

Introduction

Competition policy and regulation :
objectives and tools

Objectives

- Much debate in the past on the objectives of competition policy
- Protection of competition as such?
- Protection of efficiency?
- Protection of consumers?
- Protection of small firms ?
- Should competition policy take into account other objectives : « fairness »? Redistribution (between consumers, between firms and consumers)?

In Europe

- Idea that consumers are better protected by competitive markets than by oligopolistic ones.
- Competition policy aims at **protecting consumers**
- Not small firms against big ones.
- Less oriented towards efficiency than competition policy in the US, but still promotes entry, efficiency, investment in new technologies etc.

Links and differences with other public policies

- Regulation : usually devoted to open (monopoly) markets to competition, or to intervene on markets for which competition is not the natural functioning.
- May be actively pro-competitive : often designed to force entry on markets.
- Intervention of regulation : more focused on the number of competitors, can influence entry (licences), determine prices and quantities.
- On the opposite, competition policy defines the rules of the games but neither the prices/quantities, nor the identity or the number of firms on a market)

Links and differences with other public policies

- Other microeconomic policies can interfere with competition policy :
 - Protection of property rights, patents : protect the incentives to innovate, possible tradeoffs with comp. pol.
 - In France mostly, debate around the roles of comp. policy and industrial policy, national champions etc.

Two main fields for competition policy

- Ex ante : merger control. When 2 or more firms want to merge, the merger is examined by a competition authority. Can clear or reject or accept the merger « with remedies ».
- Ex post : behaviors of the firms are controlled and sanctioned.
- Two types of behaviors :
 - collusion (tacit or explicit like cartel, information exchanges...)
 - Abuses of dominant position : predation, tying and bundling, discrimination ...

Tools

- Competition authorities cannot « regulate » markets in the sense of price or quantity fixing.
- Example : when prices are « too high » (with respect to which benchmark?), the competition authority does not set the price at a lower level, but tries to correct the reasons that lead to high prices (barriers to entry, abuse of dominance...)
- Prices result from a given strategic market equilibrium.
- Two tools :
 - sanctions (i.e. incentives to behave in a competitive way)
 - injunctions to behave or not to behave according to a given behavior (remove a clause from a contract, stop selling bundled products etc...).

Sanctions

- All over Europe, harmonisation on the same regime : ceiling of the sanction = 10% of the world wide turnover of the group to which the firm that is sanctioned belongs to.
- European commission : has issued guidelines that describes its sanction policy.
 - Fixed amount by category of breach of the law, with adjustments depending on various factors (« seriousness », second offence etc...)
- In France no guidelines, and no fixed amount.
- Sanction depends on the the damage created by the practice, on the market affected by the practice, second offense...
- US : penal dimension of competition law, with prison sentences for managers.
- Many debates on this issue.

Other tools, other problems

- Main problem for competition authorities : to obtain the relevant information on markets, firms, behaviors.
- Some elements of the competition policy are devoted to solve this question.
 - Example : leniency programs; when a firm comes forward the authority and denounces a cartel it is involved in, then it may obtain immunity.

Other tools, other problems (2)

- Efficiency of competition policy :
Competition authorities should devote their resources to the cases that are most detrimental to consumers' surplus, that is, they should let some (minor) infringements of the law occur.
- This requires a « de minimis » policy : possibility to leave uninteresting cases aside.

II :Main features of European and french competition law

Three main elements

- Article 81 : Horizontal and vertical agreements.
 - In France : article L. 420-1
- Article 82 : Abuse of a dominant position
 - In France : article L.420-2
- Merger control (last version : 2004)
 - In France, « Règlement concentration »

Some remarks on article 81

- Article 81 deals both with horizontal and vertical agreements: but these 2 types of agreements have very different competitive effects
 - Horizontal : usually detrimental to competition,
 - Vertical : often improve competition (ex : solution to the double marginalisation problem)
 - The problem has been perceived, new approach on vertical agreements more in line with economic thinking (also true in other fields)
- Even agreements between competitors may be exempted (block exemptions) : R&D, technology transfers... : no per se prohibition

Some remarks on article 81

- Ex ante notification and acceptance by the Commission abolished
- Now the agreements are examined ex post.
- The national competition authorities (NCAs) can themselves give exemptions, which was not the case before (but may create problems with the heterogeneity of the decisions)

Some remarks on article 82

- Gives a list (not exhaustive) of possible abuses
- Relates both to exploitative and exclusionary practices
- Requires to show 1) that the firm is dominant 2) that there is an abuse
- 1) = the firm has the power to behave independently of its competitors and customers (?)
- 2) abusive behavior : very complex to define.
 - The same behavior may according to the context be pro or anti competitive
 - Two different practices that have the same effect should be treated homogenously, which is not the case

Some remarks on merger control

- Problem of the « test » : before the new regulation, mergers that create or strengthen a dominant position should be prohibited
- New merger regulation (may 2004) : new substantive test, the mergers that reduce substantially competition should be prohibited.
- In principle this should reduce the risks of type 1 and type 2 errors (prohibit mergers that have no detrimental effects, authorize mergers that have detrimental effects).

Tools

- Sanctions : up to 10% of the world wide turnover of the group to which belongs the guilty firm.
- Injunctions : to change its behavior, to do or not do something, to modify contractual clauses, to divest some assets.
- Procedural tools : leniency programs, that guarantee the immunity, under some circumstances, to a firm that comes forward and gives information on a cartel it belongs to.
- Transactions : in the case a firm decides not to contest the facts, reduction in sanctions.

Market power

- Basic idea of competition policy : market power and monopolies are « bad ».
- Empirical evidence that confirms this idea : prices are higher (static inefficiency) , innovation may be delayed (dynamic inefficiency), etc... when market power is high.
- Link between market power and concentration on the market.
- Preliminary steps in many anti-trust cases : definition of the market and assessment of market power.