

The „More Economic Approach“ after 10 years: An Interim Assessment

1) There is no unified “more economic approach”. What is called “more economic approach” differs widely between different areas of competition policy. For example, the “more economic approach” to merger control is quite different from the “more economic approach” to state aid control.

2) There are even significant differences in the “more economic approach” to different issues within the area of state aid control. For example, the approach to state aid control to public broadcasters fundamentally differs from the approach to state aid control of R&D subsidies.

3) Quite generally, the “more economic approach” is often argued to comprise three (interdependent) elements: (1) The use of modern economic theories and techniques, (2) the (gradual) shift from using per-se rules to a rule-of-reason approach, (3) a shift of objectives from the protection of competition to consumer protection. I am skeptical whether there is really a shift of objectives (element (3)) in practice.

4) Another common feature of the “more economic approach” is the introduction of an “efficiency defense” into all areas of competition policy. However, while the efficiency defense actually (as opposed to the academic debate) plays a minor role in the area of merger control, it is central in state aid control (where it takes the form of state aid being a remedy for market failures).

5) The (often voiced) concern that legal uncertainty would significantly increase due to the “more economic approach” does not appear to be borne out by experience so far.

6) Moreover, following the Court of First Instance’s decisions in *Schneider/Legrand*, *Airtours/First Choice* and *Tetra Laval/Sidel* the relevant alternative has not been to proceed as hitherto. A change of approach was mandated by the Court. Hence, some increased legal uncertainty was unavoidable.

7) The “More Economic Approach” in Europe has also led to some greater convergence with US antitrust policy and has, thereby, reduced uncertainty for international firms, at least to some degree.

8) The key feature of the “More Economic Approach” is, in my view, that more information has to be considered by the Commission and the courts, especially in “critical” cases. Is this worth the trouble? First, this depends on what the relevant alternative would be. And second, the (economic) analysis of the efficient length and depth of any investigation is inherently difficult, as the result of the investigation is unknown ex ante.