Integrating Regulatory and Antitrust Powers
Impact on the fight against cartels

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Integrating Regulatory and Antitrust Powers: Does It Work?  
Case Studies from Spain and Mexico

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There are a wide variety of possible structures for regulatory regimes in countries. This article focuses on the analysis of multi-purpose regulators that combine regulatory and antitrust powers, such as the Mexican IFT and Cofece, as well as the Spanish CNMC. We focus on institutional design, review the existing literature on the pros and cons of single-purpose vs. multi-purpose regulators, and use the new Spanish and the Mexican institutional settings to contrast how such pros and cons are designed to operate on paper and how they do so in real life. Our goal is to look for evidence, at the very initial stage of the reforms in both these countries, of whether these countries are moving closer to a rule of law equilibrium.

Multi- vs. Single-purpose regulators

- Single-purpose: Autorité de la Concurrence, DG COMP
- Multi-purpose:
  - Competition & Consumers: UK CMA
  - Single regulator & Competition: IFT, OFCOM
  - Multi-regulator: German Bundesnetzagentur
  - Multi-regulator & Competition: CNMC, Dutch ACM
Multi- vs. Single-purpose regulators

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Synergies within multi-purpose regulators in cartel detection

1. Industry expertise
2. Market monitoring and cartel screening
3. Optimal tool: Antitrust vs. Regulation
   • An illustration: Market manipulation
Industry expertise

- Multi-purpose regulators might be better equipped to investigate cartels in regulated industries
- Internal organisation (at investigation and decision levels) is crucial
Market monitoring and cartel screening

- NRAs implement **monitoring mechanisms** to detect market misconduct (mostly in energy markets)
  - Eg France, Spain CNE, Italy, Nordic Markt, US FERC
- Competition authorities operate **cartel screening programmes** to flag unlawful behavior through economic and statistical analyses
  - Structural indicators: The Dutch Competition Index
  - Behavioural screening: South Korea and Brazil (Public procurement), DOJ Red Flags
  - LIBOR conspiracy
Cartel screening

Marker: reduction in price variance

Frozen perch cartel (Abrantes-Metz et al, 2005)
Graph 1: Number of ships in the route Valencia – Ibiza during 2009 (weekly data)

Source: own calculations based on data from Puertos de Baleares
Market monitoring and cartel screening

• Synergies:
  – Introduction of collusive markers screening into market monitoring
  – Cartel screening techniques can help improve market design
  – Use experience in regulated markets to improve cartel screening in other markets
Optimal tool: Antitrust vs. Regulation

• Integrated regulators can choose from a wider set of tools to solve a problem
• But, who determines which is the optimal tool and how?
Ofcom - Football broadcasting rights

- 2010 Ofcom’s pay TV investigation
- Nov 2014: Ofcom antitrust investigation into Premier League’s broadcasting rights
  - Horizontal agreement between football teams to restrict output (number of matches broadcasted) leading to higher prices for consumers of pay TV packages
Market manipulation

- Eg LIBOR, Forex, Platts
- Market manipulation can be detected by market monitoring/cartel screening
- Market manipulation episodes have been challenged both by antitrust authorities and sectoral regulators
Antitrust vs. regulation

• LIBOR: DG COMP, DoJ, US Commodity Futures Trading Commission, UK Financial Services Authority
• FOREX: Financial regulators
Charged atmosphere (The Economist, Nov 10th 2012)
“The charges against Constellation, Barclays and Deutsche all centre on “related-position” cases, meaning that the companies traded in the actual deliverable market for electricity while simultaneously trading in financial markets tied to electricity. They are accused of distorting prices in one market—even at a loss—to benefit positions in the other.”
“The current structure of the energy market is wildly complex. The regulatory filings suggest that insiders were themselves occasionally lost. It is unclear how much the cleverest judge or jury will be able to grasp, and whether that will favour the government or the defendants.”
“But if something is rotten about the market, the best answer may be a simpler structure, not more lawsuits.”
Market manipulation in energy markets

- Platts (2013): Manipulation of benchmarks for trade in the physical and financial derivative energy markets
- Companies may have prevented others from participating in the price assessment process, with a view to distorting published prices
- Impact on the prices of crude oil, refined oil products and biofuels purchases and sales.
Conclusions

• Complementarities might arise within multi-purpose regulators in the detection and investigation of cartels but,

Regulatory and antitrust departments should act as true cartels!
Thank you!