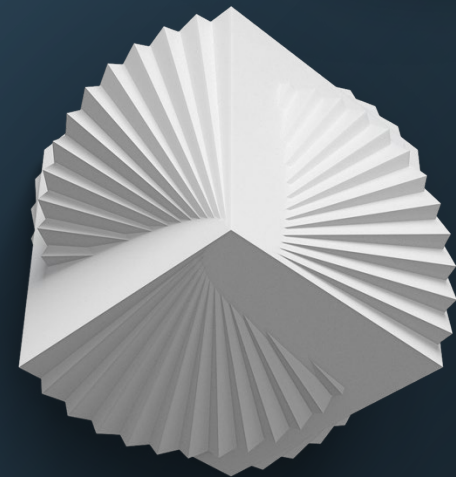
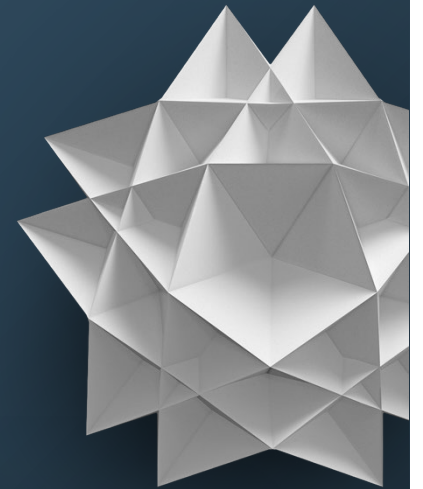


The role of economics in EC (DGCOMP) antitrust infringement decisions: 1992 – 2021

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30.06.2023 - CRESSE

Discussion by Benno Buehler



Summary

- The Paper empirically investigates the role of economics in antitrust enforcement by EC's DG COMP (Article 101 & 102)
- Analysis of 188 antitrust cases between 1992-2021
- Update of an existing paper analysing antitrust cases between 1992-2016
- The paper contributes by providing empirical evidence on the extent and type of economics used in DGCOMP's infringement decisions.
- The paper provides insights into the quality of antitrust enforcement and the potential need for adjustments to enhance competition and consumer welfare.

Main messages

- The main message of the paper is that **economic analysis in antitrust enforcement by the EC has played a modest role overall, but there is a positive trend towards adopting effects-based legal standards** in abuse of dominance cases.
- Another hypothesis tested by the authors: the use of effects-based legal standards would lead to increased disputability of the CA's decisions, which in turn would increase the likelihood of annulment. However, **their findings do not support this hypothesis.**

Comments on the findings

- **Critical research! We need more of this!**
- What is the relation between the economic analysis and the length of the case?
- The reliance on descriptive analysis and the limited number of cases (188) may limit the depth of the analysis and the generalizability of the findings.
- Slide 22: What are the reasons behind this finding? What are potential factors beyond legal standards that influence the outcome of judicial review?
- What is the relation between the reforms of Article 102 and the more economic approach? (EC guidance paper on 102 in 2009; Vertical guidelines (2010), Horizontal guidelines (2011))

Further interesting avenues

- Consider factors influencing the enforcement quality:
e.g. EC's resources, time trends, availability of effective enforcement mechanisms, case and industry characteristics, number of merger cases, etc.
- Would higher legal standards (effects-based approach) lead to higher legal uncertainty? Long time gap between decisions and judgments → test again in the future?
- What are the potential challenges in adopting effects-based legal standards for different types of antitrust violations, and how can these challenges be addressed?
- How does the DMA affect the enforcement quality?
- How do learning effects over the years in DGCOMP relate to this?