

Plenary Session 3: Challenges of Globalization for Merger Review

ICN 2018 Merger Workshop

November 7th, 2018

Tokyo Japan



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1. Geographic Market Definition





Meeting of the International Competition Network Merger Workshop

Plenary Session #3: Challenges of
Globalization for Merger Review

Christine S. Wilson, Commissioner
November 7, 2018
Tokyo, Japan

Geographic Markets – Basic Approach

- Under both U.S. law and the Horizontal Merger Guidelines, the FTC uses evidence of *demand substitution* to define relevant geographic markets
 - HMG § 4: “Focuses solely on . . . customers’ ability and willingness to substitute away from one product to another in response to a price increase” or decrease in quality
- Whether other products are in the same geographic market (HMG § 4.2) depends upon factors such as:
 - Transportation costs (as a percentage of total cost)
 - Regulations
 - Tariff and non-tariff barriers

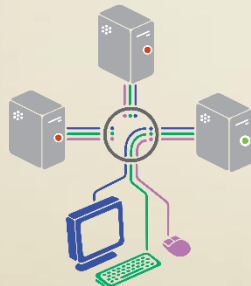
Geographic Markets – Examples

Global

Aircraft engines



Fiber channel switches
(*Broadcom / Brocade*)



National

Daily online fantasy sports
(*Draft Kings / Fan Duel*)



Regional / Local

Hospitals



Retail



ICN Merger Work Shop 2018

Plenary Session 3

José Luis Ambriz Villalpa

November, 2018



Comisión
Federal de
Competencia
Económica

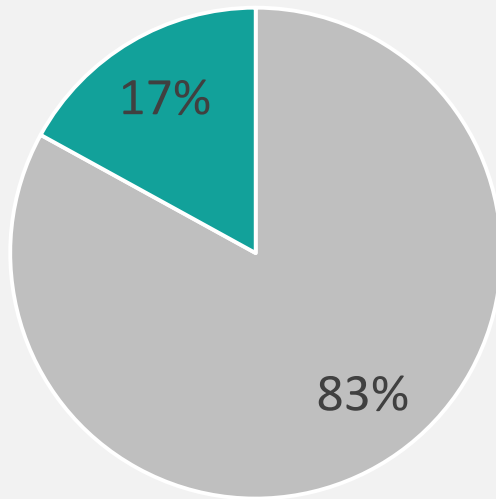
1. Mexico is one of the world's most open economies

- Free trade agreements with 46 nations.
- Borderline Mexico/US has an extension of 3,000 kilometers
- Ports in both Atlantic and Pacific oceans.

2. Indeed, geographical scope of markets is wider today

Geographical scope of markets

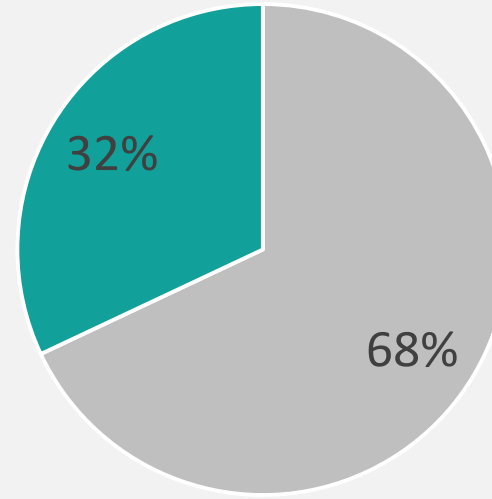
Number of cases, 1999



- National, Regional or Local
- Wider than national

Geographical scope of markets

Number of cases, 2016




- National, Regional or Local
- Wider than national

Example: Nitrogen fertilizers

1997


- Merger: Agro Nitrogenados / Nitroamonia (two Mexican firms)
- Firms overlapped in the manufacture and sale of nitrogen fertilizers.
- **Marginal imports (and limited to the border area with the US)**
- Joint market shares above 50% at national level.



Market was considered **national** and the deal was blocked by the Commission

2014 & 2015

- Mergers:
 - Pemex / Agro Nitrogenados
 - Pemex / Fertinal
- Vertical integration: ammonia (supplied solely by Pemex in Mexico) is the main input for nitrogen fertilizers (manufactured by Agro Nitrogenados and Fertinal)
- **Imports** of nitrogen fertilizers (from several countries) **accounted for more than 50% of national consumption.**
- Some domestic competitors exited the market due to increased foreign competition.



