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English - Or. English

16 November 2020

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Global Forum on Competition

ECONOMIC ANALYSIS IN MERGER INVESTIGATIONS – Contribution from Belgium

- Session III -

9 December 2020

This contribution is submitted by Belgium under Session III of the Global Forum on Competition to be held on 7-10 December 2020.

More documentation related to this discussion can be found at: oe.cd/mergerinv.

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JT03468515

Economic Analysis in Merger Investigations

- Contribution from Belgium –

1. What proportion of your merger review cases involve economists, and how does your authority determine whether to involve economists (for example, are economists only involved in in-depth reviews, or in cases where a remedy or prohibition may be required)?

1. Regarding simplified cases, the CET is only involved in a small number of cases. Only exceptionally, in case the results of a first screening does not suffice to decide whether or not the simplified procedure is applicable. In principle, however, at least one economist of the team of the prosecutor general is involved, e.g. to verify market shares.
2. Regarding non-simplified cases, the CET is involved in (nearly) every case, often already during prenotification phase.
3. The immediate intervention of the CET guarantees that the case team is on the right track right from the start. The intervention of the CET might differ from case to case, and might evolve during the case. From advising and reviewing to actively steering the analyses.

2. How does your authority structure its economic expertise? For example, is it primarily concentrated in a single team lead by a chief economist, or is it integrated in each case handler team?

4. At least regarding more complex techniques, the analyses are done by the CET. But regarding more standard and fairly straightforward exercises, we try to share our know how as much as possible with the economists of the investigation and prosecution service. The advantage of this way of cooperating is that also less experienced economists become more acquainted with these types of analyses. This way they can use their extended knowledge in future cases, so that the role of the CET-members for the more standard exercises can be restricted to advisor/reviewer.
5. In addition it is important that both worlds of lawyers and economists – also within the authority – understand each other's language: so even when the analyses are performed by the economists, it is of utmost importance that the prosecutor in charge understands the reasoning made by the CET. Conversely, economists should also understand the legal boundaries of the case team.

3. At what stage of a merger review are economists involved (e.g. making an initial decision on in-depth review, preparing information requests, negotiating remedies)?

6. In principle always at the start of the case. In the beginning, the intervention is limited to a high level review of the case, indicating main potential concerns, specificities of the sector that might play a role, some first suggestions wrt potential theories of harm,.... Depending on the complexity of the case, this might rapidly evolve towards a more intense collaboration where one or more members of the CET assist in constructing RFI's, steer

the data requests, join meetings with the parties and thirds parties in order to collect the right information,...

4. What types of quantitative analysis has your authority employed in merger reviews? What criteria does your authority use to select techniques?

4.1. Type of quantitative analysis – overview of most complex exercises:

- Diff-in-diff study to evaluate potential impact on price in country Y based on what happened after a similar merger in country X (diff 1: treatment group: prices of merged parties vs control group: prices of competitors; diff2: pre vs post merger)
- Diff-in-diff study to evaluate the closeness of competition between companies (diff 1: treatment group: price level in local markets where entry took place vs control group: price level in local market without entry; diff 2: period pre entry vs period post-entry) (executed by the parties, in close collaboration with the BCA, taking into account our comments)
- Analysis to identify the most appropriate model that explains competition in a particular homogenous good sector: Bertrand Edgeworth, Cournot, none of both. Clarifying the problem of pivotality and the role of capacity constraints in order to estimate the impact of a merger in this sector.
- Switching analysis to verify the closeness of competition between parties, and vis-à-vis their competitors
- Local market delineation: identify catchment areas via isochrones and analyze competition within these areas, specifically in overlapping areas. Our internal tools have been seriously automatized and our methodology has been strongly refined in the recent years, taking into account several types of sensitivity checks. In the coming weeks, a position paper on our methodology will be published in a Belgian competition journal.
- Vertical arithmetics to calculate incentive of input and customer foreclosure
- Large scale online surveys: see next question

4.2. Criteria (non-exhaustive list):

- Reputation of the technique: already acknowledge via previous cases (of the BCA or other authority)
- Phase of the merger: very complex, data and time consuming techniques only in phase 2, unless it is already clear right from the start that it concerns a highly problematic merger.
- Type of merger
- Human resources and time available
- Character of the good, specificities of the sector
- Size of the merging parties: large data requests are more easier to impose on big companies than on SME's. They often do not have the means, human resources or knowledge to provide us with large data sets.

- Type, number and size of competitors
- Type, number and size of upstream / downstream third parties

5. Does your authority have any experience with the use of surveys in merger review cases? What best practices and challenges have you identified with respect to survey evidence?

7. Yes, up till now about 5 large scale online surveys, making use of different platforms (free platform of the Commission vs a paid tool of a specialized company). In the context of merger cases, we only relied on surveys in the 2nd phase as an additional source of information, to try to fill the remaining gaps.

8. Most of them were customer surveys to get more insight in the demand side of the sector: past behavior, switching, get more insights in which competitive parameters customers do value as important (role of price, distance, choice,...), the closeness of competitors in view of the customer, what options are left if a firm closes down (e.g. interesting in light of remedies) and so on.

