European Commission

Recent EC Merger Enforcement in Oligopolistic Markets

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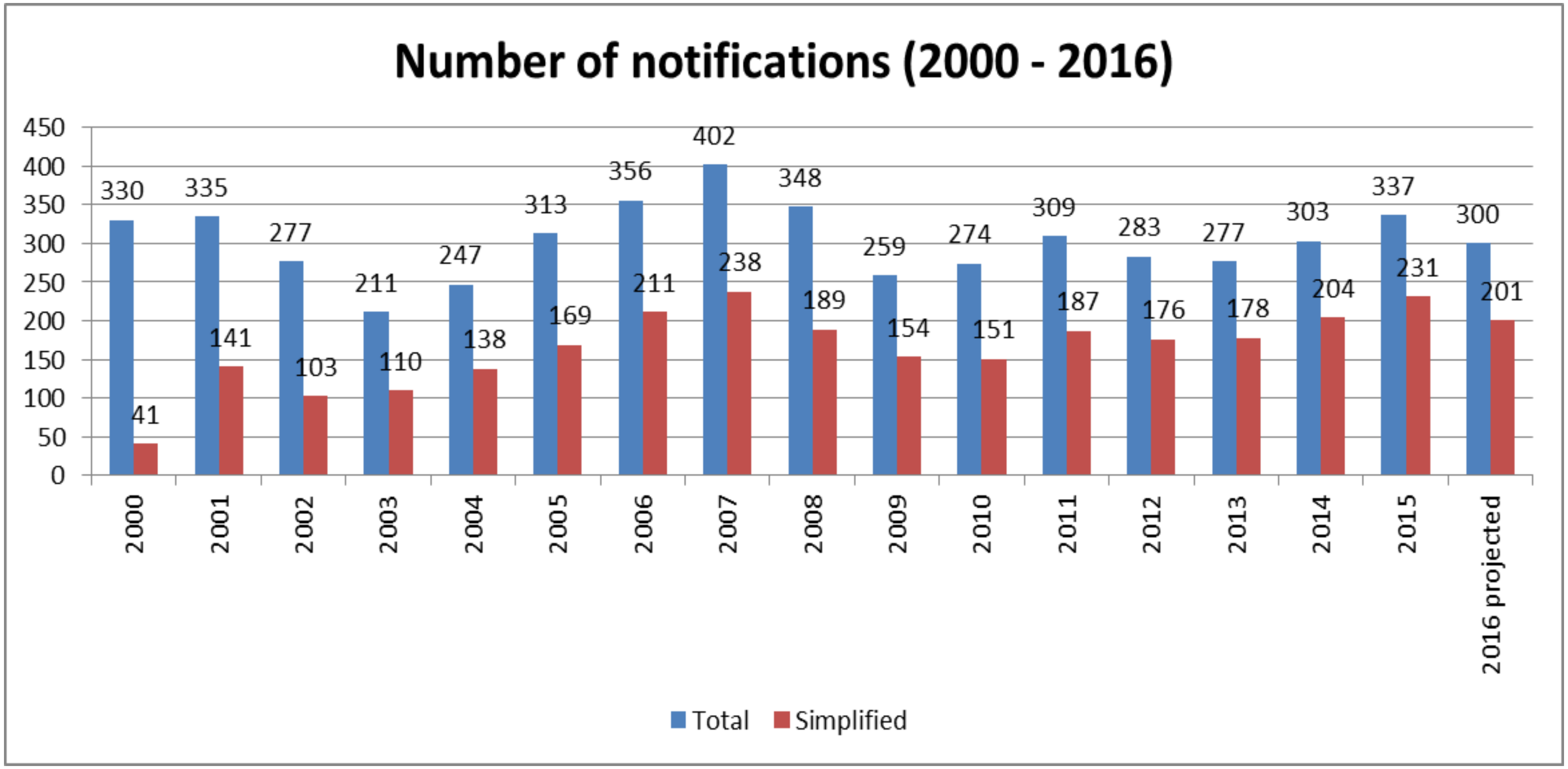
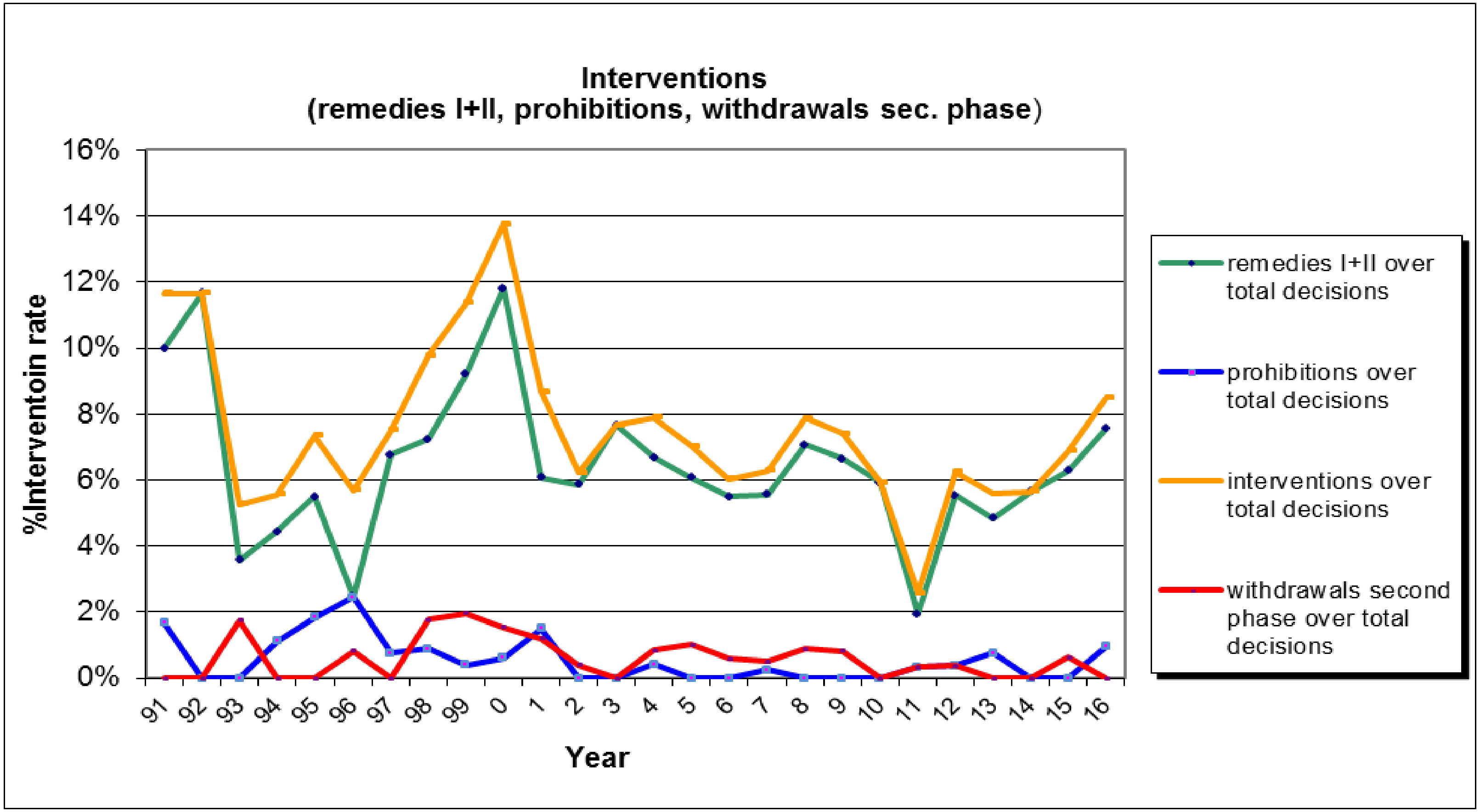
Number of notifications