Geographic scope was considered **global** and both deals were authorized



ICN Merger Workshop
Tokyo, 7-8 November 2018

Plenary Session 3

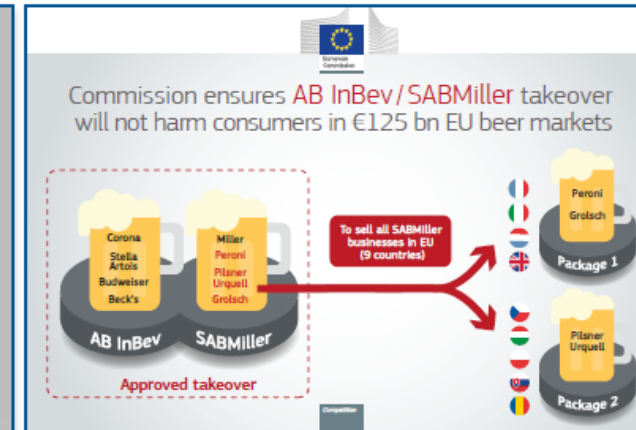
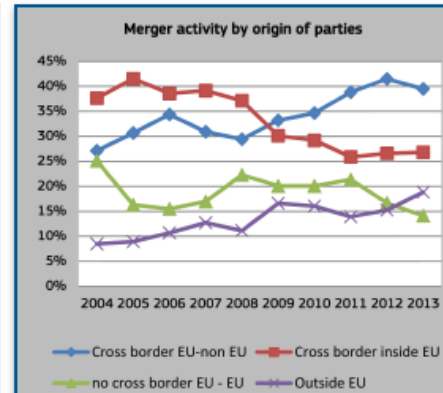
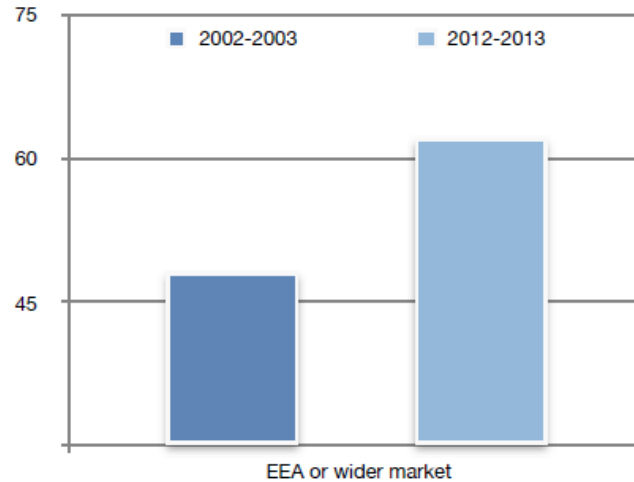
Challenges of Globalization for Merger Review

Josep M. Carpi Badia
Head of Unit, Mergers Case Support and Policy
DG COMP, European Commission

Globalization

Market definition

Evolution of Geographic Market Definition in EU Merger Cases




- World's economies have become increasingly interconnected
- This progressive global dimension has to be taken into account in merger enforcement
- Market definition is (merely) a first step in merger assessment
- Based on business realities; empirical, customer-focused and dynamic exercise
- Competitive pressure from producers "outside the market" is incorporated in the competitive assessment

- Some markets remain national, however
- Even if companies active in the relevant sectors operate at a global level
- International cooperation in merger review may also be useful in some of these cases

Geographic Market for Rail Power Supply Systems

M.3653 - Siemens/VA TECH (2000)

 COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13 July 2005
C (2005) 2676 final


PUBLIC VERSION

COMMISSION DECISION
of 13 July 2005
declaring a concentration compatible with the common market and the
EEA Agreement

(Case No COMP/M.3653 - Siemens/VA Tech)

Markets considered as
national

M.5754 - Alstom Holdings/Areva T&D (2006)

 EUROPEAN COMMISSION

Brussels, 26.3.2010
SG-Creffe(2010) D/4417
C(2010) 2148

PUBLIC VERSION

**MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION**

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying party:

Dear Sir/Madam,

Subject: Case No COMP/M.5754 - ALSTOM HOLDINGS/ AREVA T&D
Transmission activities
Notification of 23.02.2010 pursuant to Article 4 of Council Regulation
No 139/2004

1. On 23 February 2010, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004¹ (the "EC Merger Regulation") by which the undertaking Alstom Holdings ("Alstom", France), controlled by Alstom SA ("Alstom SA", France), acquires within the meaning of Article 3(1)(b) of the EC Merger Regulation sole control of the High Voltage (HV) transmission business and certain assets of the Medium Voltage (MV) distribution business of Areva T&D Holding SA ("Areva T&D", France), controlled by Areva SA ("Areva", France) by way of purchase of shares ("the proposed transaction").

1. THE PARTIES

2. **Alstom** is a worldwide supplier of equipment and services for power generation and rail transport.

3. **Areva T&D** is active in the supply of products and services for the transmission and distribution of electrical power.

¹ OJ L 24, 29.1.2004, p. 1. With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and 102, respectively, of the Treaty on the Functioning of the European Union ("TFEU"). The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 101 and 102 of the TFEU should be understood as references to Articles 81 and 82, respectively, of the EC Treaty where appropriate. The TFEU also introduced certain changes in terminology, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this Decision.