9. On the other hand, the attempts to include some kind of SSNIP-test often lead to questionable results, where we had e.g. to deal with problems related to stated preferences. These types of questions are often most criticized by the parties.

5.1. Other benefits of surveys:

- Answers are immediately collected in a kind of database that you can transfer to e.g. Excel or STATA for further analyses, even if you want to reach a large number of respondents. You can even start preparing Excel pivot tables or STATA do-files on a first set of answers (just the structure) and then update every time new respondents have filled in the survey, which is very useful given the time constraints of a merger investigation.
- One does not always have to worry about sample selection, because an invitation can be sent to all clients/competitors/... involved. Maybe sample selection is needed, if the population is too large, inferring with budget restraints, which is a first challenge of surveys.

5.2. Best practices:

- In case the structure of the questionnaire is complex, we rely on the services of specialized firms. They provide very sophisticated software, with a large set of question type possibilities (single/multiple choice, open questions, matrices for Likert scales,...), very complex routing possibilities (referring forward and backward to specific answers, the possibility to make the question visibility only to a selection of respondents,...), and random appearance of answering possibilities. In addition they offer a personalized lay-out, give additional support wrt for example the phrasing of the questions, how to adapt the invitation in order to have a better response rate, and so on.
- Try to spend sufficient time in constructing and testing the survey. While this might be problematic given the time constraints of a merger investigation, it is crucial not wanting to be too fast. Better to have no survey, than a bad survey. Problems that might arise: forgetting a very important answering possibility, forgetting an “I don’t

know/no opinion option” forcing respondents to answer, ambiguous or compound questions, and so on. If this happens, the answers to these questions are not (or less) useful. But also testing is important: is the invitation clear, do all the links work, do all the routing options work,...? Given our personal experiences (from our work at the authority, but also from previous employers), we are quite good in estimating the time that is needed to do the whole exercise.

- It is useful to see whether a control group can be constructed in order to compare their answers with the answers of the treatment group. This makes the results even more valuable.

5.3. Challenges:

- Constructing a sound sample selection
- Guarantee a sufficient response rate
- Issues of GDPR (data security, data hosting, privacy): all “professional survey tools” seem to have a sound procedure covering GDPR: not storing data too long, not possessing the data, ...

10. In our most recent survey, however, we had one specific problem: too high bounce rate. Professional firms then slow down drastically the pace of sending out invitations, and worst case ask you to clean up the set if you want to continue (explanation: <https://www.checkmarket.com/kb/high-bounce-rate-warning-in-survey/>). A similar explanation is provided on the website of Survey Monkey. In our previous case, due to the problem of a too high bounce rate, it would have taken days before the whole set would have been invited. So we looked for a mail-cleaning service, only specialized in “cleaning emails”, without any further purpose. There are many firms doing this, and the professional ones are also nicely covered wrt GDPR. We looked for a European firm, or an international firm but with servers on European ground, to avoid that for doing this cleaning, data were transferred from Europe to a country outside Europe and back. The result of this exercise is the list with email address in one column and the quality/reliability of the email address in the other. If you combine this information, with the whole set of emails, you can make a sample selection by excluding the bad emails.

6. What is your authority’s view of the optimal approach to quantitative analysis? For example, how does your authority decide whether to use new or complex techniques that may be difficult to explain to decision-makers and courts?

11. The criterium to decide whether or not to use a new/complex technique does not depend on whether it will be difficult or not to explain the results to decision-makers and courts. We do believe that every type of analysis can be explained in such a way that everyone understands the philosophy of the exercise and how the results should be interpreted. So in case we consider that a specific model is appropriate, feasible to implement and is expected to give important value added to the case, we will go ahead, even if it might seem complex at first sight. We do, however, acknowledge the risk, so we try to spend sufficient time in translating the results into a clear and comprehensible text, amended by visuals in case they might help to understand the underlying reasoning.

12. Regarding the underlying modelling and robustness checks, that might indeed be very complex, we consider that in case they lead to heavy discussions, the decision-makers and courts can always rely on the intervention of an independent expert.

7. Does your authority involve economists in the analysis of qualitative evidence? If so, how, and what are the main issues they consider?

13. Yes, e.g. reading board documents, interpreting the facts and figures mentioned in strategy presentations, reviewing the qualitative evidence as a source of inspiration to nourish the quantitative analyses,...

8. Does your authority make use of external economic experts? What factors does your authority weigh when making the decision whether to use external expertise, and how do you select external experts?

14. We already did, once or twice. Factors that weigh on decision:

- Lack of resources
- Lack of specific knowledge/experience
- Second opinion / peer review in case it concerns a complex technique Selection:
- Experience and reputation
- Price
- Availability/commitment

15. These experts might be academics or consultancy agencies. Academics are in general less expensive. However, their commitment is often limited (due to time restraints, no or only small team to rely on). But the intervention of an academic might be very useful to e.g. give feedback on the model, on specific econometric difficulties, might propose useful robustness checks,...

16. In case a full exercise would have to be outsourced, a consultancy agency is probably better equipped.