



The EU's Market Definition Notice: GCLC Lunch

Nicholas Levy – February 15, 2012

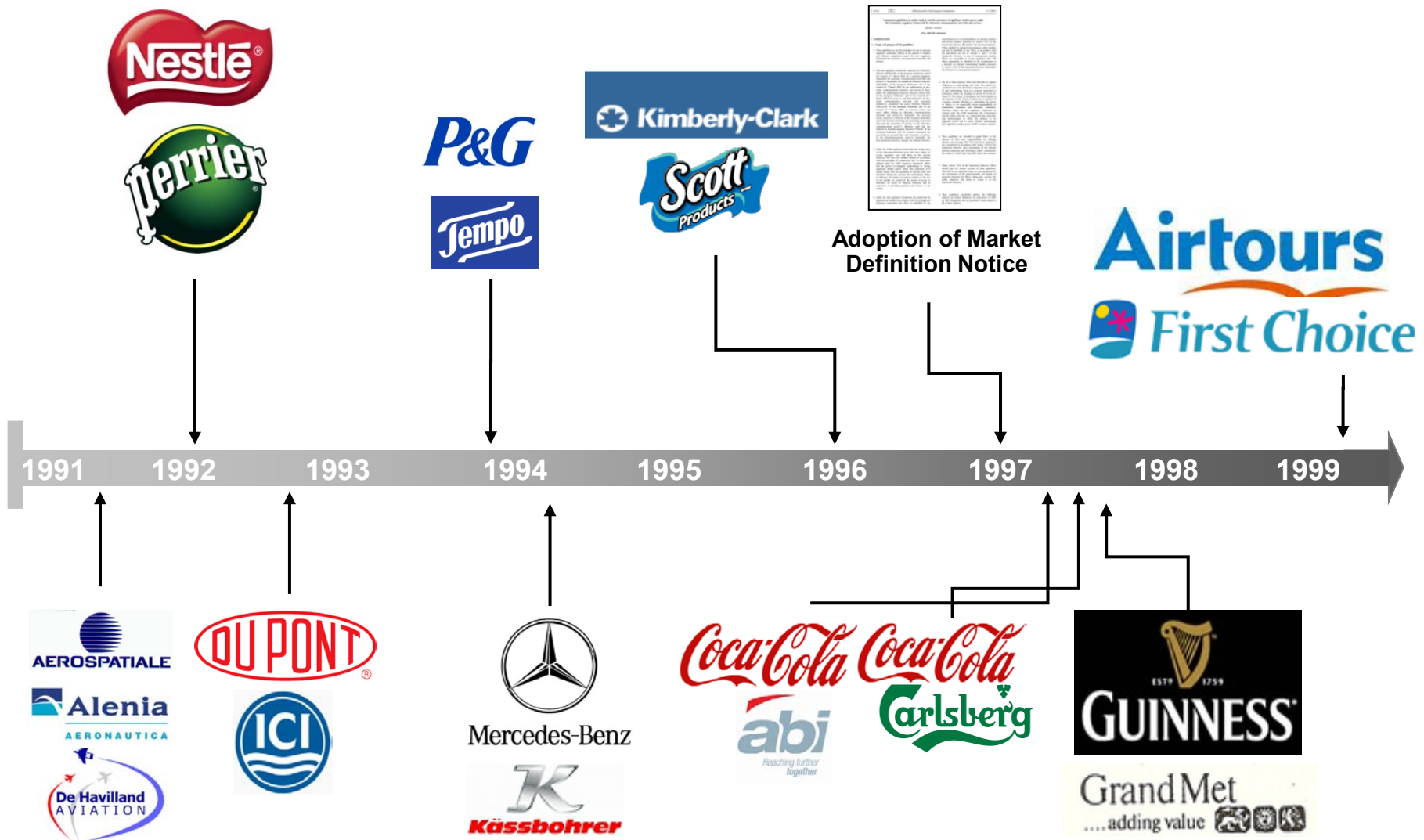
