The Horizontal Merger Guidelines Five Years Later

Remarks of Chairwoman Edith Ramirez
U.S. Federal Trade Commission

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Good morning, everyone. My thanks to Assistant Dean Larry Center, Steve Salop, and the other conference organizers for inviting me to join you this morning. It is a pleasure to be back here at Georgetown Law's Global Antitrust Enforcement Symposium.

My topic this morning is merger enforcement. And, because it is now just over five years since the introduction of the U.S. antitrust agencies' 2010 Horizontal Merger Guidelines,[1] I thought this would be a good opportunity to reflect on how we have been applying the Guidelines here in the United States and how they fit into the international competition landscape.

It is particularly fitting that I discuss the 2010 Guidelines here because it was at this very conference in 2009 that my predecessor Jon Leibowitz and then-Department of Justice Assistant Attorney General Christine Varney announced a joint project to update the merger guidelines.[2] As they emphasized, the Federal Trade Commission and Department of Justice undertook that

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[1] U.S. DEP'T OF JUSTICE & FED. TRADE COMM'N, HORIZONTAL MERGER GUIDELINES (2010), *available at* https://www.ftc.gov/sites/default/files/attachments/merger-review/100819hmg.pdf [hereinafter 2010 GUIDELINES].

[2] Jon Leibowitz, Chairman, Fed. Trade Comm'n, Introduction of Philip Lowe and Announcement of Joint FTC/DOJ Project to Modernize the Horizontal Merger Guidelines, Remarks at the Third Annual Georgetown Law Global Antitrust Enforcement Symposium 2–3 (Sept. 22, 2009), https://www.ftc.gov/sites/default/files/documents/public_statements/introduction-philip-lowe-and-announcement-joint-ftc/doj-project-modernize-horizontal-merger-guidelines/090922mergerguideleibowitzremarks.pdf; Christine A. Varney, Asst. Att'y Gen., U.S. Dep't of Justice, Merger Guidelines Workshops, Remarks at the Third Annual Georgetown Law Global Antitrust Enforcement Symposium 4–5 (Sept. 22, 2009), http://www.justice.gov/atr/file/519871/download.

challenge to align the Guidelines more closely with how we actually analyze potential competitive effects. By August 2010, the project had been completed and the Guidelines revised to reflect the agencies' flexible and holistic approach to merger analysis.[3]

To mark their fifth anniversary, I would like to discuss some of the key insights reflected in the revised Guidelines, using recent examples in the Commission's merger work. I will also briefly address recent developments in the way other competition agencies around the world report they look at mergers.

I. Historical Context

Let me start with some historical context. As most of you know, DOJ issued the first merger guidelines in 1968 and updated them in 1982.[4] The 1982 Guidelines marked a significant shift in enforcement focus under Section 7 of the Clayton Act—from the preservation and promotion of "market structures conductive to competition" to the prohibition of mergers that "create or enhance market power" or "facilitate its exercise." Market power has remained the focus ever since. The 1982 Guidelines also introduced the hypothetical-monopolist test for market definition and the Herfindahl-Hirschman Index for assessing market concentration. Both remain integral to merger analysis under the 2010 Guidelines.

When DOJ issued the 1982 Guidelines, the FTC did not have merger guidelines of its own but issued a policy statement concerning horizontal mergers, stating that it would give the

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[3] *See Horizontal Merger Guidelines Review Project*, FED. TRADE COMM'N, https://www.ftc.gov/news-events/events-calendar/2010/01/horizontal-merger-guidelines-review-project-0.

[4] *See* U.S. DEP'T OF JUSTICE, MERGER GUIDELINES (1982), *available at* http://www.justice.gov/sites/default/files/atr/legacy/2007/07/11/11248.pdf; U.S. DEP'T OF JUSTICE, MERGER GUIDELINES (1968), *available at* http://www.justice.gov/sites/default/files/atr/legacy/2007/07/11/11247.pdf.

1982 Guidelines "considerable weight."[5] When the merger guidelines underwent their next significant revision in 1992, the FTC joined DOJ in issuing them.[6]

The 1992 Guidelines were notable in their introduction of unilateral effects analysis, which has only grown in importance since then, as I will discuss in more detail. The 1992 Guidelines also added a more disciplined analysis of entry, focusing on the now familiar criteria of timeliness, likelihood, and sufficiency. A 1997 update expanded the Guidelines' discussion of efficiencies.[7] Both entry and efficiencies have retained their important place in merger analysis today.

