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Antitrust Economics – Catalyst for Convergence?

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^{*}The views expressed are those of the author and do not necessarily reflect those of DG COMP or the European Commission

Outline

- n “soft” convergence
- n “hard” convergence
- n the role of economics in convergence

n Horizontal Merger Control

- n approach is rooted in sound economic analysis of competitive effects and efficiencies
- n strong similarities with US Guidelines and methodology

=> soft convergence

n Non-horizontal Merger Control

- n effects-based, consumer
- n current internal review (pending cases)

=> soft convergence possible

Issue

- n role of efficiencies and how to account for them

n Abuse of Dominance (unilateral conduct)

- n current review of Article 82
- n more emphasis on effect-based analysis (rather than form-based)

⇒ soft convergence possible

Issues

- n exploitative vs. exclusionary abuse
- n dominance vs. integrated approach

Factors leading to different outcomes ("hard" convergence)

- n legal systems differ - administrative vs. judicial
- n markets may differ - the impact of globalization
- n differences in prior beliefs matter...
 - n the road to dominance
 - n dynamics of markets (entry, reactions by competitors, customers & consumers, technology, etc.)
 - n „speculative“ dynamic benefits vs. „sure thing“ static benefits
 - n competition as an institution (Hayek)
- n political/policy environment
- F** the role of economics.....

The role of economic analysis in the EU

- n DG Comp is an administrative authority that takes decisions and imposes fines
- n administrative system has certain advantages for more complex economic assessments and (especially) empirical analysis
 - n expertise
 - n reform and acceptance of economics
 - n opportunity for lawyers and economists to interact and work together
 - n internal reforms (panels, Hearing Officer, CE, etc.)
- n organizational differences to the FTC, DoJ

The use of economics at DG COMP

(a) economic analysis in cases – identifying theories of harm

- n The goal of a plausible theoretical framework in the context of a particular case is to come up with testable hypothesis concerning the theory harm => identification problem.
 - i.by checking assumptions
 - ii.comparative statics (simple correlations over time and/or markets, other type of reduced form evidence, as well as more structural and semi-structural empirical evidence)
 - iii.use of natural experiments (Example: identifying conduct)

(b) economic analysis for guidelines

(c) economic analysis as R&D

What kind of economic analysis?

- n theory vs. empirical – the role of theory
 - n emphasis on empirical evidence – the goal is identification
 - n best practice in empirical economic analysis
 - n critical mass => capabilities (“three reasons to kill it”)
 - n process: transparency, convergence, predictability vis-a-vis parties
 - n resource imbalances

Convergence in economic analysis?

- n final answer by economists in a given case may still be different....
 - n different situations
 - n economists can disagree (like lawyers) – both in theory and on empirical analysis & findings
- n opportunity: economics is a common language (same questions, same methodology) => facilitates soft convergence
 - n continue capacity building (DG COMP, ECN)
 - n strengthen cooperation and communication in terms of economic analysis

Conclusion

- ∅ soft convergence well advanced and is likely to increase
- ∅ despite similar guidelines and tests, outcome can not always be the same (legal framework, markets, institutional set-up, prior beliefs differ, economists do not agree)
- ∅ emphasis on “economics” reduces the likelihood of conflict