



Economic Evidence and Analysis in Competition Policy: some remarks

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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

A trend towards economics/economists.....



- n There has been a remarkable increase in the use of economics in antitrust. However, the market share of economists in antitrust has not been increasing. (US economist)
- n the role of the courts
- n increased need to justify the benefits of competition policy (competitiveness debate)
- n economics useful to be consistent with other jurisdictions (for example the FTC and DOJ) => convergence
- n Leadership – Commissioner Kroes + Monti + PL



What kind of economic analysis?

- n marginal vs. cumulative knowledge
 - n empirically tested economic principles
- n more empirical evidence – the goal is identification
 - n best practice in empirical economic analysis
- n level of technical sophistication
 - n sometimes more sophistication is needed
 - n the psychology of simple rules

The use of economics at DG COMP



n Mergers

- n implementation of new guidelines (new test, efficiencies)
=> has it mattered?
- n non-horizontal guidelines => cases pending....
- n role of economics in deciding to go to Phase II?
(economics limited)
 - n Type II errors much more frequent in phase I (listen to competitors, market definition, country effects)

n Antitrust (Article 82 review)

n State Aid Control (SAAP)

The use of economics at DG COMP



- n (a) economic analysis in cases – identifying theories of harm
- n (b) economic analysis for guidelines
 - n more general and more long-term
 - n simple rules, yet economically sound
- n (c) economic analysis as R&D
 - n Market monitoring
 - n ex-post R&D (Type I and II analysis) – more needs to be done in the area of evaluations (Example: remedy studies)
 - n ex-ante priority setting (more general: policy screening – Lisbon process)

Economists at DG COMP



- n There are economists in all directorates at DG COMP. Approximately 200 out of the over 700 officials working at DG COMP have an economics background. However, less than 20 hold a PH.D. in economics, with 10 of those currently working in the CET.
- n One of the primary objectives is for the CET is to work closely with other economists at DG COMP.

The Chief Economist at DG COMP



- n The two functions
 - n Support function => role of CET members, Opinion
 - n Checks-and-balances function (as a result the Chief Economist provides the Commissioner with an independent opinion)
- n “EU hybrid model” (not like the US)

potential for “abuse of economics”



§ „doing a little economics is worse than no economics at all”

§ economists report to economists

§ „lawyers making economic arguments – both empirical and theoretical”

⇒ capacity building

⇒ transparency => interaction with parties on economic analysis

⇒ communicate



myth about potential for “abuse of economics”

- n predictability & precision
- n the „more economic approach“ (my own country)
- n delays investigation unnecessarily – rather, shifts the argumentation
- n economists never agree - „Gutachterschlachten“
- n generate “business” for economic consultancies (competition of ideas)



DG Comp (potential) advantages.....

- n DG Comp is an administrative authority that takes decisions and imposes fines
- n administrative system has certain advantages for more complex economic assessments and (especially) empirical analysis
 - n expertise
 - n opportunity for lawyers and economists to interact and work together
 - n internal control (Panels, Hearing officer, CE, etc.)

judicial scrutiny



- n effective judicial review is necessary (Judge Vesterdorf)

“Examination by the Community judicature of the complex economic assessments made by the Commission must necessarily be confined to verifying whether the rules on procedure and on the statement of reasons have been complied with, whether the facts have been accurately stated and whether there has been any manifest error of appraisal or misuse of powers” Aalborg Portland and Others v. Commission (point 279)

“In this respect, however, the basic provisions of the Regulation, in particular Article 2 thereof, confer on the Commission a certain discretion, especially with respect to assessments of an economic nature.”
ECJ in Kali Salz(par223)



European Court of Justice in Tetra

"the fact that the Commission has a margin of discretion with regard to economic matters, [...] does not mean that the Community Courts must refrain from reviewing the Commission's interpretation of information of an economic nature. Not only must the Community Courts, inter alia, establish whether the evidence relied on is factually accurate, reliable and consistent but also whether that evidence contains all the information which must be taken into account in order to assess a complex situation and whether it is capable of substantiating the conclusions drawn from it." (para 39).



Judicial review of economic assessment

- n what does “margin of discretion on economic matters” mean?
 - n separating facts from complex economic assessment
 - ∅ is economic assessment always complex?
 - ∅ do facts require complicated economic assessments?
 - n is “all the information that must be taken into account” & “substantiating the conclusions drawn from it” seems very much part of an economic assessment
- n Scenario 1: delegate all complex economic assessment to the agency
- n Scenario 2: effective scrutiny of economic assessment
 - n build more capacity & expertise
 - n in-house economists
 - n Court appointed experts
 - n Judges