

Ex post evaluation of enforcement: An overview

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1. Introduction

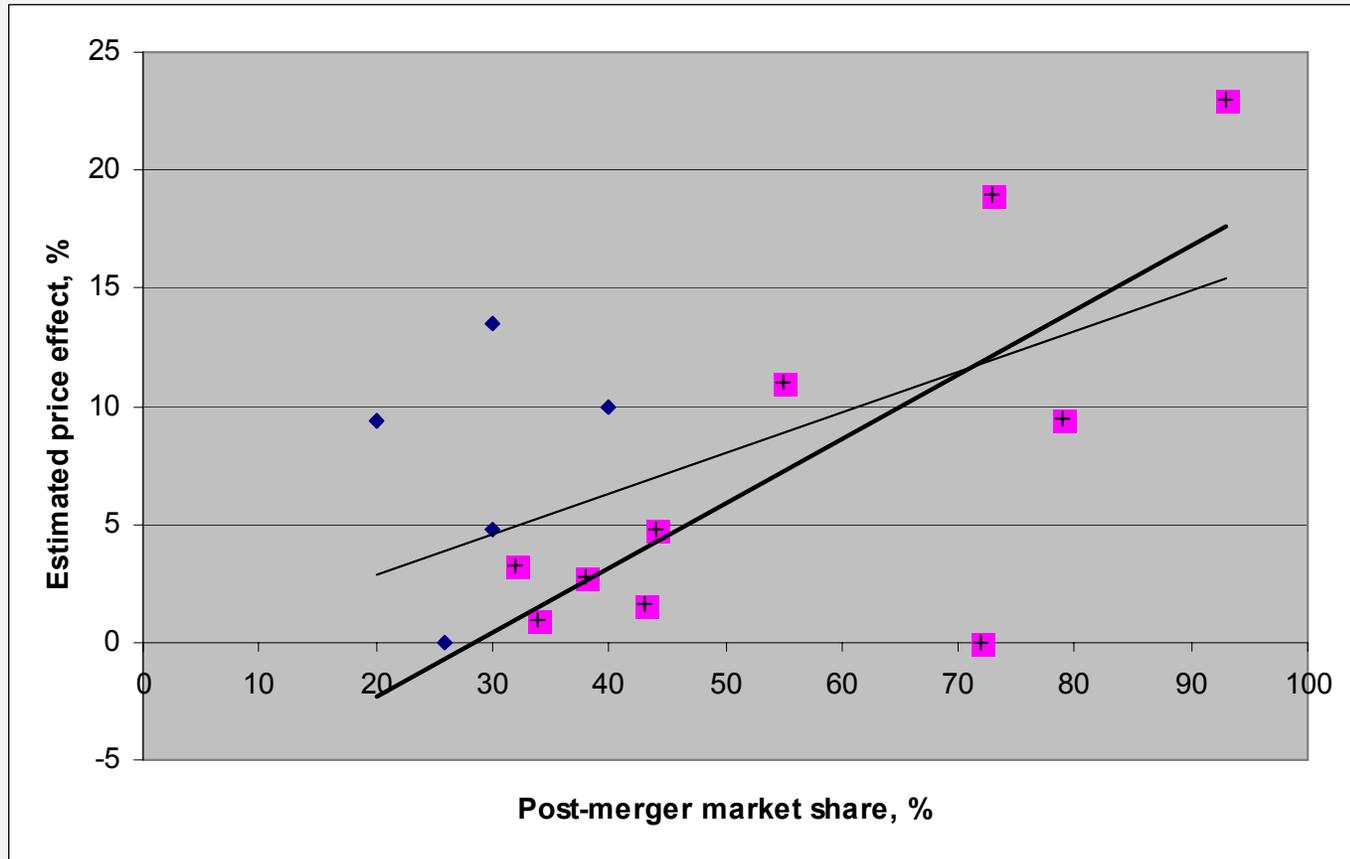


- Different mechanisms
 - Court appeals
 - Peer reviews
 - Intra government reviews (Court of auditors)
 - Quantitative / qualitative evaluations of individual cases
- Different objectives
 - External control (paymasters and general public)
 - Internal control (for resource allocation and productivity)
- Outline
 - Reviews of existing approaches / main results
 - Discussion of methodological issues
 - Different requirement for different objectives

Alternative methods



- Ex post evaluation involves the comparison between the outcome of the decision and the counterfactual (what would have happened otherwise)
- Case studies (Davies et al, Eu Commission, Price Waterhouse, FTC, OFT)
- Econometric evaluations of price increases in mergers that have been allowed (Weinberg, 2007) : up to 15-20 % for post merger market shares in excess of 40 %
- Econometric evaluation of price increases for cartels (Connor, 2007) : median of 25 % - some controversy when the counterfactual is the price after the break up of the cartel

