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Top Tips for Managing Regulatory Hurdles on Global Transactions



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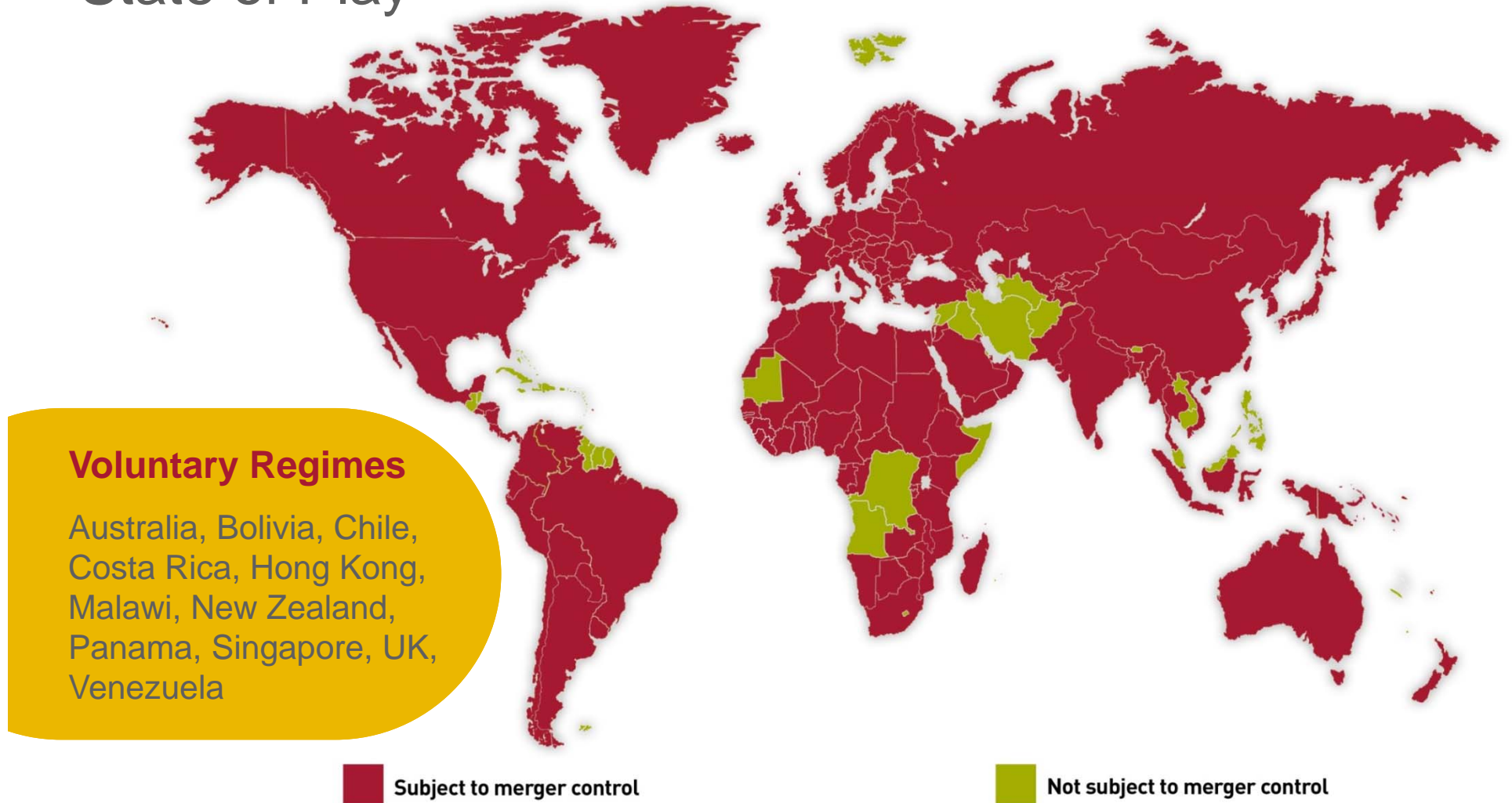
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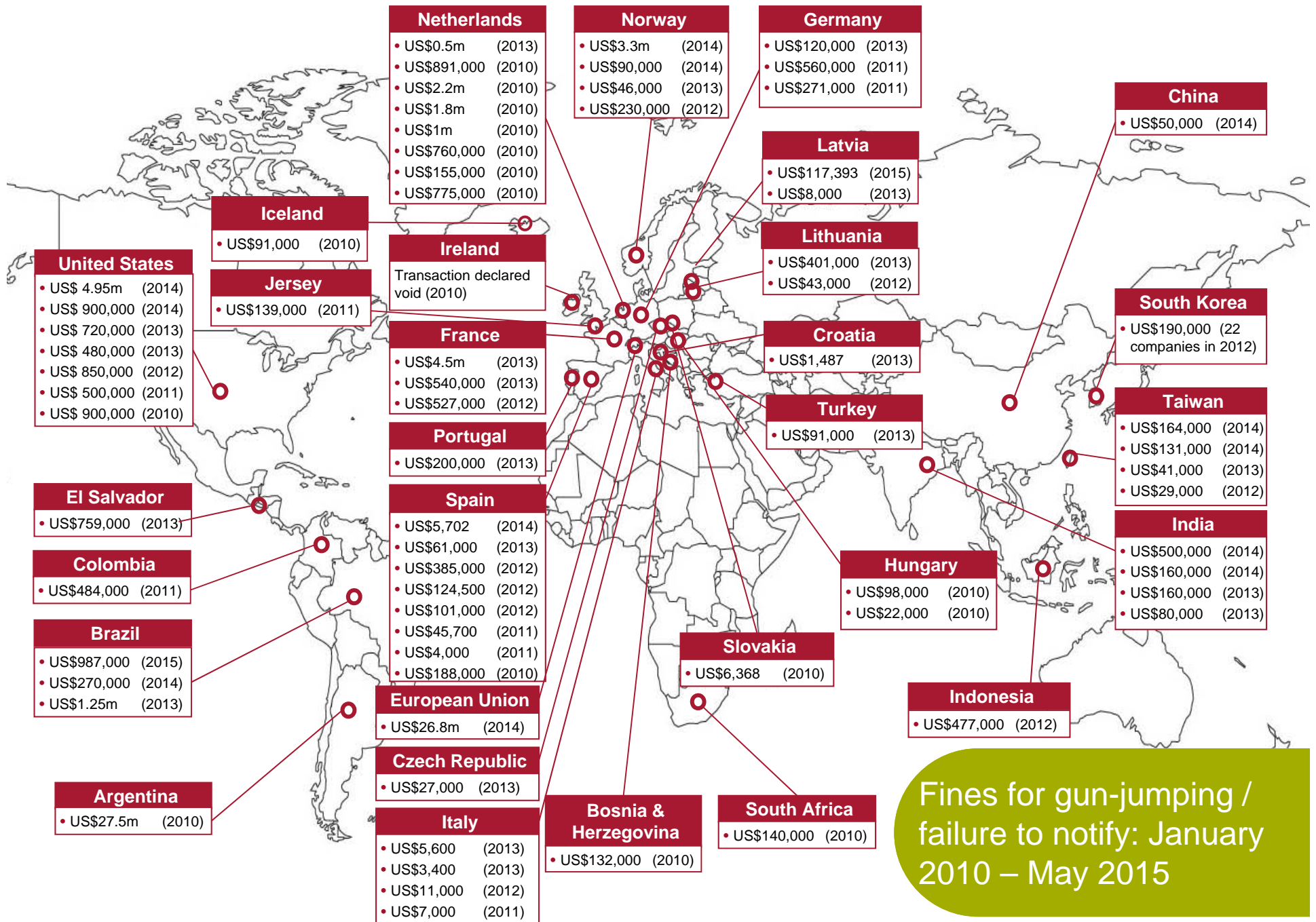


