European Commission powers:
 - ✓ Concentration compatible = Approval
 - ✓ Conditions for compatibility = Remedies
 - ✓ Incompatible = Prohibition
- Remedies:
 - Structural
 - Behavioural
- (In)famous cases:
 - *AB Inbev/Modelo: major structural remedy (US divestiture)*
 - *GE/Honeywell: EU/US differences on conglomerate merger*
 - *CIN/Tirrenia: notification from EU to Italy; behavioural remedies*



OECD Recommendation on Merger Control

- **OECD Competition** : <http://www.oecd.org/competition/>

- **OECD Recommendation on Merger Review (2005)
+ OECD Implementation of 2005 Recommendation (2013):**
<http://www.oecd.org/daf/competition/oecdrecommendationonmergerreview.htm>
 - ✓ Greater convergence of merger review procedures towards internationally recognized best practices
 - ✓ Cooperation among competition authorities
 - ✓ Make merger review procedures more effective, efficient and timely
 - ✓ Avoid unnecessary costs in multinational transactions

- **OECD Roundtables on Merger Control:**
<http://www.oecd.org/daf/competition/mergers-competition-roundtables.htm> e.g.:
 - ✓ Definition of Transaction for Merger Control (2013)
 - ✓ Market Definition (2012)
 - ✓ Economic Evidence in Merger Analysis (2011)
 - ✓ Impact Evaluation of Merger Decisions (2011)



THANK YOU

QUESTIONS





Mona Caroline Chammas
Competition Expert
Competition Division, Directorate for Financial and
Enterprise Affairs (DAF/COMP)
mona.chammas@oecd.org



2, rue André Pascal
F- 75775 Paris Cedex 16
www.oecd.org