

On the difficult relationship between competition policy and public enterprises: lessons to be learned from recent developments in the field of European state aid control - Discussion

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Differences in objectives

- The predictions of the traditional mixed oligopoly models depend crucially on a number of important assumptions. In particular, the results depend on differences in objective functions between public and private firms, and on the nature of the objective function of the public firm.
- Competition authorities need a good understanding of role of objective functions:
 - In practice, managers of state-owned enterprises may face conflicting or unclear objectives
 - Different types of state-owned enterprises in the same sector may have different objectives
 - State-owned enterprises will not necessarily have social welfare maximising objective
- How can competition authorities identify and understand the objectives of public firms?
- How should competition authorities analyse the interactions of firms with different objective functions?



Welfare standard

- The economic approach to state aid investigations has developed a total welfare standard. Is this the right welfare standard for thinking about competition issues regarding public firms?
 - Are enforcement biases of concern to the same extent with state-owned enterprises?
 - Are there fewer informational disadvantages?
 - Do selection problems arise in the same way?
 - What is the role of lobbying?
 - The application of competition policy to sectors in which there are taxpayer-funded enterprises requires consideration of consumers in their capacity as taxpayers.
 - Need to take account of the opportunity cost of the funding and the impact on behaviour of these costs.
- What test should a competition authority apply to public firms?



Specific theories of harm

- Recent developments in state aid suggest some specific theories of harm that should be considered carefully when applying competition policy to public enterprises:
 - Disrupting dynamic incentives and crowding out
 - Supporting inefficient production
 - Exclusionary practices and enhancing market power
- Some recent EC state aid complaints have raised issues of state-funded subsidies.
- What role is there for competition authorities to deal with “level playing field” issues?



CCP

- The CCP has some experience of these issues in the UK health sector.
- To support increased patient choice and competitive tendering and greater use of non-government service providers in the NHS, the government established:
 - the Principles and Rules of Cooperation and Competition - a set of rules aimed at ensuring effective competition; and
 - the Cooperation and Competition Panel (CCP) to advise on cases arising under the Principles and Rules
- The Principles and Rules cover:
 - mergers between providers of NHS services – the basis on which these should be allowed
 - the conduct of commissioners and service providers when it impacts on patient choice, cooperation and competition
 - the procurement of services by commissioners
 - advertising by service providers



CCP's general analytical approach

Is the practice or proposal in question in the best interests of patients and taxpayers?

- Adverse effects on patients and taxpayers arising from a restriction on competition
 - eg reductions in service quality or increases in costs arising from reduced competitive pressure
 - broadly equivalent to an SLC test in UK merger analysis

balanced against

- Benefits to patients and taxpayers associated with the restriction
 - eg increased patient safety due to concentration of services in a single provider



Specific theories of harm

- The CCP was asked by the Department of Health to investigate the practice of hospitals restricting their consultants' from working outside their contracted hours for other providers.
- There is a long history of consultants working their non-contracted hours in the private sector.
- More recently, consultants have started working in their non-contracted hours for new competitors to their main employer (NHS-funded, both state and privately owned firms).
- For a number of reasons, a new entrant offering NHS-funded hospital services needs access to NHS trained consultants in the local area.
- It has been argued by some that training is a positive externality from the public supply of health services.
 - Where the presence of public suppliers bestows a positive externality on the private suppliers, then a taxpayer subsidy distributed asymmetrically to the players according to their ownership, may benefit all suppliers.
- The CCP concluded that the costs of these restrictions exceeded the benefits and recommended that consultants should (under most circumstances) be free to work for NHS and private competitors to their employer.



Conclusion

- Competition authorities concerned with public enterprises need to be very aware that the results in the literature depend on certain important assumptions regarding the objective functions of those firms.
- There are a number of arguments to support a total welfare standard approach to assessing the effect of behaviour of public firms.
- Authorities may need to think about specific theories of harm when applying competition policy to these firms.

