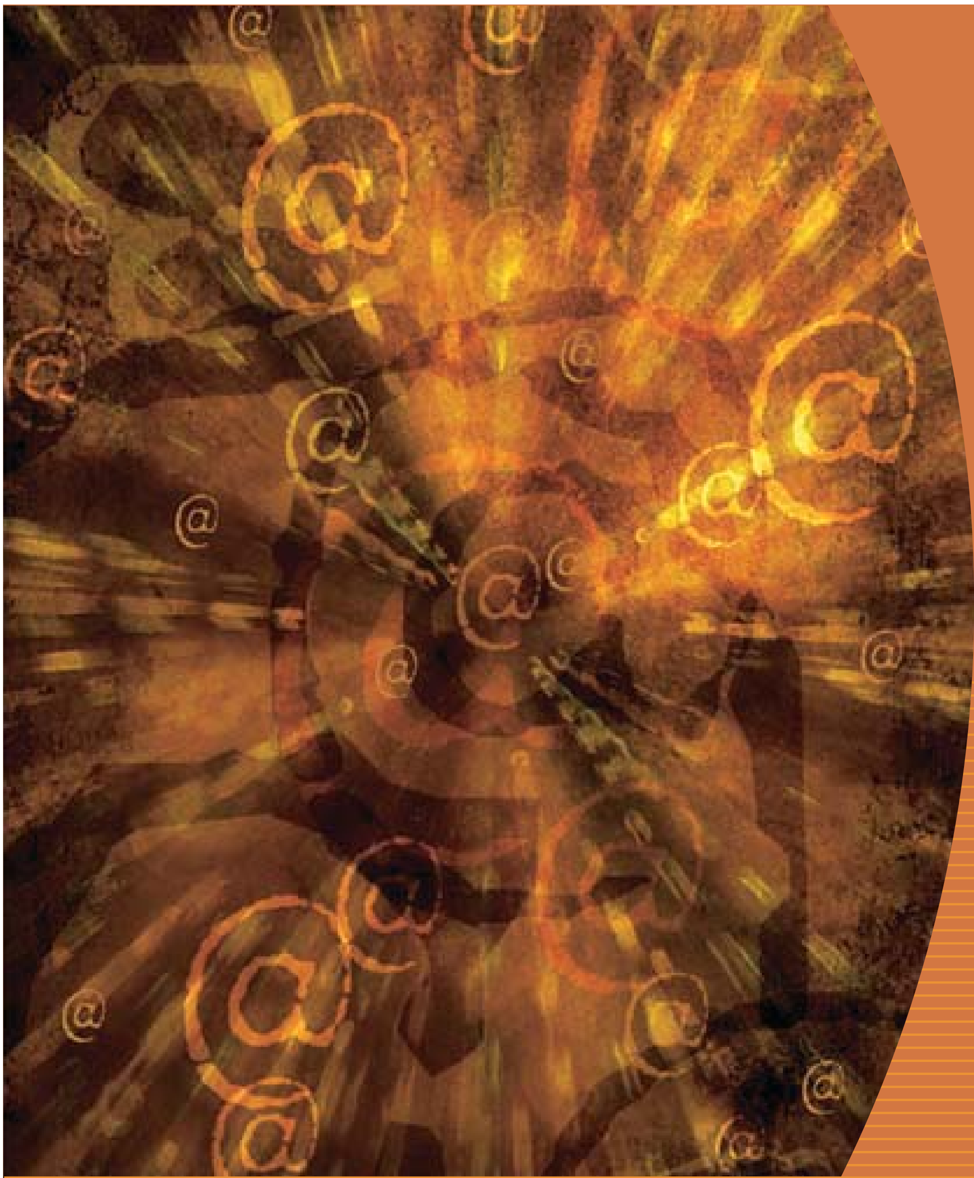
Economy

Andreas Seip

Merger Policy in the E-conomy

Diploma Thesis

Examicus



Andreas Seip

MERGER POLICY IN THE E-CONOMY

A dissertation submitted in partial fulfilment of the requirements for the degree of Bachelor of Law Honours at the University of Strathclyde, Glasgow.

