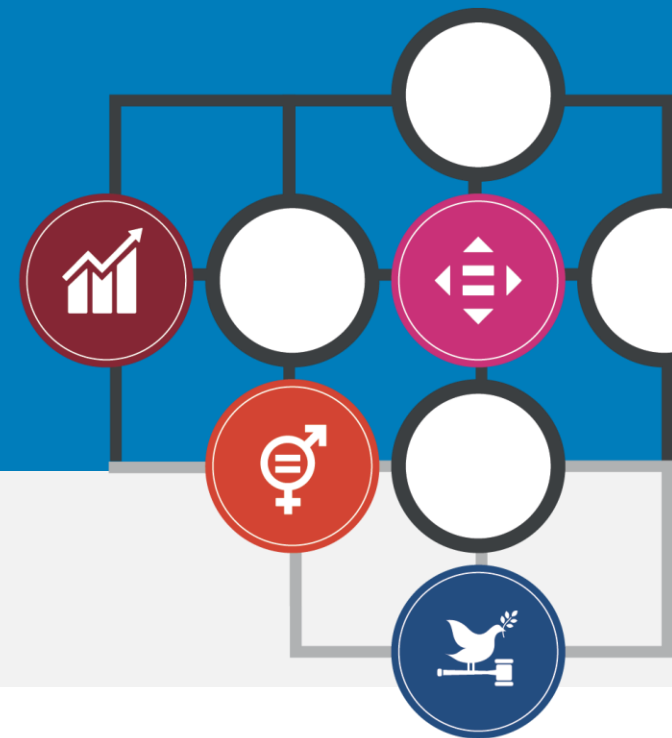


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Shared Prosperity Dignified Life



EU experience with cross border merger control in the context of developing and emerging economies

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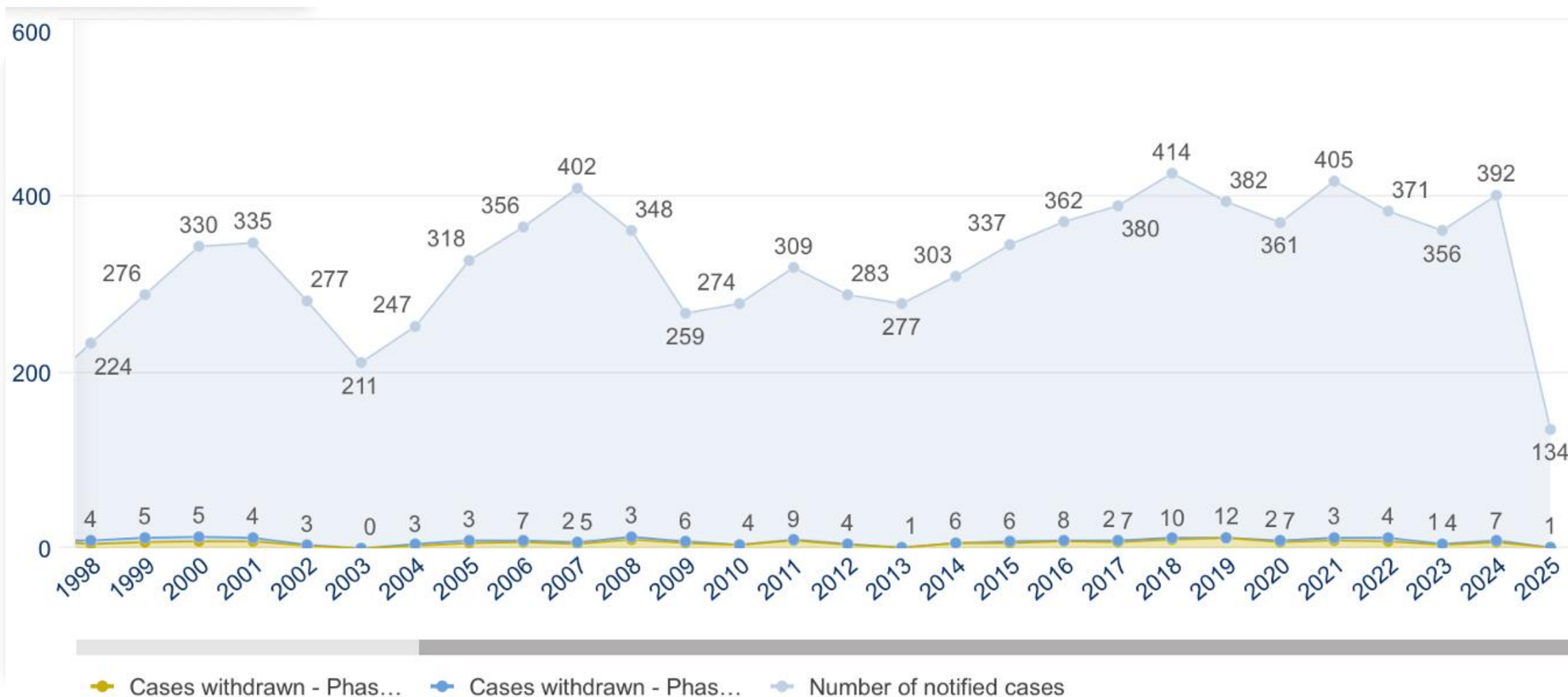
Why a Merger control?