The 2010 revisions make clear that merger analysis is not the mechanical application of a series of linear steps, as the 1992 Guidelines had suggested. Rather, merger analysis is a flexible and fact-specific process in which the agencies apply a range of analytical tools to the reasonably available evidence to evaluate the likely competitive impact of a transaction.

II. Focus on Competitive Effects

One of the major advances of the 2010 Guidelines is the increased emphasis on competitive effects. Under the revised Guidelines, a change in market concentration is simply one type of evidence that the agencies will consider. The 1992 Guidelines had described market concentration as the first step in merger analysis and adverse competitive effects as the second step, to be considered "in light of market concentration and other factors that characterize the

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[5] FED. TRADE COMM'N, STATEMENT CONCERNING HORIZONTAL MERGERS § I (1982), *reprinted in* Trade Reg. Rep. (CCH) No. 546, at 71 (June 16, 1982) (special supplement to 2 Trade Reg. Rep. (CCH) ¶ 4225 (Aug. 9, 1982)).

[6] *See* U.S. DEP'T OF JUSTICE & FED. TRADE COMM'N, HORIZONTAL MERGER GUIDELINES (1992), *available at* http://www.justice.gov/sites/default/files/atr/legacy/2007/07/11/11250.pdf [hereinafter 1992 GUIDELINES]. The Guidelines underwent a slight revision in 1984. *See* U.S. DEP'T OF JUSTICE, MERGER GUIDELINES (1984), *available at* http://www.justice.gov/sites/default/files/atr/legacy/2007/07/11/11249.pdf.

[7] *See* U.S. DEP'T OF JUSTICE & FED. TRADE COMM'N, HORIZONTAL MERGER GUIDELINES (1997), *available at* http://www.justice.gov/sites/default/files/atr/legacy/2007/07/11/11251.pdf.

market."[8] The 2010 Guidelines eliminate this sequential relationship. While there continue to be separate discussions of market definition, market concentration, and competitive effects, there is also a new section listing various types of evidence of adverse competitive effects that includes market concentration. The 2010 Guidelines make clear that the calculation of market shares and market concentration is not an end in itself, but rather a means to understanding a merger's likely competitive effects. Indeed, evidence of a merger's competitive effects can inform the definition of the relevant market impacted by the merger.

Fundamentally, the agencies are striving for an analytically sound, economics-grounded, factually consistent assessment of competitive effects. That assessment invariably involves an effort to understand the market context in which the merging parties compete and how the transaction might harm competition. A market-definition analysis can help shed light on those issues, but a separate market-definition step may not be necessary if we can go directly to an evaluation of whether the combination will likely harm competition.

Let me give you an example. In some industries such as retail, suppliers may be substitutes to varying degrees, depending on the geographic area and other factors. A market definition that treated suppliers as either in or out of the relevant market would therefore fail to capture the full continuum of competition.

The Commission's analysis of the Dollar Tree/Family Dollar merger illustrates this dynamic.[9] That merger involved the combination of two national chains of "dollar stores," which are small-format, conveniently located retail stores that sell general merchandise at deeply discounted prices. Our investigation determined that dollar stores compete most closely with

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[8] 1992 GUIDELINES § 0.2.

[9] *Dollar Tree, Inc./Family Dollar Stores, Inc.*, FED. TRADE COMM'N, https://www.ftc.gov/enforcement/cases-proceedings/141-0207/dollar-tree-incfamily-dollar-stores-inc.

Walmart and with other dollar stores in offering an assortment of discounted general merchandise in a single, convenient shopping trip. We could not definitively exclude from the relevant market, however, other retailers such as supermarkets, pharmacies, and convenience stores, which often also offer discounted general merchandise but are less able to constrain the parties' post-merger market power.

As I will explain in more detail later, we used an econometric model that allowed us to assess the likely impact of the transaction by taking into account, for any given local geographic area, the varying degrees of market power-constraining influence exerted by various retailers in that area. The model showed that in some geographic areas, the only retailers exerting a significant influence were Walmart and other dollar stores such as Dollar General. In other geographic areas, supermarkets or pharmacies, by virtue of their proximity and number, also exerted a significant influence. This approach produced a sophisticated understanding of likely competitive effects in part because it did not assume that a particular retailer fell inside or outside of any relevant market.

But while the 2010 Guidelines reflect a reduced emphasis on market shares and market structure, those concepts remain an integral part of our merger analysis and enforcement. Defining a relevant market remains a useful framing exercise. It allows us to understand the market context in which the merging parties compete, including the products and services that they each offer. Having some definition of the market in which the parties are competing enables us to ask what other firms are also participants and what other products and services may be substitutes for the products and services offered by the parties.

