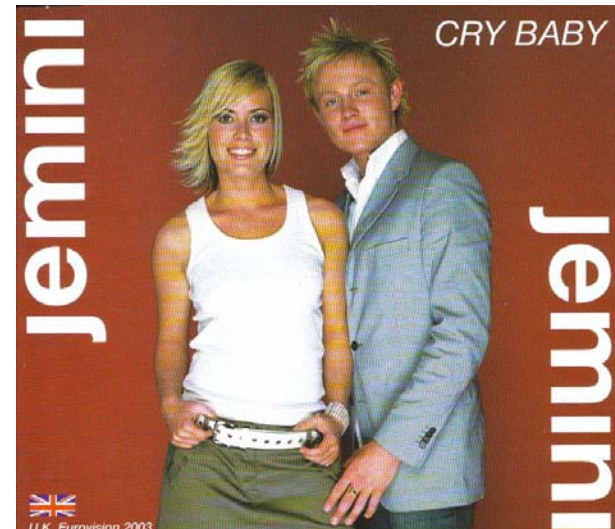


The UK Mergers Regime Hits and Misses


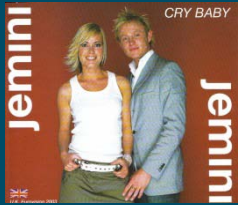


Amelia Fletcher, ESRC Centre for Competition Policy

UK Merger Regime Hits and Misses: Five key areas (NB Phase I focus)

- ✦ Jurisdiction-related issues
- ✦ SLC assessment issues
- ✦ Remedy issues
- ✦ Process issues
- ✦ Organisational/governance issues

UK Merger Regime Hits and Misses: Jurisdiction-related issues

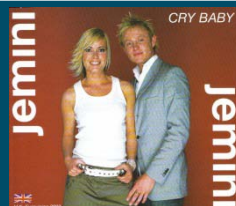
HITS 	MISSES 	CMA REFORMS
<p>Jurisdiction over:</p> <ul style="list-style-type: none"> • Small cases (where raising wider issues) • Minority shareholdings 	<p>Some risk of over-deterrence of small mergers, which are abandoned on reference</p>	<p>Jurisdiction unchanged</p> <p>No 'small business' exception included in ERA13, but <i>de minimis</i> exception remains</p>
<p>Voluntary notification has worked well</p>	<p>Some examples of irreversible consolidation (esp at Phase II)</p> <p>High merger fees</p>	<p>Voluntary notification retained</p> <p>Strengthened hold separate powers (and confirmed ability to reverse integration)</p>
<p>Strong Mergers Intelligence function</p>	<p>Some real 'misses' (e.g. DCC/ReD fuel cards)</p>	<p><i>Must retain focus on mergers intelligence</i></p>

UK Merger Regime Hits and Misses: SLC assessment issues

HITS



MISSES



CMA REFORMS

Focus on economic analysis, competitive constraints and outcomes

- Approach not over-formalised
- Willingness to be innovative

Concerns about lack of legal certainty and about continuous change in approach – sometimes justified

Need to retain a strong economic focus – on doing the right thing, not the easy thing

Strong focus on evidence and empirical analysis

Difficulties of engaging in more time-consuming empirical analysis

Need to be willing to ask for possible Phase II info at Phase I

'Phase 1.8' approach avoided unnecessary Phase II.

Generally high quality of info provision at Phase I.

Some decisions possibly reached on too partial evidence

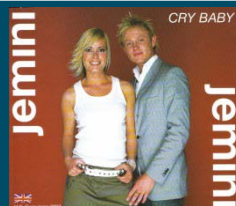
Formal investigative powers at Phase I (same as Phase II)

UK Merger Regime Hits and Misses: Remedy issues

HITS



MISSES



CMA REFORMS

Upfront buyer requirement

- Protection against failing to find appropriate purchasers
- Credibility established with Sports Direct/JJB (2009)

Speed

- Many remedies slow to arrange
- Especially problematic when reference still an option

Clear timetables for Phase I merger remedy process

Some successful UILs

Strong stance taken against behavioural remedies

Too many failed UILs

- Mostly related to purchaser approval process (and mainly one firm!)
- Insufficient 'belt and braces'

Can require parties to appoint trustees to monitor, arbitrate or implement remedies

Need to be tough on purchaser approval

Improved approach to remedy review process (speedier)

Smoother functioning within integrated organisation?


