It has been just over a year since I last wrote on EU Merger Control and the Innovation Theory of Harm (the "ITOH") here. It is about time that I set out below a summary of its key findings (to avoid being labelled "selective").

The CET Papers – what’s it all about?

The CET Papers formed a research interest group in 2004 to investigate whether mergers reduce competition, in particular in high-tech sectors, where competition was viewed as essential for innovation. The CET Paper ‘the CET Papers’ is an engaging and accessible paper. It not only presents a survey of the prior academic literature, but reviews the robustness of the ITOH literature. A redacted version of it was published in 2005. A new "monster" was born.

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• The CET considers three "channels": (i) the price coordination channel (i.e. the extent to which the merging parties are able to engage in strategic substitutes and hence too fragile to invest in innovation). In fact, Denicolo/Polo believe that innovation mergers may increase the incentive to innovate. This is because mergers can bring together two of a limited number of innovators. Both cases, therefore, involve a negative effect on the incentive to innovate post-merger. However, it is possible to increase the incentive to innovate. In the alternative, however, it exhibits an upward (i.e. positive) pressure. So far, so good.

The new addition to the Frankenstein family.

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This is a complex and extensive document discussing issues related to merger policy, particularly focusing on the impact of mergers on innovation. The author emphasizes the importance of considering both the economic and structural effects of mergers, and argues for a more nuanced approach to analyzing mergers in innovative sectors. The document references several academic papers and case studies, including those by Axalto/Gemplus and Bayer/Monsanto, to illustrate different perspectives on the topic.

Key points from the document include:

- Mergers can have a significant impact on innovation, both positively and negatively.
- The incentives to innovate in the short-term and long-term are crucial, and should be considered when assessing the effects of a merger.
- The market investigation and parties' internal documents confirmed that the parties would maintain a strong incentive to innovate, suggesting that a merger might not necessarily have a negative impact on innovation.
- The document mentions the importance of internal academic literature, particularly on the streamlining of R&D efforts and the maintenance of innovation incentives.
- The reasoning of any ITOH must be based on the proper foundations, taking into account all of the elements identified by the new academic literature. Observing the appropriate limits of the applicable legal framework is crucial.
- Proper debate should be had, and continue, as to the correct extent of EU merger control on the incentives to innovate…including spillover effects, should be part of the main competitive assessment carried out by the antitrust agencies.

Overall, the document highlights the need for a balanced approach to merger policy, recognizing both the potential for innovation to be enhanced or inhibited by mergers. It calls for a more sophisticated analysis that takes into account the complex interplay of factors involved in innovation and competition.