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THE GOALS OF EU COMPETITION LAW

A COMPREHENSIVE EMPIRICAL INVESTIGATION

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K. Stylianou & M. C. Iacovides[1]

1. Introduction and summary of findings

Competition law and enforcement are experiencing something of an awaking in the last decade. Having remained relatively muted since neoliberal economics took hold and saw a reduced role for competition law to correct the occasional malfeasance in the market, a series of high-profile cases, growing dissatisfaction with economic power (particularly in high technology markets), and mounting pressure to recognize competition law's diverse faces and role, re-launched competition law to the forefront of governments' tools to restore trust in the markets.[2]

Central to the renewed interest in the role of competition law was the question of what objective it was designed to achieve. It is impossible to decide if competition law is the appropriate tool to correct the various perceived faults and imperfections of markets if it is not first known what this tool is meant to accomplish. Is its main goal to protect against consumer harm, as it is traditionally said for EU competition law, or to safeguard (total) welfare, as US antitrust law is more commonly linked to? Further, hardly any case or market investigation goes by without touting the important role of efficiency. This raises the question of whether efficiency is considered a goal in itself or just a component of another 'bigger' goal—most likely welfare. At the same time, the aggressive competition law enforcement in the EU, spearheaded by the European Commission but complemented also by national competition authorities, has caused US antitrust scholars to accuse EU competition law of protecting competitors, usually against successful US-based giant companies.[3] The criticism

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[2] For summaries on the call for a reconceptualization of antitrust see H Singer, The Monopoly Harms that Antitrust Keeps Missing, Promarket, (12 August 2020); What More Should Antitrust Be Doing?, The Economist (6 August 2020).

[3] G J Werden and L M Froeb, 'Antitrust and Tech: Europe and the United States Differ, and It Matters', *CPI* (5 September 2019); G Gouri and M A Salinger, 'Protecting Competition vs. Protecting Competitors: Assessing the Antitrust Complaints Against Google', *CPI*, (8 June 2016); H Lee-Makiyama, 'Protecting Competition, or Competitors? — Europe's Pursuit of Silicon Valley', Open Political Economy Network, (5 December 2016).

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reflects a long-standing distinction between the protection of competitors and the protection of competition, and a concomitant criticism that the former is not an acceptable goal for competition law. All the while, as competition law was struggling with an identity crisis being torn among the above-mentioned goals, the increasing market concentration and astronomical valuation of a small cluster of star technology firms (known by the acronym GAFAM for Google, Amazon, Facebook, Apple and Microsoft, which reached a combined market capitalization of over $5 trillion, larger than the 4th largest state economy in the world) re-ignited the debate on whether competition law is strictly limited to economic goals or whether it also pursues broader socio-economic goals such as wealth redistribution and fairness.[4] Some have gone as far as to suggest that competition law, having been entrusted with the duty to rein bigness, is also relevant when bigness is used to corrupt the democratic process or undermine consumer privacy.[5]

In short, as markets have been undergoing extreme changes over the past decades, competition law has been called time and again to respond to a host of market problems that are encountered along the way. But before it can be engaged, it must first be established that competition law is the right tool for the job, in other words whether the call for help falls within the goals and purposes of what competition law has been tasked to achieve. As memorialized by Robert Bork in his now classic adage "antitrust policy cannot be made rational until we are able to give a firm answer to one question: What is the point of the law—what are its goals? Everything else follows from the answer we give…."[6] This does not mean that the goals of competition law remain static through time, but that, whatever they are as this transpires through theory and practice, we should know.

While this question has always existed in the background of competition law scholarship and enforcement, it started moving centre stage more recently with the rise of what is collectively becoming known as the neo-Brandeisian antitrust wave, which sees an expanded role for antitrust law, free from the shackles of the welfare-maximalist and efficiency-obsessed Chicago School.[7] A broader movement built around the awareness of increasing inequality and economic concentration has also contributed to popularizing the idea that competition law and policy may have a role to play, and that therefore we should re-open the debate of its goals and purposes.[8]

In this fertile ground for exploration, numerous attempts have been made to identify the role and objectives of competition law.[9] These range from interpretations of legislative history to normative principle-based analyses on the correct scope of competition law, but whatever the approach, extant work in the area has remained predominantly theoretical with only anecdotal support from primary sources.

While the value of scholarly work remains undisputed, the final word rests with courts and enforcers. We therefore set out to undertake an empirical investigation into the goals and purposes of competition law as

[4] S M Colino, 'The Antitrust F Word: Fairness Considerations in Competition Law', CPI (8 October 2018).

[5] G Sitaraman, 'Unchecked Power: How Monopolies Have Flourished—And Undermined Democracy' The New Republic (29 November 2018); A Ayal, 'The Market for Bigness: Economic Power and Competition Agencies' Duty to Curtail It'; D Srinivasan, 'Why Privacy Is an Antitrust Issue: The Demise of Facebook's Competition Has Put Our Data at Risk', The New York Times (28 May 2019); M Botta and K Wiedemann, 'The Interaction of EU Competition, Consumer, and Data Protection Law in the Digital Economy: The Regulatory Dilemma in the Facebook Odyssey' (2019) 64 *The Antitrust Bulletin* 428.

[6] R H Bork, *The Antitrust Paradox: A Policy at War with Itself* (Basic Books Inc. Publishers, 1978), 50.

[7] K G Elzinga and M Webber, 'Louis Brandeis and Contemporary Antitrust Enforcement' (2017) 33 *Touro Law Review* 277.

[8] J B Baker and S C Salop, 'Antitrust, Competition Policy, and Inequality' (2015) 104 *Georgetown Law Journal Online* 1; S-L Hsu, 'Antitrust and Inequality: The Problem of Super-Firms' (2018) 63 *The Antitrust Bulletin* 104 (2018).

[9] See infra Literature Review.

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manifested through Court of Justice of the European Union (Court) caselaw, European Commission (Commission) decisions, opinions of Advocates General (AG) and official speeches and statements delivered by the Commissioners for Competition. In this first of a kind investigation, we analyse almost 4,000 sources (1,802 CJ & GC decisions, 485 AG opinions, 1,015 Commission decisions, and 447 Commissioner speeches) dating back to 1962 and covering articles 101 and 102 TFEU as well as concentrations, to distil seven broad goals of competition law—efficiency, welfare, economic freedom and protection of competitors, competition structure, fairness, single market integration, and competition process—as expressed through 74 keywords, and then analyse them to extract quantitative results and qualitative patterns and insights. We also make available the datasets we compiled for further use and enhancement by competition law scholars and authorities.[10]

The datasets and results paint a comprehensive picture of what the EU courts and authorities consider the goals and purposes of competition law to be. They show the evolution and distribution of all major goals and purposes of competition law throughout its history, they highlight similarities and differences among the Court, AGs, the Commission, and the Commissioners for Competition, and they highlight patterns in different types of cases. In doing so, the study helps scholars and authorities ground competition law analysis on its proper goals, dispenses with the myth of single-themed competition law, demonstrates the sometimes contradictory and other times consistent choices of EU institutions, provides national competition authorities with a benchmark to compare their own practice with that of EU-level competition law to enhance harmonisation, and ultimately underscores how the goals and purposes of competition law shape its development and evolution.

Our main insights can be summarized as follows:

- EU competition law pursues a multitude of goals concurrently and it can therefore not be said that it is monothematic. This has also historically been the case.
- EU competition law prioritizes the process of competition rather than directly the achievement of a desirable outcome (e.g. efficiency, welfare maximization etc).
- Fairness, despite media popularity, does not fare highly in the decisional practice of any EU institution.
- The Commission places emphasis on different goals than the Court and AGs, and Commissioner speeches reflect yet different emphasis too. The Commission assigns more value to welfare and to the protection of competitors and commercial freedom, but less value to efficiency than the Court and AGs. Speeches emphasize welfare and fairness more than EU institutions in their decisions.
- Different Commissioners seem to emphasize different goals during their terms, with Vestager promoting fairness and Kroes promoting welfare.
- Ordoliberal objectives still linger and may recently be on the rise again.
- The rate of cases referencing competition law goals over the years has remained steady to slightly increased, with the Commission leading the increase, perhaps in response to the 'more economic approach'.

2. Literature Review

Throughout this project, we have investigated what the goals of EU competition law are as a matter of positive law. Since this is not a normative exploration, we have tried to capture as many goals and purposes as possible, as reflected in the large selection of keywords that we used to search and document primary sources (see infra Methodology). To ensure broad coverage, we started with a review of academic works which investigate the

[10] www.db-comp.eu

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goals of competition law, either as a matter of positive law or based on normative arguments. This allowed us to identify the major goals of competition law and a first selection of the keywords, which we expanded on as we went along with the search.

Although this study is about the goals of EU competition law, we did not limit our research to sources that discuss only EU competition law's goals; instead, we consulted also sources from other jurisdictions, most prominently the United States (US). The main reason is that the debate regarding goals of competition law is not limited to EU competition law; in fact, EU competition policy has been heavily influenced by different schools of thought originating in the US.

In this section, we summarize what existing scholarship considers the goals and purposes of competition law to be (Table 1). We do not evaluate the merit of the goals identified by the authors nor assess the soundness of their normative arguments. As will be evident, there is stark disagreement on the perceived goals.

Bork (1978)

In his seminal work, *The Antitrust Paradox*, Bork argued that settling the issue of competition law's goals is necessary in order to rationalise competition policy.[11] He put forward consumer welfare as the proper goal for competition law, but advocated at the same time for an understanding of consumer welfare which excluded allocative considerations and redistribution.[12] In other words, Bork's proposed goal is essentially not consumer welfare but total welfare.

Hovenkamp (1985)

Hovenkamp argues that the Chicago school of antitrust, with its emphasis on a more economic approach and efficiency and use of neoclassical economics, fails to capture the reality of how firms make short-term choices. He admits that taking into account short-term welfare effects may reduce the administrability of antitrust law and that policymakers will, therefore, have to rely on values that are outside the neoclassical market efficiency model. This leads him to conclude that antitrust will inevitably always have a noneconomic, or political, content.[13]

Amato (1997)

Amato offers a historical overview of EU competition law's goals, focusing on the influence of the ordoliberals. He argues that competition law presents a dilemma for liberal democracies, as it strives to strike a balance between economic freedom on the one hand and constraining market power on the other hand. He identifies multiple purposes of EU competition law, including industrial policy, regional policy and social policy. He rejects the proposition that economic efficiency can be understood as a one-dimensional value concerned only with restrictions of output. At the same time Amato propagates for separating EU competition law from

[11] Bork (n 6) 50.

[12] Ibid, 110-112.

[13] H Hovenkamp, 'Antitrust Policy After Chicago' (1985) 84 *Michigan Law Review* 213, 232-233.

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industrial policy and thus freeing it of political and other considerations.[14] This argument can be construed as an argument in favour of a welfare standard connected to economic efficiency.

Fels and Edwards (1998)

The authors argue that the legitimacy, desirability, and acceptance of EU competition law may hinge upon broader objectives with a clear political and social dimension. That would necessitate consumer welfare to be interpreted in a way that takes into account broader objectives and that is sensitised to the redistributive effects of competition policy.[15]

Gerber (1998)

Gerber offers a historical overview of EU competition law. He argues that EU competition's goals can be understood correctly in light of Europe's ordoliberalism tradition and the goal of achieving the common market.[16]

Neven *et al*. (1998)

The authors are of the view that EU competition law is about consumer protection and the achievement of the best possible conditions for EU consumers. According to them, in EU competition law 'the choice has clearly been made to favour income redistribution from producers with market power to consumers.' In their view, the ideological underpinnings of the project of European integration have favoured a policy choice to encourage redistribution to consumers and this has inevitably also flavoured EU competition law. They consider that this accords with a shift in economics towards a refocused economic analysis of law that examines law's distributive consequences. At the same time, they note that EU competition law's objectives may be contradictory and even inconsistent with economic theory.[17]

Ahdar (2002)

Ahdar rejects an efficiency-only model for competition law, as it fails to avoid subjectivity and value judgments by excluding distributional questions from decision-making. He puts forward the argument that competition law should not only promote efficiency, growth, and innovation, but also the long-term interests of consumers.[18]

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[14] G Amato, *Antitrust and the Bounds of Power: The Dilemma of Liberal Democracy in the History of the Market* (Hart Publishing, 1997), 95-129.

