Legal Standards as structural alternatives in antitrust

(Comments on report by Yannis Kantsoulacos '' Could a move to more presumption-based Legal Standards be justified, on cost of error minimizing grounds, for the big-tech digital platform markets? '')

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Fundamentals of antitrust enforcement economics

- Output of efficacious antitrust enforcement is deterrence of monopolistic behavior

- Deterrence is Costly in any case

- Probabilities of enforcement errors (I&II types) does matter

- Negative deterrence effects of errors

- Space for balancing?

Known LS

- Per se prohibited
- Effect-based (rule of reason), including:
  - Block exemptions
  - Individual exemptions
- Legal

Suggested DSA and interpretation (theories of harm in wider sense)

1. Conduct characterisation screen.
2. Market contextualisation and SMP / contestability screen.
3. Potential for significant exclusionary impact or enhanced ability to exercise market power screen.
4. Potential consumer welfare loss due to anticompetitive effects screen.
5. Efficiencies assessment and balancing screen.

1. Hard core cartel (size does matter? "Green cartel"?)
2. Entry barriers, market concentration, economies of scale&scope
3. Market dominance (individual /collective), some vertical restraints

4. Interpreting conduct of companies possessing market power
5. Empirical assessment of effects

Questions and reflections

- **Why continuum?** We discuss 5 LS as DSA. In fact this is not continuum. More opportunities to operationalize discussion and avoid excessive arbitrariness in enforcement (see discussion on firm as on of DSA instead of contracts continuum in 70-ies).

- **Where probabilities of recognition of harmful and non-harmful conduct as well as other probabilities come from**? **Objective of subjective ones?** It is pure theoretical modeling or we have chances to see recommendations for guide on LS choice design? What we have to know to manage this issue?

- **How to work with H&B outside pure theoretical framework**? Any benchmarks? Bank of cases with quantitative estimates effects?

- **Do we use here assumption on benevolent and omnipresent regulator**? If it is, how it corresponds to political economy of LS institutionalization as well as contemporary theory of economic regulation with concepts of rent-seeking, rent extortion etc?

Why this theme (and paper) is important?

- Structuring the subject field of the problem

- Saving antitrust from regulation or abolition (especially under digital economy challenges – remembering hearings in US Congress **GAFA**M)

- Sufficient variety of economic policy tools to manage market failures (adaptability of regulation system) ….

Thank you!
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