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Are horizontal mergers and vertical integration a problem?

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Overview

- market definition
- horizontal mergers
- vertical mergers

Market definition

- aims to consider the extent to which each product sold by a firm is subject to competition
- looks at two main aspects
  - product (eg, do road and rail compete for freight traffic?)
  - geographic (are markets by route or national?)
- theoretical framework: hypothetical monopolist test
  - would a hypothetical monopolist over this product(s) be able to raise prices by 5–10% above a competitive level?
- example case: *Freightliner/Deutsche Post*
  - rail-based intermodal container haulage is constrained by road-based

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Horizontal mergers (I)

- mergers between firms which are in the same product market
  - often the most problematic mergers from a competition perspective
- market shares used as indicative of market power
  - >50% set out in HMGs as evidence of a dominant position
  - <25% indication that the merger would not lead to competition problems
- market shares usually expressed in terms of sales
- problems can be due to elimination of either actual competition or potential competition

Horizontal mergers (II)

- a number of factors other than current market shares usually considered
  - sustainability: have market shares been consistently high?
  - countervailing buyer power: are customers large, with the ability to switch/reduce demand or sponsor entry?
    - eg, *Deutsche Bahn/Transfesa*
  - barriers to entry: are barriers to entry so low that an attempt to raise prices will be met by new firms coming into the market?

Vertical mergers (I)

- mergers between firms which are suppliers or customers of one another
  - generally less likely to lead to competitive harm than horizontal mergers
- as with horizontal mergers, more market power implies a greater likelihood of problems
  - if no market power at any level of supply chain, no problems
- problems can centre on foreclosure
  - whether upstream competitors are denied access to customers

  or

  - downstream competitors are denied access to inputs

Vertical mergers (II)

- *EWS/ Marcroft* important case in this area
  - merger of major rail freight operator and supplier of rail freight wagon maintenance blocked by the Competition Commission

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Discussion points

- role of regulatory authorities
  - NCAs have correct incentives to ensure competition
    - freight transport treated in the same framework as other sectors
  - preventing market power abuses more complex
    - relies on both strong ability to be aware of what is happening in the market, and making good decisions
- structural versus behavioural remedies
  - competition authorities tend to prefer structural remedies as no monitoring required, and harder to ‘game’
- vertical links unlikely to be problematic in absence of upstream or downstream market power

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