



European Commission

# Competition

Merger Control Conference 2011

IBC Legal

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## Recent Developments in EU Merger Control

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\*The views expressed are the speaker's and do not necessarily reflect those of  
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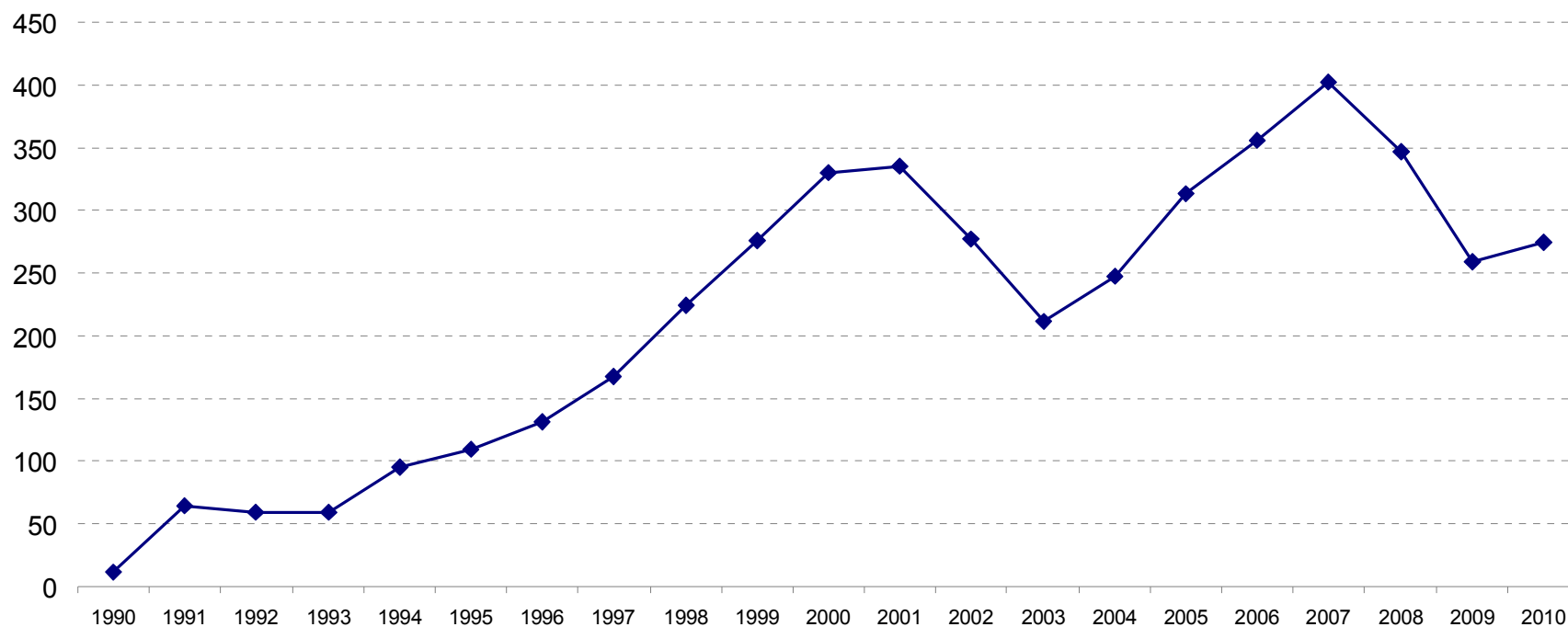


## Introduction

- A few statistics
- Review of last year's phase II cases
- Some issues to reflect upon



