

Do Remedies Affect the Efficiency Defence? An Optimal Merger Control Analysis

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ACLE UvA Workshop on
Strategic Firm-Authority Interaction in Antitrust, Merger Control and Regulation
Friday March 16, 2007

📄 Motivation

✓ Merger control: screening and selection of merger projects, to clear and promote ‘beneficial’ ones and prevent or modify ‘harmful’ ones

📄 Related literature

✓ Two-step process:

- competitive assessment / efficiency defence

(trade-off: market power v. cost savings - Williamson (1968))

📄 Model

- enforcement: prohibition or conditional approval / merger remedies

(structural or behavioural commitments to preserve competition)

✓ consequences of ex ante assessment and intervention (1):

→ information problem

possibility to make both type errors

📄 Conclusion

(allow anticompetitive mergers, reject competitive ones)

☰ Motivation

✓ consequences of ex ante assessment and intervention (2):

→ incentive provision

- through remedies

☰ Related literature

(more lenient merger control? - Seldeslachts et al. (2006)

penalizing intervention? - Farrell (2003))

- through efficiency defence

(look for and plan in advance efficiencies when allowed to argue them

☰ Model

- Jorde and Teece (1990))

✓ Objective:

examine the optimal combination of efficiency defence and merger remedies, given:

- their interaction in terms of ex ante incentives

☰ Conclusion

- the asymmetric information and need to minimize assessment error costs

☰ Motivation

✓ incentive effect of

- merger control

Besanko and Spulber (1993), Neven et al. (1993),
(Persson (2004), Ecer (2005), Barros (2003),...)

- merger remedies

Farrell (2003), Vasconcelos (2005), Seldeslachts et al. (2006)

☰ Related literature

☰ Model

✓ efficiency defence as information-processing procedure

- cost of evidence production

Lagerlöf and Heidhues (2005), Medvedev (2004)

- optimal pattern of information disclosure

Gonzalez (2004)

☰ Conclusion

 Framework

Motivation

- Two types of merger projects (market power vs. efficiency gains)

$$\bar{e} > \underline{e}, \quad \Pi(\bar{e}) \geq \Pi(\underline{e}) \geq \Pi_i$$

Related literature

- \bar{e} endogenously obtained, through costly ex ante effort, uncertain and privately-known to insiders:

$$\Pr(\bar{e} / \text{effort}) = q \in (0,1), \quad \Pr(\bar{e} / \text{no effort}) = 0$$

Model

- framework
- timing
- results

- The AA only observes public, exogenous, cost-free, binary imperfectly correlated signal: $s \in \{ \underline{s}, \bar{s} \}$, $\Pr(\bar{s} / \bar{e}) = \Pr(\underline{s} / \underline{e}) = \sigma \in [1/2, 1]$

- The AA maximizes “W”, but opposite effects: $W(\bar{e}) \geq W_i \geq W(\underline{e})$

- Remedy application:

- effective (prevents welfare loss): $W^R(\underline{e}) \geq W_i$

- costly commitment: $\Pi(\underline{e}) > \Pi^R(\underline{e}) > \Pi_i, \quad \forall \underline{e} \in \{ \bar{e}; \underline{e} \}$

- no longer effort incentive

Conclusion

Timing

📄 Motivation

1- the AA commits (through guidelines) to a merger policy – choice of decisions rule:

- clear any merger submitted with remedy
- clear a merger if good signal
- clear a merger if either good signal or remedy proposed

📄 Related literature

NB: efficiency defence = commitment to take into account signal

📄 Model

- framework
- **timing**
- results

2- firms' private effort decision

3- firms notify merger, possibly with remedy

4- signal observed and decision rule applies

📄 Conclusion

Efficiency Defence - incentive device

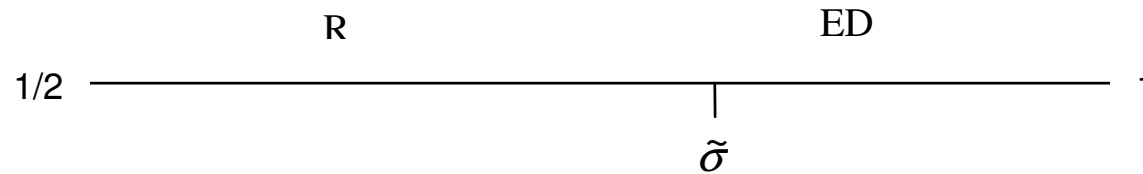
📄 Motivation

✓ Opportunity to allow the ED

choice between: - clear a merger if remedy proposed
 - clear a merger if good signal

📄 Related literature

(R1) ⇒ the ED is optimal for a sufficient assessment quality



📄 Model

- framework
- timing
- results

✓ need for sufficiently accurate assessment - to ensure effort exertion
 - and minimize cost of errors

✓ benefit of ED: incentive to exert effort (↓ unjustified refusals)
 cost of ED: welfare loss from unjustified approval (imperfect signal)

📄 Conclusion

can the remedy + ED improve the outcome ?

Efficiency Defence and Remedies - optimal merger control?

