

Promoting Empirical Analysis in Competition Policy Investigations

Peter Davis
London School of Economics and Applied Economics Ltd

Eliana Garces ¹
European Commission – DG Competition – Chief Economist Team

Submission to the Amsterdam Center for Law and Economics Workshop on
Forensic Economics in Competition and Law Enforcement
Amsterdam, March 17 2006

Abstract

The European Commission has started an ambitious program to build capacity in DG Competition to perform better and more sophisticated quantitative analysis. When a competition authority decides to actively foster the use of empirical analysis and quantitative techniques in the context of its investigations, it finds itself facing important operational and conceptual challenges. The ultimate goals will generally be clear and will involve raising the quality standards of the empirical analysis already done in house, improving the quality of admitted outside experts' reports and pushing the frontier of the set of instruments commonly used. But it becomes rapidly apparent that there are important practical consequences from such an exercise. First, there are operational challenges. To increase its reliance on case specific empirical analysis, the competition authority needs to increase its willingness and ability to request and obtain large amounts of data. Second, the institution must have enough trained people to perform high quality quantitative analysis in relatively short time periods. Choosing to train people in house causes a period of 'learning by doing' that may derail the process if there is not enough coaching capacity. To avoid negative experiences, in each case the case handlers will have to assess the value added of a sophisticated quantitative analysis in terms of increasing the likelihood of taking the right decision and in terms of contributing to the probative power of the argumentation. But the competition authority will also face procedural limitations. Investigators may feel constrained in their empirical investigations to follow a particular approach due to legal precedents or established guidelines for analysis. When economic theory suggests the possibility of more sophisticated quantitative approaches than those commonly applied, issues arise in terms of the legal risk of the endeavour and the acceptance of innovative arguments by the court. Building up capacity within the institution needs to go hand in hand with an increased awareness by the courts of the importance and relevance of the exercise.

Dr. Peter Davis
London School of Economics and Political Science
Houghton Street
London WC2A 2AE
peter.davis@appliedeconomics.com.

Dr. Eliana Garces
European Commission
Directorate General for Competition
Rue Joseph II 70 - 6/28
1040 Brussels
eliana.garces-tolon@cec.eu.int

¹ The views expressed in this paper are those of the individual and in no way represent an official position of the European Commission.