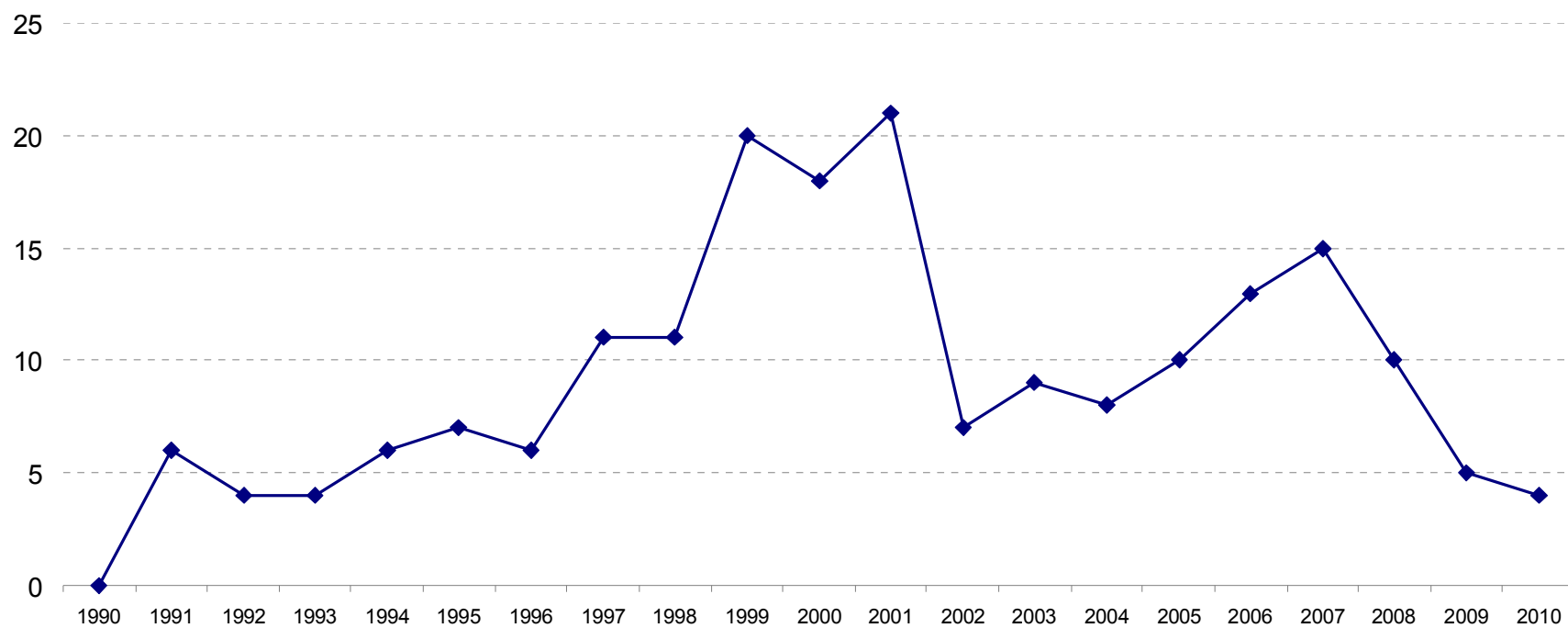
## Number of Notifications



January – May 2011: 128 notifications



## Number of 6.1 (c) decisions



January – May 2011: five 6.1 (c) decisions





## Last year's Phase II decisions

Wide range of outcomes:

- Prohibition (Aegean/Olympic)
- Unconditional clearance (Votorantim/Fischer)
- Clearance with remedies post SO (Unilever/SaraLee)
- Clearance with remedies without SO (Syngenta / Monsanto)



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## Aegean/Olympic





## The parties

- Aegean and Olympic are the only two scheduled carriers active in Greece
- Olympic:
  - **Olympic Airways** (flag carrier) created in 1957
  - Restructured as **Olympic Airlines** in 2003
  - State-aid cases (latest in 2008)
  - Privatised in 2009 and sold to Marfin to become **Olympic Air**
- Aegean:
  - Created 1987
  - First scheduled flights in 1999
  - Currently the largest airlines in Greece
  - Member of Star Alliance as of June 2010

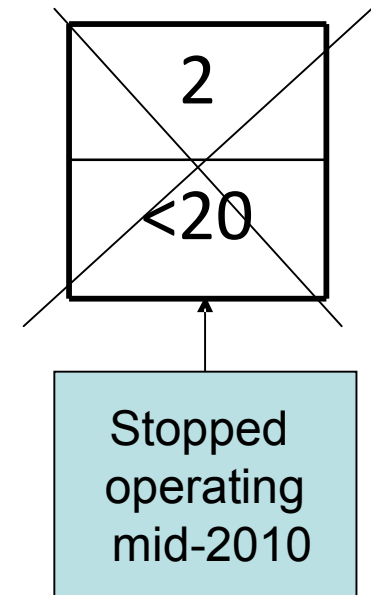


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Planes	33	32
Daily flights	195	>200
Domestic routes on which they currently compete	18 routes	
International routes on which they currently compete	10 routes	

