

Why Should Competition Authorities be Concerned with Mergers?

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Types of Mergers

- Horizontal mergers – the cause of most competition concern
- Vertical mergers – occasionally lead to market foreclosure
- Conglomerate or portfolio mergers – seldom a problem, but can be if involve complementary products

Concern is about unilateral and coordination effects

But most mergers don't harm competition. Some have benefits

'Combinations' a preferable term

Thresholds

Why do Mergers occur@

- Entrepreneurs seek gains
- Many types, including:
 - economies of scale and scope – production, distribution, R&D
 - gaining market share
 - competitive advantage
 - roll-ups of fragmented industries
 - globalisation
 - investment
 - psychological

- Merger outcomes often disappointing commercially

Merger Activity

- Since 1993 – era of strategic mega-mergers
- Rapid increase in cross-border M&A activity since 1996
- Vodafone/ Mannesman; America Online/ Time Warner
- Many causes, including:
 - technological change, especially computers
 - better logistics
 - globalization
 - de-regulation
 - investment liberalisation

Merger Review

- Over 60 jurisdictions have merger reporting requirements
- Most mandatory, most pre-merger
- Some, including India, voluntary
- International Competition Network Recommendations
- OECD recommendations
- Model Competition Laws;
 - UNCTAD
 - World Bank/OECD
 - Commonwealth

High-tech Mergers

- Existing analytical frameworks adequate
- Market definition and market shares may be problematic
- Anti-competitive co-ordination unlikely
- Unilateral effects possible

Merger Remedies

- Structural – modify property rights through divestiture
- Behavioural – undertakings on conduct
- Behavioural – require monitoring – should have sunset clause
Well suited to high-tech industries. Also for vertical mergers.
- Structural – often the best approach, and favoured by most competition authorities, but irreversible. Need to consider parties' motives on divestment
- Use only where clear competition risk, and set at least restrictive levels. Be flexible.

Conclusion

- Merger reviews complex – need analytical skills
- Most mergers unlikely to harm competition
- Need to identify those which might cause harm
- Justified place as pillar of modern competition law