Commission européenne, B-1049 Bruxelles / Europese Commissie, B-1049 Brussel - Belgium. Telephone: (32 2) 299 11 11.

Market considered as at least
EEA-wide

Geographic Market for Wholesale Supply of Helium

M.1630 - Air Liquide/BOC (2000)

IP06046
Brussels, 18 January 2000

Commission approves the acquisition of parts of BOC (UK) by Air Liquide (France) subject to conditions

The European Commission has authorised, after an in-depth investigation and subject to conditions, the acquisition of parts of the UK company BOC Gases plc, by the French company Air Liquide S.A. in the industrial gases industry. In July 1998, Air Liquide and the US company Air Products announced a joint bid for BOC. After completion of the takeover bid, Air Liquide and Air Products plan to divide BOC's worldwide businesses and assets. The Commission's assessment mainly concentrated on the assets and businesses of BOC to be obtained by Air Liquide in the European Economic Area (EEA).

The operation, as initially notified to the Commission, would have led to market dominance by Air Liquide in the European market for storage oxygen and nitrogen. The Commission also had concerns about dominance in the markets for bulk and cylinder gases in France, the United Kingdom and Ireland, in the market for helium and in the market for specialty gases supplied to the electronics industry. In order to eliminate these competition concerns, Air Liquide has undertaken to divest gas production plants, distribution networks and customer contracts in the United Kingdom, France, Belgium and the Netherlands as well as certain contracts for helium. Air Liquide will also make BOC's patented gases technology available to other companies. The Commission considered that these commitments were appropriate to remedy the competition concerns. Therefore, subject to the full compliance with the offered commitments, the concentration has been declared compatible with the common market.

« This is an exemplary case of how very serious competition concerns can be dispelled by real and substantial undertakings by the parties. Competition Commissioner Mario Monti commented on the decision: « It is because of these commitments that the Commission was finally able to approve the planned acquisition. »

Industrial gases form an important component in the production process of many industries including, for example, iron, steel, refining, chemicals, glass, electronics, paper and pulp industries. Gases are either supplied in small quantities in cylinders, cylinder markets, or in larger quantities in liquid form using tanker trucks (bulk markets), or are supplied in very large quantities directly on the customers' premises using on-site production units or pipelines (storage markets).

Market considered potentially EEA-wide in scope, covering all sources in and around the EEA

M.4141 - Linde/BOC (2006)

IP06737
Brussels, 6th June 2006

Mergers: Commission approves takeover of BOC by Linde, subject to conditions

The European Commission has approved under the EU Merger Regulation the proposed takeover of the UK-based BOC by the German company Linde. Both companies are active in industrial and specialty gases. The initial market investigation found that the proposed acquisition could have created significant competition problems by removing an important competitor of Linde on a number of gas markets. These competition concerns are removed by the remedy package offered by the parties which includes the divestiture of Linde's industrial gases business in the UK and BOC's industrial and specialty gases business in Poland. The approval is further conditional on divesting several helium wholesale supply contracts of both Linde and BOC. Linde will also break its structural link with Air Liquide in a number of Asian joint ventures. In the light of these commitments, the Commission has concluded that the proposed operation would not significantly impede effective competition in the European Economic Area (EEA) or any substantial part of it.

Competition Commissioner Neelie Kroes said: "In view of the remedies offered, we are satisfied that the notified merger would not harm consumers".

The activities of Linde and BOC overlap on the markets for industrial and specialty gases in Poland and the UK. The transaction would create a dominant player in various Polish gas markets and would strengthen BOC's dominant position in the UK markets. The parties have, however, committed to divest the whole of BOC's Polish business and the whole of Linde's UK business thereby completely removing their overlaps in all relevant Polish and UK markets. The commitments also include the divestiture of Linde's UK and Irish customer contracts of ethylene oxide that Linde supplies from its Belgian production site. The Polish National Competition Authority had requested the partial referral of the case on the ground of the significant impact of the transaction in Poland. However, in view of the substantial commitments offered, the Polish NCA subsequently withdrew its initial referral request.

Linde has only recently entered the wholesale market for helium, after having acquired significant direct access to helium sources, and has competed aggressively to expand its position on this market. The Commission's market investigation shows that after the acquisition of BOC, one of the three largest global wholesalers, Linde would no longer have the same incentive to compete. The divestiture of important supply contracts of both Linde and BOC will remove these competition concerns. In view of the global scope of the helium wholesale market, the Commission and the US (par Trade Commission (FTC)) requested closely during the investigation.

