

# The Counterfactual

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## Counterfactual: introduction

- Comparison of the prospects for competition with the merger against the competitive situation without the merger
- Main discussion points:
  - differences in general OFT/CC approach;
  - failing firm; and
  - multiple/parallel bids

## Counterfactual: general approach

- OFT
  - Presumption of prevailing conditions of competition
  - Like all presumptions, rebuttable
- CC
  - Will consider the most likely outcome in the market under investigation
  - Often, but not always, prevailing conditions of competition

## Counterfactual: failing firms

- Similar criteria to previous guidance
- Criteria:
  - inevitability of exit
  - no substantially less anticompetitive alternative
- OFT/CC differences in approach

## Counterfactual: competing bids

- OFT approach: prevailing conditions of competition
- CC approach
  - One bid referred
  - Two or more bids referred
- Parallel transactions