Merger policy: non-horizontal theories of harm

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Views are mine only
Introduction

- Approach to non-horizontal ToHs clarified in new Merger Assessment Guidelines

- Discussion of some cases
  - EC
    - Orange/T-Mobile
  - UK
    - Ticketmaster/Live Nation
### Recent EC non-horizontal mergers

- **Four EC Phase II cases opened since start of 2008**
  - 15 Art 6.1(c) in period
  - Other horizontal mergers with vertical effects (e.g. STX/Aker Yards)

- **Binary outcomes**

- **Orange/T-Mobile**
  - UK Article 9 request
  - conditionally cleared at Phase I
  - horizontal & non-horizontal ToHs

<table>
<thead>
<tr>
<th>Case</th>
<th>ToH</th>
<th>Market(s)</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>DSV/Vesterhavet/DFDS</td>
<td>Vertical</td>
<td>RoRo shipping &amp; freight forwarding (Baltic)</td>
<td>Abandoned</td>
</tr>
<tr>
<td>Bonnier/Schibsted/Retriever/Sverige</td>
<td>Vertical</td>
<td>Newspapers &amp; media databases (Sweden)</td>
<td>Abandoned</td>
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<tr>
<td>Itema/Barcovision</td>
<td>Vertical</td>
<td>Sensors &amp; textile machines (EEA)</td>
<td>Cleared</td>
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<tr>
<td>Nokia/Navteq</td>
<td>Vertical</td>
<td>Digital maps &amp; mobile phones (global)</td>
<td>Cleared</td>
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Recent UK non-horizontal mergers

- Five UK Phase II cases opened since start of 2008
  - 15 references in the period
- Vertical effects of largely horizontal mergers
- Ticketmaster/Live Nation
  - Phase III
  - Change in emphasis in approaches of OFT and CC

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<td>BOC/Ineos Chlor</td>
<td>Horizontal &amp; vertical</td>
<td>Packaged chlorine</td>
<td>Blocked</td>
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<tr>
<td>Project ‘Kangaroo’</td>
<td>Horizontal &amp; vertical</td>
<td>VoD</td>
<td>Blocked</td>
</tr>
<tr>
<td>Nufarm/A H Marks</td>
<td>Horizontal &amp; vertical</td>
<td>Herbicides</td>
<td>Remedied</td>
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<tr>
<td>Brightsolid/Friends Reunited</td>
<td>Horizontal &amp; vertical</td>
<td>Online genealogy</td>
<td>Cleared</td>
</tr>
<tr>
<td>Ticketmaster/Live Nation</td>
<td>Vertical</td>
<td>Live music</td>
<td>Cleared</td>
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Ticketmaster/Live Nation

Artist

Manager: Responsible for the artist's interest.

Agent: Responsible for maximising revenues. May choose promoter

Promoters: receives cut of ticket face value. Decides on venue. Agrees ticket allocations between venue and ticket agent. Determine advertising strategy. Takes financial risk and bears venue cost

Front Line

Ticketmaster

Ticket agent: Compete to sell tickets from promoters and venues. Pay rebates for rights. Margins obtained via service charges

Venue: Provided ticket allocation by promoter. Forms part of the 'package' offered by promoters to artists

Live Nation

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Other thoughts

● ‘Portfolio effects’ cases at OFT Phase I (all clearances)
  - EC in Kraft/Cadbury?
  - Horizontal leveraging ToH pre-supposes market definition in a way that horizontal unilateral effects ToH does not

● FTC in Google/AdMob characterizing ‘diagonal’ merger as horizontal 3-to-2? (WSJ 4 May)
  - ‘Mobile in-application advertising market’
Thank you

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