

Public Consultation on Merger Guidelines:

Submission of PMCA Economic Consulting

25 October 2013

Introduction and Overview

1. PMCA Economic Consulting welcomes the opportunity to respond to the Competition Authority's public consultation on its proposed Merger Guidelines, which, when completed, will underpin Ireland's merger control regime by guiding the Authority's decisions regarding whether or not mergers/acquisitions will lead to a substantial lessening of competition (SLC).
2. PMCA is a recently established economic consultancy firm and includes among its activities the provision of specialist competition economics advice to clients, including enterprises and their legal advisers contemplating or planning mergers. The SLC test is an economics-based test of merger control requiring the application of appropriate economic principles and the use of relevant empirical data on a case-by-case basis. The principles underlying the SLC test have a long and well-established tradition in economics – in particular, in industrial organisation (IO) economics, which is that branch of economics dealing with competition and regulation. What have changed mostly over time are the empirical methods – including enhancement of econometric techniques, and data availability and quality. The other major change concerns goods and services markets, meaning that the whole area of merger control has a dynamism that requires to be reflected in the design of merger control guidelines.
3. PMCA's overall view is that the draft Merger Guidelines are well-designed with generality of approach in mind and, at the same time, recognise the differences among markets and their development over time.

Elements of Merger Review

4. At paragraph 1.8 of the Merger Guidelines, the Authority makes an important overall point, in which it states that there are no standard measures of competitive effects that can determine definitively, on their own, whether a merger will have an SLC or not. Each merger needs to be assessed on its merits and in regard to its own particular circumstances – hence the general approach to the Guidelines.
5. On paragraph 1.19, which PMCA agrees with, in economic parlance, market definition and competitive effects are generally, in essence, 'jointly determined in equilibrium'. This implies that assessment of competitive effects of a merger should include analysis of potential competition and the possibility of a widened market in the event of a price rise post-entry. Such a possibility, which will vary from market to market, may in turn influence the likelihood of an SLC post-merger. Later in the Guidelines, the Authority gives due weight to the condition of entry and potential competition.

Market Definition

6. At paragraph 2.16, PMCA notes a flexible approach in place in respect of supply-side substitution in market definition. This is carried over to the next paragraph on potential entry.

Market Concentration

7. PMCA agrees with the observation made in paragraph 3.3, regarding the principle and fact that market concentration, *per se*, is not determinative of competition. It is one aspect of market structure but nevertheless important and of practical use as a screening device.
8. The HHI thresholds in paragraphs 3.10-3.14 are noted and PMCA has no issue with these.

Horizontal Mergers

9. The trio of considerations underpinning unilateral effects in paragraph 4.8 and explained subsequently – ability, incentive and opportunity to raise price or reduce competition – are noted.
10. The material on monopsony in paragraph 4.27-4.29 is noted but should not “opportunity” also apply here (i.e. in addition to ability and incentive)?

Countervailing Buyer Power

11. PMCA notes paragraph 7.11 and the timing of evidence in relation to assessment of countervailing buyer power.

In Conclusion

12. Overall, PMCA considers that the Merger Guidelines are well-specified generally and appropriate to guiding practitioners in regard to Irish merger review.
13. Key, of course, will be the practice and the learning from existing and future merger decisions published.

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