[15] A Fels and G Edwards, 'Working Paper III – Competition Policy Objectives', in C-D Ehlermann and L L Laudati (eds.), *European Competition Law Annual 1997: Objectives of Competition Policy* (Hart Publishing, 1998), 57.

[16] D J Gerber, *Law and Competition in Twentieth Century Europe: Protecting Prometheus* (OUP, 1998)

[17] D Neven, P Papandropoulos, and P Seabright, *Trawling for Minnows: European Competition Policy and Agreements Between Firms* (London: Centre for Economic Policy Research, 1998), 12.

[18] R Ahdar, 'Consumers, redistribution of income and the purpose of competition law' (2002) 23:7 *European Competition Law Review* 341, 349-352

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Motta (2004)

Motta argues that the proper goal of competition law should be total welfare. According to Motta, in most situations choosing between a total welfare and consumer welfare standard would not make a difference in the work of a competition authority and the policy implications of the two standards are the same. However, he considers total welfare to be superior to consumer welfare, as he thinks the latter misses the point that consumers may also own companies through pension or investment funds, and would lead to companies having to price at marginal cost and disincentivise innovation.[19]

Van den Bergh and Camesasca (2006)

The authors argue that in EU competition law there is in reality no coherent discussion taking place about the system's objectives. The 'exclusion of broader objectives thesis' would hold that only efficiency and consumer welfare are appropriate normative goals of competition law and that other objectives, such as market integration and protection of individual economic (business) freedom, may be fully legitimate objectives but should be pursued by legal instruments other than competition law. [20]

Monti (2007)

Monti considers that EU competition law seems to promote disjointed objectives and that its core values are in a flux. He argues that economic freedom, represented by the core principles of post-World War II ordoliberalism, has been the goal of EU competition law. However, he also accepts that there is a clear trend from ordoliberalism towards consumer welfare and economic efficiency as goals of EU competition law.[21]

Kirkwood and Lande (2008)

Kirkwood and Lande look into the legislative history of US antitrust laws and determine that the ultimate goal of antitrust law is not to maximize the total wealth of society, but to protect consumers from behaviour that deprives them of the benefits of competition.[22] They further analyse caselaw to conclude that courts always side with protecting consumers over efficiency.

Fox (2008)

Fox suggests that antitrust law can be used to preserve the competitive process (or open-market perspective), thereby helping to preserve the incentives that produce productive, dynamic, and market efficiency. She argues that since 1980, US courts have retreated from the tradition of protecting the competitive process (rivalry) and the openness of markets. Instead, they focus on a narrow understanding of efficiency, which is concerned mostly with lower market outputs. She argues that this is not related necessarily to efficiency, but is instead the result

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[19] M Motta, *Competition Policy: Theory and Practice* (CUP, 2004), 21-22.

[20] R v d Bergh and P D Camesasca, *European Competition Law and Economics: A Comparative Perspective* (2nd edn.; Sweet & Maxwell, 2006), 18.

[21] G Monti, *EC Competition Law* (CUP, 2007), 25 and 51-52.

[22] J Kirkwood and R H Lande, 'The Fundamental Goal of Antitrust: Protecting Consumers, Not Increasing Efficiency' (2008) 84 *Notre Dame Law Review* 191.

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of conservative (Chicago) economics. She contrasts this approach with EU competition law's approach to consumer welfare and efficiency, which is about process-and-access.[23]

Townley (2009)

Townley rejects a total welfare goal for EU competition law. Instead, he argues that consumer welfare is the proper goal, but that in certain situations competition law should try to promote broader public policy goals.[24]

Andriychuk (2010)

Andriychuk contests the utilitarian view of competition, including what he calls the Neo-Brussels school with its emphasis on consumer welfare. The author adopts an ontological understanding of competition that blends elements of ordoliberalism and the Austrian school and argues that competition ought to be understood as a right in its own self that has – together with the political and cultural dimensions of competition – an important role to play in liberal democracies that should not depend on any efficiency outcomes.[25] In essence, the author's argument can be understood as one about the goal of competition law being the maintenance of the competitive process.

Odudu (2010)

In this book review, Odudu rejects efforts to justify a competition policy concerned with more than efficiency. He considers that modern EU competition law has endorsed the Chicago school approach, both when it comes to methods of analysis (micro-economics, wherein high prices or low output are identified with inefficiency) and when it comes to goals. Regarding the latter, Odudu agrees with the Chicago approach (with reference to Bork's work) that the goal of competition policy is consumer welfare, understood as a synonym for efficiency.[26]

Parret (2010)

Parret calls for more clarity and transparency regarding the goals of EU competition law. She considers that EU competition law has multiple goals, namely market integration, economic freedom, economic efficiency, industrial policy, protection of small and medium-sized enterprises, justice, fairness, and non-discrimination, and protecting the interests of consumers.[27]

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[23] E Fox, 'The Efficiency Paradox', in R. Pitofsky (ed.), *How the Chicago School Overshot the Mark: The Effect of Conservative Economic Analysis on US Antitrust* (OUP, 2008), 79-88.

[24] C Townley, *Article 81 EC and Public Policy* (Oxford: Hart Publishing, 2009), 13-43.

[25] O Andriychuk, 'Rediscovering the Spirit of Competition: On the Normative Value of the Competitive Process' (2010) 6:3 *European Competition Journal* 575, 579-580 and 589-590.

[26] O Odudu, 'The wider concerns of competition law' (2010) 30:3 *Oxford Journal of Legal Studies* 559, 605-612.

[27] L Parret, 'Shouldn't We Know What We Are Protecting? Yes We Should! A Plea for a Solid and Comprehensive Debate about the Objectives of EU Competition Law and Policy' (2010) 6:2 *European Competition Journal* 339, 346-358.

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Nazzini (2011)

Nazzini attempts an interpretation of Article 102 TFEU, based on various methods of interpretation common in EU law such as textual, teleological, systematic etc., in order to find its objective. He argues that the goal of Article 102 TFEU is the maximisation of total social welfare through productivity growth. Accordingly, he rejects the relevance of fairness and ordoliberal goals.[28]

Akman (2012)

Akman argues for a welfarist goal for Article 102 TFEU, rejecting the argument that fairness has a role to play as an independent policy goal in the concept of "abuse" of a dominant position. Instead, Akman adopts an understanding to references in Article 102 TFEU to "fairness" that equates that term with "anticompetitive".[29]

Geradin *et al.* (2012)

The authors argue that competition policy has to be responsive to changes and responsiveness can be achieved by allowing its objective to fluctuate over time. They identify four major objectives of EU competition law, namely consumer welfare, economic efficiency, economic freedom and plurality, and consumer choice and fairness. According to them, 'undistorted competition' is a multifaceted concept and all four objectives were in the minds of the founding fathers when drafting the Treaty of Rome. They also accept that EU competition law has additional goals, such as integration of the Member States' markets.[30]

Kaplow (2012)

Kaplow discusses the relative merits and demerits of using competition law as a redistributive tool, compared to tax law. Kaplow accepts that competition law may be partially successful as a redistributive tool, however he considers that tax law is superior to that end as it is a direct, more targeted and more efficient way of redistributing wealth. Kaplow also considers whether the degree of baseline price elevation differs in relevance depending on which welfare standard is chosen, in certain scenarios such as price-fixing and abusive practices. He reaches the conclusion that it does. This suggests that rules that are thought to be grounded in consumer welfare maximization are in fact more in accord with total welfare maximization. [31]

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[28] R Nazzini, *The Foundations of European Union Competition Law: The Objective and Principles of Article 102* (OUP, 2011), 107-154.

[29] P Akman, *The Concept of Abuse in EU Competition Law: Law and Economic Approaches* (Hart Publishing, 2012), 182-184.

[30] D Geradin, A Layne-Farrar, and N Petit, *EU Competition Law and Economics* (OUP, 2012), 23-26.

[31] L Kaplow, 'On the choice of welfare standards in competition law' in D. Zimmer (ed.), *The Goals of Competition Law* (Edward Elgar, 2012), 7-25.

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Ayal (2016)

Ayal argues that both the strict welfare approach to competition law and the broader fairness approach are too narrow. Instead, he argues that competition law should aim to protect a broader notion of fairness that takes into account the interests of all actors involved, including those of monopolists or undertakings with market power.[32]

Ezrachi (2018)

Ezrachi argues that the goals of EU competition law are not limited to consumer welfare, even if they 'centre around, and are primarily consistent with, [it]'. Instead, he argues that they are (i) consumer well-being (which is broader than consumer welfare and includes, for instance, considerations of data protection and wealth distribution), (ii) effective competition structure, (iii) efficiencies and innovation, (iv) fairness, (v) economic freedom, plurality and democracy, and (vi) market integration. According to the author, this plurality of goals may embed normative values and flexibility, but reflects the EU's unique constitutional process and the societal context in which EU competition law operates.[33]

Foer and Durst (2018)

The authors argue that the consumer welfare goal for antitrust is confusing and incomplete. They consider that competition policy actually has multiple economic, political, cultural, and historic goals. They discuss specifically certain of these goals, namely making economics work for the electorate, stimulating growth, and making the most of limited resources by supporting various forms of efficiency. They argue that an approach that tries to promote all these goals through competition law has significant shortcomings. Instead, they propose that competition law's goal ought to be to promote and protect a political economy that provides a society's best mixture of competition and cooperation, given its culture, history, technology, and political situation at a given period of time.[34]

Lianos (2018)

Lianos argues that competition law is a hybrid type of law situated in between economic policy and social regulation. He identifies a progression in the goals of EU competition law, from emphasis on market integration, to protecting smaller competitors, to protecting consumers. Lianos then argues that competition law ought to integrate considerations of inequality under a framework that seeks to avoid consumer harm, which he considers more appropriate as a goal than protecting consumer welfare. This broader conception of consumer welfare includes considerations of wealth transfers, and achieving an optimal level of consumer choice. These, according to Lianos, are linked to distributive justice and equality, the latter including notions of fairness.[35]

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[32] A Ayal, *Fairness in Antitrust* (Hart Publishing, 2016), pp. 207-212.

[33] A Ezrachi, 'EU Competition Law Goals and the Digital Economy', Oxford Legal Studies Research Paper No. 17/2018, available at www.ssrn.com/abstract=3191766, 4-21 and 27.

[34] A Foer and A Durst, 'The Multiple Goals of Antitrust' (2018) 63:4 *The Antitrust Bulletin* 494, 498, and 501-506.

[35] I Lianos, 'The Poverty of Competition Law: The Long Story', *CLES Research Paper Series* No. 2/2018, available at www.ucl.ac.uk/cles/sites/cles/files/cles_2-2018.pdf, 18-23, 61-62 and 90.