*2016 projections based on notifications up to April

Interventions



Increased M&A in Recent Years

- High levels of M&A activity compared to the period before the financial crisis
- M&A activity drivers:
  - Economic recovery
  - Low finance costs / expansive monetary policy
  - Healthier balance sheets
  - Strategic consolidations in many sectors (pharma, telecoms, etc.)
  - Build or strengthen the "moat" around the firm – a barrier that offers stability and pricing power

Long Term Trends? – More Research is Needed

- Scholarly articles and studies in the US observe that profits of firms have risen in most rich countries over the past ten years

- There are plausible explanations for this, but none of them explains the persistence of high profits, *ie* the lack of entry

- One way firms have improved their "moats" in recent times is through consolidation

Unilateral Effects Analysis (i)

- Based on the foregoing statistics, we take merger enforcement in oligopolistic markets very seriously

- Unilateral effects analysis is the central foundation of our enforcement activity

- Single firm dominance analysis is rare and largely replaced by unilateral effects analysis

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Unilateral Effects Analysis (ii)

- Key question is whether the merger eliminates important competitive constraints which the merging parties exerted before the merger on each other or on the remaining competitors
- Factors to be considered:
  - narrow oligopoly before the merger; high barriers to entry; significant market shares of the merging parties; they are close competitors; customers’ limited possibility to switch suppliers; competitors’ lack of ability and incentive to increase capacity to such an extent that could defeat price rise; merged entity’s ability to hinder expansion of competitors; elimination of a maverick or innovator

Theories of harm (2015)

# Intervention Cases/ Year	Phase I w/ remedies	Phase II w/ remedies	Prohibitions	Abandoned in Phase II
2015	13	7	0	2

Unilateral effects:

Found in 21 out of 22 interventions

Co-ordinated effects:

M.7419 *Teliasonera/ Telenor* (abandoned)

Vertical effects:

M. 7194 *Liberty Global/ Corelio/ W&W/ De Wvijver Media*

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Mergers in industrial markets (i)

- **Features**
  - Mature, concentrated markets
  - (Greenfield) entry unlikely
  - Geographic markets defined largely by transport costs and local presence
  - Capacity constraints and limited importance of imports

- **Examples** of recent large mergers in concentrated markets:
  - *Cargill/ADM Chocolate business* (2015): concentrated market for industrial chocolate
  - *Ball/Rexam* (2016): 1st and 2nd largest beverage can manufacturers in the EEA
  - *Halliburton / Baker Hughes* (2016, abandoned in Phase 2): Merger to duopoly in servicing most of the North Sea offshore and complex EU onshore oilfields as well as integrated services

Mergers in industrial markets (ii)

- SIEC test covers all aspects of a loss of competition…
    - … including **harm resulting from hampering innovation**

