



News Release

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REVIEW OF PAST MERGER DECISIONS PUBLISHED

The Competition Commission (CC) and Office of Fair Trading (OFT) have published an independent study of their decisions in past merger cases.

Deloitte & Touche, supported by Professor Stephen Davies of the University of East Anglia, was commissioned by the CC and the OFT, along with the Department for Business, Enterprise and Regulatory Reform (BERR), to assess the analysis and decision-making in eight merger cases between 2004 and 2006. The study titled *Review of Merger Decisions under the Enterprise Act 2002* is available on the CC and OFT websites: www.competition-commission.org.uk or www.of.gov.uk.

Of the eight cases chosen, three were resolved at the OFT stage¹ and five were referred to the CC.² The cases were chosen to include a mixture of unconditional clearances, conditional clearances and prohibitions and to represent a range of analytical issues and markets.

The study aimed to review these decisions in the light of subsequent market developments, and to comment on the approaches taken by the OFT and the CC. The focus was to examine the two bodies' assessment of the mergers' likely effect on competition but not to examine the effectiveness of any subsequent remedies.³ This assessment was carried out through interviews with relevant market participants, questionnaires to main and related parties and research of publicly available information.

The study concludes that, in the majority of cases, subsequent market developments did not raise any substantial doubts about the soundness of the decisions. In some cases, the study suggests that subsequent events raised questions over whether factors such as barriers to entry and expansion and self-supply were correctly evaluated. It also suggests that greater explanation of the 'intervention threshold' applied by the OFT and CC in a particular local market would be helpful.

Peter Freeman, Chairman of the CC, said:

¹Impress/Alcan; Boots/Alliance UniChem; and William Hill/Stanley.

²Heinz/HP; Cott/Macaw; EWS/Marcroft; Knauf/Superglass; and DS Smith/Linpac.

³The CC published an updated review of past merger remedies in August 2008:

www.competition-commission.org.uk/our_role/analysis/understanding_past_merger_remedies.pdf.

Evaluation is key to our work. Without evaluation of what we have done, there can be no improvement. Whether it is the CC or the OFT carrying out the work, assessing a merger means making a judgement based on analysing the likely future evolution of the market in question. It is therefore a valuable exercise to look back at past decisions in order to learn any lessons which will help us in assessing future cases. This study has been very helpful in achieving that and in informing our joint review of merger assessment guidelines, which will be published shortly.

John Fingleton, Chief Executive of the OFT, said:

Assessing the impact of a merger on competition requires agencies to make predictive judgments on likely future market dynamics. Independent ex post evaluation of those decisions in the light of subsequent market developments is a key ingredient to improving the quality of our decision-making.

Although the CC and the OFT have commissioned external and internal reviews of their past merger decisions before, this is the first such review of cases carried out under the Enterprise Act 2002, which substantially reformed the process of merger assessment, notably by making the competition authorities determinative rather than merely advisory to the Government.

The CC and OFT will soon be issuing new Merger Assessment Guidelines. (See news release: www.competition-commission.org.uk/press_rel/2008/apr/pdf/11-08.pdf.)

Notes for editors

1. The CC is an independent public body which carries out investigations into mergers, markets and the regulated industries.
2. The Enterprise Act 2002 empowers the OFT to refer to the CC completed or proposed mergers for investigation and report which create or enhance a 25 per cent share of supply in the UK (or a substantial part thereof) or where the UK turnover associated with the enterprise being acquired is over £70 million.
3. Further information on the CC and its procedures, including its policy on the provision of information and the disclosure of evidence, can be obtained from its website at: www.competition-commission.org.uk.
4. Enquiries should be directed to Rory Taylor on 020 7271 0242 (email rory.taylor@cc.gsi.gov.uk).