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Wu (2018)

Wu argues that the consumer welfare standard of competition law should be abandoned in favour of a standard that is about protecting competition. According to Wu, the protection of competition standard is easier to apply because potential threats to the competitive process are far more obvious than reductions in consumer welfare. Wu concludes by suggesting a framework of analysis and provides examples of the considerations that ought to be used by an enforcer whose aim is the protection of the competitive process.[36]

Melamed and Petit (2019)

The authors argue that the consumer welfare standard should be maintained in EU competition law, despite the perceived challenges with the enforcement of the rules vis-a-vis digital platforms. According to the authors, the current discourse regarding digital platforms is attributable to misunderstanding the consumer welfare standard and any alternatives to that goal would not improve antitrust law.[37]

Marty (2020)

Marty reviews the historical evolution of EU competition law goals and notices the transition from ordoliberalism, which advanced a structural view of competition law, to the more economic approach, which adopted the US-imported welfare criterion as competition law's main objective. He argues that welfare, in the form of total welfare, rather than just consumer welfare, probably best captures the priorities of competition law, but that it needs to be complemented by a consideration for the protection of the process of competition as well. This is because digital markets may sometimes create harms that are not captured by the welfare criterion, but can be explained on the grounds of harm to the process of competition.[38]

Waked (2020)

Waked acknowledges the welfare goal of antitrust law but argues that it needs to be complemented by goals that are more oriented toward the public interest, and in particular equity and redistribution. She claims that the welfare-related goal of maximizing efficiency is one that serves the generation of wealth and that antitrust law should allow this to take place, but also have provisions in place to subsequently redistribute part of the generated wealth back toward consumers.[39]

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[36] T Wu, 'After Consumer Welfare, Now What? The "Protection of Competition" Standard in Practice', *Competition Policy International*, 4-9.

[37] A D Melamed and N Petit, 'The Misguided Assault on the Consumer Welfare Standard in the Age of Platform Markets' (2019) 54 *Review of Industrial Organization* 741.

[38] F Marty, 'Is the Consumer Welfare Obsolete? A European Union Competition Law Perspective' GREDEG Working Paper No. 2020-13, available at https://ideas.repec.org/s/gre/wpaper.html.

[39] D Waked, 'Antitrust as Public Interest Law: Redistribution, Equity, and Social Justice' (2020) 65 *The Antitrust Bulletin* 87.

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Author	Identified goals and purposes of competition law							
	Efficiency	Welfare	Freedom/ Competitors	Market structure	Fairness	European integration	Competition process	Other
Ahdar (2002)	●	●						
Akman (2012)		●						
Amato (1997)	(●)	(●)				(●)		Social goals
Andriychuk (2010)							●	
Ayal (2016)		●			●			
Van den Bergh & Camesasca (2006)	●	●						
Bork (1978)		●						
Ezrachi (2018)	●	●	●	●	●	●		
Hovenkamp (1985)	(●)	(●)						Political goals
Fels & Edwards (1998)		(●)						Political/ social goals
Foer & Durst (2018)								Effective political economy
Fox (2008)							●	
Geradin et al. (2012)	●	●	●		●	●		
Gerber (1998)			(●)			●		Ordo-liberal objectives
Kaplow (2012)		(●)						
Kirkwood & Lande (2008)		●						Consumer focus
Lianos (2018)		●	●		●	●		Broader consumer harm under-standing
Marty (2020)		●		(●)			●	
Melamed & Petit (2018)		●						
Monti (2007)	●	●	●					
Motta (2004)		●						
Nazzini (2011)		●						
Neven et al. (1998)		●						
Odudu (2010)	●							
Parret (2010)	●	●	●		●	●	●	
Townley (2009)		(●)						Broader public policy goals
Waked (2020)	●	●						Welfare as re-distribution
Wu (2018)							●	

Table 1: Literature review of the goals and purposes of EU competition law.

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3. Methodology

For a project of this kind, we employed a methodology regulating both matters of substance and matters of procedure. In terms of substance the challenge was to define the scope of our inquiry in a way that would encompass as many relevant goals and purposes as possible appropriately grouped together; in terms of procedure the aim was to ensure that we would be as exhaustive as possible to cover and organise all publicly available sources within the remit of the project, i.e. Court of Justice decisions, General Court decisions, Advocate General opinions, Commission decisions, and Competition Commissioners' speeches.

We divided the methodological steps into global and goal-specific. The global methodology was applicable to all goals and purposes we catalogued, whereas goal-specific steps and principles applied complementarily only to the respective goal. This was necessary because the keywords corresponding to each of the seven goals we studied came with idiosyncratic differences in the studied documents, and we needed pre-defined principles on how we would handle them.

3.1. Global Methodology

We first set out to list the main goals and purposes we would be studying and the keywords that would correspond to each goal and which we would use to perform the full text search within the sources. For this, we first reviewed the literature (see supra Literature Review) and the relevant caselaw that was identified within as representative of discussing EU competition law's goals and purposes. Where there was disagreement in terms of which goal a certain keyword served, we made a value judgement based on a review of how the keywords were used in the caselaw and which goal(s) they seemed to be more closely associated with. At this first stage we identified 53 keywords. As we began to review the sources and noticed recurrent phrases used in the caselaw, we added new keywords and for every new keyword we re-run our search across all sources. We also refined or qualified some of the initial keywords. For instance, the keyword "freedom" yielded an unreasonably large number of mostly irrelevant results and we thus qualified it as "freedom to compete" and other derivatives. In total, we catalogued 7 main goals reflected in 74 keywords (Table 2).

Goal	Keywords corresponding to goal
Efficiency	efficiency, efficient allocation, (in)efficient
Welfare	consumer welfare, total welfare, welfare, consumer well-being, consumer harm, harm to consumers, harm consumers, prejudice (to) consumers, detrimental to customers/consumers, consumer protection, protection of consumers, consumer surplus, interests of consumers
Freedom/ Competitors	plurality, freedom to compete, economic freedom, equal opportunity/-ies, level playing field, interests of competitors, protect competitors, protection of competitors, commercial freedom, freedom of action, equality of opportunity/ies, equal conditions of competition, interests of competing undertakings, free and undistorted competition, freedom of undertaking(s)
Market structure	competition structure, competition as such, structure of the market, structure of a market, market structure, effective competitive structure
Fairness	fairness, unfairness, wealth transfer, wealth allocation, wealth distribution, wealth redistribution, (un)fair competition, (un)fair prices/-ing
European integration	market integration, European integration, economic integration, single market, well-being of the European Union, that common market
Competition process	competition process, competitive process, process of competition, competition in general, prevent competition from being distorted, distortion of competition, protect competition, safeguard competition, protection of competition, maintain effective competition, maintenance of effective competition, protect effective competition, free and undistorted competition, genuine undistorted competition

Table 2: The main goals of EU competition law and corresponding keywords.

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Once we had the list of goals and corresponding keywords, we were ready to review the sources. We started with the Court of Justice together with the General Court and the opinions of Advocates General. For these we used the Curia database setting the following search parameters:

Parameter	Values
Case status	Cases closed
Court	Court of Justice, General Court
Documents	Judgments, Orders, Opinions of the Court, Decisions (Review procedure), Opinion
Text	The applicable keyword
Period	All
Subject matter	Dominant position, Concentrations between undertakings, Agreements, decisions and concerted practices

Table 3: Search parametres for the CJ, GC and AGs in the Curia database.

In total, we searched through 1,802 Court of Justice and General Court decisions and 485 opinions of Advocates General.

For the Commission's decisions, as the online search tool does not allow full text search, we had to download all decisions and search through the downloaded files.[40] The online search tool lists decisions after 1998; older decisions are listed on the Commission's historical decisions website.[41] We catalogued only those types of decisions that were likely to include a discussion on the goals and purposes of EU competition law: for Article 101 and 102 TFEU, commitments decisions, interim measures, prohibitions, and (reasoned) rejection of complaints decisions, as well as Article 106(3) TFEU decisions only in so far as they included a discussion as to an infringement of Article 102 TFEU. On merger control we only reviewed Phase II decisions, i.e. those adopted under Article 8 of the EU Merger Regulation, under the same rationale. In total, we searched through 744 Article 101 TFEU decisions, 180 Article 102 TFEU decisions, 91 merger decisions, for a grand total of 1,015 Commission decisions.

For public speeches delivered by Commissioners for Competition we relied on the Commission's online archives, from where we downloaded all available speeches.[42] We note, however, that many of the links to past speeches were broken, especially pre-2005. Therefore, while our results on speeches prior to 2005 are as robust as they can be, given the availability of archival material, they are not as reliable as the rest. In total, we searched through 447 speeches.

[40] For Art 101 TFEU decisions we relied on Or Brook's database. We downloaded ourselves the decisions on Art 102 TFEU and on merger control.

[41] https://ec.europa.eu/competition/antitrust/cases/older_antitrust_cases.html.

[42] https://ec.europa.eu/competition/speeches/index.html.

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Type of document	Number of documents
Court of Justice and General Court judgments, rulings, etc.	1,802
Opinions of Advocates General	485
Commission decisions	1,015
Commissioner for Competition Speeches	447
Total	**3,749**

Table 4: Types and numbers of sources searched.

From the result lists as per above we went into each document, searched for the keyword, decided whether it relates to the goals and purposes of EU competition law, and if so, we recorded the following metadata:

Sources metadata	Values	Notes
Case/ Speech number	Case / Speech number	Some speeches do not have a number
Case/ Speech name	Case / Speech name	
Institution	Court Commission AG Speech	Court includes CJ and GC Speeches and public statements by Commissioners for Competition
Subject matter	Agreements Dominance Concentration	In Commissioner speeches we only state the subject matter when the relevant passage clearly refers to it or if the speech as a whole is dedicated to it
Date	Date	Year only
Counted	Y NY	Y for Yes as per the rules in Table 6 NY for No/Yes as per the rules in Table 6
Quote	Quote	A representative quote wherein the keyword linked to a goal appears
AG	Last name of AG	If the source was an AG opinion
Second quote	Quote	Another quote from the same case
Commissioner	Last name of Commissioner	If the source was a speech

Table 5: Recorded metadata for each documented source.

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To decide whether the use of the chosen keywords signifies a statement on the goals and purposes of EU competition law we distinguished between three possibilities as follows:

<table>
<tr><td>Y (Yes)</td><td>Rule 1: Y expresses instances that were counted in our results because the keyword is used in a context that signifies a statement on the goals and purposes of EU competition law, except if it falls under any of the reasons to be counted as N or NY.</td></tr>
<tr><td>N (No)</td><td>Rule 2: N expresses instances that we did not count in our results. This was because of any of the following reasons:

• Rule 2a: The keyword is used with meaning or in context irrelevant to the goals and purposes of EU competition law. E.g. “efficient deterrence [of a fine]” was not counted under the goal of efficiency, and “plurality of the media”, which appears in Article 21(4) of the EU Merger Regulation as a reason for a national competition authority to request to review a merger which otherwise has Community dimension was not counted under the goal for freedom/competitors.
• Rule 2b: The keyword appears in a legal instrument that does not primarily belong in the body of EU competition law, even though it still relates to competition. For example, in the opinion of AG Jacobs in joined Spain and Others v Commission (cases C-271/90, 281/90 and C-289/90) the keyword “efficient” appears in the context of a telecom liberalisation directive. Even though the directive is concerned with enhancing the competitive conditions in the telecom market, it is not per se a competition law directive and therefore it is excluded from our results.

Directive 90/387 is, according to Article 1(1), concerned with 'the harmonization of conditions for open and efficient access to and use of public telecommunications networks and, where applicable, public telecommunications services'.

• Rule 2c: The keyword appears in the context of references to national law.
• Rule 2d: The keyword is mentioned only in relation to arguments of the parties or to what the Commission or General Court have stated in the previous instances of the case, unless the issuing institution engages in further substantive discussion. E.g. Opinion of AG Trstenjak in GlaxoSmithKline (C-501/06P), where we did not consider that welfare is being discussed as a relevant goal of EU competition law:

“On the basis of those findings, the Court of First Instance concluded that the principal conclusion reached by the Commission, namely that the General Sales Conditions have as their object the restriction of competition, could not be upheld. According to the Court of First Instance, as the prices of the medicines concerned are to a large extent shielded from the free play of supply and demand owing to the applicable regulations and are set or controlled by the public authorities, it cannot be taken for granted at the outset that parallel trade tends to reduce those prices and thus to increase the welfare of final consumers.”

