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Comments on ‘‘Reforming European Meyer Review: Targeting Problem Areas in Policy Outcomes’’

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1. Introduction

In his paper on European merger review, my friend and colleague Kai-Uwe Kühn covers an impressive range of current policy issues, recent cases, economic literature and analytical questions. Both his paper and the general debate are welcome steps, for rigorous antitrust analysis well informed by economics is central to effective merger policy. I certainly cannot match Kühn's command of the European merger scene, so I shall make an effort both to agree with him and disagree with him at a somewhat more abstract level.

Let me explicitly introduce a concept that is implicit in much of Kühn's paper: rigorous antitrust analysis. In a merger context, a rigorous antitrust analysis states what competition will be lessened as a result of the merger and how the merger will cause the lessening of competition. Both parts are stated with adequate specificity that evidence for or against then can be assembled, and a sensible person can assess with precision for which side a particular piece of evidence is helpful. Rigorous antitrust analysis is not the same as rigorous economics; well-trained attorneys can do it, though attorney-economist teams are far better at it in practice.

Most of my agreements with Kühn arise because we see the substantive and procedural benefits of rigorous antitrust analysis and because we agree that economists are a valuable input to making a rigorous antitrust analysis—particularly valuable if we evaluate the production process at a point of low utilization of economists.

Almost all of our disagreement arises because we link economics to rigorous antitrust analysis in slightly different ways. Kühn sees the linkage is flowing more through formal economic theory and econometrics than do I. At several junctures, Kühn appears to be advocating a delay in policy formation until economists are satisfied we understand the relevant theory deeply enough. Experience suggests that it will be a long wait. We also differ about the use of qualitative evidence. He appears at several junctures to oppose it,

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while I think it can be, if made part of a rigorous antitrust analysis, quite useful. Those disagreements of nuance aside, I applaud the seriousness and care with which Kühn has taken on the big issues.

2. Competitive effects and theory of the case

Sound policy seeks to block those mergers that would likely lessen competition and thereby harm economic efficiency. Before blocking a proposed merger, authorities should ask the threshold question ''What competition would be lessened?'' Answering with reasonable specificity is the critical step of specifying a merger's potential competitive effects. This means determining the specific products or services whose prices are likely to be higher with the merger than without it; the invention races less likely to be run; the product variety or quality less likely to be offered, and so on.

A competitive effects analysis serves an obvious substantive goal, which is focusing on specific potential harm to competition. It also has a valuable procedural role by compelling enforcers to say with specificity why they oppose the merger in society's interest. A specific statement, subject to rebuttal by the merging parties, focuses attention on the core issues.

This is the rationale for market definition. By stating the relevant market precisely, attention is focused on the locus of the alleged competitive effects. It is impossible to have rigorous antitrust analysis without having some kind of specificity in this area. Kühn's paper sensibly raises the question of whether that should look like ''market definition,'' and if so, how formulaic and rigid it should be. Sensible, too, is Kühn's raising the question of what kinds of evidence should be used for these inquiries.

Once determined what the merger's competitive effects will be, rigorous antitrust analysis determines how the merger will likely lead to that bad outcome. Specificity about the ''how'' means articulating in detail a theory of the case. Kühn is sensible in pointing out that different kinds of theory of the case have different relationships to economic analysis, and that they will call for different kinds of evidence.

An example where Kühn and I agree is ''portfolio effects.'' I agree with him because this portmanteau concept cannot be made precise and specific.[1] A portfolio effects theory does not state how the merger creates market power with any precision. It cannot be rebutted by specific evidence, nor can it, at the level of vagueness of ''portfolio effects,'' be proved by specific evidence. This does not mean that there is no rigorous antitrust analysis which would be labeled ''portfolio effects'' under EU law. It does mean that ''portfolio effects'' as a concept is too broad and vague to direct a rigorous antitrust analysis or form part of one.

1 I am relying here on Kühn's account of what ''portfolio effects'' means.

3. Unilateral effects

Kühn and I agree on unilateral effects mergers in general, though there are several important nuances on which we disagree.[2]

Here the competitive effects analysis and the theory of the case are closely related. Suppose firms A and B, each of which sells one product, are contemplating a merger. We know (by what empirical methods I leave open for a moment) that a price cut on A's product leads to an increase in A's unit sales approximately twice as large in percentage terms, and that 75% of the additional units are B's former customers. Similarly, a price cut on the part of B raises their unit sales, mostly at the expense of A. These facts, if established, fulfill both the competitive effects and theory of the case requirements.