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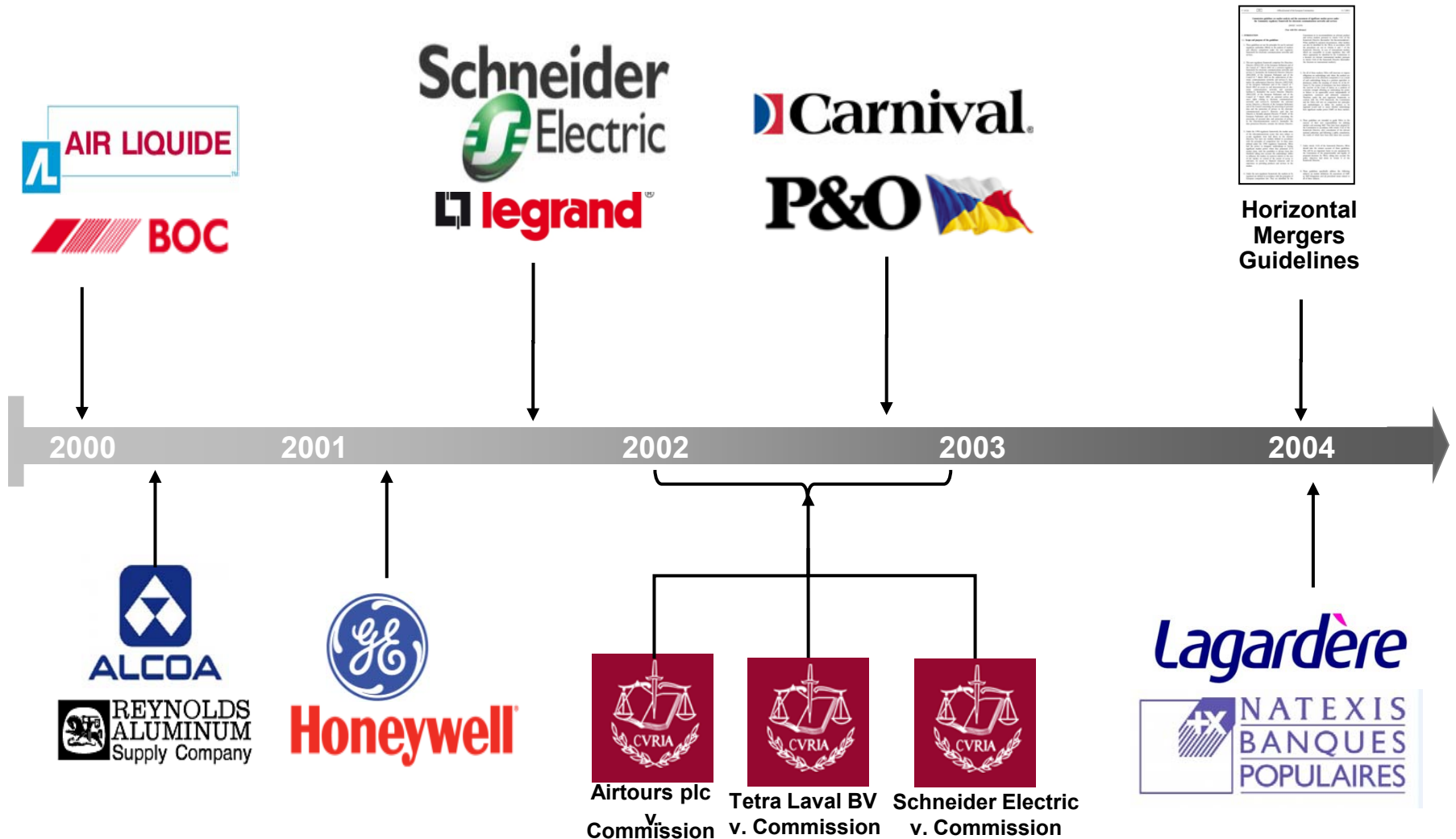
Principal Questions