Market considered as worldwide. But it could not be excluded that the market could tend towards EEA-wide scope

M.8480 - Praxair/Linde (2018)

European Commission - Press release

Mergers: Commission clears merger between Praxair and Linde, subject to conditions

Brussels, 20 August 2018

The European Commission has approved under the EU Merger Regulation the proposed merger between Praxair and Linde. The approval is conditional on the divestiture of an extensive remedy package.

Commissioner Margrethe Vestager, in charge of competition policy, said: "Gases – like oxygen and helium – are crucial inputs for a large variety of products we need and use in our everyday life. For instance, industrial oxygen is used in large quantities in the production of steel, and hospitals need medical oxygen for patients and helium so that magnetic resonance imaging (MRI) scanners can work. There are very few companies in the world capable of supplying all these gases. With this decision, we make sure that the merger of Praxair and Linde will not result in further concentration in Europe and that customers will continue to benefit from competition in these markets."

Today's decision follows an in-depth review of the proposed merger between Praxair and Linde, which are two of the four largest companies active worldwide across the whole supply chains of industrial gases, medical gases, specialty gases and helium. Both companies also offer engineering and gas plant construction services.

The Commission's investigation

Following its in-depth investigation, the Commission concluded that the proposed transaction, as originally notified, would have significantly reduced competition in a number of markets in the European Economic Area (EEA). In particular, the Commission identified competition concerns in the markets for the supply of:

- industrial gases,
- medical gases and related services,
- specialty gases and
- helium, both in the worldwide market for the sourcing of helium and in the national markets for the retail supply of this gas.

Notably, the proposed combination would have reduced the number of significant gas players in the EEA from four to three, creating a new market leader in the European gas industry. The Commission's investigation confirmed the gap between the four major suppliers (Air Liquide, Linde, Praxair and Air Products) and other competitors in terms of financial and operational capabilities. In this respect, only the four main players have the engineering capabilities necessary to bid for the largest projects (i.e. the construction of complex gas production units on customer manufacturing sites) across the EEA and access to the few sources of helium existing worldwide to be competitive.

Other market players only have a regional, national or local presence and lack the operational, technical and financial capabilities to compete on an equal footing with the four majors. The Commission also found that market entry and expansion in the gas markets is difficult, due to the very high investment necessary to establish a meaningful position in the market.

The Commission concluded that the merger as notified would have led to a significant reduction in the number of suitable alternative suppliers and potentially to price increases.

The commitments

To address the Commission's competition concerns, Praxair and Linde offered the following commitments:

- The divestment to a suitable purchaser of Praxair's entire gas business in the EEA, including all relevant legal entities, assets and personnel. This divestment covers industrial, medical, specialty gases and helium. It also includes the helium sourcing contracts required to

