

An Economic Assessment of EC Merger Control: 1958-2007

September
2008

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CCP Executive Summary

BACKGROUND

- Mergers are a major means of restructuring, potentially allowing a more efficient allocation of resources, a swift way to experiment with new ideas, a spur to rivals and improved competitiveness on the world stage. Potentially, both consumers and producers can gain from mergers.
- But mergers may also dampen the competitive process, by reducing the number of effective competitors, softening competition, impeding entry and reducing the incentives to innovate. This can harm both domestic consumers and international competitiveness.
- Effective merger regulation is the essential *ex ante* means of filtering merger proposals so that efficient ones are allowed while anti-competitive ones are not.
- The European Commission's current jurisdiction for merger control includes firms with a large turnover and which have at least a third of European sales outside a single Member State.

METHODOLOGY

- The author provides a summary assessment of the European Commission's evolving implementation of merger regulation from three perspectives:
 - (i) The evolution of merger policy is placed alongside the evolution of economic ideas in relation to competition and industrial organisation.
 - (ii) Recent developments are highlighted in the practical economic appraisal of competition in four areas:
 - (1) unilateral (non-coordinated) effects, particularly the appropriate use of simulation techniques and the efficiency defence;
 - (2) coordinated effects (collective dominance), particularly the role of the Community Courts;
 - (3) non-horizontal effects, particularly the need for the new guidelines; and
 - (4) remedies, particularly weaknesses in current practice.
 - (iii) A simple bargaining approach to merger policy evaluation is proposed, and stock market event studies are reviewed, to draw conclusions about the trend in overall effectiveness of EC merger policy since 1989.

KEY FINDINGS

- Competition economics is an evolving discipline and has made major progress in the second half of the fifty years since 1958. Some of the economics is relatively new and so it is not surprising that some earlier merger decisions were not as good as they might have been.

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- Merger control is a powerful signal to firms contemplating mergers. This makes it crucial to publish the argument behind the decision. If the guidance is sufficiently clear and if firms rationally anticipate merger control, they will only propose acceptable (or marginally harmful) mergers.
- Institutional reforms within the Commission have improved merger control, together with reform of the European Community merger regulation and the provision of guidelines.
- The analysis of *non-coordinated effects* is becoming more receptive to efficiencies, but there is still work to be done in implementing publicly stated policy. Merger simulation has both benefits and limitations and the Commission should proceed very cautiously.
- In relation to *coordinated effects*, the Commission has swung too back and forth in their analysis of the Court.
- Commission practice on *non-horizontal* merger appraisal has been the weakest part of its analysis. The new guidelines are long overdue and urgently needed.
- The efficacy of merger *remedies* has received considerable attention recently, and this research may be expected to improve future practice. The Commission should become more pro-active with divestiture trustees and buyers to ensure there is no collusion between buyer and seller or neglect in running down the assets.
- With regard to wider evaluations of EC merger policy, clear anticipation of merger control should lead to fewer anti-competitive mergers being proposed (so fewer prohibitions) and quicker agreement of remedies. The evidence cautions against the presumption that Phase I remedies are necessarily more efficient than agreements in Phase II.
- Overall, the Commission's merger regime is maturing fairly well. It has shown itself to be capable of self-criticism and able to reform. It has established a good reputation, recovered from a difficult time with the Court in 2002 and is well positioned to improve further - but there is still work to be done and no room for complacency.

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 (CCP Working Paper 08-17) and more information about CCP and its research is available from our website: www.ccp.uea.ac.uk

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