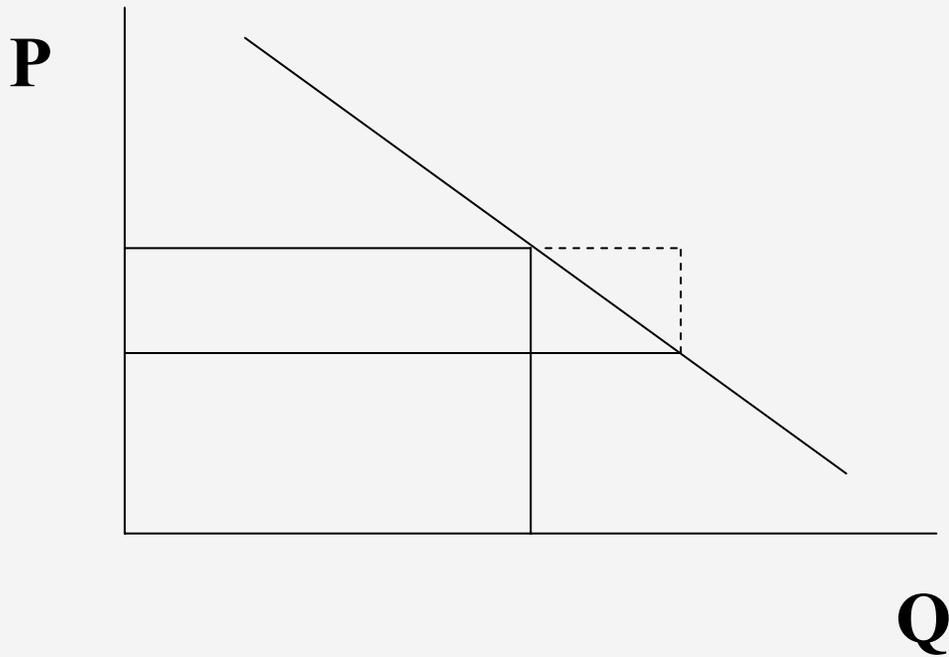


Consumer welfare accounting



- Simulation of the consumer gains from cartels assuming that lower prices (10 %) have been achieved for the expected remaining lifetime of the cartel
- For prohibited (or restructured) mergers : averted price increase over 1-2 years
 - Using rules of thumb on price increases and elasticities
 - Or estimation of demand and merger simulations
- Easy to implement – light data requirement
- Hardly any evaluation of abuse of dominance (or state aids)
- A number of the studies carried out by OFT, FTC, DoJ, NMa and others
- Showing very comfortable consumer welfare gains relative to the cost of enforcement (even considering the cost borne by the parties)

Cartels vs mergers



Consumer welfare accounting



- Ad hoc counterfactual : typically, gains to consumers have been calculated under the (often implicit) assumption that the decisions were correctly taken
- Neglect the deterrence effect of enforcement
 - This effect may be positive and significant if decisions are correct (see Feinberg (1985), NMA, Deloitte for OFT)
 - But it could be negative if decisions are mistaken (systemic costs of type I and type II errors)
- Concentrate on cartels ? For which mistakes are possibly few
- Price increase in merger counterfactual

Behavioral responses



- Studies that measure the impact of antitrust intervention typically compare the total costs and benefits of enforcement
- However, an analysis that aims at deriving whether resources were spent efficiently should compare *marginal* costs and benefits
- A comparison of total costs and benefits does not show whether the agency has received excessive or insufficient funding
- Unrestricted maximisation of the probability of taking correct decisions will reward excessive spending (inefficient agencies)

Behavioral responses (2)



- Adequate probability of making an error ex ante is implicitly defined by the legal system through the burden of proof
- In general, the fact that a particular policy appears inefficient ex post, does not imply that it is inefficient from an ex ante perspective
- Coherence between the ex ante objective and the metric ex post
- Failure to consider these issues will introduce a bias towards excessive spending and bias in the selection of cases

Behavioral responses (3)



- Focusing on authorisations will give a bias towards reducing type II errors (stricter standard in mergers) at the expense of type I errors
- Failure to control for relevant features of the counterfactual (say efficiencies in the case of mergers) will give an incentive to ignore valuable information ex ante (or not to collect it)

Conclusion



- Application of simple tests may overestimate the mistakes an agency commits
- A number of biases will trigger behavioural responses by competition authorities
- Agencies are tempted to
 - Overenforce
 - Spend too many resources and
 - Disregard available information or not collect it in the first place
- Evidence on behavioral response
- In particular within administrative procedures

Conclusion (2)



- Therefore, designing and applying appropriate evaluation methods is crucial to ensure that ex post control does not bring about the very ills it is supposed to cure
- For internal control : detailed case studies
 - Evidence on the source of potential errors - dysfunctionalities or biases in procedures
 - Priorities
- For external control : consumer welfare accounting
 - Keep simple rules of thumb
 - Focus on cartels ?
 - Calibration of the rate of error ?
 - Beware of deterrence
 - Communication to the wider public