Conceptual Framework: From Compliance to Risk Mitigation

Grounding M&A Review in Risk-Based Regulation Principles

COMPLIANCE REVIEW MODEL

- ✗ Focus on procedural compliance and threshold findings
- ✗ Applicant attempts to prove necessary or proper; affirmative benefit, burden on deal to justify itself
- ✗ Strict compliance analysis can subject agency to significant political and market discipline
- ✗ Static snapshot: review conditions at filing date only
- ✗ Success = procedural completeness of the record

→ *Risk Review Shift*

RISK MITIGATION MODEL

- ✓ **Identify the harms:** Define specific public injury types—service failure, rate shock, regulatory evasion, deferred capital.
- ✓ **Prioritize by severity and likelihood:** Concentrate review resources on high-risk-high-probability transactions; don't treat all deals equally.
- ✓ **<u>Compare paths, not just the deal</u>:** Explicitly model what happens under approval (conditioned or not) vs. the no-deal counterfactual.
- ✓ **Shift from procedural compliance to problem-solving:** Craft conditions that neutralize identified harms; monitoring tied to measurable outcomes, not procedural milestones.
- ✓ **Forcing strict compliance <u>assumes</u> rules are the public benefit**: Focus on the reality of the market or territory – strict compliance with general rules may detract from public benefit!

Public Harm Risk vs. Review Intensity

Allocating Regulatory Resources by Transaction Risk Profile

INTENSITY OF REGULATORY REVIEW

POTENTIAL PUBLIC HARM

STREAMLINE/ACCELERATED

Default - High Regulatory Risk Without Approval

Expedite approval; no or few conditions

e.g., Small distressed system acquired by creditworthy & competent applicant

INTENSIVE REVIEW

Default - High Regulatory Risk With Approval

Full evidentiary hearings; conditions + bonds + ring fencing+ regular compliance monitoring

e.g., Leveraged multi-system acquisition; unproven buyer competence; buyer obtaining first CPC in category;

TYPICAL/MONITOR

Default – Low Regulatory Risk with Approval

Potential for hearing; no or few conditions

e.g., Small well-run system owned/operated by family or retirement age person acquired by creditworthy & competent applicant

DEFINED INVESTIGATION

Default – Low compliance risk/elevated rate or financial risk

Scrutinize rationale; counterfactual deep-dive

e.g., Franchise roll-up; no infrastructure deficiency; buyer and seller financially healthy and competent