And, even if the agencies do not base their enforcement decisions solely or even primarily on market shares and market concentration, courts still find market-structure statistics useful in their decision-making. As our recently litigated merger cases bear out, courts continue to rely on the legal presumption that a merger will likely harm competition if it would significantly increase concentration in an already concentrated market. For example, in *ProMedica*, the Sixth Circuit upheld the Commission's reliance on a rebuttable presumption of anticompetitive harm, noting that "[t]he merger here blew through [the Guidelines' numerical] barriers in spectacular fashion."[10] Likewise, in *St. Luke's*, the Ninth Circuit acknowledged that the FTC could establish its prima facie case based on market concentration alone even though the record contained other evidence of anticompetitive effects.[11]

More recently, the district court in *Sysco* found that, through its evidence of market shares and concentration, the FTC had met its prima facie case and triggered a rebuttable presumption of anticompetitive harm.[12] The court then proceeded to consider other evidence of anticompetitive effects presented by the FTC, such as its expert's analysis of the parties' bidding records.

Moreover, market structure and market concentration may continue to be especially important in certain types of cases, such as those involving likely coordinated effects. Under the 2010 Guidelines, a merger challenge based on coordinated effects requires, among other things, a finding that "the merger would significantly increase concentration and lead to a moderately or highly concentrated market" and "a credible basis on which to conclude that the merger may

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[10] ProMedica Health Sys., Inc. v. FTC, 749 F.3d 559, 568 (6th Cir. 2014), *denying petition for review* No. 9346, 2012 FTC LEXIS 293 (June 25, 2012), *cert. denied*, 135 S. Ct. 2049 (2015).

[11] Saint Alphonsus Med. Ctr. – Nampa Inc. v. St. Luke's Health Sys., Ltd., 778 F.3d 775, 788 (9th Cir. 2015).

[12] FTC v. Sysco Corp., No. 1:15-cv-00256 (APM), 2015 U.S. Dist. LEXIS 83482, at *120 & *136 (D.D.C. June 23, 2015).

enhance [the market's] vulnerability" to coordinated conduct.[13] As the Commission noted in its statement accompanying the consent order in the ZF/TRW merger, the first requirement expressly makes market concentration relevant to coordinated effects, and the other implicitly encompasses changes in market structure, such as a reduction in the number and diversity of firms.[14]

III. Importance of Unilateral Effects

Another major advance under the 2010 Guidelines is the increased focus on unilateral effects, a concept introduced in the 1992 Guidelines.

The basic economic principles underlying unilateral effects are well settled. For mergers involving a differentiated products market, the combined entity may be able to profit from a unilateral increase in the price of products previously sold by one of the merging parties because at least a portion of the sales lost as a result of that price increase will be diverted to products previously sold by the other merging party, and thus be recaptured by the combined entity.[15] The magnitude of the unilateral effects will depend on the degree of head-to-head competition between the products previously sold by the merging parties. The more customers there are who consider the products of the merging parties to be their first and second choices, and the more undesirable the third choice is compared to the products of the merging parties, the greater the likely unilateral effects from the merger.

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[13] 2010 GUIDELINES § 7.1.

[14] Statement of the Federal Trade Commission at 3−4, ZF Friedrichshafen AG and TRW Automotive Holdings Corp., File No. 141-0235 (F.T.C. May 8, 2015), https://www.ftc.gov/system/files/documents/public_statements/641721/150508zeppelincommstmt.pdf.

[15] 2010 GUIDELINES § 6.1; *see also* Carl Shapiro, *The 2010 Horizontal Merger Guidelines: From Hedgehog to Fox in Forty Years*, 77 ANTITRUST L.J. 701, 713−14 (2010).

From these basic principles emerges the concept of a diversion ratio, which is defined as the fraction of the unit sales lost as a result of a price increase in the first merging party's products that are diverted to the second merging party's products. If we have a reasonable basis for estimating that ratio, we can then estimate the value of the diverted sales to the second merging party's products if we have some idea of the second merging party's margins. The value of the diverted sales represents the financial incentive, or "upward pricing pressure," for raising the price of the merging party's products post-merger.