Unless A and B are successfully colluding today, the competition between the two of them is an important part of each firm's competitive environment. A merged firm will have far less of an incentive to cut price on either product than the independent ones do today. One might or might not complete the ''market definition'' analysis, but its competitive effects' purpose has already been fulfilled. So, too, has the ''theory of the case'' purpose, which is well captured by the change in incentives. This is a standard ''unilateral affects'' analysis.

Now consider the opposite case. Only 3% of the unit sales increase from a price cut by firm A (B) comes from customers switching from firm B (A). The prospective merger does not change pricing incentives nearly as much. Neither firm is as much of a competitive constraint on the other. Again one might add a market definition analysis at the end—presumably a wider market this time—but the competitive effects analysis has already succeeded before that is done.

That is the part of the analysis on which Kühn and I agree. Determining which of the two cases just described better describes a particular merger is the heart of unilateral effects analysis. We differ on the appropriate evidence and on the importance of the distinction between competitive effects and market definition.

Kühn favors the use of econometric evidence as a way to measure the strength of the change in unilateral incentives after merger, possibly even favors the exclusive use of such evidence. The econometrician proceeds by estimating the demand function for each product as a function of all firms products. That makes it possible to distinguish between the two cases by using the estimates to calculate the change in incentives by means of ''diversion ratios'' (like my 75% and 3% hypotheticals above.)

Kühn cites Staples as an example of successful use of that approach. This argument needs to be made more carefully. First, the econometric evidence in Staples was not of that form. For this retail trade industry, one could do cross section work comparing different cities. Some of the cities were already supplied by only one of the two merging

2 I have difficulty disagreeing with Kühn about the importance unilateral effects antitrust analysis since, together with Jon Baker, I invented it. It was we who first suggested to an antitrust agency, now nearly 20 years ago, that they adopt this approach, and we who first brought in product-specific demand elasticity estimates in connection with a proposed merger.

firms, while other cities had active competition between them. The econometric evidence focused on the price differences across those two kinds of cities. That goes directly to the competitive effects bottom line, without the need to calculate the change in incentives. Second, as I read Judge Hogan's opinion, it was not the econometrics which convinced him in the first instance. Very similar price analyses had been done in the course of ordinary business by managers; that they agreed with the FTC's econometrician and not the merging firms' fellow was helpful to the Judge deciding which to credit. The general point is this. Different kinds of evidence, including both econometric studies and analyses performed in the ordinary course of doing business inside firms, will bear usefully on the key unilateral effects issues.

Most of the merger cases with a unilateral effects theory that I have seen use econometric evidence in another way. They use it in support of market definition. The reasons for this are clear, I think. It is rare that market definition and competitive effects analyses will differ. They differ in some specific cases. A narrow market definition that implies concentration seems right, but the merging firms sell products that are poor substitutes within it, for example. A wide market definition seems right, but each of the two firms is the other's closest competitor, in another example. These are not the most typical patterns (though if there is good evidence for them it is important to pay attention to it in particular cases.)

Much of the time, there is simply no conflict between a market definition view and a unilateral effects view. Focusing on whether the merging firms sell substitutes, and whether there are third parties who would or easily could replace the lost competition from the merger, gets one the same answer through any of a number of methodologies. The reason for this is that the unilateral effects analysis and the market definition analysis are trying to accomplish the same thing, which is making a precise and specific statement of the competition that will likely be lost if the merger goes forward.

4. Foreclosure and leverage theories

Kühn is absolutely on the right track in calling for caution in applying ''vertical'' theories to horizontal mergers. Suppose one of three competitors says that a merger of the other two will lead to ''foreclosure'' and exit, after which there will be a monopoly and prices will rise. This argument—and softer versions of it in which only some of several non-merging firms will exit—should be viewed with caution. It takes a great deal more to establish that there is a harm to competition here than some vague theory of ''foreclosure'' that might happen in the future. In a horizontal merger, objections from competitors are more likely to be a sign the merger is a good idea than a bad idea.

I misread the draft version of Kühn's paper on this point, and now I know why. Apparently, some recent European policy thinking in this area has been so resoundingly awful that I simply did not believe anyone would make the arguments Kühn criticized. In response to those awful arguments, Kühn appears tempted to make a stronger counter argument than economics will really support.

