



Ex post Economic Evaluation of European Competition Policy Webinar of 17.09.2020

November 2020

Objectives and organisation:

The objective of the webinar was to provide some insights on how ex post evaluation could be used to help improve competition policy design and enforcement. The workshop was organised as a roundtable discussion with five distinguished panellists. The moderator raised three questions to launch the debate.

Panel:

Speakers: *Luca Aguzzoni (DG COMP), Tomaso Duso (DIW Berlin), Fabienne Ilzkovitz (Université Libre de Bruxelles), Jan Bouckaert (University of Antwerp), Antonio Capobianco (OECD)*

Moderator: *Adriaan Dierx (DG COMP)*

Question 1:

Currently, ex post evaluations of competition policy interventions are primarily used for advocacy purposes. What could be done to make such evaluations more useful for competition policy enforcement?

Luca Aguzzoni and Tomaso Duso illustrated how the ex post economic evaluation of past cases could benefit future case design and enforcement.

Luca argued that the significant number of ex post evaluation studies done in the mobile telecoms sector had been helpful launching an open and evidence based discussion about the impact of mergers on prices and the quality of service offered. Nevertheless, he stressed that each merger case was unique and had specific features that needed to be addressed on a case-by-case basis.

Luca also showed on how ex post evaluation has become embedded in the day-to-day work on State aid control. Actually, following the State aid modernisation of 2014, EU Member States are freer to give State aid, but they are required to evaluate the effectiveness of this aid. Hence, now there are more State aid evaluation studies, which may help in ensuring that countries' State aid schemes become more effective.

Tomaso referred to a qualitative ex post study on UK competition authorities' investigations of mergers in digital markets, involving companies such as Amazon, Facebook and Google. The study had highlighted some gaps in the merger analysis, most importantly by failing to identify in the theory of harm complementarities between the services provided by the merging parties. In addition, the market definition might have been too narrow and the role of data was not considered sufficiently.

Fabienne Ilzkovitz confirmed that in her experience a case-by-case assessment was essential as each case had its own specific aspects. However, this made it difficult to arrive at general guidelines for competition policy enforcement. One solution was to increase the sample of decisions to be evaluated. Fabienne suggested using a more descriptive approach, for instance by investigating whether key assumptions made at the time of the decision had materialised ex post. This approach was simpler than implementing the counterfactual impact evaluation methods used in most current studies and could contribute to further developing an ex post evaluation culture within competition agencies through an increased involvement of their staff in the analysis.

Antonio Capobianco agreed with Tomaso that ex post evaluation could provide useful insights on the theory of harm. Validating the theory of harm could indeed be an alternative for investigating the price effects. Moreover, such validation could feed into the competition authority's legal arguments before the Court. Antonio added that an ex post assessment of the resource requirements for a case investigation would be useful for priority setting.

Jan Bouckaert stressed the need to embed planned ex post evaluations in the merger decision process. If the identification and collection of relevant information commences at the beginning of the process, evaluation will turn out to be much easier ex post.

A member of the audience raised the question whether ex post evaluations could be used to assess merger remedies. Tomaso replied that due to data issues it was very difficult to assess the impact of remedies in general, and behavioural remedies in particular. He recommended a greater transparency concerning remedies imposed and suggested introducing the requirement to provide data for ex post evaluation as part of the remedy package. Fabienne added that in counterfactual impact analyses one could not disentangle the effect of the merger from that of the associated remedies. She also referred to the Commission remedy study of 2005, which had shown structural remedies to be more effective than behavioural remedies. Finally, Luca cautioned against modifying remedies ex post. Rather, the focus of the competition authority should be on identifying good remedies ex ante.

Question 2:

Evaluations of competition policy rules and regulations are largely based on public consultations of stakeholders. How could such qualitative evaluations be complemented by more evidence-based assessments of the performance of competition rules and regulations?

Luca pointed out that there is no need to re-invent the wheel and that a lot could be learnt from the literature. For example, the evaluation and impact assessment for the ECN+ directive had exploited a published paper on competition policy and productivity growth co-authored by Tomaso. Similarly, the on-going evaluation of the vertical block exemption regulation used publicly available information.

Tomaso stressed the difference between the evaluation of institutions and the evaluation of policy rules and regulations. For the former, the OECD had used broad indices of the quality of competition and market regulation. For the latter, a more targeted approach was required. For instance, in the case of the evaluation of the regional aid guidelines, firm-level data on investment had been related to the rules applicable to different types of firms in different regions, allowing the identification of the causal effect through discontinuity design. This was a further illustration of the use of ex post analyses to improve the regulatory framework for competition policy.

Fabienne proposed four evaluation tools that could be used to complement public consultations: (1) meta-retrospectives combining multiple ex post evaluations, which had been used to show that merger remedies in the EU work well; (2) sector-specific evaluations of the impact of competition policy interventions on market functioning, which would allow exploring the interactions between different competition policy instruments in a

given sector and help increasing the complementarities between competition and regulation; (3) definition of the framework for ex post analysis at the design stage of policy reforms to facilitate the evaluation process; and (4) peer reviews of the strength of competition policy regimes and the performance of competition authorities.

Antonio added that the OECD regularly carried out formal reviews of competition rules in different countries and jurisdictions. These peer reviews also included an analysis of enforcement practice and performance. Currently, the OECD was constructing a database allowing for a quantitative assessment of competition policy enforcement. However, Antonio also emphasised that when assessing the performance of a rule or regulation, it has to be kept in mind that the enforcement of such rules depends on multiple features (e.g. culture). Hence, an identical tool may have a diverse impact depending on where it is used.

Jan stressed that a combination of qualitative and quantitative methods was required in order to obtain a more comprehensive and robust assessment of competition rules and regulations. He also stressed the importance of adopting a dynamic perspective when conducting ex post evaluations of merger decisions.

Question 3:

In light of the resource constraints of competition authorities, what are current priorities for ex post evaluation? On which policy instrument or sector should we focus our attention?

All the speakers agreed on the importance of data collection. Given resource and time constraints, having a clear and systematic data collection system in place at the competition authority level would help in saving time and money when it comes to ex post evaluation. Hence, it was essential to define already during the case investigation phase how the subsequent decision would be evaluated and what type of data would be needed. With the State aid modernisation of 2014, significant progress had been made in this respect in the area of State aid control. Challenges remained in the areas of antitrust and merger control.

Luca recommended making impact evaluations less time and resource consuming, for example by moving from quantitative evaluations of the price impact to qualitative assessments of market outcomes. This holds true in the digital sector in particular, where prices can no longer be used as a benchmark. Tomaso agreed that the digital sector was a priority. He suggested that the New Competition Tool be used to collect relevant information to help improve market functioning in this sector.

Fabienne made a distinction between priorities from an organisational perspective and a substance perspective. In terms of organisation, apart from data collection, the other priority is to have an independent ex post evaluation team, composed of both internal and external experts. In terms of substance, priorities include the development of ex post evaluations in the area of antitrust; the investigation of the non-price effects of competition policy interventions; the measurement of the deterrence effects of such interventions and the macroeconomic impact of competition policy. Finally, evidence may be brought to bear on how to deal with the current challenges of globalisation, digitalisation and Covid-19.

Antonio argued that it would be preferable to use the limited resources available to prioritise those cases from which important lessons could be learnt for the future. He added that there might be so few ex post evaluations in the area of antitrust because each case is so different, making it difficult to draw general lessons.

Jan stressed once more that ex post evaluations should be embedded in the decision making process. The information gained from ex post evaluations could be used, for example, to modify merger remedies that are shown to be ineffective or excessive.