

CLEARY GOTTLIB

EU Merger Control: Mature At 25?

Nicholas Levy

June 3, 2016



Some Facts & Figures

The First 25 Years

- 6 Commissioners
- 3 major reforms
- 7 Notices
- 2 Guidelines
- 4 Best Practices Guidelines
- 5,700 Phase I Decisions
- 200 Phase II Decisions
- 25 Prohibition Decisions
- 60 Appeals

How Should We Measure Maturity?

Measuring Maturity

1. Relative to Past?
2. Relative to Other Agencies?
3. Relative to Other Areas of Antitrust?

What Have Been The Principal Areas Of Controversy?

10 Areas Of Controversy

1. Role of Non-Competition Criteria
2. Division of Powers
3. Market Definition
4. Substantive Test
5. Coordinated Effects
6. Conglomerate Effects
7. Commission's Role as Investigator, Prosecutor and Judge
8. Role of Economics
9. Efficiencies
10. Minority Shareholdings

What Have Been The Most Influential Cases?

10 Most Influential Cases

1. Aerospatiale-Alenia/de Havilland



2. Gencor/Lonrho



3. Volvo/Scania, Volvo/Renault



4. Airtours/First Choice



5. Sony/BMG



6. Tom Tom/Tele Atlas, Nokia/Navteq



7. Tetra Laval/Sidel



8. General Electric/Honeywell



9. Ryanair/Aer Lingus



10. UPS/TNT



Where Are We Today?

10 Current Trends

1. Lengthy Reviews
2. Unilateral Effects
3. Coordinated Effects
4. Vertical Effects
5. Conglomerate Effects
6. Empirical Evidence
7. Internal Documents
8. Inter-Agency Coordination
9. Up Front Buyer Remedies
10. Judicial Review

What Have You Learnt?

10 Learnings

1. Know The Law
2. Facts Are Everything
3. Use Economists Wisely
4. Pick Your Procedural Battles
5. Rely On Politics Sparingly
6. Articulate A Clear Rationale
7. Think Ahead
8. Manage Expectations
9. Maintain Credibility
10. Get Up Early, Stay Late, Be Curious, Stay Calm



© 2016 Cleary Gottlieb Steen & Hamilton LLP. All rights reserved.

Throughout this presentation, "Cleary Gottlieb" and the "firm" refer to Cleary Gottlieb Steen & Hamilton LLP and its affiliated entities in certain jurisdictions, and the term "offices" includes offices of those affiliated entities.