Steven Hill
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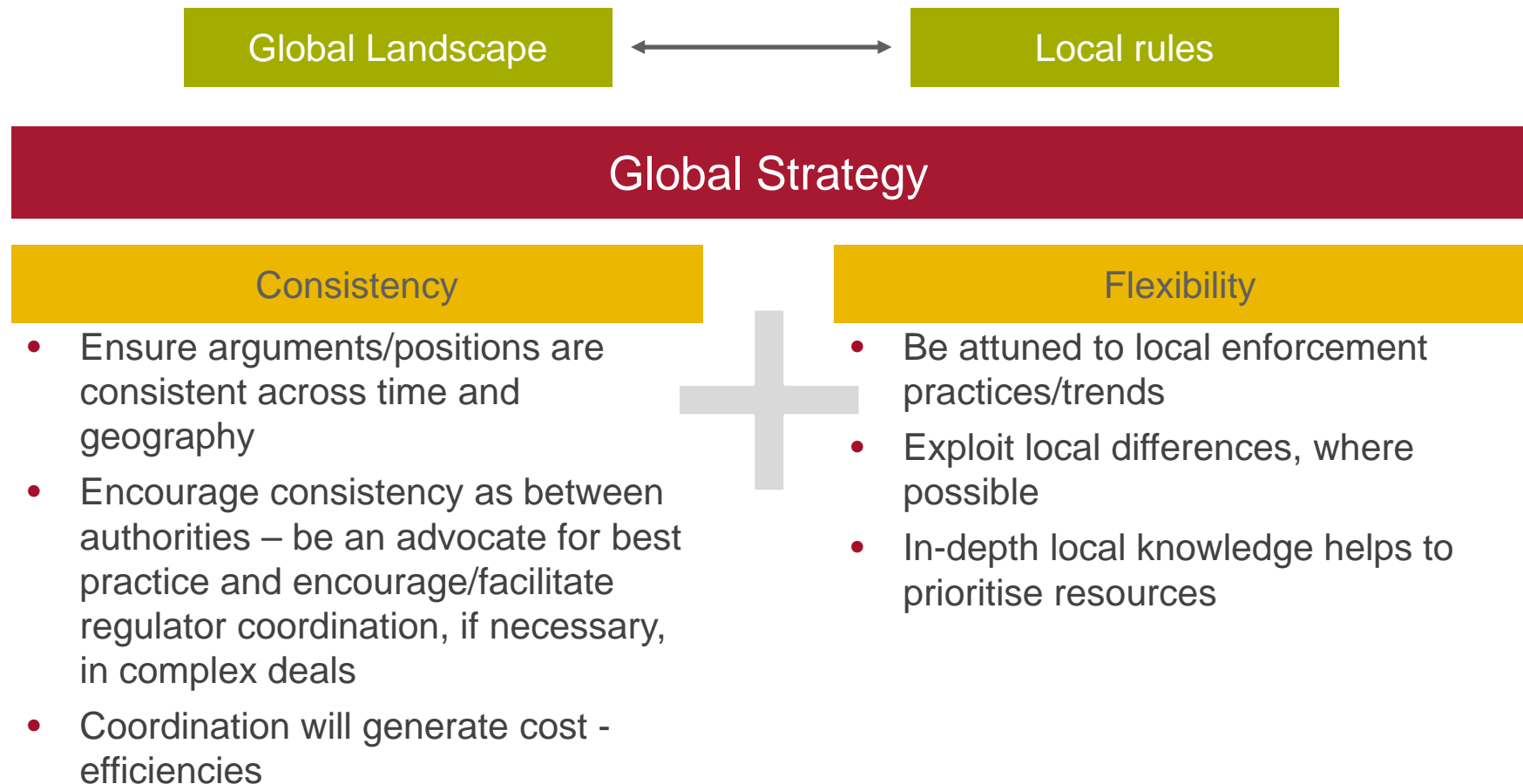
Global Merger Control