- The **purpose of EU merger control** is to ensure that **market structures remain competitive while enabling smooth restructuring of the industry**. This applies not only to EU-based companies, but also to any company active on the EU markets.
- **Industry restructuring capacity** is an important way of fostering efficient allocation of production assets.
- However, there are also **situations where industry consolidation can give rise to harmful effects on competition**, taking into account the merging companies' degree of market power and **other market features**.
- ⇒ EU merger control ensures that harmful and anticompetitive changes in the market structure do not occur.
- ⇒ The Commission in principle only examines larger mergers with an EU dimension, **all of which are per se cross border**, meaning that the merging firms reach certain turnover thresholds and that the turnover is realised over more than one EU Member Country.
- ⇒ **For the discussion today, one should thus focus on the merger control system, with a special focus of mergers concerning firms of an EU country and a non EU country. From there, we can get to issues of interest for Competition Agencies of the Arabic Regions.**
- ⇒ **Over the period 1998-2025, about 300 to 400 mergers were notified/year to the Commission and only 1% to 2% go under full review. For the EU as a whole, this means that there are at most 14 notifications per year per country. Given the size of MS, whereas some MS may count 20 mergers, many smaller MS only count 2 to 5 mergers or even less.**
- ⇒ A lot of work may be required in small Agencies for a small number of actual worrisome cases each year. This highly trained and skilled Staff factor has to be accounted, at the inception of a new Competition Regulatory framework.

Source: *Report on Competition Policy, Staff Working Document*, Brussels, 2023 and DG COMP Statistical data, 2025

EU Merger control by Calendar year, 1998 -2025: Notifications



EU Merger control procedure



There are two alternative ways to reach turnover thresholds for EU dimension implying notification. Both alternatives imply the cross border nature of mergers subject to notification, **making the EU experience of issues analysed a valuable toolkit of analysis for competition authorities in cross-border mergers all over the world.**

=> The first alternative requires:

- (i) a combined worldwide turnover of all the merging firms over €5 000 millions, &
- (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 millions, and
 - (ii) a combined turnover of all the merging firms over € 100 million in each of at least three Member States, and
 - (iii) a turnover of over €25 millions for each of at least two of the firms in each of the three Member States included under ii, and
 - (iv) an EU-wide turnover of each of at least two firms of more than €100 millions.
- 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.

