European Commission

Common ownership across sectors: source of potential anti-competitive behaviours?

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Competition

Overview

- Problem definition.
- Measuring common ownership.
- Potential Theories of harm.
- Where could risk arise?
- Conclusions.

Problem definition

- Common ownership – A situation in which competing firms operating in the same industry share identical major but apparently non-controlling shareholders
- Academic debate re-ignited by shift from active to passive investment strategies following the fall-out of the financial crisis and fact that passive asset management industry concentrated.
- US phenomenon but moving to EU: Institutional investors own 2/3 of the shares of publicly traded US firms, up from 1/3 in 1980. e.g. BlackRock is the largest shareholder of 1/3 of companies listed under the FTSE100 or DAX30

Problem definition (cont)

- "Potential problem" is that common owner may skew individual firm incentives away from competition to coordination of market behaviour (capacity, prices, pace of innovation, etc.) .

- Not just a theoretical problem: Ongoing DoJ investigation into capacity coordination by major US airlines and cases in the Member States.

Problem definition (cont): A significant problem?

- German Monopolies Commission concluded that ownership concentration in Germany does not raise competition concerns (currently), but indirect company links through minority company shareholdings should continue to be observed
- Difficult to replicate US research in the EU context due to lower statutory reporting requirements, lack of data and less transparent ownership structures.
- Economists still debating. Some more recent literature questions the methods (robustness of MHHI regressions) and conclusions of earlier papers (suggesting pro-competitive effects) but corporate governance academics are voicing concerns too.
- US investigation is not based on findings of academic research, but observation of the relevant market

Measuring Common ownership (1)

- EU Transparency Directive (2013/50/EU), Article 9 requires notification of share holdings but only as of 5%.
- However, certain Member States have lower thresholds of reporting requirements for minority shareholdings. (IE(1%) CZ(1%), UK (3%) ES (3%), NL 3%, IT (3%), PT (2%)).
- Commercial data bases could be best for these purposes.

Measuring common ownership (2)

- Recently revised Shareholder Rights directive (adopted 4/2017) could further help measurement/monitoring and might also reduce risks by forcing more transparency.
- Undertakings (and therefore enforcers?) will have access to information at time of inquiry since:

  Article 3: "Member States shall ensure that companies have the right to identify their shareholders. Member States may provide for companies having a registered office on their territory to be only allowed to request the identification of shareholders holding more than a certain percentage of shares or voting rights. Such a percentage shall not exceed 0,5 %".
- Transparency obligations on institutional investors: how they invest and how they engage with investee companies.
- Transparency obligations on proxy advisors : information on preparation of recommendations and advice.

Potential Theories of harm.

- DoJ/academic literature suggest two potential theories of harm:
  - ✓ **Antitrust**: Ex-post, examine how individual investors act outside of Boards to coordinate the behaviour of others and *"facilitate collusive agreement(s)"*. (Could prove "agreed" capacity constraints (e.g. U.S. airline case) but would be far more difficult to prove other "agreements" (e.g. regarding R&D: anti-innovation)).
  - ✓ **Mergers**: Ex-ante , seek to prevent anti-competitive risks arising from heightened common ownership that would result after the merging of companies. *Common ownership could call for more vigilance regarding the incentives underlying the proposed merger.*

Where (in which sectors) might such harmful behaviours be found?

- ✓ Level of common ownership,
- ✓ Level of industry/sector concentration,
- ✓ "Odd" capacity/pricing situations breaking previous sectorial practice,
- ✓ Slowing pace of innovation,
- ✓ Altered Competition dynamics in the sector, (e.g. sudden change in number of patent disputes),
- ✓ Ex-post assessments of merger remedies (could common ownership be the variable explaining lack of success?)
- ✓ Performance of sectorial investment funds. Are there investors who permanently outperform others and, if so, where are they investing?

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Conclusions.

1. Issue worthy of monitoring.
2. DG COMP interested to exchange on this issue with national competition authorities and to learn of examples from Member States' authorities.
3. Monitoring what is happening in third countries . OECD will be discussing this issue in November 2017.
4. Distinction between passive and active funds might not be so important. Behaviours of active investors/Hedge funds should also be considered given the race for "better performance".
5. Caution: Do not throw out the baby with the bathwater! Short-termism can be harmful to innovation and long term investors can encourage stability and be pro-competitive!

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Thank you for your attention!

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