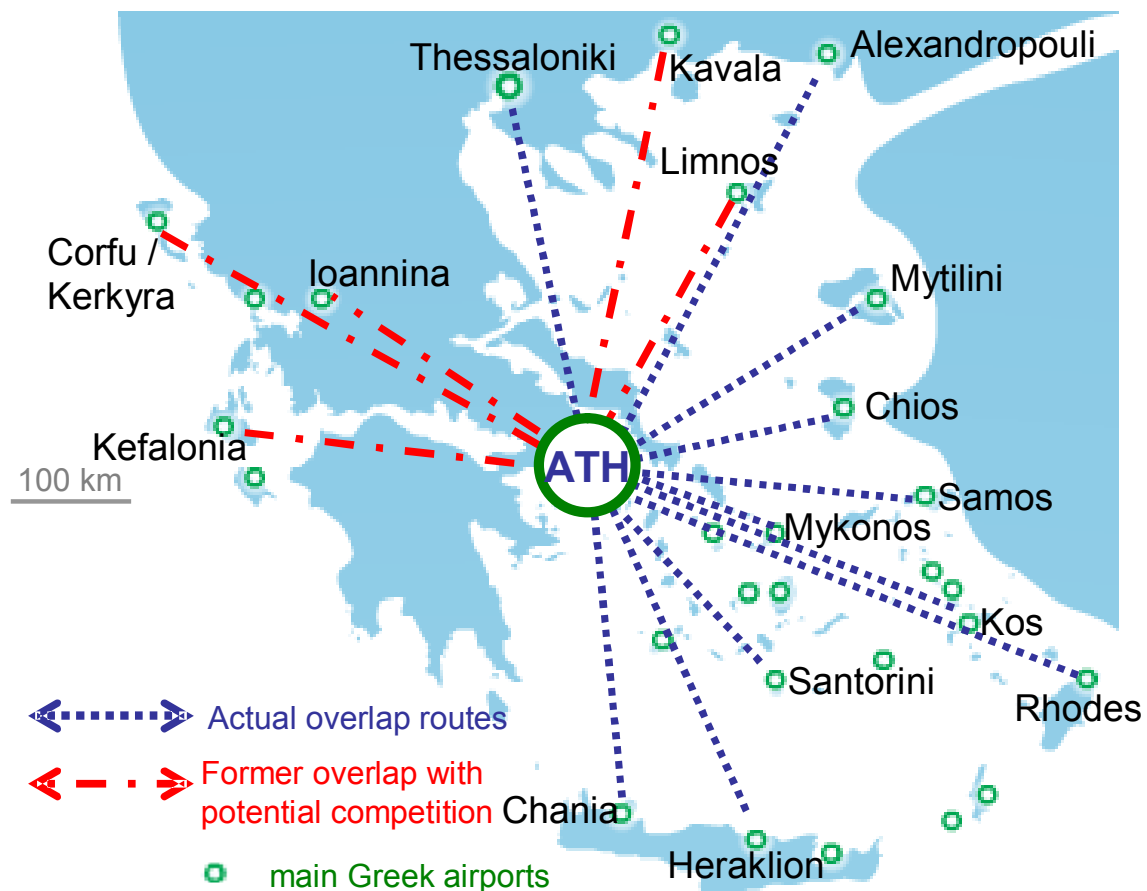




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## Some geography....





## Intermodal Competition?

- The parties argued that on most routes, customers actually do have a choice of using other means of transport (such as the ferry).

Route X - winter 2009-2010		
All passengers	<i>Without ferries</i>	<i>Including ferries</i>
Aegean	[40-50] %	[20-30] %
Olympic Air	[40-50]%	[20-30] %
<b>Combined</b>	<b>[90-100] %</b>	<b>[40-50] %</b>
Athens Airways	[0-5]%	[0-5]%
Anek	X	[50-60] %
Total	100%	100%



## BUT for passengers to switch from the plane to the ferry

- The ferries must be substitutable in the eyes of passengers on each individual route
- This depends on:
  - Travel duration
  - Quality of service (comfort level, delays etc.)
  - Availability of service (number of connections per day, etc.)

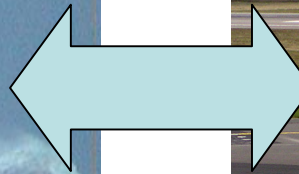




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## Substitutable ?







## Travel time

From Athens to:	Mykonos	Santorini	Samos	Chania	Rhodes
By Plane	2:30	2:55	3:25	3:20	3:35
By Ferry	2:30	5:25	8:45	8:30	12:00

Almost  
twice  
as long!

More than  
twice  
as long!!

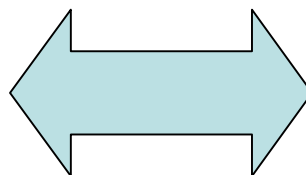
More than  
three times  
as long!!!