• Rule 2e: The keyword appears only in the context of simply a copy-pasted treaty or secondary law provision, or is mentioned completely in passing, without the issuing</td></tr>
</table>

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	institution engaging in further discussion around the keyword. For example, in many cases the institutions lead the analysis with reciting the applicable articles, such as the phrase in Article 101(1) TFEU “object or effect the prevention, restriction or distortion of competition within the internal market”. • Rule 2f: The keyword appears in a procedural rather than substantive context, for example the phrase “fair trial.” • Rule 2g: The keyword appears in the footnotes. • Rule 2h: The keyword appears simply as a heading. For instance, “market structure” would not be counted under the goal for structure if it is a heading and the institution goes on to analyse the market structure in the context of the case at hand. • Rule 2j: The keyword appears in the context of a discussion on the negative effects/outcomes of a certain practice without it being linked directly to a competition law infringement or competition law enforcement. For example, several speeches discuss generally why cartels are bad for the economy and for consumers. Unless such statements were directly linked to the fact that competition law outlaws them, we did not count such general statements.
NY (No/Yes)	Rule 3: NY expresses instances that were counted in our results because the keyword is used in a context that signifies a statement on the goals and purposes of EU competition law, but the context in which it appears is a verbatim or only slightly paraphrased excerpt from primary or secondary EU competition law source (e.g. Treaty, Regulations, Guidelines etc), such that it makes it impossible to tell whether the keyword was used as a conscious choice of words to signify a goal of competition law or because it appears in the black letter of the law. We could not exclude those cases because the fact that the relevant keyword and expression appears in the law does not mean that it does not signal reference to a goal of EU competition law, but at the same time we cannot equate it with Y results where the particular choice of words is made not because they are in the law as such but because of the institution’s legal reasoning. Compare, e.g., a NY and a Y result in two cases, both under the goal of single market: We counted as Y AG’s Mischo’s opinion in case *Mo och Domsjö AB v Commission* (C-283/98 P), as it clearly identified the goal of single market using his own words, which we take as a conscious reference to the relevant goal: *The Community's objectives, so far as concerns competition, are to ensure that the single market is not partitioned and that the price of goods can be determined by the free play of competition.* But we counted as NY the Court’s decision in case *Kone and Others v Commission* (T-151/07), because, even though the goal is again clearly identified and part of the Court’s reasoning (it grounds anti-competitiveness to the jeopardising of the single market) and therefore should be counted, it is done so in the verbatim phrasing of primary and secondary law and it is, for this reason, impossible to tell whether it is a conscious choice of words or a mechanical reference to the black letter of the law. *It must thus be stated that, by their very nature, the infringements identified in the contested decision are among the most serious breaches of Article 81 EC, since they had as their object ‘secret collusion between cartel participants to share markets or freeze market shares… In that regard, the 1998 Guidelines*

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	explain that 'very serious' infringements consist generally in horizontal restrictions such as price cartels and market-sharing quotas, or other practices which jeopardise the proper functioning of the single market. Those infringements are also among the examples of agreements explicitly declared to be incompatible with the common market in Article 81(1)(c) EC. To account for the difference in how "valid" NY results are compared to Y results, we have prepared two sets of results, one counting only Y results and one counting both NY and Y results. The results counting only Y instances reflect a "purer" set of results on the goals and purposes of EU competition law.

Table 6: Rules for deciding inclusion/exclusion of whether a source is counted as referencing a competition law goal.

- Rule 4: Cases that have advanced through different instances (e.g. Commission case which was appealed to the GC and then to the CJ) are counted separately, because a new decision is issued at every instance, unless Rule 2d applies.

- Rule 5: The same quote can contain keywords that refer to different goals and may be counted differently. For example in *Ambulanz Glöckner* (C-475/99) the following quote signifies both the goal of integration ("single market") and the goal of structure ("structure of competition"), but the goal of integration is counted as NY (Rule 13), whereas the goal of structure is counted as Y (Rule 17):

> *"Thus, Community law covers any agreement or any practice which is capable of constituting a threat to freedom of trade between Member States in a manner which might harm the attainment on the objectives of a single market between the Member States, in particular by sealing off national markets or by affecting the structure of competition within the common market."*

- Rule 6: Multiple keywords grouped under the same goal are counted once, because they all signify the same goal. If some keywords are counted as NY or N and some as Y, Y prevails.

3.2. Goal-specific methodology

Goal-specific methodologies control how we handle the specific keywords under each of the seven goals. These rules are complementary to the rules of the global methodology which continues to apply.

Goal 1: Efficiency

We count sources as Y:

- Rule 7: Where the keyword "efficient" appears in the context of the "equally efficient competitor" test, because the goal describes the goal that is being protected. That is, the equally efficient competitor test is chosen as appropriate because it promotes the goal of efficiency and therefore the fact that the word appears on the name is not enough to count it as NY as per Rule 3.

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- Rule 8: Where the keyword "efficiency/-ies" appears in the context of 102, unless any of the NY or N rules apply. In conjunction with Rule 10 below, this has led to a divergence in the treatment of the keyword efficiency/-ies between Articles 101, concentrations, and 102 TFEU, because efficiencies are expressly mentioned in Article 101 TFEU ("improving the production or distribution of goods or to promoting technical or economic progress") and in the concentrations secondary law, which forces us to apply Rule 3, whereas they are not in Article 102 TFEU.

- Rule 9: We count as NY sources where the keyword "efficiency/-ies" appears as a shorthand for the Article 101(3) TFEU phrase "improving the production or distribution of goods or to promoting technical or economic progress" (see also Rule 3).

We do not list sources (N) mentioning the keywords associated with efficiency if:

- Rule 10: The keywork refers to administrative or procedural efficiency or to the efficiency of the deterrent effect of fines (see also Rule 2a).

- Rule 11: The keyword refers to efficient enforcement of competition law (see also Rule 2a).

- Rule 12: Efficiency is used to express a specific benefit in a product, service or process, similar to, e.g., security, quality, safety, robustness, speed, and not as a general proxy term for technical or economic progress (see also above). E.g. in *Transatlantic* (94/980/EC):

  "In the Commission's view, price stability may constitute an objective within the scope of Article 85 (3) of the Treaty for the following reasons:

  - stability of rates for scheduled services enables shippers to know reasonably far in advance the cost of transporting their products and therefore their selling price on the market of destination, whatever the time, vessel or conference shipowner involved,

  - stability of rates enables shipowners to forecast their income more accurately and thus makes it easier to organize regular, reliable, adequate and efficient services."

- Rule 13: The keyword is mentioned completely in passing or without any connection to efficiencies as used in the context of articles 101 and 102 TFEU or to the goals and purposes of competition law. E.g. in *SCPA* (C-68/94):

  "K+S and the joint venture will establish in the Community their own distribution organisation - where not already in existence - and will distribute their products through this distribution network in accordance with normal commercial practice. A distribution organisation will be established in France for potash products, including potash specialities. This will cover the whole of the French market and its nature and size will be commensurate with the importance of the French market. Its establishment will conform to the principle of economic efficiency."

- Rule 14: The keyword is mentioned in relation to articles 101 or 102 TFEU but only in the context of discussing burden of proof or the steps of the analysis followed in articles 101 or 102 TFEU. E.g. in *Groupement des Cartes Bancaires* (COMP/D1/38606) the word efficiency does not appear again in the main text outside of this quote, which we do not count:

  "It is not until paragraph 3 of Article 81 that it is stated that the provisions of paragraph 1 (and therefore of the prohibition it contains) may be declared inapplicable where the decision has benefits

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meeting the conditions laid down in paragraph 3, and it is settled case-law that the burden of proving the efficiency gains generated by the agreement or decision by an association of undertakings lies with the undertakings or association in question."

We did, however, count cases such as *Yen Interest Rate Derivatives* (AT.39861) because the keyword is used to explain that the promotion of efficiency can justify business practices making efficiency a protected goal of EU competition law (see also Rule 7):

"The provisions of Article 101 of the Treaty and Article 53 of the EEA Agreement may be declared inapplicable pursuant to Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement where an agreement or concerted practice contributes to improving the production or distribution of goods or to promoting technical or economic progress … . There is no indication that the behaviour by the undertakings that participated in the seven infringements entailed any efficiency benefits or otherwise promoted technical or economic progress. Complex infringements like those which are the subject of this Decision, are, by definition, among the most detrimental restrictions of competition. They do not benefit consumers. (86) Accordingly, the conditions for exemption provided for in Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement are not met in this case with regard to any of the seven infringements."

Goal 2: Welfare

- Rule 15: We count sources (Y) when the keyword "welfare" appears in the context of a discussion on efficiencies under the merger regulation, because the choice of word welfare is not mandated by the text of the secondary law and therefore it is a conscious choice of word referring to what merger control, and by extension competition law, aims to achieve, without it being subsumed under the other goal of efficiency. See, e.g., Hutchison 3G Austria / Orange Austria (COMP/M.6497) where the decision on the legality of the merger depends on welfare effects:

"Prior to the SO, the Notifying Party did not raise a formal efficiency defence but submitted that the Proposed Transaction would allow H3G to increase the role it plays as a competitive force on the market. ... Moreover, the Notifying Party has claimed that, as a general matter, in oligopolistic markets with economies of scale, a reduction in the number of competitors may increase consumer welfare. This is not disputed by the Commission. However, if such an increase in consumer welfare were to materialise, it would need to be on the basis of efficiencies. Under the horizontal Guidelines, the Commission's practice is to assess efficiencies as a countervailing factor and the burden of proof rests upon the Parties to the Proposed Transaction to establish the existence and significance of the efficiencies to the necessary standard of proof."

Goal 3: Freedom/Competitors

- Rule 16: We do not list sources (N) when the keyword appears in a relevant discussion regarding goals of EU competition law but is explicitly rejected by the relevant institution or actor as *not* being a valid goal. This was unique for Goal 3, i.e. it was the only goal that has been at times specifically rejected, instead of simply not being mentioned, as other goals. See e.g., the following quote from AG Wahl's Opinion in Case C-525/16 *Meo – Serviços de Comunicações e Multimédia* (para. 62):

"Indeed, it is well established that a practice of discrimination, and a differential pricing practice in particular, is ambivalent in terms of its effects on competition. Such a practice may have the consequence of increasing economic efficiency and thus the well-being of consumers. These are goals which, to my mind, should not be overlooked in the application of the rules of competition law, and

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they are, in any event, quite distinct from considerations of fairness. As the Court has repeatedly held, the rules of competition law are designed to safeguard competition, not to protect competitors."

Goal 4: Market structure

- Rule 17: We count sources as (Y) even if keywords relating to market structure appear in quotes which discuss the requirement of affecting trade between Member States, such as the following example from *Ambulanz Glöckner* (C-475/99):

  "Thus, Community law covers any agreement or any practice which is capable of constituting a threat to freedom of trade between Member States in a manner which might harm the attainment on the objectives of a single market between the Member States, in particular by sealing off national markets or by affecting the structure of competition within the common market."

  The reason is that the institution or actor makes a conscious choice to interpret the affecting cross-country trade criterion as related to the structure of competition; thus, it is not merely paraphrasing the black letter of the law (see also Rules 5, 13 and 22).

Goal 5: Fairness

- Rule 18: We count sources (Y) when the statement refers to fair and unfair pricing and it is linked directly to the competition law infringement or competition law enforcement (see Rule 2j).

