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Economic Power: Competition Law, Economic Evaluation and Policy Implications

Vindelyn Smith-Hillman and Adam Scott

Introduction

A keen interest in the measurement of economic power, particularly from regulatory authorities, derives from its potentially adverse impact on resource allocation. The concept of economic power encapsulates the dual forces of market (monopoly) power and political power. It is generally associated with the large-scale accumulation of wealth and significant assets. When viewed from political, economic and ethical perspectives it is seen as a ‘threat to the operation of both economy and society’ (Gerber, 2001: 87). The threat derives from ills associated with the economic dependency of one firm on another, and with the potential for the poor treatment of workers. An alternative view focuses on its unfair representation that amounts to a punishment of entrepreneurial skills. In particular, Peritz (2000) perceives the animosity generated by economic power as evidence of the tension between the rhetorics of competition and property. This perception is especially unfair when economic power reflects commercial success as a result of the fruits of research and development (R&D) or economies of scale from which an economy benefits.

The demonstrated potential of economic power to affect social welfare – that is, the total well-being of an economy – lies at the heart of concerns regarding economic power. The measurement of economic power has become increasingly complex as markets have evolved and changed. Previously, firms grew organically, reliant on internal competence, and they generally maintained a fairly narrow focus on the production of a few goods or services. It is now increasingly the case that growth is pursued through mergers and acquisitions to the extent that a few very large firms dominate the global stage with a diverse range
of products and services. This market transformation has introduced greater complexity into the economic evaluation of welfare, as the major international firms tend not to account for a dominant share of any single market. Against this background, the aim of this chapter is twofold: to explore perspectives on economic power and evaluate the robustness of various measures; and to examine the policy implications that arise from an evolving market structure.

Concerns regarding the effects of economic power have informed the drafting of regional and national competition laws, and established a benchmark of good/bad competitive behaviour. Competition law, complemented by regulatory guidelines, effectively sets rules governing competitive conduct by dominant firms in the private sector, and sometimes also in the public sector.

Competition law has interdisciplinary origins drawing on concepts of both law and economics. Some competition policies, such as the US antitrust policies, have generally pursued balanced application of both disciplines to the administration and enforcement of competition policy. However, European administration and enforcement has leaned heavily on legal analysis. Indeed, it is only fairly recently, following the 2005 review of Article 82 TEC (now Article 102 TFEU) which guides European Union (EU) competition policy and deals with the abuse of dominance, that policy has incorporated greater economic analysis of firms’ behaviour in order to reach a decision regarding the economic effects of significant market power (SMP). Practical difficulties in adopting an economics-based approach occur at two critical junctures: defining significant market power in the absence of a clear and uncontested definition of economic power, and measuring economic power given the acknowledged limitations of existing techniques.

This chapter is structured as follows; the next section discusses perspectives on economic power; the third section highlights the difficulties of its practical measurement from a competition law perspective; and the fourth section addresses policy implications that subsequently arise. The concluding section suggests some emerging themes.

**Perspectives on economic power**

Economic power exists within a market context and is often discussed with reference to a competitive ideal. Much has been written about the virtues of perfectly competitive markets based on the associated welfare benefit of economic efficiency. Economic efficiency describes the joint existence of three types of efficiency: *allocative efficiency*, efficiently