Horizontal merger guidelines efficiencies

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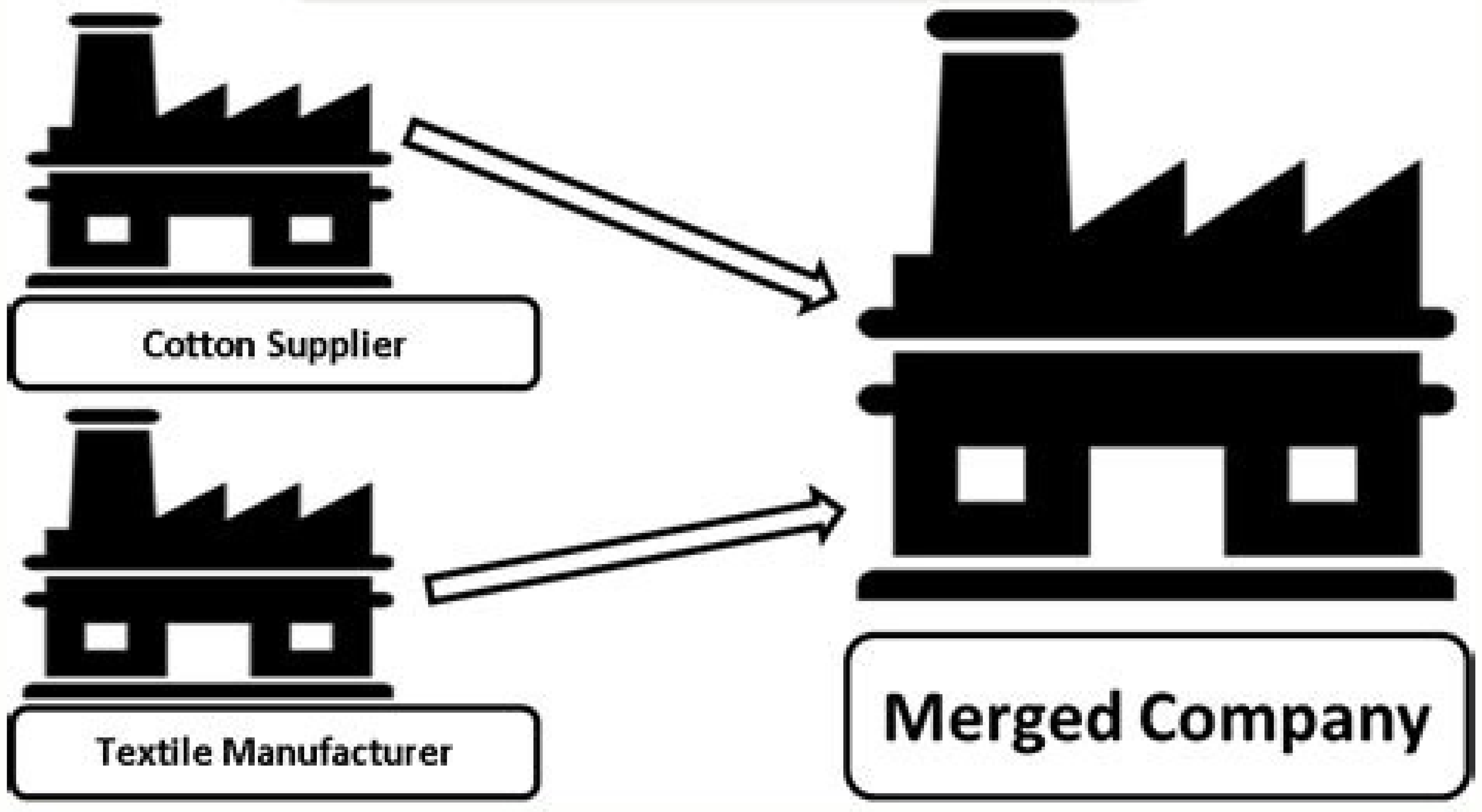
Vertical Merger



- A **vertical merger** is a merger between two or more entities who operate in the same industry but at the different levels of the production process. These entities produce similar finished goods or services.
- XYZ Ltd. is a textile manufacturer. ABC Ltd. is the supplier of cotton to XYZ Ltd. since many years. XYZ Ltd. and ABC Ltd. decide to merge their business. We can see that both the business entities are involved in the different stages of the production process.