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## Substitutable ?





## Market investigation

- Travel time differences
- Frequency differences
- Price differences
- Differences in the pricing strategy of ferries and airlines
- Extent to which ferry competition is monitored by airlines



## Conclusion on intermodal competition

- Ferries are only distant substitute to planes on Greek routes due to objective characteristics
- Customers are unlikely to switch to ferries in case the merged airline increases prices by 5-10%
- The merger would eliminate the close competition between two airlines



## Entry?

No clear threat:

- Need for a base at Athens Airport (high airport charges discouraging such entry)
- Brand recognition





## Remedies?

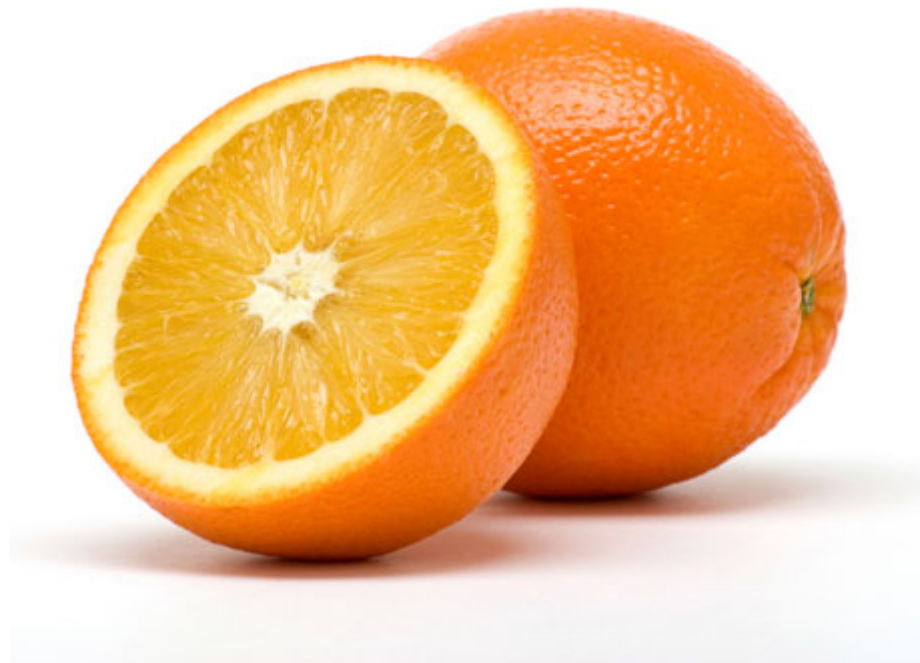
- Traditional airlines remedies offered (slots, frequent flyer program,...)
- Difference with other airlines cases: slots are not a scarce resource in Greece (ATH airport has more than half of its capacity available)
- Remedies not sufficient to trigger entry on the Greek domestic market



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## Votorantim Fischer



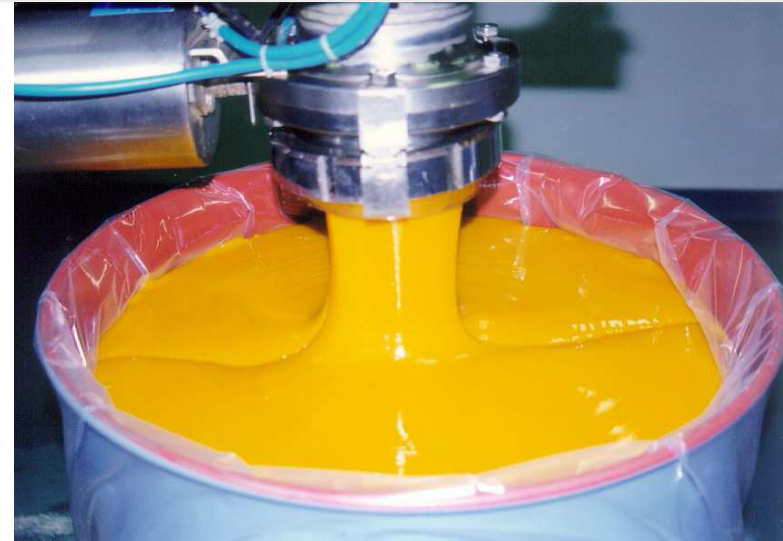




## A merger at the upstream level

Main players:

- Votorantim/Citrovita + Fischer/Citrosuco [40-45]%
- Cutrale [20-30]%
- LDC [10-15]%
- Others – some European in NFC

