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ROUNDTABLE ON IMPACT EVALUATION OF MERGER DECISIONS

-- Note by the Delegation of the European Union --

This note is submitted by the delegation of the European Union to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 29-30 June 2011.

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ROUNDTABLE ON IMPACT EVALUATION OF MERGER DECISIONS

-- Note by the European Union --

1. Introduction

1. As suggested by the OECD's Competition Committee, this paper addresses the topic "Impact Evaluation of Merger Decisions", including both the methodologies for carrying out the evaluations and the relevance of the results that have emerged from the evaluations that have already been done.

2. Intrinsic differences exist when considering the impact evaluation of mergers in the context of competition advocacy or in the context of improving the substantive decision making process. On the one hand, the primary purpose of the impact evaluation of merger decisions in the context of the competition advocacy is essentially to obtain broad estimates of the harm prevented from the Commission's intervention in the form of a prohibition or a clearance with remedies of mergers. On the other hand, the primary purpose of the impact evaluation of merger decisions in the context of improving the substantive decision making process, in particular in areas that proved difficult or controversial, is to improve the quality of future enforcement and policy development.

2. Competition advocacy perspective

2.1 DG Competition approach

2.1.1 Preliminary observations

3. The largest benefits derived from the EU merger control are probably in the form of deterrence. In other words, the mere existence of the EU merger control leads to a situation where anticompetitive mergers (that would be implemented in the absence of merger control) are not even considered. However, these benefits are, by their nature, very difficult to measure.

4. From a competition advocacy perspective, it seems therefore appropriate to benchmark the observable benefits derived from the merger decisions where the Commission has intervened. Naturally, irrespective of the technical sophistication of the methodology used, the complexity and the idiosyncrasies of the task (which requires the construction of a counter-factual) only allows, in any circumstance, to see the results as a "best estimate" and certainly not as a single "true" value of the observable harm prevented.

5. The harm prevented through its enforcement actions has been considered by the Commission's Directorate-General for Competition ("DG Competition") in the context of its competition advocacy. DG Competition's Annual Management Plan and Annual Report in 2011 benchmarks the observable consumer benefits from horizontal merger cases of 2010 on the basis of the methodology established in an internal report. In 2010, the estimated (observable) customer benefits from horizontal merger decisions were in the range of €4.2 billion to €6.3 billion.

2.1.2 The methodology

6. The approach followed to broadly estimate observable consumer benefits from the Commission's intervention in the form of a prohibition or a clearance with remedies of mergers consisted in predicting the change in consumer surplus. The method used was to calculate the sum of the "price effect" and the "deadweight effect", both multiplied by the length of the period the market would need to self-correct the distortion of competition, i.e. by new entry or expansion of competitors. Therefore, the prevention of anticompetitive effects such as the negative impacts on innovation and choice, even though some cases are largely predicated on non-price effects, especially effects on innovation, are not taken into account.

7. In practical terms, the calculation of the predicted change in consumer surplus arising from the Commission's intervention in each product market is based on three factors: (i) the total size (by value) of the product market concerned, (ii) the likely price increase avoided and (iii) the length of time that this market would have taken to self-correct either by the arrival of a new entrant or by the expansion of existing competitors. Of these three factors, only the market value is usually available from the case file. The other two have to be calculated.

- Avoided likely price increase

  The estimation of the avoided likely price increase is based on an ex-ante merger simulation methodology, which predicts post-merger prices using information about pre-merger market conditions, while building on simplified assumptions about the behaviour of firms and consumers.

  As regards *differentiated products*, the likely price changes are determined ex-ante using PCAIDS modelling techniques. PCAIDS, a software model developed by Epstein and Rubinfeld[1,] relies on the unilateral effects theory of harm for differentiated product markets. Unilateral effects analysis encompasses a broad set of issues that arise when differentiated brands produced by the merging firms constitute the first and second choice for some group of consumers. Absent a new entrant or a product repositioning, a unilateral price increase may become profitable as the result of a merger if a substantial number of customers who previously would have been lost can now be retained because the merger firm also offers the customer's second choice.[2]

  PCAIDS assumes that firms' behaviour is consistent with Bertrand model pricing. According to this theory, each firm sets the prices of its brands to maximize its profit, while accounting for possible strategic, non-collusive interactions with competitors. An equilibrium results when no firm can increase its profit by unilaterally changing the price of its brands. PCAIDS predicts hypothetical post-merger prices based on information about a set of pre-merger market conditions