One does not need to conclude that dominant firms' business practices are nearly always efficient and very rarely anticompetitive to dislike ''foreclosure'' theories in horizontal merger. One does not need to believe that a harm to competitors always signals that there is no harm to competition, either. There is no foundation in economics for either of those claims. It is still true that the conditions for a horizontal merger leading to foreclosure are hard to fulfill.

A rigorous antitrust analysis must say what competition is going to be reduced and how the merger, specifically, is going to reduce it. Most vertical theories fail this simple test. The key point is showing that foreclosure must be feasible and profitable after the merger but not before. Vague suspicions will not do here. There needs to be a reasonable showing that the return to getting rid of a competitor to the merging firms is only high enough to merit the effort of foreclosing them post merger and not before. Further, there needs to be a reasonable showing that the mechanism and the motive for getting rid of the third party are anticompetitive. Those two form high hurdles that will rarely be overcome.

I agree with Kühn that vertical merger cases (where the firms sell complements not substitutes, in contrast to the vertical theories above) can be anticompetitive, though I am not sure why he requires that one firm already be dominant in one of the two vertically related markets. (What if the merger creates a dominant firm in one market? Perhaps he means that the merger should be analyzed starting with the horizontal effects in that market, which is probably a good idea.) If he is right that vertical mergers are rare, that is an interesting difference between the EU and the United States.

Kühn suggests that vertical theories in a merger case are hard to prove because the harm is prospective, and that such cases will therefore be rare. This may well be right, but it is of limited policy importance. Rare does not mean never, and when the prospective evidence is there the authorities should act.

Consider, for example, the ''other'' Microsoft case, the proposed merger of Microsoft and Intuit. Intuit's main product is personal finance software. The merger was part of a package in which Microsoft's directly competing personal finance software, Money, would be sold to a third party. Thus, the theory of the case had to be vertical. The horizontal market structure of the markets in which each firm sells was not directly altered by the merger.

Both firms' internal discussions of the merger clearly identifiable two distinct competitive consequences of the merger.[3] The first had to do with new technologies where the firms were in competition to sell services to Financial Institutions (FIs). Intuit's chairman to his board:

> Our future vision is both vulnerable to and would benefit from Godzilla's [Microsoft's(!)] strengths. . . . Our combination gives FIs one clear option, eliminating a bloody share war and speeding adoption. That, in turn enriches the terms of trade we can negotiate with FIs.

3 The quotes from Microsoft and Intuit documents are drawn from the Department of Justice Antitrust Division's Complaint, which you can find at http://www.usdoj.gov/atr/cases/f0100/0184.htm.

A Microsoft manager:

> Since neither company has both of these strengths, the banks, credit card associations and others are in a stronger position to play us off against each other. As a combination, we would be dominant.

Both firms' managers also agreed that Money would be a far less effective competitor in the personal finance software market in the hands of its new owners than under its current ownership. Thus, there were likely competitive effects in two markets from this merger: The weakening of one of the two competitors in an extant duopoly, personal financial software, and the elimination of one of the two entrants forecast by market participants into a new area, financial services online.

My point here is that prospective rigorous antitrust analysis is possible even in a vertical case. The bedrock principle should not be, in my view, that the right theory of foreclosure to apply to the case should have already been published in the *RAND Journal of Economics*. Instead, the bedrock principles should be those of rigorous antitrust analysis. What competition will be harmed? How will the merger harm it? What evidence shows this specific harm and specific link to the merger?

5. Coordinated effects

Kühn and I agree that coordinated effects and the relevant theories are an important part of antitrust enforcement. He is right that there is enough tacitly or explicitly collusive behavior in industries with few sellers to warrant real policy concern. The introduction of an amnesty program in the United States brought a remarkable number of large scale price fixing agreements out into the open, for example. This is an area, however, where we differ somewhat on the use of economic theory and the appropriate evidence.

Let me illustrate with an example from my merger enforcement practice.[4] Firms A and B propose to merge. A modest number of interviews with customers reveal that many of A's customers considered B at their last procurement decision time. Symmetrically, B's customers often considered A. Most considered at least one other firm in a formal process leading to a substantial procurement, but few considered many more. When customers were asked how prices were set, several volunteered that firm B has been a price cutter at various times. A slide presented to A's Board of Directors by a marketing manager favors the merger which will ''take all that discounting out of our lives.''