Market defined as worldwide, despite the existence of regional specificities



European
Commission

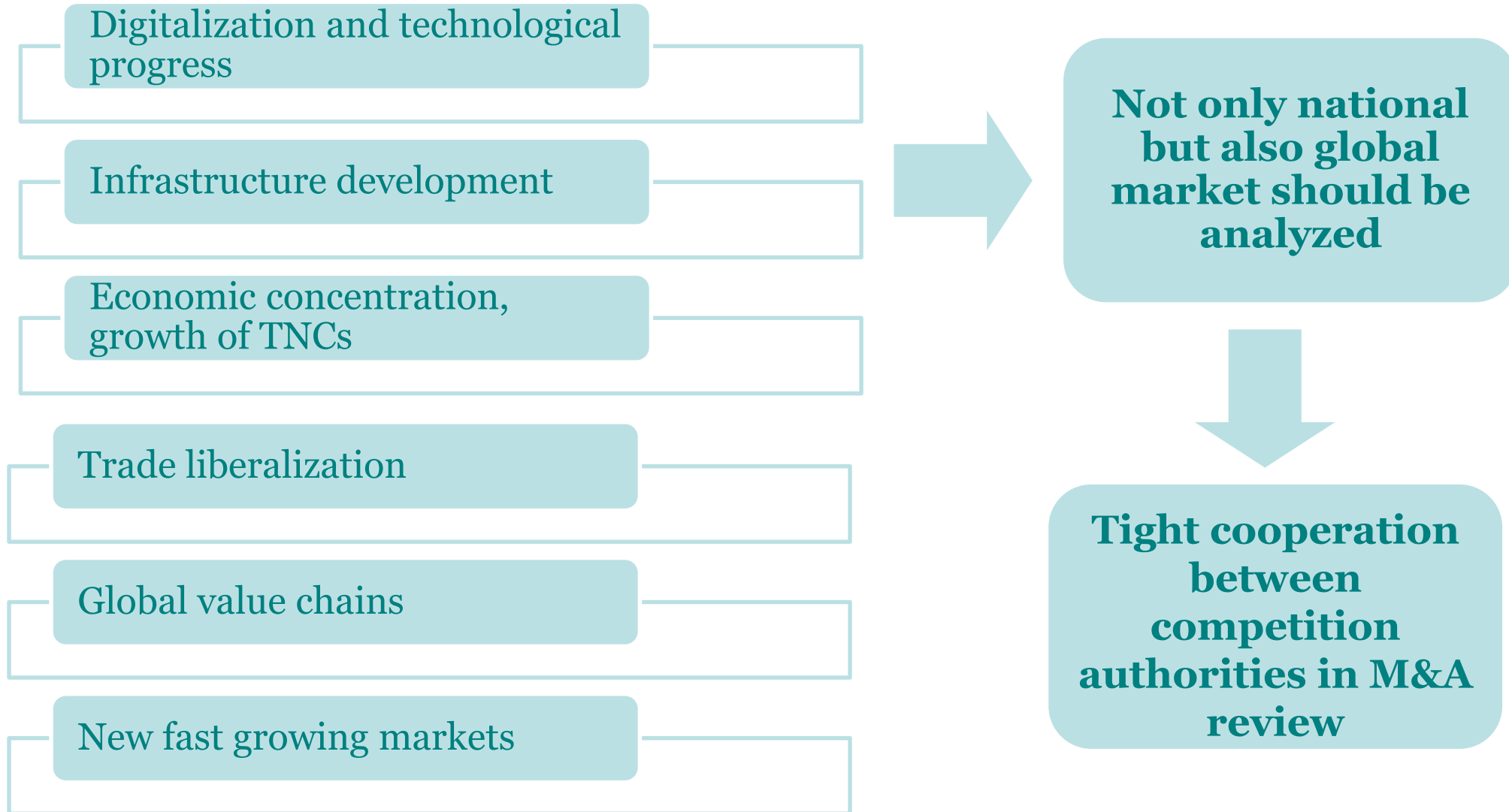


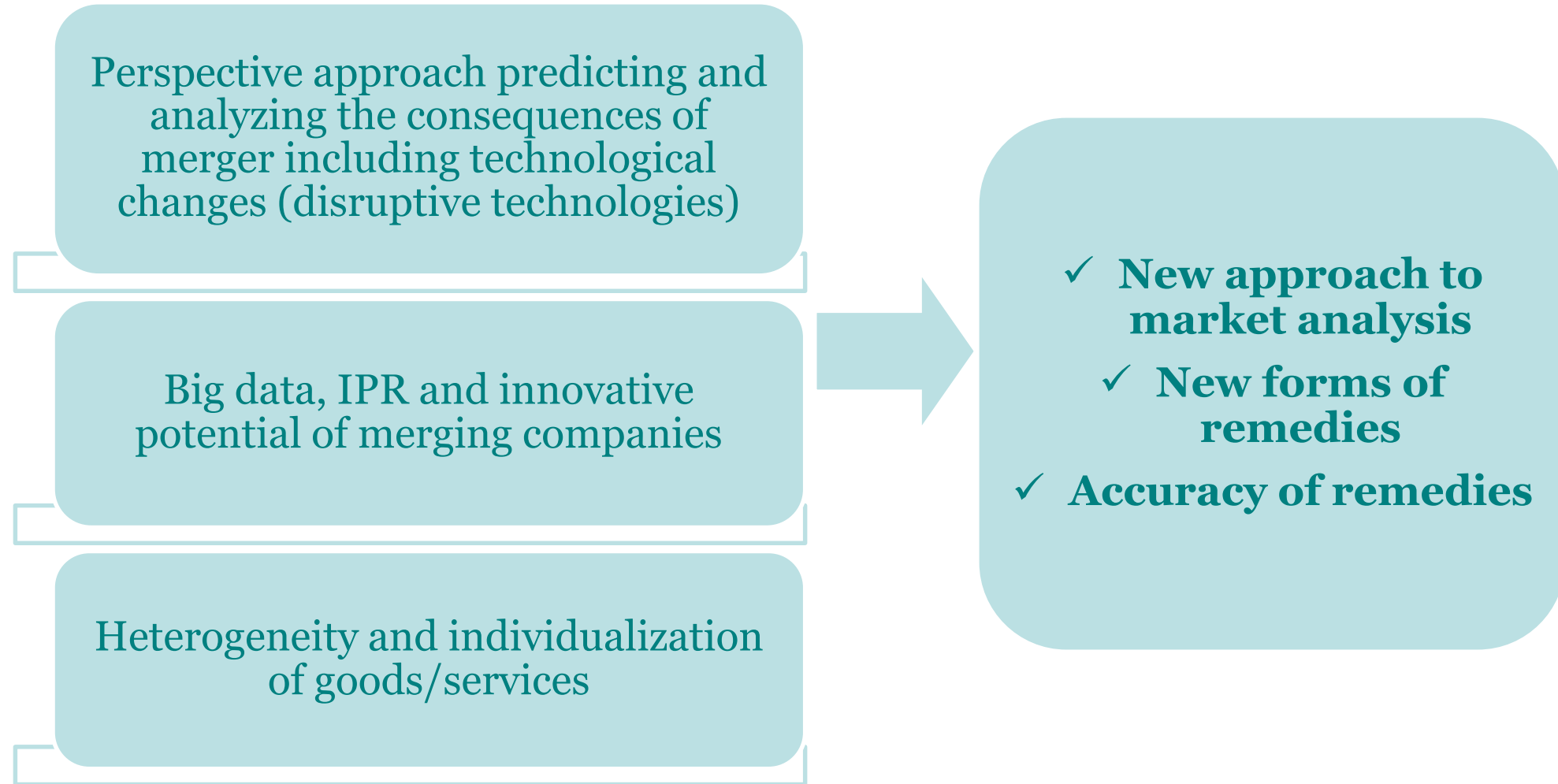
FEDERAL ANTIMONOPOLY SERVICE

Challenges of globalization for merger review: Russian experience

Andrey Tsyganov
Deputy Head of the FAS Russia
Japan, November 2018

Defining the geographic scope of a market in merger review





2. Communication with Agencies in other Jurisdictions



International cooperation

Communication between agencies

**Practical Guide to International
Enforcement Cooperation
in Mergers (2015)**



Practical Guide to International Enforcement Cooperation in Mergers

1. GENERAL FRAMEWORK

3. This Practical Guide to International Enforcement Cooperation in Mergers elaborates on recommended practices and principles of merger review cooperation created in ICN work products, particularly the *Mergers Notification and Review Procedures Recommended Practice on Interagency Coordination*.¹ In doing so, this Practical Guide draws on the experiences of ICN member agencies and non-governmental advisers.²
- II. OBJECTIVES**
2. This Practical Guide seeks to address the ICN Mergers members' calls for practical guidance on merger review cooperation. Hereafter "cooperation" in the context of increased multijurisdictional mergers and multilateral cooperation.³
3. This Practical Guide is intended to serve, to the extent consistent with applicable laws and agencies' respective enforcement responsibilities, as: (i) a voluntary and flexible framework for interagency cooperation in merger investigations; (ii) practical guidance for agencies seeking to engage in such cooperation;⁴ and (iii) practical guidance for merging parties and third parties seeking to facilitate cooperation. In particular, the Practical Guide provides guidance to agencies on cooperation in individual cases that can be structured and when tools can be used while recognizing the need to allow for agencies' flexibility to determine the extent of cooperation both

