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