

Competition: Merger control procedures

The legal basis for EU Merger Control is [Council Regulation \(EC\) No 139/2004](#), the EU Merger Regulation. The regulation **prohibits** mergers and acquisitions which would **significantly reduce competition** in the Single Market, for example if they would create dominant companies that are likely to raise prices for consumers.

Which mergers get reviewed by the EU?

The Commission in principle only examines larger mergers with an **EU dimension**, meaning that the merging firms reach certain **turnover thresholds**.¹ About 300 mergers are typically notified to the Commission each year.

Smaller mergers which do not have an EU dimension may fall instead under the remit of Member States' competition authorities. There is a **referral** mechanism in place which allows the Member States and the Commission to transfer the case between themselves, both at the request of the companies involved and of the Member States. This allows the companies to benefit from a one-stop-shop review

¹ There are two alternative ways to reach turnover thresholds for EU dimension. The first alternative requires: (i) a combined worldwide turnover of all the merging firms over €5 000 million, and (ii) an EU-wide turnover for each of at least two of the firms over €250 million. The second alternative requires: (i) a worldwide turnover of all the merging firms over €2 500 million, and (ii) a combined turnover of all the merging firms over € 100 million in each of at least three Member States, (iii) a turnover of over €25 million for each of at least two of the firms in each of the three Member States included under ii, and (iv) EU-wide turnover of each of at least two firms of more than €100 million. In both alternatives, an EU dimension is not met if each of the firms archives more than two thirds of its EU-wide turnover within one and the same Member State.

and to allocate the case to the most appropriate authority.

Notification

The **Commission must be notified** of any merger with an EU dimension prior to its implementation. Companies may contact the Commission beforehand to see how to best prepare their notification. There are pre-prepared templates used to notify their mergers, based on the complexity of the case.

- If the merging firms are not operating in the same or related markets, or if they have only very small market shares not reaching specified **market share thresholds**² the merger will typically not give rise to significant competition problems: the merger review is therefore done by a **simplified procedure**, involving a routine check.
- Above those market share thresholds, the Commission carries out a full **investigation**.

Details of any new notification are **published** on the Commission's [competition website](#) and in the EU Official Journal, so that any interested parties may contact the Commission and submit comments on the merger.

Phase I investigation

After notification, the Commission has 25 working days to analyse the deal during the phase I investigation. More than 90% of all cases are resolved in Phase I, generally without remedies.

A phase I review may involve the following:

² Below 15% combined market shares on any market where they both compete, or below 25% market shares on vertically related markets. Note that sometimes a 'market' can possibly involve relatively narrow business areas, both in terms of products and geographic areas.

- Requests for information from the merging companies or third parties;
- Questionnaires to competitors or customers seeking their views on the merger, as well as other contacts with market participants, aimed at clarifying the conditions for competition in a given market or the role of the merged companies in that market.

The Commission keeps the merging companies informed about the progress of its analysis. Towards the end of phase I, a "state-of-play meeting" is typically held, where the Commission informs them about the results of the phase I investigation. If there are competition concerns, companies can offer remedies, which extends the phase I deadline by 10 working days.

There are two main conclusions of a phase I investigation:

- The merger is **cleared**, either unconditionally or subject to accepted remedies; **or**
- The merger still raises competition concerns and the Commission **opens a phase II investigation**.

Remedies

If the Commission has concerns that the merger may significantly affect competition, the merging companies may offer remedies ("commitments"), i.e. propose certain modifications to the project that would **guarantee continued competition** on the market. Companies may offer remedies in phase I or in phase II.

The Commission analyses whether the proposed remedies are viable, and sufficient to eliminate competition concerns. It also takes into account the views of market participants in a **market test**. If remedies are accepted, they become binding upon the companies. An **independent trustee** is then appointed to oversee compliance with these commitments.

For example, the Commission's approval of EMI's recorded music business by Universal Music Group in 2012 was conditional upon the divestment of EMI's Parlophone label and numerous other music assets. The proposed merger would bring together two of the four so-called global "major" record companies and likely have enabled Universal to impose higher prices for digital music. The divestment ensures that an independent company can continue to compete.

Phase II investigation

Phase II is an **in-depth analysis of the merger's effects on competition** and requires more time. It is opened when the case cannot be resolved in Phase I, i.e. when the Commission has concerns that the transaction could restrict competition in the internal market. A phase II investigation typically involves more extensive information gathering, including companies' internal documents, extensive economic data, more detailed questionnaires to market participants, and/or site visits.

In phase II the Commission also **analyses claimed efficiencies** which the companies could achieve when merged together. If the positive effects of such efficiencies for consumers would outweigh the mergers' negative effects, the merger can be cleared. In order to be taken into account, efficiencies must fulfil strict conditions³ and it is for the merging companies to prove that they are met.

The Commission updates the companies regularly about the process. If, after such a market investigation, the Commission concludes that the planned merger will likely impede competition, it sends a **statement of objections (SO)** to the notifying parties, informing them of the Commission's preliminary conclusions. Parties then have the right to respond to the SO in writing within a certain period. They have the right to consult the Commission's case file and to request an oral hearing which is conducted independently by the competition Hearing Officer.

Timing

From the opening of a Phase II investigation, the Commission has **90 working days** to make a final decision on the compatibility of the planned transaction with the EU Merger Regulation. This can be extended by an additional 15 working days if the notifying parties offer commitments later in phase II (i.e. after the 55th working day of the case). Further extensions of up to 20 working days can be granted on request by, or with the agreement of, the notifying parties. If the notifying parties do not provide an important piece of information which the Commission has requested from them, the clock can

³ First, the claimed efficiencies must be verifiable (such as that the Commission can be reasonably certain that they will materialise and be substantial enough). Second, the efficiencies must be merger specific (i.e. they cannot be achieved by other means than by a merger). Third, the efficiencies must be likely passed-on to consumers, and not only recapped by the merging companies alone.

be stopped until such missing information is supplied.

The Commission strives to align the timing of the investigations with **other authorities worldwide** whenever possible. It is cooperating actively with other agencies such as the [US Federal Trade Commission](#) and the [US Department of Justice](#).

The final decision

Following the phase II investigation, the Commission may either:

- **Unconditionally clear** the merger; **or**
- Approve the merger **subject to remedies**; **or**
- **Prohibit** the merger if no adequate remedies to the competition concerns have been proposed by the merging parties.

All final decisions - in both phase I and phase II - are published on the competition website, after references to the companies' confidential business information has been removed.

Judicial review

All decisions and procedural conduct of the Commission are subject to review by the General Court and ultimately by the [Court of Justice](#). The companies or other parties demonstrating an interest can appeal within 2 months of the decision. This guarantees an independent judicial oversight and ensures that all rights of defence available to the companies are fully respected.

Consulting case-related information

The status of merger **notifications, deadlines** and published **documents** (such as decisions or press releases) can be consulted **for all notified mergers** on the [competition website](#). Each merger case has a page indicating the provisional deadline of the investigation (depending on the stage of the procedure) and containing links to all documents made public by the Commission. The information is being updated on a daily basis.

You can also consult our [latest updates](#) on all cases within the last 3 months.

Decisions only become public once they have been cleared of confidential information (in particular business secrets). This process sometimes takes several months.

July 2013. This factsheet provides basic information on competition procedures and is not a substitute for the applicable legislation.

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