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Capacity Building Workshop on the Ex-Post Evaluation of Competition Authorities' Enforcement Decisions: A Critical Discussion

OECD Final workshop on the ex-post evaluation of
Competition Authorities' enforcement decisions
Paris, October 26, 2015

Outline

- The pros and cons of ex-post evaluations
 - Why do we need ex-post evaluations?
- Institutional details matter
 - Compulsory or not?
 - Resources: budget, data, people
 - Quality check: in house studies or outsourcing?
- Methodological issues (Peter Ormosi)
- The way ahead

1 The Pros and cons of Ex-Post evaluations

- Ex-post evaluations are strongly advocated by the academic community and are quite **positively perceived** by authorities, case handlers, and policy makers
 - Consensus emerged that ex-post evaluations should be seen as an **integral part of competition policy enforcement**
 - The use of ex-post studies of competition policy enforcement has substantially increased over the last two decades
 - Yet, quite **few competition authorities** around the world are making use of this instrument
- How can the collected experience **motivate and help** other, less experienced institutions to follow this path?
- Identify and define some **best practices** and useful institutional arrangements

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2 Why do we need ex-post evaluations?

- Improve policy making: **learning and correcting mistakes**
 - Two large series of ex-post evaluations by the US FTC (hospital mergers and petroleum industry) led to policy improvements
 - Results from retrospective studies helped the UK CMA shaping institutional details (e.g., merger assessment guidelines)
- **Evaluate the predictive power** of methodological tools
 - How accurately ex-ante merger simulations can predict observed ex-post outcomes
 - Better understand what specific economic market models are more adequate to represent specific industries
 - What kind of data are necessary and how they can be obtained
- Serve **advocacy purposes** and improve accountability
 - Externally and internally demonstrate the impact of enforcement work
 - More easily quantify and communicate to the public
 - Deter anticompetitive behavior

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Institutional details matter I

- **Compulsory** or not?
 - Compulsory assessment helps **integrating** ex-post evaluations in the process of policy making and enforcement
 - It helps establishing a **fairer division of (limited) resources** between regular enforcement activities and retrospective studies
 - It might put authorities **too much under pressure** if limited resources
- **Resources:** budget, data, people
 - To ensure a **minimum quality standard**, both the quantity and quality of the involved staff, as well as the quality of the data has to be assured
 - Research team should be constituted of one or more senior economists as well as junior economists with strong empirical skills
 - The choice of the **data** to use in the analysis is crucial
 - They heavily influenced the exact design of the evaluation framework
 - Allocate a budget for data acquisition when planning the evaluation
 - Think about the possibility of requiring the parties involved to provide data for the ex-post evaluation (especially in the case of remedies)

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Institutional details matter III

- **Quality check:** in house studies or outsourcing?
 - Peer-review '**quality-checks**' are central to a successful ex-post evaluation
 - Strike the balance between in-house and outsourced activities
 - Build a in-house stock of knowledge
 - **Academics** can/should be involved to transfer the knowledge frontier from the academic work to policy and might take different roles:
 - Main consultants who actively run the evaluation themselves
 - 'Quality-checkers' or 'peer reviewers', who control the in-house work
 - 'Teachers' who help building up the in-house stock of knowledge
 - Consider **publishing** the results of ex-post evaluations in academic journals subject to a serious peer-review process
 - Help reinforce the belief that policy making is based on serious, scientific, evidence-based research and, hence help reaching advocacy goals

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The way ahead I

- Most of the existing studies focus on merger policy
 - **Other areas** of competition policy enforcement have not been systematically evaluated so far
 - Many methods can be adopted but it is crucial to think more carefully about the **differences and peculiarities** of such assessments
- **Other outcomes** than simple price effects are also important:
 - Quality, variety, innovation, entry/exit...
 - Broader effects of policy enforcement: e.g., welfare effects, effect on productivity, deterrence effects, spill-over effects
 - A clearer identification of type I and type II errors
- Not only robust empirical tools but also **more general theoretical frameworks** are needed

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The way ahead II

- Still too little work on the clear identification of the effect of specific **remedies**, which are currently the most commonly used policy tool
 - It might be almost impossible to separately identify the effect of the firms' conduct and the specific remedy
 - Institutional details, timing, and regional variation might be helpful
 - Perhaps structural methods and simulation can be particularly helpful
- Still very little analysis of the **role of judges** and the evaluation of their decisions
- Discussion is still needed on how to deal with possibly **negative results** from evaluations

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