

Public and Private Enforcement of Competition Law

BACKGROUND

- Most competition law enforcement systems are based on two enforcement pillars: public enforcement and private enforcement. Public enforcement means that antitrust rules are enforced by state authorities. Private enforcement refers to individually initiated litigation, either as stand-alone or follow-on action, before a court to remedy an infringement of antitrust law.
- Private enforcement is often treated as something new or at least only marginally important in Europe, but it has been the driving force of US antitrust enforcement since the middle of the 20th century.
- The European Commission published a Green Paper in 2005 and a White Paper in 2008 to incentivise private damages actions and remove perceived obstacles for victims of anticompetitive conduct.

METHODOLOGY

- The authors develop a framework which takes into account the usefulness of each enforcement mode contingent on the type of anticompetitive conduct: horizontal agreements, vertical agreements and abuses of a dominant position.
- Several central determinants of an optimal enforcement mix are identified and characterised. These determine the value of the public and private modes in enforcing different antitrust laws.

KEY FINDINGS

- A combination of public and private enforcement is likely to increase the benefits of competition law enforcement compared to the implementation of either a pure public or a pure private enforcement strategy.
- The costs and benefits for public and private enforcement actions may differ depending on the type of infringement.
 - With respect to *horizontal agreements*, public enforcement has to play the leading role due to the difficulties in detection and information gathering by private parties.
 - With respect to *vertical agreements*, the information possession and gathering advantages of private parties should lead to a more prominent role for private enforcement.
 - With respect to abuses of a dominant position, public enforcement should play the leading role as long as the victim does not have direct dealings with the infringer.

POLICY ISSUES

- It is crucial to the design of an optimal competition law enforcement system to assess the incremental costs and benefits when private enforcement activities are added to an existing public enforcement system.
- Once the parameters for an optimal enforcement system are determined, policy makers can choose those effective legal mechanisms which will provide the incentives for public and private actors to take on the infringement they are respectively best suited to deal with.

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THE CCP

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FOR MORE INFORMATION

The full working paper 13-5 and more information about CCP and its research is available from our website: www.competitionpolicy.ac.uk

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