

Merger guidelines: a comparative perspective

John Vickers

Chairman, OFT

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Merger regimes

- ▶ laws
- ▶ guidelines
- ▶ cases

UK reform

- ▶ law: "public interest" → SLC
- ▶ guidelines: May 2003
- ▶ cases: OFT public 2000 →

What guidelines do

- ▶ say how law will be applied to cases
- ▶ show which facts matter
- ▶ improve predictability
- ▶ help accountability

OFT guidance: topics

- ▶ the counterfactual
- ▶ market definition
- ▶ concentration measures
- ▶ non-coordinated and coordinated effects

OFT guidance: topics (cont'd)

- ▶ entry and expansion
- ▶ buyer power
- ▶ efficiencies
- ▶ failing firm
- ▶ vertical and conglomerate mergers

OFT guidance: themes

- ▶ economic analysis
- ▶ of FACTS
- ▶ in framework of law

ICN merger guidelines project

What is the ICN?

- ▶ network of agencies
- ▶ very open
- ▶ no tangible infrastructure
- ▶ web + annual conference

ICN themes

- ▶ mergers
- ▶ competition advocacy
- ▶ capacity building

ICN merger work

- ▶ notification and procedures (FTC)
- ▶ analytical framework (OFT)
- ▶ investigative techniques (Israel)

Analytical framework

- ▶ laws (Naples 2002)
- ▶ guidelines (Merida 2003)
- ▶ cases (non-stop)

Guidelines project

- ▶ 26 jurisdictions
- ▶ 12 compared

Guidelines project

- ▶ Australia
- ▶ Brazil
- ▶ Canada
- ▶ EU
- ▶ Finland
- ▶ Germany
- ▶ Ireland
- ▶ Japan
- ▶ New Zealand
- ▶ Romania
- ▶ UK
- ▶ USA

Guidelines project

- ▶ 26 jurisdictions
- ▶ 12 compared
- ▶ on 5 issues

The issues

- ▶ market definition
- ▶ “unilateral” effects
- ▶ coordinated effects
- ▶ entry/expansion
- ▶ efficiencies

Done by the bar

- ▶ lawyers from 16 firms
- ▶ from 13 jurisdictions
- ▶ international troikas
- ▶ + overview chapter

Findings

- ▶ surprising (?) similarities
- ▶ differences
- ▶ reviewed guidelines have much in common
- ▶ ambiguities

Surprising (?) similarities

▶ market definition

- concepts and tools used
- SSNIP (base price? increment?)
- supply-side?

▶ coordinated effects

- uniform recognition of main factors
- concentration ratios?

Differences

- ▶ entry/expansion
 - MVS v MES
 - timing and likelihood

- ▶ efficiencies
 - consumer welfare?
 - merger specific?
 - scepticism well-placed?

Some ambiguities

- ▶ “unilateral” effects
 - terminology → market-wide effects
 - safe harbours?
 - evidence and standard of proof
 - link to test in law

Next steps?

- ▶ revision of papers and then.....
- ▶ broaden?
- ▶ deepen?
- ▶ economic appraisal?
- ▶ improve application to developing regimes?
- ▶ model guidelines or checklist?
- ▶ guidelines/casework nexus