

Application of the Nonhorizontal Merger Guidelines

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Abstract: On November 28, 2007, the European Commission adopted its first nonhorizontal merger Guidelines as part of DG Competition's implementation of a wider effects-based analysis framework following criticism by the European courts. The Guidelines underscore first that nonhorizontal mergers have significant scope for efficiencies and second that the Commission's analysis should focus on whether a transaction is likely to lead to anticompetitive foreclosure, i.e., foreclosure leading to consumer harm. This article reviews the Commission's application of the Guidelines since their adoption and suggests that the Guidelines have helped focus the Commission's analysis on the key questions for the assessment of the effects of nonhorizontal mergers on consumers. The review of recent cases presented in this article shows that the Guidelines provide a flexible framework within which both qualitative and quantitative economic analysis can be carried out in order to distinguish between pro- and anticompetitive mergers. Although the Guidelines are not binding from a legal point of view, this article also observes that they have served as an effective internal commitment mechanism for DG Competition.

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