Mergers after cartels: How markets react to cartel breakdown

KEYWORDS: tacit and overt collusion, mergers, long-term impact, recurrent events, survival analysis

BACKGROUND

- Anti-cartel enforcement is widely heralded as the single most important part of antitrust activity. But there have been only a few studies analysing how markets react to the elimination of cartels.

METHODOLOGY

- The authors approach cartel detection from a dynamic perspective by analysing what happens in markets in the years after a competition authority has detected a cartel. At issue is whether markets revert to competitive behaviour or whether firms find alternative ways of reinstating collusive equilibria (short of cartelisation) in the longer run.
- Data were collected on mergers, acquisitions and joint ventures between firms involved in those cartels for which the European Commission issued decision documents between 1990 and 2012. The useable sample is 84 cartels that were detected between 1984 and 2009.
- Three questions are posed:
    1. Was there more intense merger activity amongst the former cartelists in the years immediately following breakdown?
    2. Were certain types of cartel more likely than others to be followed by merger?
    3. Is there evidence that the competition authority intervened in those proposed mergers which were most likely to raise potential anti-competitive concerns, or is there evidence of deterrence of such mergers?
- The authors employ a novel application of survival analysis.

KEY FINDINGS

- The main finding of the paper is a confirmation that, after a cartel breaks down, typically, there is increased merger activity amongst the former cartelists.
- The increased merger activity post-breakdown is most pronounced in those cartels which are detected under leniency.
- A disproportionately high number of acquisitions are undertaken by the leading firms.
- The findings of the paper could be consistent with either of two explanations:
    - the efficiency explanation: cartel breakdown stiffens competition and this forces weaker firms to exit
    - the collusive explanation: with the cartel option denied, firms strive for tacit collusion via merger.
- Examination of changes in market shares caused by mergers suggests that both explanations might be at work in some markets. However, on balance, the investigation points towards the 'anti-competitive' explanation.

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POLICY ISSUES

- Findings shed light on the potential for competition authority intervention to exert a deterrence effect. Markets where post-breakdown merger activity is least pronounced or even non-existent tend to be highly concentrated with only a few relatively symmetric firms. This could be because second-best tacit collusion is already attainable without merger. But it could be that firms in such markets are deterred from proposing mergers which they know will be blocked. However, deterrence does not seem to have been effective in the subset of markets in which mergers did occur and which appears to have resulted in a structure where the leading firms have emerged as dominant.
- There is a potential fault-line in the use of size thresholds in merger control in that a sequence of relatively small mergers may have a significant deadening impact on competition, even though none of the mergers in itself seems significant. This possibility is particularly pronounced where markets themselves are small, as is the case for many cartels.

THE CCP

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