- Rule 19: We do not list sources (N) when the keyword appears in the context of the general benefits of "fair competition".

Goal 6: European integration

- Rule 20: We count sources (Y) when the keyword "single market" is mentioned in relation to the calculation of fines, because it links the amount of the fine with the gravity of the competition violation of a goal protected under EU competition law, i.e. the amount of the fine reflects the severity of the curtailing of the single market which EU competition law protects, hence the fine.

- Rule 21: We do not list sources (N) where the keyword "single market" is simply used as a geographical term to determine the boundaries of applicability of EU competition law.

- Rule 22: We count as NY sources where the keyword "single market" appears in the context of practices that affect the "pattern of trade between member states" because it is linked with the goal of the attainment of a single market, but at the same time it only minimally paraphrases the black letter of the law.

Goal 7: Competition process

- Rule 23: We do not search for the keywords "restriction of competition" or "prevention of competition" as they appear on the text of Article 101 TFEU, but we do search for "distortion of competition" and its variants, because we interpret the seventh broad goal as referring to the process of competition, not to

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competition as such. Our search through the case-law showed that the word "process" is used in conjunction with the words "distortion", "protection," "maintenance" and others, but not "restriction" and "prevention," which are broad and colloquial and appear in almost every source and therefore are not indicative, as such, of the goals and purposes of competition law.

- Rule 24: We count as Y references to the old pre-Lisbon Treaty Article 3(1)(g)/(f) even if they quote the black letter of the law or slightly paraphrase it (i.e. Rule 2e did not apply), because Article 3(1)(g)/(f) expressly concerns itself with the goals of competition law, so referring to that article must be seen as a conscious choice to adopt the exact same goals mentioned in the article and to allow them to inform the specific application of competition law in the case. The text of old Article 3(1)(g)/(f) was as follows:

  "For the purposes set out in Article 2, the activities of the Community shall include [...] a system ensuring that competition in the internal market is not distorted."

  This provision resulted, through paraphrasing, in certain expressions such as 'prevent competition from being distorted' and 'distortion of competition', which appear as keywords in Goal 7.

4. Results and discussion

We present below selected results and discussion deriving from our empirical research. Unless otherwise noted, the results below are based on the sources that were counted as Yes (Y) (see above Methodology and Table 6). By filtering out the less relevant sources designated as NY the presented results are the closest and strictest representation of how the goals and purposes of EU competition law manifest themselves in 3,749 Court of Justice decisions (CJ & GC), AG opinions, Commission decisions and Commissioners for Competition speeches distributed as follows.

	Total Number of Sources Searched							Goals and Purposes Sources			
Year	CJ& GC	AG	Comm total	Speeches	Mergers	Comm 101	Comm 102	CJ& GC	AG	Comm total	Speeches
1962	2	1	0	0	0	0	0	0	0	0	0
1963	0	0	0	0	0	0	0	0	0	0	0
1964	0	0	5	0	0	5	0	0	0	0	0
1965	2	0	3	0	0	3	0	0	0	0	0
1966	3	3	0	0	0	0	0	3	1	0	0
1967	2	2	1	0	0	1	0	1	0	0	0
1968	1	2	8	0	0	8	0	0	0	0	0
1969	4	3	10	0	0	10	0	1	0	0	0
1970	6	3	7	0	0	7	0	0	0	0	0
1971	7	6	11	0	0	9	2	2	1	0	0
1972	12	5	12	0	0	11	1	7	1	0	0
1973	4	1	8	0	0	8	0	2	0	4	0
1974	12	6	11	0	0	10	1	2	0	6	0
1975	8	6	15	0	0	14	1	2	1	10	0
1976	6	4	7	0	0	6	1	0	0	5	0

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1977	7	6	18	0	0	16	2	2	1	5	0
1978	6	5	11	0	0	11	0	2	1	7	0
1979	6	8	8	0	0	8	0	3	1	4	0
1980	9	7	9	0	0	9	0	3	1	3	0
1981	6	4	11	0	0	8	3	1	2	6	0
1982	12	10	10	0	0	9	1	0	0	5	0
1983	7	11	16	0	0	15	1	4	1	4	0
1984	8	6	20	0	0	19	1	3	0	3	0
1985	11	12	15	0	0	14	1	1	2	3	0
1986	12	9	21	0	0	21	0	0	1	5	0
1987	10	5	14	0	0	13	1	2	1	4	0
1988	9	10	26	0	0	19	7	3	2	4	0
1989	12	10	10	0	0	10	0	7	2	1	0
1990	9	4	14	0	0	11	3	1	2	4	0
1991	31	8	14	0	1	12	1	4	2	6	0
1992	30	10	24	0	0	23	1	5	0	9	0
1993	29	11	7	0	0	6	1	4	0	0	0
1994	41	15	29	0	1	28	0	4	3	5	0
1995	63	14	16	3	2	12	2	4	4	2	0
1996	28	7	23	5	3	18	2	3	1	4	3
1997	27	25	17	9	1	15	1	3	4	4	4
1998	54	14	35	0	2	29	4	2	5	6	0
1999	47	18	44	0	1	34	9	8	8	12	0
2000	49	15	20	2	2	16	2	4	3	5	1
2001	40	18	50	0	5	37	8	5	5	23	0
2002	38	4	40	0	0	35	5	5	2	12	0
2003	40	14	27	6	0	24	3	13	1	17	1
2004	47	9	23	10	1	12	10	2	0	10	8
2005	40	10	15	24	3	10	2	4	1	8	4
2006	57	14	18	35	6	10	2	10	2	10	15
2007	50	6	24	40	5	16	3	5	1	12	17
2008	40	9	19	35	5	10	4	1	1	10	8
2009	56	9	23	44	3	9	11	8	4	7	15
2010	37	6	21	26	2	12	7	5	2	8	10
2011	124	10	22	36	2	14	6	6	3	9	13
2012	91	11	26	38	7	14	5	11	2	9	16
2013	113	14	24	33	4	14	6	10	3	11	9
2014	90	10	43	0	5	20	18	10	4	21	0
2015	93	23	22	14	7	9	6	5	2	6	9
2016	64	14	31	22	7	13	11	3	2	11	7
2017	63	7	20	16	4	9	7	5	1	7	4
2018	61	6	20	14	6	4	10	10	0	11	8

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2019	42	3	16	20	6	4	6	3	1	8	4
2020*	24	2	1	15	0	0	1	1	1	0	3
Total	1802	485	1015	447	91	744	180	215	89	346	159

*Table 7: Number of sources documented by type and year. *2020 coverage only until February of that year.*

Ratios and 5-year Averages								
Year	**CJ&GC**	**AG**	**Comm total**	**Speeches**	**CJ&GC 5y**	**AG 5y**	**Comm total 5y**	**Speeches 5y**
1962	0%	0%	0%	0	0	0	0	0
1963	0%	0%	0%	0	0	0	0	0
1964	0%	0%	0%	0	0	0	0	0
1965	0%	0%	0%	0	0	0	0	0
1966	100%	33%	0%	0	20%	7%	0%	0%
1967	50%	0%	0%	0	30%	7%	0%	0%
1968	0%	0%	0%	0	30%	7%	0%	0%
1969	25%	0%	0%	0	35%	7%	0%	0%
1970	0%	0%	0%	0	35%	7%	0%	0%
1971	29%	17%	0%	0	21%	3%	0%	0%
1972	58%	20%	0%	0	22%	7%	0%	0%
1973	50%	0%	50%	0	32%	7%	10%	0%
1974	17%	0%	55%	0	31%	7%	21%	0%
1975	25%	17%	67%	0	36%	11%	34%	0%
1976	0%	0%	71%	0	30%	7%	49%	0%
1977	29%	17%	28%	0	24%	7%	54%	0%
1978	33%	20%	64%	0	21%	11%	57%	0%
1979	50%	13%	50%	0	27%	13%	56%	0%
1980	33%	14%	33%	0	29%	13%	49%	0%
1981	17%	50%	55%	0	32%	23%	46%	0%
1982	0%	0%	50%	0	27%	19%	50%	0%
1983	57%	9%	25%	0	31%	17%	43%	0%
1984	38%	0%	15%	0	29%	15%	36%	0%
1985	9%	17%	20%	0	24%	15%	33%	0%
1986	0%	11%	24%	0	21%	7%	27%	0%
1987	20%	20%	29%	0	25%	11%	22%	0%
1988	33%	20%	15%	0	20%	14%	21%	0%
1989	58%	20%	10%	0	24%	18%	20%	0%
1990	11%	50%	29%	0	25%	24%	21%	0%
1991	13%	25%	43%	0	27%	27%	25%	0%
1992	17%	0%	38%	0	26%	23%	27%	0%
1993	14%	0%	0%	0	23%	19%	24%	0%

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1994	10%	20%	17%	0	13%	19%	25%	0%
1995	6%	29%	13%	0%	12%	15%	22%	0%
1996	11%	14%	17%	60%	11%	13%	17%	12%
1997	11%	16%	24%	44%	10%	16%	14%	21%
1998	4%	36%	17%	0%	8%	23%	18%	21%
1999	17%	44%	27%	0%	10%	28%	20%	21%
2000	8%	20%	25%	50%	10%	26%	22%	31%
2001	13%	28%	46%	0%	10%	29%	28%	19%
2002	13%	50%	30%	0%	11%	36%	29%	10%
2003	33%	7%	63%	17%	17%	30%	38%	13%
2004	4%	0%	43%	80%	14%	21%	41%	29%
2005	10%	10%	53%	17%	14%	19%	47%	23%
2006	18%	14%	56%	43%	15%	16%	49%	31%
2007	10%	17%	50%	43%	15%	10%	53%	40%
2008	3%	11%	53%	23%	9%	10%	51%	41%
2009	14%	44%	30%	34%	11%	19%	48%	32%
2010	14%	33%	38%	38%	12%	24%	45%	36%
2011	5%	30%	41%	36%	9%	27%	42%	35%
2012	12%	18%	35%	42%	9%	27%	39%	35%
2013	9%	21%	46%	27%	11%	29%	38%	36%
2014	11%	40%	49%	0%	10%	29%	42%	29%
2015	5%	9%	27%	64%	8%	24%	39%	34%
2016	5%	14%	35%	32%	8%	21%	38%	33%
2017	8%	14%	35%	25%	8%	20%	38%	30%
2018	16%	0%	55%	57%	9%	15%	40%	36%
2019	7%	33%	50%	20%	8%	14%	41%	40%
2020*	4%	50%	0%	20%	8%	22%	35%	31%

*Table 8: Ratios and 5-year averages of sources referencing goals of EU competition law to total cases. Ratios are calculated as the number of sources referencing a goal per year divided by the total number of sources per year. 5-year averages are calculated as the average of ratios across the trailing 5-year period. *2020 coverage only until February of that year.*

4.1. EU competition law is not monothematic but pursues a multitude of goals

Our results indicate that all seven of the overarching goals are represented to varying extents in the sources (Figure 1). What is more, all seven goals are present from the 1960s until today; in other words, goals are persistent even if their significance fluctuates with time. This is illustrated in the graphs below, which show the number of sources associated with a given goal on a year to year basis. All goals have a more than negligible presence in the decisional practice in case law and soft law (see also Table 7, Table 8, and Figure 2). This dispels the myth that competition law is monothematic or that it is consistently concerned with only one main goal to the expense of others. While some goals may be more important than others, our results do not support the conclusion that, as a whole, competition law is only about one priority—whether welfare, efficiency, competition process or other.