I submit that the right rigorous antitrust analysis is obvious. The theory of the case is coordinated effects, and there is compelling evidence that the merger will harm competition. Are their advances in formal cartel theory which would change my mind about this merger? I think not. Cartel theory, by its very nature, will never be precise enough. To wait for a formal theory that says the industry participants might be correct in

4 I will suppress firm names and industry because I am not sure that the details are in the public record.

what they say is silly. Of course, there is such a theory, even if no one has written it down yet. To conclude, on the basis of some theory, that the industry participants must be wrong, is even more silly. It turned out that bumblebees can fly, after all.

The evidence is qualitative and anecdotal, for Kühn problematic. I am less troubled than Kühn that the evidence has these features. Given that we generally agree about the importance of coordinated effects theories, it is useful to expand on our differences.

We cannot quantify the expected price rise from the merger on the basis of the evidence I just told you about. Does this mean that the merger raises no competitive concerns? That cannot be the right answer. We need a more modulated view of evidence and of theories of the case than the one which says there should always be a number representing the likely damage to competition. Merger enforcement is inherently preventative. The idea is to present future declines in competition. The interventions are done *ex ante*, which has costs (uncertainty) and benefits (no harm to going concerns.) That tradeoff is sensible. The other idea, in which antitrust becomes highly regulatory, and we attempt to come up with a quantitative assessment of both the costs and benefits of mergers, is not sensible. These mergers are prospective. Not all of their effects can be foreseen.

Let me unpack a bit the point about it being difficult to quantify the expected price rise from the merger of firms A and B, above. It would be very difficult, even in principle, to say how much lower prices are today because of firms B's behavior. How often do they discount? How much does that affect the discounting behavior of other firms? How much does that affect the regular prices charged by other firms? The theory of tacit cartels tell us that all those things matter, but offers little operational guidance at making them quantitative. They are all reasons why the merger is bad for society. On the other side, there are other difficult questions. Will B's niche as a price cutter be filled after a delay (how long?) by some other firm? Quantification is difficult.

The problems of quantification I raise here have little to do with my specific example. Coordinated effects theories in general are going to lead to problems like this, with rare exceptions. One can construct a rigorous antitrust analysis that tells us that there is a serious threat to competition and that the merger is likely to be causal in the reduction of competition. The analysis will not likely have a reliable quantification of the harm, however.

I think that some of the call for quantification here comes from a misunderstanding of what economics is. Industrial Organization economics has been so long dominated by theorists that may people think that the role of empirical economics is to make a big spreadsheet in which everything that theorists dream up is made operational. This is a dangerous and arrogant idea.

Another source of the call for quantification comes from an odd generalization of the unilateral effects cases. Those cases seem so attractive intellectually! The precise harm to competition is made quantitative. Surely we could do that for all our other cases as well.

This is another error, also with its roots in arrogance. All a unilateral effects theory can do is quantify the incentives of the merging firms to raise prices away from the existing equilibrium. It cannot reliably tell you how high prices will rise. What if there is new

entry or product repositioning in response to the price rise? What if the price setting game is closer to Cournot than the widely assumed (but rarely tested) Bertrand? My point is that the hope for quantitative precision in forecasting post merger prices is a snare and a delusion. What we want is analytical precision.

Kühn's other worry is that evidence is sometimes anecdotal. It seems unwise to cast out all customer interviews on that ground. In my example, the small sample size of customer interviews may be a problem. Were the customers interviewed drawn representatively? Or were they, say, drawn from A's ''crabby accounts'' file drawer? Of course, precisely these questions would still be apropos if there were a large sample. ''Data,'' Stigler said, ''is the plural of anecdote.'' There is no excuse for sloppiness in interpreting evidence when you have a little of it nor when you have a lot.

Pragmatic business people and lawyers should be discouraged from drawing the obvious (to them) conclusion from Kühn's remark that ''any competition authority attempting a sound theoretical foundation for its policies will be shooting a moving target.'' I think it is simply false that the parts of industrial organization economic theory that matter for antitrust policy change with any great frequency or that they are likely to change going forward. The basic principles of sound antitrust economics have changed little since I entered the profession 25 years ago.[5] Deepening theoretical and empirical research leaves us better at applying those same principles, but does not change them.

Kühn and I differ here less than it may appear. If he is, as I suspect, echoing complaints that EU merger policy has sometimes failed to bring forward a rigorous antitrust analysis, I am with him. As a practical policy arena view, however, I would not say that ''qualitative'' and ''anecdotal'' are the right words. What we want is analytical precision, and the best available evidence to back it up, whatever the form.