1 R. Epstein and D. Rubinfeld (2008), "*Merger Simulation: A Simplified Approach with New Applications*" Antitrust Law Journal 69 (3), pp. 883-919. The simulation has been used by other competition authorities (including the Federal Trade Commission in the United States and the OFT in the UK),

2 This effect is particularly strong when the two merging parties have been offering closely substitutable products, i.e. where they are the closest competitors. The impact of this effect depends on the rate of switching by customers between different products in the market in response to variations in prices. The rate of switching between two products is called the cross-price elasticity between products. The rate of customers leaving the product market is typically given by the industry price elasticity of demand. Some customers may leave the market altogether. This is so because competitors have differentiated their products from the competing products based upon certain characteristics, be they technical, related to quality or connected services or via branding and do not face one single price for the good in the entire market as is the case for homogeneous product markets. It is thus a plausible assumption that some customers would not opt to buy a competing product if their preferred product becomes more expensive but would choose to not buy any related product at all.

and certain assumptions about the behaviour of the firms in the relevant markets. A major advantage of PCAIDS is that it considers the effects of the merger not just on the prices of the merging parties but on all brands in the market.

The Bertrand model is, however, not suitable for modelling changes in the market structure where the goods produced by each firm are near identical (homogenous) and it is reasonable to think of the strategic interaction between the firms to be "as if" they chose the quantity of production and not the price. In this case, the *Cournot* model is, in principle, best suited.

Accordingly, the estimation of the likely price increase in *homogenous product markets* is based on an oligopoly formula derived from a simple *Cournot* model.

- Length of the period each product market would take to self-correct

As to the estimation of the length of the period each product market would take to self-correct, it was based on a case-by-case assessment of the likelihood of either a new entrant or the expansion of existing competitors in these markets.

The "restoration" process depends upon the individual characteristics of each product market as well as the potential of each market entrant. We looked at the barriers to entry and to expansion and other important characteristics of the product markets in each merger case. Each market was categorised into one of the three groups: "*Significant*", "*High*" and "*Very High*". Each of these groups was then assigned a duration period in years which was an estimation of the minimum time it would take to restore competition to its pre-merger state.

In merger analysis, the European Commission only intervenes if it has concerns that a lasting effect of the structural change would occur. In practice, such an effect must last for a period of at least two years[3]. Had the merger gone ahead without remedies, it would therefore be prudent to assume that the new post-merger competition landscape would have lasted for at least two years. Therefore two years is set as the standard length for markets where entry barriers are considered to be "*Significant*", both for new entry and for expansion of production by competitors.

There are, however a number of cases where, due to the structure and characteristics of the market, entry or expansion would have been highly unlikely for longer than two years. In such cases, we classified the durations to be either "*High*" (alternatively three or five years) or "*Very High*" (alternatively five or seven years).

Nonetheless, these timeframes seem to be very conservative in the light of the magnitude of the barriers to entry or expansion and other market characteristics mentioned in the decisions. In fact, the typical anticompetitive merger case is one that takes place in mature industries, where investments and the branding effects are very high, with no major technological development so that normally no sizeable new entry can be expected in a near future. A study by K. Gugler *et al.* (2003) in the International Journal of Industrial Organization[4] provides useful insight which corroborates the conservative nature of these estimations.

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3 Pursuant to point 75 of the Guidelines on the Assessment of Horizontal Mergers "The Commission examines whether entry would be sufficiently swift and sustained to deter or defeat the exercise of market power. What constitutes an appropriate time period depends on the characteristics and dynamics of the market, as well as on the specific capabilities of potential entrants. However, entry is normally only considered timely if it occurs within two years".

4 K. Gugler *et al.* (2003), "The effects of mergers: an international comparison", International Journal of Industrial Organization, 21 (2003) 625–653

2.1.3 Observations on the methodology

8. It is well known that simulation models have considerable limitations in regard to the degree of certainty and precision that can be expected. Bearing this in mind, we tried to mitigate these limitations by assigning conservative values where there was less certainty surrounding the input in order to ultimately produce a lower estimate of consumer benefit. Still, there is an important number of limitations associated with this methodology that cannot be lifted.

