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Optimal Settlement and Commitment in Optimal Antitrust Enforcement

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ABSTRACT



Since Becker (1968) and Posner (1976), the optimal antitrust enforcement policy consists of a penalty scheme and investigative effort that maximizes social welfare. The optimality requires the balancing of total costs and benefits of antitrust enforcement. This continual cost-benefit analysis necessitates the update and modernization of competition law. The Turkish competition law is expected to be updated soon in which elements of settlement and commitment are introduced. In this study, I argue that the competition authority should optimally employ settlement and commitment devices by weighing their benefits and costs. The relevant benefits could be speed, decrease in administrative costs and legal certainty. However, losses in deterrence and the elimination of positive externalities of final decisions are significant costs to consider. I also discuss the conditions under which settlement and commitment bring about the desired benefits. I finally propose that settlement and commitment are not the substitutes but the complements of the antitrust devices that the competition authority has (e.g., leniency programmes). The central message of the study is that settlement and commitment should also be used optimally in optimal antitrust enforcement.

KEYWORDS Optimal antitrust enforcement; competition law; settlement; commitment; Turkey

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