



Reply to Public Consultation regarding Review of the current regime for the assessment of horizontal cooperation agreements under EU antitrust rules

Ecully, France

June 24th, 2010

In a press release of 4 May 2010, the Commission laudably invites interested parties to submit comments regarding its revision of the rules governing horizontal co-operation agreements. As economists, we wish to make the following observation with respect to Article 4, “Market share threshold and duration of exemption” of the draft Research and Development Block Exemption Regulation.

Several respondents to a previous Public Consultation had raised arguments in favor of increasing the market share threshold. It seems to us that the stated positions of these stakeholders have been if anything too moderate, and that the Commission should, in principle, be called upon to both simplify and specialize its policy by forgoing the market share threshold altogether, so as to dissociate the enforcement of competition rules on the one hand from the promotion of a framework that is favorable to innovation in the European Union on the other.

The proposed Draft maintains a market share threshold of 25% in order for the block exemption to apply, as was the case of Commission Regulation (EC) No 2659/2000. Beyond this threshold, parties to a co-operation agreement are thus subject to additional legal and regulatory uncertainty with respect to the applicability of Article 81, over and above the uncertainty which is already inherent to the pursuit of innovative activity.

The Commission states that it aims to adopt “a more economic approach”, and to “allow competitor collaboration where it contributes to economic welfare without creating a risk for competition.” In this light, it seems to us that, whereas there is substantial existing evidence to suggest that R&D co-operation may produce social benefits, there is scant economic backing for the idea that the social benefits of R&D co-operation are linked to market share.

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In particular, the economic analysis of R&D co-operation has often revealed “U-shaped” relations, suggesting that the link between economic factors and economic outcomes is often ambiguous when it comes to innovation.¹

In a paper presented at the 2009 conference of the European Association for Research in Industrial Organization,² we show that according to standard economic theory, the relationship between market share and the social benefits from R&D co-operation is generally unclear.

Moreover, we establish that R&D co-operation can sometimes be socially desirable when markets are concentrated, and harmful when they are more competitive, which is quite the opposite of what Reg. 2659/2000 seemed to assume.

In the absence of a sound foundation in economic theory, it seems unlikely to us that an empirical study would uncover a determinate link between market concentration and the benefits of R&D co-operation.

As, to our knowledge, the net economic welfare resulting from “competitor collaboration” bears no demonstrable direct link to market share, the justification of the inclusion of the 25 percent threshold provision in the existing Draft, “favourable” as its intention may be, does not seem clear to us. Rather, the block exemption for R&D co-operation agreements, which in and of themselves have no clear anticompetitive effect, should apply to firms regardless of market concentration considerations – the Commission already has tools with which to address competition concerns directly when this need arises.

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¹ This idea is surveyed in Raymond de Bondt and Jan Vandekerckhove, “Inverted-U Relations and Innovative Activities”, http://www.econ.kuleuven.ac.be/msi/docs/members/debondt/2010_inverted.pdf

² Richard Ruble and Bruno Versaevel, “Market Share, R&D Cooperation, and EU Competition Policy”, EMLYON working paper 2009/03.