9. The most important of all is probably its *ex-ante* nature, i.e. the methodology is based on theoretical predictions whereby changes in the structure (ownership) of markets affect the pricing behaviour of the companies in that market. These ex-ante techniques simulate the difference between two counterfactuals with data available before the merger. Ideally, however, estimates of the consumer benefit from merger enforcement would be delivered from an *ex-post* evaluation of each merger decision on what has actually happened in the subject market after the merger with respect to prices and quantities and then compare it to a counterfactual.[5] This requires also intensive market research which would certainly not have been possible, given the resources available, to apply, for instance, to the multiple market products corresponding to the horizontal merger cases in a given years. By contrast, it is feasible to model a high number of product markets in a rather straightforward way by using micro-simulation techniques. All in all, the *ex-ante* framework appears to be the most suitable one to estimate the consumer benefits from merger control at a large scale (see Point 2 on other possible approaches).

10. Secondly, the simulation approach has to make restrictive assumptions. One of the most restrictive assumptions is the proportionality assumption of PCAIDS (as explained above) which can introduce errors into the analysis. The fact PCAIDS focuses entirely on price competition and ignores factors such as product repositioning and advertising (which can be very important in branded consumer products markets) is also an important limitation.[6] It is also assumed there are no efficiencies in any of the merger cases looked at. None of the merger cases analyzed in this report mentions efficiency effects that could potentially compensate the anticompetitive effects. Moreover, empirical economic literature has not found support for a general presumption that mergers create efficiency gains (see Röller, Stennek, and Verboven (2006) survey the literature on merger efficiencies).[7] In any event, it is doubtful that possible efficiencies would be passed-on to consumers (as a matter of fact, none of the analysed merger cases has claimed the existence of efficiencies).

11. Thirdly, the model simulation approach assumes that the Commission's decisions are correct and that the remedies imposed are able to address the anticompetitive effect identified. In other words, this methodology does not allow for checking whether the Commsion incurred in a type I error – i.e. case where the Commission should not have intervened or an inappropriate remedy was imposed – and whether the Commission incurred in a type II error - i.e. case where the Commission should have intervened but did not.

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5 See Carlton (2009), "Why we need to measure the effect of merger policy and how to do it", NBER, WP 14719.

6 Product repositioning generally refers to activities undertaken by a firm to change the image of its product to enhance its competitiveness vis-à-vis other products. A merger simulation based on the Bertrand model focuses on how a change in ownership affects post-merger pricing decisions and implicitly assumes that product repositioning does not occur. Thus, the degree of competition across products is assumed to remain the same in the pre-merger and post-merger regimes (i.e., product “positions” are fixed in the two regimes, hence repositioning does not take place). The predictions from this merger simulation can therefore be seen as upper bounds on the likely price effects of a merger

7 See also Iversen, H. (2010) "The efficiency defence in EC merger control", European Competition Law Review, 31(9). See Farrell, J. and Shapiro, C. (2010) for a slightly different point of view on this issue.

12. Finally, it is worth noting that vertical mergers, co-ordinated effects mergers or other potential competition scenarios cannot be modelled with this type of models.

2.2 Other possible approaches

13. Apart from the simple calibrated-demand simulation model such as PCAIDS, there exist a number of other econometric methodologies that could be used for benchmarking the consumer benefits derived from merger control for the purpose of competition advocacy.

2.2.1 Structural demand estimations

14. This methodology would involve the comparison of the results obtained in an ex-ante perspective (i.e., using data that are already available pre-merger) with the results obtained with post-merger data to allow for the formulation of a proper counterfactual for the merger (that is, what would have happened without the merger taking place.

15. Sophisticated and useful as this methodology may be for individual cases, it is not suited for a systematic assessment of merger control. Structural models are very demanding both as concerns the construction of the underlying model of competition and with respect to its stochastic properties. If the modelling specifications chosen by the researcher do not reflect well the specifics of the industry under investigation, then substantial prediction errors can follow. Moreover, the amount and quality of data needed to estimate demand systems with structural models is large. In many industries, the necessary data is simply not available.

16. For these reasons, sophisticated structural models have only been used in a small minority of merger cases and do not lend themselves for an overall investigation of the benefits of antitrust enforcement. However, for the increasing number of mergers for which demand estimations are performed ex ante, it might be relatively easier in the future to update the demand estimation and merger simulations ex post to evaluate the effect of the merger.

2.2.2 Ex-post analysis of actual ex-post price developments

17. This methodology would involve the investigation of price developments on a sample of "marginal mergers", i.e. mergers that were allowed to go through without substantial modifications but generated some degree of debate within DG Competition. In a nutshell, the purpose of this methodology is to identify a suitable control (or comparator) group of firms that should be sufficiently similar to the merging firms (e.g., in terms of costs and/or product mix), so that the difference in say, prices, between the two groups can reasonably be attributed to the merger. Once a proper comparator group has been identified, techniques such as "differences in differences" (DiD) can be applied to isolate the effect of the merger. A recent study that implements the methodology described above and that goes beyond a single merger case has been presented by Ashenfelter and Hosken (2008).

