

The Pros and Cons of Market Definition

Comments on „Relevant markets in EU merger control“ by Lucrezia Busa

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



Dr. Sebastian Wismer
General Policy Division
(Digital Economy, Regulation and
Competition, Procurement Law)
Bundeskartellamt

Summary

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- Purpose and role of market definition:
 - first view on competitive landscape, possibly using market shares
 - inform and organize competitive assessment
 - interplay with competitive assessment stage

- Recent discussions:

Geographic market definition and supply-side substitutability

- homogeneous conditions of competition probably more important criterion in geographic definition than supply-side substitutability
- Commission refines concepts if necessary (e.g. use of isochrones); market definition also might change over time (market dynamics)

Summary (cont'd)

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- (Limited) Informative value of market shares
 - Facebook/WhatsApp: absence of remuneration for services
 - GE/Alstom: differentiated products / bidding markets
 - Dealing with (indirect) network effects
 - Dealing with dynamic markets and innovation
- > specifics of a case may necessitate refinement of approach
- > market definition as a useful tool, but not an end in itself
- > use of complementary tools to ensure accurate fact-based assessment

Overview of further discussion

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- Geographic market definition and interplay with competitive assessment
 - > example: hospital mergers in Germany
- Limitations of market shares
 - > example: online platforms with different business models
- Market definition in presence of indirect network effects
 - > how many markets?
- Market definition and free of charge services
 - > no cash flow – no market? scope of application of merger control?
- Dealing with innovations
 - > challenges posed by dynamic non-price competition

Discussion: Geographic market definition and interplay with competitive assessment

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- NCAs often deal with local/regional markets, e.g. German hospital mergers
 - Identification of areas with homogeneous conditions of competition by using data on patients' actual hospital choices
 - Closer look at data during competitive analysis
 - > assessment of closeness of competition vs. varying market definition
- German jurisprudence: Federal Court of Justice skeptical about (schematic) use of radiuses (Sanacorp, 2004), emphasizes actual customer behavior (KKH Bad Neustadt, 2008) while not criticizing use of isochrones (Total/OMV, 2011)
 - > BKartA often uses approach established in hospital mergers (when detailed data available) or isochrones that account for actual behavior
 - > importance of interplay with competitive assessment!

Discussion: Limitations of market shares

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- Market shares often helpful, but sometimes misleading when considered without accounting for specifics of the case at hand
- Example: Competition b/w online platforms with different business models (e.g. in German case of a merger between online dating platforms)
 - paid vs. free of charge services -> revenue-based shares misleading
 - no incentive to unsubscribe from free services -> shares based on registered users misleading (non-active members)
 - focus on active members -> what does "active" mean?
number of "unique" visitors? DAU? MAU?

Discussion: Market definition in presence of indirect network effects

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- One market or separate markets for different market/platform sides?
 - Pro separate markets: relevant substitutes/scope may differ b/w sides
 - Pro one market: sides linked by network effects; competitive analysis may be the same for each market side
- > both approaches seem fine if competitive assessment accounts for interdependencies and all competitive forces on each market side
- Rule of thumb: define separate markets for each side unless it is a transaction platform or a matching platform (in contrast to audience providing platform)
- single-/multi-homing may justify narrow market definition (rationale?)

Discussion: Market definition and free of charge services

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- Antitrust markets can 'exist' if service is offered free of charge
 - gratuitous services frequent phenomenon esp. in multi-sided markets
 - competition for customers exists irrespective of payments
 - services to be considered as (part of) a market at least if group that is served is "linked" by indirect network effects to group that is charged
- Side note: New (additional) threshold in German merger control based on transaction value to be able to review cases that were not notifiable so far
 - high transaction value may indicate high economic potential
 - especially relevant for cases such as Facebook/WhatsApp or involving "pipeline products" / R&D activities without current but future revenues
 - in practice: questions on details of value assessment and on local nexus

Discussion: Dealing with innovations

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- In many cases high importance of competitive dimensions beyond price, in particular quality, product choice and innovation/R&D activities
- Firms that engage in R&D in a certain field may be the same as current competitors in established product markets, but also others (or a subset)
- How can agencies capture competition for future markets and ensure innovation competition, possibly beyond potential competition approach?
- In sectors with relatively long cycles of product development that are observable for agencies: definition of future markets / innovation spaces (?)
- What if “spaces” cannot be identified (e.g. not observable or highly dynamic context)? What if innovation competition is the ‘only’ concern and relationship to an existing or future product market cannot be established?

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Thank you for your attention!

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