



ITALIAN CONFERENCE **V** CONVEGNO NAZIONALE

AAI
ASSOCIAZIONE ANTITRUST
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I PRINCIPALI SVILUPPI
NEL DIRITTO DELLA
CONCORRENZA DELL'UNIONE
EUROPEA E NAZIONALE

*MAIN DEVELOPMENTS
IN EUROPEAN
AND ITALIAN
COMPETITION LAW*

Michele Piergiovanni

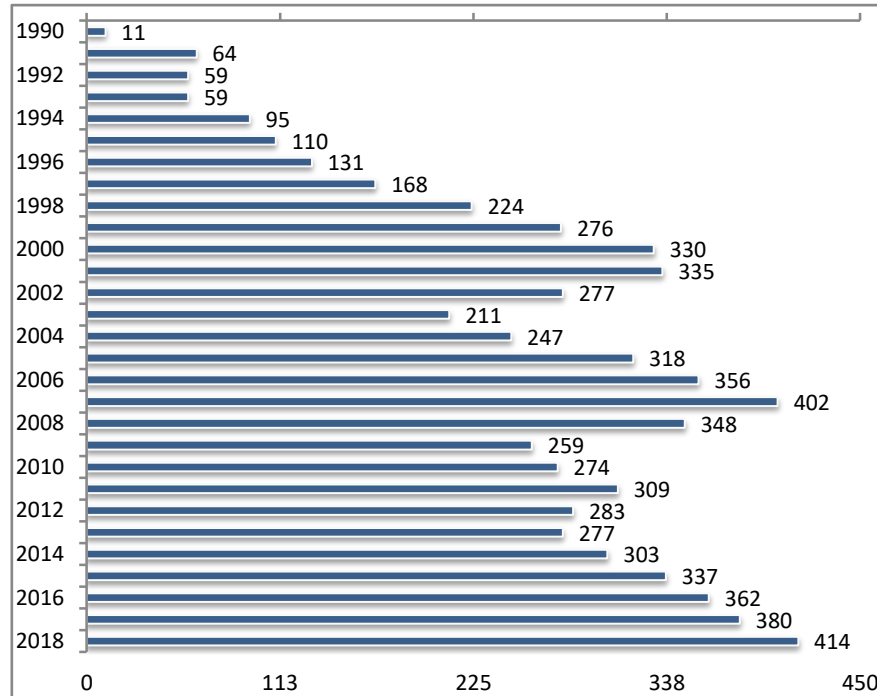
Head of Unit, Mergers: Information, communication and media
DG Competition, European Commission

Overview

- EU merger control – some key facts and figures
- EU merger control – future challenges
 - Digital economy
 - Globalisation and European champions