See in particular: Recommended Practices for Measuring Satisfaction and Review Procedures (Recommended Practice 3 in Integrated Guidelines) (<http://www.internationalcommissionforworkshop.org/uploads/10/04/10/04/10041004.pdf>); Measuring Satisfaction and Review (joint 6) (<http://www.internationalcommissionforworkshop.org/uploads/10/04/10/04/10041004.pdf>); Review Methodology Report (Report for the Fourth ICM annual conference (part 3 and appendix G) (<http://www.internationalcommissionforworkshop.org/uploads/10/04/10/04/10041004.pdf>); ICM Investigative Tool/Inquiry Handbook for Measuring (chapter 2 and chapter 3) (<http://www.internationalcommissionforworkshop.org/uploads/10/04/10/04/10041004.pdf>); Assessing the Effectiveness of the ICM (chapter 4) (<http://www.internationalcommissionforworkshop.org/uploads/10/04/10/04/10041004.pdf>); and the Working Group Discussion on the ICM of the International Migration Enforcement Cooperation Project (<http://www.internationalcommissionforworkshop.org/uploads/10/04/10/04/10041004.pdf>).

These experiences will be, in particular, shared during ICN annual conferences, ICN WMO workshops and the 2013-2014 ICN WMO international cooperation experience-sharing teleconferential series. The main takeaways from this Missionary series are contained in the ICN Master Working Group Informal Report on the Status of the International Register Enforcement Cooperation Project. For further information see <http://www.internationalcooperationwmo.com/uploads/attach/00041.pdf> or <http://www.internationalcooperationwmo.com/uploads/attach/00042.pdf> and <http://www.internationalcooperationwmo.com/uploads/attach/00043.pdf>. The *Practical Guide* is intended to be updated periodically to reflect further experience gained in the field of copyright review (copyright1976).

See in	Journal	Module	For the	International	Enhanced	Cooperation	Project
http://www.internationalcompetitiveness.org/uploads/Int%20.pdf				the	ICN Report on	OECD/OSQ Questionnaire on	
	International	Enhancement	Cooperation	http://www.internationalcompetitiveness.org/uploads/Int%20.pdf			
	Secretariat	Report	on	the	OECD/OSQ	Survey	on
				International	Enhancement	Cooperation	

⁴ Throughout this Practical Guide, "agencies" refers to competition agencies that have chosen to cooperate with one or more state national law enforcers during their review of the same merger.

