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Antitrust Economics: Catalyst for Convergence

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(*) The views expressed are those of the author and not necessarily reflect those of the European Commission

Overview

- n The Role of Economists and Economics at DG COMP
- n Recent Developments and Convergence
- n Perspectives on Convergence

The Role of Economics and Economists in EU Competition Policy

- n Commissioner Monti
- n Economists across DG COMP
- n CET
 - n EU Model (compare to FTC and DOJ)
 - n Resources => focus on certain cases & guidelines
 - n How we get involved.....
 - n Opinion and Final Advice
- n Economic debate: Seminars, EAGCP, etc.
- n Re-organization of DG COMP & Fresh Pairs of Eyes

The Contribution of Economics to Antitrust

- n robust economics

 - => simplicity, transparency, legal certainty, predictability

- n refining and re-assessing „per se“ rules

- n case-by-by case analysis (need to set priorities)

 - ⇒ Reduce the (expected harm) Type I and II mistakes (not the likelihood)



What “kind” of Economics?

- n The role of “theory”
- n What kind of evidence
[econometrics & simulations, reduced-form
evidence, facts, natural experiments]
=> Identification
- n Sectoral focus: DG COMP re-organization
- n Best Practice for empirical evidence

EU Merger Control

- n New test: whether a merger “would significantly impede effective competition, in particular as a result of the creation or strengthening of a dominant position”
- n Guidelines
 - n Distinction: unilateral (“non-coordinated”) effects and co-ordinated effects
 - n Consideration of efficiencies (open but cautious)
 - n benefit to consumers timely, and substantial, likely to be realized
 - n merger-specificity
 - n Verifiability
- n Economic approach: effects based, integrated approach
- n Focus on intermediate cases: reduce type I and type II errors

Overall Approach to EU Merger Control

- n Approach is rooted in sound economic analysis of competitive effects and efficiencies
- n Modern Economic Analysis has advanced
(Analysis of Competitive Effects, Empirical methods: Econometrics, Simulations, "reduced form" evidence)
- n Reduce potential Type I and Type II errors
- n Strong similarities with US Guidelines

=> convergence

Factors leading to different outcomes in Merger Control

- n Despite similar guidelines and test we will not necessarily always get the same outcome.
- n Differences in Legal Systems matter significantly....
 - Treatment of efficiencies - burden of proof
 - Judicial control
- n Markets may differ.....

Differences in Prior Beliefs matter...

- n The road to dominance
- n Dynamics of markets (entry)
 - n Reactions by competitors
 - n Customers & consumers
 - n Technology, etc.
- n „Speculative“ dynamic benefits vs. „sure thing“ static benefits
- n Competition as an institution (Hayek)

Convergence through economics...

We live in a Bayesian World.....

Prior Beliefs + economic analysis + new evidence => decisions





Abuse of Dominance

– some perspectives –

- n Approach to Dominance
- n Exclusionary Effect & Impact on Consumers
- n Efficiencies (pass-on)

=> internal working group.....



Different Abuses

- n rebates (Michelin II and BA)
- n predation
- n tying & bundling
- n refusal to deal

⇒ role of economics

⇒ convergence



Non-horizontal Guidelines

- n consumer approach & effects-based
- n efficiencies
 - ⇒ guidelines....(court cases pending: GE/HWL)
 - ⇒ role of economics & convergence



Conclusion

- n Convergence in outcomes
- n Convergence in process
- n Convergence on substance
 - n economics is a contributor
 - n potential to reduce political interference
 - n it is good for consumers and business

In sum, more “economics” reduces the likelihood of conflict.