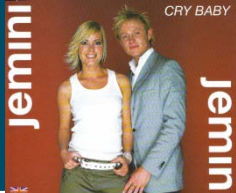
UK Merger Regime Hits and Misses: Phase I UIL remedies, 2009-2011

(Joint work with Antonios Karatzas, CCP)


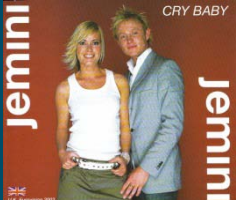


Merger	Divestments..	Result
Co-op/Lothian	Of 11 stores	6-8 sold to Haldanes, went bankrupt. Up to 8 failed. 2 recently reopened by Co-op!
SRCL/Cliniserve	Littlehampton plant	OK – in the end (after re-sale)
Global/GCap	In 2 regions	OK
Co-op/Somerfield	In 133 local areas	26 sold to Haldanes, went bankrupt. Up to 30 failed!
Aggregate Industries/Atlantic Aggregates	Gunheath business	OK
GB Oils/Brogan	Isle of Lewis business	Problematic – OFT currently investigating
Travis Perkins/BSS	In 20 local areas	OK
Co-op/Plymouth and SW Co-op	1-2 funeral homes	OK
GHG/Covenant	Abbey Carrick hospital	Failed – No buyer found
Acergy/Subsea 7	One vessel	OK
Asda/Netto	In 47 local areas	20 sold to Haldanes, went bankrupt. Up to 25 failed!
Unilever/Alberto Culver	AC's bar soaps	OK
GB Oils/Pace	Isle of Wight business	OK
Princes/Premier	Fray Bentos brand	OK

UK Merger Regime Hits and Misses: Process issues

HITS 	MISSES 	CMA REFORMS
<p>Some flexibility re timetable:</p> <ul style="list-style-type: none"> • More potential to resolve at Phase I • Avoided extensive pre-notification 	<p>Speed</p> <ul style="list-style-type: none"> • Admin deadlines often missed on complex cases • Stop the clock problematic in completed mergers 	<p>Tight statutory timetables for Phase I (and Phase II), including remedy process, with less flexibility</p> <p>Stop the clock retained</p>
<p>Transparency good:</p> <ul style="list-style-type: none"> • Detailed MAGs • Issues papers for parties (and public at Phase II) • Timetable and decisions public 	<p>Too much redaction: reduces legal clarity/precedent from decisions</p> <p>Some concerns about case teams not being clear about theories of harm until late on.</p>	<p><i>Need to retain commitment to transparency, including being tough on redactions</i></p>
<p>Good internal links across OFT</p> <ul style="list-style-type: none"> • Generated several OFT studies/cases 		<p><i>Important to preserve strong links with intelligence groups and case teams</i></p>

UK Merger Regime Hits and Misses: Organisational/governance issues

HITS 	MISSES 	CMA REFORMS
<p>Strong incentives for parties to resolve at Phase I</p> <ul style="list-style-type: none"> • Due to low reference threshold and high cost of Phase II 	<p>'Feast and famine' for CC</p>	<p>OFT/CC merger</p> <p>More flexible use of staff across the organisation</p>
<p>Separation of Phase I/Phase II decision-making</p> <ul style="list-style-type: none"> • Low risk of confirmation bias 	<p>Cost (in resources/time) of bringing a whole new team up to speed</p> <p>Some issues around handover</p>	<p>Separate Phase I/Phase II decision making preserved</p> <p>But expected integration of Phase I/Phase II case teams</p>
<p>Constructive competition between OFT and CC on quality of analysis</p>	<p>Organisational tensions and political game-playing</p>	<p>OFT/CC merger!</p>

Questions?

