Determinants of the success of remedy offers: Evidence from European Community mergers

BACKGROUND

- Merger remedies are intended to influence the structure of the industry or the behaviour of participants such that competitive concerns raised by the proposed merger are eliminated.
- Merger remedies have come to play an increasingly important role in merger control. This type of intervention to eliminate potential anticompetitive effects has been deemed necessary in over 200 cases in the past decade of EC merger control.
- Merging parties must gain the approval of the European Commission for mergers with a Community dimension, though it is incumbent on the parties to propose the scale and scope of any remedies for consideration by the Commission. Parties are therefore able to influence the probability of delays in gaining approval.
- Because delays in gaining approval are costly, there is a balance to be struck between the level of remedy proposed and the length of delay that may be incurred by excessive bargaining.
- This paper presents an empirical analysis of the possibility that delay aversion by the merging parties may lead them to propose inefficiently large remedies.

METHODOLOGY & DATA

- A method for calculating the probability of remedy offers being accepted is developed. The method is based on the empirical analysis of the properties of the distribution of the timing of remedy offers.
- The data is a sample of 198 EC merger cases in which remedies to restore the pre-merger level of competition were offered. The sample period is 1999-2008.

KEY FINDINGS

- Expected merger-generated cost savings have a positive effect on the probability of the proposed remedy gaining acceptance.
- Firms are becoming more adept at identifying the Commission's 'reservation' level of remedy, which helps merging parties to determine an acceptable remedy offer.
- If parties are delay-averse, then the complexity of the case has little effect on the probability of the proposed merger gaining acceptance.
- In cases where the parties reveal to the Commission their expectations with respect to efficiency savings, there is a lower probability of proposed remedies gaining acceptance.

POLICY ISSUES

- Overly large merger remedies may signal to the European Commission an urgency that suggests an expectation of high cost savings from the merger. This may lead the Commission to make type I errors in merger control.
- If remedy offers and the efficiency defence are considered as alternative ways of achieving regulatory approval for a merger, then the parties to more efficient mergers may be less likely to reveal their efficiency expectations if a satisfactory remedy is offered anyway.

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