Reading the UK MAGs: How do they compare?

GCR Conference on International Merger Control
29 September 10

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Similarities:

● A joint agency product

● A big step forward
Differences:

- **US** were faster
- **UK** wrote more
Similarities:

● **Less weight on market definition**
  - and concentration measures

● **More on assessment of unilateral effects**
  - and use of diversion ratios plus margins
Non-substantive differences?

- **UK’s have greater coverage, including:**
  - What is a merger?
  - Non-horizontal mergers
  - Substantial detail on the ‘counterfactual’
  - Public interest cases
Apparent difference: Coordinated effects

- **UK follows EC 3-part emphasis on:**
  - Ability to reach and monitor terms
  - Internal sustainability
  - External sustainability

- **US emphasis on:**
  - Impact of merger on coordinated interaction
  - Evidence a market is vulnerable to coordinated conduct

- **How different really?**
  - Both guidelines emphasise need to understand how the merger changes incentives or ability to coordinate....
  - ...but do the thresholds for intervention differ?
A few other differences

- **A nuanced approach to market definition**
  - May not be the narrowest market satisfying the HMT

- **A less mechanistic use of concentration measures**
  - And then, *only* on the narrowest HMT market

- **The SLC test**
  - UK SLC test is focussed on effect on the process of rivalry, rather than effect on consumers
  - As such, efficiencies can only prevent an SLC to the extent that they are ‘rivalry-enhancing’
  - Otherwise, efficiencies can still be reviewed, but as ‘relevant customer benefits’. (A peculiarity of UK legal test!)
What else is new?

- **More on complications with market definition**
  - including multi-sided markets, asymmetric/indirect constraints, price discrimination

- **Non-horizontal mergers**
  - broadly adopting EC approach of assessing foreclosure on the basis of ‘ability, incentive and effect’, but highlighting diagonal effects

- **More detail on efficiencies**
  - including categorisation as demand-side and supply-side

- **Anti-competitive buyer power as a theory of harm**
  - while recognising that enhanced buyer power is typically good (also an addition to the US guidelines)
Find the MAGs at:

www.oft.gov.uk
or
www.competition-commission.org.uk

Thank you!