EU merger control – some key facts and figures

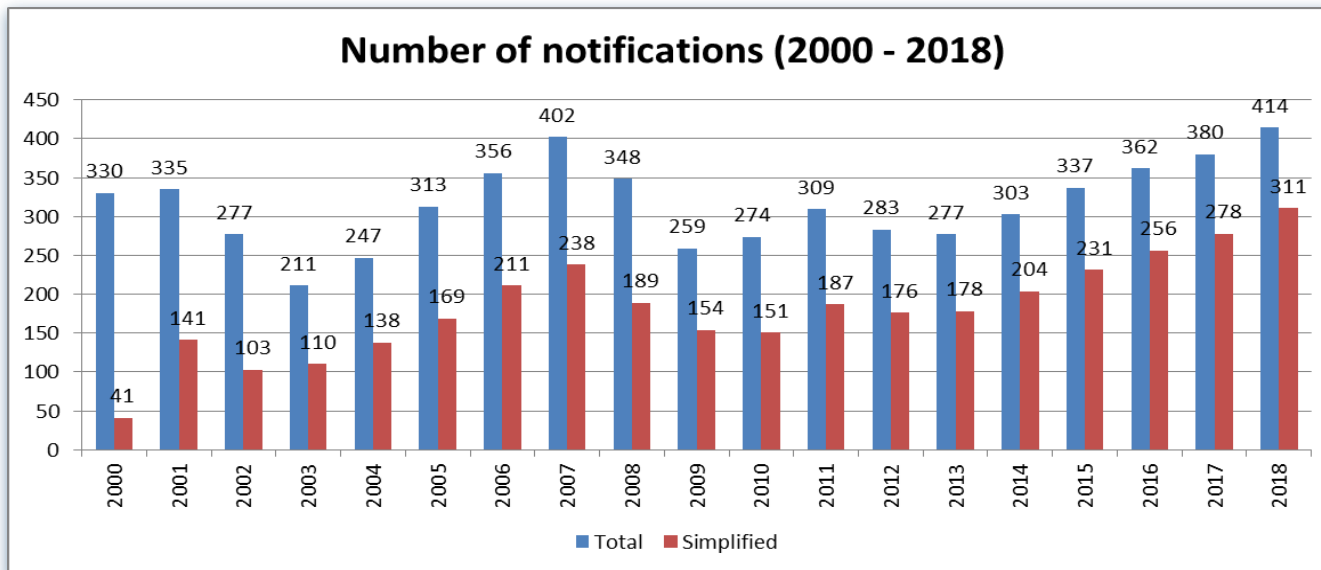
Evolution of number of notifications



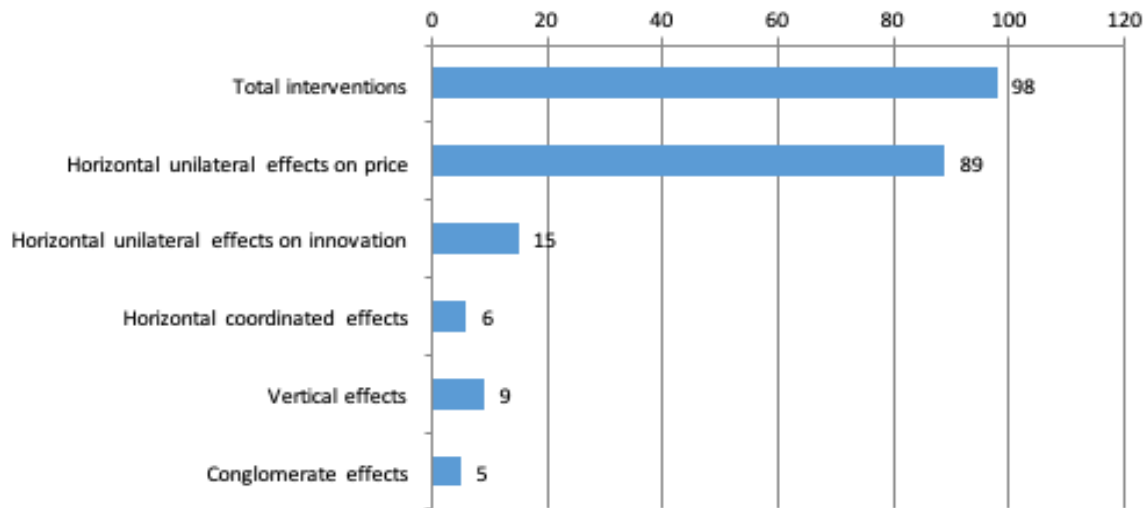
Simplified vs normal procedure

(Last year before
Simplification Package)

2004 to 2013: 59% 2013: 64% 2018: 75%

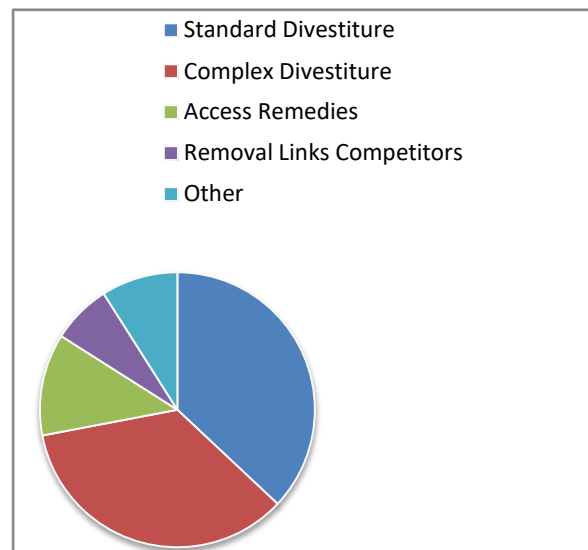


Theories of harm (based on intervention cases between 2015 and 2018)




Remedies (2011-2018) – 138 cases

Type of Remedy	
Divestiture	71%
Standard Divestiture	37%
Complex Divestiture	35%
Access Remedies	12%
Removal Links Competitors	7%
Other	9%



Procedural infringement cases

European Commission - Press release



Mergers: Commission fines Altice €125 million for breaching EU rules and controlling PT Portugal before obtaining merger approval

Brussels, 24 April 2018

The European Commission has imposed a €124.5 million fine on Altice, the multinational cable and telecommunications company based in the Netherlands, for implementing its acquisition of the Portuguese telecommunications operator PT Portugal before notification or approval by the Commission.

