

Are all mergers equally delay-averse?

BACKGROUND

- Delayed merger reviews under the European Commission Merger Regulations (ECMR) are the subject of considerable disquiet since long delays in approval may result in the failure of the merger.
- Protracted merger reviews introduce uncertainty which implies two classes of costs for the parties. First, direct informational and opportunity costs that are a pure deadweight loss to society. Second, they may result in indirect costs in terms of forgone innovation and efficiency gains.
- The commonly cited reason for delay in approval is regulatory or judicial review. However, it is equally possible that the merging parties cause the delay by invoking a suspension in the review procedure.
- The paper identifies two reasons why merging parties may invoke the suspension of the investigation. They may deliberately cause suspension thus buying time to formulate a strategy that avoids a phase II (in-depth) investigation, or they may lack delay averseness, being negligent as to the consequences of failing to comply fully and in a timely fashion to requests for information from the Commission.
- This paper is the first empirical analysis of the procedural delays arising from the current merger review system provided by the ECMR. Specifically, it focuses on the impact of not defining the maximum length of suspension of merger investigations.

METHODOLOGY

- This is an empirical study that relies heavily on the rigorous statistical analysis of the distribution of specific measures of procedural delays.
- The paper offers a non-parametric analysis of a sample of cases in which a merger review is suspended for an indefinite period that took place in the interval 1999 - 2008. Additionally, a hypothetical scenario is developed, in which no indefinite suspension is allowed.

KEY FINDINGS

- Despite rhetoric to the contrary, the study reveals that far from occurring only in 'exceptional' cases, approximately 20% of merger reviews under the ECMR are characterised by the suspension of proceedings.
- Comparison with the hypothetical base case in which indefinite suspension is disallowed reveals that eliminating the possibility of indefinite suspension reduces uncertainty regarding procedural length, which prevents parties from imposing delays.
- Eliminating indefinite suspension therefore eliminates the beneficial effect of phase I suspensions - the time for parties to avoid phase II investigations.
- The duration of delays due to suspension has a high variance. This reflects the fact that the ECMR, in contrast to some member states, do not set an upper limit to the period of suspension, and is a consequence of a high variance in merging parties behaviour (deliberate or negligent) with respect to the provision of information as requested by the Commission.

POLICY ISSUES

- Delays due to the negligence of merging parties may be a signal of the expected profitability of the merger.

- The identification of the type of delay may help to screen out inefficient mergers. Suspensions that are due to the negligence of parties may signal a lack of commitment on behalf of the merging parties.

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CCP Policy Briefing

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ABOUT THE AUTHOR

- Peter Ormosi is a part time Research Associate at the Centre for Competition Policy.