The Dollar Tree/Family Dollar merger illustrates our application of diversion ratios and upward pricing pressure to assess unilateral price effects in a differentiated products market. As we explained when approving the consent order, we estimated a gross upward pricing pressure index, or GUPPI, for each of the merging parties' dollar stores located near one another in any given local geographic area.[16] A GUPPI score reflects the value of the diverted sales that would be recaptured by the combined entity post-merger. It can therefore serve as a useful indicator of whether a merger involving differentiated products is likely to result in unilateral anticompetitive effects.

The Commission's investigation of the Dollar Tree/Family Dollar merger implicated literally thousands of local geographic areas in the United States where both parties had retail stores. We used the GUPPI scores as an initial screen to flag those markets where the merger might be likely to harm competition and those where it might pose little or no risk to competition.

[16] Statement of the Federal Trade Commission at 1−2, Dollar Tree, Inc. and Family Dollar, Inc., No. 141-0207 (F.T.C. July 2, 2015), https://www.ftc.gov/system/files/documents/public_statements/681901/150714dollarstoresstatement.pdf.

Unilateral effects analysis is of course not confined to differentiated products markets. Under the 2010 Guidelines, it also applies to markets in which buyers and sellers negotiate on price and other terms and two or more sellers compete with each other to make a sale to a single buyer.[17] Specifically, if the merging parties are among a buyer's choices of potential sellers, then the merger could harm competition by eliminating that buyer's alternative to contract with one of the merging parties if it does not reach a contract with the other merging party. The magnitude of the unilateral effect will depend on the extent to which the merging parties appear in negotiations with buyers as the first and second choices and how good an alternative the third choice is.

The Commission's challenge of ProMedica Health System's consummated acquisition of St. Luke's Hospital is an example of this type of unilateral effect. The case focused primarily on whether the transaction would likely enhance ProMedica's bargaining leverage with insurers that provide healthcare coverage to employers and their employees in Lucas County, Ohio. Following a trial on the merits, the administrative law judge found that the acquisition, by eliminating the insurers' option of contracting with St. Luke's but not ProMedica, would significantly increase ProMedica's bargaining leverage in negotiations with insurers over reimbursement rates for general acute care in-patient hospital services. The Commission reached a similar conclusion, the Sixth Circuit affirmed, and the Supreme Court denied certiorari in May.

In denying ProMedica's arguments on appeal, the Sixth Circuit embraced the analytical framework that reimbursement rates for healthcare services are typically the product of each negotiating party's bargaining power. Importantly, a hospital system can demand and receive supracompetitive rates if it becomes so dominant in a market that no insurer can walk away from

[17] 2010 GUIDELINES § 6.2; *see also* Shapiro, *supra* note 15, at 734.

reaching a deal with it and still offer a competitive commercial health plan. That was the case with ProMedica after its acquisition of St. Luke's, as evidenced by the testimony of insurers and the merging parties' own executives.[18] We also relied extensively on econometric evidence that measured ProMedica's bargaining leverage by estimating the "willingness-to-pay."[19]

Dollar Tree and *ProMedica* not only illustrate two types of unilateral effects but also showcase the Commission's use of econometrics—namely, estimates of upward pricing pressure and willingness-to-pay. Another econometric tool that we often use is merger simulation. We recently used merger simulation in *Sysco/U.S. Foods* to predict whether customers in an auction market would suffer harm if the top two bidders merge and the next-best bidder is a distant third. The district court concluded that the merger simulation model strengthened the FTC's prima facie case.[20]

The *Sysco* case also spotlights a related advance in the 2010 Guidelines—the recognition of unilateral effects in price discrimination markets involving targeted customers.[21] This theory of harm is also uncontroversial. It holds that a merger can be anticompetitive if the merging parties can charge higher prices to an identifiable subset of customers that, post-merger, would have a limited ability to buy from other customers in response.

In *Sysco*, the merging parties argued that price discrimination is not feasible if the targeted customers lack common characteristics. The court disagreed. As it explained, price discrimination would be effective as long as the merging parties obtained certain information

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[18] *See ProMedica*, 749 F.3d at 571.

[19] *See* ProMedica Health Sys., Inc., No. 9346, 2012 FTC LEXIS 293, at *138−40 (June 25, 2012), *petition for review denied*, 749 F.3d 559 (6th Cir. 2014), *cert. denied*, 135 S. Ct. 2049 (2015).

[20] FTC v. Sysco Corp., No. 1:15-cv-00256 (APM), 2015 U.S. Dist. LEXIS 83482, at *153 & *136 (D.D.C. June 23, 2015).

[21] 2010 GUIDELINES § 3.

about their customers through individualized negotiation.[22] The parties would be able to use that information to determine which customers exhibited inelastic demand (due to their having fewer viable alternatives) and therefore would be more inclined to acquiesce in the higher price.

