

European competition policy modernization: From notifications to legal exception

Frédéric Loss^a, Estelle Malavolti-Grimal^{b,c},
Thibaud Vergé^{d,*}, Fabian Bergès-Sennou^c

^aCNAM - Laboratoire d'Econométrie, 2 Rue Conté, 75003 Paris, France

^bLEEA-ENAC, 7 Avenue Edouard Belin, BP 54005, 31055 Toulouse Cedex 4, France

^cUniversity of Toulouse (GREMAQ), 21 Allée de Brienne, 31000 Toulouse, France

^dCREST-LEI, 28 Rue des Saints-Pères, 75007 Paris, France

Received 8 July 2004; accepted 13 February 2007

Available online 6 April 2007

Abstract

Council Regulation (EC) 1/2003 came into force in May 2004 and replaced the mandatory notification of agreements by a regime of ex post monitoring. This paper shows that ex post monitoring is the optimal audit regime when the competition authority's probability of error is low. On the other hand, the notification system becomes optimal when the competition authority's probability of error is high. The paper also shows that block exemptions and black list (regimes of per se (il)legality) should be implemented when the agreements' expected welfare impact is very high and very low, respectively.

© 2007 Elsevier B.V. All rights reserved.

JEL classification: L4; D8

Keywords: Competition policy; Imperfect audit

1. Introduction

In January 2003, the European Commission (hereafter EC) published a new regulation that modified the procedure for the detection of anti-competitive practices and abuses of

*Corresponding author. Tel.: +33 144582750; fax: +33 144582772.

E-mail addresses: frederic.loss@cnam.fr (F. Loss), estelle.malavolti-grimal@enac.fr (E. Malavolti-Grimal), thibaud.verge@ensae.fr (T. Vergé), fabian.berges@toulouse.inra.fr (F. Bergès-Sennou).

dominant position.¹ The new regulation replaced the old system of mandatory notification (ex ante monitoring) by an ex post repression regime, and strengthened the powers of national competition authorities and courts by decentralizing the enforcement of some competition rules to member states.

Inter-firm agreements have been covered under article 81 of the European Community Treaty that prohibits “*agreements (...) which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market.*” Agreements that promote economic progress or enhance the distribution of goods within the Common Market can be exempted from this prohibition under article 81(3) if consumers get a “*fair share of the resulting benefit.*” Some R&D joint ventures and exclusive distribution agreements fall under this category. Until the recent reform, agreements had to be notified to the EC in order to be granted exemption.

This mandatory notification system had been introduced in 1962 in order to centralize the application of article 81(3), develop coherent law enforcement, and diffuse a competition culture within member states. A broad interpretation of the concept of “*restriction to competition*” combined with the fact that regulation 17 required a response for each notification, led to congestion (by 1967, more than 37,450 cases were pending).² The EC thus took several steps in order to limit the number of notifications, and speed up the process. “*General notices*” were published, the concept of “*appreciable effect on competition*” was introduced to ignore minor cases, and *block exemption regulations* were set up. At the same time, some restrictive clauses (*black list* including price-fixing agreements and resale price maintenance, for instance) were deemed anticompetitive per se. Finally, the EC started to close (most of the) cases informally (“*comfort letters*”). This did not solve all the problems. In the early 1990s, 250 agreements were notified each year. However, only 20 formal decisions were taken, and less than 1% of notified agreements were prohibited. This pushed the EC to reform the system with the aim of focusing on the most severe anti-competitive practices, such as transnational cartels. In order to free the much needed resources, the EC decided to decentralize the enforcement of competition rules to member states, and to remove the costly and ineffective notification system. The new legal exception regime came into force on 1st May 2004.

This paper provides a framework to compare the efficiency of these different systems: Notifications, legal exception, block exemptions and black list. We show that an improvement in the quality of monitoring — or alternatively in the amount of available resources or the timing of ex post intervention — could justify a shift from ex ante to ex post monitoring. When the information received during the investigation is accurate enough, ex post monitoring combined with appropriate fines allows the competition authority to partially deter harmful agreements. On the other hand, the absence of financial penalties leads to pooling equilibria in the case of ex ante control. When the audit is not very informative, however, high fines would also deter good agreements, and early intervention, through notifications, becomes preferable. We believe that after 40 years of enforcement, the EC has acquired a better understanding of market organization and competition mechanisms. Combined with increased resources and timely intervention, this

¹The new regulation replaces regulation 17/62 since 1st May 2004 and is part of the modernization of European Competition Law (See Council Regulation (EC) 1/2003, *Official Journal of the European Communities*, 4th January 2003).

²Verouden (2003) provides a detailed analysis of the evolution of the EC’s interpretation of article 81.

Download English Version:

<https://daneshyari.com/en/article/5067674>

Download Persian Version:

<https://daneshyari.com/article/5067674>

[Daneshyari.com](https://daneshyari.com)