18. This exercise is less demanding in terms of data requirements than the so-called "structural estimations", as it is based upon the so-called "reduced form" specifications, which do not require knowing the residual demand faced by the merging firms. It should be borne in mind, however, that such studies are relatively resource intensive and require substantial econometric expertise, which is however available in DG Competition.

19. Any price increase from such "marginal" mergers would eventually provide an "upper boundary" to the price increases that other authorised mergers may have produced and a "lower boundary" to any price increases that could otherwise have occurred in mergers that were substantially modified or blocked.

2.2.3 Event studies

20. This method entails assessing the stock markets' reaction to an event, for example the Commission's decision, and to derive from such an event a view on the effect(s) on the relevant markets. Under the assumption that the financial markets are efficient and the acting agents act rationally the stock price of the merged firm should adapt to reflect the merger-specific expectations on the relevant market(s).[8]

21. In the case of a horizontal merger, the event study methodology assumes that competitors' share prices will react positively if a merger is anti-competitive but negatively if it is pro-competitive. The reasoning behind this is that the increase in market power arising from an anti-competitive merger makes it profitable for the merged entity to raise its prices and reduce its output. This benefits competitors by enabling them to raise their prices while profiting from the diversion of some demand from the merged entity. By contrast, a pro-competitive merger damages rivals' profitability (and hence lowers their share prices) by creating a more aggressive competitor. In the case of non-horizontal mergers, on the other hand, a fall in the competitors' share prices might signal that the merger has anti-competitive foreclosure effects.

22. While this method requires a relatively low volume of data, it appears from the outset that it is not really an ex post instrument as stock price data is available prior to the decision. In other words, a different decision than the one suggested by the stock market reaction may be due to the fact that the authority had better information than the financial market (such as internal documents of the merging firms or the results of questionnaires submitted to competitors and customers).

23. The event study methodology has also been criticised on theoretical grounds, partly because the "efficient markets hypothesis" is controversial (see, for instance, Grossman and Stiglitz, 1980) and partly because almost any given shift in relative share prices following a merger announcement can be explained in a number of different ways.

3. Substantive decision making process

3.1 DG Competition approach

24. The objective of this type of evaluation impact of merger decision is to learn from past experience in areas that proved difficult or controversial and, thus, improve the quality of future enforcement and policy development.

3.1.1 The methodology

25. The methodology would consist of assessing the main predictions upon which decisions were based against the backdrop of the subsequent market developments in the years following the decision. This is therefore a qualitative, practical approach which is not based on econometric techniques or model simulations. Instead, the analysis attempts to make a comparison between the predictions made during the merger analysis and the subsequent development of the market(s) since the decision was taken.

26. In this context, it should be noted that an ex-post evaluation of predictions underlying a decision is more difficult in cases where the Commission had intervened than in cases of an unconditional clearance decision. In the latter case, the competitive development of the market may give a stronger indication

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8 For a detailed discussion on this issue, see, for instance, Duso, T., Gugler, K. & Yurtoglu, B. (2006b) How Effective is European Merger Control? WZB, Markets and Politics Working Paper, No. SP II 2006-12. and Duso, T., Gugler, K. & Yurtoglu, B. (2006c) Is the Event Study Methodology Useful for Merger Analysis? A Comparison of Stock Market and Accounting Data. Governance and the Efficiency of Economic Systems, Discussion Papers, No. 163

whether or not the clearance decision was justified. By contrast, where a merger has been blocked or a remedy has been accepted, it is much less clear how the market would have evolved if the merger had been implemented or if the remedy had not been imposed. However, there is a particular interest of trying to verify ex-post to what extent the theory of harm in the cases of intervention was based on predictions which were later corroborated by the development of the market after the decision. Furthermore, in remedy cases an ex-post assessment can also attempt to shed some light on the efficiency of the remedies, of course to an extent the role of the remedy can be isolated from other external factors. Despite the difficulties, ex-post evaluation should, therefore, not be limited to non-intervention cases.

27. This methodology therefore allows for checking whether the Commission made a type I error – i.e. case where the Commission should not have intervened or an inappropriate remedy was imposed – or whether the Commission made a type II error - i.e. case where the Commission should have intervened but did not.