Questions for Public Comment (cont'd)

- Other
  12. Large buyers
  13. Uncommitted vs. committed entry
  14. Fixed vs. marginal cost efficiencies
  15. Non-price effects / innovation
  16. Minority interests
  17. Failing firm / exiting assets
  18. Remedies – preserving pre-merger competition, shortcomings of behavioral remedies
  19. Examples
  20. Retrospective studies

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Horizontal Merger Guidelines (1992)

- Theme: mergers should not be permitted to create or enhance market power, so as to confer on a seller the ability profitably to maintain prices above competitive levels for a sig. Period of time.
- Analytical process: assessment of whether:
- 1.the merger will sig. increase market concentration
- 2.the merger will raise concern about potential adverse competitive effects
- 3.efficiency gains would result that otherwise cannot be achieved

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Horizontal Merger Guidelines

3. Other Factors that may affect decision to challenge:
   - Unilateral Effects:
     - Ability to raise prices after merger (without collusion). Why?
     - Ruled on a case by case basis
   - Entry:
     - If easy: post-merger HHI may be easily eroded (less concern)
     - If hard: smaller mergers may be more of a concern
     - Benchmark: are BTE's small enough to erode prices to pre-merger levels within 2 years? Yes: less likely to challenge.

Horizontal Merger Guidelines

Post Merger HHI	Change in HHI	DOJ/FTC Challenge?	FTC Classification
<1000	Not Considered	Typically not	Unconcentrated
1000-1800	Not specified	Further analysis needed	Moderately concentrated
>1800	>100	Likely to challenge	Highly Concentrated

