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Capturing the Relevant Mergers

Workshop on Merger Review and
International Co-operation

Jakarta, 28 April 2025

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Topic overview

- Notification thresholds
- The notion of (joint) control
- Investigation phases
- Outcomes

DEFINITION (2005 OECD RECOMMENDATION)



“Merger” means a merger, acquisition, joint venture, or any other form of business amalgamation, combination or transaction that falls within the scope and definitions of the competition laws of a Member country governing business concentrations or combinations.

Source: <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0333>

5 The OECD Recommendation on Merger Control (2005)

A. Notification and Review Procedures

...

1. Assert jurisdiction only over those mergers that have an appropriate nexus with their jurisdiction;
2. Use clear and objective criteria to determine whether and when a merger must be notified or, in countries without mandatory notification requirements, whether and when a merger will qualify for review;
3. Set reasonable information requirements consistent with effective merger review;
4. Provide procedures that seek to ensure that mergers that do not raise material competitive concerns are subject to expedited review and clearance; and
5. Provide, without compromising effective and timely review, merging parties with a reasonable degree of flexibility in determining when they can notify a proposed merger.

Rationale? – Only control economically significant mergers that matter to your jurisdiction

- Turnover based
 - Market share based
 - Transaction value based
 - (Call-in powers)
- ⇒ Establish local nexus as well!

EU Merger Control Article 1

2. A concentration has a **Community dimension** where:
 (a) the combined **aggregate worldwide turnover** of all the undertakings concerned **is more than EUR 5 000 million**; and
 (b) the aggregate **Community-wide turnover** of each of at least two of the undertakings concerned **is more than EUR 250 million**,
unless each of the undertakings concerned achieves **more than two-thirds of its aggregate Community-wide turnover within one and the same Member State**.

3. A concentration that does not meet the thresholds laid down in paragraph 2 has a **Community dimension** where:
 (a) the combined **aggregate worldwide turnover** of all the undertakings concerned **is more than EUR 2 500 million**;
 (b) **in each of at least three Member States**, the combined **aggregate turnover** of all the undertakings concerned **is more than EUR 100 million**;
 (c) **in each of at least three Member States** included for the purpose of point (b), **the aggregate turnover of each of at least two of the undertakings concerned is more than EUR 25 million**; and
 (d) the **aggregate Community-wide turnover** of each of at least two of the undertakings concerned **is more than EUR 100 million**, **unless each of the undertakings concerned achieves more than two-thirds of its aggregate Community-wide turnover within one and the same Member State**.

German Merger Control Section 35

(1) The provisions on the control of concentrations shall apply if in the last business year preceding the concentration
 1. the combined **aggregate worldwide turnover** of all the undertakings concerned **was more than EUR 500 million**, and
 2. the **domestic turnover of at least one undertaking** concerned was **more than EUR 50 million** and that of **another undertaking** concerned was **more than EUR 17.5 million**.

(1a) The provisions on the control of concentrations shall also apply if
 1. the requirements under subsection (1) no 1 are fulfilled,
 2. in the **last business year** preceding the concentration
 a) the **domestic turnover** of one undertaking concerned was **more than EUR 50 million** and
 b) neither the target undertaking nor any other undertaking concerned achieved a domestic turnover of more than EUR 17.5 million,
 3. the **consideration for the acquisition exceeds EUR 400 million** and
 4. the **target undertaking** pursuant to no 2 has **substantial operations** in Germany.

In addition Section 185 (2)

The provisions of Parts 1 to 3 of this Act shall be applied to all **restraints of competition having an effect within the area of application of this Act, even if they were caused outside the area of application of this Act**.

Rationale? – Control for changes in ownership that create a structural change on a lasting basis

- Merger of previously independent undertakings
- Acquisition of direct or indirect control (sole or joint control)
- Creation of joint ventures
- Some jurisdictions also include non-controlling minority acquisitions (i.a. Austria, Germany, UK)

Art. 3 (2) EUMR:

Control shall be constituted by *rights, contracts or any other means* which, either separately or in combination and having regard to the considerations of fact or law involved, *confer the possibility of exercising decisive influence* on an undertaking, in particular by:

- (a) ownership or the right to use all or part of the assets of an undertaking;
- (b) rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an undertaking.

Comp/M.5469 Renova/Sulzer

- Renova acquired 31,1 % of Sulzer`s capital
 - Horizontal overlaps in metal surface treatment
 - Participation rate at annual general meeting from 2001 – 2008 continually around or below 40 %
 - **Exception 2009 – 62,5 %**
 - One other shareholder with 4,88 %, rest of shares widely dispersed
 - **Expectation that future attendance rates will return to lower level**
 - Special circumstances 2009 – public announcement of Renova to remove President of the Board of Directors – public discussion and call on shareholders to attend
 - even high attendance didn`t prevent Renova from reaching it`s aim
 - Continuous majority for Renova in shareholders meeting to be expected – ability to appoint majority of the Board
- ⇒ ***Acquisition of control of Renova over Sulzer***



A German Local Newspaper Merger

- A wanted to acquire majority in B, both active as direct competitors on the same local newspaper market
 - Acquisition was prohibited by Bundeskartellamt

Then

- Natural Person Mr. C bought majority stake in B
 - Mr. C was a retired former high level employee of A
 - Mr. C was given a substantial loan by A to finance the purchase of B
 - A had a call option on the shares owned by Mr. C
 - Mr. C was the godfather of a son of the owner of A
 - Merger control proceedings were initiated
 - Mr. C was found to be acting as a front man for A
- ⇒ (Indirect) Control was attributed to A
- ⇒ Prohibition

Common Characteristics

- Ex-ante pre-merger notification is mandatory
- Standstill obligation for duration of the review (with exceptions)
- Clear legal timeframes for the investigation; expiry without decision = clearance

Stages of review

- Pre-notification (potentially unlimited)
- Phase 1 (around 1 month)
- Phase 2 (varies, 3- 4 months with limited extensions)

Phase 1

- Simplified procedures (no-brainer cases)
- I-don't-know-yet-what-this-is-cases
 - Investigate as much as possible to determine if
 - Case can be cleared within phase 1 or
 - Phase 2 needs to be initiated
- What and how to investigate?
 - Mostly informal investigations – calls/meetings with competitors, customers, suppliers; limited number of questionnaires; online research; internal party documents

Phase 1 - Example

Acquisition of SportScheck by Cisalfa – 1 month

- Sports retail merger with significant horizontal overlaps on 15 regional markets
- No pre-merger discussions
- Detailed estimates by parties
- Questionnaires (e-mail) to 18 competitors, differentiated data for all affected markets; also on relationship online/offline markets
- Request of internal documents
- Excel-based evaluation of answers and calculation of shares
- 48 pages internal decision proposal

⇒ **Unconditional clearance at the end of phase 1**

See more: Case report

https://www.bundeskartellamt.de/SharedDocs/Entscheidung/EN/Fallberichte/Fusionskontrolle/2024/B2-27-24.pdf?__blob=publicationFile&v=2

Phase 1 => Phase 2

When to initiate phase 2?

- EUMR Art. 6 1. (c) – „...where the Commission finds that the concentration notified falls within the scope of this Regulation and raises serious doubts as to its compatibility with the common market, it shall decide to initiate proceedings....“
- Germany Sec. 40 (1) – „...Second phase proceedings are to be initiated if a further examination of the concentration is necessary.“

Standards and criteria may differ between jurisdictions.

What to consider: seriousness of potential competition problems; likelihood that further investigation can provide more and better information; use of formal investigation tools; precedent value of the case; priorities; resources; ...

- Unconditional clearance phase 1 and phase 2
- Conditional clearance (clearance with remedies) phase 1 and phase 2
- Prohibition decision
- Withdrawal of notification

EC Merger Statistics

III.) FIRST PHASE DECISIONS

February

	90	91	92	93	94	95	96	97	98	99	00	01	02	03	04	05	06	07	08	09	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	Total
Art 6.1 (a) out of scope Merger Regulation	2	5	9	4	5	9	6	4	4	1	1	1	1	0	0	0	0	0	0	0	0	0	0	1	1	1	0	0	0	1	0	0	0	0	0	0	56
Art 6.1 (b) compatible	5	47	43	49	78	90	109	118	196	225	278	299	238	203	220	276	323	368	307	225	253	299	254	252	280	297	327	353	366	343	334	384	354	320	390	57	8560
Art 6.1(b) compatible, under simplified procedure (figures included in 6.1(b) compatible above)	0	0	0	0	0	0	0	0	0	0	41	141	103	110	138	169	211	238	190	143	143	191	171	166	207	222	246	280	302	283	278	309	291	271	351	50	5245
Art 6.1 (b) in conjunction with Art 6.2 (compatible w. commitments)	0	3	4	0	2	3	0	2	12	16	26	11	10	11	12	15	13	18	19	13	14	5	9	11	12	13	19	18	17	10	13	7	10	4	5	3	360

IV.) PHASE II PROCEEDINGS INITIATED

February

	90	91	92	93	94	95	96	97	98	99	00	01	02	03	04	05	06	07	08	09	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	Total
Art 6.1 (c)	0	6	4	4	6	7	6	11	11	20	18	21	7	9	8	10	13	15	10	5	4	8	10	6	8	11	8	7	12	8	8	7	8	5	3	0	304

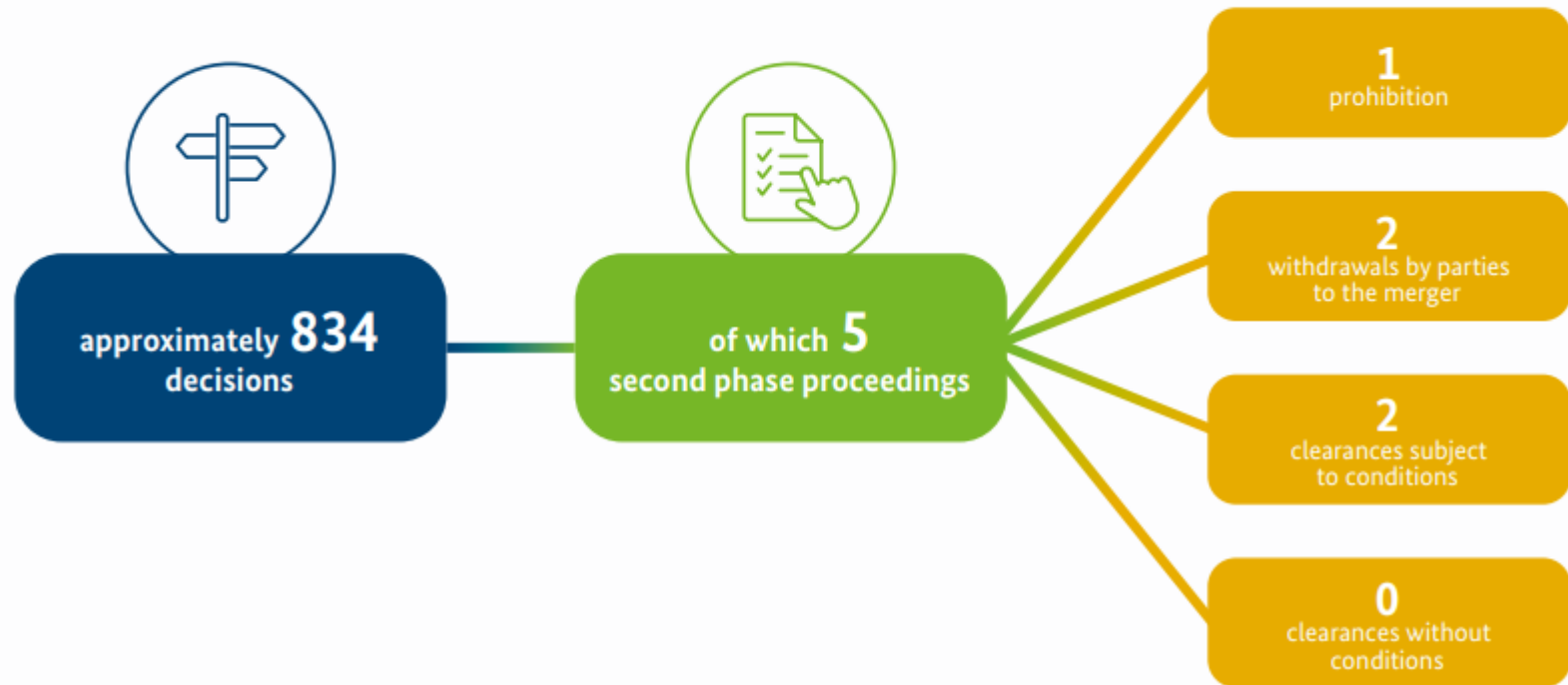
V.) SECOND PHASE DECISIONS

February

	90	91	92	93	94	95	96	97	98	99	00	01	02	03	04	05	06	07	08	09	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	Total
Art 8.1 compatible (8.2 under Reg. 4064/89)	0	1	1	1	2	2	1	1	3	0	3	5	2	2	2	2	4	5	9	0	1	4	1	2	2	1	1	0	4	0	1	0	0	2	0	0	65
Art 8.2 compatible with commitments	0	3	3	2	2	3	3	7	4	7	12	9	5	6	4	3	6	4	5	3	2	1	6	2	5	7	6	2	6	6	3	4	2	5	3	0	151
Art 8.3 prohibition	0	1	0	0	1	2	3	1	2	1	2	5	0	0	1	0	0	1	0	0	0	1	1	2	0	0	1	2	0	3	0	0	2	1	0	0	33
Art 8.4 restore effective competition	0	0	0	0	0	0	0	2	0	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	1	0	0	6	

Source: https://competition-policy.ec.europa.eu/mergers/statistics_en

Germany Merger Statistics

Bundeskartellamt merger control
in 2022

Source: https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Jahresbericht/Jahresbericht_2022-2023.pdf?__blob=publicationFile&v=1

OECD Merger Statistics (OECD Competition Trends

2025

- <https://www.oecd.org/en/publications/oecd-competition-trends-2025/8c4bd00b-en.html>



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Figure 2.27. Share of merger decisions by type, 2015-23

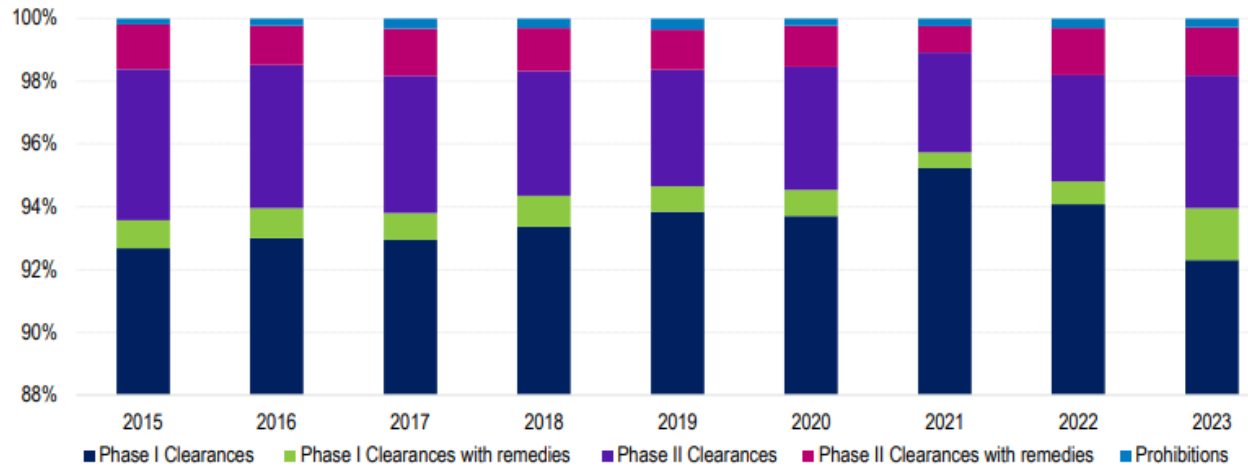
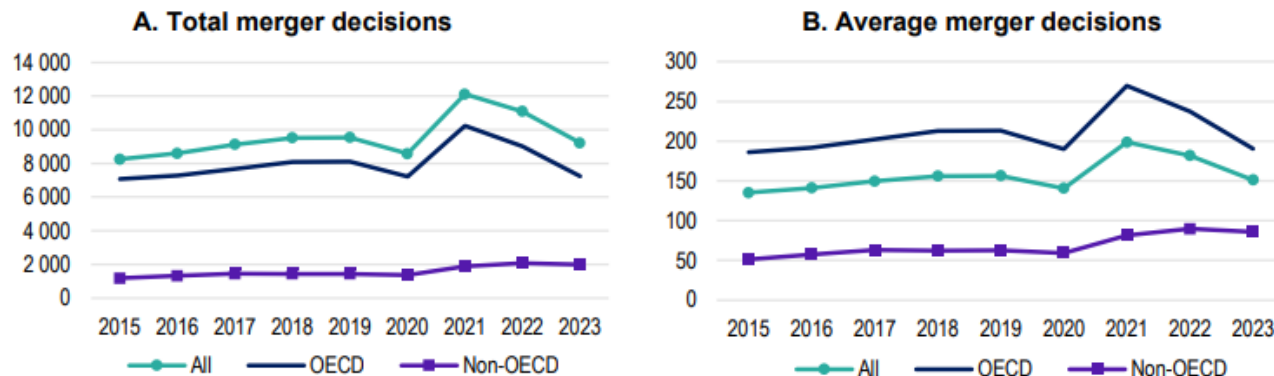


Figure 2.26. Number of merger decisions, 2015-23



Note: Data based on the 61 jurisdictions in the OECD CompStats database that provided data for merger decisions by type for nine years.

Source: OECD CompStats database.

21 Further Reading

- ICN - https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/05/MWG_SettingMergerNotificationThresholds.pdf
- ICN https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/09/MWG_NPRecPractices2018.pdf
- ICN <https://www.internationalcompetitionnetwork.org/portfolio/icn-framework-for-merger-review-cooperation/>
- OECD Recommendation <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0333>
- OECD Roundtable https://www.oecd.org/en/publications/local-nexus-and-jurisdictional-thresholds-in-merger-control_39e70c71-en.html
- OECD Roundtable https://www.oecd.org/en/publications/minority-shareholdings-and-interlocking-directorates_d81d1ccd-en.html
- OECD Roundtable https://www.oecd.org/en/publications/definition-of-transaction-for-the-purpose-of-merger-control-review_36e27703-en.html
- European Commission Consolidated Jurisdictional Notice [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52008XC0416\(08\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52008XC0416(08))
- European Commission Notice on Simplified Treatment [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52023XC0505\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52023XC0505(01))
- European Commission on International Co-operation https://competition-policy.ec.europa.eu/mergers/legislation/international-cooperation_en



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Thank you for your attention!

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Market definition

OECD - Korea Policy Centre workshop

Jakarta - April 2025

David KOVO

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Disclaimer: the views expressed are those of the speaker only and cannot be regarded as stating an official position of the European Commission.

Agenda

1. *What is market definition*
 - a. *Basic concepts (product/geographic, demand/supply side substitution,...)*
 - b. *The Hypothetical Monopolist Test*
 - c. *Market definition in practice*
2. *Selected topics on market definition*

What it is and why we need it

- A relevant market is a **set of products and geographic areas** that constitute the most significant and direct competitive constraint (in terms of price, quality, innovation, etc.) on the products of the companies under investigation
- Market definition is a **tool to identify** in a systematic way the **boundaries of competition** around the companies under investigation
- Not an end in itself. Only a **preliminary step towards the assessment of market power**
- It **provides a framework of analysis** for most competition cases
 - **Mergers:** calculate market shares and obtain a preliminary assessment of market power
 - **Abuses of dominance:** essential to establish dominance
 - **Horizontal and vertical cooperation agreements:** appreciability test. Agreements among firms with market share below a certain threshold can be dismissed (no appreciable effect on competition)

Dimensions of market definition

Product market

- "A relevant product market comprises all those products that customers regard as interchangeable or substitutable [...]" [EC Market Definition Notice, para 12]



Geographic market

- "The relevant geographic market comprises the geographic area in which the undertakings involved supply or demand relevant products, in which the conditions of competition are sufficiently homogeneous for the effects of the conduct or concentration under investigation to be able to be assessed, and which can be distinguished from other geographic areas [...]" [EC Market Definition Notice, para 12]



Additional dimensions

- **Customer groups.** Certain customer groups may have different alternative choices and willingness to pay, and suppliers can exploit this by price discriminating (e.g. business/economy passengers)
- **Distribution channels.** The same bottle of beer can be in a different relevant market depending on whether it is sold in a supermarket or in a bar/restaurant

The Hypothetical Monopolist Test

- The **Hypothetical Monopolist Test** is the **main tool** used to define relevant markets
- A useful **framework to think about substitution patterns and competitive constraints**. Should not be taken too literally as a "test"

General idea

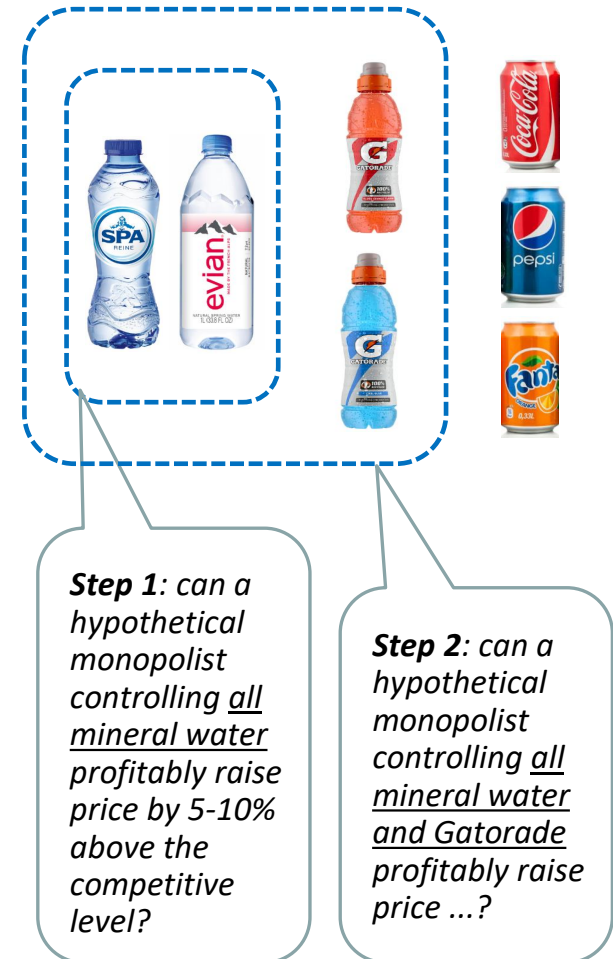
- Competition analysis is concerned with market power: price increases or other lessening of competition (quality, innovation)
- Exercising market power is feasible only when customers would not sufficiently reduce or divert demand to other products, making a price increase unprofitable
- The HMT aims at identifying the minimum set of products for which a hypothetical monopolist controlling these products would profitably increase prices by 5-10% (**SSNIP** = **S**mall but **S**ignificant **N**on-transitory **I**crease in **P**rice) above the "competitive level" (the level that would prevail if those products were controlled by separate firms)



Can a hypothetical monopolist controlling all mineral water profitably raise prices by 5-10% above the competitive level?

Hypothetical Monopolist Test: *in practice*

- **Consider a monopolist** over the focal product (the one at the center of the competition analysis) in the focal area
- **STEP 1:** would it be profitable for this monopolist to **↑ the price** of the focal product by a SSNIP (5-10%)?
 - If yes, test completed: the relevant market is the focal product (in the focal area)
 - If no, then this can be due to demand- or supply-side substitution. Go to step 2...
- **STEP 2:** assume that the monopolist now controls the focal product and its closest substitute. **Re-consider if it would be profitable to ↑ the price** of the focal product by a SSNIP (5-10%)
 - If yes, test completed. The relevant market is: {focal product + its closest substitute}
 - If no, then add the next substitute to the set of products controlled by the hypothetical monopolist...



Will the SSNIP be profitable?

Demand side substitution

- Extent to which consumers respond to a price increase by (i) substituting to alternative products or alternative locations, or (ii) reducing consumption altogether
- Starting point and most effective disciplinary force



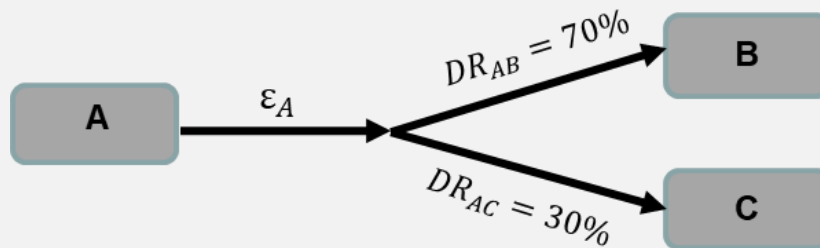
Supply-side substitution

- Extent to which productive assets outside the control of the hypothetical monopolist would be rapidly redirected towards the production of the focal product
- Immediacy and effectiveness must be equivalent to demand side substitution



Demand side substitution

- **When will a SSNIP be profitable?**
 - When extra profit on customers who stay > profit lost on customers who switch away
 - Critical loss analysis. Role of the own price elasticity of demand (how demand for product A responds to an increase in price)
 - Can also use qualitative criteria: previous decisions, interviews with industry participants, internal documents
- How to establish **which are the next best substitutes?**
 - Role of diversion ratios. Indicate how the volume lost after a price \uparrow is distributed across substitutes



Supply side substitution

- After a SSNIP, suppliers of related products may **convert production towards the focal product**
- It's a **less immediate constraint than demand side substitution**. Often assessed at a later stage of the competitive assessment (under "likelihood of rival entry/expansion")
- To be considered at the market definition stage, **entry must have equivalent effects to demand substitution** in terms of *effectiveness* and *immediacy*. Suppliers must be able to switch production to the relevant product quickly and without significant investments/risks
- Entry must be:
 - **Timely**: the conversion of production must be feasible within a short time (<1 year). Either there is spare capacity or production can start in almost real-time (all skills and assets are available)
 - **Likely**: converting production must be profitable. Either there's spare capacity or conversion costs (including opportunity costs) are low
 - **Sufficient**: sufficient to deter the SSNIP (small scale not enough)
- Key role of **capacity constraints, conversion costs** (incl. **opportunity costs**), **barriers to entry/expansion**

Example of SSNIP test



▪ Mineral water

▪ Sports drinks



▪ Carbonated soft drinks

Supply side
substitutability?



▪ Ice cubes producers

Example of SSNIP test



▪ *Branded apple juice*

▪ *Private label apple juice*



▪ *Orange, tomato, pineapple, ...*

Supply side substitutability?

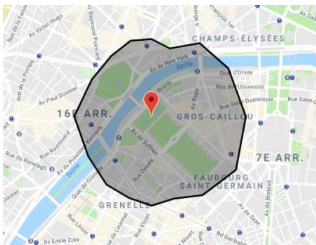


▪ *Other apple products*

What about geographic markets?