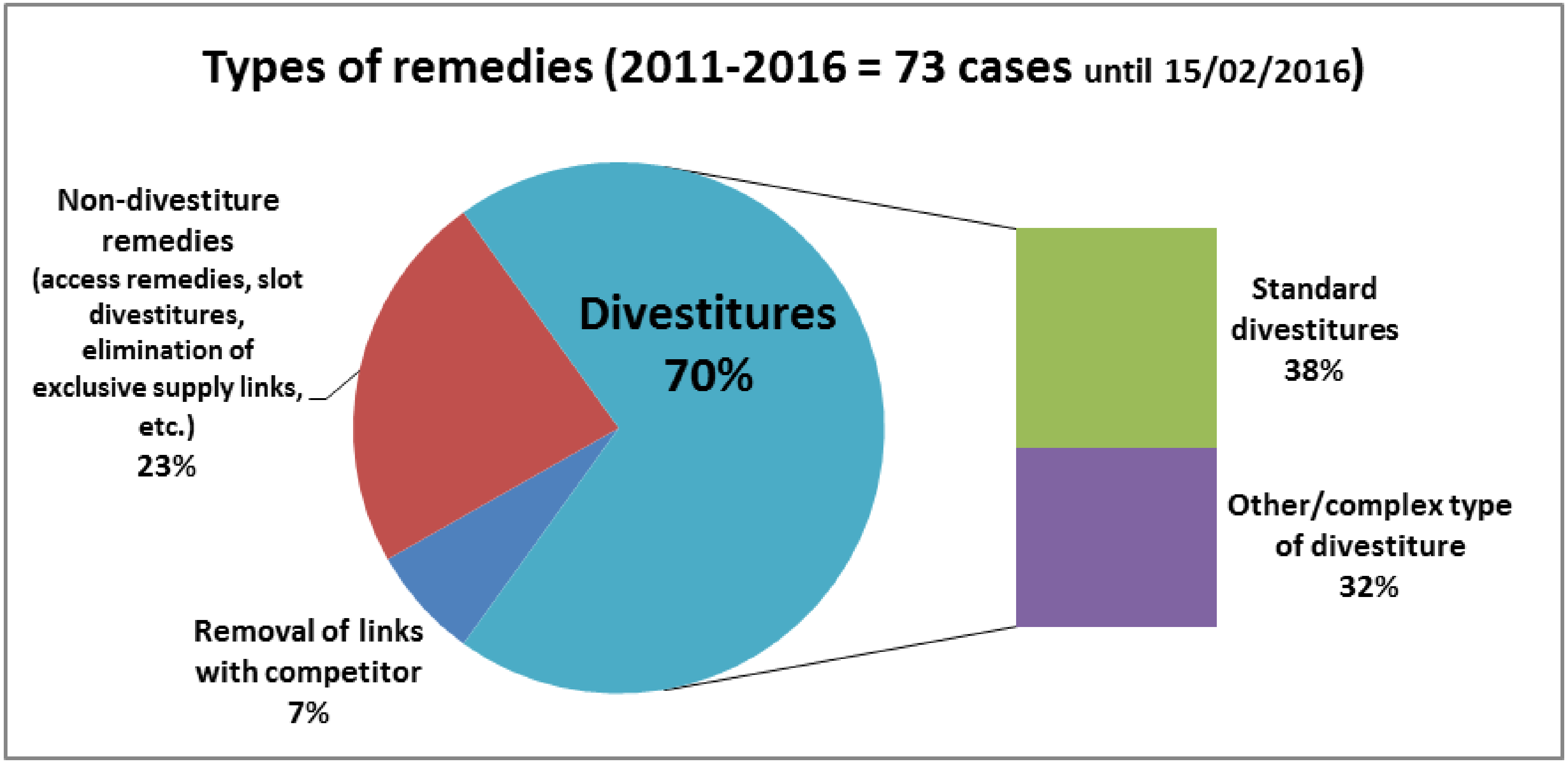
- EU merger control looks carefully not only at the short term impact of mergers on prices and output, but also at their dynamic effects on future innovation

- Recent examples where EU merger control specifically protected innovation:
    - Pharma sector (*Novartis/ GlaxoSmithKline's oncology business*, *Medtronic/Covidien* and *Pfizer/Hospira*)
    - And beyond (*GE/Alstom*: loss of an important innovator in large gas turbines)

Coordinated Effects Analysis

- Merger does not pose a threat of market power by the merged entity, but generates more favourable conditions for collusion in the industry
- Merger may create structural conditions for the firms to (tacitly or explicitly) attain a collusive outcome
- Factors to consider: high entry barriers; structural links such as cross-ownership; existence of information exchange among firms; the presence of multi-market contacts; the regularity and frequency of market interactions; absence of countervailing power; the existence of best-price clauses and RPM