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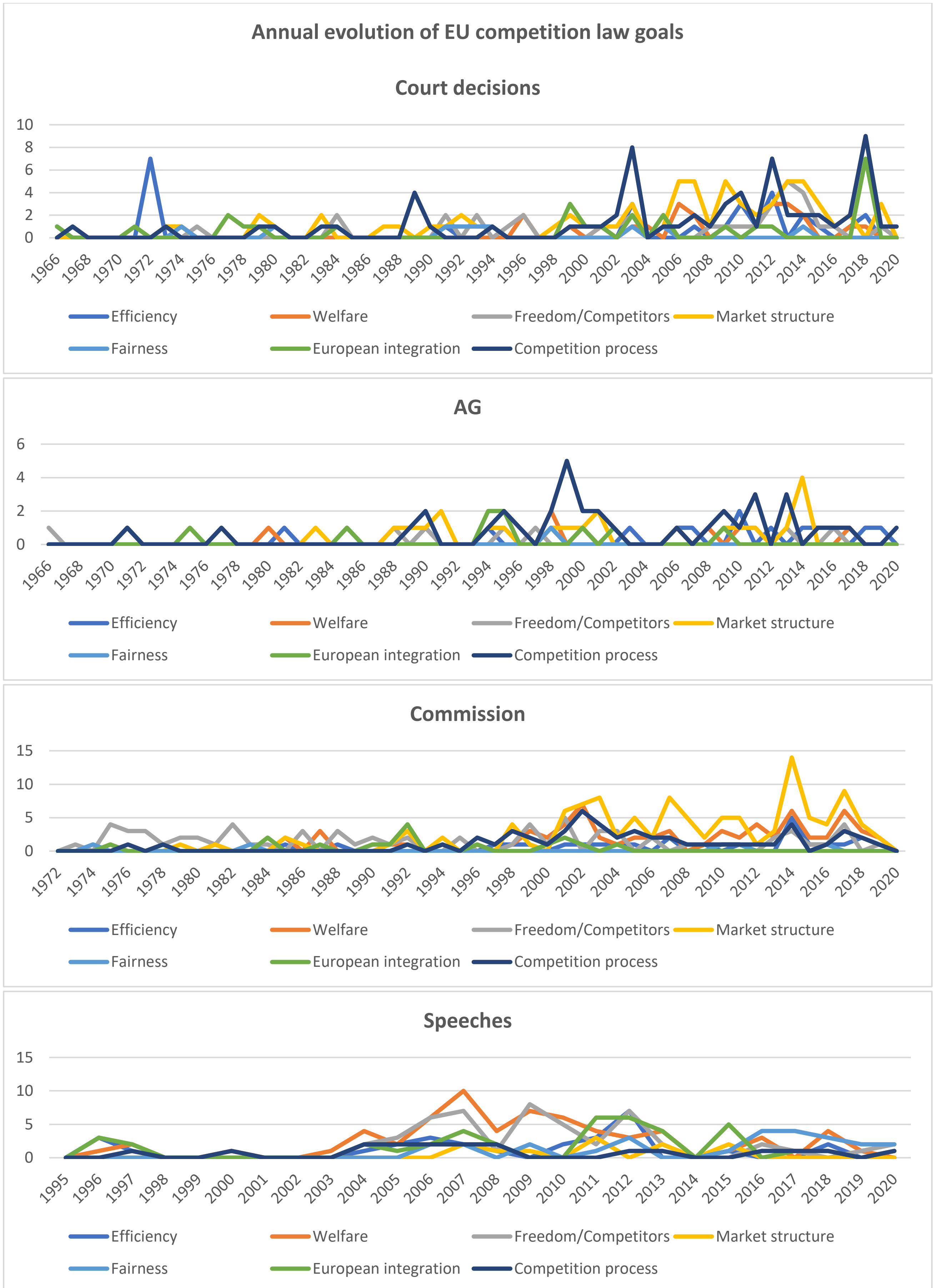

*Figure 1: Number of sources per year, per referenced goal and per institution. *2020 coverage only until February of that year.*

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4.2. EU competition law prioritizes the process of competition rather than the outcome

Although, as mentioned, all goals are persistently present in the results and none is manifestly predominant, competition process and market structure are the ones that appear more frequently both in terms of percentage and in terms of absolute numbers, at least as regards the practice of EU institutions (i.e. excluding speeches). These two goals are closely related to each other; they express the desire to protect a market structure that is built around an effective competitive process (see Table 2 for the keywords corresponding to these goals). EU competition law, therefore, seems to prioritize the process rather than the outcome (e.g. efficiency, welfare) under the belief that the process will, in turn, deliver the optimal outcomes.

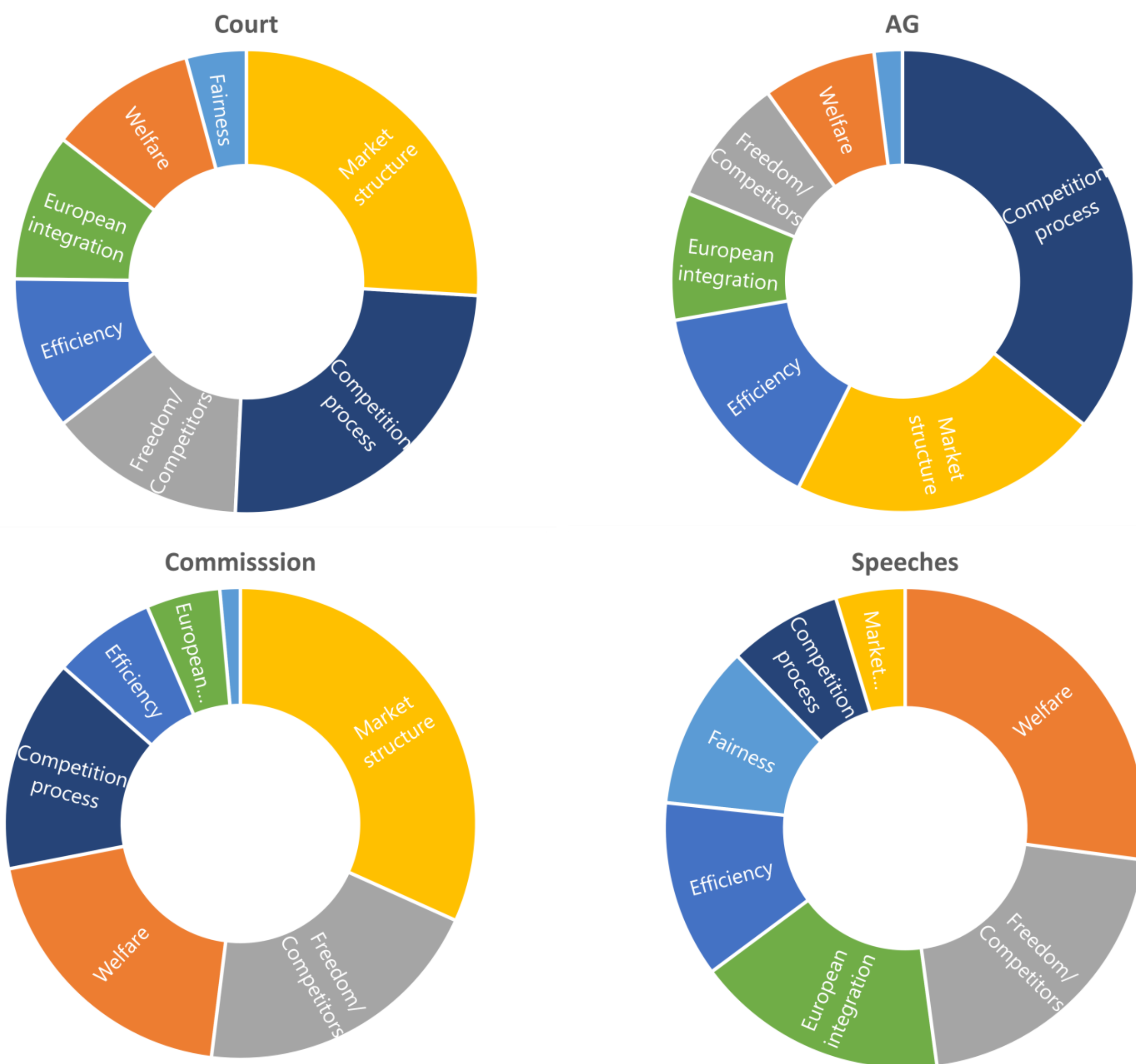

Figure 2: Percentage distribution of EU competition goals per institution. See also 4.4 and Figure 4.

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	Efficiency	Welfare	Freedom/ Competitors	Market structure	Fairness	European integration	Competition process
Court	11%	10%	14%	26%	4%	10%	25%
AGs	15%	8%	9%	22%	2%	9%	36%
Commission	7%	19%	21%	32%	1%	5%	15%
Speeches	12%	27%	21%	5%	11%	17%	8%
Average all sources	11.25%	16%	16%	21.25%	4.5%	10.25%	21%
Average Court & Commission	9%	14.5%	17.5%	29%	2.5%	7.5%	20%

Table 9: Percentage distribution of goals across institutions. It is evident that, taken together, the related goals of competition process and market structure are more prominently featured in the 'hard law' sources and AG opinions.

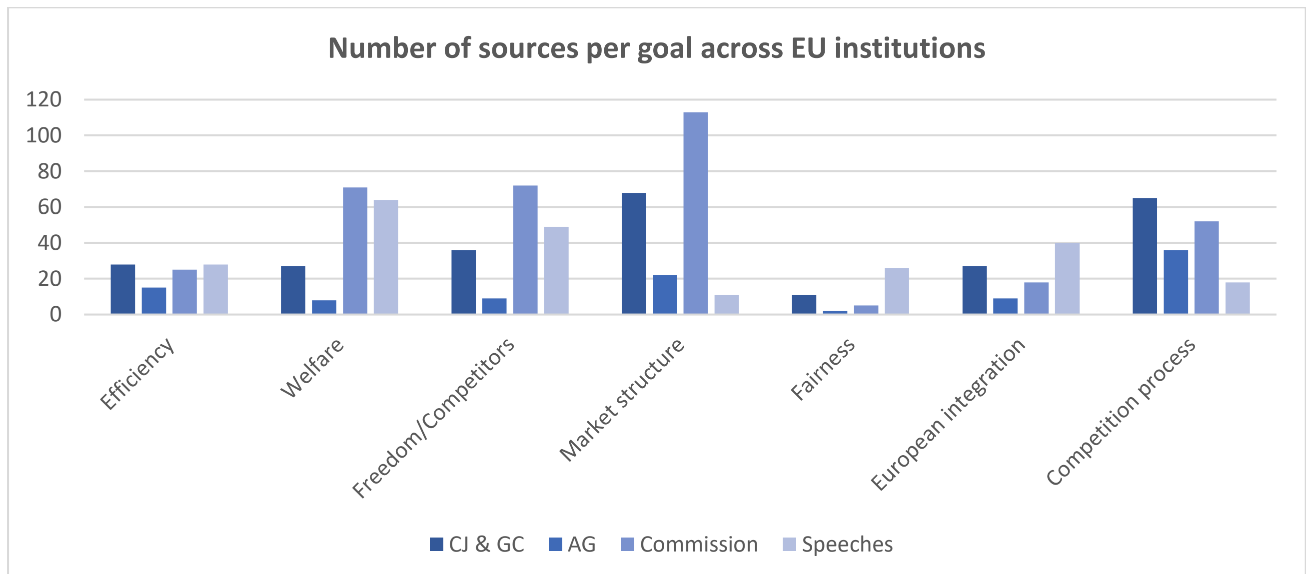

Figure 3: Distribution of sources per goal per institution in absolute numbers.

	Efficiency	Welfare	Freedom/ Competitors	Market structure	Fairness	European integration	Competition process
Court	28	27	36	68	11	27	65
AG	15	8	9	22	2	9	36
Commission	26	71	75	116	5	18	54
Speeches	28	64	49	11	26	40	18

Table 10: Distribtion of sources per goal per institution in absolute numbers.