▪ Local

→ Pharmacies



▪ National

→ Beer



▪ Europe

→ Aluminium



▪ Global

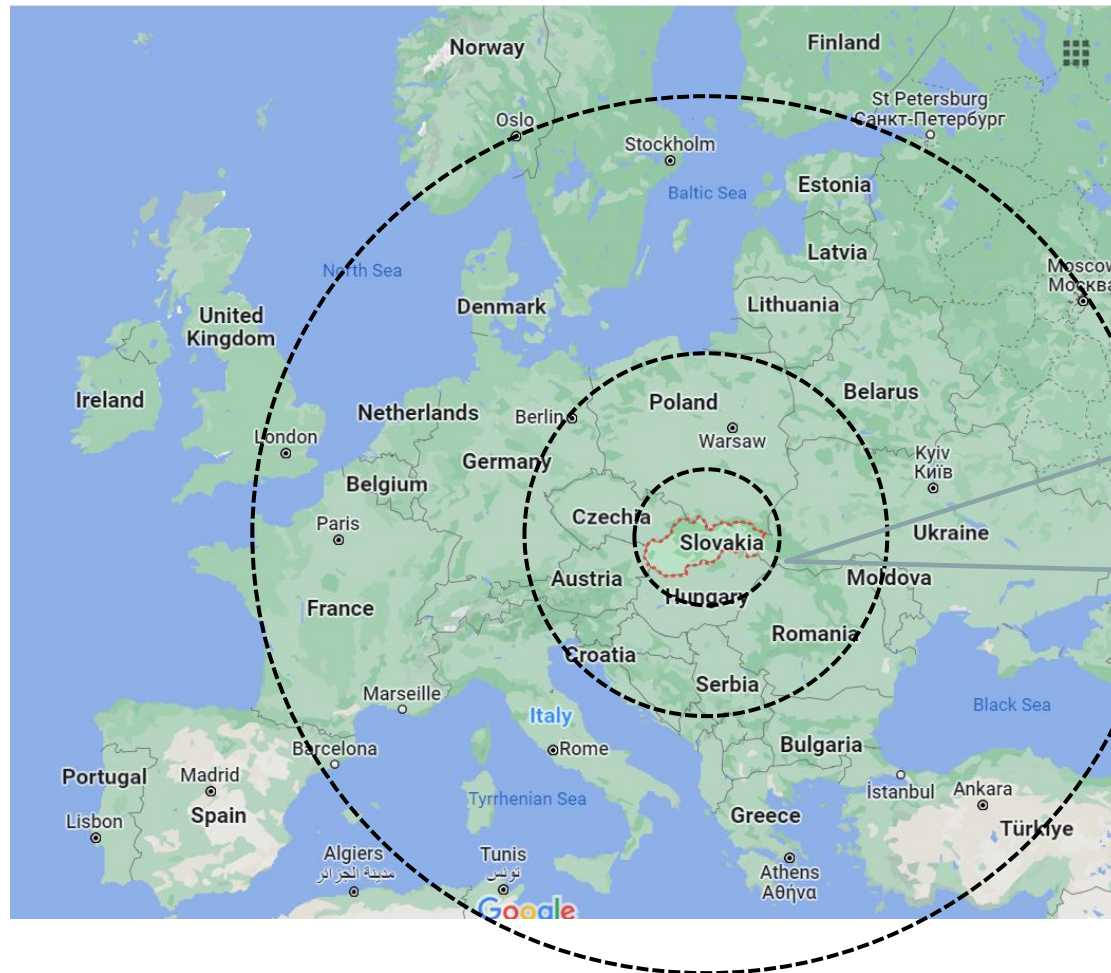
→ Semiconductors



▪ Other

- Airlines: point-to-point (origin-destination city pairs)
- Etc.

Can apply the HMT just like for product markets



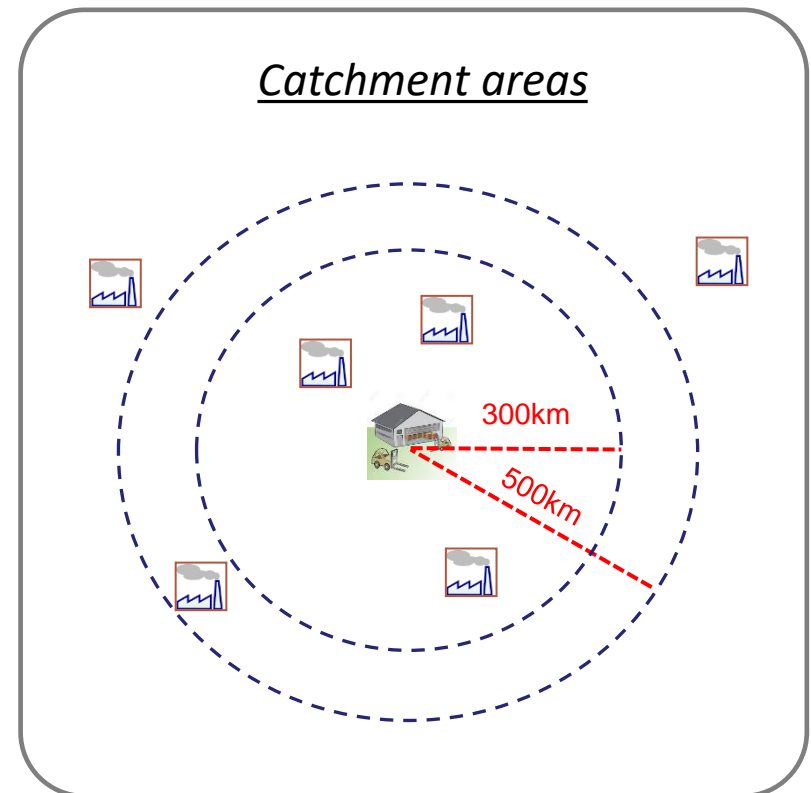
Can a **hypothetical monopolist** controlling all mineral water in Slovakia profitably **increase prices by 5-10%** above the competitive level?

Or would competition from neighbouring countries (i.e. imports of mineral water) prevent this?

Local geographic markets

General idea:

- Establish the main competitive options available to each customer
→ Draw **catchment areas** around each customer
- What radius?
 - In principle: based on a SSNIP test
 - In practice: can use the distance within which 80% of sales are delivered
 - Straight-line vs. actual distance (drive time)



Market definition in practice

Typical indicators for market definition

[Should not rely on a single piece of evidence → Gather complementary sources of evidence]

Qualitative tools

- Product characteristics and customer preferences (price, quality, functionalities, intended use, etc.)
- Company internal documents (competitive analyses, **which rivals are monitored**, etc.)
- Industry studies/reports
- Surveys of consumers and competitors / Evidence of hypothetical substitution
 - *Caveat 1*: surveys on hypothetical switching may not be reliable predictors of actual switching
 - *Caveat 2*: without a Critical Loss Analysis, it is hard to judge whether the expected switching is enough to conclude that market is broader
- Barriers and costs associated with switching (contractual obligations, search costs, uncertainty about quality of alternatives, costs of adapting to new products, brand recognition, network effects, data portability, lack of interoperability, etc.)

Typical indicators for market definition

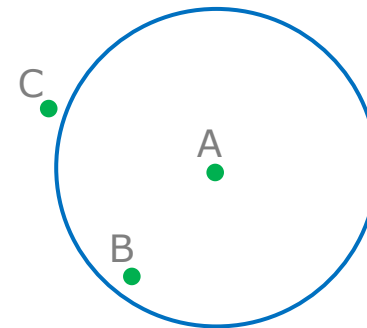
Quantitative tools

- Critical loss analysis (quantitative SSNIP test)
 - Requires measuring margins, elasticities and diversion ratios
- Price tests (price levels, price-correlation analysis, etc.)
- Evidence of past substitution (historical switching) and competitive interactions
 - Especially from event studies / natural experiments: switching based on exogenous changes in relative prices or availability of products (e.g. entry/exit, production outages, etc.)
- Additional tools for geo market definition (catchment area analyses, trade flows and patterns of shipments, transportation costs, etc.)

Market definition is very much "black or white"

- Market definition gives a very "black or white" answer: products are either "in" or "out" of the market
 - Not all players within the market are equally close substitutes (especially for differentiated products)
 - Similarly, products outside the relevant market can impose a competitive constraint
- Not a mechanical exercise!

Who are the competitors of A?

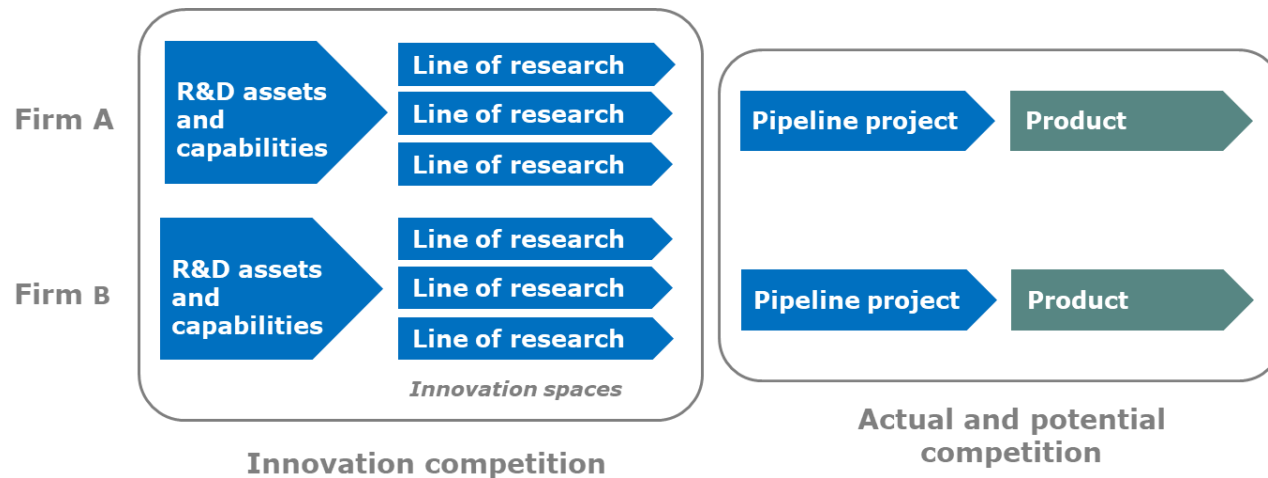


Selected topics on market definition

Innovation competition and market definition

Two levels of analysis

- Pipeline projects at development stage (e.g. drug for specific form of lung cancer, a specific mode of action)
 - One can often define (product) markets in a conventional way
- Early innovation efforts (e.g. research on a new lung cancer drug)
 - Boundaries of innovation competition ("**innovation spaces**") can be broader and not exactly defined
 - Look at R&D objectives/targets, results of past innovation, etc



Digital markets: zero-price

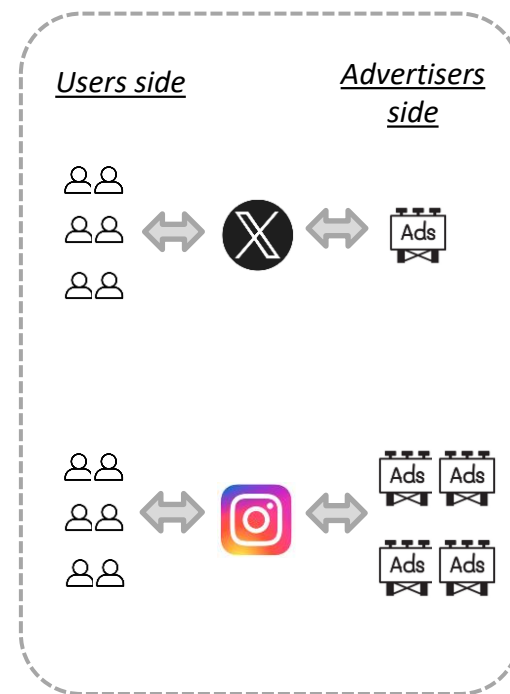
Can the SSNIP test be applied if the price for the service is zero?

- For many digital services, the user price is zero (e.g. social media, search engines, etc)
- The SSNIP test can still be applied when the price is zero. One could postulate a small but significant deterioration in quality (e.g. a less stringent privacy policy) or a change of the business model from "free" to a small fee
- The test can be applied even when there is a negative price on one side of the market (e.g. the platform is not only free but gives incentives for users to join). One could analyse the effect of reducing the payment to the respective users by 5-10%
- In general, the SSNIP test is a framework to think about demand-side substitutability. Even when it is difficult to implement the test empirically, it is a useful tool to apply as thought experiment

Digital markets: two-sidedness

For multi-sided platforms, should we define separate markets for each side of the platform (multi-markets approach) or should all sides be treated as a single market (single-market approach)?

- In general, the multi-market approach is more appropriate, especially if competitive conditions differ across the sides of the platform
- However, if the two sides of the platform interact, cross-group externalities must be considered at some stage of a competition analysis. Because conduct and outcomes on one side on the market affect conduct and outcomes on the other side
 - *Example.* Raising the price (or degrading quality) to end users has a negative effect on advertising revenues. So the hypothetical monopolist may have the ability but not the incentive to raise prices to final users



Mergers

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Chief Economist Team

DG Competition, European Commission

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Introduction

Why mergers occur?

Many reasons...

- Synergies / efficiencies (reducing costs, complementary assets, etc.)
- Better range of brands or products
- Gain footholds in new geographic markets
- A company is failing
- Elimination of rivalry

In general, if a merger is approved by shareholders, it means they expect **higher future profits** thanks to the transaction

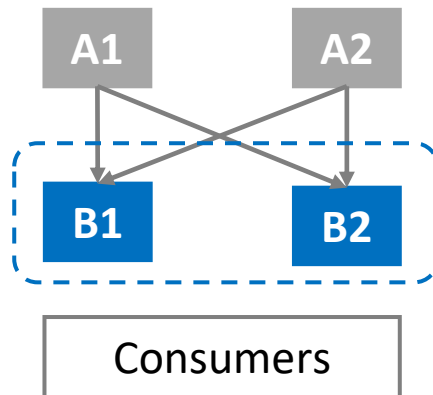
The competition authority must establish whether these higher profits come from:

1. **Harm to consumers** (more market power → higher prices, lower output, quality, choice or innovation; or
2. **Pro-competitive rationales**

Types of mergers

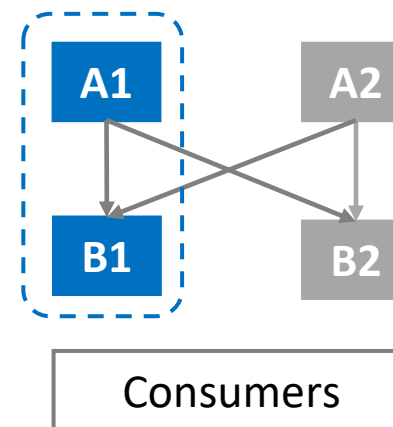
Horizontal

Companies operate at the same level of the supply chain (substitute products)



Vertical and Conglomerate

Companies operate at different levels of the supply chain (vertical) or in separate but somehow related markets (conglomerate)



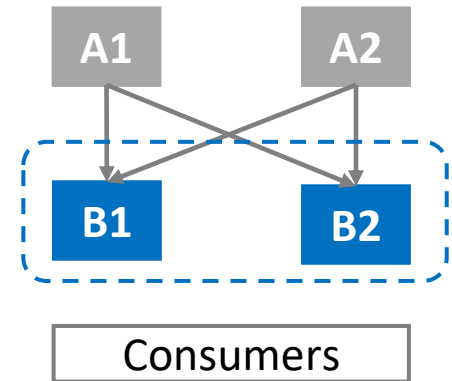
Theories of harm

▪ Unilateral effects

Merger confers an incentive to unilaterally increase prices (or reduce quality), regardless of the response of the remaining competitors

▪ Coordinated effects

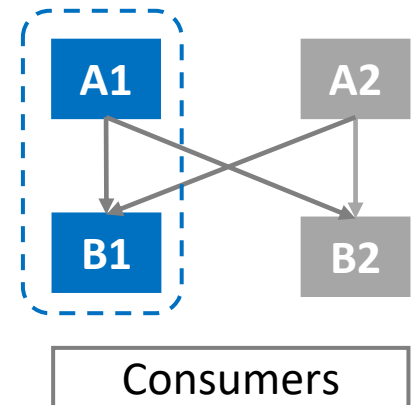
The merger enables the remaining firms to better reach and sustain a tacit coordination on competing less vigorously



▪ Foreclosure

No elimination of horizontal competition...

But the merger may confer ability and incentive to make it harder for rivals to access an input or distribution channel (vertical mergers) or to access a component of a bundle (conglomerate mergers)



Analytical framework

- **Market definition**
- **Competitive assessment**
 - Market shares / Concentration
 - Theories of harm
 - Further analyses, depending on the industry (homogeneous products, differentiated products, bidding markets, innovation, digital markets, etc.)
- **Countervailing factors**
 - Entry / Repositioning
 - Buyer power
 - Efficiencies
 - Failing firm defence / Counterfactual
- **Remedies**
- **[Ex-post assessment]**

Concentration

Concentration measures: market shares

- Market shares are a **preliminary indication of market power**
- High market share suggests, prima facie, that there are only a few (less preferable or less efficient) rivals

Market shares screens in EC Horizontal Merger Guidelines

- **Above 50%:** presumption of dominance (rebuttable)
- **Between 40 and 50%:** case by case assessment – more likely problematic [*not in Guidelines*]
- **Between 25 and 40%:** case by case assessment – less likely problematic [*not in Guidelines*]
- **Below 25%:** presumption that the merger is not problematic

Pros and cons of market shares

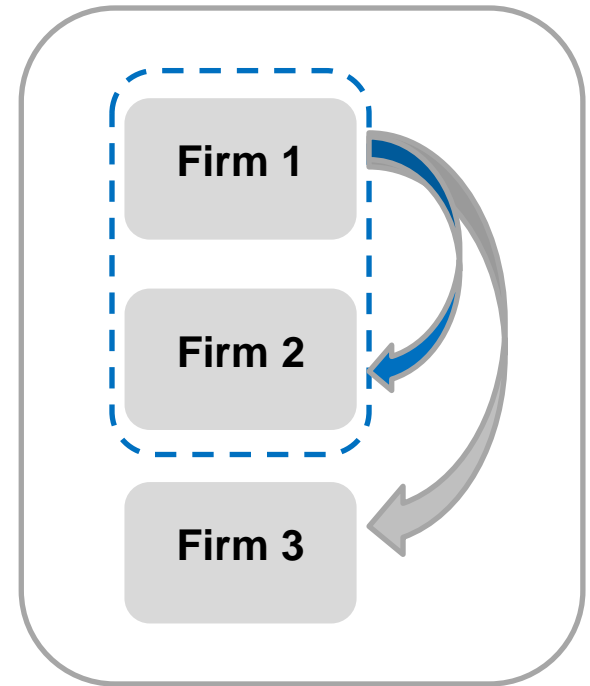
- In general, market shares are a **preliminary indication** of the effect of the merger
- But market shares **may over-** or **under-estimate** the competitive constraint between the merging firms
 - High combined share may **over-state** concerns
 - Distant competitors amongst differentiated products –e.g. vintage watches and sport watches
 - Bidding markets (competition for the market) –e.g. bidding for large Government contracts
 - Low combined share may **under-state** concerns
 - Close competitors in a differentiated market
 - Capacity constraints
 - Recent entrants

Horizontal mergers – Unilateral price effects

Price competition: economic intuition

- Why do we expect a price \uparrow from horizontal mergers?
 - **Pre-merger:** a price increase for firm 1 carries a trade-off between (i) higher margins on the customers who stay and (ii) lost margin on the customers who leave
 - **Post-merger:** firm 1 is now more likely to increase price, as the sales lost to firm 2 are now "recaptured" by 1

[same reasoning applies to merging firm 2]
- The extent of the price \uparrow will be proportional to:
 1. **Margins** (extent of market power); and
 2. **Diversion ratios** (degree of substitutability)



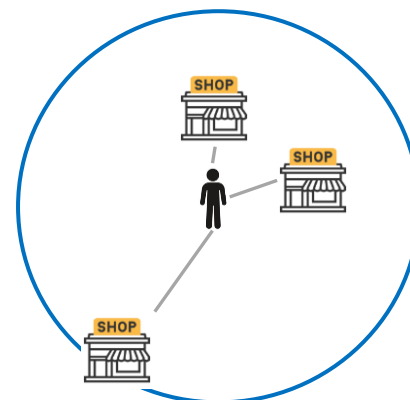
Diversion ratios and substitutability

- **Market shares** as a metric **have limitations** (especially in differentiated markets)
 - They may fail to capture the closeness of competition between the parties
 - The "binary" process of market definition (products are "in" or "out" of the market)
- In differentiated markets, **diversion ratios** tend to be **more informative** than market shares

Product differentiation



Geographic differentiation



Diversion ratios and substitutability

How can diversion ratios be obtained?

- **Switching data**

- *"Out of all people who switched away from company A, what proportion went to company B?"*

- **Customer surveys**

- *"You purchased product A. If product A were not available, which alternative product would you have bought?"*

- **Event studies**

- *"When company X's plant was closed last year, to which rivals did customers switch?"*

- **Demand estimation**

- Econometric estimation of own and cross-price elasticities of demand

Margins and profitability

- Market power = '*ability to maintain prices above competitive levels*'
 - Economic margins can provide an indication of the extent of a firm's market power

Gross margins (price minus variable costs)

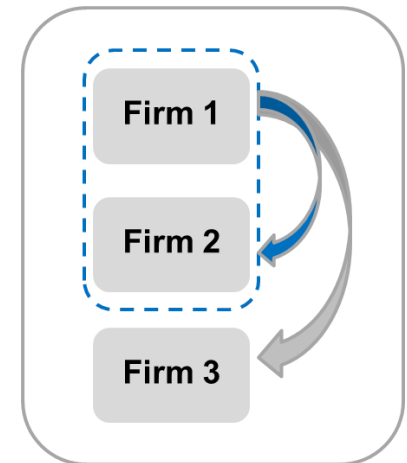
- Market power in the short term: the firm can price above variable costs despite pressure from rivals and consumers

Net margins (price minus variable and fixed costs)

- In markets with large fixed costs, all firms will have large gross margins (to cover fixed costs)
- In these markets, net margins are a useful indication of a firm's long run profitability and market power

Innovation competition: economic intuition

- Firms' incentives to compete (lower prices, more innovation) are driven by the desire to win customers from rivals and to protect own sales ("**business stealing**")
- The **internalisation** of this **business stealing** between the merging parties is the **key driver of unilateral effects**
- Absent efficiencies, horizontal mergers in innovative industries lead to:
 - Higher prices
 - Lower incentives to innovate

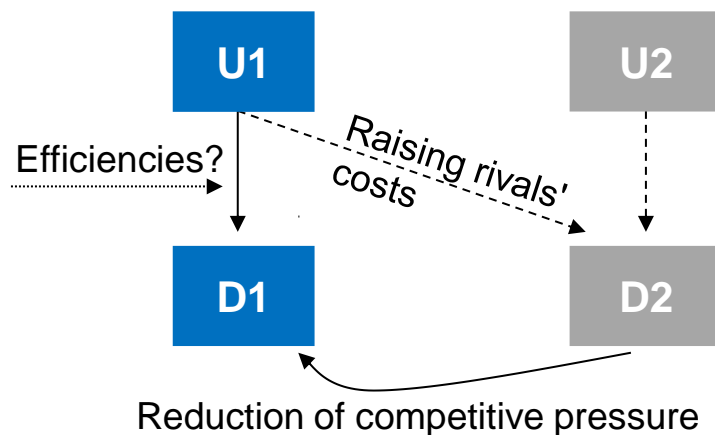


A common counter-argument

- Defendants often argue that higher prices lead to higher incentives to innovate
- However:
 - The "business stealing" tends to dominate → innovation incentives are lower post-merger
 - In any event, the negative effect from higher prices tends to dominate

Vertical mergers – Foreclosure

Input foreclosure



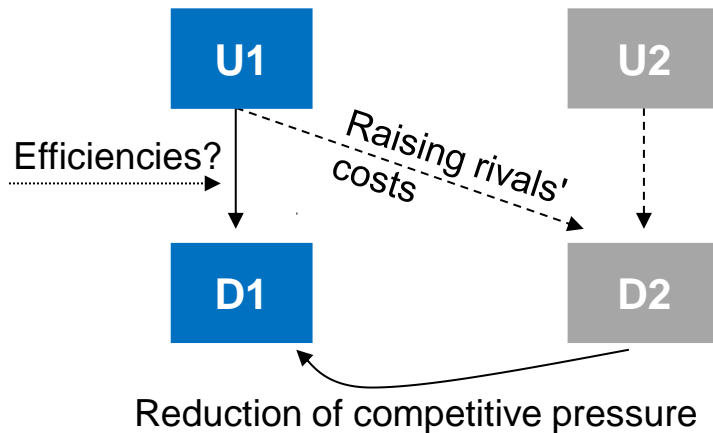
General intuition

- Upstream affiliate U1 reduces supply (or increases price) to downstream rival D2
- Downstream rivals face higher costs and therefore
 - ↑ price to final consumers (pass-on the cost ↑)
 - Lose some sales to D1

Legal framework

- Most non-horizontal merger guidelines present a three-step approach to the assessment of vertical mergers
 - **Ability** to foreclose
 - **Incentive** to foreclose
 - **Effects** on consumers

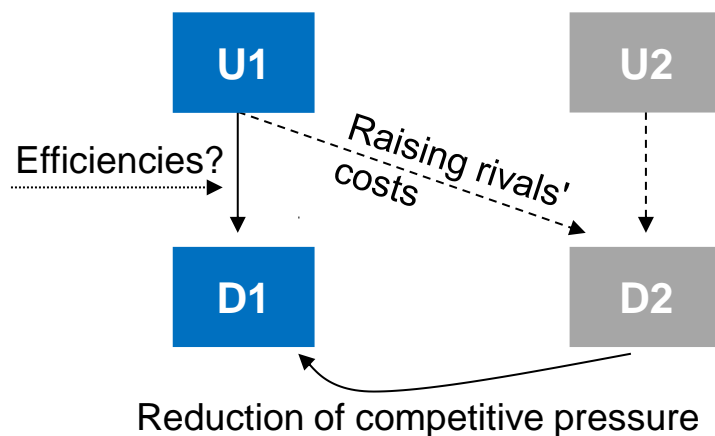
Ability



Ability *(can rivals be foreclosed?)*

- **Input must be important** (e.g. high share of input costs for downstream rivals)
- Merged entity must have **market power**
 - EC NHMG: merger unlikely to raise concerns if **combined share** (upstream and downstream) is **below 30%** and $HHI^{post} < 2000$
 - Note: watch out for the presence of vertically integrated rivals, which by definition cannot be foreclosed

