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Consolidation and competition in telecommunications

Ewan Sutherland

Executive Director

ewan@intug.net



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INTUG what is INTUG?

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- members
 - national associations
 - corporations
 - individuals
- activities
 - ITU and WTO
 - OECD
 - APEC TEL, CITELE and EU



INTUG our aims

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- real and effective competition
- genuine choice for users
- lower prices
- higher quality
- more innovative services
- constructive co-operation with
 - international bodies
 - governments
 - regulators



INTUG our priorities

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1. open access to global mobile networks
2. regulatory best practice
3. liberalization
4. leased lines
5. IP telephony
6. digital divide
7. universal access
8. numbering



INTUG global and continental markets

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- multi-national corporations want:
 - global services
 - continental services
- instead of the business school ideal of picking only five global suppliers we have:
 - multiple fixed operators
 - innumerable mobile operators
- a few global service providers



INTUG no global business model

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- operators have failed to create even one model for trans-national business
- joint ventures
- building new entrants in foreign markets
- serial acquisitions
- creating start-ups in other countries
- now it is consolidation

fashions seem to change!



INTUG why consolidation?

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- core competence is manipulation of the regulatory process which is generally national
- foreign acquisitions now:
 - often are unprofitable
 - appear unfocused
 - face too much (any) competition
- instead operators can withdraw then subcontract in those markets for commodity services (i.e. they failed to differentiate themselves)



INTUG financial markets

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- flooded telecommunications with money, they sanctioned:
 - acquisitions
 - infrastructure investments
 - 3G auctions
- now will fund absolutely nothing
- did they know what they were or are doing?
- who was regulating them?



INTUG is telecoms different?

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- fixed networks are still dominated by incumbent operators
- mobile networks have severe entry barriers
- hard core duopolies and oligopolies are:
 - hard to root out across national borders
 - nobody has applied for leniency on cartel penalties (so far)
- innovation, R&D spending is more a factor in suppliers than operators



INTUG merger approval

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- who has powers to consider a case?
 - legal presence
- can result in conflicting decisions
 - Hong Kong may be a marginal consideration, able only to impose divestiture
- competent authority may be:
 - telecoms regulator
 - competition authority
 - government minister



INTUG global best practice

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- an independent telecommunications regulator (a WTO commitment)
- an independent competition authority
- a legal framework covering the division of work
- comprehensive powers over mergers and acquisitions
- a vital check on excessive concentration of market powers



INTUG inter-governmental collaboration

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- OECD
 - Competition Committee
 - collaboration with APEC
- APEC
- WTO negotiations
 - the round after Doha
- International Competition Network (ICN)



INTUG high-tech merger issues

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- importance of R&D
- human more than physical capital
- importance of innovation:
 - rapid change
 - short product cycles
- network effects
- compatibility and standards

A special procedure?
Different remedies?



INTUG markets

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- need to define market(s) to determine the effect(s) of a merger
- forward looking
- market shares
- innovation drives technological changes

It is challenging to define a mobile data market, as distinct from mobile voice, SMS, hot-spot data and fixed data.



INTUG AOL-Time Warner

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- instant messaging
- obligation either
 - standardise
 - all interconnection
- market is very heavily concentrated
- still does not properly:
 - interconnect
 - interwork



INTUG FCC Commissioners Copps

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The Nineties brought new rules permitting increased consolidation in the broadcasting industry, on the premise that broadcasters needed more flexibility in order to compete effectively. These rules paved the way for tremendous consolidation in the industry – going far beyond, I think, what anyone expected at the time. These changes created efficiencies that allowed some media companies to operate more profitably and on a scale unimaginable just a few years ago. They may even have kept some companies in business, allowing stations to remain on the air when they otherwise might have gone dark. But they also raise profound questions of public policy. How far should such combinations be allowed to go? What is their impact on localism, diversity and the availability of choices to consumers? Does consolidation always, generally or only occasionally serve the interests of the citizenry? How do we judge these things?



