Overview

1. From structural to more effects based approach
2. Putting European Merger Control on the map
3. Successes and failures
4. Lessons to be learnt
1. From structure to effects based approach

- **Alcatel/AEG Kabel (1991)**
  - Breaking ranks with a godfather (BKARTA)

- **Closeness of substitution concept widely applied under the dominance test**
    - A merger of two ‘Mercedeses’ - in Sweden
  - **Philips/Agilent (2001)**
    - Skip market definition and center on effects on competition; importance of competition on innovation
  - **GE/Instrumentarium (2003)**
    - Making bidding data analysis respectable

- **Effects based analysis in the context of oligopolistic dominance**

2. Putting Europe on the Map

- **Glencore/Lonrho(1996)**
  - A South African marriage creating a worldwide duopoly in platinum – prohibition confirmed by the Court

- **Boeing/McDonnell Douglas (1997)**
  - US/EU disaccord; a courageous Commissioner; behavioral remedies – “the Europeans did it for Airbus…”

- **GE/Honeywell (2001)**
  - US/EU disaccord, about the predictability of conglomerate effects – “effects only dimly discernible” (CFI)

- **Enhanced EU/US cooperation:**
  - Increasing convergence since 1997
  - Kick-start for the ICN
3. Successes and Failures

- The One-Stop Shop and strict deadlines
  - Commission have proven ability to take reasoned (and mostly reasonable) decisions within short deadlines

- The trilogy of defeats (2002)
  - Airtours/First Choice – coordinated effects, gap case, damages
  - Schneider/Legrand – unilateral effects, French champions, damages
  - Tetra/Sidel – conglomerate effects
  - Bad economics or bad (insufficient) facts?

- Judicial review has been (and continues to be) healthy – angst of judicial censure has sometimes lead COMP to “over-investigate” (ex Sony/BMG/Impala)

- Monti’s Christmas package
  - The best possible test (SLEC plus dominance)
  - Horizontal Merger Guidelines
  - Checks and Balances

4. Lessons Learnt ?

- Post MTF record is mixed: more economics - but steady increase in length of pre-notifications

- Massive gap of procedural requirements between Phase 1 and Phase 2 determines choice of procedure: few Phase 2 cases, but (too) many “long” Phase 1 cases

- Market definition and market shares are still key to far too many cases – despite enhanced CE team and so-called “more effects-based approach”

- ‘Invitations’ to resort to efficiencies (eg.Olympic/Aegean; Deutsche Börse-NYSE) not (yet?) taken up by the Commission

- In comparison with other mature authorities, DG Competition fails to retain experienced case handlers