Guidelines on the assessment of horizontal mergers SUMMARY OF: Guidelines on the assessment of horizontal mergers under the EU regulation on the control of concentrations between undertakings WHAT IS THE AIM OF THE GUIDELINES? They provide guidance as to the European Commission’s approach when assessing the likely impact of mergers, within the scope of Article 2 of Regulation (EC) No 139/2004 (the Merger Regulation), where the firms concerned are actual or potential competitors in the same relevant market (horizontal mergers). Through its review, the Commission can raise competition concerns when mergers would be likely to deprive consumers of the benefits of effective competition (for instance, lower prices, a wider choice of products or services, or innovation). KEY POINTS In the guidelines, the Commission explains when it may raise competition concerns, but also indicates when it will be unlikely to intervene. The Commission can raise competition concerns when mergers and acquisitions increase the market power of the companies involved to an extent which is likely to have significant adverse effects for consumers, in particular by creating or strengthening a dominant position*. This might be the case if the merger were to eliminate a competitor from the market or to make coordination between the firms present on the market more likely. Market share and concentration levels The Commission’s assessment of mergers normally involves: defining relevant product and geographic markets;competitive assessment of the merger. The Commission defines the relevant market based on its notice of 1997. The main purpose of market definition is to identify in a systematic way the immediate competitive constraints facing the merged entity. The Commission does not normally intervene where the merger does not result in market concentration levels exceeding certain specified levels, as measured by the firms’ market-share percentage or by the Herfindahl-Hirschmann Index (HHI)*. Possible anti-competitive effects of a horizontal merger There are 2 main ways in which horizontal mergers may significantly harm effective competition, in particular by creating or strengthening a dominant position: by eliminating important competitive constraints on one or more firms, which consequently would have increased market power, without resorting to coordinated behaviour (known as non-coordinated effects);by changing the nature of competition so that firms that previously were not coordinating their behaviour are now significantly more likely to do so and raise prices or otherwise harm effective competition. A merger may also make coordination easier, more stable or more effective for firms which were coordinating prior to the merger (known as coordinated effects). The Commission assesses whether the changes brought about by the merger would result in any of these effects. Both instances mentioned above may be relevant when assessing a particular transaction. Other aspects that the Commission takes into account include: Countervailing buyer power* — the competitive pressure on a supplier is not only from competitors but can also come from its customers. Even firms with very high market shares may not be able, post-merger, to significantly impede effective competition, in particular by acting to an appreciable extent independently of their customers, if their customers have countervailing buyer power. Market entry — when it is sufficiently easy to enter a market, a merger is unlikely to pose any significant anti-competitive risk. Therefore, entry analysis is an important element of the overall competitive assessment. For entry to be considered a sufficient competitive constraint on the merging parties, it must be shown to be likely, timely and sufficient to deter or defeat any potential anti-competitive effects of the merger. Efficiencies — companies can claim that efficiencies are a mitigating factor to the likely competitive harm. Here, the merging parties need to be able to show that the efficiencies are merger-related, will benefit consumers and are verifiable. Failing firm defence — an otherwise problematic merger may nevertheless be considered compatible with the common market if one of the merging parties is a failing firm. The basic requirement is that any reduction in competition that follows the merger has not been caused by the merger. FROM WHEN DOES THE GUIDANCE APPLY? It has applied since 5 February 2004. BACKGROUND For more information, see: Mergers (European Commission). KEY TERMS Dominant position: where a firm has the ability to behave to a considerable extent independently of its competitors, customers, suppliers and, ultimately, the final consumer. Herfindahl-Hirschmann Index (HHI): the index, which is calculated on the basis of the market shares of all the firms in the market, gives proportionately greater weight to the market shares of larger firms. While the absolute level of the HHI can give an initial indication of the competitive pressure in the market post-merger, it is, above all, the change in the HHI that is a useful indicator for the change in concentration directly brought about by the merger. Countervailing buyer power: in this context, this should be understood as the bargaining strength that the buyer has in relation to the seller in commercial negotiations due to its size, its commercial significance to the seller and its ability to switch to alternative suppliers. MAIN DOCUMENT Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (OJ C 31, 5.2.2004, pp. 5-18) RELATED DOCUMENTS Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ L 24, 29.1.2004, pp. 1-22) Commission Notice on the definition of relevant market for the purposes of Community competition law (OJ C 372, 9.12.1997, pp. 5-13) last update 15.05.2020 Preview Preview The .gov means it’s official. Federal government websites often end in .gov or .mil. Before sharing sensitive information, make sure you’re on a federal government site. The site is secure. The https:// ensures that you are connecting to the official website and that any information you provide is encrypted