

Monitoring compliance with competition laws

The Experience of EU NCAs

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Basic assumptions

- Ultimate goal of competition enforcement system: defend competition from certain practices
 - No defense of competitors
 - No welfare maximising
- Two intermediate goals: to **deter** future anticompetitive practices and to **cure** anticompetitive effects of past practices
- Two instrumental tools:
 - Sanctions (criminal, administrative, damages,...)
 - Remedies (behavioral or structural)
- Deterrence will be successful when the competition enforcement system is credible in detecting, prosecuting and sanctioning anticompetitive practices

Main Monitoring tools (i)

- Monitoring of market conditions (price, sales, benefits, entrance and exit,...)
 - Very difficult to extract any clear conclusions
 - Time and resource consumption is high
- The main monitoring instrument are complaints
 - Need to guide plaintiffs because an overload of complaints can be very burdensome
 - Under several legal systems, NCA cannot simply reject a complaint based on its enforcement priorities
- Anonymous informants
 - NCA has to build a comfortable environment for informants, which can be very valuable

Main Monitoring tools (ii)

- Leniency applications
 - They are the best instrument to fight against cartels
 - Leniency system has to be carefully designed
- Exchange of information between authorities
 - Many anticompetitive practices are similar in different jurisdictions
- Sector enquiries, merger notifications and state aid analysis are also valuable instruments to identify areas of enforcement

Experience of NCAs

- Time experience: accumulation and consolidation of practice is needed to achieve success, building credibility
- But, since real markets change fast, all competition enforcement systems need to adapt both, their policy and practice
- The local environment and past institutional conditions affect heavily each competition enforcement system
- One very clear and visible trend: most NCAs are expanding and refining their monitoring tools, probably because traditional tools are not enough to deter and to cure

Experience of NCAs in shaping *policy (i)*

- Adaptation of rules: from *per se* towards the *rule of reason*. A more “economic” approach
 - Rules are key for companies. Rules are the interpretation of basic prohibitions: what can and cannot be done
 - *Per se* rules, focused on the formal aspects of the conduct, are easy to understand and to monitor, but less efficient and error-likely
 - In many areas of competition enforcement the trend is to use more structured rules, based on an economic analysis of market effects: vertical agreements, abuses of dominant position, horizontal co-operation agreements,...
 - The same applies to the experience in merger control: detailed analysis of market characteristics and less focus on concentration
 - The administration of these rules needs more guidance to companies and a good expertise in modern industrial economics

Experience of NCAs in shaping *policy* (ii)

- Increase their roles to become more proactive:
competition advocacy
 - Sanctions and remedies are not enough to build a competitive market
 - Need to educate and convince all stakeholders: regulators, consumers, politicians, associations, judiciary,...
 - Regulators need a special attention. Competition assessment should be a must in every law making procedure
 - Reports on the functioning of markets are also relevant to identify priority areas of enforcement

Experience of NCAs in shaping *policy (iii)*

- Expansion of enforcement toolkit to increase effectiveness. The objective is to achieve greater deterrence effect
 - Private enforcement
 - Leniency
 - New types of punishments: criminal sanctions, more publicity,...

Experience of NCAs in their *practice*

- Visible increase in sanctions
- Reinforced co-operation between authorities for international cases
- Increase in resources: stronger investigative powers (leniency and forensic units) and analysis capabilities (chief economist unit)
- New ways to settle cases and to accept remedies: streamlining procedures
- More interaction with the judiciary