¹ For example, timing alignment, waivers of confidentiality and coordinated or joint investigative efforts.



International enforcement cooperation in mergers: main principles and recent experiences

- [illegible]

⁷ For the purposes of this policy level, the term "agencies" relates to competition agencies. Furthermore, the brief does not describe its cooperation between the European Commission and EU Member States' National Competition Agencies, why the cooperation between the European Commission and agencies 2012 is not the objective.

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www.ccsn.ca/publications/cfr/eng/06/06-07/06-07-01-eng.pdf

Merger Remedies Guide



ICN MERGER WORKING GROUP

2016

usually involves the use of complex, non-observable criteria require that the Board or Order specify procedures regarding ongoing and compliance monitoring by the competition authority, or an independent monitor or monitoring centre who is appointed by the competition authority and subject to carry out the monitoring functions in further detail as in rules 6.2 and 6.6.

When designing two-sided markets, competition authorities should consider the monitoring and enforcement on Facebook and other non-compliance or evasion is difficult and subject to efficient countermeasures or penalties.¹⁰ To be effective, the remedy either should include reporting requirements for the firm to provide specific information to the competition authority or to the market to determine compliance, either in respect of a specific network or competition remedy, or in relation to the competition authority's ability to monitor, the remedy either prohibits, entirely or in part, or only, creates a degree of moderation, limitation, for example via algorithmic procedures which, subject to the jurisdiction, can be used by the competition authority within third parties if possible for its jurisdictional tasks.¹¹

363. Goss
The ongoing oversight (including compliance reporting, and, when necessary, enforcement action against non-compliance) required of a non-financial remedy can be construed narrowly to limit the competition authority and the treatment thus. However, there would also be a well-accepted a competition authority's primary expertise is in enforcing, in practice, the monitoring task is often entrusted to an independent monitor. Such monitoring exists as a useful force by the merging parties.

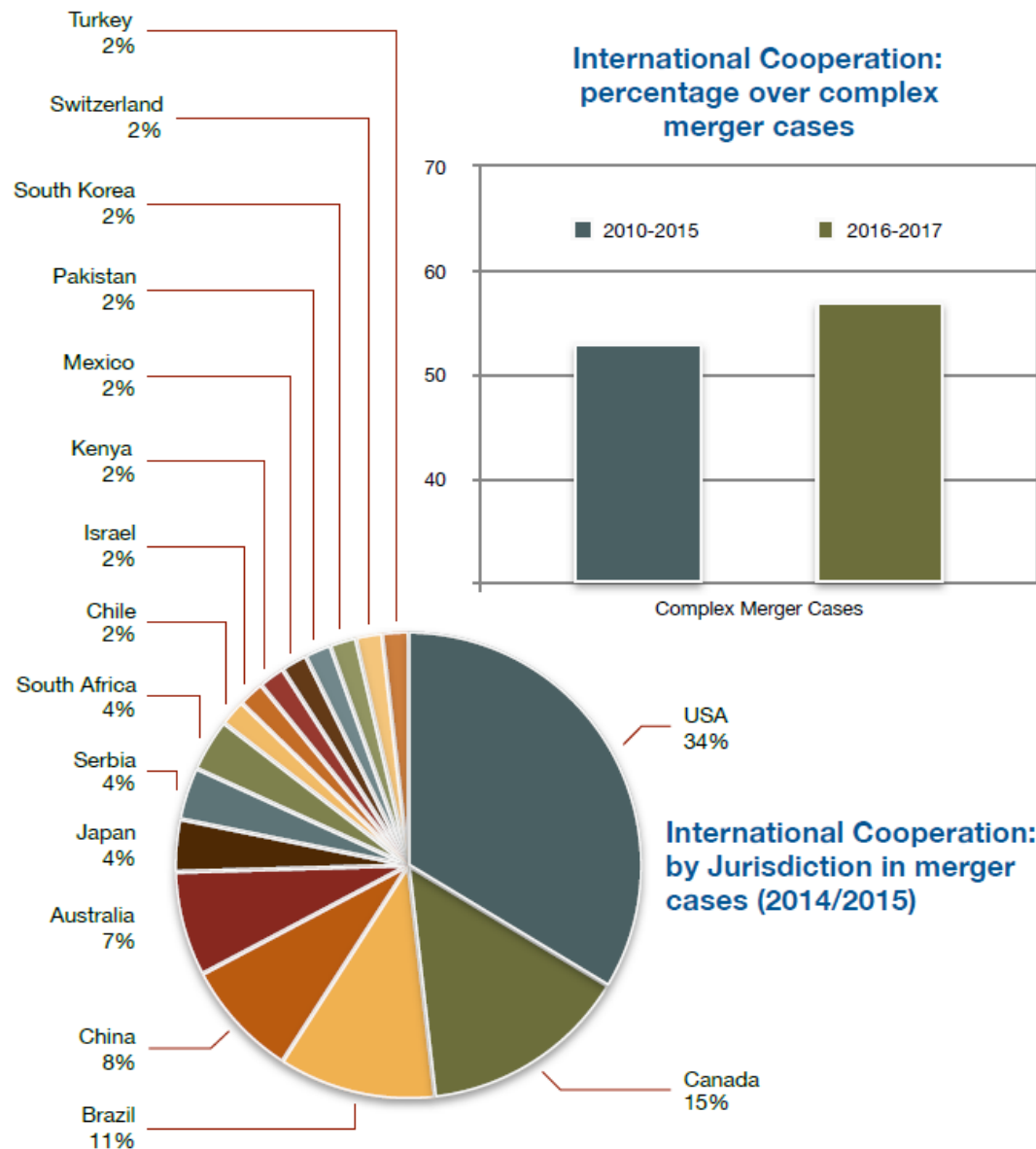
3.4 Additional Capabilities with International Compliance