and transmitted securely. U.S. competition rules Competition law Basic concepts History of competition law Monopoly and oligopoly Coercive monopoly Natural monopoly Barriers to entry Herfindahl–Hirschman Index Market concentration Market power SSNIP test Relevant market Merger control Anti-competitive practices Monopolization Collusion Formation of cartels Price fixing (cases) Bid rigging Tacit collusion Product bundling and tying Refusal to deal Group boycott Essential facilities Exclusive dealing Dividing territories Predatory pricing Misuse of patents and copyrights Enforcement authorities and organizations International Competition Network List of competition regulators vte For EU guidelines on the assessment of horizontal mergers, see European Union merger law. Merger guidelines in the United States are a set of internal rules promulgated by the Antitrust Division of the Department of Justice (DOJ) in conjunction with the Federal Trade Commission (FTC). These rules have been revised over the past four decades. They govern the process by which these two regulatory bodies scrutinize and/or challenge a potential merger. Grounds for challenges include increased market concentration and threat to competition within a relevant market. The merger guidelines have sections governing both horizontal integration and vertical integration. History The first merger guidelines set forth by the DOJ were the 1968 Merger Guidelines.[1] The guidelines were developed by former U.S. Assistant Attorney General Dr. Donald Turner, an economist and lawyer with expertise in the field of industrial organization.[2] These merger guidelines were criticized in some quarters for excess concern with issues of market structure such as barriers to entry and concentration ratios at the expense of efficiency and economies of scale.[3] They were, however, a step forward in two ways: they gave more accurate advice to corporate management as to when and how mergers would be examined and brought new economic ideas into antitrust enforcement, specifically the "structure-conduct-performance" model of industrial organization.[2] They remained largely unchanged until 1982 when Associate Attorney General Bill Baxter, under the authority of U.S. Attorney General William French Smith, released a new set of guidelines, which made heavier use of modern concepts of microeconomic theory, including using the Herfindahl index to measure market concentration.[4] The newer guidelines took a more favorable view of economies of scale and efficiency of production as rationales for integration.[2] Moreover, they raised the level of market concentration necessary for the government to scrutinize mergers, effectively treating competition as a means to greater efficiency rather than as an independent goal.[5] This approach was controversial: some antitrust lawyers saw it as a loosening of previous restraints on corporate consolidation, and some State Attorneys General responded to Baxter's changes by tightening merger enforcement at the state level.[3] The guidelines were revised again in 1984.[6] The only portion of the 1984 guidelines that remains in effect is Section Four, which governs the examination of market effects of vertical integration. These guidelines were replaced by the 1992 Merger Guidelines,[7] which fine-tuned previously established tools and policies, such as the SSNIP test and rules governing the acquisition of failing firms.[8] The 1992 Guidelines were revised in 1997, almost concurrently with the FTC's challenge of the Staples-Office Depot merger in federal court. The 1997 Horizontal Merger Guidelines were replaced on August 19, 2010.[9] These guidelines introduced the concept of "upward pricing pressure" resulting from a merger between competing firms. The 2010 revisions, while deemed by some to be an improvement,[10] attracted criticism from law and economics scholars who contend that they do not update efficiencies analysis,[11] that they may not be recognized by the courts[12] and that they do not embody principles that reflect dynamic competition.[13] Notes ^ "1968 Merger Guidelines". www.justice.gov. 2015-06-25. Retrieved 2019-07-13. ^ a b c Oliver E. Williamson, The Merger Guidelines of the U.S. Department of Justice-In Perspective. Accessed November 4, 2007. ^ a b Remarks of Assistant Attorney General Charles A. James. ^ Time magazine, "Guidelines for the Merger Thicket", June 28, 1982. Accessed September 12, 2007. ^ William J. Kolasky and Andrew R. Dick, The Merger Guidelines and the Integration of Efficiencies into Antitrust Review of Horizontal Mergers, 10 June 2002. Accessed September 12, 2007. ^ 1984 Merger Guidelines ^ 1992 Merger Guidelines ^ Joshua R. Wueller, Mergers of Majors: Applying the Failing Firm Doctrine in the Recorded Music Industry, 7 Brook. J. Corp. Fin. & Com. L. 589, 591–92 (2013) (describing section 11 of the 2010 Guidelines (and section 5.1 of the earlier 1997 Guidelines), which governs the failing firm doctrine for the FTC and DOJ). ^ 2010 Horizontal Merger Guidelines ^ Judd E. Stone & Joshua D. Wright, The Sound of One Hand Clapping: The 2010 Merger Guidelines and the Challenge of Judicial Adoption, 39 REV. IND. ORGAN. 145 (2011). ^ Id. ^ Leah Brannon & Kathleen Bradish, The Revised Horizontal Merger Guidelines: Can the Courts Be Persuaded?, THE ANTITRUST SOURCE, October 2010, at 4. ^ See J. Gregory Sidak & David J. Teece, Rewriting the Horizontal Merger Guidelines in the Name of Dynamic Competition, 16 GEO. MASON L. REV. 885 (2009), . See also United States antitrust law Second request (law) External links Merger guidelines documents: 1968 Merger Guidelines 1984 Merger Guidelines 1984 Non-horizontal Merger Guidelines 1992 Merger Guidelines 1992 Horizontal Merger Guidelines, with April 8, 1997, Revisions to Section 4 on Efficiencies 1997 Merger Guidelines 2010 Horizontal Merger Guidelines Official DOJ commentary on the horizontal merger guidelines 20th anniversary of the 1982 merger guidelines FTC International antitrust coordinator Debra Valentine Retrieved from "

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