COMPETITION COMMISSION

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Unilateral effects

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Overview

- Very well developed area of merger analysis, so little change to guidelines
- However, new structure stresses ‘theories of harm’ approach and uses to categorize indicators of unilateral effects
- Less emphasis on market definition (back into market definition from competitive assessment)
- Primarily concerned with effects on one or both of merger firms

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Framework

Market share

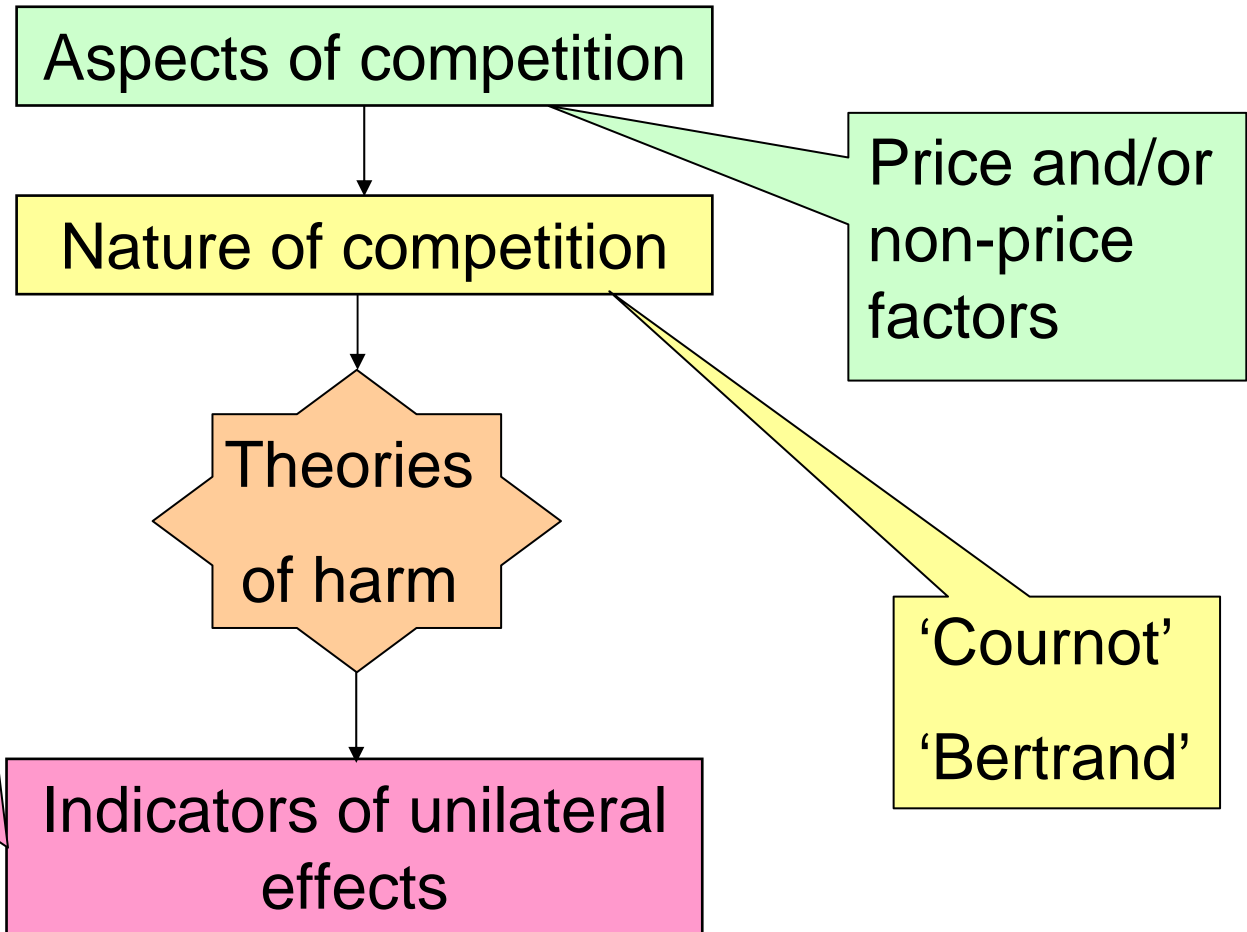
Firm numbers (fascia counts)

Closeness of competition (diversion ratios)

Alternatives

Rivals’ reactions

Recent entrant/ “novel” competitor



Market share/firm numbers

- Emphasize that market shares most informative for mergers in undifferentiated product markets
- Abolished ‘safe harbour’ but—based on OFT decisional practice—mention that unilateral effects unlikely below 40% combined market share
- Explain why and how we will use ‘fascia counts’

Closeness of competition

- Emphasize that closeness of direct competitive constraint removed by merger most informative for mergers of differentiated products

- Outline role of combination of diversion ratios and profit margins as gauge of upward pressure on prices

Other indicators

- Lack of alternatives can arise because of switching costs
- Unilateral effects theories of harm often predicated on lack of reaction by rivals
  - Undercut price
  - Expand output in undifferentiated product markets
  - Reposition products in differentiated goods markets
- Merger involving a recent entrant or a particularly aggressive or novel competitor potentially more problematic