Economic analysis in European competition policy: The first 2000 (or so) years

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In the 1990's, events like today's were something of a rare phenomenon. A gathering of academic researchers in Europe making a contribution to the debate on current policy and enforcement issues. At the time, economic analysis in competition cases was still rudimentary. In the meantime, both the Commission and private parties make significant efforts to assess the economic effects of firms' practices.

There is an interesting study published in 2006 that illustrates this development. It shows that expenditures on economic advice in antitrust cases have increased from five to about 15% of total fees over the last ten years. The report shows the tremendous increase in turnover that economic consultancy firms have had as a result from a few hundred thousand euros in 1991 to more than 40 millions euros today. If this study is correct, then Europe has by now matched the traditionally larger role that economics has played in US competition policy.

One has to be careful with such estimates of course, because precise data is sometimes not available. This study, however, seems very robust to me even if cynics may be tempted to point out that I am co-author of this study.

As a naïve observer, one would tend to think that some modest involvement of economists in a core economic subject like competition policy is probably not a bad idea. But this development towards a more effects-based assessment has not always been greeted with enthusiasm. Again cynics might argue that barriers to entry were raised by the legal profession, motivate by the protection of their rents. But I have to much respect for the legal profession to endorse such a view.

Probably, the initial discomfort with economic analysis in antitrust has much to do with a first mover advantage, as competition law was there before economists, let alone competition economists.. Indeed, early antitrust legislations date back to the Roman Empire, to 50 BC. The acknowledgement of economics as an independent discipline came much later. Only in the 18th century, the term "economist" was first recognized as a profession, and many economists in this room would not want to be associated with the strange specie that term economists referred to at the time.

The Roman Empire had strict legal rules against withholding the supply brought by ships. This was sometimes done by merchants to raise market prices. So in essence, these were excessive pricing cases. Needless to say, lawmakers opted for a per se prohibition of the conduct. Such capacity withdrawal was heavily fined.

Incidentally, there were not many Chicago school economists around at the time. In all likelihood, they would have argued against a per se rule, so as to give merchants an incentive to build ships and engage in the risky business of international sea trade. Such argument has clear merit given that 2000 years ago, being drowned by the tentacles of a sea monster or falling off at the edge of the earth were still considered to be reasonable danger.

But ancient politicians were rather ignorant about dynamic efficiency and focused on static efficiency losses instead. Hence, merchants were publicly accused of exploiting their market power. 300 years later, under emperor Diocletian, lawmakers even proposed that excessive pricing should be punished with the death penalty. In short, everything was pretty much as it is today.

But economic analysis has not only triggered scepticism among lawmakers, but sometimes even a slight bit of fascination. Today, this particularly seems to be the case whenever quantitative methods are involved. For some non economists, statistical software is a *deus ex machina*: you feed it with lengthy columns of numbers, press a button and it produces a draft so, the meaning of life as a bonus (possibly rounded to the third decimal place). People who have done some econometrics themselves of course find this hilarious. Precision is an illusion. And quantitative methods can only be seen as one approach among others to validate a theory of harm.

Indeed, the contribution of economics is mostly not about number-crunching but about the development of a sound understanding of competitive interactions.. Take the example of Article 82. Both in the past and today, practices like bundling or exclusive dealing have sometimes been prohibited and often been accepted by competition authorities. The potential efficiency benefits stemming from the implementation of these practices has been increasingly recognised as well as the need to develop better test to distinguish those that are beneficial from those that are harmful. Without an economic framework, we will necessarily navigate without a Tom/Tom. In order to give firms the certainty they need, we will have to provide a clear and consistent analysis of the effects involved here. Only by doing this can we fulfil the Treaty's aim of safeguarding competition in Europe.

Since the inception of the Chief Economist Team four years ago, we have been trying to do just this: to contribute to decisions by providing sound economic reasoning and evidence. A few examples may help to illustrate.

Master Card (principles);
Telefonica
Ryanair/Aer lingus. (econometric exercice)
Travelport/worldspan
About 15 case with econometrics
State aids : development of methods to evaluate market failures, incentive effects and distortion of competition.

This overview shows that many of the bigger cases at DG COMP raise challenging economic questions. And both the Commission and private parties engage in sophisticated economic analyses to answer them.

The concern is sometimes expressed that evaluating effects is excessively burdensome. Now, I agree that life would be a whole lot easier if we could simply conclude that “bundling is evil” or “exclusive dealing is great” without need for further clarification. I'm afraid we will have to accept that life is a complicated undertaking and that formalistic rules often no longer offer an alternative because of the errors that their implementation induces.

That is why we need economic analysis in competition analysis. It provides a structured approach to assess when a given practice is efficient and when it merely excludes rivals to the detriment of welfare; and it provides for empirical test to inform the decision.

So what do we learn from all this? Well, if anything, then that economics is here to stay. The inception of the Oxera Economics Council today is another element of this development. It will provide a forum to discuss advances in economic theory and derive insights for policy and enforcement.

This is essential: if we want economics to play a useful role in antitrust analysis, it is necessary to make it work. On that account, there is a common prejudice against academic researchers, and many highly reputable members of this group are assembled here today. This is the perception that academics are interested in pretty much everything—except reality.

While there may be some truth to this, the field of industrial economics is an encouraging counterexample. Academic research is often triggered by concrete questions raised by competition practice; statistical methods to validate theoretical hypotheses are heavily used; and many if not most influential researchers have been involved in concrete case-analysis. Industrial economics is thus grounded in real life to a greater extent than other disciplines. Cynics again argue that this has do with the fact that consulting fees are somewhat less significant in the field of moral philosophy or medieval languages.

Oxera has managed to bring together a number of distinguished researchers who have shown their intellectual capabilities not only in theory but also in practice. I therefore hope that the Oxera Economic Council will develop into an influential venue to "stretch the boundaries of existing economic thinking in the context of public policy in competition and regulation". I wish this new forum the best of success and look forward to the contributions it will surely make to our understanding of antitrust policy in the future. Thank you.