A cautionary note is due here: Because some goals seem to be more prevalent in certain types of cases and certain types of cases are more common in competition law enforcement the results can be skewed depending on the commonness of the type and subject matter of the cases, opinions and decisions. One example is the following quote on the definition of 'abuse' from *Hoffmann-La Roche* (Case 85/76) (the quote highlights that

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competition law aims at protecting the competitive structure of the market by outlawing conduct as abusive on the grounds that it distorts it):

> *'… The concept of abuse is an objective concept relating to the behaviour of an undertaking in a dominant position which is such as to influence the structure of a market where, as a result of the very presence of the undertaking in question, the degree of competition is weakened and which, through recourse to methods different from those which condition normal competition in products or services on the basis of the transactions of commercial operators, has the effect of hindering the maintenance of the degree of competition still existing in the market or the growth of that competition.'*

This quote has appeared dozens of times in our results and it raises the absolute number of sources that reference market structure as a relevant goal. While we cannot account for the fact that certain types of cases are simply more numerous than others (at a minimum, there are a lot more cases involving Article 101 TFEU than Article 102 TFEU), looking also at the relative prevalence of goals within institutions' decisional practice, i.e. the percentage distribution in Figure 2 and Table 9, helps put things in perspective: percentage distribution shows what share of the total sources delivered by each institution corresponds to a given goal. This guards against assigning disproportionate importance to large absolute numbers of sources for a given goal, when in reality this is only so because a very large number of sources was delivered in total as well.

4.3. Fairness, despite media popularity, does not fare highly in any EU institution practice

Fairness has been a popular buzzword in competition law circles recently and a commonly cited goal. Our research shows that fairness is just that: a popular goal in the media, but not yet in decisional practice (Figure 2 and Table 9). Fairness is the least represented goal across all EU institutions, but it featured more prominently in Commissioner speeches and particularly thanks to Commissioner Vestager (see also 4.5 below). We take that to mean that as a matter of actual legal practice fairness does not seem to be a determinative goal of competition law, but that it nevertheless is commonly promoted as such outside of strictly legal circles.

	Number of sources per institution referencing fairness as a goal	Sources referencing fairness as a percentage of total sources delivered per institution
Court	11	4%
AG	2	2%
Commission	5	1%
Speeches	26	11%

Table 11: Absolute number of sources and percentage out of total sources per institution referencing fairness as a goal.

It is interesting to note that fairness' prominence would double if we included in the results the sources we designated as NY and which we normally exclude from the results presented here as explained in the Methodology and the introductory paragraph of this Section (NY results are those where the keyword is used in a context that signifies a statement on the goals and purposes of EU competition law, but the context in which it appears is a verbatim or only slightly paraphrased excerpt from primary or secondary EU competition law source (e.g. Treaty, Regulations, Guidelines etc), such that it makes it impossible to tell whether the keyword was used as a conscious choice of words to signify a goal of competition law or because it appears in the black letter of the law). An example of such instances are cases that verbatim reference the text of Article 102 TFEU on unfair prices or trading conditions: while the outlawing of a practice on the grounds that it imposes unfair prices or trading conditions means that fairness is a relevant objective that competition law safeguards, the fact that the relevant goal is only mentioned as part of the wording of Article 102 TFEU leads us to exclude those

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from Y results which are the ones that reflect genuine references to goals rather than just because they appear in the black letter of the law, and which form the basis of our analysis.

	ALL (Y & NY)	Y
Court	29	11
AG	2	2
Commission	22	5
Speeches	32	26
Total	**85**	**44**

Table 12: Number of sources that reference fairness as the relevant goal counted as ALL (NY & Y) and only as Y (see Table 6 for explanation on Y and NY). Even under the broader set of results (ALL), fairness still ranks low as a goal.

4.4. The Commission has different priorities than the Court and AGs and Commissioner speeches express yet different priorities too

Figure 2 and Table 9 further demonstrate that the Commission and the Court (incl. AGs) assign different relative weight to different goals. While it is true that the process of competition and market structure feature prominently in all of their practice (see 4.2), there is little agreement between them otherwise. The Commission assigns more value to welfare and to the protection of competitors and commercial freedom but less value to efficiency than the Court and AGs (Figure 4). And even in terms of competition process, the Commission is only half as concerned with that goal compared to the Court and AGs. Speeches express yet different priorities with welfare dominating the speeches' goal list and fairness being featured at the highest rate in speeches than in any other type of source. This is perhaps natural, because Commissioners for Competition want their speeches to resonate with the public and fairness and welfare are buzzwords that can help achieve that goal.

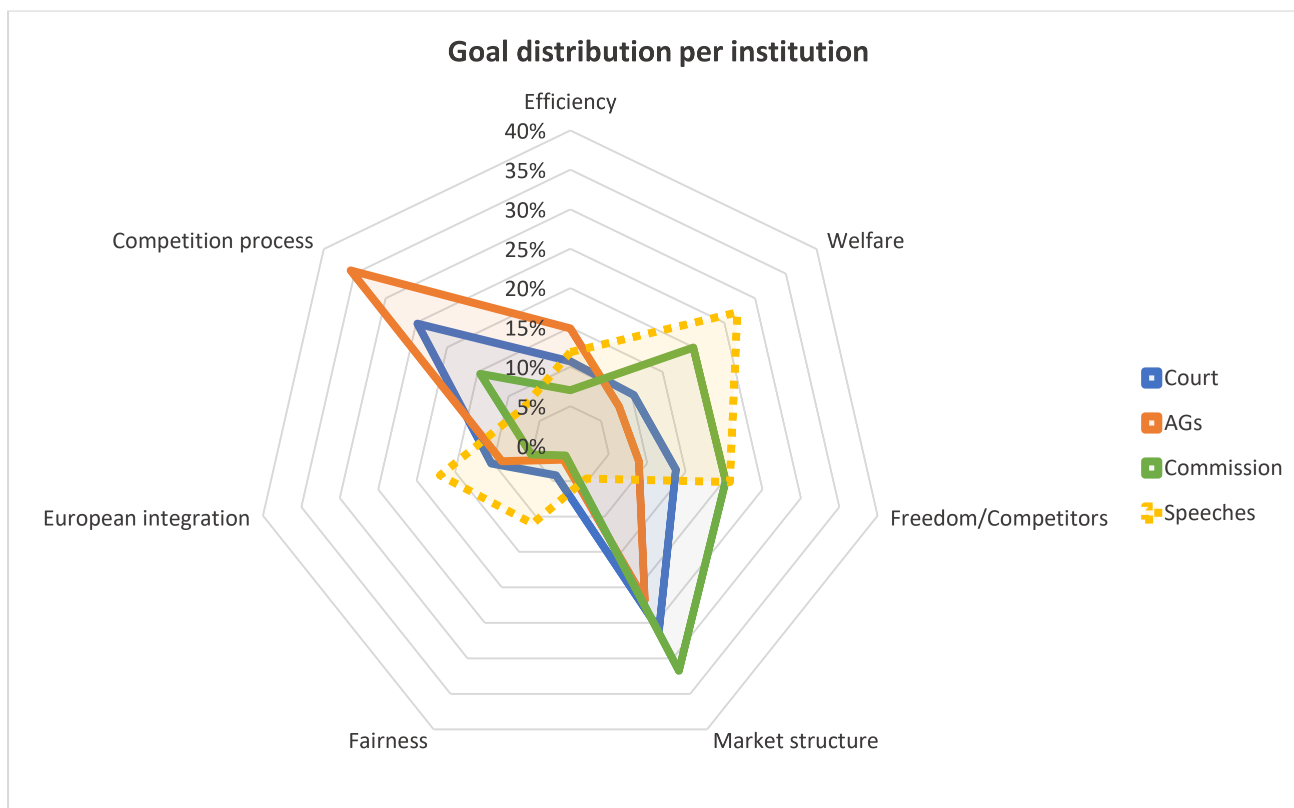

Figure 4: Relative commonness of goals per institution. Protection of market structure is prevalent, but welfare, protection of competitors and competition process show divergence across institutions. Speeches express yet different priorities.

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4.5. Different Commissioners seem to emphasize different goals during their terms, with Vestager promoting *fairness* and Kroes promoting *welfare*

It is only natural to expect that Commissioners have their own agendas, priorities, and sensibilities, and that this will be reflected in their speeches and advocacy. Indeed, our results indicate that certain Commissioners, as it transpires through their speeches, emphasize some goals more than others (Table 13). For example, it is clear that Commission Vestager is a strong advocate of fairness, whereas Commissioner Kroes was concerned predominantly with welfare. Besides personal priorities, the historical context of their office terms may help to explain these results. Kroes, for instance, was in office right before a landmark legislative package on telecom liberalization was passed (after her term as Commissioner for Competition, she became Commissioner for Digital Agenda), and many of her speeches reflect the combined contribution of competition and regulation as tools to safeguard and maximize welfare.

	Efficiency	Welfare	Freedom/ Competitors	Market structure	Fairness	European integration	Competition process
Miert (1993-1999)*	4	3	0	0	0	5	1
Monti (1999-2004)*	1	5	2	0	0	2	2
Kroes (2004-2009)	8	30	25	4	6	9	9
Almunia (2009-2014)	12	17	16	5	4	16	2
Vestager (2014-2020)	3	9	6	2	16	8	4

*Table 13: Number of speeches per goal per Commissioner. *Miert's and Monti's results are limited due to partial unavailability of their speeches.*

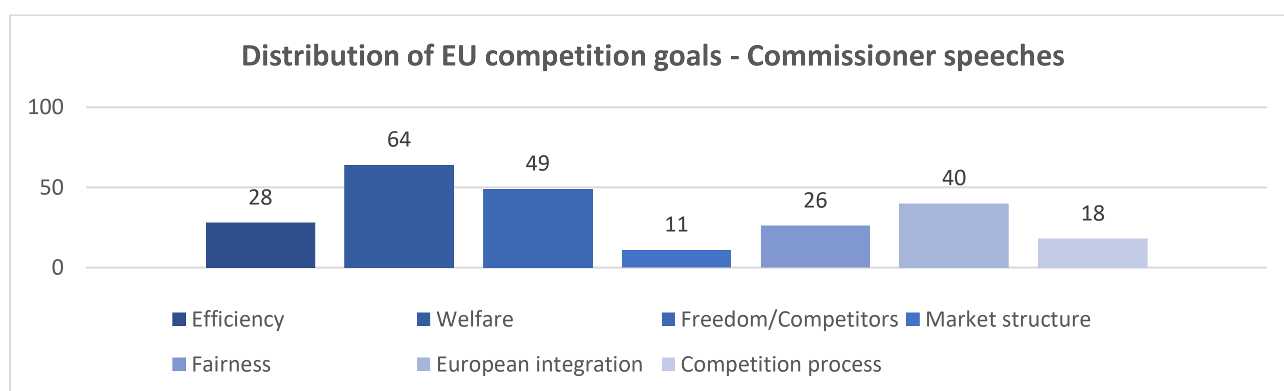

Figure 5: Distribution of EU competition goals in speeches by Commissioners for Competition.

4.6. Ordoliberalism still lingers and may be on the rise again

A risky, but not unsubstantiated, inference from the data is that the goals that can be attributed to the ordoliberal tradition, such as commercial freedom, level playing field, and the protection of competitors (see Goal 3 in Table 2), seem to be on the rise as of late. They still do not fare very highly overall, but it is worth noticing the constant increase in the share of Court decisions that reference these goals, effectively doubling in rate from the early 1990s to today, and the recent, post-2013, rise in Commission decisions as well, after a period of decline which itself succeeded a period of very high rates of representation of such goals in Commission decisions (the 5-year average exceeded 40% of Commission decisions in the mid-80s). The trend is reflected in Commissioner speeches as well, with those goals retaining a steady share therein starting in the mid-2000s.