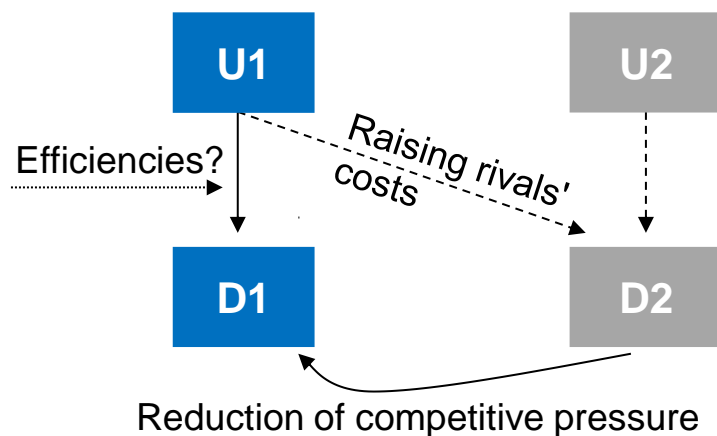
Incentives



Incentive *(does foreclosure increase profits?)*

- Merged entity faces a trade-off
 - **Profit loss upstream** due to no longer supplying downstream rivals; and
 - **Profit gain downstream** due to \uparrow sales downstream and ability to \uparrow price downstream
- Incentive to foreclose tends to be higher when
 - **Margin upstream** low; **margin downstream** high
 - Likelihood to expand downstream is high (role of **diversion ratios**)

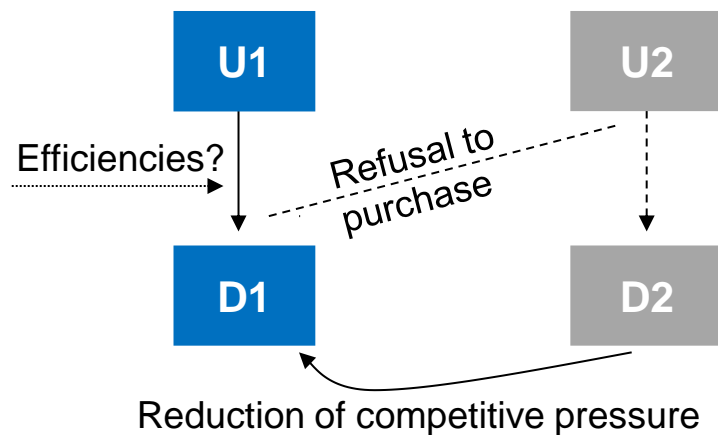
Effects on consumers



Effect on consumers

- Effects depend on the ToH
- A merger that **raises rivals' costs** may raise rivals' prices. This in turn allows the merged entity to raise its price
 - Effect likely greater when the proportion of foreclosed rivals is high or foreclosed rivals are close competitors
- Anti-competitive effects must be **balanced against efficiencies** (e.g. internalisation of double mark-ups)
 - Very complex task

Customer foreclosure



Framework of assessment

- **Ability:** (1) Scale economies upstream; (2) D1 is critical in achieving them

- **Incentive:**

Losses: foregoing rivals' input may reduce D1's profits (if U1's input is not as good as U2)

Gains: increase in D1's profits once D1's rivals are weakened

Relevant questions:

- Is D1 likely to capture significant sales lost by D2? (role of product differentiation)
 - Does U1-D1 have spare capacity to serve the sales lost by D2?
- **Effects on competition:** Depends on which effect prevails between (i) raising rivals' costs and (ii) efficiencies

Countervailing factors

Entry/Expansion

- Apart from existing competitors, potential entrants may also constrain a firm's market power
- Three cumulative conditions
 - **Likely:** do rivals have the ability and incentive to expand (Do they have spare capacity? Why did they not use the spare capacity in the past? Is it profitable to expand? What is the cost of expanding supply by x%)
 - **Timely:** how long does it takes to expand supply? Is it sufficiently swift to deter/defeat the exercise of market power?
 - **Sufficient:** can rivals expand to an extent that is capable of mitigating market power?
- Barriers to entry / expansion
 - Regulatory / Legal
 - High fixed costs: R&D, expertise, etc
 - Demand and supply side disadvantages (economies of scale, network effects, switching costs)
 - Control of essential assets / vertical integration
 - Strategic: advertising, over-investment, exclusionary practices, etc

Buyer power

- Definition: **bargaining strength** vis-à-vis a seller in commercial negotiations due to size, commercial significance to the seller and ability to switch to alternative suppliers
- Relevance: customers with buyer power may be able to **counter the exercise in market power**
- Buyer power comes from the **ability and incentive to use alternative forms of supply**
 - Switching to alternative existing suppliers
 - Vertically integrating
 - Threatening to sponsor entry upstream
- Some relevant considerations
 - Need to assess the **incentives** of buyers **to utilise buyer power** (e.g. costs of sponsoring new entry may be higher than the benefits of entry)
 - Price discrimination markets: buyer power may protect **large buyers** but not smaller ones
 - In mergers, it is not sufficient that buyer power exists prior to the merger. **Buyer power must remain effective after the merger** (the merger may eliminate a credible alternative for users)

Intro

- A horizontal merger may be problematic because it **eliminates competition** between the merging parties
- But it could also **enhance competition** by generating efficiencies
 - lower production costs due to greater economies of scale
 - higher quality products due to combination of complementary tangible and intangible assets
- Efficiencies **may offset the loss of competition** between the merging parties
- Competition authority must perform a **balancing exercise** to establish if consumers are better-off after the merger



Legal framework

- The burden of proof for showing efficiencies is on the merging parties (**3 cumulative criteria**)
- The authority's role is to verify the claims and evaluate whether they are sufficient to offset any anticompetitive effects ("balancing exercise")

1

Verifiability

- **Reasonable certainty that efficiencies are likely to materialize**
- Quantification required where reasonably possible
- If data not available, a "clearly identifiable positive impact" is necessary (but balancing is difficult in this case)

3

Benefit to consumers

- **Efficiencies must be likely to be passed on to consumers** (e.g. variable v. fixed costs)
- Efficiencies must be timely
- Benefits to consumers should occur on the same market as the harm

2

Merger specificity

- **Efficiencies must be a direct consequence of the merger**
- Cannot be achieved by less anti-competitive alternatives

Failing firm defense

- The effect of a merger must be assessed by comparison to the most likely scenario absent the merger (the "counterfactual")
- A merger may have no effect on competition if **one of the merging parties is failing**
 - The **counterfactual scenario** without the merger is **not substantially less anticompetitive** than a scenario in which the merger takes place
- Three strict conditions (see HMG para 89-91):
 - Absent the merger, the failing firm **would exit the market in the near future**
 - There is **no less anti-competitive alternative purchaser**
 - Absent the merger, the **assets of the failing firm would exit the market** (e.g. purchased by a buyer who would use them for a different purpose; that is, the merger is the only way to keep the assets of the firm in productive use)





ក្រសួងពាណិជ្ជកម្ម
Ministry of Commerce

Case Study:
**“Business Combinations
between Grab Inc. & G024 Pte. Ltd”**

Mr. MENG SONGKHEANG
Director, Department of Competition
CCF Directorate-General, Ministry of Commerce





CONTENTS



Overview of Cambodia's Merger control



Background of Transaction



Competition Assessment



Conclusion



Overview of Merger Control

According to Article 3(3) of the Law, Business Combination means:

- The acquisition of **the right of control or voting rights** through the purchase of shares or assets by one Person from any other Persons or
- The combination of two or more Persons to acquire joint ownership of an existing legal Person or a new legal Person.

Acquisition of Assets

Consolidation

Joint Venture

Acquisition of Share

Merger





Overview of Merger Control

On 6 September 2023, Cambodia became the latest AMS to have a comprehensive merger control regime in force:

Pre-Notification

To notify the CCC before substantive completion

Post-Notification

To notify the CCC after substantive completion



Registration

To register at the CCC after substantive completion of 30 days.

Advance Ruling Certificate

To voluntarily notify the CCC before substantive completion

(*For pre-notified transaction)

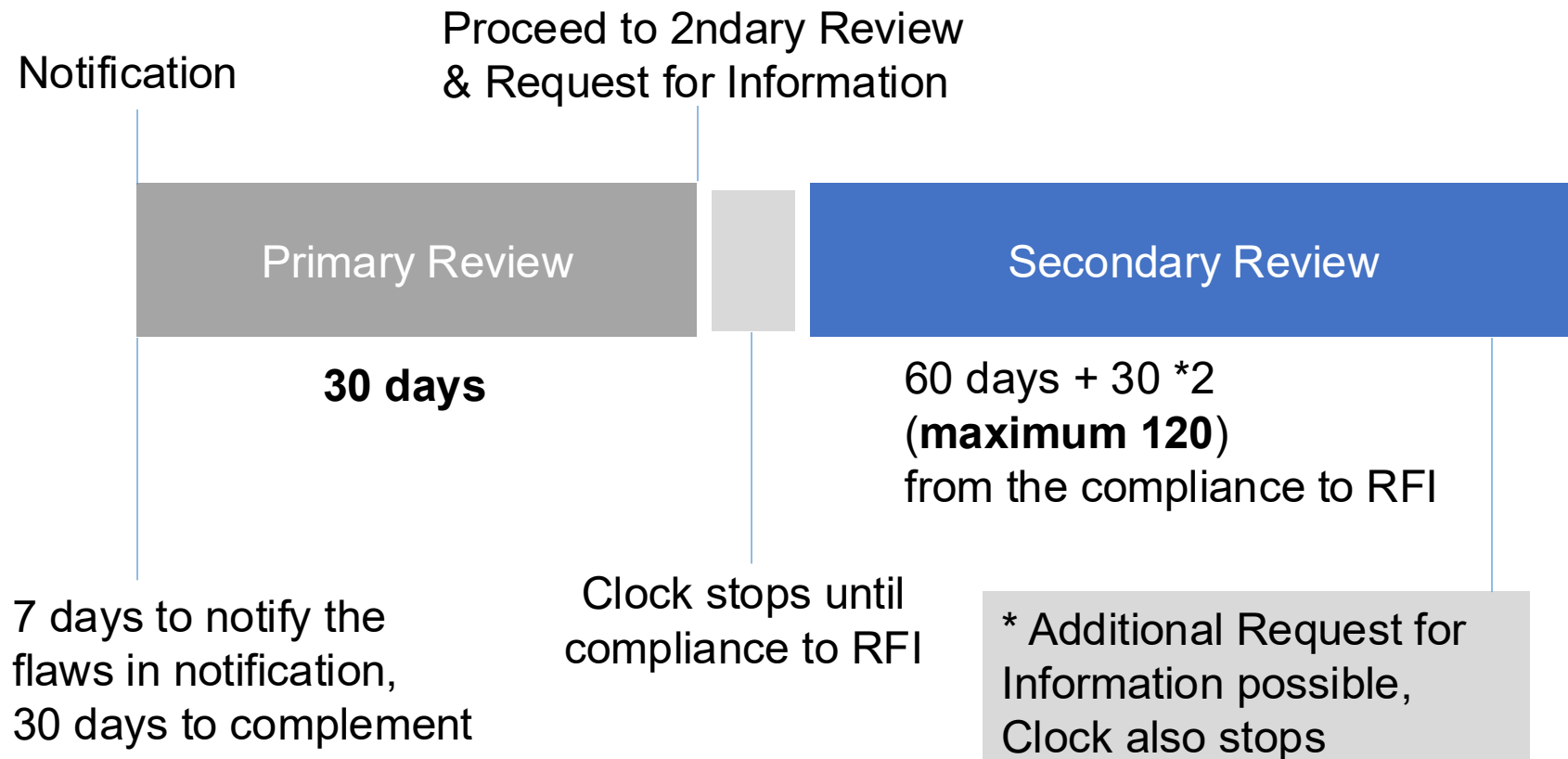




Overview of Merger Control

Timeline of the Review (Pre-Notification)

* Days = Working days





Overview of Merger Control (cont'd)

Thresholds

4

- Assets
- Turnover
- Input Purchase
- Transaction Value



Sectors

3

- General
- Banking and Finance
- Insurance and Securities

Sectors	Types of Thresholds	Notification Thresholds (USD Million)	Notification Thresholds (KHR Million)
General	Assets	84	340,000
	Turnover	67	270,000
	Input Purchase	30	120,000
	Transaction Value	10	41,000
Banking and Finance	Assets	1,118	4,500,000
	Turnover	103	420,000
	Input Purchase	903	3,800,000
	Transaction Value	30	120,000
Insurance and Securities	Assets	260	1,000,000
	Turnover	70	280,000
	Input Purchase	200	820,000
	Transaction Value	15	61,000

Note: The table above depicts the pre-notification thresholds, with the post-notification thresholds set at 50% of these values.





Case Study- Grab Inc. & Go24 Pte. Ltd.

Grab
♥
Nham24
Together, for you





Background of Transaction

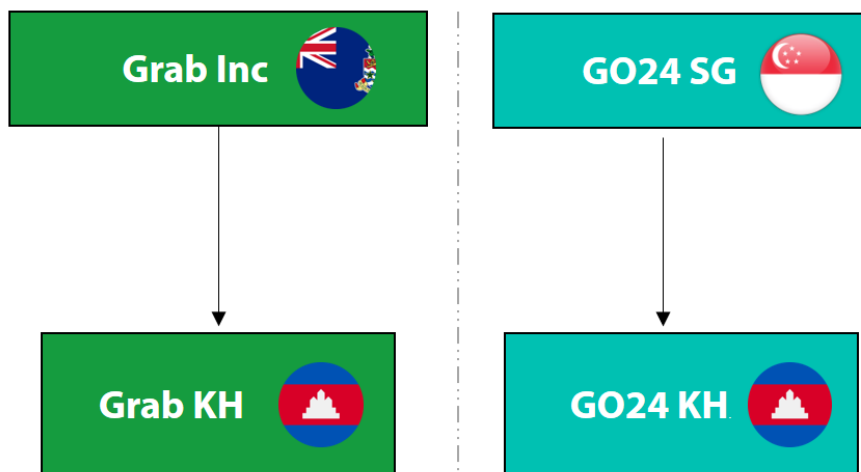
Procedure	Case Timeline
Submission of Notification	21 November 2024 (Grab Inc.) 20 November 2024 (Go24 Pte. Ltd)
Notice of Sufficiency	26 November 2024
Primariy Review	27 November 2024
Completion	9 December 2024



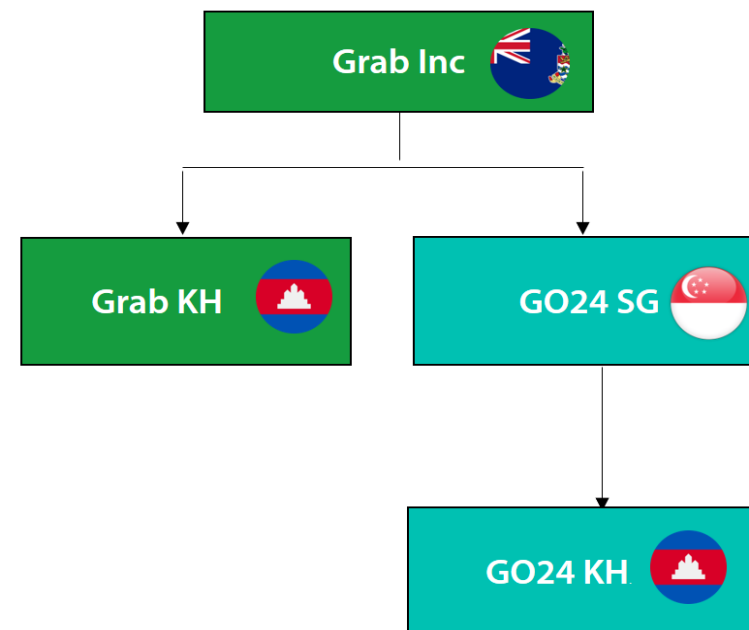


Background of Transaction

- The Proposed Transaction (“**Acquisition**”) involves **Grab Inc.** acquiring **100%** shares of **Go24 Pte. Ltd.** (“**GO24 SG**”), a company based in Singapore.
- Through the Acquisition, Grab Inc will also indirectly own **Go24 (Cambodia) Co., Ltd.** (“**GO24 KH**”), which operates the NHAM24 business in Cambodia.
- Upon completion of the Acquisition, both **GO24 SG** and **GO24 KH** will become part of the **Grab group** of companies. (“**Grab**”)



Pre-transaction structure



Post-transaction structure





Background of Transaction



Grab operates **online-to-offline mobile platforms (“O2O Platform”)** in the transportation, food delivery, parcel delivery, mobile payments and financial services in Southeast Asia, including **Cambodia (“GrabKH”)**, Indonesia, Myanmar, Malaysia, Philippines, Singapore, Thailand and Vietnam. The lines of business of **GrabKH** are as follows:

No.	Segments	Line of Business
1.	Deliveries	Food Delivery (GrabFood)
2.		Parcel Delivery (GrabExpress)
3.	Transportation	Ride-Hailing (GrabRide)
4.	Others	Hotel Booking





Background of Transaction



Go24 (Cambodia) Co., Ltd. (“Go24KH”) is a subsidiary company wholly owned by Go24. The primary business activities of **Go24KH** are operated under the brand name of **Nham24** as follows:

No.	Segments	Line of Business
1.	Deliveries	Food Delivery (Nham24 Food)
2.		Parcel Delivery (Nham24 Express)
3.	Transportation	Ride-Hailing (Nham24 Taxi)
4.	Others	Bus, Ferry, Taxi Bookings





Competition Assessment

- Under the Competition Law, any merger transaction that may have the effect of “significantly preventing, restricting or distorting competition” in a market shall be prohibited.
- The term “significantly preventing, restricting or distorting competition” is akin to the ‘substantial lessening competition’ (SLC) standard. **Common factors include:**

No.	Criterion
1.	Market Shares
2.	Unilateral Effects
3.	Coordinated Effects
4.	Barrier to Entry and Expansion
5.	Countervailing Buyer Power
6.	Efficiencies





Competition Assessment- Relevant Markets

Relevant Product Market	Relevant Geographic Market
O2O Food Delivery Platform	Nationwide
O2O Ride-Hailing Platform	Nationwide
O2O Parcel Delivery Platform	Nationwide





Competition Assessment- Relevant Markets

Market Concentration

Horizontal

Safe Harbours

(Presumed not to raise competitive concerns)

1. Aggregate market share of the Parties $< 30\%$
2. Aggregate market share of the Parties $\geq 30\%$
& **HHI**(in such relevant Market) $< 1,800$
3. Aggregate market share of the Parties $\geq 30\%$
& **HHI**(in such relevant Market) $\geq 1,800$ & $\Delta \text{HHI} < 150$

Vertical & Conglomerate

Aggregate market share of any Party $< 30\%$










Competition Assessment – Market Share and Concentration

O2O Food Delivery Platform (“O2O FDP”)

The market share for O2O FDP is computed by using total Gross Merchandise Value (GMV) as an indicator. The combined market share of Parties is **27.67%** following the Transaction.

Logo	Competitors	Market Share
	Foodpanda	29.92%
	Egets	26.97%
	Nham24 (as part of "Go24")	23.79%
	WowNow	6.11%
	GrabFood (as part of "Grab")	3.88%
-	Others	9.33%
Total		100%





Competition Assessment – Market Share and Concentration

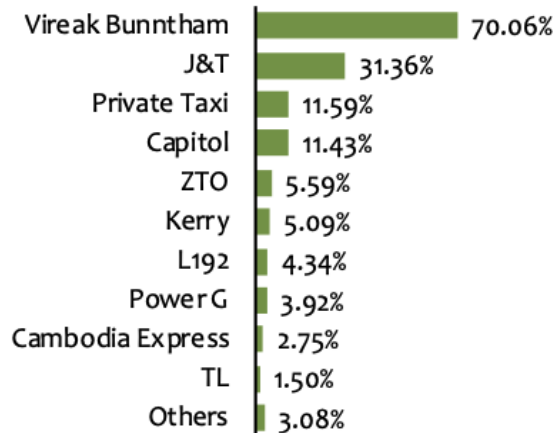
O2O Ride Hailing Platform (“O2O RHP”)

The market share for O2O RHP is computed based on the total market size. The combined market share of Parties is **16%** following the Transaction.

Parties	Market Share
Nham24 (as part of “Go24”)	0% (as the revenue is recorded negative)
GrabFood (as part of “Grab”)	16%

O2O Ride Parcel Platform (“O2O RPP”)

Notably, GrabExpress and Nham24 Express are not explicitly identified among the companies used by respondents and may be included under "Others," which accounts for **3%** of respondents who use their services.





Competition Assessment - Unilateral Effects

A. Many Remaining Key Competitors

There are many **key existing players** able to constrain **Proposed Transaction** from substantially raising prices.

O2O Food Delivery Market



O2O Ride-Hailing Market



O2O Parcel Delivery Market





Competition Assessment - Unilateral Effects

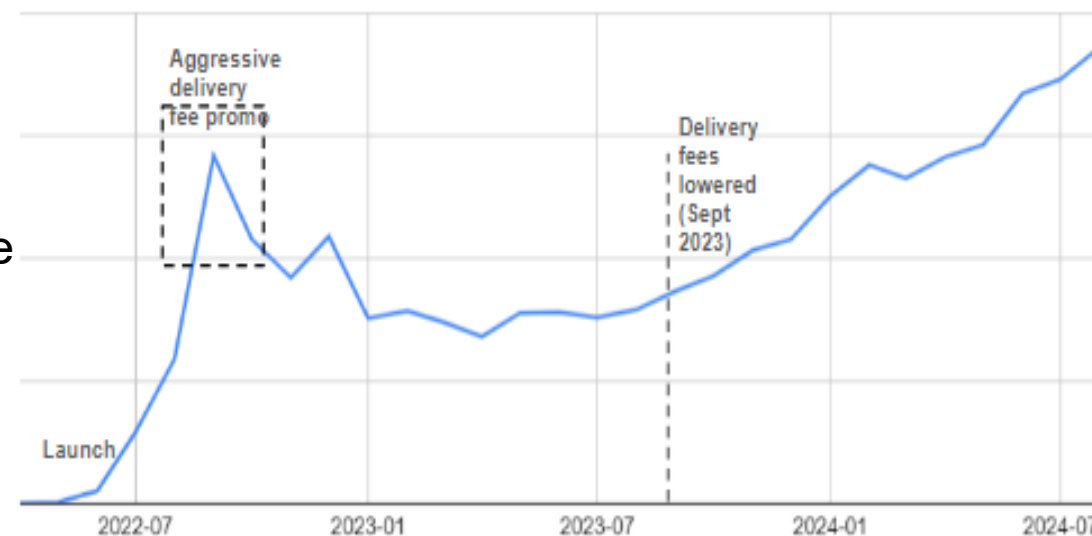
B. Fierce Competition

- Price competition has traditionally been **very strong**. Competitors fiercely compete on the basis of promotions, discounts, and commission rates to merchants, which makes it difficult for **Proposed Transaction** to raise prices and cut down on incentives.

C. Customers are Price-Sensitive

- Customers in the food delivery market has traditionally been very **price-sensitive**. Customers switch from platform to platform looking for the most affordable prices and the best discounts.

GrabFood Avg. Daily Orders





Competition Assessment - Unilateral Effects

D. Low Switching Costs

Users

- **Switching costs is practically zero.** They can download a new app and put in their first order in just a few simple steps.
- Users usually have multiple apps on their phones to compare prices.

Merchants

- **Switching costs of these merchants are near zero.** More than 99% of merchants are already on multiple platforms.
- Exclusive merchants can easily terminated their agreement with short notice, and there are generally no penalties for early termination.

Delivery Partners

- As industry practice, delivery partners are required to deliver for just one app at a time.
- However, under competition law theory, it is also important to consider how easily these exclusivity arrangement can be terminated.
- **Delivery partners can easily terminate an existing arrangement and work for a different app.**





Competition Assessment – Coordinated Effects

Factors	Analysis
Many Remaining Competitors	<ul style="list-style-type: none"> A number of competitors would still exist after the Acquisition, making it difficult for all of them to agree on the terms of coordination. There had not been any recorded cases of collusion in the past either, when there were fewer key players (i.e. such as E-Gets and Foodpanda)
Lack of Transparency in the Market	<ul style="list-style-type: none"> Commission rates, number of orders, and commission rate for delivery partners are not public information.
Constantly Changing Market Conditions	<ul style="list-style-type: none"> Changing market conditions make it difficult to maintain any agreed coordination terms for long. New entrants have been able to enter the market in the past 5 years (WowNow, Egets). Market conditions also fluctuate, due to pressure from users, merchants, and delivery partners. <ol style="list-style-type: none"> Restaurant partners have an incentive to re-negotiate their commission rates, Users' demands and preferences may change over time. There to be strikes or demonstrations by the delivery partners which can be disruptive to the company's business and the industry.





Competition Assessment – Barriers to Entry and Expansion

Barriers	Analysis
Regulatory	<ul style="list-style-type: none"> • The relevant market is not heavily regulated. There is no restriction on the number of players. Few permits and licenses are needed to operate in the market, which are very easy to obtain
Structural	<ul style="list-style-type: none"> • Startup-cost are generally low. The business rely on building relationship with (1) merchants and (2) drivers—rather than physical assets. • There are low switching costs for customers to switch to new platforms. They can easy switch to new platforms that offer better discounts or fees.
Strategic	<ul style="list-style-type: none"> • There are some exclusivity arrangements with merchant and delivery partners. However: <ul style="list-style-type: none"> (a) For merchants, exclusive contracts typically make up less than 1% of a platform's total merchants. Any exclusive contracts would only be for 1-2 years, and early termination is allowed with short notice. (b) For delivery partners, they can easily go offline and work for another app. No need to provide notice.
Market Growth	<ul style="list-style-type: none"> • The relevant markets are still growing. There is still room and incentive for new competitors to enter into the market, to capture untapped potential. • As seen from the growth of the relevant markets in the recent years, the possibility of new entrants or current players expanding their operations is high and may further constrain the Parties from exercising market power. • Other O2O platform providers, such as ride-hailing platform provider, could diversify into the food delivery market by utilizing their existing infrastructure, such as digital interfaces, integrated payment systems, and delivery networks, which can be adapted for O2O food delivery services.





Competition Assessment – Countervailing Buyer Power

Power	Analysis
Users	Users are generally price sensitive. If a platform operator increases prices, consumers can quickly move to a competitor, making it difficult for the proposed Transaction to retain market power.
Merchants	Merchants can exercise countervailing power by negotiating favorable terms or partnering with multiple platforms to mitigate dependency.
Delivery Partners	O2O mobile platforms also partially rely on delivery partners to deliver orders or provide services. Therefore, any significant dissatisfaction or exodus of delivery partners could disrupt operations, forcing platforms to address their concerns promptly.





Competition Assessment – Efficiencies

Stakeholder	Efficiencies
Users	<ul style="list-style-type: none"> • More options on delivery fees: Saver, Standard and Priority. Cheaper delivery options than Nham24. • Better search capabilities • Better user sign-up flow • Better drop-off location selection inside the application
Delivery Partners	<ul style="list-style-type: none"> • Grab's batching technology allows delivery partners to serve multiple orders simultaneously, increasing their per-hour earning potential. • Grab's 'just in time' technology only allocates orders to delivery partners once the orders are nearly done, so that they can avoid long-waiting time and focus on fulfilling other orders • High-definition indoor map that helps delivery partner find their way.
Merchants	<ul style="list-style-type: none"> • Improved access to business analytics. • Grab's 'just in time' technology only allocates orders to delivery partners once the orders are nearly done, so that they can avoid long-waiting time at their stores.





