

EU Merger Control

The Commission has jurisdiction where a concentration has a European Union dimension. This means:

- merger, change of control on a lasting basis, or creation of a full function joint venture; and
- 1 of 2 alternative turnover tests is met.

Test 1

- parties' combined worldwide turnover is more than €5000million; and
- each of at least 2 of the parties has EU-wide turnover of more than €250million; unless
- each party has more than 2/3 of EU-wide turnover attributable to one and the same Member State.

Test 2

- parties' combined worldwide turnover is more than €2500million; and
- in each of at least 3 Member States, the combined turnover of the parties is more than €100million; and
- in each of those 3 Member States the turnover of each of at least 2 of the parties is more than €25million; and

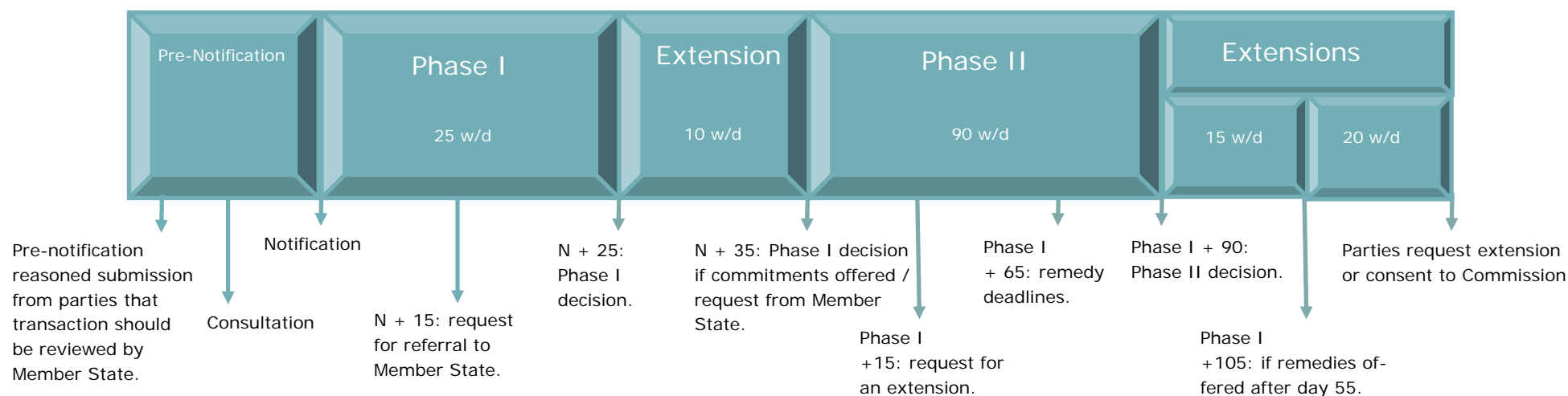
- each of at least 2 of the parties has EU-wide turnover of more than €100 million; unless
- each party has more than 2/3 of EU-wide turnover attributable to one and the same Member State.

Notification and clearance are mandatory before implementation.

A simplified procedure is available for straightforward cases which raise no competition issues:

- Joint ventures with no, or negligible, actual or foreseen activities within the EEA, ie. joint venture has turnover of less than €100 million in the EEA and the value of assets transferred in the EEA is less than €100 million.
- Mergers where all parties' activities are unconnected in respect of product and geographical markets.
- Mergers where 2 or more of the merging entities have a combined market share of less than 15% on the same market (horizontal relationships), or less than 25% on any market which is upstream or downstream (vertical relationships).

The Commission will issue a short-form decision within 25 working days from the date of notification. However, the Commission retains the right to revert to the standard merger procedure. Approximately half of notifications are dealt with using the simplified procedure.



UK Merger Control

The OFT has jurisdiction when there is a relevant merger situation. This means:

- 2 or more enterprises cease to be distinct; and
- target turnover in the UK exceeds £70million; or
- share of supply of goods or services in the UK or part of the UK is 25% or more as a result of the relevant merger situation.

The OFT has the function of obtaining and reviewing information relating to merger situations and has a duty to refer to the Competition Commission any merger which may result in a substantial lessening of competition.

UK merger control rules generally only apply if the EUMR does not. Notification and prior clearance of relevant merger situations is not mandatory, but may be advisable unless there are demonstrably no competition concerns.



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