

Case law in European merger control

Comment on a paper by Johan Callermo

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1 Introduction

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Introduction

- This paper studies references to case law in merger control decisions by the EC Directorate General for Competition in 1990-2022.
- New case law is immediately incorporated into the merger control practice without a learning period.
- Subsequent citations correlate with industry-specific M&A activity for a subset of industry-specific judgments.
- The 2004 EC merger regulation reform changed which judgments are frequently cited.
- Judgments do not intrinsically lose relevance to the merger control regime over 25 years.

Some Comments

- The author builds a nice data set.
- He carefully constructs his variables.
- The empirical model makes sense to me.
- The paper is well written.

Some Comments

- I would have liked more motivation as to why the questions considered in this paper are of interest.
 - ▶ For example, I never doubted that case law influences DG COMP decisions.
 - ▶ I was also not surprised that DG COMP incorporates new case law immediately in its decisions: Failing to do so would mean losing the new cases.
- As to the other results, I had no prior beliefs.
- Yet, it would be helpful to explain why the author considers them important.

Some Comments

- The Swiss ComCo had to prove the harm for any violation of the Cartel Act.
- In 2013 the Administrative Court introduced a per se rule for horizontal price fixing and certain vertical restraints—the Gaba Ruling.
- In 2016 the Federal Court approved the Gaba Ruling.
- In 2023 Parliament abolished the per se rule.

Some Comments

- In 2013-16 the ComCo continued to prove the harm in its decisions: It was unclear whether the Federal Court would uphold the Gaba Ruling.
- After that period the ComCo acted cautiously because the new law was in the making. It was, however, unclear whether it would be enacted.
- I wonder how you would deal with this case in your framework?