Main Trends of Enforcement in EU Merger control 2023-2024



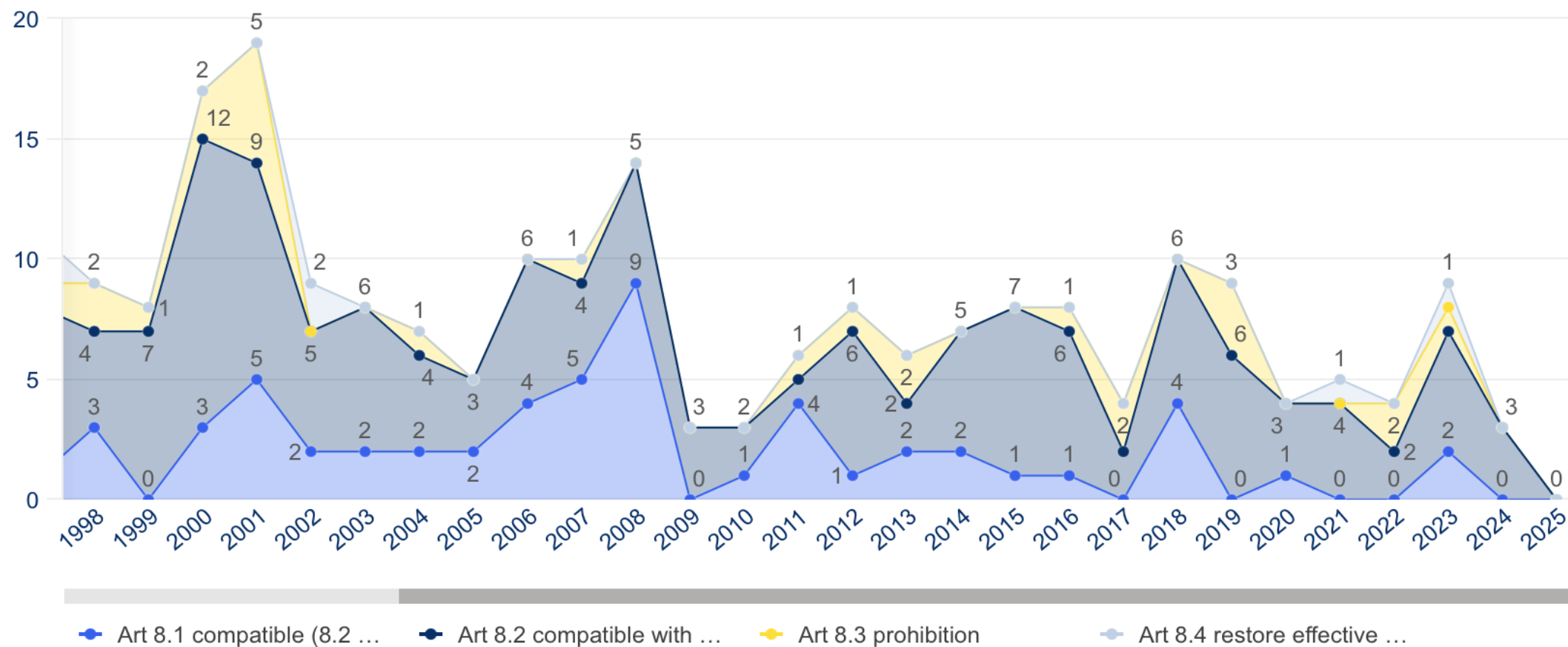
In 2024, 392 mergers were notified to the Commission, a slight increase in the figure of 2023 (356). Most were unconditionally approved under simplified procedures. Commission **conditionally approved deals with commitments in 5 cases in Phase I and 4 in Phase II making in total 9 approvals, all subject to divestment remedies. That made a 10-year low.**

In 2024, **3 Phase II cases were focused on the Airline industry** (passenger and cargo air transport). And one Phase II concerned **telecommunications** (*Orange/Masmovil*). Two deals were also abandoned in Phase II (*Amazon/iRobot* and *IAG/Air Europa*)

In 2023, in line with the trends of recent years, the Commission assessed **six mergers involving digital issues**. For example, the Commission, following an in-depth assessment, adopted a clearance with commitments decision in *Microsoft's* acquisition of *Activision Blizzard*.

In the medium term, the European Commission's merger enforcement activities remains stable as can be observed on the following graph.

Most important Decisions: Phase II Decisions



Source: EU Commission DG Competition, Statistical Data, 2025



The context of cross border merger control and international cooperation

The starting point is **globalisation**: nowadays value chains are global; companies trade internationally; global entities without any particularly strong national affiliation are commonplace. If business is global, so is illegal business. In particular, many merging firms extend their activities across the globe without regard to borders for economic efficiency purposes.

This globalised approach in the private business sector has **to be mirrored in the public sector of competition enforcement** through:

- the **creation of competition agencies** throughout the globe, with many agencies tentatively grouping themselves in regional trade organisations;
- **cooperation amongst competition authorities and regulatory bodies** to ensure effective global enforcement;
- **convergence in competition rules to be applied to cross-border mergers**, so that companies don't take advantage of the gaps we leave open to the detriment of other businesses and of consumers.

Key issues emerging from EU experience of cross-border mergers



- Cross border mergers issues have been addressed by several roundtables at UNCTAD, the OECD and the ICN. One should of course consult the published materials by these international cooperation fora. Some key issues are arising from the recent EU experience namely in the cases related to cross border mergers in the Airlines industry.
 - Cross border examination is best developed between countries that have effective merger control regimes. Absence of such effective regime do undermine the interests of the Developing and Emerging economies (OECD, DAF/COMP/GFC(2011)13)
- ⇒ Biggest challenges include the following:
- ✓ Lack of well trained human and financial resources
 - ✓ Inadequate legal framework and international cooperation instruments (cooperation agreements, waivers, documentation...)
 - ✓ Absence of proper competition culture
 - ✓ Difficult transition towards an unhampered market based economy (regulatory issues, sectoral regulation hostile to competitive principles...)
 - ✓ Importance of Industrial policy
 - ✓ Implementation issues (esp. when a competition law regime is not ranked highly on the agenda of governments – e.g. need of political support to CLP)
 - ✓ A firm-friendly cross border regime is prone to encourage FDI (this does not mean a complacent Merger control regime but one well articulated and connected with neighbouring countries National Competition, Agencies)
 - ✓ Usefulness of actively participating in international competition policy networks (e.g. UNCTAD IGE on Competition and Consumer protection, International Competition Network, development of regional competition fora and eventually networks)