3.1.2 The selection criteria

28. The choice of decisions must be made on the basis of appropriate criteria. Appropriate criteria could be:

- Whether the proposed outcome generated some degree of debate within COMP;
- Whether the decision was of strategic importance, either in terms of sector policy remedies or general competition policy such as new elements in the approach to the analysis;
- Whether there is sufficient time, insight and data for conducting sound economic analysis;
- It would also be appropriate to select decisions that are neither the subject of proceedings before the European Courts or of ongoing litigation before the National Courts and/or for which the risk of ligation, irrespectively of the final conclusion of the post evaluation study, is rather low.

3.1.3 DG Competition's practice

29. DG Competition has already undertaken some ex-post evaluations of this type, either of horizontal issues or for specific cases.

- Horizontal issues

  Regarding general horizontal issues, the Merger Remedies Study (2005) has reviewed with the benefit of hindsight the design and implementation of commitments offered and accepted by the Commission in previous cases so as to identify what factors and/or processes may have positively or negatively influenced the effective design and implementation of merger remedies.

  To this end, the study conducted an ex-post evaluation of 90 different merger remedies. The study has provided a solid empirical basis for the revision of the Merger Remedies Notice, which was adopted in 2008.

  In terms of sectoral horizontal issues, DG Competition has carried out an internal investigation on the effectiveness of commitments offered in merger cases in a specific sector. The evaluation has identified the reasons for a rather limited effectiveness of the remedies and suggested concrete improvements in terms of overall design as well as procedure. These recommendations have already been implemented in some recent merger cases concerning this industry.

- Specific cases

  Regarding specific cases, an internal DG Competition ex-post evaluation, whose first purpose was to test whether or not it is possible to carry out a meaningful ex-post evaluation based on information available from desktop research, analysed some selected merger cases, covering the classical industries, Industries of the future or the "new economy" and liberalised markets. The project aimed to verify if the assumptions that were made in past decisions were in fact a realistic basis for the decision.[9]

  The outcome of the case studies clearly showed that the conclusions to be drawn from the ex-post analysis depend largely not only on the type of industry but also on the specific characteristics of the underlying competition concerns in the respective cases.

  In general, the ex-post analysis revealed that the Commission's decisions were made on a sound basis and provided an adequate forecast of future market developments. Furthermore, the ex post analysis of the merger case in the "new economy" has revealed that the emerging markets by their very nature pose difficulties in forecasting their future development. The Commission identified a possible risk arising from the transaction. However, in hindsight the forecasts about the market developments were found to be unjustified. Nevertheless, at the time of the decision this was hardly foreseeable and in can be argued that in this kind of new and fast developing markets an intervention can be justified if – as in the case at hand - it is largely based on plausible risks as otherwise an emerging market could be foreclosed at its infancy.

4. Conducting the impact evaluation study

4.1 In-house vs. outsourced work

30. DG Competition has the expertise to carry out impact studies of merger decision in both the competition advocacy perspective and with the ultimate of improving its internal substantive decision making process.

31. There are some aspects in both exercises, notably the need to deal with confidential information that may lead to the conclusion that a competition authority is better placed than an external consultant for carrying out this type of ex-post evaluation. Even if DG Competition has no formal investigation powers for carrying out ex-post evaluations, our past experience has shown that the relevant stakeholders were relatively co-operative when replying, on a voluntary basis, to our surveys. It may be more difficult to obtain such a co-operation if a private consultant would be leading the evaluation. Furthermore, the ex-post evaluation of a specific case may benefit significantly from the information in case-files of subsequent procedures, which may be confidential (and therefore not immediately accessible to a consultant). Finally, based on the large practical in-house experience, DG Competition may combine better the necessary expertise in the implementation of competition law and the sector specific knowledge than an outside organization.

32. Nevertheless, there are ways to structure ex post analysis that could allow us to outsource all or part of the work to external consultants. For instance, it is an option to outsource the (econometric) ex-post evaluations of merger cases as it involves mainly the application of (advanced) econometric techniques to a dataset that must be obtained from commercial entities. In other words, this type of evaluation doesn't require the participation of market players in the survey of market developments and the information

9 DG Competition has also commissioned to "Lear" an ex-post study on the merger between the power cable producers Pirelli and BICC. See http://ec.europa.eu/competition/mergers/studies_reports/lear.pdf

needed has not a confidential nature. The use of an external consultant may have also the advantage of the perception of increased impartiality in the analysis.

