

Remedies in Competition Law

Merger Remedies: Ex-Post Assessment

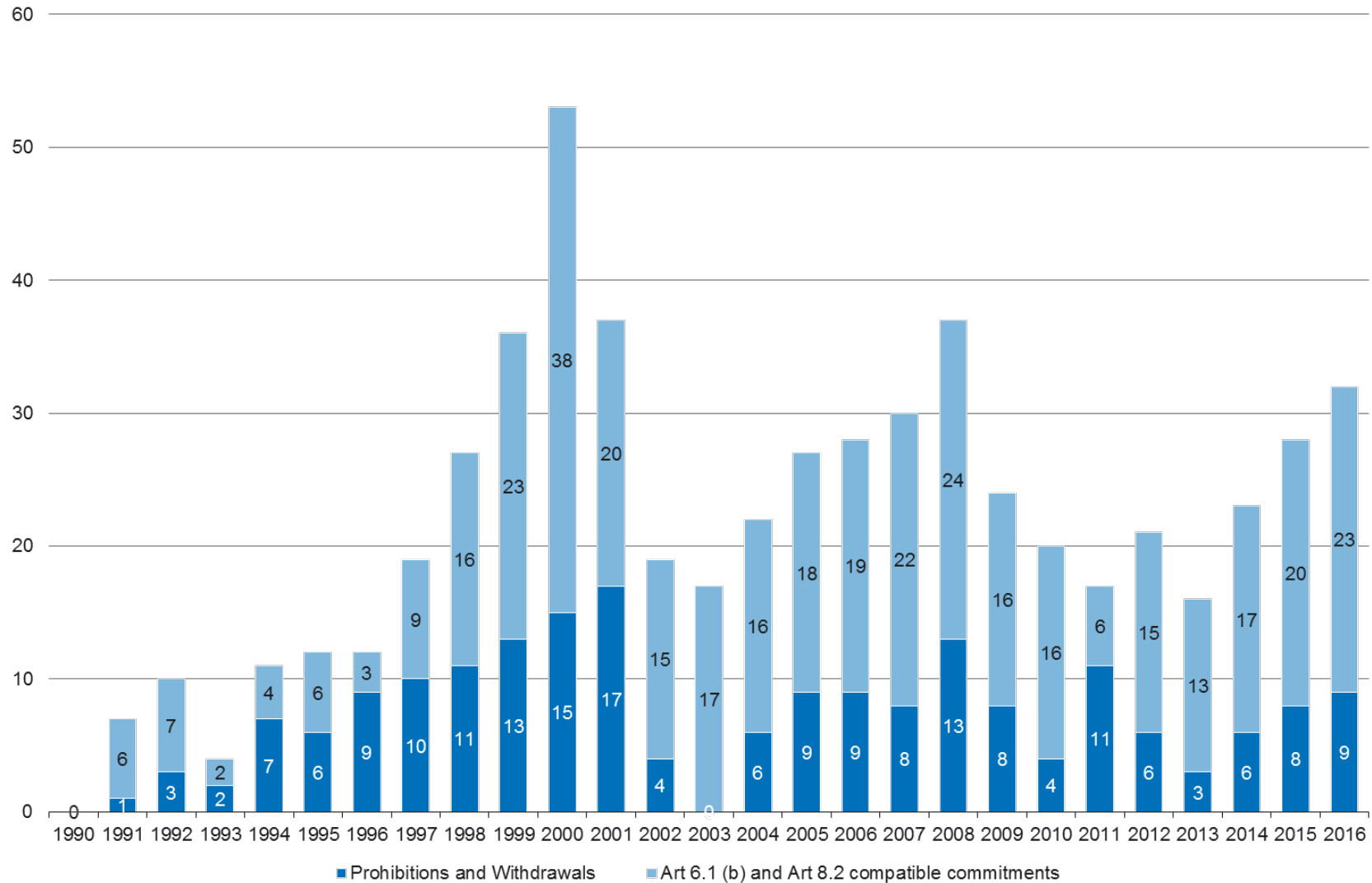
14th Annual Conference of the GCLC

31 January 2019

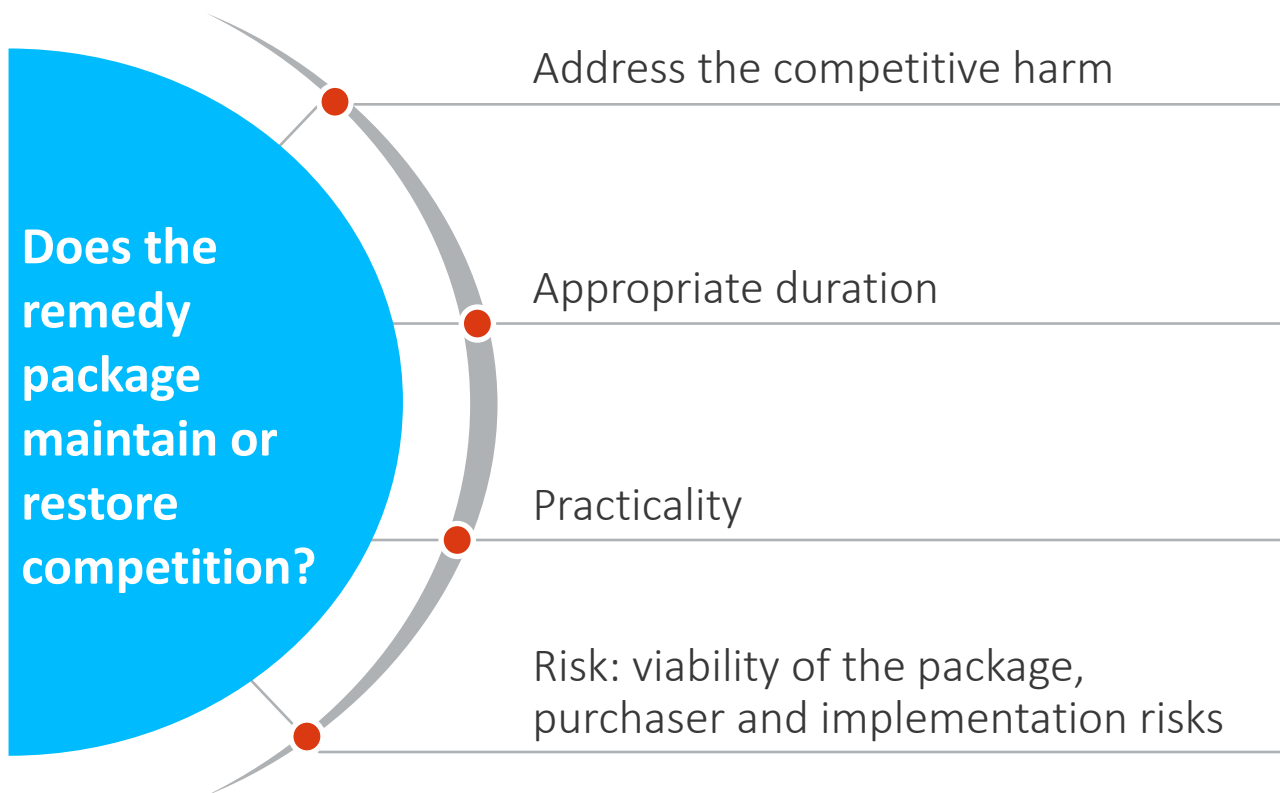
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MERGER INTERVENTIONS



MEASURING EFFECTIVENESS



Efficiencies
Impact costs
Operating costs

ICN Merger Remedies Guide, 2016.

EX-POST STUDIES

Immediate Follow-Up

- Immediate follow-up, to check if the implementation was completed correctly, limited investment

Case Studies

- Formal, comprehensive study of a selected number of cases.
- Qualitative assessment based on interviews and some market information. Focus on impact, practicality and risks.
- FTC (2017), CMA (2017), EC (2005)

Quantitative Assessment

- Empirical evaluations of single mergers/remedies on price, quality, innovation
- Meta-analyses (e.g., Kwoka's 2015 retrospective analysis of US policy)

RETROSPECTIVE STUDIES OF EU MERGERS

Duso, Gugler & Szücs (2013)

- Impact of 2004 reform, 326 mergers until 2007
- Harder to anticipate interventions– consistent with case by case assessment
- Type I error more likely, type II less likely
- Limited effect of remedies

Ormosi, Mariuzzo & Havell (2015)