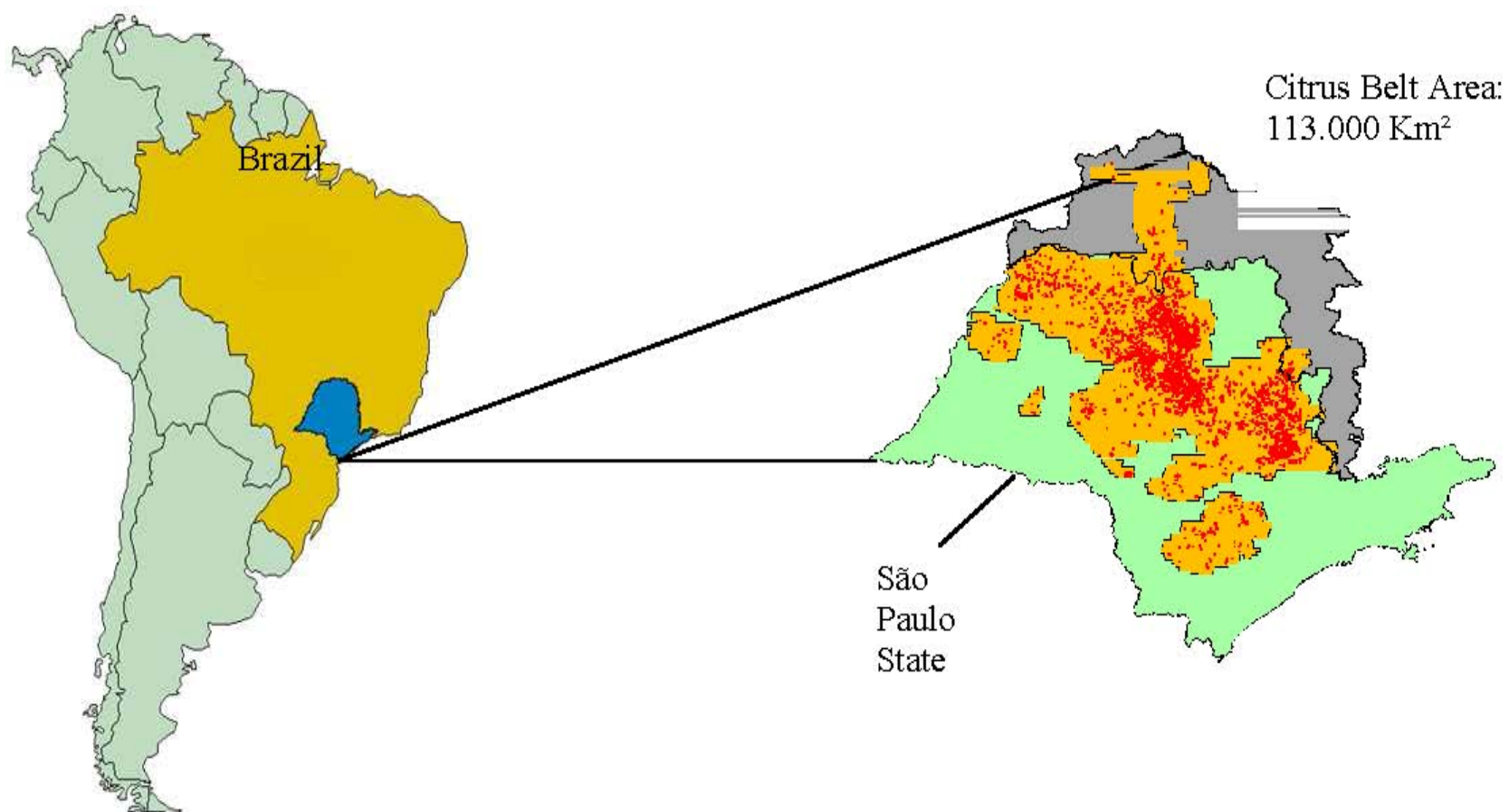


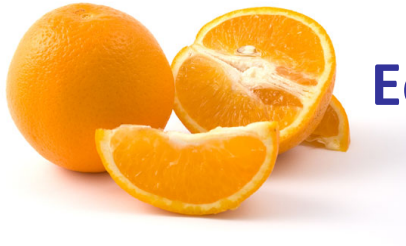




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## Economic analysis submitted by the parties



- Submission from the parties' economists arguing that other fruit juices, and in particular apple juice exerts a significant competitive constraint on orange juice
  - correlation/stationarity analyses
  - estimation of own- and cross-price elasticities at the retail level
- This analysis was not considered conclusive because of its lack of robustness.
- Apple and orange juice were considered to be in different markets



## Establishing a theory of harm (1)

### 1. How does the competition between orange juice suppliers take place at the customer-level?

- Detailed data were collected from the parties and their competitors on volumes, prices and margins at the customer level.
- A descriptive analysis of this data suggested that there are large price variations among customers, and that there is a lot of switching and multi-sourcing by customers.





