

The Assessment of Agreements for which Temporary Antitrust Immunity is Sought: Competition Authority's Perspective

October 2011

The Assessment
of Agreements
for which
Temporary
Antitrust
Immunity

CCP Policy Briefings

BACKGROUND

- Firms occasionally need to interact with one another and coordinate their actions in pursuit of greater profits and to avoid inefficiencies.
- Such behaviour is difficult, if not illegal, under competition laws which aim to protect effective competition in the market.
- One way of bypassing competition laws is to obtain antitrust immunity from the competition authority via an exemption application. The authority may either grant the application under specific conditions or decline it.

METHODOLOGY

- The author examines the attitude of the Dutch competition authority, the NMa, towards firms seeking temporary antitrust immunity for the period 1998-2004.
- A theoretical Bayesian decision framework is employed to derive the optimal enforcement rule for agreements for which ex ante antitrust immunity is sought.
- Narrative evidence on the legal and institutional background to cases is interpreted in the light of the theoretical framework.
- Various industry characteristics that the NMa took into consideration in reaching its final decisions are subjected to econometric analysis.

KEY FINDINGS

- Under the optimal decision rule, a decision to challenge a given exemption request is more likely if:
 - i. there is a weak likelihood that the evidence was produced by a pro-competitive, rather than anti-competitive, practice;
 - ii. the losses associated with a type-II error are high compared to the losses associated with a type-I error; and
 - iii. there are strong priors that an agreement is anti-competitive.
- The econometric results suggest it is more likely that concerted practices are seen as anti-competitive in industries regarded as more competitive and less concentrated.
- The results also suggest that, if advertising intensity is seen as a sign of vertical differentiation rather than the degree of monopoly power, then the NMa is more likely to identify an agreement as anti-competitive in industries with more asymmetric structures.
- The predicted probability of classifying an agreement as anti-competitive is calculated to be around 76%.
- The author concludes that the NMa, as a newly-established reputation-builder, might have over-reported and erred on the side of classifying non-serious coordination mechanisms as cartels. These cartels could easily be disciplined or dissolved under competitive market structures.

October 2011

The Assessment
of Agreements
for which
Temporary
Antitrust
Immunity

CCP Policy Briefings

THE CCP

The ESRC Centre for Competition Policy (CCP), at the University of East Anglia, undertakes competition policy research, incorporating economic, legal, management and political science perspectives, that has real-world policy relevance without compromising academic rigour.

FOR MORE INFORMATION

The full working paper (11-15) and more information about CCP and its research is available from our website: www.competitionpolicy.ac.uk

ABOUT THE AUTHORS

- Faith Cemil Ozbugday is a Researcher at Tilburg School of Economics and Management.