

The Importance of Ex Post Evaluation of Competition Policy Enforcement at ACM

Anita Vegter, Board Member of the Netherlands Authority for Consumers and Markets.

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Thank you Chairman. The OECD has conducted very useful work on ex post analysis. As a board member of the Netherlands Authority for Consumers and Markets, I will tell you today about our experiences with ex post evaluation of competition policy enforcement. I will talk about the reasons why the ACM board has done ex post evaluations, and chart some of the lessons we have learnt and our plans for the future.

Why is ex post analysis important at ACM?

Let me begin by explaining that in the Netherlands, we have a tradition of analysing policy decisions for their impact on economic performance. In that respect, ex post analysis of competition enforcement fits quite well with the Dutch culture of public administration.

Historically, the Netherlands Competition Authority, one of the predecessors of ACM already conducted outcome analysis, and some analysis of deterrent effects. When the new Authority was being formed in 2013, from the NMa, the telecommunications regulator and the Netherlands Consumer authority, the Board set out ACM's strategy.

It is ACM's strategy to focus our activities on increasing consumer welfare. In that respect it is important that we show with our outcome measurements that competition is to the advantage of the consumer. ACM is an open, independent and professional organization. We strive to be effective and sharply focused on the direct and deterrent effects of our interventions.

One of the ways that the Board can achieve this strategy is by investing in ex post evaluation. The benefits of ex post evaluation for ACM are three-fold. Firstly, accountability, secondly quality assurance, and thirdly to improve our performance.

Benefits of ex post evaluation

Let me start with accountability. Accountability is an important responsibility for an independent authority. We have a certain freedom as an authority to focus on the sectors and cases we feel are important. We have the freedom to choose our own priorities, but with that freedom comes of course, an increasing level of accountability. The Board has to be able to explain why the priorities we choose are the right priorities.

In addition, politicians and consumers deserve as full a picture as possible of the consequences of authority's interventions. We have to be able to justify our existence and explain what we do to the general public. Self-evaluation, self-criticism, these are crucial elements in the governance of an authority. Ex post analysis assists

us in delivering that accountability.

The other two reasons of quality assurance, and improving future performance are also very important. By quality assurance I mean that the Board has been able to check on some of the methods we have used in the past, and see whether the predictions we made were realistic, for example merger simulations, and indeed, whether they were correct. In addition, ex post analysis lets us test the effectiveness of our decision-making, and analyse the appropriateness of the instruments chosen.

By improving performance, I mean that we want teams to start thinking, very early on in each case, what it is they want to achieve, and what the effects of a possible ACM intervention will be on the market in question. As a Board, we also want to optimize the deterrent effect of our decisions and be in a position to test the effectiveness of our instrument choice, and the results of our interventions. Ex post analysis is one of the tools that can help us to do this.

Examples: Hospitals and Supermarkets

Let me give you an example of how we learnt from ex post analysis in a real case. In 2009 ACM wanted to analyse the effectiveness of its decisions on hospital mergers, an area in which we have been very active. We wanted to see if we had done enough to safeguard competition in this area, which is of such importance to consumers.

In order to test this we conducted an ex post analysis of the impact of hospital mergers on the price of hip surgery.

In earlier cases we assumed that hospitals set a uniform price for treatments carried out at their different locations. However, from the analysis we learnt that hospitals do not necessarily work with uniform prices for all locations. Rather they set prices on location level despite extra transaction costs. So when we analysed the effects of the merger we saw that prices rose higher at one location than at another location.

We were also able to test our ex ante prediction methods to see how accurate our predictions were, for example on willingness to pay, when compared with the realized prices. It turned out that in some cases price increases were predicted, but that given the complexity of hospital mergers it is difficult to give a specific prediction for individual medical treatments.

These kinds of studies help the board to assess which ex-ante methods are most relevant for good decision-making in future cases.

Another example is a very recent ex post study that we have conducted on supermarkets. We looked at the effects of the merger on grocery prices and on product variation in our assessment. Our assumption on prices proved correct. There was no real price effect as a result of the merger. However, in terms of product variety, we

observed a reduction in the number of products available post-merger. This was offset, to a certain extent, by the remedies. We had accepted remedies involving the sale of certain supermarket locations to other competitors.

This type of observation can sharpen our remedy choice in future supermarket mergers. In that way, this ex post evaluation helps us to assess the effectiveness of the instrument chosen, and also to inform future choices. Supermarket mergers can be politically sensitive. Economic ex post analysis provides an objective perspective on which we can securely base our decision-making.

Ambitions

However, I am not just talking about improving the quality of individual decisions. The Board also has ambitions to use ex post analysis to test our oversight style. We want to find ways to evaluate the effectiveness of our decisions and the effectiveness of the tools we use to engineer changes in parties' market behaviour. This is more difficult to measure, but this is where our ambitions lie.

We have done a lot of cooperative work with the British authority, and with the European Commission on exploring how we can measure deterrence, how we can assess effectiveness. We organized a workshop in September, kindly hosted by the European Commission, in which we invited researchers to share their findings on the measurement of effects. There we discussed measuring the effects of competition on economic growth, on productivity, and on

employment. We agreed to continue the exchange of experiences and knowledge to improve the methods for measuring effects. Therefore we agreed to publish our studies.

As a Board, we think it is important to participate in these events. It is only through continued cooperation, such as this work, prepared by the OECD, that we can make advances in this area. It's work in progress. We are looking for improvements. We are refining our techniques. We will advance in small steps.

Better governance

As I said when I talked about the impact of the ex post research in hospital mergers, the quality of decision-making at board level is assisted by ex post analysis. Of course, these studies can be complex. It is thus essential as a board member to question the results and the way in which these results are obtained. Make sure you ask the right questions. What did you measure? What is the counterfactual. What were the dilemmas? Where do the uncertainties lie? You need to use the information as input in your decision making, use it in combination with other relevant factors. Use the analysis to mould your perspective. Economic models can feed decision-making, they cannot and should not replace it.

What are the pitfalls of ex post analysis?

Firstly, there is the danger of simplistic interpretation. Politicians can interpret ex post analysis simplistically to try to influence priorities.

We are always careful in our publications to make it clear that we are seeking ways to make our decision-making as effective as possible. That does not mean we think our decisions were wrong – they were what we decided with the information we had available at that time. As a Board, we try to keep the discussion as open as possible. We make it clear we are looking to improve our techniques for the future.

Secondly, communication and publication. It is very important to think from the beginning of the ex post analysis about how you are going to involve parties, what are you going to tell stakeholders. How will you interact with stakeholders? The results of the study may attract negative attention for the subject of the ex post analysis. It may be a bit unfair to the company involved.

So think in advance, what is the effect that I want to achieve by publication, and what must I do in advance to ensure that we achieve that effect and not some unintended effect.

Conclusion

The Netherlands is a small country with a sizeable economy. ACM is a national authority, focused on improving consumer welfare, and using competition law as one of the tools to do that. Calculating the outcome of competition interventions can be done using rules of thumb. This is especially relevant for the authority's accountability. Ex post analyses require more resources but need not to be done

on a massive scale in order to be effective. We select the cases from which we can learn the most. Every decision analysed contributes to our knowledge.

However, as a Board, we do have ambitions in this area. We are looking for methods to calculate deterrent effects, for ways to calculate consumer harm. We want to find out what effects a different choice of instrument can have in a sector. We are ambitious, but we are patient. We see a real need for continued cooperation with other authorities in order to make this progress. We hope that the OECD can help us to realise this ambition.