## Establishing a theory of harm (2)

### **2. How important are capacity and production decisions in this market?**

Detailed data were collected from the parties and their competitors

- Disaggregated data on capacity utilisation and orange procurement (e.g. distance from plant)
- Production and capacity data at high frequency (i.e. monthly) to thoroughly check possible bottlenecks.

➤ Purpose was to assess the impact of a unilateral output restriction by the parties (and the ability of competitors to expand in such a case).



## Outcome

- Based on both qualitative and quantitative analysis, it was considered that the transaction was unlikely to lead to a SIEC.
- No Statement of Objections was issued.







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## Unilever / SaraLee





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## Parties' main deodorant brands



Sara Lee



Unilever



- Deodorants are a differentiated product
  - ✓ Format (stick, roll-on, aerosol)
  - ✓ Gender (male, female, unisex)
- National markets, with combined shares in 35-70%, overlap 3 to 15%
- 4-5 remaining competitors, PL generally very small
- Some parties' brands interacting strongly





## A variety of evidence

The Commission completed its market investigation with significant evidence based on:

- Internal documents review
- External market research sources (consumer panels, switching analysis, ...)

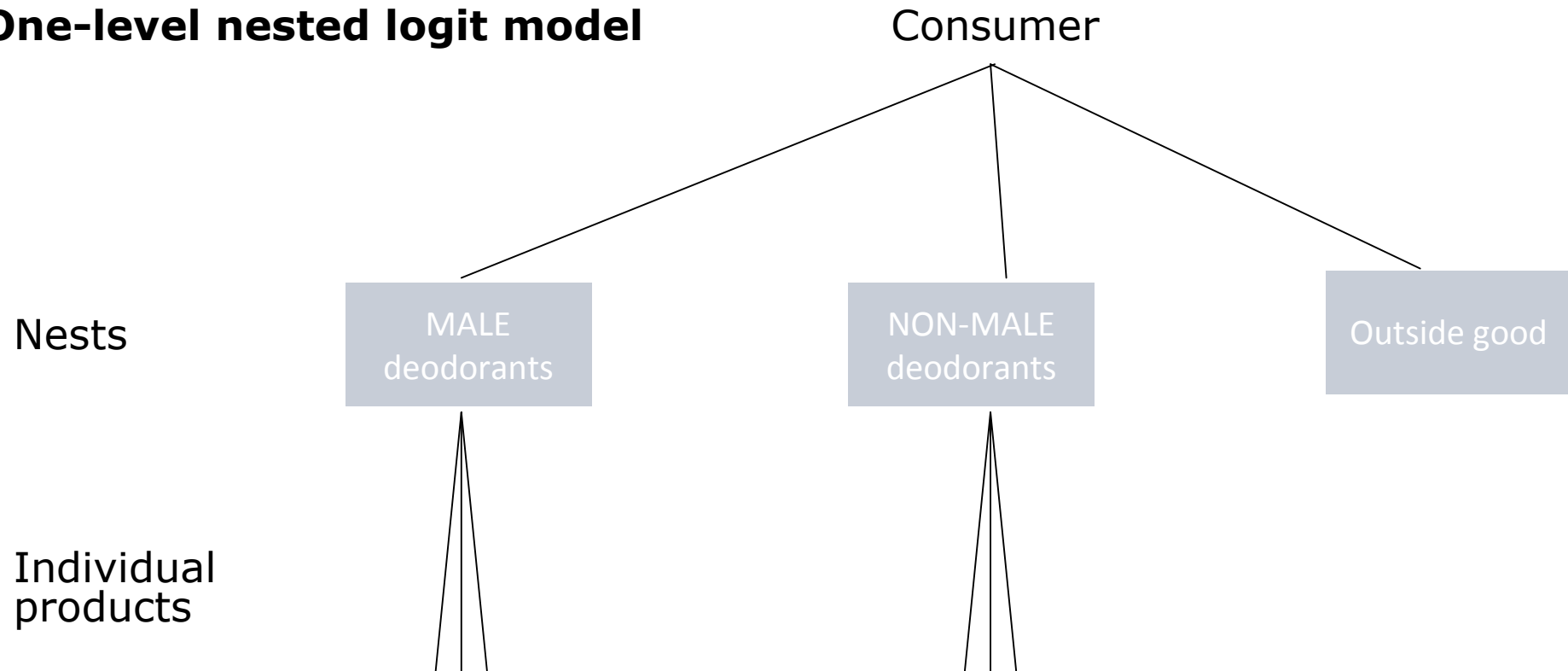


## ... and econometric analysis

- The Commission estimated one- and two-level nested logit models for deodorants, with nests for male and non-male deodorants, and sub-nests depending on whether the deodorant is presented as skin friendly.
- With the estimated elasticities, the Commission simulated the price impact of the transaction.

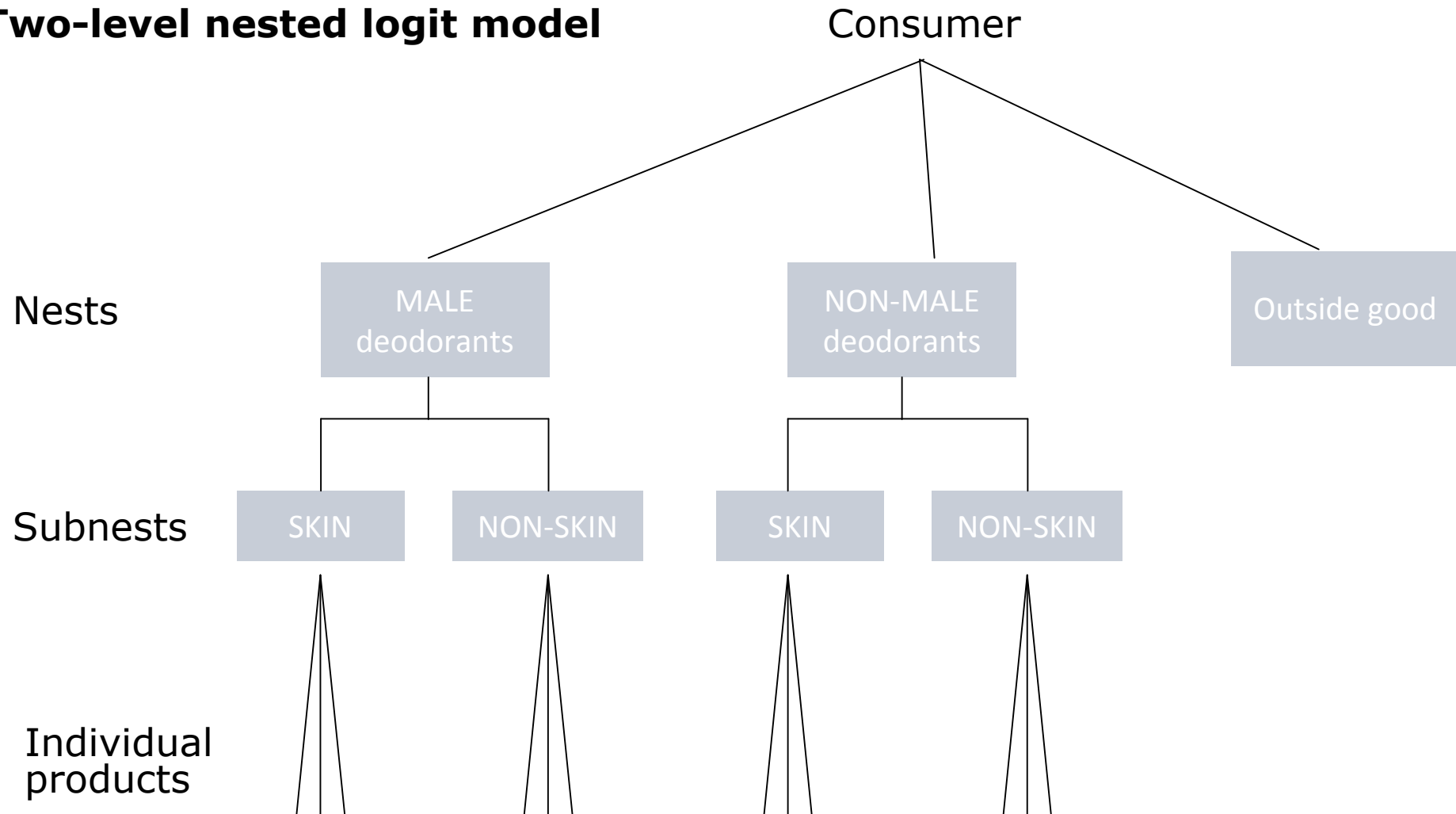


## One-level nested logit model





## Two-level nested logit model





- The Commission found overall deodorant price increases of up to 5% depending on the country (in the absence of efficiencies), with generally higher price increases for non-male deodorants (higher price increases were also presented at the brand level).
- The overall required compensating efficiencies were in the range of [5%-25%] depending on the country and specification.