- What impact did the Notice's adoption have in 1997?
- Does the Notice properly summarize the relevant principles and methodology?
- Have new techniques and legal developments rendered the Notice obsolete or out-of-date?
- Does market definition matter any longer?
- Does the Notice need replacing or updating?

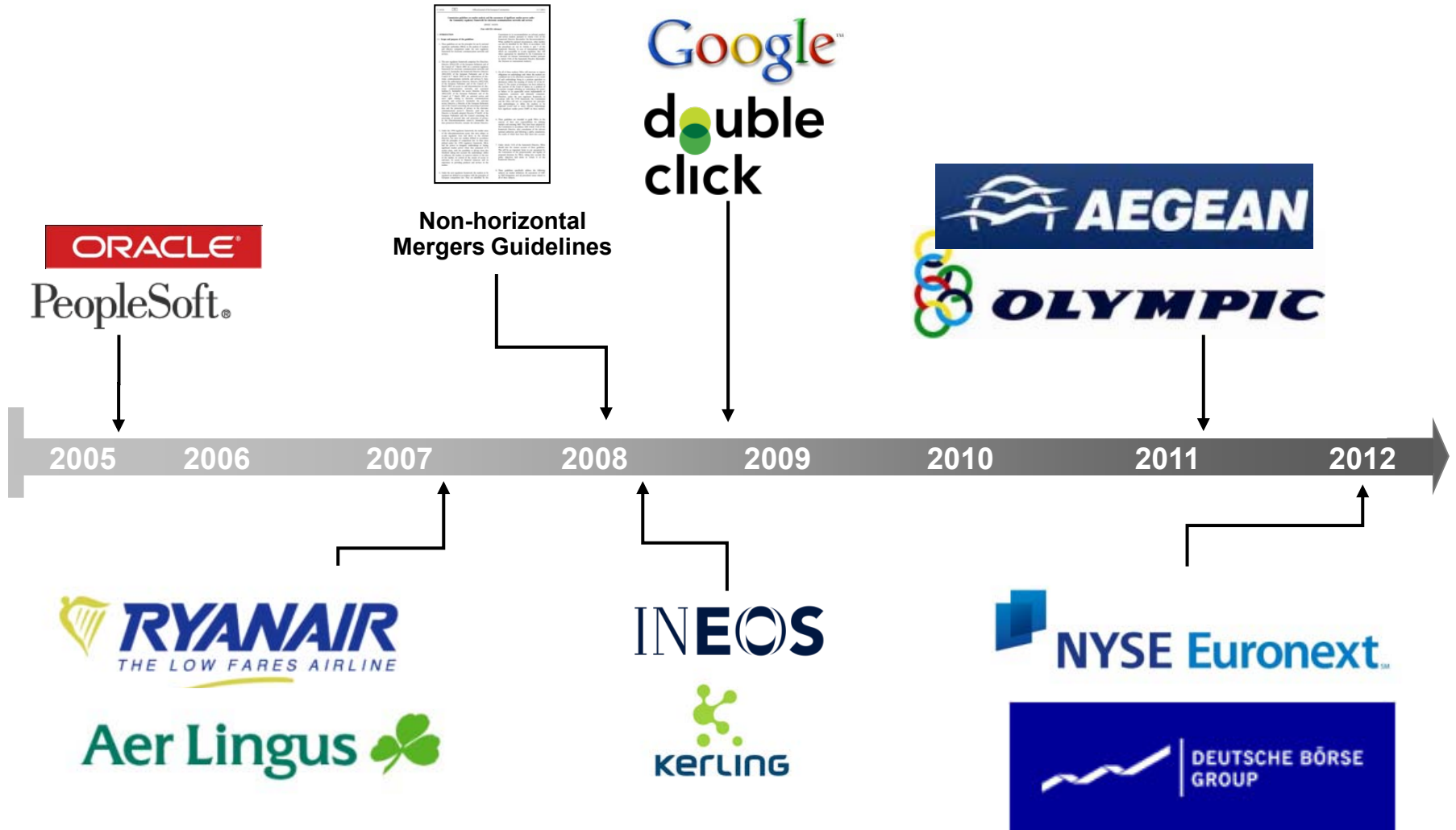
Evolution In The Commission's Practice (1990-1999)



Evolution In The Commission's Practice (2000-2004)



Evolution In The Commission's Practice (2005-2012)



Principal Observations

- The Market Definition Notice was instrumental in setting out in a clear and systematic way the analytical approach applied by the Commission to defining product and geographic markets:
 - It formalized recognition of the hypothetical monopolist test.
 - It elevated reliance on hard data and sound economics.
 - It began the process of integrating economists into EU merger control.
- It meets (and arguably exceeds) the standard demanded of any useful Notice or Guidelines:
 - It is clear, succinct, and well-written.
 - It is accessible and easy to apply.
 - It is balanced and uncontroversial.
 - It has stood the test of time.
- Applying the “*if it works, leave it alone*” maxim, there is no compelling need to update it, in particular given the increased importance attached to analyzing and measuring competition between merging companies.



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