

Comments on Cento Veljanovski: Pros and Cons of Counterfactuals in Competition Law

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Stockholm, 06.12.2013

What's the paper about?

- Explains the term counterfactuals
- Gives an overview of cases
- Draws some lessons from these cases
- Main conclusions: Counterfactuals are ok in theory, but hard in practice
 - Question: What do we do?
 - Veljanovski's advise: Direct application

The term «counterfactual»

- The paper gives a discussion of the origin and nature of the term “counterfactual”
- The paper claims that
 - counterfactuals plays no role in economics
 - Counting the word “counterfactual”
 - “...economists who have written on the subject (...) seem to treat counterfactuals as integral to the economic and effect-based approach to competition law e.g. Geradin and Girgenson (2012). Yet nothing could be further from the truth.”
 - Counterfactual reasoning can be found in economics, but hardly part of mainstream economics
- The paper admits that the concept of counterfactuals occurs in econometrics

Counterfactuals in the past and in the future

- Counterfactuals
 - Ex post: Hypothetical past
 - typically in assessing anticompetitive agreements
 - Ex ante: Forward-looking
 - typically in merger cases
- Status quo is also a counterfactual choice
 - The paper argues for an direct approach in effect-based cases.
 - Status quo as counterfactual?

Lessons from the cases

1. What kind of cases require counterfactuals
 - Most useful in assessing anticompetitive agreements and in merger cases.
2. How to establish the counterfactuals
 - Convincing story
 - Use different sources/proofs to support the story (internal documents, statement from the parties involved, statement from competitors etc)
 - Complex economic theory is challenging
3. The number of counterfactuals
 - No problem if the result don't depend on the which counterfactual we assume
 - Challenging if the result depend on the assumed counterfactual
4. The failing firm argument
 - Burden of proof vs the standard of proof

Conclusions

- Useful paper
 - Gives an overview of previous cases
 - Lessons from cases are good
 - Stimulating the debate
- But:
 - I would prefer to focus on how to improve the use of counterfactuals
 - Can't solve the challenges with counterfactuals by ignoring the problem