Commissioner Margrethe Vestager, in charge of competition policy, said: "Companies that jump the gun and implement mergers before notification or clearance undermine the effectiveness of our merger control system. This is the system that protects European consumers from any merger that would lead to higher prices or reduced choice. The fine imposed by the Commission on Altice today reflects the seriousness of the infringement and should deter other firms from breaking EU merger control rules".

To be able to deliver accurate decisions within tight timelines, the EU merger control system is built on clear procedural rules that companies must fully respect to ensure fair competition.

EU merger rules require that merging companies notify planned mergers of Union dimension for review by the Commission ("the notification requirement") and do not implement them until cleared by the Commission ("the standstill obligation"). The standstill obligation prevents the potentially irreparable negative impact of transactions on the market, pending the outcome of the Commission's investigation.

In February 2015, Altice notified the Commission of its plans to acquire PT Portugal. The transaction was conditionally cleared by the Commission on 20 April 2015, subject to the divestment of Altice's businesses in Portugal at the time, Oni and Cabovisão.

In May 2017, the Commission addressed a **Statement of Objections** to Altice detailing its concerns that Altice implemented its acquisition of PT Portugal before obtaining the Commission's clearance, and in some instances, even before its notification of the merger. In today's decision the Commission confirms its preliminary view that Altice breached the EU Merger Regulation and imposes a fine of €124.5 million on Altice.

In particular, the Commission has concluded that:

- certain provisions of the purchase agreement resulted in Altice acquiring the legal right to exercise decisive influence over PT Portugal, for example by granting Altice veto rights over decisions concerning PT Portugal's ordinary business;
- in certain cases, Altice actually exercised decisive influence over aspects of PT Portugal's business, for example by giving PT Portugal instructions on how to carry out a marketing campaign and by seeking and receiving detailed commercially sensitive information about PT Portugal outside the framework of any confidentiality agreement.

Today's decision has no impact on the Commission's April 2015 decision to authorise the transaction under the EU Merger Regulation. The assessment of the Commission at the time was independent of the facts reproached by the Commission to Altice in today's decision.

The fine

According to the [Merger Regulation](#), the Commission can impose fines of up to 10% of the aggregated turnover of companies, which intentionally or negligently breach the notification and/or the standstill obligations.

In setting the amount of a fine, the Commission takes into account the nature, the gravity and duration of the infringement, as well as any mitigating and aggravating circumstances.

Altice breached both the notification and the standstill obligations. The Commission considers that these infringements are serious because they undermine the effective functioning of the EU merger control system.

Moreover, the Commission considers that Altice was aware of its obligations under the Merger Regulation. Therefore, Altice's breach of procedural obligations was, at least, negligent.

EUR 110 million fine on Facebook

EUR 124.5 million fine on Altice

EUR 52 million fine on General Electric

Ongoing investigations:

Gun Jumping
M.8179 – Cañon/TMSC

Provision of incorrect or misleading information
M.8181 – Merck/Sigma

Breach of commitments
M. 9003 – Telefónica Deutschland

Merger control and the digital economy

Merger control and the digital economy

- Is there a gap in the EU Merger Regulation?
 - Do the current jurisdictional rules allow the Commission to review potential anti-competitive acquisitions of start-ups in particular by large tech companies?
 - If not, do the current rules need to be changed and, if so, how?
- When it actually gets to review these cases, should the Commission intervene more (either under the current substantive rules or under new ones)?
 - SPADs' recommendation:
 - New theory of harm needed to minimise “false negatives” and to capture the potential adverse effects on competition of digital mergers where network effects and strong economies of scale and scope lead to a growing degree of concentration
 - Assessment of the strategic relevance of digital mergers; analysis of acquisitions of small start-ups by dominant platforms and/or ecosystems as a possible defensive strategy against partial customer churn from the ecosystem
 - Burden of proof on the notifying parties (adverse effects offset by merger-specific efficiencies)

Merger control and globalisation

Merger control and globalisation

- Should EU merger control rules be reformed to take into account globalisation and the fact that European companies must compete worldwide with from large US and Asian players?
- The proposed Siemens/Alstom merger
 - Perhaps not the "posterchild" case to show the need to reform the EU merger control rules
 - Two global champions pre-merger
 - Within signalling, most of the problematic markets (in the parties' own admission) were national or, at most, EEA-wide
 - Not even the remote threat of Chinese entry in the most problematic signalling markets
 - Limited Chinese competition in rolling stock in the EEA
 - Late and mainly behavioural remedies



