



Reducing Governmental Impediments To Capital Mobility

ASEAN Consultative Forum on Competition

August 17, 2005

William Blumenthal

General Counsel

Competition Advocacy and Governmental Restraints

- Entry and pricing
- State aid
- Bureaucratization
- Anti-takeover legislation



Governmental Impediments to Competition: Dominance

- Prohibit misuse, not possession
- Permit aggressive conduct
- Beware presumptions
- Do not impede innovation or entry



Governmental Impediments to Competition: Compulsory Access

- Access requirements discourage:
 - Procompetitive behavior
 - Investment
 - Innovation and intellectual property
- . . . But cause disputes over terms



Governmental Impediments to Competition: Mergers

- Emerging substantive consensus
- Friction only sporadically
- Procedural issues more difficult
 - Most transactions not problematic
 - Systemic and transactional efficiencies
 - Risk of excessive cost and burden



International Competition Network and its Mergers Working Group

- 91 agencies from 81 jurisdictions
- Recommended Practices
- Substantial effort at conformity



ICN on Mergers: Nexus to Reviewing Jurisdiction

- Screen out transactions without appreciable effect
- Significant local sales or assets
 - Upcoming workshop on levels
- Generally two parties with nexus



ICN on Mergers: Notification Thresholds

- Clear, understandable, objective
 - Examples: sales and assets
- Not based on market shares
- Not based on transaction value



ICN on Mergers: Review Periods

- Reasonable timetables
 - Initial review within 6 weeks
 - Extended review within 6 months
- Reasonable flexibility
- Allow for early termination



ICN on Mergers: Initial Notification

- Minimal information to initiate process
- Sensitivity to disproportionate burden
- Flexibility



Conclusion

- Alternative approaches to convergence
- Strengthen regional networks under ICN umbrella
- ASEAN and ACFC as regional network