Contents

Chapter One | Introduction

This paper addresses the economic policy context surrounding the European merger regulation in high-tech industries. The rapidity of technological change raises questions as to the operation of the dynamic parameters underlying high-tech industries. While the identification of those parameters appears to be straightforward, the interpretation of the effects posed by the dynamics is rather controversial.

On the one hand, it is argued that the very dynamics of high-tech industries create or strengthen dominant companies whereby consumers run the risk of adopting inefficient technologies. However, the present paper is to contest this reasoning since performance competition and the resultant Schumpeterian process of disequlibria makes a so-called lock-in unlikely.

The second chapter is to identify the distinctive parameters of high-tech industries, whereby a contrasting analysis between the two dimensions of economic performance, establishes dynamic competition as best utilised to serve the furtherance of consumer welfare. The third chapter is to consider the implications of dynamic competition for current relevant market definition by discussing the deficiencies of current practice. Recent competitive developments appear to confirm a broad, intermarket and technologies-based competition among firms. The fourth chapter, therefore, seeks to propose analytical tools that are capable of evaluating the state of competition more accurately. To that end, the cornerstones of relevant market definition are redefined by including a performance based test, an enquiry into capability explanations and the setting of time frames to assess entry competition.

The final chapter is to conclude that although Schumpeterian dynamic competition deals with the expectation of innovation, the proposed analysis is the more accurate approach to intermarket competition. The goal of this paper is to provide a pragmatic framework that assists merger analysis in evaluating the ongoing transformation of industrial organisation in the high-tech environment.

Chapter Two | The E-conomy

'New economy', 'innovation economy', 'knowledge economy' and 'network economy' are all terms which broadly seek to describe the ongoing transformation of industrial organisation and business strategies, but which are at best vague in scope.[1] While 'new economy' bears a broad meaning by referring to virtually all sectors in the economy where information is the basic feature, which functions as output and input good,[2] the 'network economy' may be very narrow in its scope.[3] The present paper's preference lies with the term 'e-conomy' termed by Cohen, Bradford DeLong and

[1] Cohen, S., Bradford DeLong, J., Zysman, J. '*Tools for Thought: What Is New and Important About the E-conomy*' BRIE Working Paper No. 138, 27 Feb. 2000, at pp. 3 et seq. available at: http://www.j-bradford-delong.net./OpEd/virtual/technet/Tools_for_Thought.doc. See also Minda, G. '*Antitrust regulability and the new digital economy: A proposal for integrating "hard" and "soft" regulation*' 2001 Antitrust Bulletin Vol. 46(3), 439.
[2] Klodt, H. '*The Essence of the New Economy*' Kiel Discussion Paper 375, Kiel Institute of World Economics, Kiel 2001. Also available at http://www.uni-kiel.de:8080/IfW/pub/pub.htm.
[3] Network economy may cause confusion by referring only to physical networks such as telephone networks, airline networks etc. which are also described as 'real' networks as opposed to 'virtual' networks. See further Shapiro, C. and Varian, H. *Information Rules: A Strategic Guide to the Network Economy* (Boston: Harvard Business School Press, 1999), at p. 174.

Zysman[4] since it accurately reflects the economy and policy context that is sought to be addressed in the present paper.

The term 'e-conomy' describes the economic transformation, which is triggered by the development and dissemination of information technology based products and services comprising computer chips, broadband internet, wireless communication and software.[5] While the origins of e-conomy firms can be traced, the competitive reality is about firms seeking to acquire each other's strengths with a variety of business integrated. Consequently, AOL Time Warner could be defined as a media conglomerate with a focus on online services and media content, but it also has a significant stake in cable and telecoms networks[6] as well as technology with its acquisition of Netscape in 1999.[7]

The rationale for the e-conomy coverage lies in the importance of these sectors, in that they have been undergoing rapid change and

[4] Cohen, S. et al. (2000), at p. 3.
[5] Ibid.
[6] This is, however, limited to AOL Time Warner's operations in the USA.
[7] Hoover's Company Profile Database - American Public Companies 2002, Load-Date: 4 Feb. 2002.