Competition Assessment – Voluntary Commitments

Stakeholder	Grab's Commitment to Ease Transition Process
Merchant	<ul style="list-style-type: none">• Grab will cap the commission rate at a maximum of 25%.• If the commission rate at Nham24 was lower than 25%, the restaurant will enjoy the existing commission rate for 1 year.• Grab will provide free credits of at least USD20 to advertise on the Grab platform to build their brand
Delivery Partner	<ul style="list-style-type: none">• Accident insurance of up to KHR 20,000,000 when carrying out delivery orders for Grab.• One free set of uniform for new delivery partners (including delivery bag and a Grab-branded t-shirt
User	<ul style="list-style-type: none">• Provide free Grab Unlimited subscription for one month (Grab Unlimited is a promotion/benefit program of cheaper delivery fees for subscribed consumers)



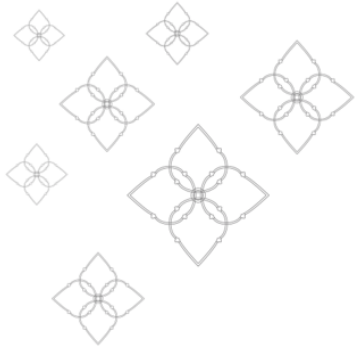


Conclusion

The Transaction would not significantly prevent, restrict, or distort competition within the relevant markets due to the existence of substantial competitive constraints from other market players in the nationwide market.

No.	Competition Assessment Factor	Competition Effect	
		NO	YES
1	Horizontal Unilateral Effects		
	Price	✓	
	Quality of Service	✓	
	Ability of the customers to easily switch	✓	
2	Horizontal Coordinated Effects	✓	
3	Barriers to Entry	✓	
4	Countervailing buying power		
	Users	✓	
	Restaurant partners	✓	
	Delivery partners	✓	
5	Efficiencies		
	Users	✓	
	Riders	✓	
	Merchants	✓	





Thank You





Grab Holding Limited's Proposed Acquisition of Trans-cab Holdings Ltd.

ASEAN-OECD KPC Competition Workshop on Merger Review and International Cooperation (28 April 2025)

Melina Chew (Legal Counsel, Competition and Consumer Commission of Singapore)

Grab's Proposed Acquisition of Trans-cab

Background – Parties

- On 7 August 2023, CCCS accepted a joint notification for a decision as to whether the proposed acquisition by Grab Holdings Limited (“**Grab**”) through its wholly-owned subsidiary, Grab Rentals Pte. Ltd. (“**GrabRentals**”) of 100 per cent of the shares of Trans-cab Holdings Ltd. (“**Trans-cab**”), if carried into effect, would infringe section 54 of the Competition Act 2004.
- In Singapore, Grab operates primarily over a mobile application across the digital financial services, delivery and mobility sectors, which also include ride-hail platform services. GrabRentals operates a fleet of private-hire cars for rental to drivers for the provision of ride-hail services to passengers.
- Trans-cab is a private taxi operator in Singapore. It also operates a fleet of private-hire cars for rental to drivers for the provision of ride-hail services. Trans-cab also offers phone taxi booking services to passengers but only for the taxi fleet operated by Trans-cab. Trans-cab’s business also includes other services such as towing, credit finance, car leasing and advertising.

Grab to buy S’pore’s third-largest taxi company Trans-Cab



The purchase includes some 2,200 taxis and more than 300 private-hire vehicles which Trans-Cab owns. PHOTOS: ST FILE, LIANHE WANBAO



Christopher Tan

UPDATED NOV 18, 2024, 11:46 AM ~



Grab's Proposed Acquisition of Trans-cab

Background – Timelines

- 7 August 2023: Phase 1 review commenced.
- 16 October 2023: CCCS concluded Phase 1 review and raised competition concerns with the Parties.
- 31 October 2023: Grab proposed commitments to CCCS.
- 24 November 2023: CCCS informed Grab that it was unable to accept the proposed commitments.
- 31 January 2024: CCCS commenced Phase 2 review after receiving additional documents from the Parties on 25 January 2024.
- 11 July 2024: CCCS issued a Statement of Decision (Provisional), provisionally finding that the Proposed Acquisition was likely to result in a substantial lessening of competition in the market for the supply of ride-hail platform services to drivers and passengers in Singapore.
- 22 July 2024: The Parties terminated the Proposed Acquisition and withdrew their application to CCCS for a decision.

Grab's Proposed Acquisition of Trans-cab

Relevant Industry Background

- Under Singapore's P2P regulatory framework established by the Point-to-Point Passenger Transport Industry Act 2019, operators are licensed based on the services they provide, i.e., street-hail or ride-hail platform services.
 - At the time of CCCS's assessment, there were 4 licensed taxi operators – ComfortDelGro, Prime, Strides Premier and Trans-cab.
 - At the time of CCCS's assessment, there were 5 licensed Class 1 ride-hail platform operators – ComfortDelGro, Gojek, Grab, Ryde and TADA.
- Car ownership in Singapore is regulated under the Vehicle Quota System which caps the number of new vehicles that can be registered in Singapore and helps to control the vehicle population in Singapore.
 - Each vehicle is required to have a Certificate of Entitlement ("**COE**"), which is tied to the particular vehicle for which it is purchased and is valid for a duration of 10 years at the first instance.
 - COEs are obtained through a bidding process conducted by the Land Transport Authority.
 - COEs may be renewed for a further 5 year or 10 year period by paying the prevailing quota premium for the respective vehicle category.
 - CCCS's assessment noted that there was an upward trend for COE premiums – COE premium for Category B (applicable to non-fully electric cars with engines above 1,600cc) exceeded S\$150,000 in October 2023.

Grab's Proposed Acquisition of Trans-cab

Relevant Industry Background

- CCCS's assessment also noted the presence of partnership agreements between taxi or private-hire rental fleets and ride-hail platforms.
 - Such agreements provide drivers who rent from the respective fleets with, amongst others, access and support to the ride-hail platform as well as other benefits (e.g., fuel discounts, training for usage of ride-hail platform).
 - For taxi operators, this can also allow them to access the technology of the ride-hail platform operator (e.g., integrating the mobile data terminal system in taxis with the ride-hail platform mobile application).

Gojek and ComfortDelGro Taxi join hands to take on each other's unfulfilled ride bookings



The partnership will use a cross-dispatch model, where rides that are not taken up by one platform will be sent to the other. ST PHOTO: LIM YAO HUI, KUA CHEE SIONG

Whitney William

UPDATED APR 23, 2024, 07:54 PM

f ↩ ...

Grab's Proposed Acquisition of Trans-cab

Overview of the impact of the Proposed Acquisition

Grab is already dominant in the ride-hail platform market

Proposed Acquisition is expected to result in a greater degree of "stickiness" of Trans-cab drivers to Grab's ride-hail platform

Rival ride-hail platforms' access to Trans-cab drivers post-merger is likely to be significantly restricted

Difficult for rival ride-hail platforms to replace any loss of Trans-cab drivers on their ride-hail platforms in a timely manner

Ability of competitors to expand are affected due to the degradation in quality of their ride-hail platform services

Weakened competitive constraints on Grab from its rivals

Grab's dominant position is entrenched and strengthened

Possible higher prices e.g., in the form of higher commissions and fees net of incentives
Fewer choices for ride-hail platform services

Grab's Proposed Acquisition of Trans-cab

Grab's dominance in the market for ride-hail platform services to drivers and passengers

- Ride-hail platform services are intermediary services provided by ride-hail platforms that match drivers with passengers for ride-hail trips. It involves a two-sided supply of ride-hail platform services to (a) drivers and (b) passengers.
- CCCS assessed that Grab was dominant in this market, based on various metrics and factors including:
 - Grab's significantly larger market share (based on revenue net of incentives, number of ride-hail trips completed).
 - Grab's significantly higher revenue per trip net of incentive (i.e., effective prices charged to drivers and passengers).
 - Grab's superior access to drivers through its ownership of GrabRentals and fleet partnerships.
 - Large proportion of drivers who use Grab's ride-hail platform rely heavily on it.
 - Grab's significantly larger scale (e.g., number of driver online hours).

Generally, as a starting point, CCCS considers a market share above 60% as likely to indicate that an undertaking is dominant in the relevant market. Other determinants of competition such as entry barriers, the degree of innovation, product differentiation, the responsiveness of buyers and competitors to price increases, the strength of network effects, and the control or ownership of key inputs also need to be considered.

Grab's Proposed Acquisition of Trans-cab

The Proposed Acquisition would have significantly weakened rival ride-hail platforms by depriving them of an important source of drivers (i.e., Trans-cab drivers)

- The Proposed Acquisition was expected to result in a greater degree of “stickiness” of Trans-cab drivers to Grab’s ride-hail platform.
 - Data analysed by CCCS indicated that drivers who rent from ride-hail platform owned fleets tend to use more of that ride-hail platform as compared to drivers who do not rent from such fleets.
 - There were also various strategies which could have been employed by Grab to induce Trans-cab drivers to increase their usage of Grab’s ride-hail platform and, correspondingly, reduce their usage of rival ride-hail platforms (e.g., imposition of minimum trip requirements, providing rental or commission rebates for completion of a minimum number of ride-hail trips, integration of Grab’s ride-hail platform with mobile data terminal system in the Trans-cab taxis).
- Hence, rival ride-hail platforms’ access to Trans-cab drivers post-merger was likely to be significantly restricted.

Grab's Proposed Acquisition of Trans-cab

Why did Trans-cab taxi drivers represent an important source of driver supply for ride-hail operators to tap on to expand?

- Without the Proposed Acquisition, there would have been significant scope for rival ride-hail platforms to increase the number of Trans-cab drivers using their respective ride-hail platforms, as well as to intensify the usage by the Trans-cab drivers of the respective ride-hail platforms.
 - At the time of CCCS's assessment, Trans-cab was one of the largest fleets (taxi or private-hire car) not owned by or in partnership with any ride-hail platform in Singapore.
 - The trend in declining street-hail services meant that taxi drivers (including Trans-cab taxi drivers) were likely to eventually switch to providing more ride-hail services.
- Given the driver supply shortages that were faced by rival ride-hail platforms, CCCS was of the view that there was greater importance to competition between ride-hail platforms for drivers and passengers in ensuring that access to Trans-cab drivers remained contestable by ride-hail platforms.

Grab's Proposed Acquisition of Trans-cab

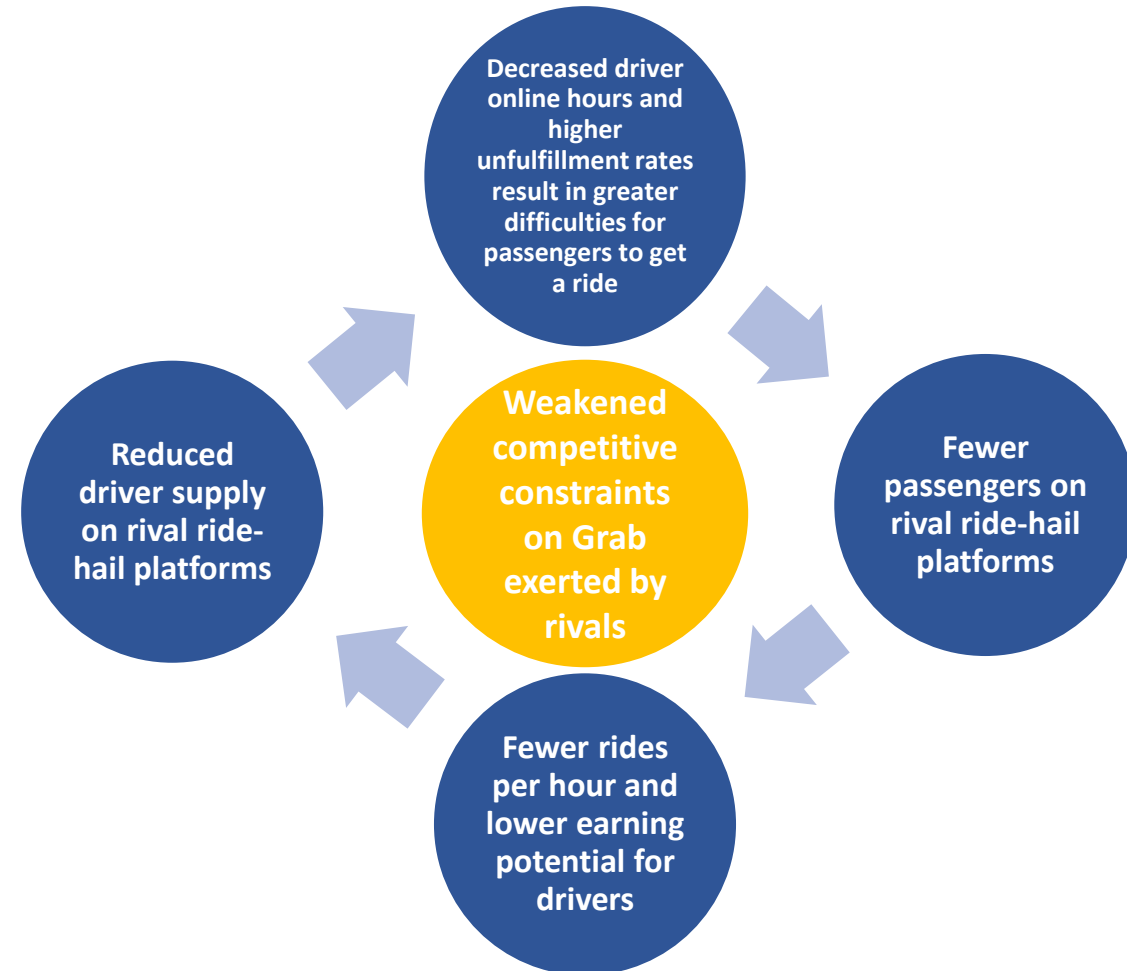
Could rival ride-hail platforms replace the loss of Trans-cab drivers on their ride-hail platforms to mitigate the effects of the Proposed Acquisition?

- It would have been difficult for rival ride-hail platforms to replace any loss of Trans-cab drivers on their respective ride-hail platforms due to:
 - Driver supply shortages faced by rival ride-hail platforms;
 - “Stickiness” of drivers to certain ride-hail platforms;
 - Lack of major non-affiliated taxi or private-hire car fleets to partner with;
 - High cost of fleet ownership and expansion; and
 - High cost of driver incentives.

Grab's Proposed Acquisition of Trans-cab

Impact of the Proposed Acquisition: Ability of rival ride-hail platforms to expand would have been affected due to the degradation in quality of their ride-hail platform services

- Difficulties in replacing Trans-cab drivers would have likely affected the ability of rival ride-hail platforms to fulfil trip requests.
- Over time, rival ride-hail platforms would become less attractive to passengers and drivers due to indirect network effects.
- Less drivers and passengers on rival ride-hail platforms affect their ability to expand.
- This would have weakened competitive constraints exerted by rival ride-hail platforms on Grab.



Grab's Proposed Acquisition of Trans-cab

Postscript

Grab awarded street-hail operator licence, set to become Singapore's sixth taxi operator



GrabCab will have three years to progressively expand its fleet to 800 taxis. ST PHOTO: MARK CHEONG



Esther Loi

UPDATED APR 04, 2025, 08:26 PM -



SUBSCRIBERS

Grab's entry into taxi sector given green light on organic growth: CCCS, LTA

Regulators say move increases competition, in contrast to the ride-hail giant's previous effort to acquire Trans-cab



Derryn Wong

Published Wed, Apr 2, 2025 · 09:38 PM

Ground up

Grab's entry comes after its proposed takeover of taxi operator Trans-cab [fell through last year](#), with the Competition and Consumer Commission of Singapore (CCCS) citing competition concerns in its review of the merger.

In a joint statement on Grab's new licence, CCCS and LTA said that the proposed merger had raised worries as it was "likely to result in a substantial lessening of competition in the market for the supply of ride-hail platform services" in Singapore.

This was due to the fact that Grab sought, through the merger, to acquire one of the largest taxi or private-hire car fleets not owned by, or in partnership with, any ride-hail platform in Singapore.

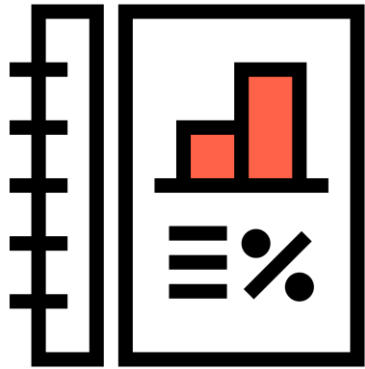
For the issuance of the new SSOL, LTA considered the input of CCCS and assessed that a new entry would require Grab to grow its fleet and market share organically.

The company would need to start a new taxi fleet, which could result in a net increase in the supply of street-hail services if GrabCab can attract new taxi drivers.

Such a move is consistent with CCCS' general view that businesses are not prohibited from entering new or adjacent markets through organic growth, or striving to protect their market position through competitive merit, the regulators said.

Grab's Proposed Acquisition of Trans-cab

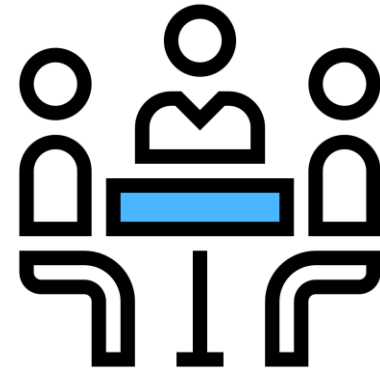
Learning Points



Data collection
and analysis



Evidence relating to
end-user behaviour



Stakeholder
engagement



Thank You



MERGER CONTROL UNDER THE CURRENT FRAMEWORK OF THE MALAYSIA COMPETITION ACT 2010

28 April 2025

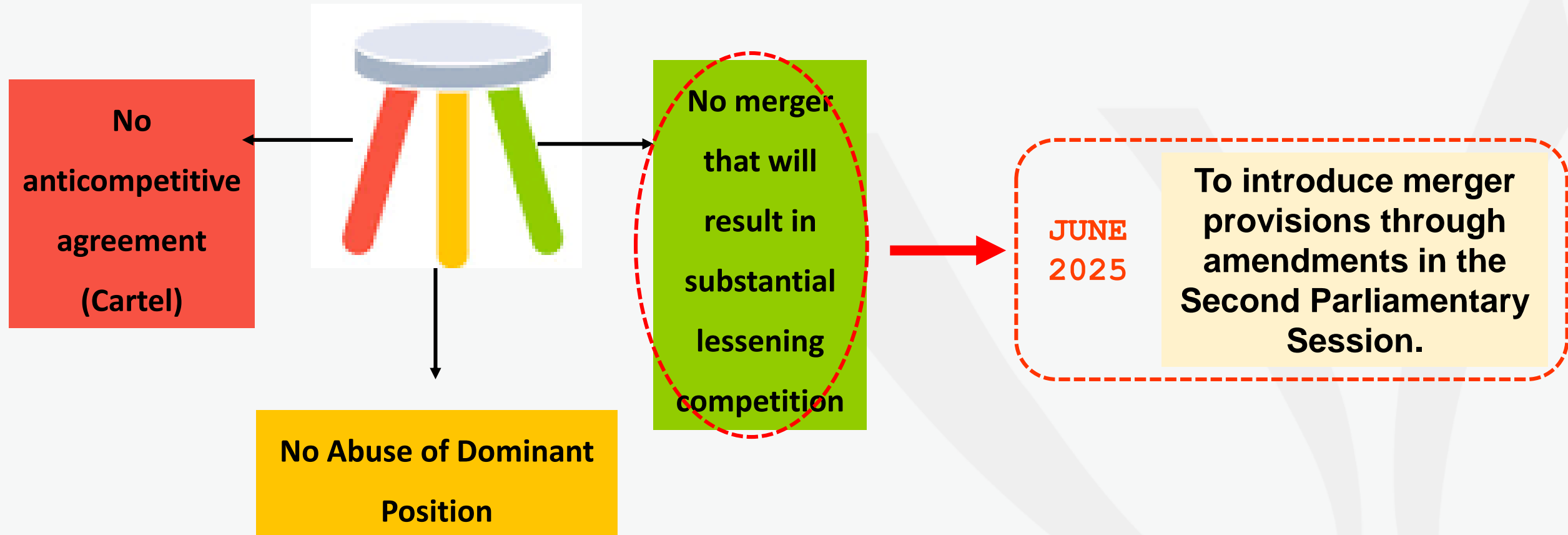
► Presented By :
MyCC
Hakeem, Nursyamimi & Alessandra

► Presented to :
OECD KPC

PROMOTING
COMPETITION,
PROTECTING YOU



3 PILLARS OF THE COMPETITION LAW



MyCC's REGULATORY APPROACH TO MERGER

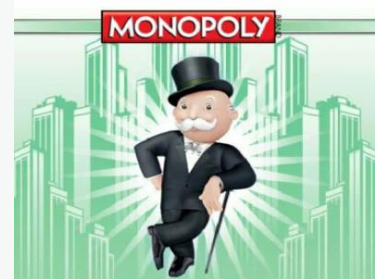
MYCC'S MEASURES ON MERGERS

A

**PROVIDE POLICY ADVICE
(SECTION 16(a))**

B

**INVESTIGATION OF ABUSE OF
DOMINANT POSITION
(SECTION 10)**



C

**CONDUCT MARKET REVIEW
(SECTION 11)**



A

PROVIDE POLICY ADVICE



SECTION 16 (a) OF COMPETITION COMMISSION ACT

MyCC have the function to advise the Minister or any other public or regulatory authority on all matters concerning competition

EXAMPLE: TESCO & LOTUS



Tesco Malaysia is now Lotuss Stores Malaysia

By Nst Property - February 15, 2021 @ 8:01pm



TESCO

MyCC advises the government to impose additional conditions on the license

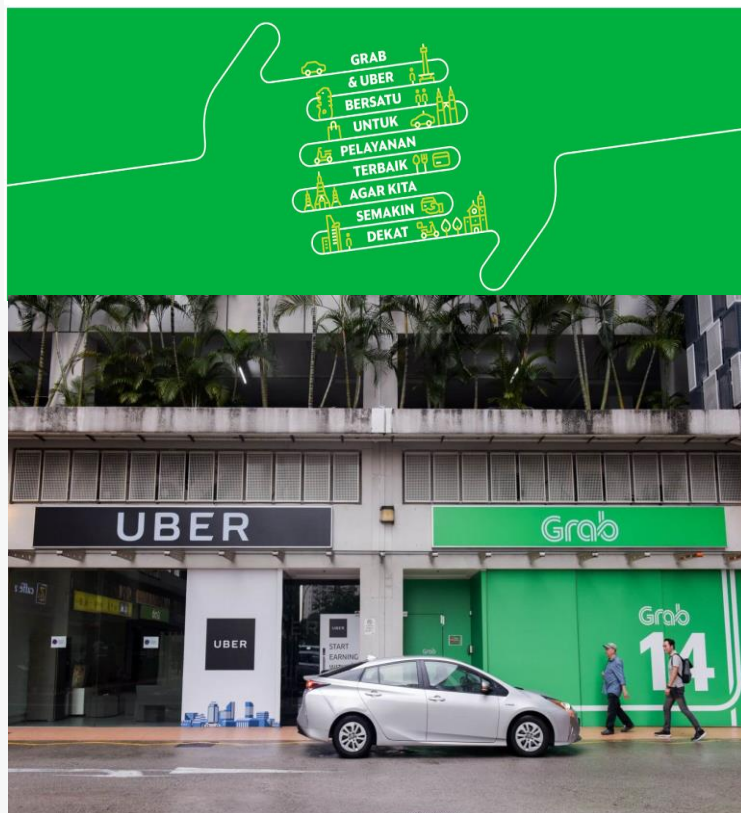
INVESTIGATION PURSUANT TO S10

BUSINESS

March 26, 2018

Grab Merges with Uber in Southeast Asia

Grab today announced that it has acquired Uber's Southeast Asia operations.



In the absence of a merger control regime, the Commission invoked Section 10 to address anti-competitive effects arising from the Grab-Uber merger

MARKET REVIEW UNDER S11

Market Review on
Chicken Broiler



Market Review of
Building Materials in
The Construction
Industry



Market Review on
Services Sector in
Malaysia (Wholesale
and Retail for
Selected Products)

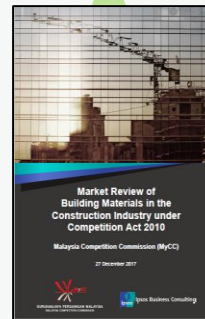


General Study on
Paddy & Rice
Industry



Market Review on
Professional
Bodies

Market Review on
Pharmaceutical
Sector



Market Review on
Food Sector
(5 selected food)



Market Review on
Selected
Transportation
Sectors in Malaysia

General Study on
Onion, Coconut
and Beef

THANK YOU

ASEAN-OECD/KPC Workshop
on Merger Review and International Cooperation

JAKARTA, 28-29 April 2025

Hypothetical Exercise

Robot Vacuum Cleaners and Digital Platforms

Background Information



Introduction

RCC is a hypothetical country in Asia, which benefits from the RCC Competition Authority to ensure a healthy competitive environment in protection of consumers.

In recent years, Asian consumers have increasingly relied on online marketplaces to research product options and purchase them. The company **Digital-Store** is a dominant regional online marketplace platform that sells third-party products and various products manufactured by itself. The company **Robo-Asian-Cleaning** is a leading international manufacturer of robot vacuum cleaners (RVCs) that sells its products both through its own channels and via Digital-Store's platform.

Facts of the case

In January 2025, **Digital-Store** proposed to acquire **Robo-Asian-Cleaning**, and notified the desired acquisition to the RCC Competition Authority for prior clearance under a pre-merger control regime.

- **Comercio-Digital:** a prominent online marketplace platform that enables retailers to advertise and sell products (including robot vacuum cleaners – RVCs) to millions of customers across Asia. It is also active as a retailer of its own products through the same online platform.
- **Robo-Asian-Cleaning:** a well-established manufacturer of robot vacuum cleaners that distributes its products both directly (via its own website) and via Digital-Store's platform.

The RCC Competition Authority initiated an investigation to examine potential competition concerns in the manufacturing and supply of RVCs. The investigation also seeks to explore if and how the merger can strengthen Digital-Store's market power in online marketplace services.

The table below indicates the estimated market-shares of the companies in the country of RCC:

Relevant market	Robo-Asian	Digital-Store	Others
Robot Vacuum Cleaners (RVCs)	70%	-	30%
Online marketplace services	-	70%	30%

Source: RCC Competition Authority based on annual turnover of companies in each of the markets in 2023.

Given the cross-border nature of Digital-Store's operations, the investigation also involves close cooperation with multiple national competition authorities across Asia.

Exercise Tasks and Discussion Points

1. Competition Analysis

- Indicate the theories of harm that may support potential competition concern(s). More precisely, how could the merger lead to higher prices, lower quality, and/or reduced innovation in the RVC market?
- What questions/information could you ask for further analysis (and to whom)?