4.2 Data Sources

33. When the methodological aspects related to the impact evaluation of merger are conveniently sorted out, the access to the relevant market data is the crucial element in carrying out a meaningful ex-post examination of a merger decision.

4.2.1 Quantitative approaches

34. The model simulation approach basically requires data on three parameters for each product market: the market shares (in value), the industry demand price elasticity and the own-price demand elasticity of at least one product of one of the merging parties. While the market shares are usually available from the case file, data on the two elasticities are not always available from primary sources. Whenever possible, the own-price demand elasticity of at least one product of one of the merging parties was derived from existing econometric studies or calculated by using a company's internal financial data. Financial data were used to compute the ratio gross margin per sales of specific product market(s) when the product market(s) corresponded to the core business of that company. As to the industry elasticity, studies and general market reports and articles in academic journals were a useful source (the pilot cases yielded significant information about typical industry elasticities in similar cases).

35. As regards the data for the alternative econometric approach, such as the investigation of price developments on a sample of "marginal mergers", it seems that the necessary input can be obtained from commercial organisations that collect micro data on specific industries or products.

4.2.2 Qualitative approaches

36. Regarding the less formal methods of impact evaluation described above, it emerges that the most reliable data was to be found in both the original case files, which served as a starting point of the analysis, but more importantly in the case files from subsequent mergers in the same sectors. Reports from monitoring trustees in cases where commitments were subject to the clearance decision proved to be another useful source. Studies and general market reports are another useful source. Articles in academic journals and online searches in databases can also provide useful information. Since COMP has many academic journals in its library subscription list as well as access to a number of databases, it is possible to do a certain amount of desk research. Research for information on the internet is also a viable option.

37. In addition, a well-structured survey among all involved industry participants can certainly contribute to a complete data set. For instance, for the analysis of the sectoral remedy cases, DG Competition has addressed quite detailed questionnaires to a number of involved parties in this industry and has held meetings and telephone interviews with some of the relevant stakeholders. The outcome was positive since most of the addressed parties were co-operative when replying, on a voluntary basis, to our survey. A similar experience was made in an ex-post evaluation project in the area of antitrust.

4.3 Internal reaction

38. In terms of competition advocacy, it must be highlighted that the study on the impact evaluation of merger decisions was welcomed by DG Competition. It is now the new tool for DG Competition's external and internal communication to benchmark the customer benefits derived from merger control. The results have been used in speeches made by senior management and are part of the DG COMP's Management Plan 2011, which reflects the work carried out each year by DG COMP on key policy priorities set-out by the Commission.

39. Also, regarding the substantive decision making process, evaluations carried out so far achieved positive reactions. For instance, the Merger Remedies Study has provided a solid empirical ground for the revision of the Merger Remedies Notice. Another good illustration is provided by an internal report on the effectiveness of commitments offered in merger cases in a specific sector, suggesting concrete improvements. The recommendations have already been implemented in some recent merger cases concerning this industry.

5. Conclusions

40. The impact evaluation of merger control can be a useful tool of competition policy. Its contribution to an effective competition advocacy is important, as this advocacy is much more effective when it is supported by empirical data resulting from an impact evaluation of our own enforcement record. At the same time, the qualitative evaluation of selected merger decisions has proved to be a valuable instrument for improving the quality of our future enforcement and policy development.

41. There are however intrinsic differences when considering the impact evaluation of mergers in the context of competition advocacy or in the context of improving the substantive decision making process. These differences are dictated not only by dissimilar scopes but also by the type of methodology employed.

42. Obtaining broad estimates of the harm prevented from the Commission's interventions in merger cases (deterrence effects are by far the most important source of consumer benefits but very difficult to observe) usually requires a large sample of markets. An ex-ante framework, i.e. a methodology based on theoretical predictions how changes in the structure of markets affect the pricing behaviour of the companies, appears therefore to be the most suitable one to estimate the consumer benefits from merger control at a large scale. Even if this method has limitations, it appears, in any event, more appropriate than simple rules of thumb.

43. When the objective is to learn from past experience in areas that proved difficult or controversial and, thus, improve the quality of future enforcement and policy development, the methodology employed has a more qualitative nature, in order to assess empirically the main predictions upon which decisions were based some years after the closure of the case. In this respect, experience shows that it is possible to obtain the necessary data and other relevant information from the desktop research (in particular in-house files) and surveys among markets participants even if there is no formal investigative power for the purpose of ex-post evaluations.