State of Play





Global Merger Control Strategy



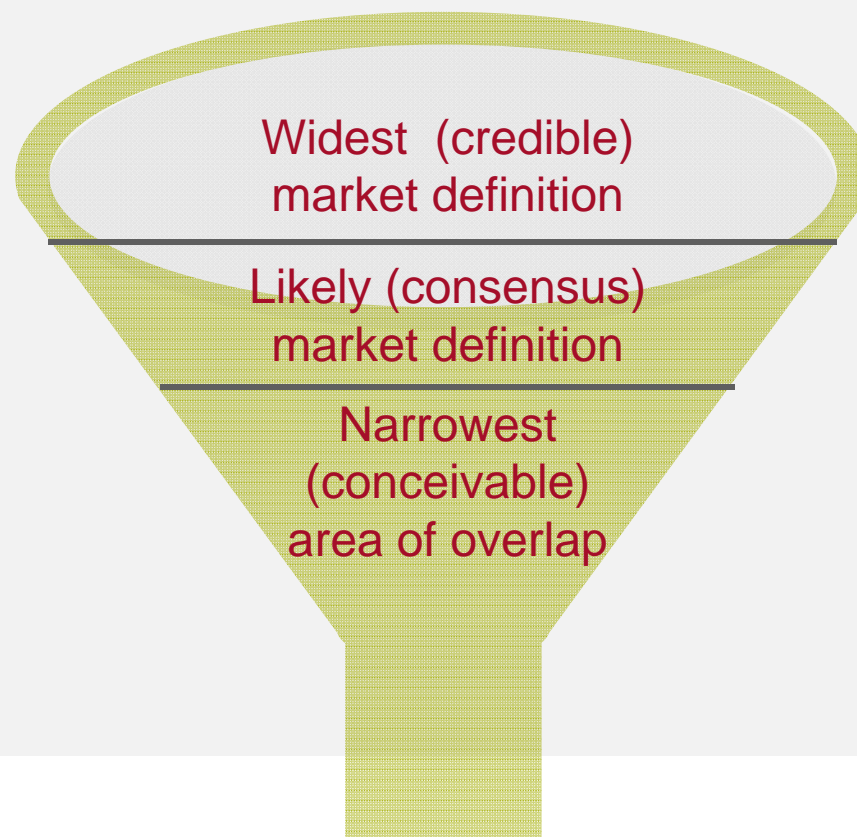
Global Merger Control and Market Definition |