2. Investigation Strategy

- In general terms, what could be an investigation plan (including stages of analysis and types of evidence you would seek, e.g. internal communications, algorithmic data, and third-party market analyses)? More precisely, should the investigation fall into a fast-track system or be reviewed in a full-analysis procedure? If the latter, should the analysis be extended to Phase II (in-depth analysis)?
- What obstacles may you face for the investigation (also considering any extraterritorial reach of the merging parties, i.e. Digital-Store has its headquarters abroad)? If applicable, what ways to overcome such constraints?

3. Defense Strategies and Counterarguments

- What potential defenses may Digital-Store raise (e.g. claims of legitimate business efficiencies, algorithmic adjustments based on neutral criteria, market dynamics, rapid entrance/expansion of competitors, etc.)?
- What are the possible counterarguments?

4. Remedies and Regional Cooperation

- What are possible remedies and policy measures to mitigate the identified competitive harms? Please consider both structural remedies and behavioral remedies, as well as potential advocacy initiatives.
- Assuming regional cooperation with other Asian competition authorities will be useful, what kind of information could be shared/asked? Should you harmonize timeline and potential remedies (including implementation)?

Please be ready to discuss in smaller groups and report back (via one volunteer per group) on the main findings of each of the questions.



OECD-Korea Policy Centre Workshop on Merger Review and International Cooperation

Collecting evidence for the analysis of a merger

Simon Pomery
Executive Director (a/g) – Merger Investigations

ASEAN Secretariat, Jakarta, Indonesia

28-29 April 2025

Overview



Types of evidence



Aligning evidence with theories of harm and case theories



Assessing evidence

Types of evidence in a merger investigation

Submissions

Provided by the parties, market participants and customers (eg relevant third parties who could be customers, competitors or other industry participants). → Questionnaires

Direct evidence

Provided by the parties, market participants and customers (typically most likely to be provided voluntarily by the merger parties or very interested third parties)

Documents

Provided by the parties and market participants – (usually obtained from the merger parties, but also can be obtained from relevant third parties such as customers, competitors, or other industry participants).

This also include publicly available documents (such as annual reports, news articles, or websites) that are able to be obtained via desktop research.

Data

Provided or obtained from various data sources, either collated by third party bodies or as a collation of various data from the merger parties and third parties. → Customer Surveys

Expert Opinion

Obtained from an independent expert in a relevant field, for example, an economic expert, an industry expert or a finance expert.

Aligning collection of evidence with theories of harm and case theories

Horizontal effects



- Unilateral effects
- Coordinated effects (the ability of two or more firms acting together to affect competition)

Vertical effects



- Leveraging market power in one level of supply chain into another (foreclosure/discrimination)

Conglomerate effects



- eg. bundling/tying

Basic horizontal example - use your case theory to request information and documents

- **Your case theory sets out a series of propositions that need to be proven in order for you to show that the merger is problematic (or in Australia, likely to ‘substantially lessen competition’).**
- **Case theory is the starting point for figuring out what information and documents you will need in order to assess the competitive effects of a merger.**
- **An example – supermarket A proposes to acquire supermarket B. Both supermarkets in the same town.**



Basic horizontal example - use your case theory to request information and documents

Case theory proposition	Information required to prove (or disprove) proposition
<p>Supermarket A and supermarket B are each other's closest competitors in a town.</p>	<p>Internal documents: that assess other competing supermarkets in the area. Data: revenue and sales volumes from all supermarkets in the area</p>
<p>Customers are likely to switch to another supermarket if prices increased by 5-10%.</p>	<p>Internal documents: that assess customer behaviour (including switching or price sensitivity). Data: revenue and sales volumes from all supermarkets in the area, what happens when discounting occurs, do customers switch?</p> <p>→ Customer survey: what would they do if prices increased. What do they value from supermarket B (including quality aspects, such as product range)</p>
<p>Barriers to entry are high.</p>	<p>Information: regulations, have rival supermarkets opened recently, what re their volumes Data: costs associated with starting up</p>

Horizontal mergers – closeness of competition

- **If one firm increases its prices, the customers who switch will be more likely to switch to firms that supply products with similar attributes, such as similar quality or features (substitutes). Firms that supply products that are close substitutes will typically have high diversion ratios. Diversion ratio means the proportion of a firm's total lost sales that switch to a rival when it increases its price (or worsens some other term of competition). The higher the diversion ratios between two firms, the more closely they compete, and the more competition that will be lost through a merger.**

Example of product differentiation and diversion ratios

Supplier A manufactures a popular range of sports shoes. Customers purchase the shoes because of the high-quality designs, product range, premium brand name and celebrity endorsements. If supplier A increased its prices, customers would be likely to switch to supplier B, which manufactures sports shoes under a competing brand name, and has similar quality designs and celebrity endorsements. Customers would be less likely to switch to supplier C, which focuses on hiking and trail-running, and whose brand name is associated with outdoor apparel.

There would be high diversion ratios between suppliers A and B, and low diversion ratios between supplier A and supplier C.

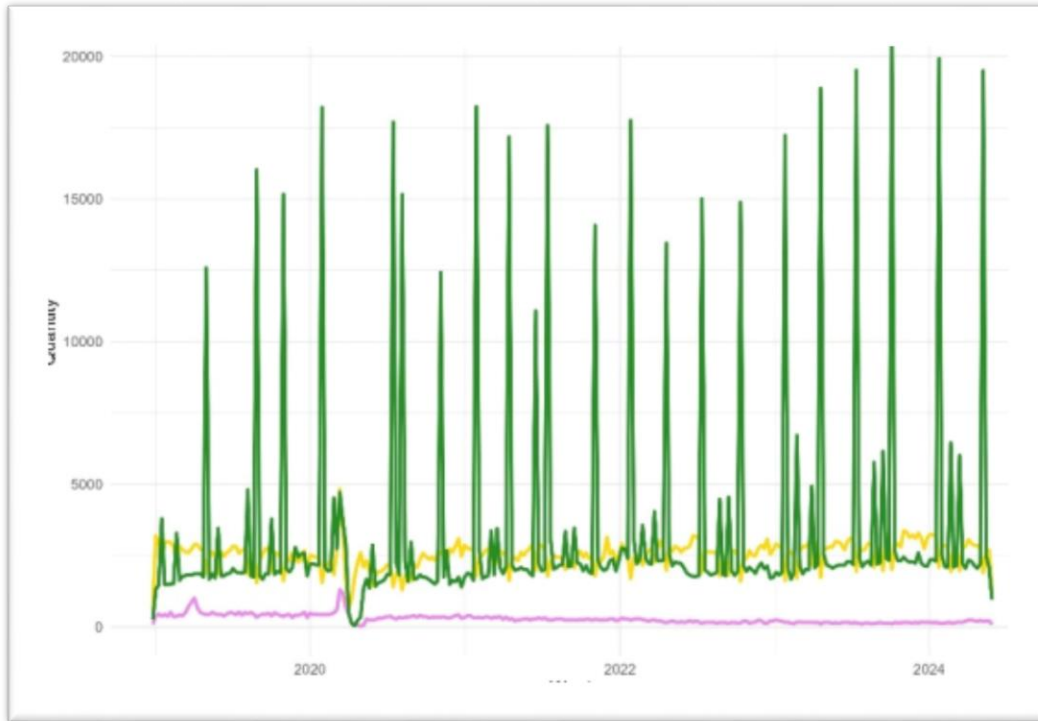
Data considerations:

- **Sales data (including price and units sold) from both parties**
- **For Supermarkets, product Stock Keeping Unit (SKU) used**

Horizontal mergers – closeness of competition

Sales data (including price and units sold) from both parties

Weekly sales of cereal



Price of cereal



Green cereal does not closely compete with pink cereal, as the change in the price of one products has not significant impact of the sales of the other (cross price elasticities of demand)

Vertical mergers – foreclosure

- **When a merger involves an upstream supplier and a downstream customer (which in turn supplies goods or services in a downstream market), they will become vertically integrated. Competition concerns can arise when the vertically integrated firm forecloses access to products or routes to market that rivals use to compete. Two types:**
 - **input foreclosure – when the vertically integrated merged firm decides to fully or partly restrict downstream rivals from accessing an input or offers the input on worse terms**
 - **customer foreclosure – when the vertically integrated merged firm decides to fully or partly restrict upstream rivals from accessing its route to market (e.g. a distributor or retailer).**

Box 4

Example of input foreclosure

- A rubber producer and tyre manufacturer merge, and the merged firm decides to no longer sell rubber to rival tyre manufacturers.

Box 5

Example of customer foreclosure

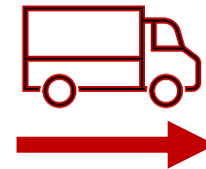
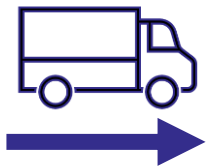
- A building materials producer and building materials retailer merge, and the merged firm decides to no longer sell the building materials of its rivals.

Vertical mergers – foreclosure

- **Need to assess whether the merged firm has the ABILITY (do rivals have effective alternate sources of inputs / customers) and INCENTIVE (is it profitable to foreclose rivals, or whether it is more profitable to maintain rivals access to inputs/ customers) to foreclose, and then the EFFECT of such foreclosure on competition in relevant markets**

Evidence considerations:

- **Contracts with customers / suppliers (have supply terms worsened)**
- **Documents of limiting access (notices to cease supply, deny integration) – can include documents received by customers / rival suppliers**
- **Product / service margin data (Revenue and EBITDA, can indicate which products / services are more profitable**
- **Volume of sales**
- **Plans of customers and rivals – will they exit market if they can access input or customers ???**

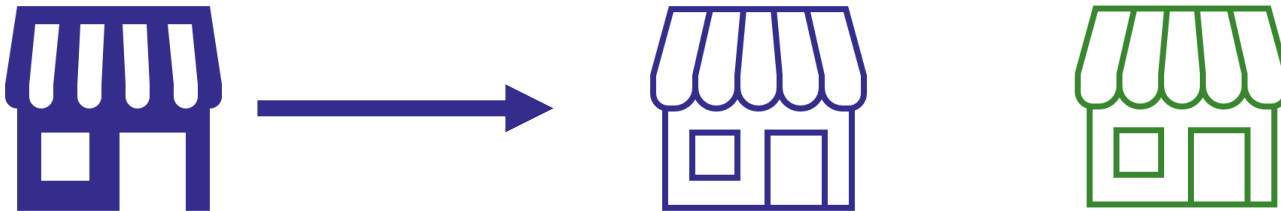


Entry or expansion by rivals

- **Entry or expansion by a rival can provide an important source of competitive constraint**
- **Conditions are cumulative and must be satisfied simultaneously (new entrant must be able to enter rapidly after merger and be able to becoming sufficiently large to compete/ constrain**

TEST – will entry / expansion be timely, sufficient and likely ?

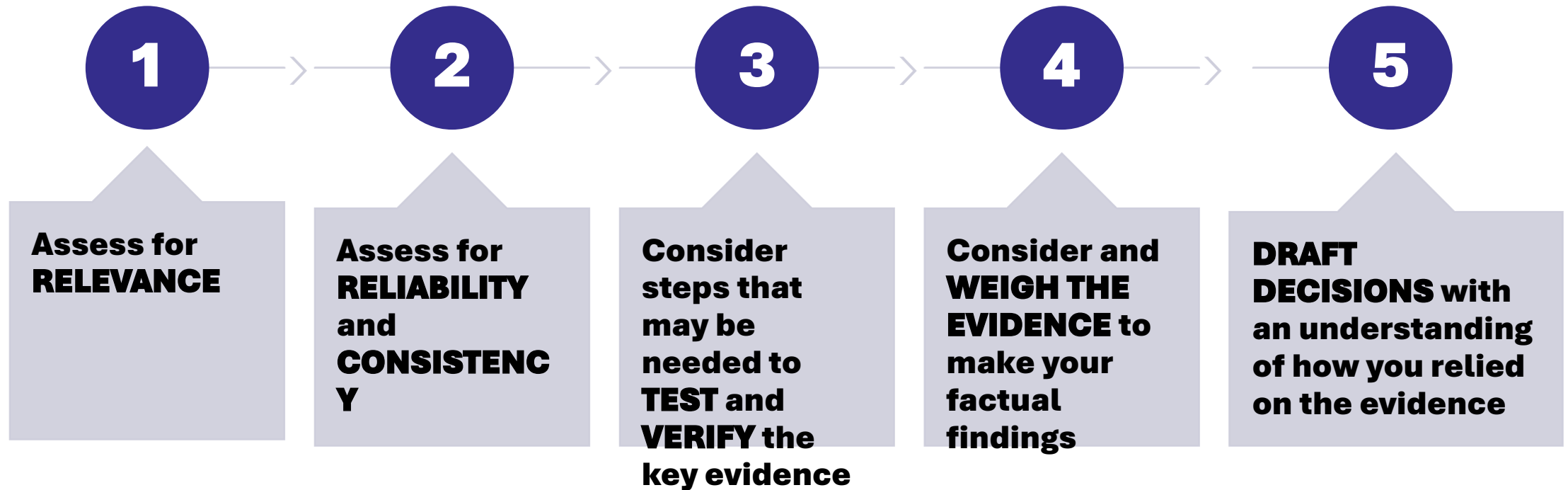
→ can entrant / expanding party become profitable if the merger firms increased prices ?



Evidence considerations:

- **Internal documents considering growth / entry plans**
- **Financial consideration of growth / entry (costs, return on investment)**
- **Barriers to entry / expansion**
 - **High sunk costs**
 - **Economies of scale need to make profit**
 - **Customer stickiness**
- **Timeliness**
 - **Frequency of transactions**
 - **Nature and length of contracts**

Assessing evidence



Assessing Evidence: Guiding Principles

No.1	Evidence that is NOT RELEVANT should not be taken into account
No.2	Evidence given by individual with NO DIRECT KNOWLEDGE may be unreliable
No.3	Evidence that is given by an individual who NOT WILLING TO BE QUESTIONED may be unreliable
No.4	Evidence comprised of documents which were NOT PREPARED IN THE ORDINARY COURSE OF BUSINESS may be unreliable
No.5	Evidence which is in fact an “opinion” should not be relied upon unless the giver has REQUISITE EXPERTISE and FACTS and ASSUMPTIONS are reliable

Assessing Evidence: Reliability considerations

Type of information	Source	Key reliability considerations
Submissions / Voluntary RFI's	Merger parties	<ul style="list-style-type: none"> • Source of document? <ul style="list-style-type: none"> • Incentives may exist – documents of this type run the risk of being being self-serving (particularly for merger parties, but also potentially competitors – will depend) • Second-hand evidence – not technically “direct evidence” but capable of being reliable – will depend on the sort of issues it goes to, and if supporting documents and data provided • Critical facts and issues ought to be tested and verified • Is the submission / RFI supported by additional consistent other available evidence and documents?
	Competitors, customers or other third parties	
Witness statements	Merger parties	<ul style="list-style-type: none"> • Considered to be direct evidence • Source? Incentives may still exist • Do they have direct knowledge? Has it been told to them by someone who does have direct knowledge? • Critical key facts and issues ought to be tested and verified, verified, either directly with the witness or through internal documents and other sources
	Competitors, customers or other third parties	<ul style="list-style-type: none"> • Is what the witness is staying consistent with other available evidence (ie annexed documents, other internal business records etc). Is it internally consistent with itself!

Assessing Evidence: Reliability considerations

Type of information	Source	Key reliability considerations
Formally requested information	Merger parties	<ul style="list-style-type: none">• Not a document prepared in the ordinary course of business – prepared under compulsion• However, can assume a degree of care and diligence has gone into preparing it given the consequences for giving misleading information• Incentives may still exist – need to be careful• Critical key facts and issues ought to be tested and verified• Query, is the information provided consistent with other available evidence (ie internal documents, witness statements, other information)
	Competitors, customers or other third parties	

Assessing Evidence: Reliability considerations

Type of information	Source	Key reliability considerations
Formally requested documents	Merger parties	<ul style="list-style-type: none"> • Be careful to ensure they are prepared in the ordinary course of business – but if so, generally considered to be reliable • <u>Critical key facts and issues</u> ought to be tested and verified • What is the timing of the document? Is it pre or post the deal? Is it too historical? Have recent events bypassed it? • Who is the author? <ul style="list-style-type: none"> • Do they have direct knowledge of the representations they are making? • Has it been told to them by someone who does have direct knowledge? • What is the status of the document? <ul style="list-style-type: none"> • Is it in draft or in final? • What is the context of the document? <ul style="list-style-type: none"> • Who is the audience? Does the author have an agenda? • Query, is the information provided consistent with other available evidence (ie internal documents, witness statements, other information received?)
	Competitors, customers or other third parties	

Assessing Evidence: Reliability considerations

Type of information	Source	Key reliability considerations
Voluntary interviews	Merger parties	<ul style="list-style-type: none">• Does not occur under oath – but that does not mean it cannot be relied on• Does the individual have direct knowledge?• Not open to be tested by “the other side” – only questioned by the ACCC - how reliable these ultimately are will depend on how well the interview is conducted• ACCC plays the role of getting to the truth of the issue, and ought to conduct the interview in a fair way (ie put squarely to the individual where we think their evidence might not be accurate, so they have the opportunity to respond and explain)• Query, is the information provided consistent with other available evidence (ie internal documents, witness statements, other information received?)
	Competitors, customers or other third parties	

Assessing Evidence: Reliability considerations

Type of information	Source	Key reliability considerations
Formal Examinations	Merger parties	<ul style="list-style-type: none">• Occurs under oath• Does the individual have direct knowledge?• Not open to be tested by “the other side” – only questioned by the ACCC - how reliable these ultimately are will depend on how well the interview is conducted• ACCC plays the role of getting to the truth of the issue, and ought to conduct the interview in a fair way (ie put squarely to the individual where we think their evidence might not be accurate, so they have the opportunity to respond and explain)• Query, is the information provided consistent with other available evidence (ie internal documents, witness statements, other information received?)
	Competitors, customers or other third parties	



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Identifying Remedies in Merger Review

Workshop on Merger Review and
International Co-operation

Jakarta, 29 April 2025

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***Disclaimer**

I am speaking in a strictly personal capacity. The views and opinions presented here are my personal views only. None of what is written on the slides or said in my oral presentation has any indicative or binding effects on views and decisions by the Bundeskartellamt and/or its 2nd Decision Division (or any other).

Topic overview

- Definitions and Principles, Experience
- Types of Remedies
- Use of Trustees
- Some words on process

DEFINITION (CONCURRENCES DICTIONARY)

Merger remedies are used by competition authorities to maintain or restore competition in the market, by resolving and preventing the harm to the competitive process that may result as a consequence of a merger. By eliminating the harm that a given transaction may cause to competition, remedies allow for the approval of mergers that would otherwise be challenged or prohibited. They are generally classified as structural, if they require the divestiture of a business, an asset or other rights, or behavioural, if they impose an obligation to engage, modify or constrain the future conduct of the merging firms.

Source: <https://www.concurrences.com/en/dictionary/merger-remedies-100323>

Why do we do ex-ante control of mergers?

- To preserve competitive market structures.
- To prevent the creation or strengthening of powerful market positions that would enable/facilitate price increases/deterioration of quality/slow down innovation etc. Without merger control, competition enforcers are reduced to ex-post intervention, when abuses of a dominant position can be observed.
- Abuse proceedings are usually limited to (often inadequately) curing symptoms instead of tackling the root causes (= market structure) of a competition problem.

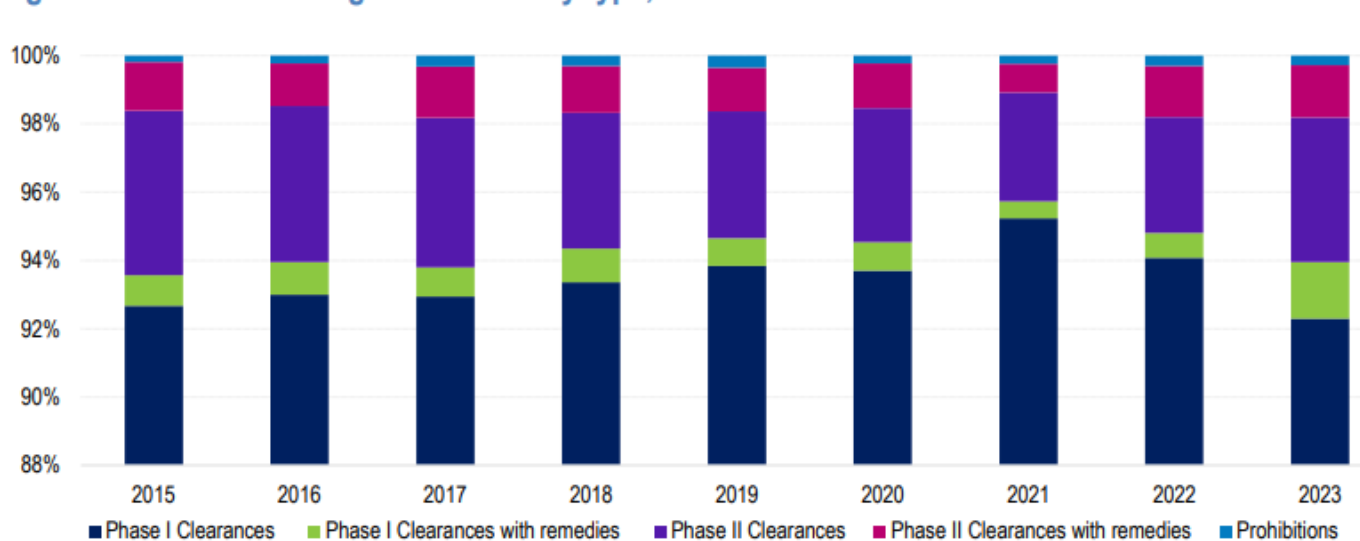
What does this mean for the type of remedies that could/should be accepted in an ex-ante merger control investigation?

The remedy must ensure that competitive market structures are preserved.

➤ If this basic principle is not observed, an agency might as well not bother doing merger control at all.

7 How are we doing?

Figure 2.27. Share of merger decisions by type, 2015-23

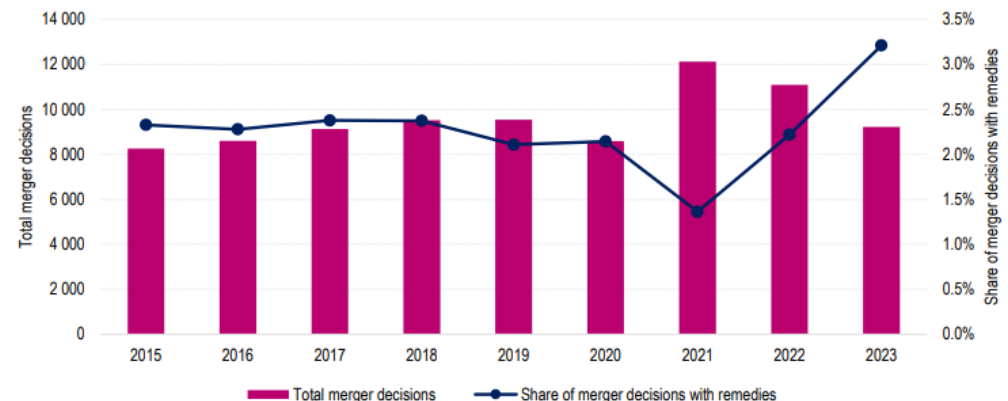


Note: Data based on the 60 jurisdictions in the OECD CompStats data
Source: OECD CompStats database.

In 2023 roughly 9.500 mergers reviewed

- App. 26 prohibitions
- App. 300 remedies imposed

Figure 2.30. Share of merger decisions with remedies, 2015-23



Note: Data based on the 61 jurisdictions in the OECD CompStats database that provided data for merger decisions for nine years.
Source: OECD CompStats database.

Source: 2025 OECD Competition Trends https://www.oecd.org/en/publications/oecd-competition-trends-2025_8c4bd00b-en.html

8 How are we doing?

FIX IT OR FORGET IT: A “NO-REMEDIES” POLICY FOR MERGER ENFORCEMENT




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By John Kwoka & Spencer Weber Waller

“The inherent limitations of remedies as a method of resolving competitive concerns with mergers have become more evident. The expansive use of remedies in actual practice has likely exceeded the capabilities of agencies and courts; and empirical evidence has increasingly cast doubt on their effectiveness. Accordingly, *we propose a “no-remedies” policy under which the antitrust agency would not accept any conduct remedies and only limited divestitures.* The agencies would only consider those structural changes that have been undertaken (or at least committed to) prior to the parties’ filing their merger proposal and would not enter into negotiation with the parties during the review period. *This “Fix It or Forget It” (“FIFI”) policy* would encourage merging parties to initiate the necessary competitive fixes and permit the agency to evaluate precisely what the parties file in their proposal. We believe this policy would strengthen merger enforcement by restoring the traditional roles of the agencies and the courts.”

Source: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3915083 CPI Antitrust Chronicle August 2021

15 ...Accordingly, commitments which *are structural in nature*, such as the commitment to sell a business unit, are, as a rule, preferable Nevertheless, the possibility cannot automatically be ruled out that other types of commitments may also be capable of preventing the significant impediment of effective competition ⁽²³⁾.

16.has to be examined on a *case-by-case* basis.

17. *Divestiture commitments are the best way* to eliminate competition concerns resulting from horizontal overlaps, and may also be the best means of resolving problems resulting from vertical or conglomerate concerns...Other structural commitments may be suitable to resolve all types of concerns if those remedies are equivalent to divestitures in their effects, *Commitments relating to the future behaviour of the merged entity may be acceptable only exceptionally in very specific circumstances* ... In particular, *commitments in the form of undertakings not to raise prices, to reduce product ranges or to remove brands, etc., will generally not eliminate competition concerns resulting from horizontal overlaps.*

....

