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Professor Paul Geroski
Chairman
Competition Commission
Victoria House
Southampton Row
London WC1B 4AD

Dear Paul:

Many thanks for asking for my comments on the Commission's consultative document on divestiture remedies in merger inquiries. I should preface these remarks with a statement of ignorance: I am unfamiliar with the history of past divestitures in the UK.

My general reaction is to be very suspicious of the divestiture remedy. If a merger threatens a substantial lessening of competition by removing one important, established player from a market, I wonder why it is not better simply to say "no" than to replace the lost competitor with an inevitably weaker entity. All of the efforts to guarantee the survival of that spun-off creation -- detailed in your consultative document -- seem to testify to the fact that the newcomer will in most instances be unlikely to restore the lost degree of competition to the relevant market.

Another problem with the divestiture remedy is the presence of substantial information asymmetry. The parties to the deal will

always know more than the Commission, no matter how good its staff. And since one goal of almost every merger is to ease the competitive pressures on the merging firms -- tales of efficiencies to the contrary notwithstanding -- the Commission will often end up bargaining with people far better informed, and eager to minimise the competitive impact of any divestiture.

Of course, some form of divestiture (a structural remedy) is infinitely superior to an attempt "to regulate the behaviour of firms", as your document quite properly points out.

Since I fear that what I have said so far will be of little practical use, let me offer one suggestion. Would it be possible to set forth the burden of proof to be met by any company that proposes a merger that results in a substantial lessening of competition, if the party seeks divestiture as an alternative to a rejection of the merger? I would hope that burden would be quite daunting!

Again, many thanks for soliciting my views. I hope you are enjoying your relatively new post.

Sincerely,
Juri