

Essays on Enforcement Effects and Market Distortions in Competition Policy

Seppe Maes

Supervisors

Prof. Dr. Caroline Buts

Em. Prof. Dr. Marc Jegers

Abstract

How should EU competition policy respond to an increasingly difficult policy balance? On the one hand, there is a clear need to protect competitive markets because it forms the very basis of the single market, and broader European integration. On the other hand, in the current geoeconomic world, voices call to adapt and employ EU competition instruments to support industrial policy, crisis management, resilience, and strategic autonomy. The central research question is how EU competition instruments conceptualise and operationalise the idea of “distortion of competition”, and what quantifiable consequences follow from different enforcement and policy-design choices. To answer this question, we combine a number of methods, ranging from a systematic literature review to a stacked synthetic difference-in-differences analysis.

The first contribution is conceptual, and comparative. Through a comparative doctrinal analysis, we show that the notion of distortion of competition, which forms the basis of the different pillars of competition policy, is understood differently, and therefore not applied uniformly across the different competition instruments. In antitrust, distortion is linked to agreements and conduct that prevents, restricts, or distorts rivalry. In merger control, the concept is operationalised through a significant impediment to effective competition, and a forward-looking counterfactual assessment. In State aid, distortion is presumed relatively broadly once an intervention qualifies as State aid. Under the Foreign Subsidies Regulation, by contrast, distortion requires a more structured review into whether a foreign subsidy improves a firm’s competitive position and actually or potentially harms competition in the internal market. We argue that these divergences are functionally understandable, but that they also create important challenges for legal certainty and coherence across instruments.

The second contribution concerns cartel fining methods, which is currently the only real tool in hands of the European Commission, to deter and punish anticompetitive behaviour under this pillar. Through a systematic literature review, we compare the different quantitative methods discussed in extant literature to determine optimal cartel fines: revenue-based, overcharge-based, damages-based, profit-based, and sophisticated revenue-based fine methods. We conclude that a sophisticated revenue-based method is the most persuasive default option, over the revenue-based formula which is currently used. The sophisticated revenue-based alternative retains the relative administrative simplicity and legal certainty of revenue-based fines, while addressing their main distortive effect, namely the incentive for firms to raise prices excessively in order to reduce turnover-based exposure. By linking the penalty rate to the overcharge, the sophisticated revenue-based method better aligns fine setting with consumer welfare and deterrence objectives without imposing disproportionate evidentiary burdens on competition authorities.

The third contribution is empirical and focuses on the market effects of cartel enforcement. Using an event-study design based on around 700 cartel-related events, including dawn raids, infringement decisions, and appeals, we find that enforcement events generate significant negative stock-market reactions for the firms targeted. These effects are driven only partly by the monetary size of the fine.

The final empirical contribution addresses State aid instrument choice. Based on a dataset of 28 969 COVID-19 aid disbursements, matched to firm-level accounting data, we compare the effects of grants and other aid instruments on beneficiaries' financial outcomes while controlling for the aid element. Using multiple regression analysis and stacked synthetic difference-in-differences, we conclude that grants can improve profitability and financial stability in the short term, but these effects largely fade over time compared to the non-grant receiving control group. The results therefore nuance the view that grants are inherently more distortive than other instruments. We nevertheless support the Commission's growing preference for loans, guarantees, and other financial instruments, but mostly on grounds of fiscal efficiency and policy design rather than because grants necessarily create greater competitive harm.

All in all, EU competition policy is undergoing a subtle reorientation. It no longer acts solely as a shield against distortions within the internal market, but is increasingly also used as an instrument of economic governance and industrial strategy. With this dissertation, we bridge debates that are often kept separate by studying how doctrinal interpretation, sanction design, capital-market reactions, and firm-level State aid outcomes belong to the same overarching policy architecture. In doing so, we challenge simplified claims that EU competition policy is simply "too strict" or "too permissive", and instead argue that each pillar uses different tests, burdens of proof, and policy logics, and that sensible reform requires recognising those differences.