
Forum

Commission merger thresholds review

A Commission review of the thresholds that trigger merger inquiries concluded that no changes to the thresholds are necessary at this stage.

In June 1996 the then Industry Commission (IC) suggested that the Commission consider the implications of raising its existing thresholds where mergers can proceed without further examination.

Under the Commission's current *Merger Guidelines*, concentration thresholds establish 'safe harbours' indicating levels of concentration below which there is unlikely to be concern. Normally if a merger falls within the safe harbours threshold the Commission does not conduct any assessment as to whether the merger could be anti-competitive. The safe harbours are that:

- the market share of the merged entity is below 40 per cent; and
- if the market share of the merged entity is above 15 per cent, the combined share of the four largest market participants after the proposed merger is below 75 per cent.

The IC suggested that consideration be given to the possibility of lifting the threshold so that the critical market share of the merged entity is 50 per cent and lifting the critical combined share of the three largest participants to 75 per cent, with the merged entity having 20 per cent of the market or more.

The Commission reviewed all merger matters assessed between 1 July 1996 and the present to identify those that triggered its existing thresholds but did not trigger the IC alternative.

Eight mergers fell between the thresholds: St George/Advance Bank, IAMA/Primac, Sigma Pharmaceuticals/Andrews Laboratories/Guardian retail banner, Northern Suburban Taxis/Services of Silver top Taxi Service radio room, North Suburban Taxis/Services of Black Cabs radio room, HJ Heinz/Southern Country Foods, Westpac/Bank of Melbourne, and a confidential proposal. The Commission assessed six of these proposals, the other two did not proceed for commercial reasons.

The Commission concluded that:

- while there were a few more matters that triggered the Commission's current thresholds than the IC's, the difference was still minor compared with the 147 matters considered during the 1996-97 financial year;
- each of the eight 'between threshold mergers' were considered worthy of investigation;
- often it is unclear if a merger will trigger the Commission's thresholds because the market definition is unclear. Changing the thresholds may have little impact on the number of matters raised with the Commission;
- of the six matters that went to decision, three were considered by the Mergers Review Committee within the Commission, allowing them to be considered expeditiously as they raised no significant competition issues; and
- the regulatory costs imposed on the parties directly by the Commission's processes were quite minor.

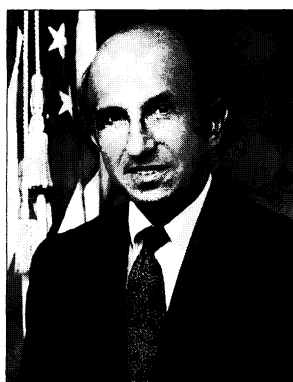
The Commission concluded that, given:

- the small number of 'between threshold' mergers;
- the small regulatory cost to most of the parties involved; and
- its concerns with at least one merger falling between the two thresholds,

it was not convinced that changes to the thresholds were necessary at this stage.

The Commission will continue to collect information against both thresholds. Until it has more conclusive evidence, it will continue to use its current thresholds. Statistical information collected for the purposes of the review has been published in *The Commission's approach to mergers: A statistical summary*, published in February 1998 (see 'Guidance and information', this Journal).

International cartel enforcement: A shared opportunity



The following is an edited version of a speech given by Joel I. Klein, Assistant Attorney General of the Antitrust Division of the US Department of Justice at the Symposium in Commemoration of the 50th

Anniversary of the Founding of the Fair Trade Commission of Japan, Tokyo, on 2 December 1997.

Introduction

This paper discusses a subject that I believe has become one of the most important challenges — if not the most important — for antitrust authorities throughout the world: the fight

against international cartels that victimise consumers and businesses in all parts of the world.

In today's global economy, international enforcement of competition laws is essential to preserve a free marketplace. In the United States alone nearly one-quarter of our Gross Domestic Product is accounted for by export and import trade; that's double what it was when the Japan Fair Trade Commission (JFTC) was established in 1947. And for many other nations the figure is much higher. Not surprisingly, now that nearly one-quarter of the US economy is international, we at the Antitrust Division have an increasing number of cases that have an international dimension. Indeed, in the US roughly 25 grand juries currently are looking into suspected international cartel activity, and the subjects and targets of these investigations are located in over 20 countries on four continents.

In my view the greatest challenge we face is adapting competition policy to globalisation. We must make sure antitrust works effectively in the increasingly global economy, where many corporations have multinational operations and even powerful nations find it harder and harder to go it alone. This is critically important, because our ultimate ability to overcome the few remaining pockets of resistance to the argument that open and vigorous competition is the most efficient way to run a world economy depends on our commitment to fulfilling the promise of the structures and models we have set in motion.

Let me be more specific about the challenge I think we face. Unquestionably the increased liberalisation of international trade has fostered many benefits, but it has also created an environment in which international cartels seem to flourish. Perhaps this is because firms, once protected by governmentally imposed trade barriers, are looking increasingly to self-help measures to shield themselves from the rigours of competition.

Of course, to have a private agreement two persons must be able to communicate. One of the results of the information and telecommunications revolution — in many cases the product of tough competition policy