Antitrust Economics - Catalyst for Convergence?

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*The views expressed are those of the author and do not necessarily reflect those of DG COMP or the European Commission
Outline

- “soft” convergence
- “hard” convergence
- the role of economics in convergence
Horizontal Merger Control

- approach is rooted in sound economic analysis of competitive effects and efficiencies
- strong similarities with US Guidelines and methodology

=> soft convergence

Non-horizontal Merger Control

- effects-based, consumer
- current internal review (pending cases)

=> soft convergence possible

Issue
- role of efficiencies and how to account for them
Abuse of Dominance (unilateral conduct)

- current review of Article 82
- more emphasis on effect-based analysis (rather than form-based)

⇒ soft convergence possible

Issues
- exploitative vs. exclusionary abuse
- dominance vs. integrated approach
Factors leading to different outcomes (“hard” convergence)

- legal systems differ - administrative vs. judicial
- markets may differ - the impact of globalization
- differences in prior beliefs matter…
  - the road to dominance
  - dynamics of markets (entry, reactions by competitors, customers & consumers, technology, etc.)
  - „speculative“ dynamic benefits vs. „sure thing“ static benefits
  - competition as an institution (Hayek)

- political/policy environment

- the role of economics… …..
The role of economic analysis in the EU

- DG Comp is an administrative authority that takes decisions and imposes fines
- Administrative system has certain advantages for more complex economic assessments and (especially) empirical analysis
  - expertise
  - reform and acceptance of economics
  - opportunity for lawyers and economists to interact and work together
  - internal reforms (panels, Hearing Officer, CE, etc.)
- Organizational differences to the FTC, DoJ
The use of economics at DG COMP

(a) economic analysis in cases - identifying theories of harm

The goal of a plausible theoretical framework in the context of a particular case is to come up with testable hypothesis concerning the theory harm => identification problem.

i. .....by checking assumptions

ii. .....comparative statics (simple correlations over time and/or markets, other type of reduced form evidence, as well as more structural and semi-structural empirical evidence)

iii. .....use of natural experiments (Example: identifying conduct)

(b) economic analysis for guidelines

(c) economic analysis as R&D
What kind of economic analysis?

n theory vs. empirical – the role of theory

n emphasis on empirical evidence – the goal is identification

n best practice in empirical economic analysis

n critical mass => capabilities (“three reasons to kill it”)

n process: transparency, convergence, predictability vis-a-vis parties

n resource imbalances
Convergence in economic analysis?

- Final answer by economists in a given case may still be different....
  - different situations
  - Economists can disagree (like lawyers) - both in theory and on empirical analysis & findings

- Opportunity: economics is a common language (same questions, same methodology) => facilitates soft convergence

- Continue capacity building (DG COMP, ECN)
- Strengthen cooperation and communication in terms of economic analysis
Conclusion

- soft convergence well advanced and is likely to increase
- despite similar guidelines and tests, outcome can not always be the same (legal framework, markets, institutional set-up, prior beliefs differ, economists do not agree)
- emphasis on “economics“ reduces the likelihood of conflict