

Bruegel discussion

Market power and its implications to competition policy

Brussels, 16 January 2019



The views expressed are those of the
presenter and do not necessarily reflect
those of the Bundeskartellamt

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Outline

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- will cover implications to competition law enforcement and policy only
- implications on different levels:
 - direct impact on enforcement cases
 - potential need for agency policy change
 - potential need for competition law changes
- 4 propositions

More market power leads to more agency actions

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- prohibition of abusive practices depends on dominance threshold
- sliding scale in merger control: the higher market power pre-merger, the lower is the acceptable increment
- if market power is rising, and the agency's enforcement policy remains unchanged, we can expect to see more merger prohibitions and more dominance abuse cases
- same is true for higher profits/margins and higher concentration, as these are market power indicators
- need to step up agency resources?

Agencies broaden(ed) perspective on consumer welfare

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- mergers and potentially abusive practices may affect prices, quantities, quality, variety and innovation, both short-term and long-term
- agency enforcement was sometimes focused on short-term price effects
- no theoretical grounds for such a narrow perspective
- more recent cases: mergers challenged e.g. on lessening of innovation (e.g. US DoJ Applied Materials / Tokyo Electron) or quality (e.g. UK CMA ICE / Trayport), ...
- trend towards broader perspective is likely to persist
- overall, this will lead to more agency interventions

Should agencies lower their intervention threshold?

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- lively debate on possible CL under-enforcement
- hardly possible to prove a general over- or under-enforcement empirically
- legal limitations of merger control are more obvious (e.g. acquisition of potential competitors, common ownership), but difficult to fix
- (voiced) majority views have changed significantly if compared to last decade
- a natural step is to fully enforce the existing intervention thresholds
- some agencies seem to have become stricter de facto

Robust CL enforcement needed for (emerging) tech monopolies

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- digital economy is often characterized by significant network effects and economies of scale
- quasi-monopolies more likely to emerge and persist if compared to other markets
- merger control less suitable/effective
→ abuse control becomes more important
- Tirole (2017): analogy with telecom networks
- open question whether CL will be sufficient to address these new market power issues, or whether additional specific regulation will be needed
- competition agencies should try at least

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