ICN Unilateral Conduct Regional Workshop

Assessment of Dominance

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Tuesday, July 24, 2012

Contents

The concept of dominance/substantial market power

- What is the meaning of dominance or substantial market power? (See ICN's *Unilateral conduct workbook chapter 3: assessment of dominance*, paras 5-6.)
  - Market power: The ability to price profitably above the competitive level
  - Substantial market power
    - high degree of market power both with respect to the level to which price can be profitably raised and to the duration that price can be maintained at such a level(*Substantial and durable*)
    - a firm's ability to behave with appreciable freedom from competitive discipline imposed by rivals
- Evidences to find dominance
  - direct evidence: pricing and profitability
  - indirect evidence: market shares, entry conditions and other market factors all affect a firm's ability to exercise market power

Defining the relevant market

- A starting point for the assessment of dominance
  - Demand-side substitution: economic substitutability from the point of view of the customers
    - ‘SSNIP’ test: *a* ***s****mall but* ***s****ignificant and* ***n****on-transitory* ***i****ncrease in* ***p****rice*
    - ‘Cellophane fallacy’: if the alleged dominant firm already sells its product at the monopoly price, the fact that a further price increase might not be profitable does not indicate that demand-side substitution is constraining prices at a competitive level
  - Supply-side substitution: the ability of suppliers to use existing capacity to begin producing the allegedly dominant firm’s product

Defining the relevant market

- Relevant product market
  - evidence on characteristics and usage of the products
  - patterns in price changes of the product
- Relevant geographic market
  - transportation costs in relation to the value of the product
  - whether national or regional regulatory or licensing authorizations are necessary

International Competition Network

Assessing dominance in the relevant market

- Does a firm have a market power?
  - Market shares, barriers to expansion and entry, and buyer power
- Market Share
  - Interpreting market shares
    - A very high market share may indicate dominance, however…
  - Calculating market shares in the relevant market
    - Production and sales volumes by monetary unit or by physical units
    - Reserves or production capacity(i.e. in the mining industry)

International Competition Network

Assessing dominance in the relevant market

- Barriers to expansion and entry
  - Where barriers to expansion or entry are low, the fact that one firm has a very high market share may not be indicative of significant market power.
- Factors that can give rise to barriers to expansion and entry
  - structural barriers: sunk costs, economies of scale and scope, and scarce inputs, and from demand factors such as a firm’s reputation
  - strategic barriers: investment in excess capacity or supply and distribution contracts
  - regulatory barriers: intellectual property rights, administrative regulations

Assessing dominance in the relevant market

- Buyer power: the ability of buyer to influence the terms and conditions on which it purchases goods
- Factors to be considered in assessing buyer power
  - To threaten to resort to alternative sources of supply
  - switching cost
  - the buyer's significance to the seller
  - the expertise and special know-how of the buyer
  - buying habits and procedures
  - market-specific aspects(such as the presence of network effects)

Concluding Remark

- Market definition is important, but it is not an end in itself and is simply one stage in the overall process
- Market share can be a reliable indicator of market power, but they cannot be determinative
- Barriers to expansion and entry provide us with information about the existence of potential competition
- Buyer power is also an important part of the analysis of market power