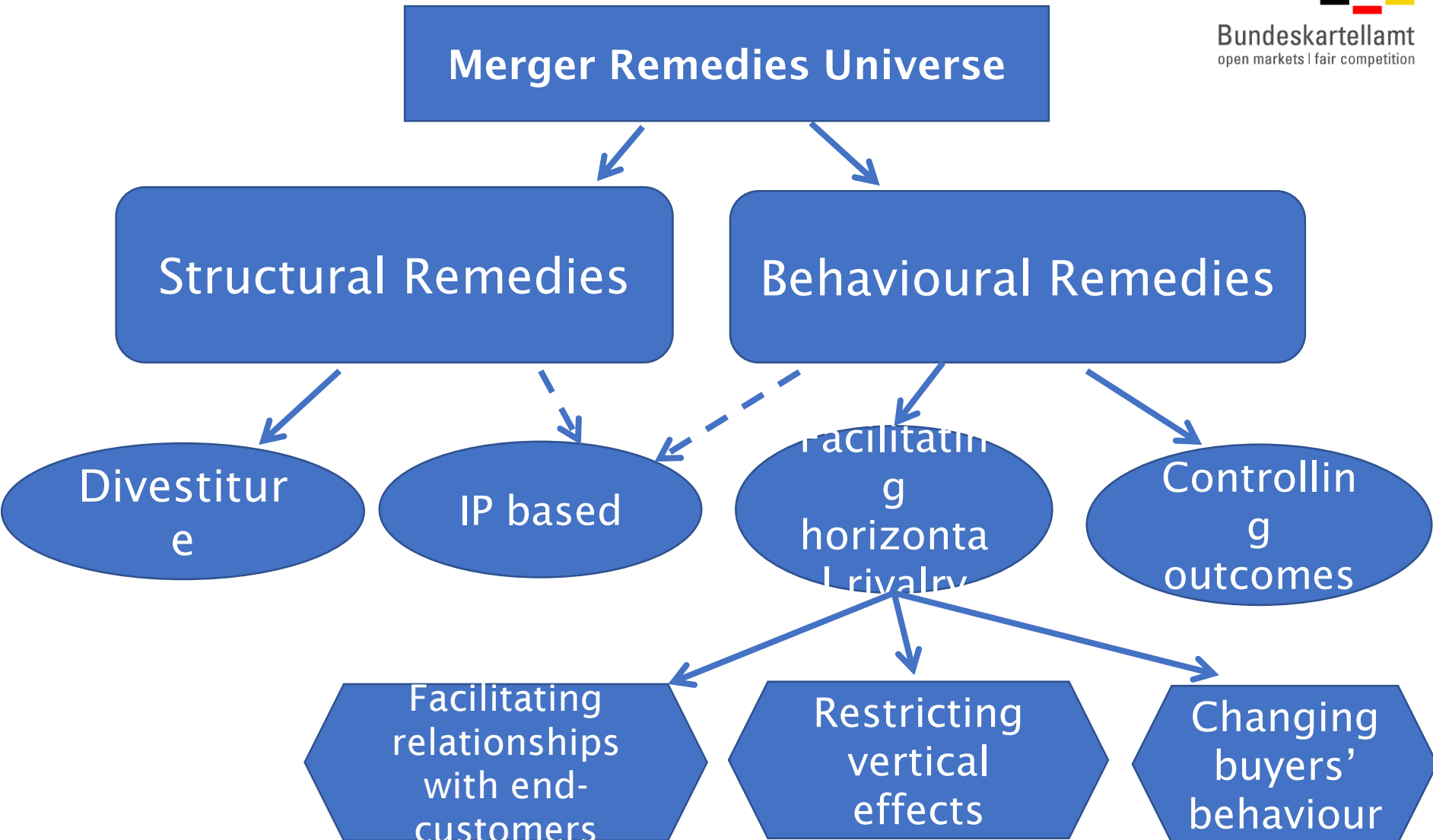
Source: [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52008XC1022\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52008XC1022(01))

From the 2016 ICN Merger Remedies Guide:

“Competition authorities are responsible for ensuring that remedies are necessary, clear, enforceable, effective, sufficient in scope and capable of being effectively implemented within a short period of time.”



Source: https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/05/MWG_RemediesGuide.pdf



Source: ICN Merger Remedies Review Project 2005

Aim is to transfer a market position

- **Stand-alone** - divestiture of a controlling stake in a viable, existing company;
- **Carve out** – business unit taken out from a greater company structure;
- **Tangible or intangible assets** – a machine/factory is tangible / an IP right is intangible
- **Mix and match** - divestiture of a package of assets that combine assets of more than one of the parties;
- **Crown jewel** commitments - alternative (often more far reaching) divestiture commitment in case of failure of the original remedy solution.



Timing/conditionality:

Pre-consummation:



- **Up-front buyer** – merger is cleared but not allowed to be consummated before sale of divestiture assets.
- **Fix-it-first solution** – competition problems solved by sale before the authority has issued a decision.



Fix It First

Timing/conditionality:

Post-consummation:

- **Standard cases without complications**
- **First divestiture period** – merging parties search a buyer.
- **Second divestiture period** – no success in period 1
 - Sale at best price = often **trustee divestiture period**.

Risks related to structural remedies:

- **Composition risks** – scope and scale
- **Asset risks** – loss of competitive value
- **Purchaser risks** – suitable/weak purchaser
- **Monitoring risks** – too complicated to supervise
- **Implementation risks** – overall risk of getting the right package to the right customer in the right time



... also known as **conduct** remedies (US)

- Granting **access rights** – IP, inputs, raw material, distribution system;
 - Often go along with **firewall provisions/Chinese walls** – prevent use of information on competitors.
- Should be **self-monitoring** at best – a breach can and will easily be detected and reported by competitors and/or customers.
- **Sunset clauses** – specify end of remedy requirement
- **Hybrid remedies** – mix of structural and behavioural remedies

Risks related to behavioural remedies:

- **Specification risk** – required conduct not sufficiently clear
- **Circumvention risk** – anticompetitive conduct in a way not foreseen
- **Distortion risk** – adverse incentives
- **Monitoring/enforcement risk** – complexity, long timescales



Depending on the type of remedy chosen you will need:

Asset preservation:

- Obligations to safeguard the competitive viability and potential of the divestiture object(s)
- Hold separate obligations
- Ring fencing of assets
- Firewall provisions/Chinese walls
- Non-solicitation clauses
- Hold separate managers/operating trustees
- Monitoring trustees



Depending on the type of remedy chosen you will need:

Purchaser related obligations:

- Purchaser requirements
 - Industrial/financial investor
 - Actual/potential competitor
 - Resources
 - Buyer fitness test
- (No) links between seller(s) and purchaser
- Due diligence provisions/data room
- Provisions on the sales price (?)
- Flexibility of divestiture assets depending on the purchaser (?)



Depending on the type of remedy chosen you will need:

Other safeguards:

- Non-re-acquisition clauses
- Non-compete clauses
- Delivery commitments/access to infrastructure
- Arbitration clauses/dispute resolution
- Reporting obligations
- Divestiture trustees
- Timelines!
- Review clauses



Of general relevance:

- Nomination - independence
 - Supervision/responsibility – the authority
 - Remuneration – the parties
-
- Monitoring trustee
 - Operating trustee
 - Divestiture trustee/selling trustee
-
- Trustee reporting obligations
 - Timelines

And yes, appointing trustees should be the rule and not the exception!



It depends ...

- Pre-merger discussions
- Some do it in phase 1
- Phase 2



In general, it is up to the merging parties to propose remedies.

- Make sure to market test remedies before agreeing
- Do not allow for salami tactics
- Keep an eye on deadlines

- OECD Policy Roundtable “Remedies in Merger Cases” (2011) -
<http://www.oecd.org/daf/competition/RemediesinMergerCases2011.pdf>
- OECD Policy Roundtable “Remedies in Cross Border Merger Cases” (2013), -
<http://www.oecd.org/daf/competition/competition-remedies-in-cross-border-merger-cases.htm>
- OECD Policy Roundtable “Ex-post assessment”- https://www.oecd.org/en/publications/ex-post-assessment-of-merger-remedies_84c232b6-en.html
- Commission notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 -
http://ec.europa.eu/competition/mergers/legislation/files_remedies/remedies_notice_en.pdf
- Commission templates -
http://ec.europa.eu/competition/mergers/legislation/template_commitments_en.pdf and
http://ec.europa.eu/competition/mergers/legislation/trustee_mandate_en.pdf
- Bundeskartellamt Guidance 2017
https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Leitlinien/Guidance%20on%20Remedies%20in%20Merger%20Control.pdf?__blob=publicationFile
- UK CMA: Merger Remedies 2018 -
https://assets.publishing.service.gov.uk/media/5c12349c40f0b60bbee0d7be/Merger_remedies_guidance.pdf
- UK Competition Commission (now CMA): Understanding past merger remedies-
<https://www.gov.uk/government/publications/understanding-past-merger-remedies-2023-update>
- US FTC - <https://www.ftc.gov/advice-guidance/competition-guidance/negotiating-merger-remedies>
- ICN Merger Remedies Guide (2016) -
<http://www.internationalcompetitionnetwork.org/uploads/library/doc1082.pdf>



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Thank you for your attention!



**KEEP CALM
AND
FIX IT FIRST TIME**

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Synopsys Inc. – Ansys Inc. Case

Daejun Kang

International M&A Division

Korea Fair Trade Commission

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- 01 Overview
- 02 Market Structure
- 03 Market Definition
- 04 Type of Merger
- 05 Competitive Assessment
- 06 Mitigation Factors of Restriction of Competition
- 07 Conclusion
- 08 International Cooperation

01 Overview

❖ The Parties

: ① Synopsys Inc. 

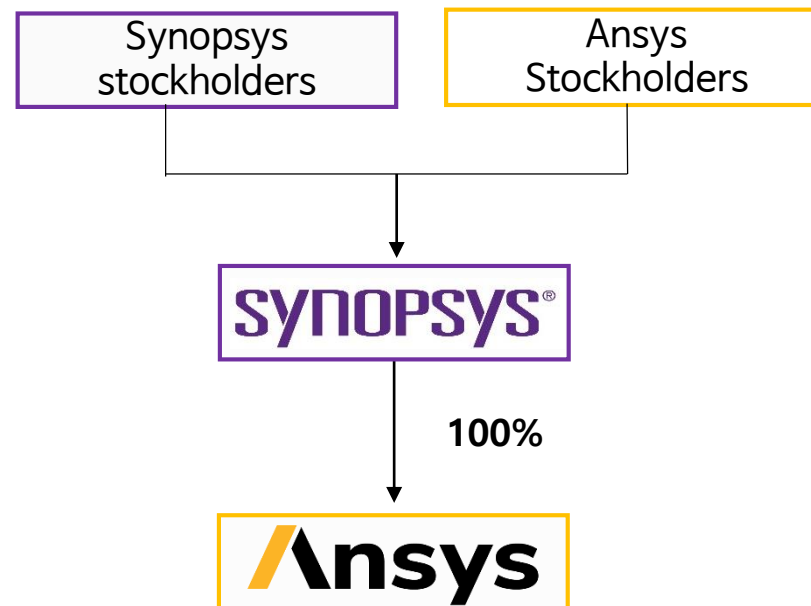
(acquisition company)

② Ansys Inc. 

(company acquired)

❖ Synopsys Inc. and Ansys Inc. filed
a merger notification (May. 2024)

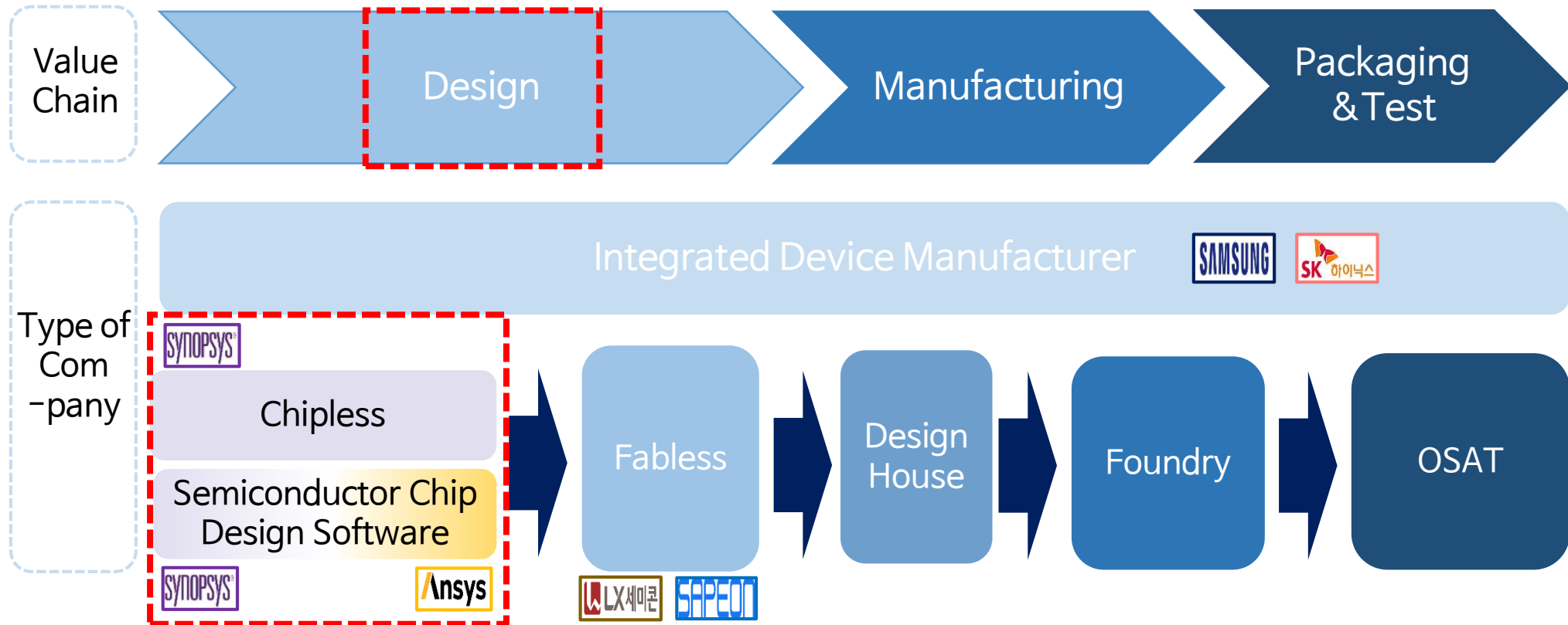
❖ Stock trading structure



To Strengthen competitiveness in
Semiconductor Chip Design Software
Market

02 Market Structure : Semiconductor Chip

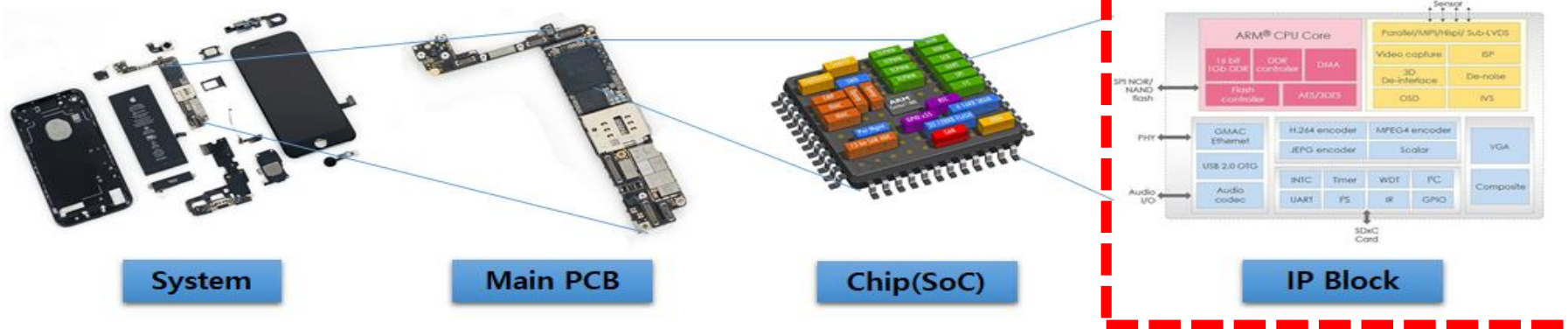
❖ Value Chain of Semiconductor Chip



※ Chipless: Provides Semiconductor Chip Design IP

Fabless: Specialized in semiconductor chip design without production facilities

SYNOPSIS



02 Market Structure : Semiconductor Chip

❖ Semiconductor Chip Design Software

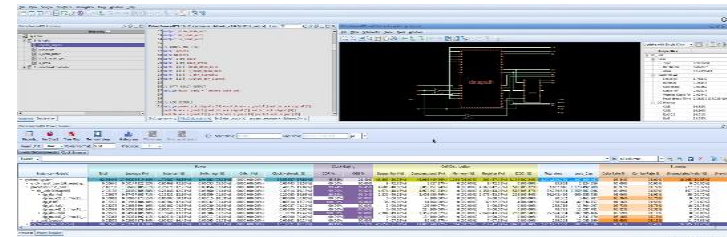
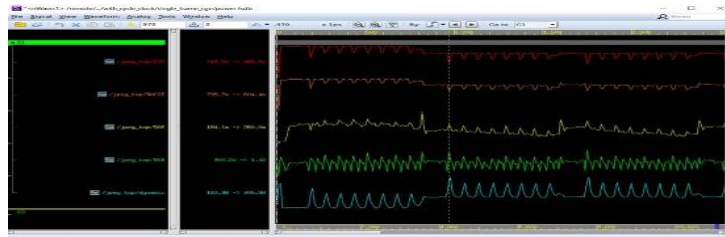


➔ **Software** used in the design of semiconductor chip

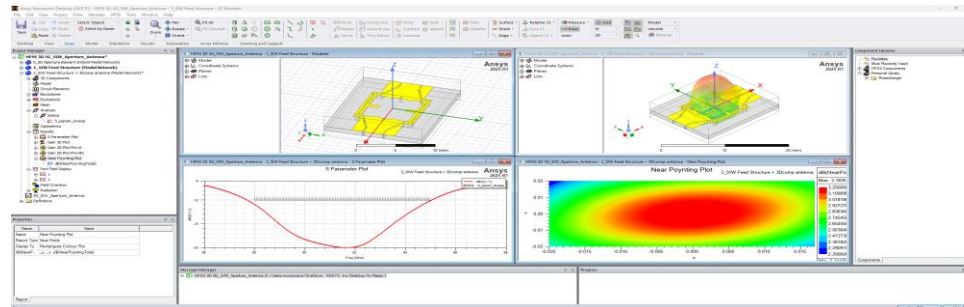
Semiconductor Chip Design Process(partial)



- (Register Transfer Level Power Consumption Analysis) Synopsys 'PrimePower RTL' software

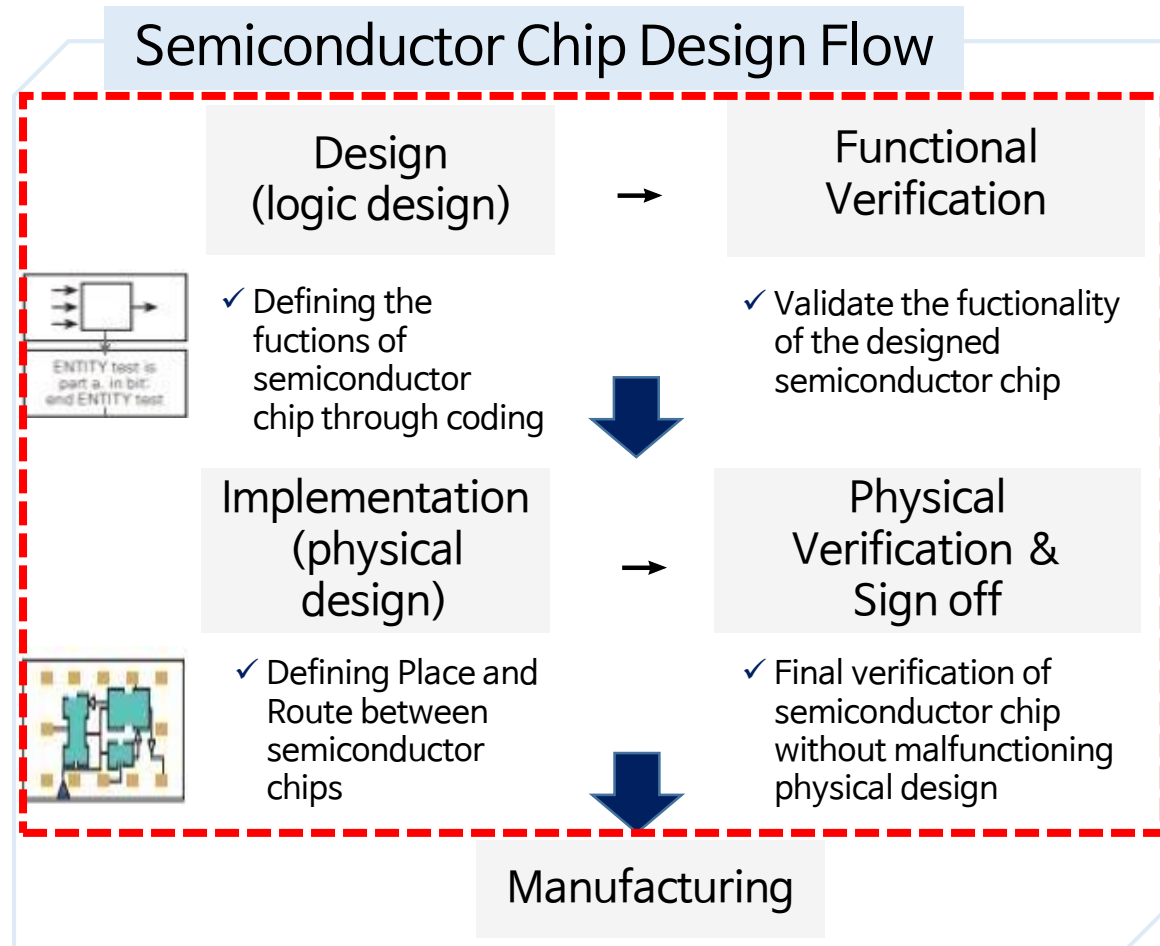


- (Electromagnetic Simulation) Ansys 'HFSS' software



02 Market Structure : Semiconductor Chip

❖ Semiconductor Chip Design Software



➤ Organized into 45 detailed steps

02 Market Structure : Semiconductor Chip

❖ Semiconductor Chip Design Software



Key features of the market

✓ **Difficulty** in freely **switching purchases**

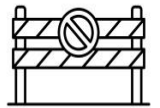
- It requires a lot of time and cost to convert using software into a different product



✓ **High entry barriers** and **market concentration**

- High R&D expenditure
- In reality, oligopoly market

※ Total share of the top 3 companies 85% (including Synopsys)



✓ **Product recognized as a standard (golden tool)**

- Major players have golden tools

※ Synopsys (PrimeTime), Ansys (RedHawk, HFSS),
Cadence (Virtuoso), Siemens (Calibre)



✓ **Mix & Match**, Importance of an **Interoperability**

- Customers use a strategy to Mix & Match multiple software from different vendors
- Ensuring interoperability across a variety of software is critical to the market



02 Market Structure : Optics and Photonics

❖ Optics Software

➔ **Software** for designing and analyzing linear movement of light at the **macro** level

Application field



〈 Camera 〉



〈 Car Headlight 〉

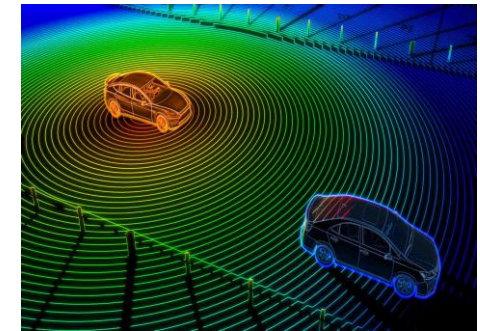
❖ Photonics Software

➔ **Software** for designing and analyzing subtle waves of light at the **nano** level

Application field



〈 Optical Fiber 〉



〈 LiDAR 〉

03 Market Definition : Product Market

1 Semiconductor Chip Design IP Market

➤ Interface IP and Foundation IP : **Separate Products Market**

✓ Key features are different → **Demand substitutability restriction**

Interface IP

- Function: supports intercommunication between semiconductor chips
→ Connecting electronics with semiconductor chips

Foundation IP

- Function: ensures the reliability of semiconductor chips, data transfer speed etc.
→ Reduction time and cost for chip design

✓ No businesses supply both IPs except Synopsys → **Supply substitutability restriction**

03 Market Definition : Product Market

2

Semiconductor Chip Design Software Market



- Defining **Separate Products Market** according to
Detailed steps for chip design

- ✓ Functionality varies depending on the software used in each step→
Demand substitutability restriction
- ✓ Specialized expertise and skills are required for each step→
Supply substitutability restriction
- ✓ **EU** and **CMA** came to the same conclusion



A total **33 products markets** are defined, excluding 12 markets where the combined share of Synopsys and Ansys is insignificant

03 Market Definition : Product Market

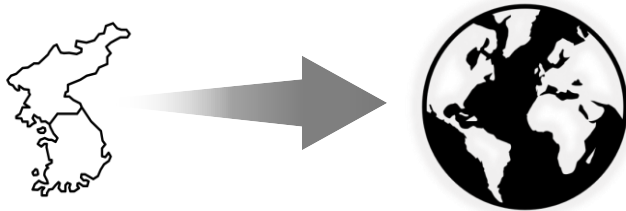
3 Optics and Photonics Software Market

➤ Optics Software and Photonics Software : **Separate Products Market**

- ✓ Key features are different → **Demand substitutability restriction**
- ✓ No businesses supply both types of software except Synopsys and Ansys → **Supply substitutability restriction**
- ✓ **EU** and **CMA** came to the same conclusion

03 Market Definition : Geographic Market

- ✓ Major companies compete worldwide
- ✓ Customers also purchase software regardless of vendor's location
- ✓ No risk of corruption or deterioration of related products
- ✓ Cross-border switching is not restricted by time, cost and regulation



➤ “Global” Market

03 Market Definition











공정거래위원회

Type	Relevant Market(global)	SYNOPSYS®	Ansys
Design IP	Interface IP	O	X
	Foundation IP	O	X
Semiconductor Chip Design Software	RTL Power consumption analysis software	O	O
	ElectroStatic Discharge(ESD) analysis software	O	O
	Parasitic analysis software	O	O
	Transistor level power integrity analysis software	O	O
	Power device analysis software	O	O
	Photonic chip simulation software	O	O
	Gate level power integrity analysis software	X	O
	Electromagnetic simulation software	X	O
	⋮	⋮	⋮
	⋮	⋮	⋮
33 in total			
Optics software		O	O
Photonics software		O	O

04 Type of Merger







1 Horizontal merger



✓ Horizontal merger occurs in a total 8 markets

- ① RTL Power consumption analysis software 
- ② ESD analysis software 
- ③ Parasitic analysis software 
- ④ Transistor level power integrity analysis software 
- ⑤ Power device analysis software 
- ⑥ Photonic chip simulation software 
- ⑦ Optics software 
- ⑧ Photonics software 

2 Conglomerate merger

✓ Conglomerate merger occurs in 3 types

- ① Interface IP and 
Semiconductor chip design software 
- ② Foundation IP and 
Semiconductor chip design software 
- ③ Semiconductor chip design software  

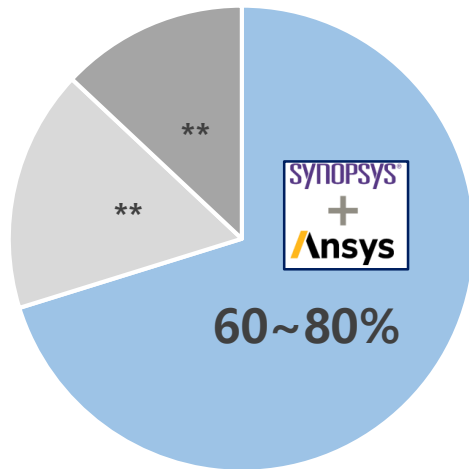
Relevant market		
RTL power consumption analysis software	O	O
Gate level power integrity analysis software	X	O
Electromagnetic simulation software	X	O
...

