



# Article 22 of the EU Merger Regulation

## *A change of approach*

22<sup>nd</sup> EU-China Competition Week

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# The objectives of Article 22

- Article 22 is one of the referral possibilities provided by the EU Merger Regulation. Allows Member States to refer cases that do not reach EU thresholds to be referred to the European Commission
- **Legal conditions:** (i) the merger must affect trade between member States; and (ii) the merger must threaten to significantly affect competition in the territory of Member States making the referral request
- Initially introduced in the Merger Regulation to empower jurisdiction with no national merger control regime; as those regime generalized within the EU, the policy was to **not encourage** referral requests for cases for which Member States did not have jurisdiction, as there was no perceived need to do so

# The findings of the “Merger Evaluation”

- Turnover thresholds coupled with referral mechanisms **generally work well**
- Increase in concentrations involving firms with **little turnover** but that play/may develop into playing important **competitive role**
- A number of transactions with a potential impact on competition have **escaped control** at both EU and national level
- Additional **value-based thresholds** at EU level may not be an effective solution
- Accepting **referrals under Art 22** when MS not initially competent could address the issue in a targeted/proportionate manner without imposing high burden (*safety net*)

# Article 22 Guidance

- The Commission will **stop discouraging** referral requests from MS that do not have initial jurisdiction over the transaction
- **Good** candidate cases
  - **Overarching principle:** turnover does not reflect actual or future competitive potential
  - **Illustrative list**, e.g., a start-up or recent entrant with significant competitive potential; important innovator; provides key inputs/components for other industries)
- **Not** good candidates
  - **Closed transactions** - more than 6 months post-closing
  - **Notified transactions** in non-referring MS
- Procedure
  - **Voluntary** information by the parties or complaints from third parties
  - **Early indication** from the Commission; **suspension** obligation

# Cases to date

- *Illumina/GRAIL*: Article 22 referral from Member State without jurisdiction (requests by Belgium, France, Greece, Iceland, the Netherlands, and Norway); currently in phase II; early completion issue led to adoption of interim measures
- Only case so far, but Article 22 referrals are not frequent, and we do not foresee a large number of referrals under the new approach
- In practice: informal consultations and companies, Commission's services available to provide guidance in case of doubt

# Thank you



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