IV. Efficiencies

Finally, let me say a few words about efficiencies, a concept introduced in a 1997 update to the 1992 Guidelines. The efficiency defense has not fared well in litigation.[23] But while litigated merger cases may garner the most attention, they represent only a tiny fraction of the transactions that we review each year. In a number of cases, efficiencies have played a role in our decision not to take action against proposed mergers. Moreover, the cases that we bring tend to be ones with evidence of significant anticompetitive effects that are unlikely to be offset by the routine, garden-variety efficiency claims we typically encounter from parties.

Importantly, the 2010 Guidelines require efficiencies to be merger-specific, not vague or speculative, and cognizable, meaning they can be verified and do not arise from anticompetitive reductions in output or service.[24] Often we encounter efficiency claims that fail to meet one or more of these three requirements. In the *St. Luke's* case, for instance, the district court held that the claimed efficiencies were not merger-specific.[25]

V. Merger Guidelines on the International Stage

Internationally, we have witnessed similar trends. If one surveys the merger guidelines of other competition agencies around the world, one can see a high degree of convergence in the

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[22] *Sysco Corp.*, 2015 U.S. Dist. LEXIS 83482, at *95−96.

[23] *See, e.g.*, *Saint Alphonsus Medical Center*, 778 F.3d at 791−92; *Sysco Corp.*, 2015 U.S. Dist. LEXIS 83482, at *200−07.

[24] 2010 GUIDELINES § 10.

[25] Saint Alphonsus Med. Ctr. – Nampa Inc. v. St. Luke's Health Sys., Ltd., No. 1:12-cv-00560-BLW, 2014 U.S. Dist. LEXIS 9264, at *43, *47−48 (D. Idaho Jan. 24, 2014) , *aff'd*, 778 F.3d 775 (9th Cir. 2015).

overall analytical framework, which has shifted towards a more effects-based analysis, increased focus on unilateral effects, and greater use of econometric tools.

For example, in introducing updated merger guidance in 2012, the Bundeskartellamt's President, Andreas Mundt, described the new guidance as reflecting "a continual development in merger control practice" in which a "[s]harper focus has been given to economic findings and concepts in the decision-making process."[26] The Bundeskartellamt's press release added that the updated guidance "places greater emphasis on the necessary appraisal of all relevant conditions in the market" and "does not employ a checklist approach."[27]

The Canadian Competition Bureau's 2011 Merger Enforcement Guidelines mirror our 2010 Guidelines in stating that market definition is not necessarily the first step in merger analysis and that evidence regarding the relevant market is often considered together with other evidence of competitive effects.[28]

Additionally, since the release of our updated Guidelines, we have seen an increased use of econometric tools in merger reviews by competition agencies around the globe. Notably, other agencies are relying on diversion ratios and measures of upward pricing pressure ("UPP") to assess the pricing incentives of merged parties and the potential magnitude of unilateral pricing effects resulting from a proposed merger. There are many examples of this.

The French Merger Control Guidelines, updated in 2013, address different tests the agency will use in assessing unilateral effects, which include GUPPIs, UPP, and IPR or the

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[26] Press Release, Bundeskartellamt, New Guidance on Substantive Merger Control (Mar. 29, 2012), http://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2012/29_03_2012_Leitfaden_Fusionskontrolle.html.

[27] *Id.*

[28] COMPETITION BUREAU, CANADA, MERGER ENFORCEMENT GUIDELINES § 3.1 (2011), *available at* http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/cb-meg-2011-e.pdf/$FILE/cb-meg-2011-e.pdf.

"illustrative price rise" test.[29] The French guidelines also discuss the agency's expectations for a party's use of econometric modeling, which include the party providing supporting data submissions, demonstrating the quality and adequacy of models, and ensuring that the agency itself can reproduce the models' results.[30] Our Bureau of Economics has also adopted a set of best practices for use with data submissions, as have other agencies like the European Commission and the Bundeskartellamt.[31]

And look at the econometric tools that the EC used to understand the potential unilateral effects associated with the 2012 Hutchison 3G Austria/Orange Austria merger, which would have brought together two of the four mobile network operators in Austria.[32] As part of its review, the EC applied diversion ratios and GUPPIs, and analyzed customer-switching data, which supported the Commission's conclusion that the transaction would have led to higher prices and a reduction of competition. The deal was ultimately cleared with commitments.

