

# **Non-horizontal mergers: A UK perspective**

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**(The views expressed here are my own and not necessarily those of the OFT)**

# Background

- **Criticism of past Commission NHM decisions**
  - Speculative and insufficiently evidenced
- **EC Non-Horizontal Guidelines (2007) emphasise**
  - lower likelihood of harm and greater likelihood of efficiencies in NHMs
  - importance of coherent story
  - limited role of Art82 to protect *ex post*

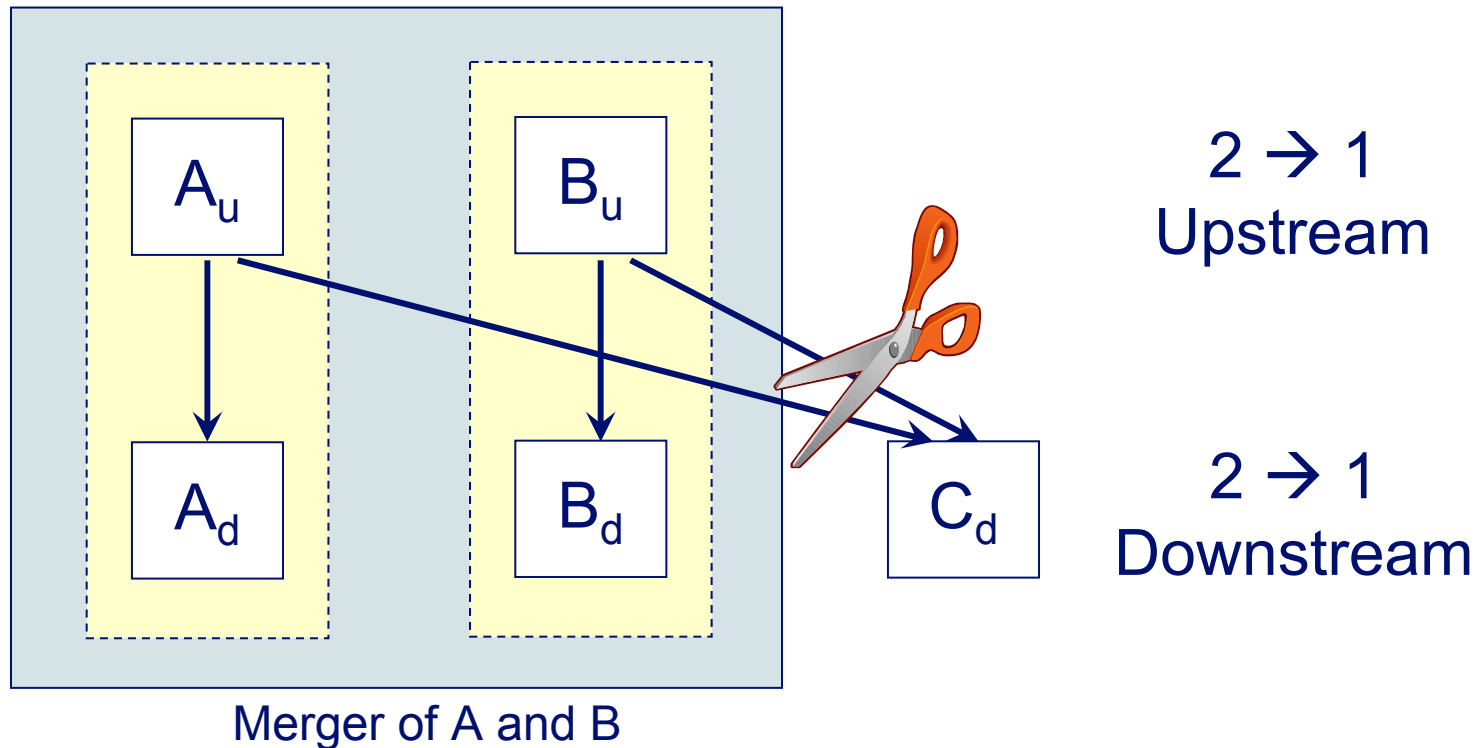
# A huge step forward, but....

- **...Is the burden now too high?**
  - Evidential requirements?
  - Potential for case-specific models?
- **...Do the guidelines cover all issues?**
  - Lessons from recent UK cases
  - Further thinking for OFT/CC joint substantive guidance, including recent academic roundtable

