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ROUNDTABLE ON IMPACT EVALUATION OF MERGER DECISIONS

-- Note by the Delegation of Hungary --

This note is submitted by the delegation of Hungary to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 29-30 June 2011.

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ROUNDTABLE ON IMPACT EVALUATION OF MERGER DECISIONS

-- Note by Hungary --

1. The present contribution of the Hungarian Competition Authority (Gazdasági Versenyhivatal, GVH) is based on the questions posed, but follows a slightly different structure. We first discuss our general views on the subject, highlight some of the challenges we see in applying ex post evaluations in the case of a smaller country / competition authority and then our limited experience with ex post evaluations.

1. The goals of impact evaluations

2. In our view, the answers to the practical questions depend a lot on the main goals the competition authority expects to achieve by conducting impact evaluation studies. Below, we present two possible goals. Naturally, one can choose to pursue both at the same time as they are not contradictory to each other, but there may be some trade-offs that need to be considered in implementation.

3. The first objective may be called "internal", that is, providing information for the agency itself. Conducting impact evaluation studies may provide useful feedback that can help the agency improve the quality of its work in future cases. This may be especially true in industries with high merger activity (for example, telecommunications or retail), where direct lessons can be drawn from analysing the impact of previous mergers. In the case of a primarily internal focus for impact evaluation, cases can be chosen based on how "interesting" or "useful" the results are expected to be.

4. The second objective may be called "external", that is, providing information on, or justifying, the agency's work for third parties. If an agency routinely conducts impact evaluation studies, these may help to improve the agency's reputation, justify its importance, or have direct effects on its budget. There are two possible approaches to case selection in this case: either the agency could attempt to measure the overall positive impact of merger control on consumer welfare by analysing all cases, or it could focus on certain more important or more "problematic" cases, in order to establish whether the agency's assessment was "correct".

2. Impact evaluation methods

5. The choice of methods depends, to some extent, on the number of cases where an impact evaluation study is carried out. When all cases are investigated, it is probably the best to employ simulation methods to a degree (as in the practice of the OFT). This speeds the process and facilitates comparing cases to each other, but still requires a dedicated staff with this main responsibility. However, simulation requires many assumptions and simplifications, leading to possibly less robust results. Because of this statistical property, we think that a sufficiently large number of cases are required to derive reliable estimates. In our view, these arguments favor larger jurisdictions with more cases and resources to successfully implement the general impact evaluation of merger control.

6. When only selected cases are investigated, a more detailed approach can be implemented, ideally using quantitative ex-post studies. In our view, the conceptual framework should be based on correct factual-counterfactual comparisons, by controlling for other market characteristics and developments. If

possible, this would mean a quantitative approach in a difference-in-differences (DID) spirit; even if explicit econometric estimations could not be carried out. Whenever possible, it is preferred to complement the analysis with qualitative data, for example by using customer questionnaires.

7. In our view, one should be very careful when using financial market data to evaluate the impact of a competition authority's merger decision. First, there are many theoretical and measurement concerns, as event studies measure the impact of merger decisions on consumer welfare in an indirect and imperfect way. Second, many merging or rival firms' shares are not quoted, especially in transactions that are investigated in smaller jurisdictions.[1]

3. Case selection for impact evaluation

8. If not all cases are investigated, the question of the approach to case selection arises. In our view, especially when first commencing the use of impact evaluation studies or if resource allocation is an important consideration, it may make sense to conduct them in cases where ample data is available on the industry. These may be, for example, industries where list prices are employed (like telecommunications or FMCG). Also, in "problematic" mergers, the Competition Authority is likely to have access to more data than usual during the merger investigation – although acquiring the data may be harder for the post-merger period.

9. Perhaps the most trivial approach to case selection is to investigate mergers where the agency has identified competition concerns. It is not trivial, however, to identify "problematic" mergers. It is possible to employ certain screening methods: for example, conducting impact evaluation studies based on whether a merger was Phase II, or whether there were remedies. A further advantage of remedies is that they are often employed in cases where possible counterfactual situations have been defined in more detail, thus facilitating a DID approach. Impact evaluation might be simpler in the case of structural remedies, as opposed to behavioral, especially if the divestiture concerns only some of the affected markets.

10. However, selecting the cases based on simple statistical criteria can lead to bias in identifying "important" cases – it is quite possible that in a complex merger, detailed analysis was performed already during pre-notification or Phase I, and the merger was finally cleared. It is also worth considering that analyzing more complex cases also leads to a higher margin of error in the results of impact evaluation. It therefore may make sense to also investigate some "simpler" cases – but selecting them will then be somewhat subjective.

4. The GVH's experience with impact evaluation in mergers

11. The GVH has not yet conducted a full-scale impact evaluation study in a merger case where it made the decision itself. As we discussed above, impact evaluation studies may be less effective and relatively more costly to carry out (in terms of agency resources). The number of mergers investigated per year is relatively low (34 in 2009 and 37 in 2010, of which only 2 and 1 were remedied). This means that the possible sample size of mergers where impact evaluation could be conducted is also relatively small, implying that general conclusions about the agency's effectiveness would be hard to draw reliably.

12. The GVH has commissioned, in a handful of cases, surveys pertaining to how well-known a given case is to the general public. In such studies, respondents are also sometimes asked about their thoughts on the impact of a given decision. One such study was conducted in relation to a merger on the

[1] The merger might also impact only a relatively small division of a large international company, in which case no significant stock market reaction can be expected, even if it may have had a significant effect on the affected markets.

market for tabloid newspapers.[2] The survey contained questions relating to consumers' perceptions of the likely effects the merger would have had, first on the content of the two papers, second on their respective prices, and also, whether the acquired paper would have been shut down. While many consumers could not answer the questions, the majority of those who gave answers believed that the papers would have become more similar to each other, that their prices would have increased, and many also believed that the acquired paper would, eventually, have been pulled from the market. Such a survey is of course no substitute for an impact evaluation study.

13. A detailed impact evaluation concerning two mergers in the Hungarian retail gasoline markets was conducted in 2007. The basic motivation to start with this evaluation was another transaction in this market in 2009,[3] and the GVH wanted to thoroughly check the effects of previous mergers on Hungarian retail prices. Note however, that the two mergers in 2007 were part of larger transactions involving multiple countries and so were investigated by the European Commission.[4] The study ran fully fledged difference-in differences estimations and developed a methodology to separate the effects of the two mergers that happened almost simultaneously.[5] The study used a detailed, publicly available database containing daily retail gasoline prices (for 24 monthly, during 2007-2008) for each gas station.[6] The study found that both mergers had a statistically significant but minimal effect on prices (all price effects were smaller than 1%), and these results were robust to various specifications.

2 Ringier/Hid Radio (Vj-155/2008). The GVH had issued a Statement of Objections in the case, and no suitable remedies could be found. The parties finally withdrew the merger before the GVH could take a formal decision.

3 Shell/Tesco (Vj-17/2009), approved unconditionally in Phase II.

4 The acquisition of Esso stations by Agip in case Eni/Exxon Mobil (COMP.M.4723), and the acquisition of Jet stations by Lukoil in transaction in case Lukoil/Conocophilips (COMP.M.4532), both cases cleared unconditionally in Phase I.

5 A publicly available paper written on the subject is Csorba-Koltay-Farkas (2011), "Separating the ex post effects of mergers: an analysis of structural changes on the Hungarian retail gasoline market"

6 www.holtankoljak.hu ("Where Should I Refuel?" in Hungarian), a website run by a private company to help consumers to compare gasoline prices at various stations.