Global Consistency, Locally Tailored

Be sure to address local (legitimate) variations

- Prior authority decisions
- Local market differences

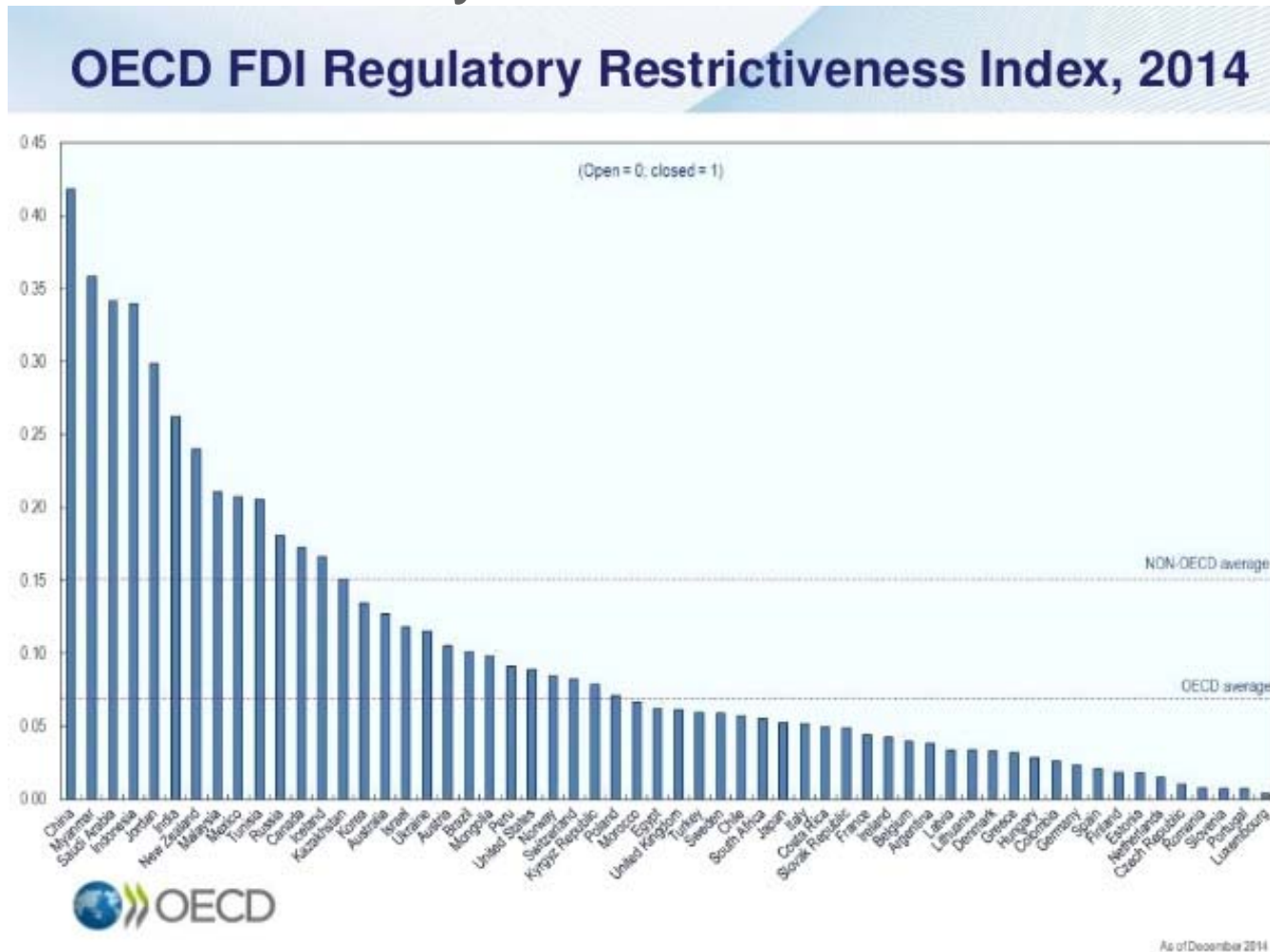
The “Funnel Approach” to Market Definition*



* Less scope of manoeuvre in regional/global markets

Global Foreign Investment Restrictions

Current State of Play



**Dataset: OECD FDI
Regulatory Restrictiveness
Index**

Series	Index total									
Type of restriction	All types of restrictions									
Year	2014									
Country	Australia	Canada	Chile	France	Germany	Italy	Japan	Korea	Mexico	Spain
Sector / Industry										
Mining & Quarrying (incl. Oil extr.)	0.088	0.16	0	0.009	0	0.02	0.075	0	0.1	0.045
Oil ref. & Chemicals	0.075	0.11	0	0	0	0	0.008	0	0.1	0
Total FDI Index	0.127	0.173	0.057	0.045	0.023	0.052	0.052	0.135	0.207	0.021

**Dataset: OECD FDI
Regulatory Restrictiveness
Index**

Series										
Type of restriction										
Year										
Country	Sweden	Turkey	United Kingdom	United States	OECD - Average	Non-OECD Member Economies	Argentina	Brazil	China (People's Republic of)	Colombia
Sector / Industry										
Mining & Quarrying (incl. Oil extr.)	0	0.05	0.023	0.1	0.037	..	0	0.025	0.328	0
Oil ref. & Chemicals	0	0	0.023	0	0.02	..	0	0.025	0.17	0
Total FDI Index	0.059	0.059	0.061	0.089	0.069	..	0.038	0.101	0.418	0.026

**Dataset: OECD FDI
Regulatory Restrictiveness
Index**

Series									
Type of restriction									
Year									
Country	Non-OECD Member Economies								
	Egypt	India	Kazakhstan	Malaysia	Peru	Russia	Saudi Arabia	South Africa	Ukraine
Sector / Industry									
Mining & Quarrying (incl. Oil extr.)	0	0.06	0.25	0	0.38	0.327	1	0.01	0.1
Oil ref. & Chemicals	0	0.092	0.05	0	0.05	0.067	0.17	0.01	0.1
Total FDI Index	0.062	0.263	0.151	0.211	0.092	0.181	0.342	0.055	0.116

Global Foreign Investment Restrictions

Important Takeaways

Energy Sector may be of Critical Importance

- Resource stewardship
- Energy security
- Critical infrastructure
- Source of revenue

Considerations

Is the investment target closed or severely restricted to foreigners?

