

WORKSHOP ON MERGER ANALYSIS

Budapest, Hungary, 27-30 April 2009

WORKSHOP OBJECTIVES

The programme will cover all relevant issues concerning the application of competition law in merger cases. Issues such as defining the relevant market, unilateral and coordinated effects, barriers to entry and other competitive factors, assessing the evidence as well as remedies and efficiencies will be discussed. Participants will examine these issues through lectures and through a hypothetical case involving a proposed merger. Participants will analyze documents and will participate in exercises as they examine the facts of the case and they take on the roles of the merging parties, a complainant to the merger and the competition authority. At the end of the hypothetical case study participants will join a plenary session where the findings from each breakout discussion will be presented, followed by discussion of the appropriate decision.

DRAFT AGENDA

Hotel Mercure Budapest Buda

Monday, 27 April

Cultural Events

Tuesday, 28 April

09.30-09.45 Welcome, opening remarks and introduction

09.45-12.45 Opening session:

Presentation of the hypothetical merger Fantasy dairy Group/ Just Soy (*João Azevedo, OECD*)

The EU guidelines on the assessment of mergers (*Gergely Csorba, GVH*),
with a commentary by DOJ/FTC.

Session I – Market Definition, market shares and concentration

Plenary session:

The principles of market definition and market shares assessment (*Albert Kim, US FTC*)

The general counsel of Fantasy Dairy Group and his legal adviser discuss the proposed merger after the presentation to Fantasy Dairy's board.

Coffee Break

Breakout session:

This breakout session focuses on the importance of market definition and practical approaches to defining product and geographic markets. It covers market shares and concentration: their uses and misuses in merger review. The session follows the approaches set out the opening session of the workshop.

12.45-14.00

Lunch

14.00-16.30

Session II – Unilateral and coordinated effects

Plenary session:

Assessing unilateral and coordinated effects (*Albert Kim, US FTC*)

A Competition Authority inquiry director conducts two interviews: one with Ever Soy, a competitor of the merging parties and the other with Super Grocery, a customer of the merging parties.

Coffee Break

Breakout session:

This breakout session assesses and discusses the arguments presented by the interviewees. Participants will use the analytical framework set out in the Merger Guidelines to test the possible theories of competitive harm – both in terms of unilateral and coordinated effects.

18.00

Meeting at the reception of the Hotel Mercure Budapest Buda

18.30

Reception Dinner

Wednesday, 29 April

09.30-12.15

Session III – Entry and other competitive factors

Plenary session:

Assessing the possibility of entry and other competitive factors. (*João Azevedo, OECD*)

The president of Economists R Us, an economic consultancy acting for the merging parties, accompanied by the legal adviser, meets with a Competition Authority inquiry director to present the parties' view on issues such as entry, the supermarkets' buyer power and expected efficiencies.

Coffee Break

Breakout session:

This breakout session will assess and discuss the arguments put forward by the expert in the plenary session. The analysis will follow the framework suggested in the Merger Guidelines.

12.15-13.30 Lunch

14.00-16.55 Recap of sessions I, II and III

Plenary session:

Agency Discussion: Competition Authority inquiry directors brief the agency heads in anticipation of a late stage meeting with the parties. Inquiry directors will report the conclusions of the breakouts to Sessions I, II and III.

Meeting with the Parties: a late-stage meeting between the parties and agency heads

Session IV – assessing the evidence

Plenary session:

Evaluating evidence in competition cases (*Robert Young, US DOJ*)

This plenary session presents techniques and practical guidance for evaluating the often-conflicting sources of evidence consistent with the theory of harm during an investigation.

Coffee Break

Breakout session:

This breakout session illustrate how to value the source and context of evidence, the integration of economic evidence with the other evidence in the case record, and how one integrates the entire record within the overall context of investigation decision making. This will rely on the principles detailed in the earlier presentation.

09.30-13.00 Session V – Remedies

Plenary session:

Assessing remedies. (*Robert Young, US DOJ*) with a commentary by *Tibor Szanto, GVH*

The plenary session will include with a summary of the adverse findings of the competition authority and an outline of the session. Then, Fantasy Dairy general counsel and his legal adviser present the proposed remedies package to the Competition Authority.

Breakout session:

The main goal of this breakout session is to familiarise the participants with the main principles that apply and the risks to be avoided when determining an appropriate remedy, in particular, considering the appropriate scope of a divestiture package and identifying a suitable purchaser. In addition the session will cover practical aspects of effecting a divestment, including reducing implementation risks.

Coffee break

Session VI – Conclusion on sessions IV & V

Plenary session:

Summarise and discuss the findings from each breakout discussion of Session IV.

Summarise and discuss the findings from each breakout discussion of Session V.

Closing Session

Plenary Session – Commentary and conclusions