6. Organizational issues

Kühn makes a number of excellent points about the organization of the antitrust enforcement effort. I merely want to amplify his points from the perspective of a former enforcement agency manager.[6] If Kühn's characterization of the low status and low rate of utilization of economists in the EU enforcement effort is even partly right, the organization is making a mistake.

First, to make the point slightly more broadly than Kühn, attorneys and economists have very different skill sets. In any merger investigation, the economists are likely to be better at most aspects of competitive effects analysis. They will identify overlap markets

5 They did change just before that. In the mid-1970s the simplistic version of the Chicago School approach was finally abandoned by industrial organization economists, except for a tiny minority. It had been held, for a short time before that, by a somewhat larger minority.

6 I spent a good deal of time thinking about organization because the Antitrust Division was running right at capacity when I was in it. A generation of lax enforcement left us with many blatant violations to pursue.

more quickly, do a better job of market definition, and better assess unilateral effects. Kühn emphasizes the high-end quantitative skills. In my experience, economists are also better even at medium-grade quantitative skills like reading spreadsheets from firms' finance or marketing departments.

Second, economists are far better than attorneys at seeing internal contradictions in a draft of a rigorous antitrust analysis, and in asking some classes of question that sharpen the analysis. Attorneys tend to push on other parts of the analysis; the skills are complementary. I'm pretty sure I'm right about the complementarity. When I was in the Antitrust Division, I usually learned more when the staff attorneys were talking about the cases and less when the economists were talking. My front office colleagues, brilliant and successful antitrust attorneys, usually learned more from the staff economists. An antitrust lawyer who says he ''knows enough economics'' is a fool. So is an antitrust economist who ''knows enough law.''

Again, I would apply this on a broader scope than Kühn. It is not only the most conceptually difficult cases where there are benefits of this complementarity. Each profession is better at applying its core thinking in new factual circumstances. That applies even to comparatively simple cases.

Kühn has a second point that staff economists can protect an enforcement agency from excess reliance on the analysis of economists who have been retained by outsiders. Those can be either the merging parties, customers, complementors or competitors. He is right that these submissions are very hard to evaluate without real in-house expertise. I can contribute an anecdote here.[7]

In a product differentiated industry merger, the EU commissioned an econometric analysis. It was a good job, particularly given the tight time constraints of policy work. Economists, I presume retained by the parties, wrote a sharp criticism of the econometric analysis. At this time, I was in the Antitrust Division, and was asked to comment on the interchange. In the spirit of transatlantic governmental cooperation, I read the materials. While the original report had flaws, as all econometric work always does, the flaws were unlikely to affect the conclusions.

The criticisms from the other outside economists were not ones they would have dared bring to an US enforcement agency. Looking at the critical submission, one US antitrust colleague said ''Even [Professor X] wouldn't bring this [expletive] to us.'' By treating economic analysis seriously, the US agencies have deterred much advocacy hiding behind a technical mask. Without staff economists, the EU is vulnerable to that kind of submission. Lacking staff economists, it is left with the unattractive choice of ignoring the submission or being fully swayed by it.

Another good point from Kühn is that staff economists can help in filtering the information that comes in from interested parties (including the merging firms) to avoid regulatory capture. His discussion of the problem of capture is refreshingly sophisticated, recognizing that both the merging parties and third parties have an incentive to take advantage of the process. Economists can be useful here. We are a cynical breed, tending

7 Once again, I am unsure what is public so say nothing to identify the case.

to think about a speaker's incentives as well as his credentials. More importantly, we are very good at separating the argument from its source. An agency with economists will do a better job of learning about industries without being captured.

Some observers have suggested that to avoid capture, the authorities limit contact with interested parties. This seems to me to be a bad idea. Contact with at least two interested parties, the merger partners, is inevitable. Speaking to more parties, with more diverse interests, increases the agency's knowledge base. So, too, does insisting that all parties back up their claims with hard facts and data, that they bring in business people and economists, not just attorneys, and so on. The fundamental problem is learning as much as possible about the industry. These cases cannot be decided on theory, they need to be linked to detailed knowledge about the industry at hand. A strong tradition of rigorous pro-efficiency antitrust analysis among staff attorneys and economists are a better safeguard against capture than refusing information.

An example illustrates this. The US Assistant Attorney General for Antitrust negotiated a settlement with Microsoft a year ago, including many provisions with complex technical or business implications. It was widely reported that he refused information from other firms in the computer business in order to avoid capture. Ultimately, he negotiated a settlement which looks pro-competition until read closely. In its details it is very pro-Microsoft. This is the inevitable outcome of negotiations between an informed and an uninformed party. Enforcement agencies which attempt to make decisions without gathering a large body of information from interested parties (among other sources) will be flying blind.

