Innovation Competition, Unilateral Effects and Merger Control Policy
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Summary

This paper looks at whether the standard unilateral effects model can be applied to non-price competition parameters such as innovation. This question arises because competition authorities are intervening in horizontal mergers that are found to give rise to a "significant impediment to effective innovation competition" ("SIEIC") as a result of a reduction in post-merger R&D efforts (including lower expenditure). SIEIC is distinct from the mainstream unilateral effects theory of harm that predicts a "significant impediment to effective competition" ("SIEC") as a result of increased prices. Most recently, the European Commission ("Commission") used its powers under the EU Merger Regulation ("EUMR") to impose remedies in the Dow/DuPont merger. This was in part because of concerns that that the transaction "would be likely to significantly impede effective competition as regards innovation both in innovation spaces where the Parties' lines of research and early pipeline products overlap and overall in innovation in the crop protection industry." At the heart of the development of SIEIC analysis lies a fundamental question of competition theory: under what conditions can variations of existing economic models be applied in merger cases?

This paper is divided into three sections. In Section I, the SIEIC theory of harm is described and put into perspective against past competition policy on innovation competition. Section I concludes that SIEIC constitutes a small but significant change in merger policy. In Section II, the economics of SIEIC are discussed. In particular, it will be seen that SIEIC is an application of the standard unilateral effects analysis where the focus is shifted from price to innovation effects. Section II demonstrates that this variant of the model can only deliver sound and robust empirical predictions if three critical innovation-specific questions are addressed. Section III discusses the economic methodology of merger control policy. This Section shows that agencies should remain free to rely on new or adapted pre-existing economic models in merger control reviews, provided they are able to discharge the "burden of persuasion". With this, the paper hopes to contribute to the ongoing development of optimal merger control policy in innovative and R&D-driven markets.

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