

ON THE IMPORTANCE OF *SPEED* IN ANTITRUST ENFORCEMENT

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Abstract The speed of enforcement is a crucial variable in antitrust policy. From the viewpoint of the antitrust authority, an increase in the speed of an investigation typically leads to an increase in the required resources and/or may increase the risk of antitrust errors. From the viewpoint of the respective firms, increasing the speed of antitrust enforcement leads, on the one hand, to cost reductions and also reduces uncertainty about the respective decision earlier; however, on the other hand may also increase the risk of wrong antitrust decisions to the detriment of the respective firms.

In predation cases, the speed of antitrust enforcement becomes an even more crucial determinant of the significance and effectiveness of antitrust policy. Given the fact that predation strategies are typically applied by incumbents facing entry by relatively weak entrants, the speed of antitrust enforcement often determines the destiny of the entrant. If the antitrust authority is quick in detecting and punishing predation, the entrant (and therefore competition) may establish in the market. However, if the antitrust authority is slow, the entrant may be forced to leave the market - to the detriment of competition - before a decision on the case has been made.

Against this background, the paper applies a simple oligopoly model to study the optimal antitrust policy for predation strategies. The results show that if the antitrust authority is tough and quick in enforcing predation, an ex-post approach is the welfare optimal solution. If, however, the antitrust authority is relatively weak and slow, it becomes optimal to apply an ex-ante rule to fight predation. Although such ex-ante rules - which basically impose constraints on the post-entry behavior of the incumbent - are certainly less exact in 'detecting predation' than an in-depth ex-post assessment, such rules contain the central advantage of giving the entrant 'a fair chance' to establish in the market. The paper concludes by providing avenues for further research on the general question of the 'optimal speed of antitrust enforcement'.

Keywords Antitrust, Antitrust enforcement, Predation

JEL Class L40, L41, K21