※ (example) conglomerate merger occurs between RTL power consumption analysis(Synopsys) and Gate level power integrity analysis(Ansys)

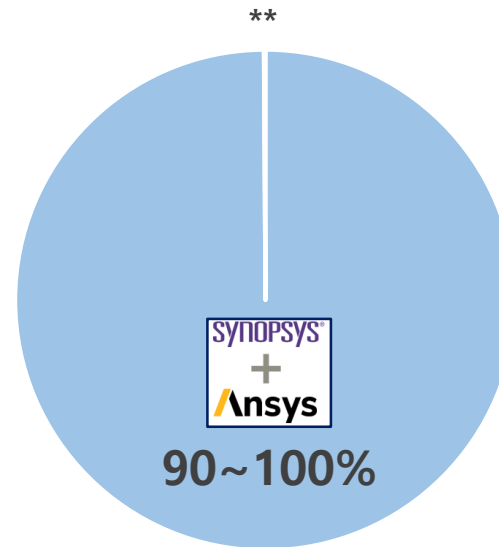
05 Competitive Assessment : Horizontal Merger

❖ Market Share → High Level of Concentration

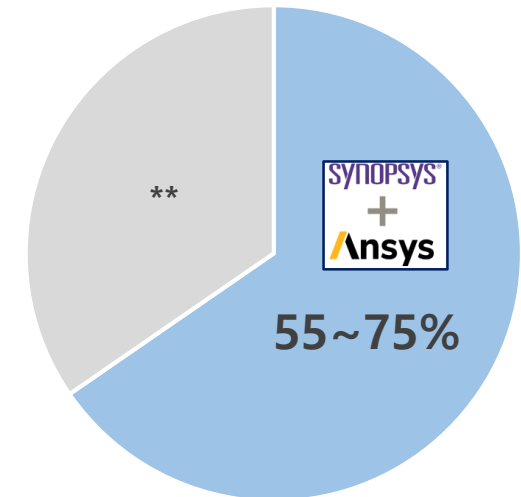
➤ RTL power consumption analysis software



➤ Optics software



➤ Photonics software

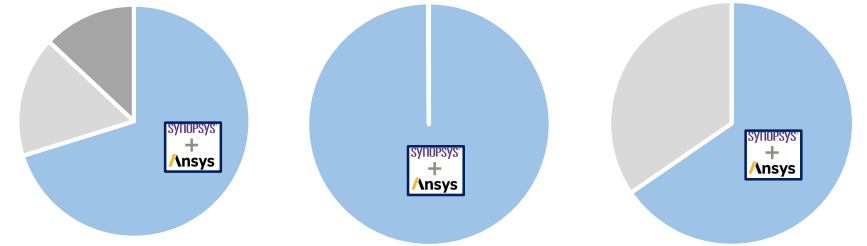


05 Competitive Assessment : Horizontal Merger

❖ Individual Effect → High probability of occurrence

1 Elimination of direct competition

- ✓ Combination of Ansys(No.1) and Synopsys(No.2)
 - RTL power consumption analysis
 - Optics
 - Photonics
- ✓ Synopsys acknowledged that its software overlaps with Ansys software
 - RTL power consumption analysis
 - Optics
 - Photonics
- ✓ Customers also see Synopsys and Ansys software as close competitors
 - RTL power consumption analysis
 - Optics
 - Photonics



05 Competitive Assessment : Horizontal Merger

❖ Individual Effect → High probability of occurrence

2 Reduction in purchasing options

✓ The absence of competitors' software

- Optics

✓ Low preference for competitors' software

- RTL power consumption analysis

- Photonics

Result of competitors' software preference survey

Competitor	Software	Score(five-point scale)
Cadence	**	2.7
Siemens	**	2.625

※ targeting 10 customers(domestic and international)
2 customers responded that they would not purchase competitors' software



05 Competitive Assessment : Horizontal Merger

❖ Individual Effect → High probability of occurrence

3 High barriers to entry

✓ High R&D expenditure

- RTL power consumption analysis
- Optics
- Photonics

Type	Ratio of R&D to sales	
		
RTL power consumption analysis	20~40%	10~20%
Optics		
Photonics		

↔

Ratio of R&D to sales
Top 1,000 companies in Korea
average 4.4%

✓ Synopsys and Ansys have maintained No.1 and No.2 positions over the last 3 years, and continue to hold more than 50% share of the market

- RTL power consumption analysis
- Optics
- Photonics

05 Competitive Assessment : Horizontal Merger

❖ Cooperative Effect ➡ Low probability of occurrence

- ✓ Due to the feature of the software transaction structure of individual negotiation, it's difficult to grasp the terms and conditions of the competitors
- ✓ No history of Cartel behavior

❖ Conclusion

- The merger would likely restrict competition in RTL power consumption analysis software, Optics software and Photonics software market

05 Competitive Assessment : Conglomerate Merger

❖ Between Chip Design IP and Chip Design Software



No concerns about
competition restriction

- ✓ (Issue) Bundling of Synopsys's semiconductor chip design IP and Ansys's semiconductor chip design software

- ✓ (Result) Synopsys has **no ability** to bundle the two products because chip design IP and chip design software have different transaction structures such as transaction cycle

※ Therefore, the incentive and effect were not reviewed

Criteria

1. ability
2. incentive
3. effect

05 Competitive Assessment : Conglomerate Merger

❖ Between Synopsys Chip Design Software and Ansys Software ➡ No concerns about competition restriction



1 Potential Overlapping

- ✓ (Issue) Synopsys conducts R&D projects to enter Ansys business market,
Post-merger, suspension of R&D will likely undermine potential competition
- ✓ (Result) No potential competition concerns
 - Functional differences exist between Synopsys R&D projects and Ansys software
 - Synopsys R&D projects are at an early stage
 - Ansys does not recognize Synopsys R&D projects as a potential competitor

05 Competitive Assessment : Conglomerate Merger

❖ Between Synopsys Chip Design Software and Ansys Software ➡ No concerns about competition restriction



2 Bundling

✓ (Issue) Bundling of semiconductor chip design software of Synopsys and Ansys

✓ (Result) Bundling ability and incentive are present,
but, No effect on excluding competitors

- Competitors can already conduct bundling, enabling immediate response to Synopsys and Ansys bundling
- Customers adopt a Mix & Match strategy (using competitor's golden tool),
Customers will not change their purchasing pattern regardless of Synopsys and Ansys bundling

Criteria

1. ability
2. incentive
3. effect

05 Competitive Assessment : Conglomerate Merger

❖ Between Synopsys Chip Design Software and Ansys Software ➡ No concerns about competition restriction



③ Hampering Interoperability

✓ (Issue) Hampering interoperability between Synopsys's and Ansys's semiconductor chip design software (golden tool) and that of competitors

✓ (Result) No ability, No incentive

※ Therefore, the effect was not reviewed

- (no ability) Interoperability is established by international organizations
- (no incentive) Possibility of retaliation from competitors

Criteria

1. ability
2. incentive
3. effect

06 Mitigation factors of Restriction of Competition

✓ Possibility of new entry: **Low**

- High R&D expenditure (RTL power consumption analysis, Optics, Photonics)
 - High barriers to entry make it difficult for a competitive entrant to emerge in a short period of time
- ※ In fact, there has been no significant new entry in the last 3 years

✓ Whether a powerful purchaser exist: **None**

- Synopsys and Ansys have market dominance and have a negotiating advantage over customers
(RTL power consumption analysis, Optics, Photonics)

07 Conclusion : Divestment remedies

❖ RTL power consumption analysis software

- Ansys and its affiliates are required to divest all related assets
(software, intellectual property, patent, employment, commercial contract etc.)

❖ Optics software and Photonics software

- Synopsys and its affiliates are to sell all related assets
(software, intellectual property, patent, employment, commercial contract etc.)

08 International Cooperation

❖ During its review, the KFTC closely cooperates with EC, CMA, FTC

- ✓ (Step 1) get the waivers from the parties to discuss confidential information with overseas competition authorities

※ In this case, the parties submitted waivers allowing the disclosure of confidential information, provided that the competition authorities discuss it orally rather than in writing

- ✓ (Step 2) conduct video conferences(using MS Teams) with EC, CMA, FTC

※ Discuss topics such as market definition, competitive concerns about horizontal and conglomerate merger, analysis methods and remedies submitted by the parties etc.

- ✓ (Step 3) coordinate the timeline

※ Share a rough timeline, In this case, EC and CMA announced the conclusion in January 2025, while the KFTC reached the same conclusion in March 2025 after talking additional time to collect expert opinions considering the importance of semiconductor chip industry in Korea.



Thank you!

kdj726@korea.kr



OECD-Korea Policy Centre Workshop on Merger Review and International Cooperation

ACCC Draft Merger Review Guidelines

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28-29 April 2025

Background

On 28 November 2024, The Australian Parliament passed the Treasury Laws Amendment (Mergers and Acquisitions Reform) Act.

Merger control will move from a judicial enforcement model to a primarily administrative regime

The ACCC will be the first instance decision maker on each notified acquisition (approve or disallow).

Mandatory notification commences on 1 January 2026.

Parties can voluntarily notify acquisitions from 1 July 2025.

External Guidance



Statement of Goals for Merger Reform Implementation
published 10 October 2024



Transition Guidance
published 4 March 2025

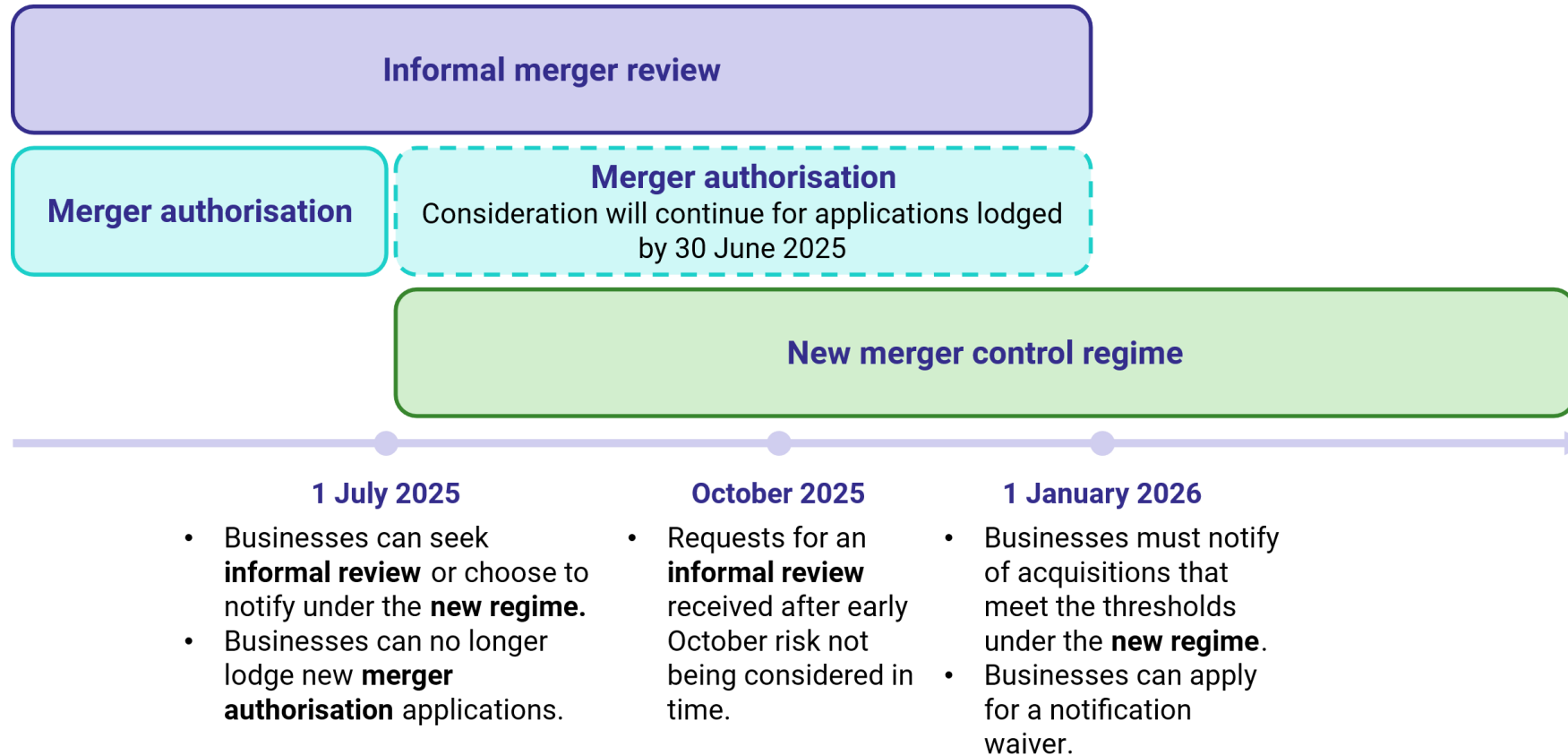


Draft Merger Process Guidelines and Draft Merger Assessment Guidelines
released for consultation in March 2025 with feedback due in April 2025



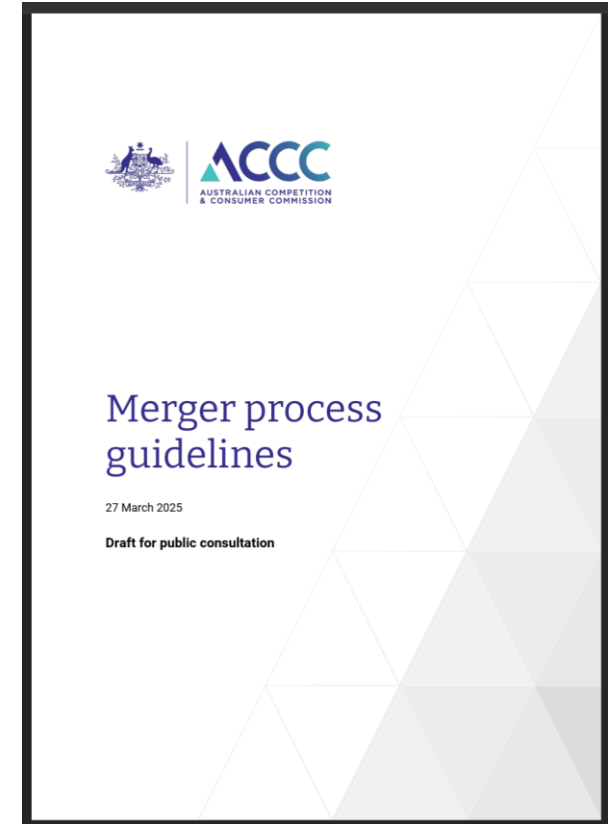
Replacing *ACCC Merger Guidelines* November

Transition guidance

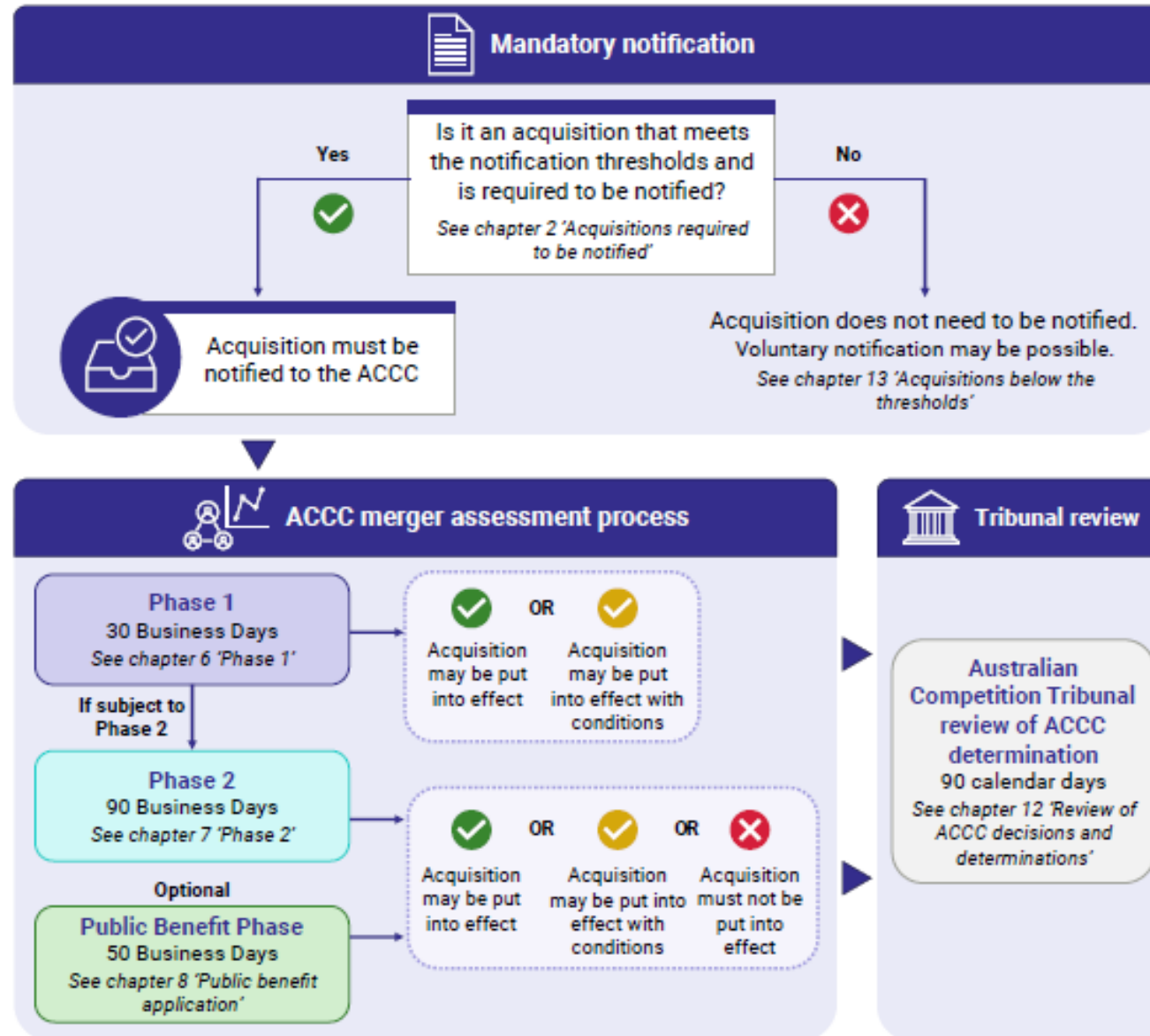


Process guidelines

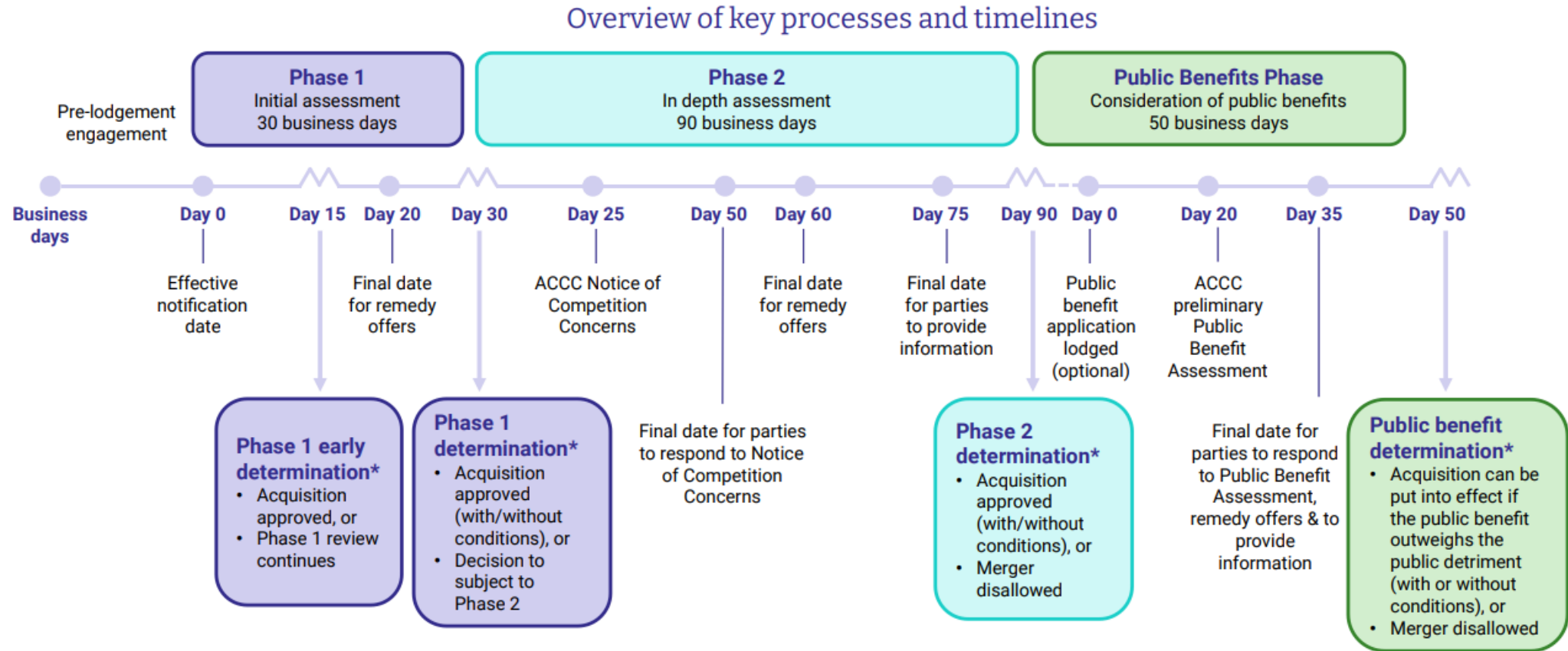
- **In late March the ACCC released draft merger process guidelines and an accompanying quick guide for business.**
- **[Consultation](#) on the process guidelines runs until 28 April 2025.**
- **We are encouraging pre-notification engagement to provide an opportunity for businesses to raise issues with us to ensure we can assess applications as efficiently and promptly as possible.**
- **The new process has timing implications businesses should be aware of:**
 - **All notifications (with a handful of limited exceptions) must be listed on the public register for a minimum of 15 business days before the ACCC can make a decision.**
 - **ACCC approvals are only valid for 12 months.**



Process guidelines

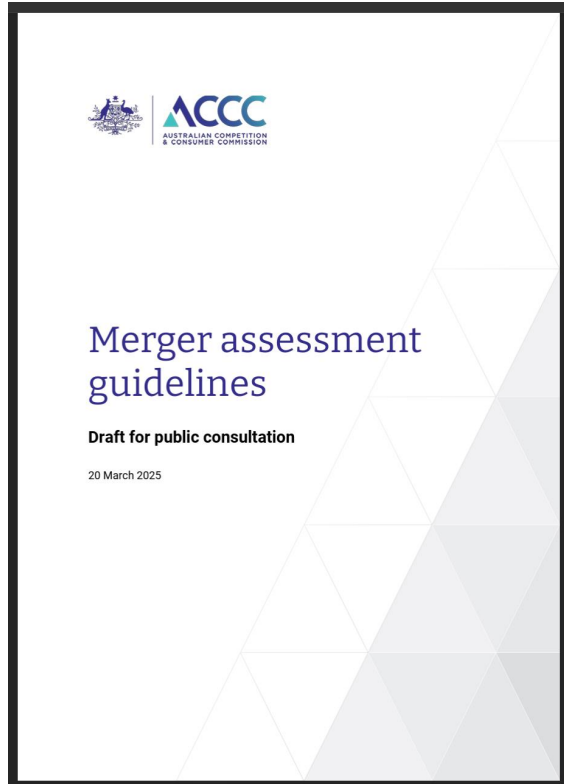


Process guidelines



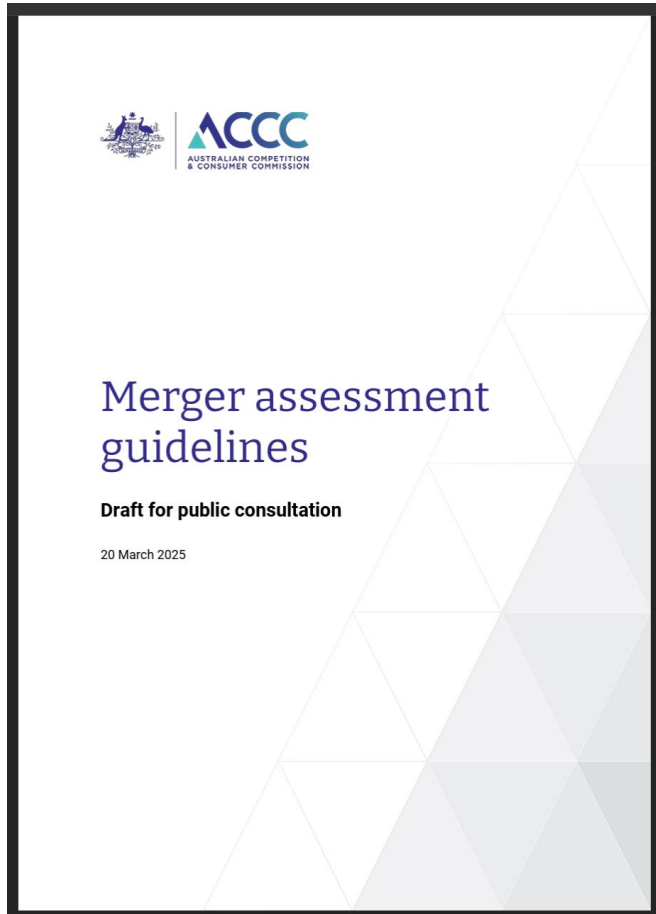
*A person dissatisfied with an ACCC determination may apply to the Australian Competition Tribunal for review.

