

OECD Roundtable on Market study methodologies for competition authorities

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Introduction

- A discussion on methodologies for market studies and which of those to use is of course better done by competition authorities; they are the ones that drive those studies and choose what best methodology to apply depending on the type of study carried out.
- As a representative of the business community, I thought I would therefore focus on those methods used by competition authorities which involve industry players. Requests for information are an obvious example. I will also provide some suggestions on what could be improved and made more efficient in a market study thus reducing the burden for authorities and industry alike.

Pre-existing information and desk research

- Before discussing specific types of methodologies, there is a more general point that it is worth making. Market studies are a demanding exercise not only for external stakeholders but also for competition authorities. They should not be undertaken lightly and should be chosen carefully, a point well made by the Canadian Bureau in its written contribution to this OECD roundtable.
- Once authorities decide that a market study is necessary, it should be best practice to start looking at what they already know or information they already have access to. The point is well made by the OECD and the ICN in the Good Practice Handbook.
- When envisaging a market study, competition authorities should carry out detailed 'desk research' to ensure all existing information sources, including information publicly available, such as published reports by other relevant agencies and regulators, as well as government statistics or research in the public domain, are fully considered.
- I believe that the cases in which this desk research will be sufficient on its own are very limited, so in most cases involvement of external stakeholders is needed.
- However, that initial search is important not only to avoid unnecessary and wide-ranging requests for industry players but also for the authority, as it allows the authority to define better what information is still needed and therefore the scope of engagement that is required from stakeholders.
- Once the desk research has been carried out, initial informal meetings and interviews with stakeholders can follow. Those will be useful to form the basis of a better understanding of the market, including who the players are and the products. They can also assist in identifying possible competition concerns at an early stage.

Information requests

- In order to understand how a market operates, a competition authority would want to look at
 - how to define the market;
 - market share data;
 - whether there are barriers to entry or expansion;
 - the nature and characteristics of the products or services and their substitutes;
 - customers (such as customer segmentation or their behavior);
 - the legal and regulatory framework;
 - industry practice;
 - prices and profitability;
 - level of innovation and quality.
- This information has to be gathered from different sources. Most of the time this is in the hands of external stakeholders and market participants.
- A market study cannot be carried out in isolation, that is, without involvement of appropriate stakeholders. If there is no engagement of third parties, the outcome is likely to be an academic exercise of limited value.
- In my experience, early stakeholder involvement can help identify pertinent questions and existing information sources for carrying out an effective market study. This seems to be supported by the contributions to this roundtable of many competition authorities.
 - At the European Union level, DG Comp has stated that it values dialogue with stakeholders over both scope and process
 - In the UK, the CMA generally writes to a range of stakeholders who are associated with the market to seek both factual information and opinions
- It should not be underestimated how burdensome information requests can be for industry, so a competition authority should always take a proportionate approach and always ask itself:
 - why the information is needed;
 - if it is already available within the authority or publicly;
 - what is the burden on industry and if there is a different way to gather the information (for example a face to face meeting rather than a lengthy questionnaire).
- The reality is that private sector players cannot get information internally just by 'clicking on a button'. That is rarely the case and many times internal collection of documents is extremely burdensome:
 - either because the information is not routinely kept;
 - or because it is scattered among different locations;
 - or it is not kept in the format requested by the authority.
- It may be particularly difficult to provide historic information if IT systems have changed and careful consideration should be given as to how many months or years of data is actually necessary and proportionate and competition authorities should be prepared to discuss particular difficulties faced by the parties.
- In addition, most business people see the collection of such information as an intrusion into their daily job. The people tasked with collecting the internal data (such as in-house lawyers) might face reluctance to provide data as fast and extensively as requested.
- To reduce such burden as well as to assist the authority with a more efficient, targeted

request, a competition authority should be flexible – a discussion with certain stakeholders could assist to determine the focus, content and scope of information requests or questionnaires.

- This is an approach that for example the CMA takes when sending information requests. A draft is usually sent to parties before a formal request is sent so that discussions can take place on the scope and the timing of the request.
- Stakeholders might be given the opportunity
 - to highlight that e.g. data is not available in the format sought by the authority;
 - or that it would take too much time to provide it.
- Stakeholders might suggest other useful data instead. The dialogue may also lead to more targeted information requests and data which is readily available. Of course, one has to be conscious of the possible risk that more targeted information requests might vary from one market participants to another with the result that making a comparison of the various answers might be more burdensome for a competition authority.
- Authorities should not only consider what data they need but also how to ask for it. The ICN Handbook puts it well: “when making an information request, it is good practice for an authority to make clear what information is being sought, why the information is being sought, how the information is to be submitted, the timeframe for submission, the consequences if any of not supplying the information, any protection to confidential information submitted, a contact point for questions about the information request”.
- On this specific point, one should remember that hard data constitutes better evidence than mere opinions, and this must be reflected in the way the requests are written. Requests should therefore focus more on verifiable facts and less on eliciting opinions and conclusions.
- Sufficient time should be granted to obtain a high-quality response. It is not considered good practice (and market participants resent) to be given a deadline, maybe no extension if it had been requested, and when submitting the response to the authority receive an “out of office - the case handler will be back in two days”.
- Responses must be carefully checked against any follow up or clarifications necessary.