## Outcome

- Divestment of Sara Lee's Sanex brand and related business in Europe.





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## Syngenta /Monsanto's sunflower seed business







## The deal



- Covers all assets linked to the global sunflower seed business of Monsanto.
- The main purpose of the transaction was for Syngenta to gain access to Monsanto's Germplasm (genetic seed material available for breeding)





## Trading of sunflower varieties

- Defined as an (upstream) product market.
  - Allowed to capture the effects of the transaction on innovation (continuous development of new and better seeds)
- EEA-wide in scope.
  - Examination of the effect of the merger beyond the referring Member States (Spain and Hungary)





## Commercialisation of sunflower hybrids

- Defined as a downstream market
- Assessment of closeness of competition through the presence in different segments
- Geographic market considered to be national





## Competitive Assessment

### Main theories of harm:

- Vertical foreclosure (by reducing their trading activities the parties would foreclose downstream rivals).
- Unilateral effects on the Spanish and Hungarian market for the commercialization of hybrids.





## Outcome

- Balancing two imperatives in designing remedies:
  - Proportionality of remedies (competition concerns related to Spain, Hungary, and in the case of the upstream market, to the EU)
  - Viability of the divested business
- Divestment of Monsanto's hybrids commercialised (or under trial for registration) in Spain and Hungary + the parental lines used to develop these hybrids (and pipelines product)
- Asymmetric scope of the remedy package: extension of the territorial scope up to Russia, Ukraine and Turkey for those assets requiring long term R&D efforts to develop new products (i.e. new parental lines)





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## Some issues for reflection...







1. Market definition
2. Counterfactual analysis
3. Remedies
4. Demand estimation and merger estimation
5. Magnitude of the effects
6. The Ryanair/Aer Lingus judgment





## 1. Market definition

- Market definition is not the determining factor for assessing the effects of mergers of differentiated products:
- Examples:
  - Aegean/Olympic: time-sensitive/non time-sensitive passengers
  - Closeness of competition analysis in consumer goods (Unilever/SaraLee)



## 2. Counterfactual analysis

- Failing firm versus counterfactual analysis (e.g. Aegean/Olympic)
- What is the right counterfactual? How can it be established?





## 3. Remedies

### Brand splitting

- Between countries?
- Between product markets?





## 4. Econometric Analysis

Demand estimation and merger simulation in Unilever/SaraLee:

- The nested logit model imposes a strong structure on substitution patterns. In particular, it relies on the *Independence of Irrelevant Alternatives* assumption: switching within a nest is supposed to take place in proportion to market shares.
- Practical advantage: limited number of parameters to estimate.



## Key questions to assess such econometric analysis

- How well does the estimation fit the observed data (e.g. observed margins)?
- Does it allow sufficient flexibility to estimate the relevant substitution patterns?
- Robustness / choice of instruments

... and of course:

- Merger simulation cannot be seen in isolation – at best one piece of the puzzle.





## 5. Magnitude of the effects

- How much price increase do you need for SIEC?



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EUR 1,99





## 6. Ryanair/Aer Lingus Judgment

- In its judgment of 6 July 2010, the General Court upheld the Commission's prohibition decision in the Ryanair/Aer Lingus merger case.
- The Court conducted a detailed review of the economic evidence (within the Commission's margin of discretion). This appears clearly in the judgment's detailed discussion of the econometric analysis carried out in this case (cross-section regression, fixed effects regression, omitted variable biases, ...)
- The Court validated the process followed by the Commission in dealing with the various pieces of econometric evidence in this case.
- The Best practices on the submission of economic evidence codify DG COMP's practice since at least Ryanair/Aer Lingus, in particular concerning the interaction with the parties at various stages of the data gathering process and the development and cross examination of the various pieces of evidence.



## Conclusion

- Main focus on unilateral effects in this year's phase II cases.
- Importance of economic analysis:
  - for both differentiated products and homogenous goods
  - from key conceptual contributions to identify and test a theory of harm to sophisticated econometric work
  - ... by the Commission, the merging parties and third parties

=> need for early interaction on economic evidence!





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