
*Economic Developments in Competition Law
CRA Conference, Brussels, 3 December 2008*

Mavericks in Merger Analysis

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EC cases mentioning 'Mavericks' in 2008

- ✦ Three cases consider 'maverick' analysis:
 - ✦ Rexel/Hagemeyer, 22 Feb 08, M4963, Art.6.2
 - ✦ TomTom/TeleAtlas, 14th May 08, M4854, Art.8.1
 - ✦ Rewe/Adeg, 23rd June 08, M5047, Art.6.2

- ✦ Also one #9 referral:
 - ✦ Heineken/S&N, 3rd April 08, M4999
 - ✦ *Note: I advised Irish Competition Authority on this case*

- ✦ And an honourable mention in Competition Policy Newsletter:
 - ✦ Thomson/Reuters, 19th Feb 08, M4726, Art.8.2

- ✦ And I have not checked since mid-November (also publication lag)

This is a growing phenomenon... ...though apparently never decisive

Maverick Mentions

	1990s	2000-03	2004-05	2006-08	2008 alone
Maverick	0	3	1	7	3
Mentions p.a.	0	1	1	2	3

Maverick Mentions per 100 cases

	1990s	2000-03	2004-05	2006-08	2008 alone
CD/CE mentions	0	11	10	29	60
Interventions	0	3	2	8	11
Decisions/10	0	2	2	7	11

What is a maverick?

- ✦ Firm with 'greater incentive to deviate from the terms of coordination...unusually disruptive and competitive'
 - ✦ US Horizontal Merger Guidelines
- ✦ **The** firm most likely to 'cheat' on coordinated behaviour
 - there is always a maverick (and only one) → this should be the entire focus of coordinated effects analysis
 - ✦ Baker; Baker & Shapiro
- ✦ **A** firm with exceptionally low costs or low discount factor
 - ✦ Ivaldi et al
 - ✦ A firm that has been a particularly aggressive competitor (in coordinated effects context) - Scheffman & Coleman

Other possible economic theories

- ✦ A firm which selects a more competitive equilibrium
 - ✦ The standard collusion model has multiple equilibria
- ✦ A firm which is 'untrustworthy' and prone to renegotiate
 - ✦ Farrell

...so there are possible differences in detailed economics

...but all relate to the analysis of coordinated effects

Is the Commission's Maverick analysis consistent?

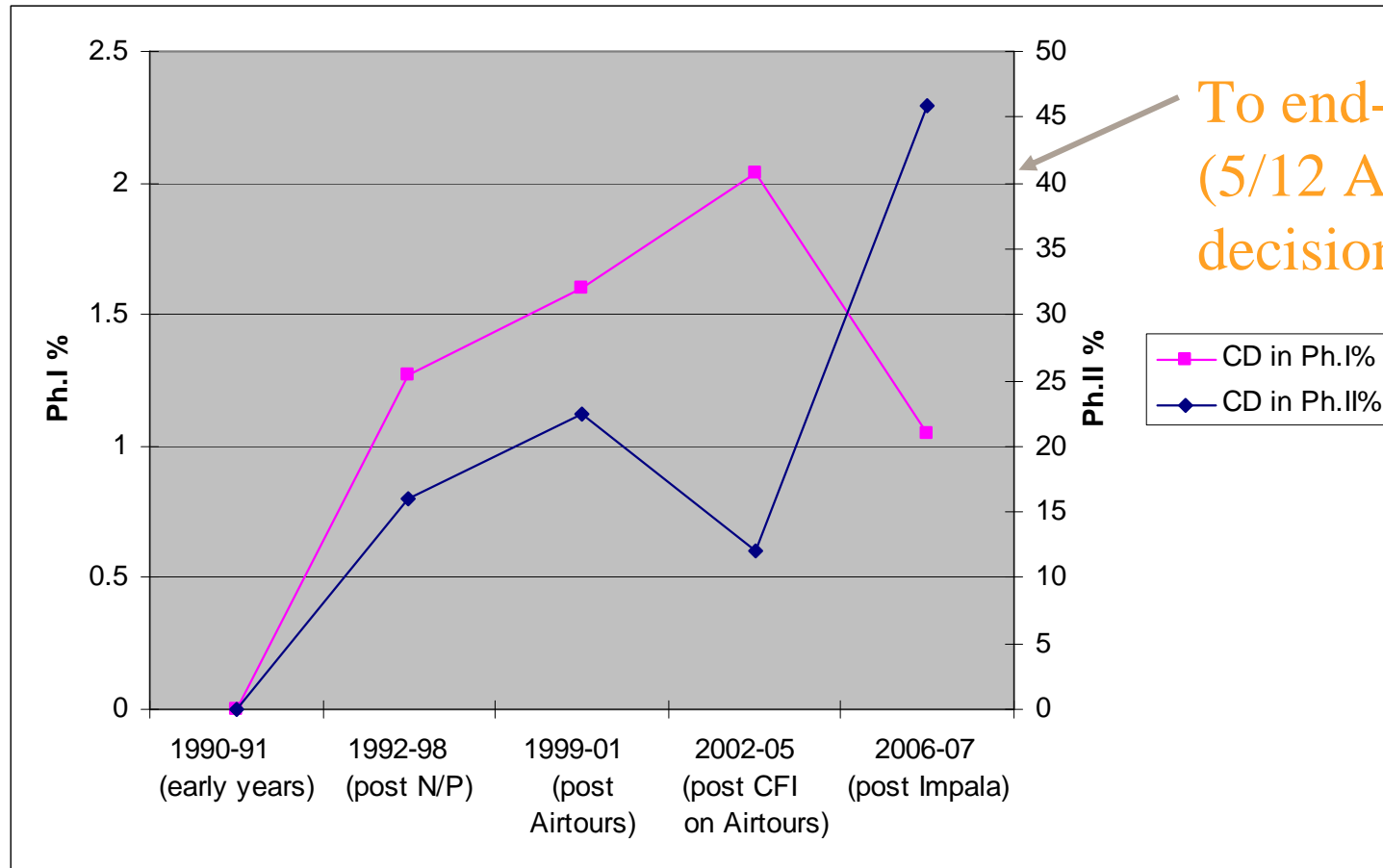
Context of Maverick Discussion

	1990s	2000-03	2004-05	2006-08	2008
Maverick	0	3	1	7	3
<i>context...</i>					
Coordinated	0	3	1	3	2
Unilateral	0	0	0	3	1
v. dismissive				1	

‘Unilateral Maverick’ discussions

- ✦ Rewe/Adeg, 23rd June 08, M5047, Art.6.2
- ✦ Travelport/Worldspan, 21st Aug 07, M4523, Art.8.1
- ✦ T-Mobile Austria/Tele.ring, 26th Apr 06, M.3916, Art.8.2

Trend incidence of Coordinated Effects analysis



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