Meeting and interviews

- Meetings with stakeholders could be extremely useful and they are usually welcomed by business people, as they allow them to express their views on the market being studied and to correct any misunderstanding the authority might have on the functioning of that market.
- Meetings could be especially useful in very complex matters and in gathering expert evidence, either industry specific or economic. Of course, all evidence presented should be recorded, confirmed for accuracy with whoever provided it and tested for reliability through the process.
- There are advantages in conducting interviews over the phone or in person. Oral interviews from market participants can provide input from a large number of market participants in a short amount of time, usually with relatively little burden for all involved. In addition, oral interviews can be a useful tool as an initial contact with third parties to help identify issues for further investigation.
- Lots of important information can be gained in the evidence provided by market participants (customers, suppliers etc.) obtained in interviews over the phone or in person such as facts, prediction of behavior in the sector, views on the industry and how the market works, opinion and conclusions.

Analysis

- Gathering information is only one aspect of the process. Even if reliable, the data has to be evaluated, analysed and assessed. This can be a major and complex task. Therefore, competition authorities should avoid asking questions that result in excessive data demands, as the internal team within the competition authority will need to analyse all the information provided.
- It should also be added that in the analysis of the data the rigor of the methodology applied in undertaking studies is critical. For example, where only a small sample size of market participants and/or only one part of the market is surveyed, the sample becomes non-representative, limiting conclusions that can be drawn from the results. Using appropriate methodologies and testing assumptions and properly analysing the data gathered will lead to a more robust result.
- Helen, as an economist, will speak shortly on some of those types of analysis.

Surveys

- Surveys are discussed in the secretariat paper, in a very well drafted chapter. Rather than repeating what is already there, I would like to make a couple of general points.
- Surveys can be quite useful to gather information from a large number of stakeholders (usually consumers). But there are challenges.
 - One has to define the target (consumers, SMEs etc.);
 - how the survey is going to be done;
 - and the questions to be asked.
- The drafting of survey questions is the most challenging part. The survey should
 - present questions in context;
 - avoid ambiguity or confusion;
 - avoid leading the consumers to give certain answers;
 - provide appropriate response options for representing the views expressed.
- Piloting the survey internally and externally is essential before sending it to a large number of respondents.
- It is also important to share the draft survey with external stakeholders that know the market to ensure the questions are consistent with the realities of that market.
- Possible issues with surveys:
 - If the target is not representative of the class surveyed, the outcome might not be useful or precise. Careful consideration should be given to avoiding sampling bias that leads to an unplanned excessive participation in the survey of a type of consumer with one view on the questions, in preference to another type of consumer with a systematically different view.
 - If there are likely to be material difference in the behavior or attitudes of customer at different times of the day, on different times of the week or year, this should also be reflected in the description of the population of customers (peak and off-peak trains).
 - A detailed understanding of how consumers' views were gathered is important to the assessment of how much evidential weight to give to a piece of consumer survey.
 - Care should be taken to present consumer survey questions in a logical order to assist the respondent to understand them and to ensure that

answers to later questions are not biased by the presentation of information in earlier questions. In general screening questions should appear as early as possible to minimize the number of questions asked of consumers who turn out not to be qualified to answer the main survey.

- Sending questionnaire to all possible stakeholders is an impossible task so the authority should consider a selection. But it must be a sufficient large number and spread of respondents to make the results useful for the analysis.

Workshop

- Workshops can be useful as they bring together different stakeholders that might have different views or perspective, such as business, academics, associations, regulators and other interested parties. The format might vary: it could be a panel, a roundtable discussion or presentation.
- The type of workshop will depend on the outcome sought by the competition authority. A meeting with many players to discuss general issues on the market under study could be useful, but if companies have to disclose sensitive data, then a private meeting would be best.

Confidentiality

- That brings me to the final point of my presentation.
- Confidential information and business secrets are highly sensitive for companies. In the course of a study, companies might be asked to provide such information, especially if the authority has the power to compel production of information and impose fines for non-compliance.
- Authorities should have very good internal processes and safeguards in place by which they can ensure that confidentiality is protected during the course of market studies, similar to the protections that should be in place in formal investigations. In addition, there should be a proper process for the authority to review any confidential information they receive before publishing or disclosing details of the study or their findings, so that any necessary permission can be sought and obtained and confidential information excluded.
- The treatment of confidential information for example was a matter of great concern when the UK Government set up, following the banking crisis, the Independent Commission on Banking. Such body looked at financial stability and competition. It could request information but had no formal powers to do so and there was no legal protection for confidential information.

Conclusions

- I hope I have given some useful points to consider. In English, we have a saying 'it takes two to tango' and in a market study cooperation and mutual understanding between authorities and market players is essential.
- Authorities should involve market players at all stages even informally when designing the next steps, information requests or surveys.
- Authorities should however be always aware of the burden they put on market players when starting a study. So, studies should not be undertaken lightly and consideration has to be given to the burden that they might cause to industry players.