Specific remarks on waivers



Waivers of confidentiality are common means which facilitate cooperation and in recent times have become an extremely important element, notably in Transatlantic cooperation between U.S. Antitrust Authorities and the EU Commission. **Waivers are directly a function of trust and confidence of firms in Competition Agency and Rule of Law** effectively protecting Business secrets potentially communicated.

Essentially **waivers** provided by companies **allow anti-trust agencies to exchange information**. They are **provided on a voluntary basis**. They bring **benefits** to both sides:

- the **agency** benefits through the exchange of information leading to an improved investigation;
- an **applicant** maximises its level of cooperation under leniency and by allowing agencies to interact it minimises its chances of being exposed to conflicting outcomes or double penalisation of cartel conduct in different jurisdictions.

Full waivers covering both **procedure and substance** are preferred by major agencies. On Mergers, DG COMP accepts **waivers concerning** applicants, their businesses, turnovers, relevant markets, other issues of substance.

The **duration should be unlimited** covering both the initial application and subsequent submissions. **Waivers are not necessary to exchange agency information, general information, publicly available information**.

NOTE:

- Waivers allow an **exchange of confidential information** only between agencies.
- Waivers **do not constitute a general waiver with respect to third parties** of the confidentiality information submitted by the leniency applicant.
- Agencies must **ensure the confidential treatment of exchanged information** otherwise risk jeopardizing leniency policies.

=> A **model waiver** has been **developed within ICN framework**, which should make the provision of waivers more straightforward.

Conclusion



There are **various frameworks of cooperation** namely multilateral, bilateral formal agreements and informal cooperation including merger control cooperation. While all three are relevant to Development and Emerging Economies, only **bilateral contacts (formalised by bilateral agreement or not)** are a key element for effective review of cross-border mergers.

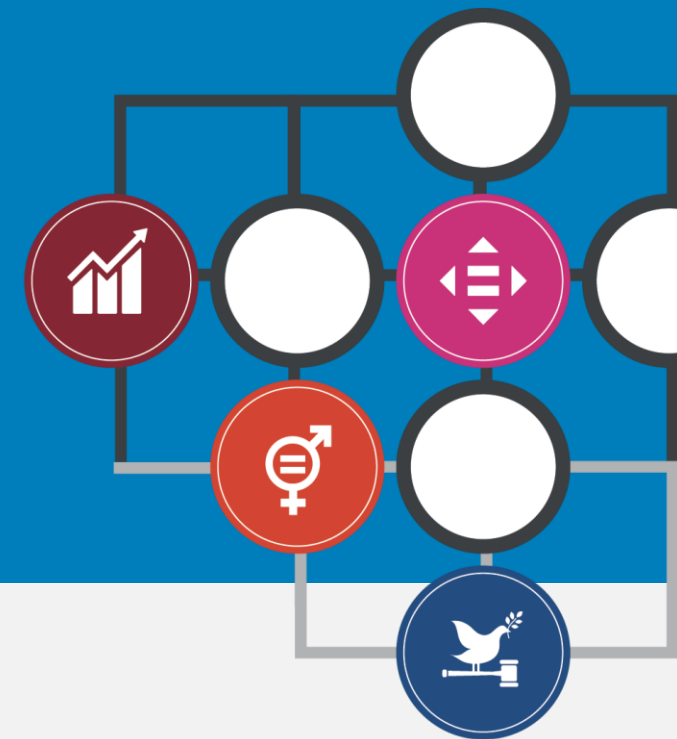
The **main successes** of international cooperation on merger control in recent years have come from **practical cooperation**

- in the form of **coordinated or non coordinated merger assessment** by agencies around the globe
- Bilateral agreements between agencies are mostly if not only developed by countries with **equivalent levels of development** and **effectively operational Competition Authorities.**
- and in the form of **exchange of information** following the grant of **waivers** by merging parties

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Thank you!