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International Competition Policy: some issues

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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

- n where we are – soft convergence
- n the role of economics
- n challenges

Where we are....



- n multilateral frameworks
 - n ECN, ICN => forum for advocacy, OECD, WTO
 - n multi-jurisdictional approach is a reality (no hard convergence)
- n mostly procedural convergence
 - n "best practice" agreements
 - n reduce regulatory burden (ECN) / increase legal certainty
- n soft convergence on substance (amongst certain jurisdictions)
 - n similar objectives (role of micro-economics)
 - n similar methods (market definition, merger control)
 - n close cooperation between agencies

Example: Transatlantic Relationship in Merger Control



- n most important trading relationship
- n US academic/policy debate influential
- n very close (almost daily) contacts with FTC or DOJ
- n in the last 12 month 40 cases where at least one firm was US based (this is certainly not going down...)
- n Oracle/Peoplesoft, Sony/BMG, Air France/KLM, Sanofi/Aventis, etc.
- n very little disagreement (GE/HWL)
- n bilaterals and meetings

Soft convergence?



- n horizontal Merger Control
 - n EU approach is rooted in sound economic analysis of competitive effects and efficiencies
 - n strong similarities with US Guidelines and methodology
- n non-horizontal Merger Control
 - n current internal review (pending cases)
- n Article 82 - Abuse of Dominance (unilateral conduct)
 - n current review – guidance paper
 - n more emphasis on effect-based analysis (rather than form-based)
 - n exploitative abuse
- n Article 81 – administrative vs. judicial

Factors leading to different outcomes (no “hard” convergence)



- n legal/institutional differences
 - n DG Comp is an administrative authority that takes decisions and imposes fines
 - n organizational differences with the FTC, DoJ
- n markets may differ
- n industrial policy vs. competition policy (globalization and conflicts)
- n differences in prior beliefs matter...
 - n the road to dominance
 - n dynamics of markets (entry, reactions by competitors, customers & consumers, technology, etc.)
 - n „speculative“ dynamic benefits vs. „sure thing“ static benefits
 - n competition as an institution (Hayek)
- n political/policy environment

Convergence through economic analysis?



- n final answer by economists in a given case may still be different....
 - n economists can disagree (like lawyers) – both in theory and on empirical analysis & findings
- n Yet, economics is a common language => facilitates soft convergence through Bayesian updating
 - n continue capacity building (DG COMP, ECN)
 - n strengthen cooperation and communication in terms of economic analysis
 - n build link with academic world (.. which is international)

What is next?



- n no hard convergence likely => converge on what?
- n soft convergence
 - n multilateral approach very useful (ICN, OECD)
 - n certain jurisdictions + ECN more advanced and great need to increase (ex: Article 82 across the ECN)
 - n yet, a long way to go – Ex: opportunity of China
- n economic research – how can it help?
 - n emphasis on “economic principles and evidence” reduces the likelihood of conflict
 - n more ex-post studies: bayesian updating of our beliefs
 - n more empirical research: for both cases and guidelines