Merger assessment guidelines



- **The draft merger assessment guidelines outline the analytical framework the ACCC will apply when assessing notified acquisitions under the new regime, reflecting best practice for competition assessments and evolving markets.**
- **Consultation runs until 17 April 2025.**
- **The ACCC can take into account the effect on competition resulting from serial acquisitions over the preceding three years.**
- **The law clarifies a substantial lessening of competition includes creating, strengthening or entrenching a substantial degree of market power.**

Merger assessment guidelines – Key features



How mergers can raise competition concerns

1. Analytical framework

2. Mergers between competitors – unilateral effects

3. Coordinated effects

4. Non-horizontal mergers

5. Specific merger issues

6. Countervailing factors

7. Public benefits

Appendix 1- Market definition

Appendix 2 - Counterfactuals

Merger assessment guidelines

How mergers can raise competition concerns

**a merger between
close competitors**

**a merger in a
concentrated
market**

**an acquisition of a
potential competitor**

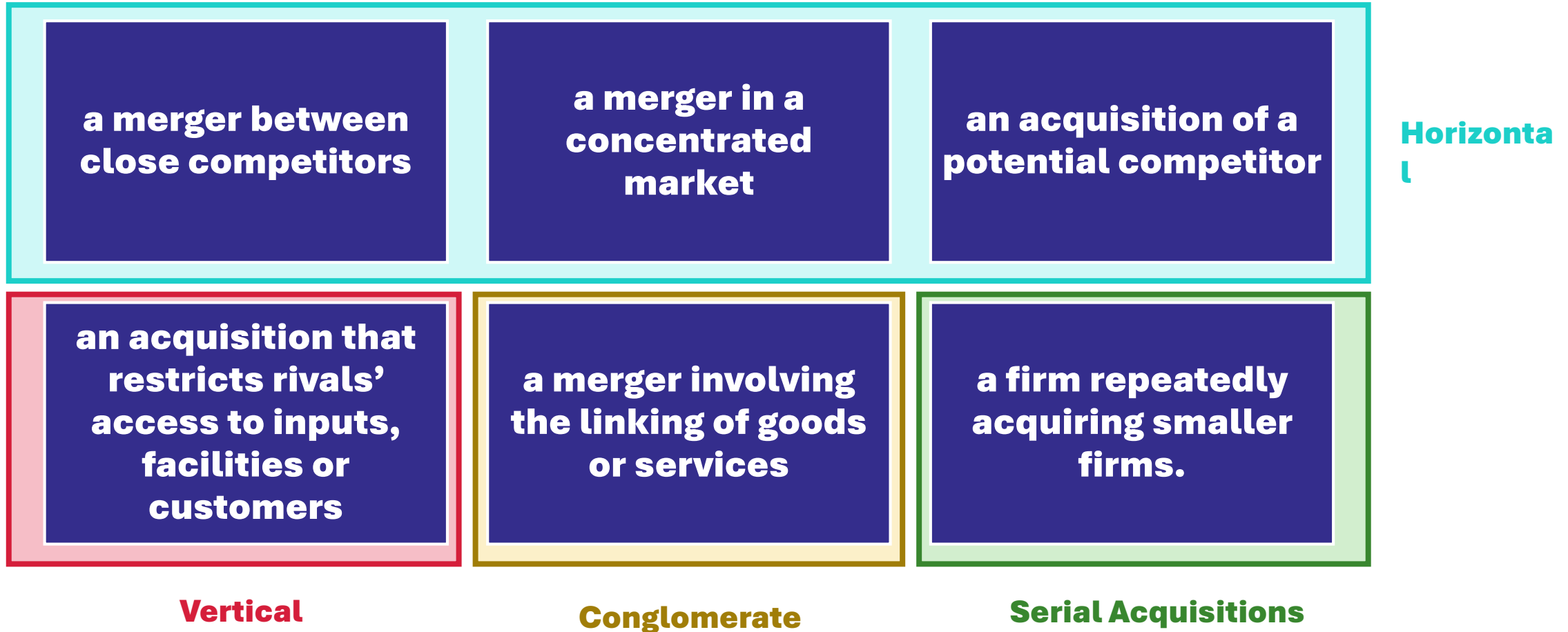
**an acquisition that
restricts rivals'
access to inputs,
facilities or
customers**

**a merger involving
the linking of goods
or services**

**a firm repeatedly
acquiring smaller
firms.**

Merger assessment guidelines

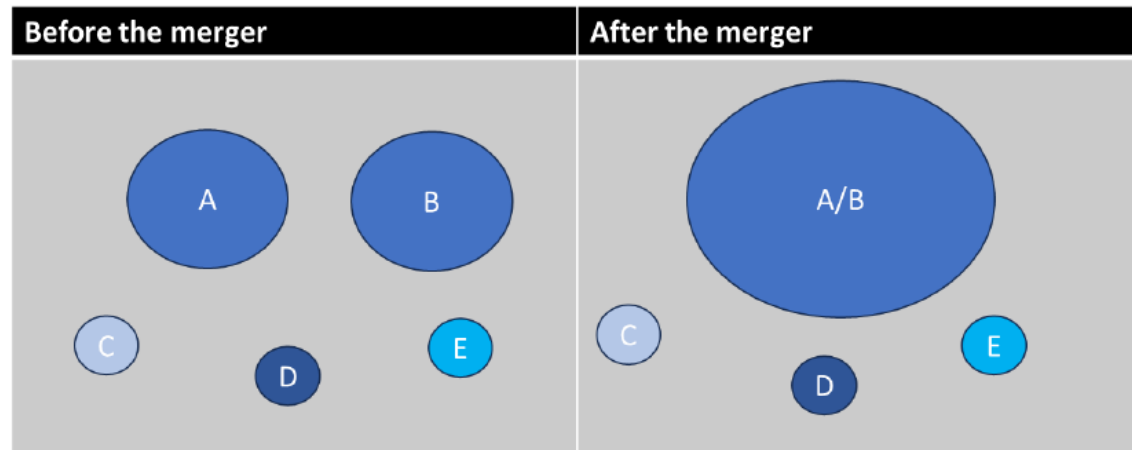
How mergers can raise competition concerns



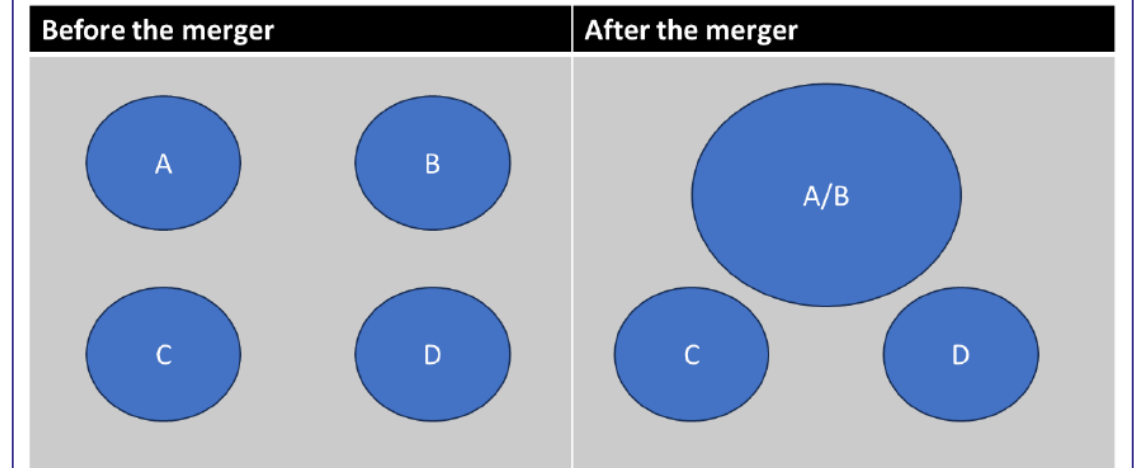
Merger assessment guidelines

How mergers can raise competition concerns

A merger between close competitors



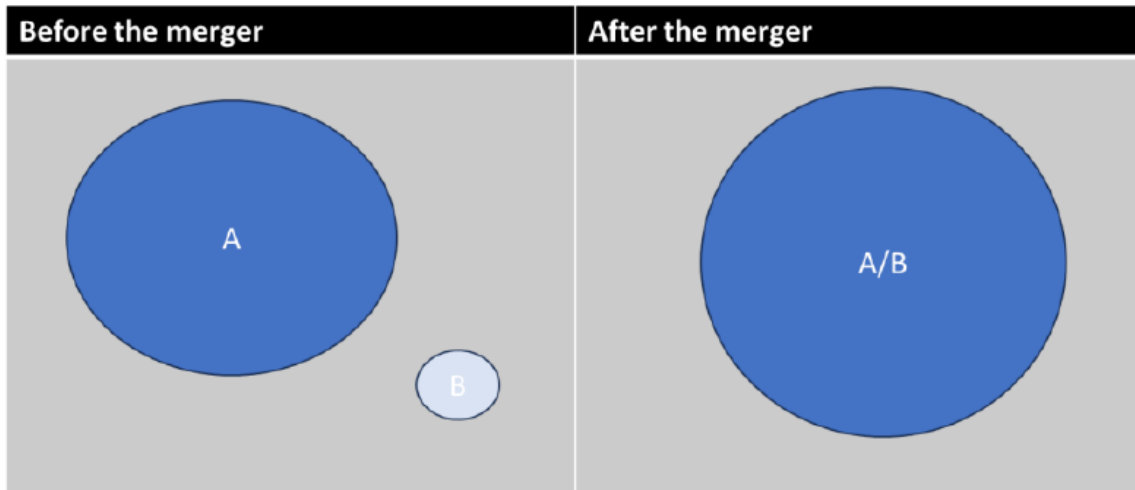
A merger in a concentrated market



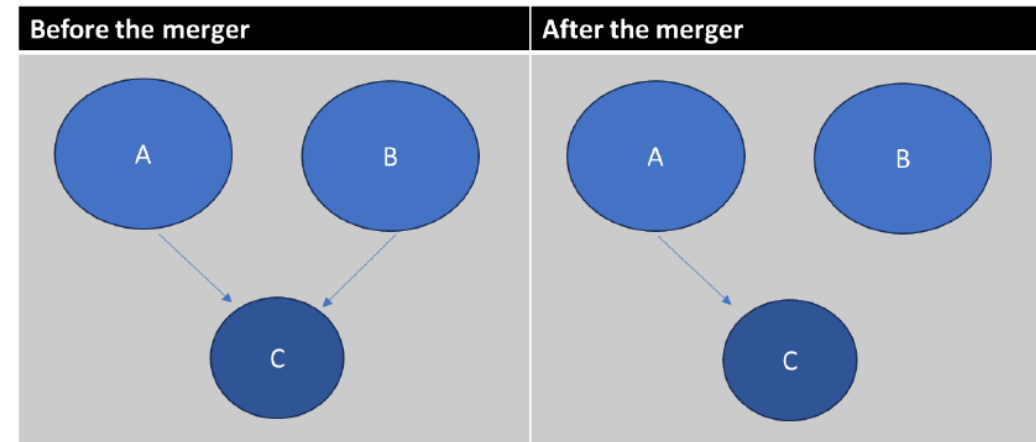
Merger assessment guidelines

How mergers can raise competition concerns

An acquisition of a potential or nascent competitor



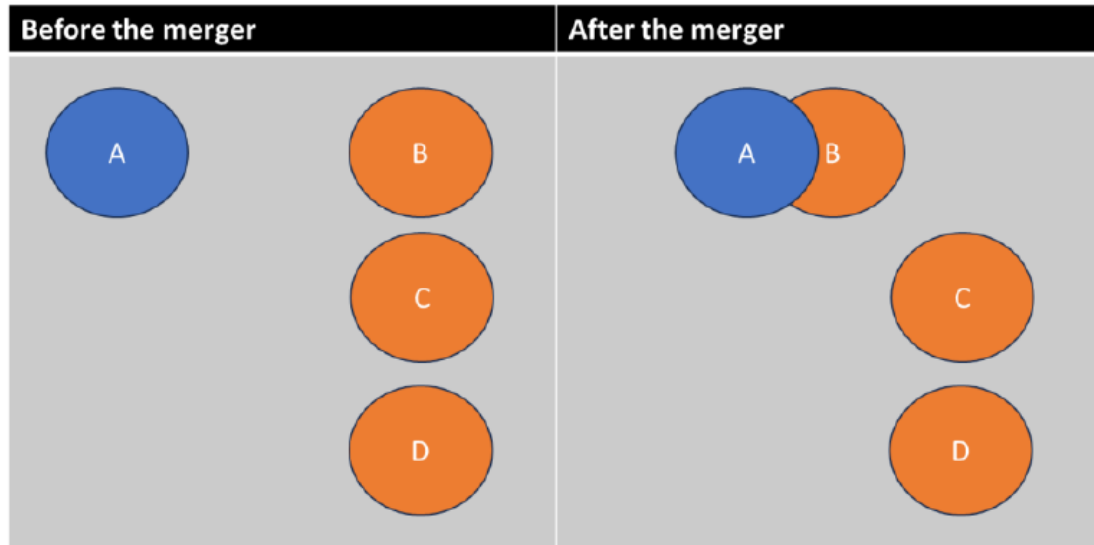
An acquisition that restricts rivals' access to inputs, facilities or customers



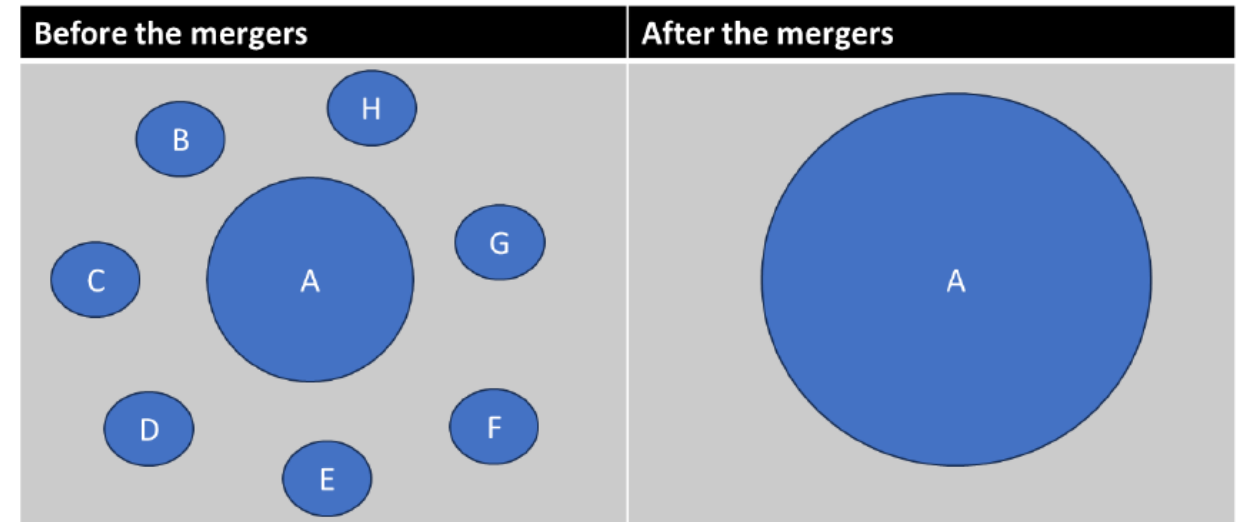
Merger assessment guidelines

How mergers can raise competition concerns

A merger involving the linking of goods or services



A firm serially acquiring smaller firms



More information

- **ACCC's merger reform page:** <https://www.accc.gov.au/business/mergers-and-acquisitions/merger-reform>
- **Current ACCC merger consultations:** <https://www.accc.gov.au/business/mergers-and-acquisitions/consultations-on-merger-regime-changes> (assessment guidelines closing 17 April and process guidelines closing 28 April)
- **To be alerted on the status of guidelines and other merger reform updates:** [subscribe to merger reform updates](#).
- **If you have a question about merger reform or the new merger control regime,** email MergerReformInfo@acc.gov.au

**ASEAN- OECD/KPC WORKSHOP
ON MERGER REVIEW AND INTERNATIONAL COOPERATION**

JAKARTA, 28-29 April 2025

Hypothetical Exercise

Case HT.4716 - Power Brake International/Best Brakes



1. Overview

1. On 28 August 2024, the Competition Authority received a notification from Power Brake International, Inc. ("PBI") regarding the proposed acquisition of sole control by PBI over Car Part Corporation's brake business ("Best Brakes") by way of purchase of shares and assets (the "Transaction").
2. Following its initial market investigation, the Competition Authority expressed its concerns in relation to the effects of the Transaction to the parties at a meeting held on 18 September 2024. The initial deadline for review expires on 2 October 2024. If remedies are formally submitted, the deadline will be extended until 16 October 2024.
3. The transaction has also been notified in other jurisdictions. The Competition Authority has, in particular, been cooperating with the competition bureau of Republic B (the "Competition Bureau").

2. The parties and the Transaction

4. **PBI** is an international company which develops, manufactures and sells engine and transmission components as well as brakes, primarily for use in light passenger and commercial vehicles ("LPV") as well as in heavy commercial vehicles ("CV").¹
5. **Best Brakes** is an international company which designs, develops, manufactures, markets, repairs, overhauls and sells brakes and ancillary equipment primarily for use in LPVs as well as in CVs.

3. Market definition

6. The parties' activities overlap as regards original and replacement brakes for use in LPVs and in CVs.
7. The Competition Authority identified the following relevant product markets for brakes for use in automotive vehicles:
 - Separate markets according to the type of vehicle: LPVs vs. CVs; and
 - Separate markets according to the sales channel: sales to original equipment manufacturers/original equipment service providers (OEM/OES) vs. independent aftermarket sales.²

¹ Heavy commercial vehicles are vehicles with a weight of more than 7.5 tons.

² No competition concern arises with respect to independent aftermarket sales.

8. As regards the relevant geographic market the Competition Authority considers all these markets to be national in scope: encompassing the whole of the Competition Authority's territory.

4. Competition assessment

9. Following the market investigation, competition concerns (horizontal unilateral/non-coordinated effects) arise in relation to the markets for brakes for LPVs sold to OEM/OES and on the market for brakes for CVs sold to OEM/OES. These markets represent 30% of the transaction value. The main rationale for the acquisition lies in the markets for brakes used in trains, in which Best Brakes is a particularly strong player while PBI is not present and would like to enter.

4.1. Market structure and market characteristics

10. Both markets are very concentrated with currently 3 to 4 big players and a small number of small suppliers together holding a limited market share.

Brakes for CVs sold to OEM/OES (2012-2014 market shares)

2014	Sales (Value)	Sales (Volume)	Capacity
PBI	18%	18%	20%
Best Brake	30%	30%	32%
Combined	48%	48%	52%
Competitor Z	44%	44%	43%
Others	8%	8%	5%

2013	Sales (Value)	Sales (Volume)	Capacity
PBI	16%	16%	18%
Best Brake	28%	28%	30%
Combined	44%	44%	48%
Competitor Z	48%	48%	47%
Others	8%	8%	5%

2012	Sales (Value)	Sales (Volume)	Capacity
PBI	15%	15%	18%
Best Brake	26%	26%	28%
Combined	41%	41%	46%
Competitor Z	50%	50%	48%
Others	9%	9%	6%

11. Contracts are awarded on the basis of price and quality through multi-annual tenders combined with bilateral negotiations. Customers usually multi-source, in particular from both of the parties, who have been, respectively, winner and runner up in the vast majority of recent tenders. In recent tenders, competitor Z did not win as many tenders as the parties. The number of bidders needed to have a competitive bid is considered to be at least three. OEMs get involved in the process of certification and type approval through testing of the material and visiting of production sites. The market investigation also

revealed that OEMs prefer certain brands over others as their customers give value to those brands. In the territory of the Competition Authority, the Best Brakes brand and the PBI brand have been ranked first and second due to the perceived superior quality of the products.

Brakes for LPVs sold to OEM/OES (2012-2014 market shares)

2014	Sales (Value)	Sales (Volume)	Capacity
PBI	22%	20%	18%
Best Brake	27%	25%	22.5%
Combined	49%	45%	40.5%
Competitor A	25%	26%	28%
Competitor B	16%	19%	21.5%
Others	10%	10%	10%

Market shares were stable over the last years.

12. Contracts are awarded through multi-annual tenders combined with bilateral negotiations. Multi-sourcing is less common but is still done. PBI and Best Brakes are important suppliers, combined, they won almost half of the tenders recently organized. Competitor A is similarly strong in winning tenders.
13. In conclusion, on both markets, the merged entity would become the market leader with market shares approaching 50% while there would be few remaining competitors (3 to 2 merger in brakes for CVs and 4 to 3 merger in brakes for LPVs). Since many customers rely on multi-sourcing for the provision of brakes for CVs (and to a slightly more limited extent for the provision of brakes for LPVs), the number of remaining players may have an impact on the price stemming from tender process.

4.2. Barriers to entry and expansion

14. In both markets, the barriers to expansion are high:
 - The industry is marked by low spare capacity. Full utilization rate of production facilities is not possible due to the need to account for tooling change and maintenance. In addition, customers regularly require manufacturers to hold around 10% spare capacity above peak volume. PBI's average capacity utilization in the territory of the Competition Authority amounts to 83% for brakes for CVs and to 80% for brakes for LPVs while Best Brake utilizes 85% and 80% for brakes for CVs and LPVs respectively. Capacity utilization of the parties' competitors is even higher, amounting to 87% or more on both markets.
 - Creation of additional capacity is costly (cost of a new production line in an existing factory is at least EUR 4 million) and time-intensive (2-3 years for certification; long supply relationship of 15 years or longer).
15. Similarly, there are significant entry barriers for *de novo* entrants. Entry is costly and time-intensive (cost of a new production plant is estimated at EUR 10-40 million; certification for a new entrant would cost EUR 150 000 to EUR 900 000 and takes about one year). Due

to regulatory safety requirements brake manufacturers need to engage in extensive testing of their products for which a dedicated testing facility is needed (testing takes at least six months). In addition, customers engage in extensive and costly testing of the brakes before accepting a new supplier (testing takes about one year). They therefore have a preference to award contracts to incumbent players. In the past years, there has been no significant and successful entry. To the contrary, it has been reported that some smaller players did not manage to establish themselves and exited the market.

4.3. Buyer power

16. Buyer power on the markets for brakes for LPVs and CVs appears to be limited. The supply side on both markets will be highly concentrated. Given the time required for testing before accepting a new supplier, customers cannot easily switch. Switching suppliers is also made more difficult by the capacity constraints faced by the parties and their competitors.

5. Remedies

17. During the meeting with the Competition Authority held on 18 September 2024, PBI has expressed its willingness to submit remedies. However, no draft remedy proposal has yet been submitted to the Competition Authority. On the basis of the high level presentation done by PBI at the meeting it is likely that PBI is ready to propose:

- A commitment to divest **one of PBI's production facilities with associated personnel, contracts and customers' orders** to a third party that is independent and unrelated to PBI and Best Brakes. No further details have been provided as regards the plant to be divested, but at the request of the Competition Authority an excel sheet with some details of each of the parties' plants located in the territory of the Competition Authority has been submitted. These plants only meet the demand of the territory of the Competition Authority.

Brakes for CVs sold to OEM/OES

Plant name	Sales (Value) 2014	Sales (No. of units sold) 2014	Capacity 2014
PBI			
Plant A	EUR 20.1 million (24%)	1.7 million (26%)	2 million (25%)
Plant B	EUR 17.8 million (21%)	1.3 million (20%)	1.5 million (19%)
Plant C	EUR 30.2 million (36%)	2.6 million (39%)	3 million (38%)
Plant D	EUR 15.5 million (19%)	1 million (15%)	1.5 million (19%)
Total	EUR 83.6 million (100%)	6.6 million (100%)	8 million (100%)
Best Brakes			
Plant # 1	EUR 20 million (14%)	1.5 million (14%)	2 million (16%)
Plant #2	EUR 60.5 million (43%)	4.5 million (41%)	5.4 million (42%)
Plant #3	EUR 58.8 million (42%)	4.9 million (42%)	5.4 million (42%)
Total	EUR 139.3 million (100%)	Pieces 10.9 million (100%)	12.8 million (100%)

Brakes for LPVs sold to OEM/OES

Plant name	Sales (Value) 2014	Sales (No. of units sold) 2014	Capacity 2014
PBI			
Plant A	EUR 60.3 million (50%)	15.5 million (52%)	18 million (48%)
Plant B	EUR 55.7 million (46%)	13.5 million (45%)	18 million (48%)
Plant D	EUR 4.6 million (4%)	1 million (3%)	1.5 million (4%)

Total	EUR 120.6 million (100%)	30 million (100%)	37.5 million (100%)
Best Brakes			
Plant # 1	EUR 60 million (41%)	14 million (37%)	18 million (38%)
Plant #2	EUR 63 million (43%)	16.5 million (44%)	18 million (38%)
Plant #3	EUR 25 million (17%)	7 million (19%)	11 million (23%)
Total	EUR 148 million (100%)	37.5 million (100%)	47 million (100%)

(PBI explains that Plant #1 not only produces brakes but also exhaust pipes.)

- PBI clarified that a divestment would not include any testing facility or testing equipment.
- To the extent necessary and required by the independent third party, the **provision of certain transitional services** for a period of 6 months could be envisaged. No further details have been provided as regards the type of services offered.

18. On 19 September 2024, specialized press reported that, in order to remove the competition concerns raised by several competition authorities around the world, PBI intends to offer a **"price freeze" remedy for 3 years**, in the form of an option to renew current contracts on the same terms and conditions with the exception of the quantities agreed (i.e. fixed price per unit for 3 years). Moreover, according to the same press article, PBI would continue selling its products under the separate PBI and Best Brakes brands for at least 3 years from closing.

6. International cooperation

19. The Competition Authority and the Competition Bureau have been in close contact and have discussed, amongst other things, market definition and their respective findings as regards the competitive assessment. They aim to ensure that potential remedies would be compatible with each other.

20. The Competition Bureau has reached the same conclusions as the Competition Authority as regards the product and geographic market definitions. During the Competition Authority's and the Competition Bureau's weekly call, the Competition Bureau mentioned that the parties had submitted a draft remedy proposal. The Competition Bureau also mentioned that it had expressed some preliminary views to the parties indicating that the remedy might not be sufficient to entirely eliminate the competition concerns in Republic B. The draft proposal consists of the following elements:

- A commitment to enter into a 10-year **toll manufacture agreement**³ with an independent third party for the production of brakes for LPVs and CVs on the basis of a design defined by the independent third party;
 - A commitment to enter into a 12 months, non-exclusive, royalty-free licence agreement with the independent third party for **all intellectual property rights and know-how needed for the design and marketing including the brands** (but not production, as this will be carried out by PBI under the toll manufacture agreement) of LPV and CV brakes for the OEM/OES market in the territory of Republic B. After the 12 months period, the independent third party will have an option to enter into a 5 year royalty licence agreement (with a lump-sum royalty set at 10% of estimated profits on the sales of LPV and CV brakes to OEM/OES);
 - To the extent necessary and required by the independent third party for the design of its brakes, the provision of **access to PBI's testing facilities** for a transitional period of up to 12 months on a cost-plus basis (i.e. cost and top-up margin of 5%);
 - The **commitment not to close the Transaction until an independent third party has been selected and approved** by the Competition Bureau as a suitable purchaser of the assets.
21. Another call between the Competition Authority and the Competition Bureau is scheduled to be held tomorrow. The two authorities have agreed to discuss issues relating to the scope and implementation of potential remedies during that call.

7. Group Discussion - Questions to Address:

The purpose of the discussion is to talk about the remedy proposals and identify a solution that is effective and administrable. The focus is not on the competitive assessment.

1. What assets should be included in the divestment proposal presented at the meeting held on 18 September 2024?
2. What are the risks associated with the licensing commitment presented to the Competition Bureau of Republic B?
3. What do you think about the price freeze idea indicated to the Competition Authority?
4. What should be the criteria to assess the suitability of the potential buyers/beneficiaries of the remedy in order to ensure the viability of the remedy in the long run?
5. Should access to the testing facility be granted?
6. What elements would you check when the Parties propose plant A for LPVs for the OEM/OES market to be divested?
7. Assuming the Parties propose to divest the equipment of plant A (including personnel, etc.) and to keep the manufacturing site where other pieces are produced, would you consider this sufficient to address the competition concerns identified?

³ Tolling or toll manufacturing is when an entity provides raw materials or semi-finished products to a third party that will perform production or manufacturing services on those materials.

The discussion is also intended to cover international cooperation in remedy cases.

- What are the topics (substantive and/or procedural) which you would expect the competition authorities to discuss during their next call?
- What features should a suitable remedy in this type of case have?
- What would be the type and the scope of the remedy that would be most suitable to address the competition concerns identified in the present case?
- Do you consider that the competition authorities should continue to cooperate in the implementation phase of the remedies? - In case you do, on what aspects would continued cooperation be most useful?