- Meta analysis
- Evidence of price increases : <5% on average, 1-2% with remedies
- Remedies reduce post-merger price-increases even in concentrated markets

Ormosi & Mariuzzo (forthcoming)

- The analysis of pricing dynamics matters: post merger price increases tend to disappear by the second year after the merger

MOBILE MERGERS

T-Mobile/Orange NL (Netherlands, 2007)

- 4 to 3
- Combined share: 40-50%
- Phase 1 approval

H3G/Orange AT (Austria, 2013)

- 4 to 3
- Combined share: <25%
- Phase 2 remedies

Telefónica DE/E-Plus (Germany, 2014)

- 4 to 3
- Combined share: 30-40%
- Phase 2 remedies

H3G/Telefónica UK (UK, 2016)

- 4 to 3
- Market leader by 10 pp
- Prohibition

Tele2/T-Mobile (Netherlands, 2018)

- 4 to 3
- Third and fourth largest operators
- Phase 2 approval

T-Mobile/tele.ring (Austria, 2006)

- 5 to 4
- Combined share: 30-40%
- Phase 2 remedies

T-Mobile/Orange UK (UK, 2010)

- 5 to 4
- Combined share: 30-40%
- Phase 1 remedies

H3G/ Telefónica IE (Ireland, 2014)

- 4 to 3
- Combined share : ~40%
- Phase 2 remedies

Telia Sonera/Telenor (Denmark, 2015)

- 4 to 3
- Combined share: >40%
- Abandoned

H3G Italy/WIND JV (Italy, 2016)

- 4 to 3
- Largest provider
- Phase 2 remedies

MOBILE MERGERS: REMEDIES AND EX POST ASSESSMENT

T-Mobile/tele.ring, 2006

Structural remedy

- Transfer of parts of tele.ring's spectrum and sites to competitors (H3G)

EC 2015 study (2004-2010)

- No market-wide price increase
- Price decreases (but unclear if “caused” by the merger)

T-Mobile/Orange UK, 2010

Behavioural and structural remedies

- Amendments on existing network sharing agreements
- Spectrum divestiture (H3G)

EC 2017 Study (2007-2014)

- Mobile prices decreased relative to other countries
- Increase in CAPEX, but not in CAPEX per subscriber (economies of scale)

MOBILE MERGERS: REMEDIES AND EX POST ASSESSMENT

H3G/Orange AT, 2013

Remedy

- Facilitate MNO entry by divesting spectrum to a potential entrant
- Facilitate MVNO entry
 - Access to up to 30% of H3G's network for to 16 MVNOs in 10 years
 - Pay-as-you-go wholesale terms
 - Upfront commitment to enter into an agreement with one MVNO (which entered 2 years later)

Ex post assessment

- Hounghonon 2015 (2013, 2014): Decrease in prices of data, due to larger bundling discounts (higher speed, data allowance)
- RTR 2016 Study (2011-2014): Positive effect of the merger on prices for the average smartphone and traditional users, in particular the second year after the merger (before remedies became effective)
- BWB 2016 Study (2011-2014): Price increase of 10-15%.
- GSMA 2016 Study (2010-2016): Increase in H3G 4G coverage 2 years after the merger, improvements in market-wide network quality
- Berc 2018 Study (2011-2016): Effects of MVNO entry only visible in 2016.

MOBILE MERGERS: REMEDIES AND EX POST ASSESSMENT

H3G/Telefónica IE, 2014

Remedies

- Upfront MVNO commitment
- Access to up to 30% of merged entity's capacity in coming 10 years
- Capacity MVNOs model
- Amendments to the network sharing agreement between Meteor (third largest player) and O2

Ex-post assessment

- Berc 2018 Study (2012-2016): Short-term price increases, which disappear in 2015 for low and medium baskets

Telefónica DE/E-Plus, 2014

Remedies

- Upfront MVNO commitment, capacity based
- Committed to divest spectrum and certain assets either to a new entrant
- Extend existing wholesale agreements

Ex-post assessment

- Berc 2018 Study (2012-2016): Price increases for low usage profiles (but no data on MVNOs is considered); price increase in medium and high usage baskets

H3G Italy /WIND JV, 2016

- Fix-it first divestiture of radio spectrum and fixed assets to MNO entrant

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