📄 Motivation

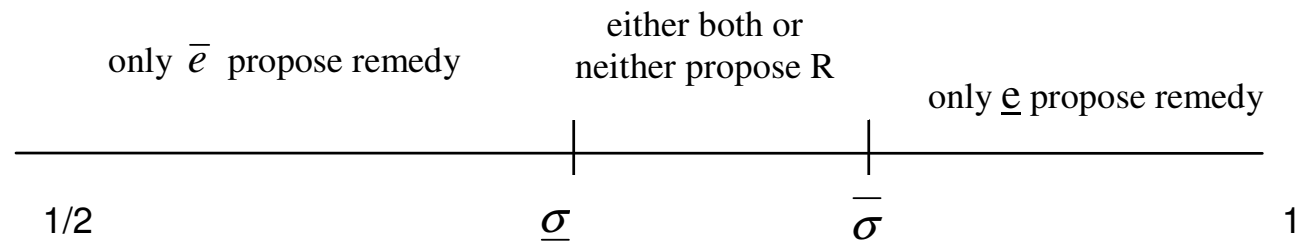
- ✓ Opportunity to allow both the ED and R:
clear merger if either good signal or remedy proposed

📄 Related literature

- (R2) ⇒ the R modifies notification strategy
may induce self-selection effect

📄 Model

- framework
- timing
- results



- ✓ for higher (lower) σ , lower (higher) opportunity cost for \underline{e} to attempt the efficiency defence

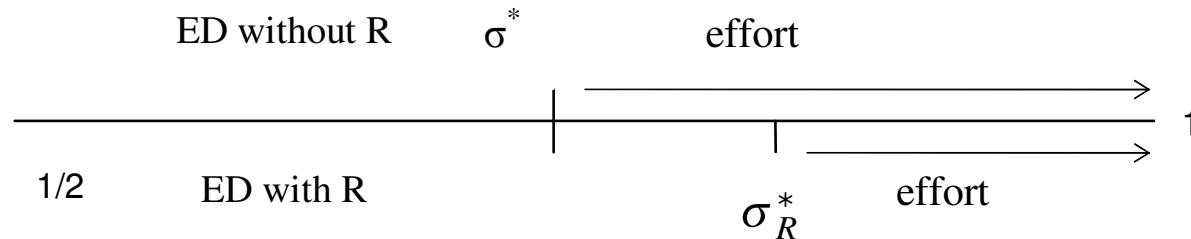
📄 Conclusion

- ✓ benefit from R: may completely prevent welfare loss from unjustified approvals
(through self-selection effect)

(R3) \Rightarrow R modifies expected payoff and therefore effort-stage strategy
remedy application lowers the effort incentive of the ED

📄 Motivation

📄 Related literature



✓ R increases the opportunity cost of ED
(firms can always safely merge with R without exerting effort)

📄 Model
▪ framework
▪ timing
▪ results

\rightarrow the optimal merger control ought to account for:

- ED provides effort incentive towards more efficient mergers (reduces unjustified refusals), but allows unjustified approvals
- R may prevent unjustified approvals (by inducing self-selection of merger projects), but lowers effort incentives

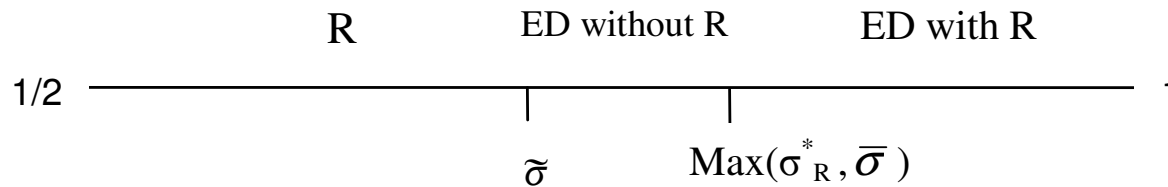
📄 Conclusion

(R4) \Rightarrow optimal merger policy:

☰ Motivation

✓ the less costly the “welfare loss” of accepting inefficient mergers, the more effort incentives can be optimally provided through the ED without R

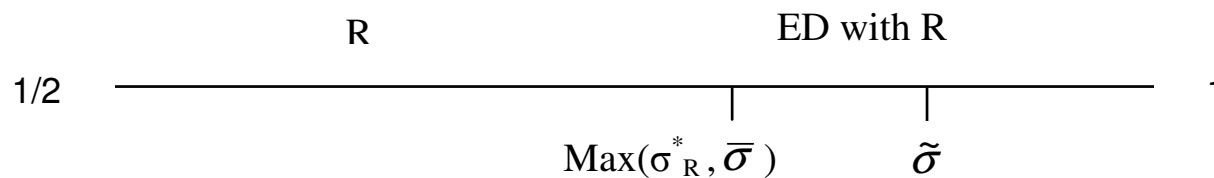
☰ Related literature



☰ Model

- framework
- timing
- results

✓ the costlier the “welfare loss” of unjustified approvals, the earlier the adoption of ED with R, and incentive-provision neglected



☰ Conclusion

(R4) \Rightarrow optimal merger policy:

📄 Motivation

✓ whenever the welfare cost of an unjustified approval is relatively low,
or the welfare benefit expected from an efficient merger is very high,

📄 Related literature

→ the AA will privilege provision of higher effort incentives
by allowing ED but refraining from R

📄 Model

- framework
- timing
- results

✓ whenever the social cost of unjustified approvals is prohibitive/ very high,

→ the AA will optimally allow the ED together with R (current legal framework),
so as to induce self-selection of merger projects
and prevent the approval of inefficient, socially harmful mergers,
although effort incentives are neglected

📄 Conclusion