Target in a sensitive sector?

Requirement (*de jure* or *de facto*) to team up with local investor?

Investment threshold for review?

Investor (in whole or in part) is a state-owned or controlled entity?

Timing for approval?

U.S. – CFIUS Reviews

Current State of Play

Covered Transactions, Withdrawals, and Presidential Decisions*					
2009 - 2013					
Year	Number of Notices	Notices Withdrawn During Review	Number of Investigations	Notices Withdrawn After Commencement of Investigation	Presidential Decisions
2009	65	5	25	2	0
2010	93	6	35	6	0
2011	111	1	40	5	0
2012	114	2	45	20	1
2013	97	3	48	5	0
Total	480	17	193	38	1

Covered Transaction by Sector and Year, 2009-2013					
Year	Manufacturing	Finance, Information, and Services	Mining, Utilities, and Construction	Wholesale, Retail, and Transportation	Total
2009	21 (32%)	22 (34%)	19 (29%)	3 (5%)	65
2010	36 (39%)	35 (38%)	13 (14%)	9 (10%)	93
2011	49 (44%)	38 (34%)	16 (14%)	8 (7%)	111
2012	45 (39%)	38 (33%)	23 (20%)	8 (7%)	114
2013	35 (36%)	32 (33%)	20 (21%)	10 (10%)	97
Total	186 (39%)	165 (34%)	91 (19%)	38 (8%)	480

Covered Transactions by Acquirer Home Country/Economy and Target Sector, 2011-2013					
Country/Economy	Manufacturing	Finance, Information, and Services	Mining, Utilities, and Construction	Wholesale, Retail, and Transportation	Total
Australia	1	3	3	0	7
Bermuda	0	0	0	0	0
Brazil	1	2	0	1	4
Canada	2	7	21	4	34
Cayman Islands	1	0	0	1	2
Chile	0	0	1	0	1
China	24	13	17	0	54
Denmark	0	0	1	1	2
Estonia	0	0	1	0	1
Finland	0	1	0	0	1
France	21	3	1	4	29
Germany	4	7	0	0	11
Hong Kong	1	2	0	0	3
India	3	3	0	0	6
Ireland	0	1	0	0	1
Israel	5	6	0	0	11
Italy	3	0	0	0	3
Japan	17	9	3	5	34
Korea	2	2	0	0	4
Kuwait	0	0	0	0	0
Luxembourg	1	0	0	0	1
Malaysia	0	1	0	0	1
Mexico	0	0	1	1	2
Netherlands	2	8	2	2	14
New Zealand	1	0	0	0	1
Norway	2	1	1	0	4
Qatar	0	0	0	0	0
Russian Federation	1	2	0	0	3
Saudi Arabia	1	1	0	0	2
Singapore	1	1	3	2	7
Spain	2	5	0	0	7
Sweden	3	7	0	0	10
Switzerland	8	1	0	0	9
Taiwan	1	0	0	0	1
United Arab Emirates	1	0	1	0	2
United Kingdom	21	20	3	5	49
United Kingdom & Germany	1	0	0	0	1
Total	131	106	59	26	322



Summary of Top Tips on Regulatory Hurdles

1. Sensitive Industry - Expect Scrutiny
2. Global Coordination and Consistent Messaging, Key
3. Be Alert to Local Sensitivities- Understand the Rules (and the Enforcement Agencies)
4. Prepare for the Long-Haul (and Deploy Expediting Strategies, where possible)
5. Understand the Underlying Businesses

EARLY AND FULL PLANNING ESSENTIAL