Preference for structural solutions



Recent divestiture remedies

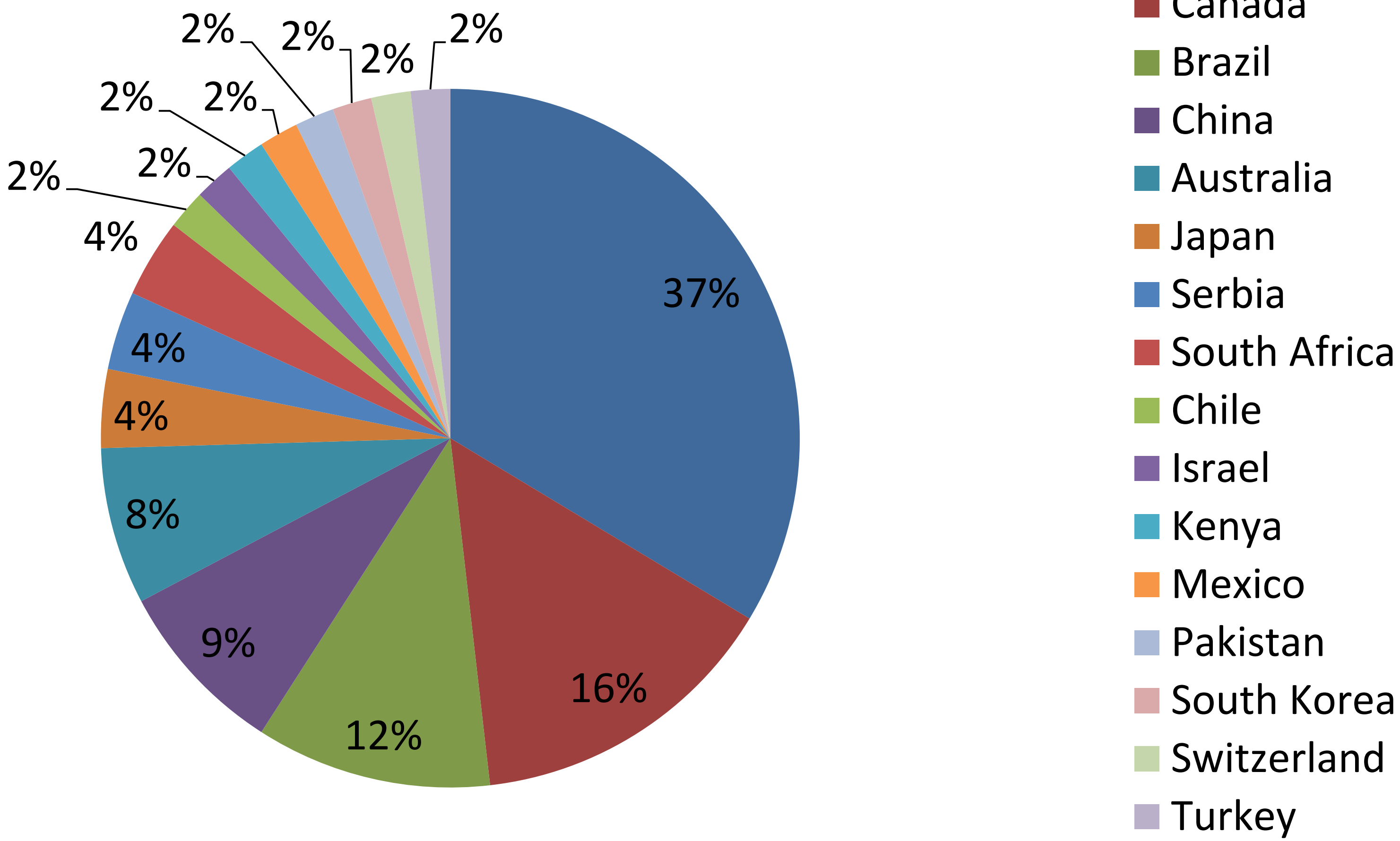
Standard divestitures:

- *Pharma cases: Novartis/Glaxo; Mylan/Abbot; Teva/Allergan;…*
- *Equinix/Telecity* (2015): divestment of 8 parties' data centres
- *Honeywell/Elster* (2015):divestment of the buyer's plant manufacturing gas meters
- *Cargill/ADM* (2015): divestment of a chocolate plant in Germany

Complex divestitures:

- *Holcim/Lafarge* (2014, Phase 1): divestment of the parties' businesses in 8 Member States
- *GE/Alstom (2015, Phase 2)*: divestment of the target business in large gas turbines, including R&D projects.
- *Ball/Rexam* (2016, Phase 2): divestment of ten can body plants and two can end plants in the EEA
- *Staples/Office Depot* (2016, Phase 2): divestment of the target's entire contract distribution business in the EEA and entire business in Sweden

International Cooperation on EU merger cases 2014-15



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International co-operation in the *GE/Alstom* case

- Cooperation with Brasil, Canada, China, Israel, Southafrica, Switzerland and in particular the US DoJ
- Very close cooperation with US DoJ on gas turbines:
  - Different markets: 50 hz, 60 Hz,
  - Also four to three but different market situations, Alstom weak in US,
  - but align assessment on gas turbines
  - partially same concern on servicing market
- What we did
  - Close cooperation since prenotification: weekly calls
  - Meeting in US to meet and discuss issues and bidding evidence
  - Alignment of remedy: purchaser
  - Alignment of timing of decision and of press releases
  - Alignment of monitoring trustee
  - Alignment of final green light related to closing of divestiture

Thank you for our attention!

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