

US and UK Horizontal Merger Guidelines

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Disclaimer

- To the extent I go beyond what's in the Guidelines and other official documents, this is my analysis and views, and should not be attributed to Commission or Commissioners.

2010 Guidelines: Overview

- Merger review is eclectic, using multiple kinds and sources of evidence re effects
 - More explicit about this longstanding fact
- Concentration (requiring market def) has no analytical monopoly
 - Did it?
- More pragmatic on entry
- Improved economics on market definition and on unilateral and coordinated effects

Market Definition

- Still important part of litigating a case
 - Compare UK 5.2.4
- Still used and often useful in analysis
 - Presumptions and “safe harbors”
- Longer and more nuanced discussion
 - Why and when “smallest market”, departure from 5% SSNIP, etc.

Improved Economics in Unilateral Effects

- See Amelia Fletcher remarks
- One can trace all this back to 1992 HMG: evolution and not revolution

Improved Economics in Coordinated Effects

- Effects generated by (change in) how rivals will respond to a competitive move
- Not only if rivals are trying to enforce a specific outcome
- What would create such effects
 - Strong responses by rivals
 - Ability to see the competitive move
 - Effects on own incentives
- Can, but needn't, phrase as “coordination”

Coordinated Effects (2)

- Broader, less moralistic framework
 - As with unilateral effects
- More consistent with correct reading of the economics literature
 - What the folk theorems do and don't say
 - Conjectural variations
- Looking to many of the same factors
 - Transparency/information
 - Responsiveness
 - Effect of responsiveness