

**Innovation Market Concept:
A Model for European Merger Control ?**

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Abstract

Innovation-based competition creates new challenges for antitrust policy. American and European antitrust enforcement pursue different conceptual approaches to incorporating innovative efficiency considerations into merger analysis. At the heart of this development lies the US authorities' implementation of new market concepts, especially the innovation market concept, while the European Commission largely stays with the analysis of actual and future product markets combined with the potential competition doctrine. The innovation market concept is the latest step in the antitrust policy of the DOJ and the FTC. It accounts for the dynamic nature of competition and the importance of innovation for economic growth. Innovation market analysis is driven by an intention to preserve competition in the field of research and development.

This paper examines whether innovation-based competition requires adjustments in European merger analysis and whether the analysis of innovation markets should serve as a guideline for such a change. As this thesis will argue, the innovation market concept cannot explain to what extent competition in R&D is conducive to innovation and, thus, it fails to adequately identify those mergers which will lead to a socially undesirable reduction of R&D competition. The innovation market concept does, however, have one useful feature meriting its incorporation into European merger review. Current European merger practice does not prevent transactions which reduce the number of alternative research paths and, thus, cause a loss of innovative diversity. Innovation market analysis bridges that gap, thus, making it a valuable supplement to European merger control.

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