- the structure and content of the economy
 - specific policies (choice)
 - whether to regulate a single part/sector
 - the stability of the financial institutions
 - the freedom of movements (people and international trade)
 - the use of monetary union
 - tax (income, consumption, etc.)

The discussion may lead to competition authorities deciding to coordinate or separately regulate their treaty with the relevant merging parties.

²²See, for example, E. <https://doi.org/10.1016/j.jurimetrics.2018.04.001> in *Adams*, which illustrates the difficulties of measuring compliance with law using machine learning and the value of its monitoring teams.

1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 26



Essilor/Luxottica (2018)
 Phase II unconditional clearance
 Cooperation with 12 Agencies outside the EU
 From: single calls on the status of proceedings
 To: regular engagements, exchange views on market definition, theories of harm, investigation findings; timeline of the investigation; exchange of document submissions

Phase I with remedies

(cont.)

Phase II abandoned

 Cooperation with non-EEA Agency

**Cooperation with
foreign competition
authorities while
considering global
mergers**



Bilateral cooperation

More than 60 official documents,
(MoUs, programs of cooperation,
agreements)

EAEU

EAEU Treaty, cooperation with EEC

CIS

Joint market studies in socially
important markets

BRICS

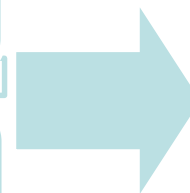
MoU between the BRICS
Competition Authorities

Global nature of the merger in the oligopolistic fast growing market

The merger affects the markets for the products used by agricultural producers (seeds, technologies, genetics and selection, data, complex solutions)

Application of waivers for consultations with India, China, Brazil and European Commission

New methodological approaches to identify potential anticompetitive effects of the merger both in the Russian and global markets



The FAS Russia took into account the information provided by counterparts in other jurisdictions including on the basis of waivers to consider the merger in the most proper way and **to make the most balanced decision**

3. Extra-territorial Remedies



Extraterritorial Remedies

- FTC and DOJ recently issued new *Antitrust Guidelines for International Enforcement and Cooperation* (January 13, 2017)
 - These Guidelines update an earlier 1995 edition
 - FTC and DOJ will seek extraterritorial remedies only if:
 - Remedy of “conduct or assets *outside the United States*” is
 - “*needed* to effectively *redress harm* or threatened harm”
 - “to *U.S. commerce and consumers*” and
 - “is consistent with the Agency’s *international comity* analysis”
- In short, the focus remains on how the remedy redresses harm to *consumers in the United States*

Extraterritorial remedies

In our experience, location of parties' assets and sales have been key factors when considering possible extraterritorial remedies ...

Assets & Sales	Remedies coordination	Examples
<div>Assets in Mexico</div>	<ul style="list-style-type: none"> Consistent remedies to those of other jurisdictions Remedies offered in other jurisdictions may include Mexican assets Additional remedies may be imposed in Mexico to attend concerns in national markets 	<p>ChemChina / Syngenta (global deal, national markets, specific remedies for Mexico)</p> <p>Delta/Aeromexico (JCA, cooperation with US sectoral regulator, remedies in both countries)</p>
<div>No assets in Mexico</div> <div>+</div> <div>Low sales in Mexico</div>	<ul style="list-style-type: none"> Difficult and costly to monitor compliance Other authority best suited to monitor compliance Cofece only requires the parties to prove they fully complied with the remedy imposed by other jurisdiction 	<p>Dow/DuPont – Acid copolymer business (global deal, global market, no specific remedies for Mexico)</p> <p>Emerson / Pentair (global deal, global market, no specific remedies for Mexico)</p>

- ✓ The Federal Law dated July 26, 2006, No. 135-FZ “On Protection of Competition” stipulates the possibility of **extraterritorial application of the Law on Protection of Competition**