A benefit of a well-functioning economics capability not mentioned by Kühn is analysis of other governmental action for pro- or anticompetitive effort. This is a highly useful function for antitrust economists in the United States; perhaps it could be for the EU as well. Governments sometimes undertake protectionist policies on purpose. That is hard to prevent. Yet they sometimes do it because they have only learned of the issues from the party desiring protection. In such instances, economics can be very useful.

I do not, unfortunately, know nearly enough to comment on Kühn's specific proposals for organizational change. I do know that the available supply of EU economics talent would permit effective staffing.

Kühn's other organizational point is equally valid. He proposes a separation of the investigational function from the decisional one within merger enforcement. Some kind of separation of the decision from the investigation will give investigators the right incentives. If the decision making body is set up right, it will demand and get rigorous antitrust analysis. Mush will disappear. Indeed, the incentive for rigor will propagate. Whatever body has the investigational role will develop its own internal review process. Senior people will force junior people to make rigorous antitrust analyzes. This will save the investigational unit from embarrassment in front of the decisional body.

That leads me to the third organizational point, never quite articulated by Kühn but possibly quite important. Assume with me that direct political control of competition policy on a case-by-case level will lead to protectionism. Only by delegation, before particular cases arise, can pro-efficiency competition policy be implemented. I know how

to set that up in the United States system. Largely rule-base courts and high costs to politicians of being seen influencing prosecutors are the tools.

I do not understand the EU structure well enough to comment any more on the specifics of how to set that up, but Kühn's comments on organization are troubling to me. What EU institutions are strong enough to be delegated to? To avoid protectionism calls for a highly independent institution to play Kühn's ''decision'' role and a reasonably independent agency to play his ''investigation'' role. That independence needs to have the committed backing of political institutions. This seems tricky in an EU context. The relevant politics seem to involve not only the clash of interests at one governmental level, but an incomplete division of authority between the EU and the member states.

7. Conclusions and open points

Kühn has done an admirably thorough job. His substantive review of policy issues did not, however, mention some of the new topics that challenge merger policy formation. Perhaps this is because he stuck close to the Green Paper. My sense of the issues left out may be too US-centric, but let me raise a few, very briefly.

A general trend to stronger intellectual property protection poses challenges to competition policy. One form of that is mergers to resolve IP litigation. How do you deal with a merger to monopoly that the parties say is a legal, patent protected monopoly? Because of the settlement, there has been no court test of the patent. There are many, many other interactions between IP and competition policy that are not yet fully understood.

Mergers with potential entrants pose similar problems. Suppose an existing dominant firm has a built-up distribution network. An entrant has a new and better technology, at least according to a few customers, yet their only assets are a patent and a prototype. They merge, in order to ''gain the efficiencies of using the existing distribution network.'' How do you assess either the lost competition or the efficiencies?

Another trend affecting competition policy is the impact of information technology on industry structure. I'll stand by my 1998 forecast that this will take 20 years, not five, and that change will be substantial. One new issue this brings to the fore is vertical. The potential entrants into many distributive markets are the upstream firms, for example. Current understanding of vertical theories, of potential entry, and of distribution markets could all improve in support of policy formation.

Both of these outside trends, and others, mean that the problem of bringing economics into EU competition policy needs a forward-looking analytical element as well as a degree of toolkit sophistication. Here Kühn's proposal of getting very good economists is spot on.

Kühn's analysis is impressive. it is particularly impressive for being right about the most important things. His enthusiasm for cutting-edge theory and complex econometrics may obscure his core message, however. He is right that economically efficient competition policy needs to be rigorous and analytical—whether the importance of formal economic theory is as large as he sees it or not. He is right that the evidentiary

basis for blocking a merger must be precise, detailed and specific—whether you agree with him about the centrality of econometric evidence or not. He is right that assigning economists low status and low head count in an enforcement agency is an inefficient organization—whether you share his enthusiasm for economists' newest methods or not. Finally, he is deeply and wisely right to emphasize organizational changes—whether you like his specific organizational proposals or not.

Where Kühn is most right is in his insistence that merger analysis be specific and rigorous about two things, the harm to competition and the mechanism by which the merger is likely to effect that harm. That is economics' contribution to antitrust policy formation. It was a pleasure to read his paper, and gratifying to see policy analysis debate going forward at this level.