

**14th EU-China Competition Week**  
Beijin, MOFCOM, 21 March 2017

## **Economic analysis of coordinated effects**

Louise Kastfelt (Danish Competition and Consumer Authority)  
Eleonora Ocello (DG COMP, European Commission)

## **Analytical framework**

## 1. The Airtours criteria



### Analytical framework

- » European Commission's guidelines on the assessment of horizontal mergers (2004/ 31/03)
- » Case T-342/99, Airtours v Commission, (2002)
- » Four main criteria:
  - » Reaching terms of coordination
  - » Monitoring deviations
  - » Deterrent mechanisms
  - » Reactions of outsiders

## 1. Reaching terms of coordination

Competitors must be able to easily arrive at a common perception as to how the coordination should work

- » Similar views on which actions would be in accordance with the aligned behaviour
- » A stable economic environment
- » Transparency



Assessing coordinated effects

## 2. Monitoring deviations

It should be possible to identify potential deviations

- » Coordinating firms may have an incentive to deviate
- » Requires transparency
  - » Few market players
  - » Transparent price setting
  - » Stable economic environment
  - » Small, frequent orders
  - » Cross-directorships, joint ventures, etc.



Assessing coordinated effects

### 3. Deterrent mechanisms

The consequences of deviation must be sufficiently severe to deter

- » Incentive to retaliate
- » Timely and credible retaliation
  - » Frequent orders
  - » The cost of price wars etc.
  - » Commercial interaction in other markets



Assessing coordinated effects

### 4. Reactions of outsiders

The coordination should not be jeopardised by non-coordinating firms, potential competitors or customers

- » Absence of strong competitors
- » No maverick in the market
- » No potential competition
- » Absence of buyer power



Assessing coordinated effects

## 2. The merger between J-M. Lemvig-Müller Holding A/S and Brdr. A & O Johansen A/S



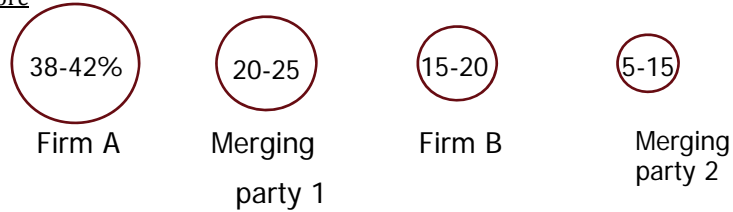
## The relevant markets

- » Wholesale markets for:
  - » Plumbing and heating materials sold to professional customers in Denmark (plumbers)
  - » Electricity materials sold to professional customers in Denmark (electricians)
  
- » Two other markets where part of the investigation, but no concerns found
  
- » Geographic market: Denmark



## Market shares – plumbing materials

» Before



» After



Assessing coordinated effects

## Reaching terms of coordination (I)

- » Concentrated markets: from 4 to 3 in plumbing (CR3 85-90 %)
- » Price setting in the industry
  - » List prices known by all in the industry
  - » Rebates are typically negotiated, often 30-40 %, up to 80 %
- » Stable market
- » Homogenous products (standards)
- » Lack of innovation
- » Stable customer relationships
- » Symmetry



Assessing coordinated effects

## Reaching terms of coordination (II)

- » Can the market be transparent enough with a very large number of products?
- » Not necessary to know all net-prices in detail, see Impala (T-464/04):
  - » “..the necessary transparency is that which allows each member of the dominant oligopoly to be aware of the conduct of the others. ...The requisite transparency does not mean that each member may at any moment be aware of every detail of the precise conditions of each sale made by the other members of the oligopoly but must, first, make it possible to identify the terms of the tacit coordination and, second, give rise to a serious risk that deviant conduct.... will be discovered by the other members of the oligopoly” (CFI, Impala)

Assessing coordinated effects

## Reaching terms of coordination (III)

- » Theory of harm/the coordination mechanism:
  - » Coordination on prices and less aggressive competition for customers
    - » Public statements
    - » Raising list prices and keeping rebates at current level
    - » Given the limited number of market players, it will be more rational to follow a price increase than to initiate a price war

Assessing coordinated effects

## Monitoring deviations

- » Transparency with regard to net-prices:
  - » Few market players
  - » High transparency on list prices
  - » Close, frequent and persistent contact between wholesalers and customers
  - » Customers have more than one wholesaler and use offers from the other wholesaler to negotiate rebates
  - » Inspection in the industry revealed very high transparency
    - » Detailed knowledge of sales and market shares of competition, even at city-level and with decimals

Assessing coordinated effects

## Deterrent mechanisms

- » Frequent interaction with customers (day-to-day delivery)
- » Retaliation could quickly be initiated and could be targeted towards specific customers or areas
- » Symmetry made retaliation more effective and credible
- » Possible to retaliate in several markets

Assessing coordinated effects



## Reactions of outsiders

- » High barriers to entry (and increased by the merger)
- » No potential competition from outside Denmark
- » No potential competition from small, local wholesalers
- » No maverick
- » Large majority of the customers are very small and have no significant buyer power
- » Fewer alternatives on the market

Assessing coordinated effects

## Conclusion

- » The merger would significantly impede effective competition
- » Efficiencies were not sufficient
- » No suitable remedies were proposed by the Parties
- » The concentration was prohibited by the Danish Competition Council
- » The decision was not appealed

Assessing coordinated effects