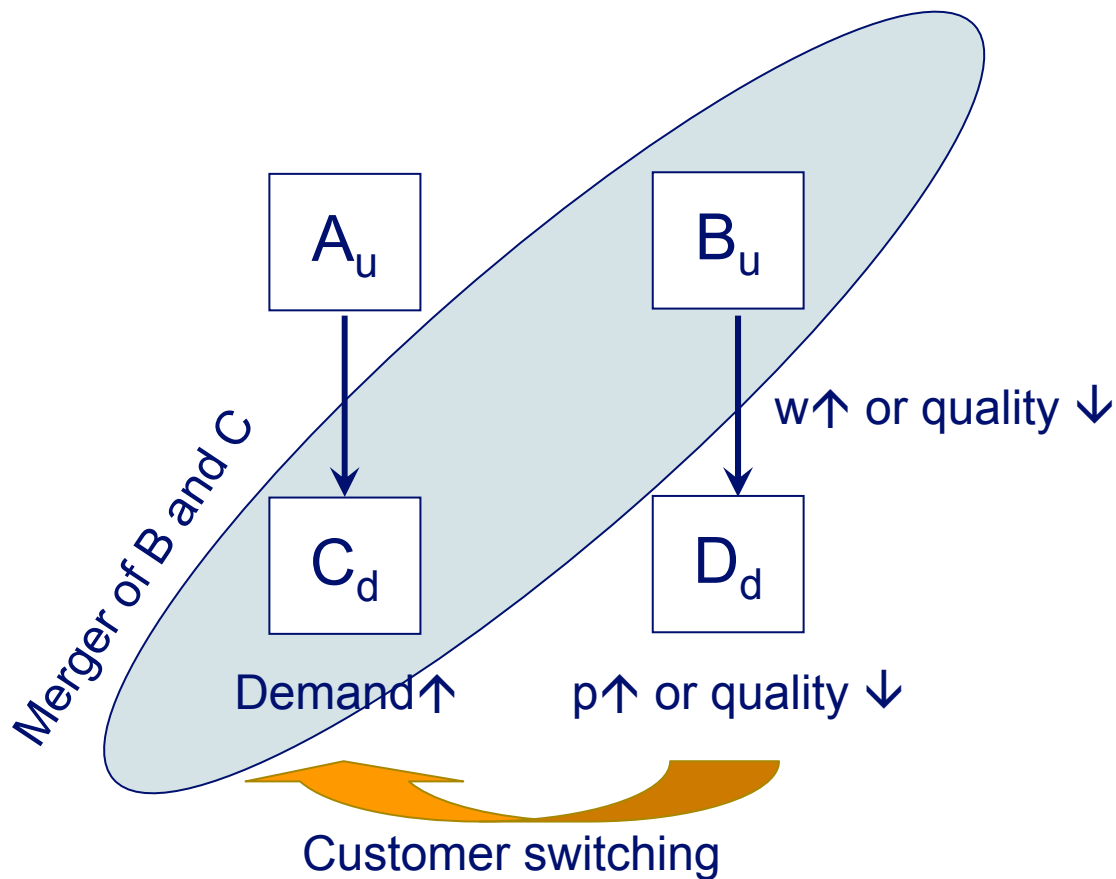
## Some possibly missing issues?

- **Non-horizontal effects of horizontal mergers**
  - BOC-Ineos, Kangaroo (ongoing)
- **Diagonal mergers**
  - EWS-Marcroft, (BSkyB-ITV?)
- **Market definition with indirect constraints**
  - Nufarm-AH Marks (ongoing)

# Non-horizontal effects of horizontal mergers



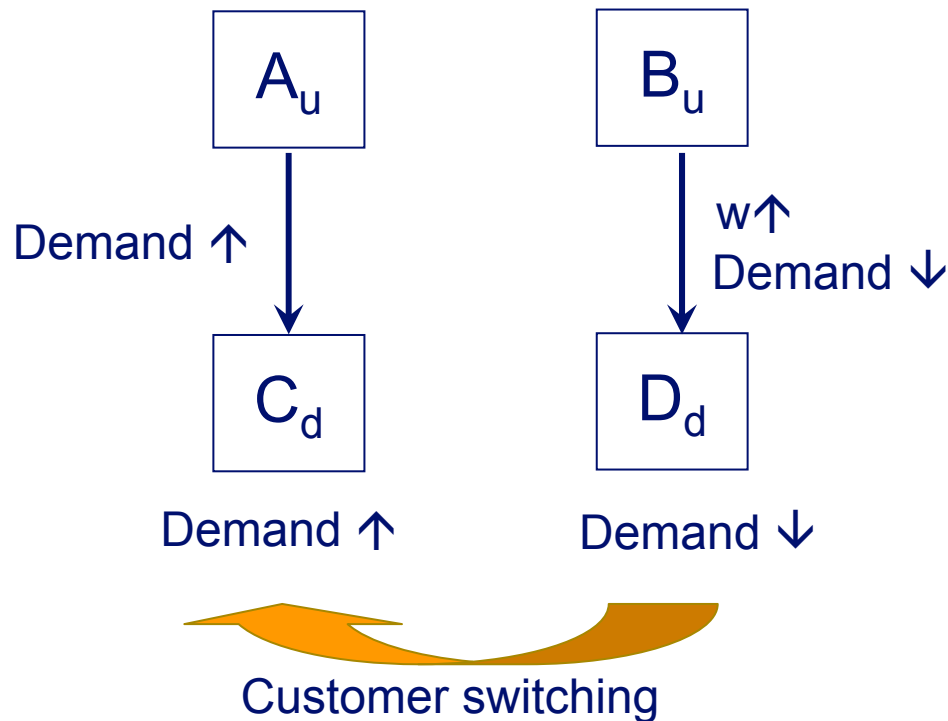
# Diagonal mergers



## Lessons for guidance?

- **Both of these effects arguably encompassed by existing guidance, which covers:**
  - input foreclosure
  - customer foreclosure
- **But worth highlighting:**
  - different implications for likelihood of both harm and efficiencies
  - strength of horizontal effect, even if no exit

# Market definition and indirect constraints



## What next?

- **More cases:**
  - Forthcoming CC decisions on Kangaroo, Nufarm/AH Marks and BOC/Ineos
- **More empirical evidence:**
  - Forthcoming *ex post* evaluation of mergers includes 2 non-horizontal mergers
- **Draft joint OFT/CC substantive guidance**
  - Due out early next year

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