



Merger control



25 years of expert knowledge in competition economics



Since 1986 we have advised numerous companies in many sectors in the field of competition economics. As the first consulting firm in Germany to specialise in competition economics we have wide experience in the analysis, assessment and classification of company mergers. In our many years of practice we have supported clients with expert opinions as well as in oral hearings with the competition authorities and courts. In these cases we have explained our results to the case teams and economists at competition authorities or at court.

Economic approaches for successful merger control proceedings

Economic analyses play an increasingly important role in German and European merger control. Whilst economic methods have long since been established at a European level, in the past few years the importance of economic analyses has also increased in Germany. With the introduction of the SIEC test into German merger control it will continue to gain in importance.

In the tight deadlines of merger control proceedings it depends on early identification of the critical questions of competition before the filing of a merger. We support our clients in prenotification talks with the competition authorities as well as first and second phase proceedings. Usually a specific economic theory of harm will be followed up in market tests by the authorities.

Efficient economic support deals with competition concerns early and checks these for their practical relevance. In this way authority concerns can be recognised early on and – if necessary – appropriate corrective measures proposed.

Alongside questions of product and geographic market delineation, the direct analysis of unilateral and coordinated price effects are also gaining in importance. As a result newer indicator-based approaches such as the “Upward Pricing Pressure Test” are also becoming commonplace in economic analysis.

Also, the probability of foreclosure strategies as part of vertical proposed mergers can also be an important question which has to be answered with economic analysis.

Market delineation

Market delineation are an important starting point in merger control proceedings. They create the framework for more detailed analyses on the effects of a merger. We have extensive methodical experience in various market delineation methods. These include:

- Price correlation analyses
- Critical loss analyses (SSNIP test)
- Shipment tests

Stated choice experiments

In some situations no suitable data is available for actual demand behaviour (“revealed choices”). This problem often occurs if certain offers are still very young or should only be placed on the market as part of a joint venture. In these cases consolidated micro-economic “stated choice experiments” can still provide very helpful indicators on the substitution behaviour of customers which can in turn be used for the analysis of expected price effects of a merger or for market delimitation.



Analysis of market power effects

In many situations, such as markets with differentiated products, market shares are only a weak indicator for the actual market position of a company. Freedom to set prices by merger partners can be limited by a range of factual circumstances and potential competitors:

- Market entries
- Capacity development
- Buyer power
- Analysis of bidding behaviour

In bidding markets the number and identity of bidders often plays an important role in terms of competition intensity. Our team has extensive experience in the analysis of bidder markets in many different sectors.

Unilateral effects and differentiated products

A central question in merger control proceedings is possible expected price increases (“upward pricing pressure”) after a merger. The competitive closeness of the merging parties plays a large role as well as the possible existence of “mavericks” in the market. A range of economic indicators and test methods allows us to evaluate upward pricing pressure. Also, the efficiency effects relevant to pricing resulting from the merger are also examined and if necessary incorporated into the analysis. We have the broad methodological competencies in the following fields:

- Diversion ratios
- Pricing – Hedonic price regressions
- Upward pricing pressure indices
- Merger simulation

Coordinated effects

The risk of a greater probability of collusion is a damage theory often easily brought forward theoretically. These types of dynamic effects in particular require a careful analysis of the foreseeable competitive dynamics in a sector. By contrast, checking coordinated effects for their factual importance and probability of entry can be very difficult – however, our extensive experience and the use of the relevant economic theories in each case enable us to check the validity of such competition concerns in various cases and achieve robust results.

Non-horizontal damage theories

Non-horizontal damage theories such as market foreclosure concerns, are often initially theoretically inspired apprehensions whose practical relevance is to be checked respectively. In this way theoretical market foreclosure potentials can prove to be practically irrelevant if it can be shown clearly that such strategies would be unprofitable for the merger partners. For instance, this can be checked as part of market simulations.

Simulation methods

Both in the analysis of horizontal but also in particular non-horizontal mergers the effects to be expected can be checked with merger simulation models. These analyses can provide further valuable indicators for the consequences of a merger, if the specifics of a market are adequately depicted by the model structure and the underlying assumptions. L&A implements these models and presents the results to competition authorities.

Remedies

Often appropriate corrective measures can resolve any concerns by the competition authorities. Using economic analyses these measures can be precisely identified and therefore the requirements as part of merger control proceedings minimised to what is necessary.



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