INTUG Consumers Union (USA)

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Consumers Union is concerned that an avalanche of mergers in the telecommunications and cable industries is threatening to undermine the development of broad-based competition for local telephone, long distance, television and high-speed broadband Internet services. The Clinton Administration -- including its antitrust and regulatory enforcers - and the Congress appear frozen in place as today's mergers are justified on the basis of yesterday's mergers, and then used to justify even further consolidation in the future. This merger-mania is already so out of hand that the most popular services most consumers want and need may be available from only one or two players in the market.

Statement before Committee of US Senate 8 November 1999.



INTUG USA

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- complex regulatory arrangements: Department of Justice, FTC and FCC
- “Baby” Bells cases:
 - Bell Atlantic and Nynex
 - Bell Atlantic and GTE
 - MCI and Worldcom
 - SBC Corp (SouthWestern Bell and PacTel)
- recent decisions on cable television and satellite



INTUG European Commission

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- Merger Regulation (under review) based on Articles 81 and 82 of the Treaty
- EC reinforced liberalisation in:
 - Atlas, later Global One (FTel and DTAG)
 - Telia and Telenor (then with Sonera)
 - Vodafone and Mannesmann
- programme of cooperation with USA
different legal approach and disagreements over:
 - GE and Honeywell
 - Worldcom and Sprint



INTUG joint dominance

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- in Article 82 of the Treaty:
“Any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market insofar as it may affect trade between Member States.”
- clarified by ECJ in *Airtours versus* European Commission
- being used in the international mobile roaming case



INTUG Vodafone

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- long chain of approvals of its acquisitions
- acquisitions paid for with the high and rising value of its shares (not yet written off)
- bitter battle over Mannesmann:
 - divestment of engineering activities
 - made an undertaking to provide third parties with any wholesale pan-European services
 - never been used and expires in a few weeks
- background: international mobile roaming market is seen as a cartel



INTUG special defences

- failing firm
- efficiency gains
- it is considered more important to get innovation than lower prices:
 - so don't look at ability to control prices, but ability to innovate (attributes)
 - but very hard to assess incentives to innovate or withhold innovation
 - takes you into the US *versus* Microsoft case



INTUG European Commission

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- ... Two questions could be distinguished:
1. Whether innovation, having superior welfare effects, should be the focal point of competition policy instead of price competition, and
 2. Whether technological developments are increasing in pace, in general or at least in certain sectors, and if so whether this should lead to changes in current competition policy practice.



INTUG Prof. Mario Monti

I know more CEOs regretting discreetly that their deals have been authorised than regret that their deals have not been authorised

Financial Times 27 January 2003



INTUG bankruptcy

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- a relatively new problem
- KPN Qwest
- Worldcom
- Global Crossing
- firms coming out of bankruptcy without being broken up
- possible risk of cyclical bankruptcies, like the airline business



INTUG spectrum trading

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- extreme barriers to entry in both:
 - mobile telephony
 - Wireless Local Loop (WLL)
- operators are keen to reduce the number of market players
- will not be allowed to sell to one of the existing players
- instead they are trying to divide it up equally amongst all players
- this blocks all subsequent market entry



INTUG Asian tiger question

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- no mention of competition authorities in accounts of Asian economic growth
- did competition policy play a role in growth?
- did its absence play a role in its downfall?



INTUG conclusions

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- distortions in financial markets hit telecommunications very badly
- consolidation is likely to be as bad as other “strategies” devised by the operators
- competition policy is a *national* means to control excessive consolidation
- merger approval is complex in telecommunications, often played as politico-regulatory game
- it is very hard to assess arguments about the ability and willingness of market players to innovate



INTUG thank you

Ewan Sutherland

International Telecommunications Users Group

Boulevard Reyers 80

B-1030 Brussels

+32.2.706.8255

<http://www.intug.net/talks.html>