Looking southward in the western hemisphere, Chile's competition agency and tribunal also have a longstanding track record of reliance on econometric tools to evaluate potential unilateral effects. Chile's Competition Tribunal estimated UPP in a 2012 merger between

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[29] AUTORITÉ DE LA CONCURRENCE, RÉPUBLIQUE FRANÇAISE, LIGNES DIRECTRICES DE L'AUTORITÉ DE LA CONCURRENCE RELATIVES AU CONTRÔLE DES CONCENTRATIONS ¶ 409 (2013), *available at* http://www.autoritedelaconcurrence.fr/doc/ld_concentrations_juill13.pdf.

[30] *Id.* ¶ 380.

[31] *See Economics Best Practices, Bureau of Economics*, FED. TRADE COMM'N, https://www.ftc.gov/about-ftc/bureaus-offices/bureau-economics/best-practices (last visited Sept. 29, 2015); EUR. COMM'N, DIR. GEN. COMPETITION, BEST PRACTICES FOR THE SUBMISSION OF ECONOMIC EVIDENCE AND DATA COLLECTION IN CASES CONCERNING THE APPLICATION OF ARTICLES 101 AND 102 TFEU AND IN MERGER CASES (undated), *available at* http://ec.europa.eu/competition/antitrust/legislation/best_practices_submission_en.pdf; BUNDESKARTELLAMT, BEST PRACTICES FOR EXPERT ECONOMIC OPINIONS (2010), *available at* http://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Bekanntmachungen/Notice%20-%20Standards%20for%20economic%20opinions.pdf.

[32] Case M.6497, Hutchison 3G Austria/Orange Austria ¶¶ 308–57 (Eur. Comm'n Dec. 12, 2012), *available at* http://ec.europa.eu/competition/mergers/cases/decisions/m6497_20121212_20600_3210969_EN.pdf.

supermarkets affecting several geographic markets in the country.[33] The Chilean competition agency also relied on UPP to support its conclusion that the transaction was likely to harm competition. Ultimately, the transaction proceeded after parties agreed to a remedy that included divestitures.

Additional examples of the use of UPP and merger simulations abound, including use by competition agencies in Korea, Japan, Mexico, New Zealand, and Turkey.[34]

Recent work by the International Competition Network also confirms the trend toward greater reliance on econometric tools in merger analysis and the promotion of further convergence towards these approaches. The ICN recently updated guidance that discusses the role of economists and economic evidence in merger analysis.[35]

The increasingly widespread use of econometrics to assess competitive effects, particularly unilateral effects, can be attributed to several developments. The first is that, through an iterative process of use and refinement, the precision and sensitivity of econometric tools can be improved. Second, businesses are generating more and more data every day, and the computing power at our disposal continues to increase to handle that data. Third, many competition agencies around the world are steadily deepening their expertise in economics and adding to their complement of staff economists.

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[33] Tribunal de Defensa de la Libre Competencia, Republica de Chile, 12 diciembre 2012, "SMU S.A. y otra," Rol de la causa: 397-11, Resolución No. 43/2012 ¶¶ 14.10−14.16.

[34] *See* ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, ECONOMIC EVIDENCE IN MERGER ANALYSIS, Competition Policy Roundtable No. DAF/COMP(2011)23 (2011), *available* at www.oecd.org/daf/competition/EconomicEvidenceInMergerAnalysis2011.pdf.

[35] INTERNATIONAL COMPETITION NETWORK, ICN INVESTIGATIVE TECHNIQUES HANDBOOK FOR MERGER REVIEW ch. 4, *The Role of Economists and Economic Evidence in Merger Analysis* (2013 rev.), *available at* http://internationalcompetitionnetwork.org/uploads/library/doc903.pdf.

VI. Conclusion

Let me conclude by emphasizing that the U.S. agencies' issuance of revised 2010 Horizontal Merger Guidelines has served multiple beneficial purposes. It goes without saying that they provide transparency and predictability to the merger review process. As we have seen in the recent merger decisions from the courts, they can also be an effective vehicle for updating our merger jurisprudence. Not only have the courts cited to the 2010 Guidelines as persuasive authority on market definition, but they have also relied on the Guidelines' articulation of unilateral effects and efficiencies.

Internationally, as the number of competition agencies has multiplied, the 2010 Guidelines have served as a means of sharing our current thinking on merger review and enforcement with our sister agencies around the globe. While merger guidelines around the world may reflect some differences, there is a great deal of convergence at the core, where the focus is on market power and competitive effects. That is something that we should celebrate.

Thank you.