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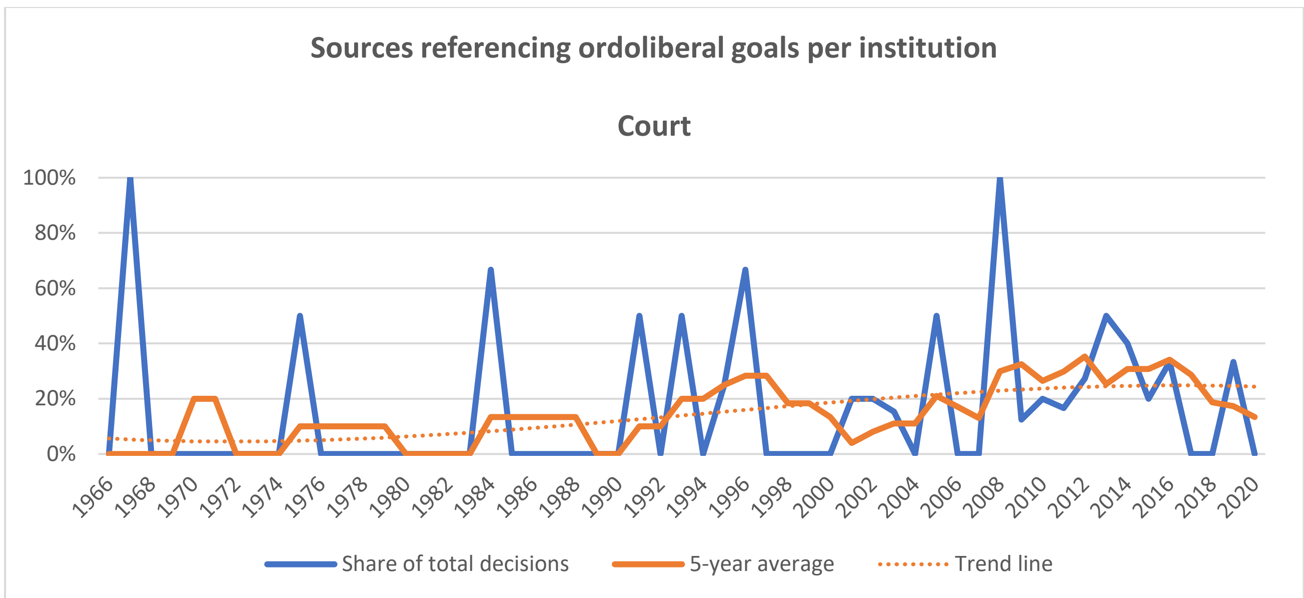

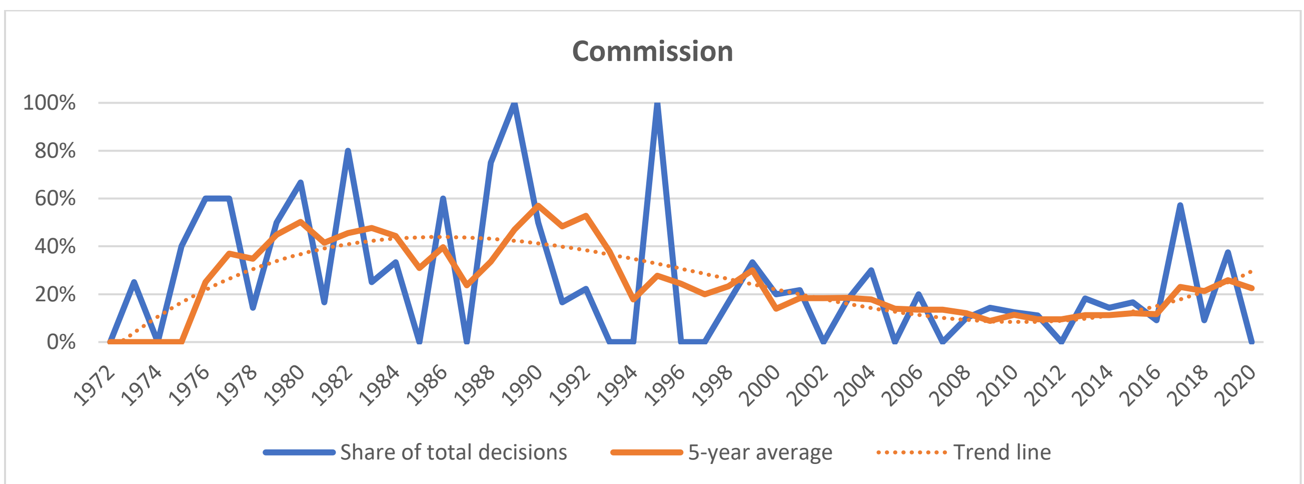

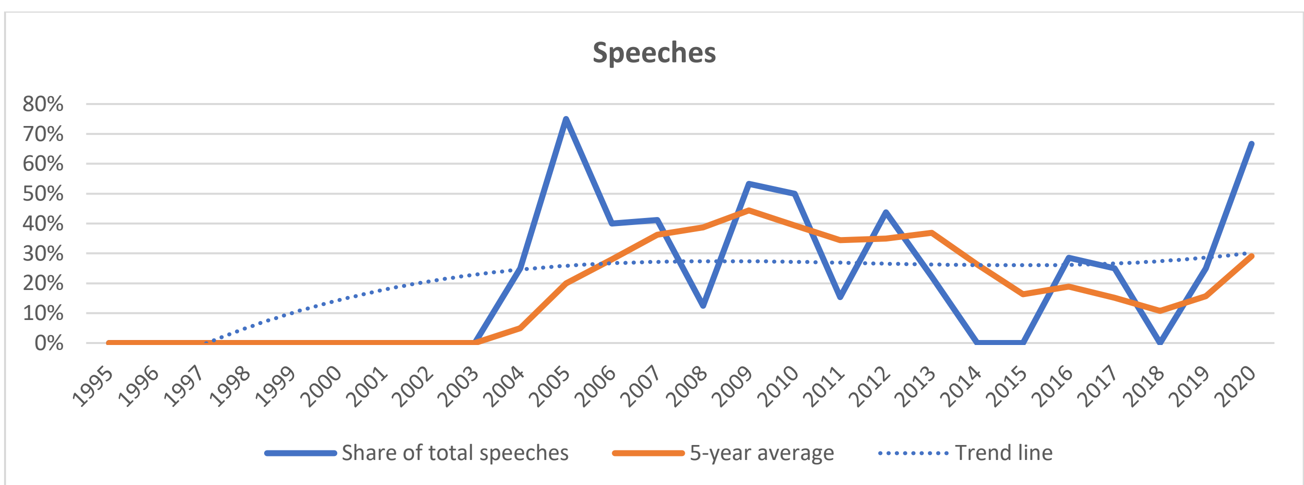

Figure 6: Ordoliberal goals (Goal 3 in Table 2) are on the rise in Court decisions, and in Commission decisions since 2013 after a dip in the last 20 years. In speeches, ordoliberalism is reflected at steady rates.

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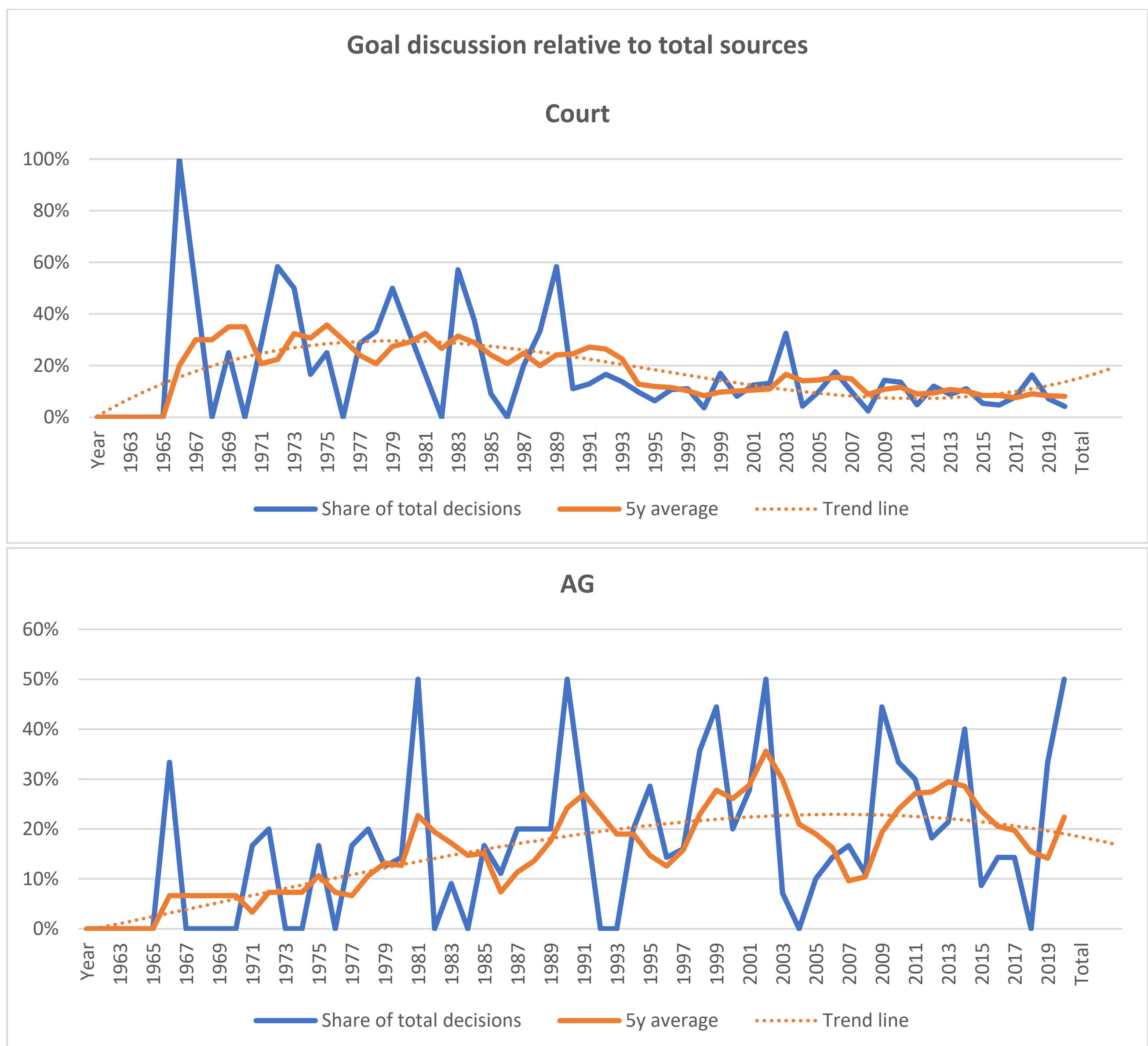
4.7. Steady to increased discussion of competition law goals over the years, with Commission leading the increase perhaps in response to the 'more economic approach'

While in absolute numbers the sources that reference goals of EU competition law have increased over the years (Figure 1) so has the total number of sources too. To determine whether the discussion of competition law goals has in fact increased, we calculate the ratios of sources that reference competition goals to total numbers per year. Our results indicate that, overall, the sources referencing competition law goals have only moderately increased, except in that case of the Commission, which starting in the early 2000s has doubled the share of decisions wherein it references the goals of competition law. AG opinions and speeches show a more modest increase, whereas the Court shows a steady trend since the early 1990s and a decrease compared to the earlier years. It may be the case that the adoption of the more economic approach in the late 1990s urged the Commission to better justify its reasoning, as part of which effort it started referring to the goals of competition law as guiding principles.



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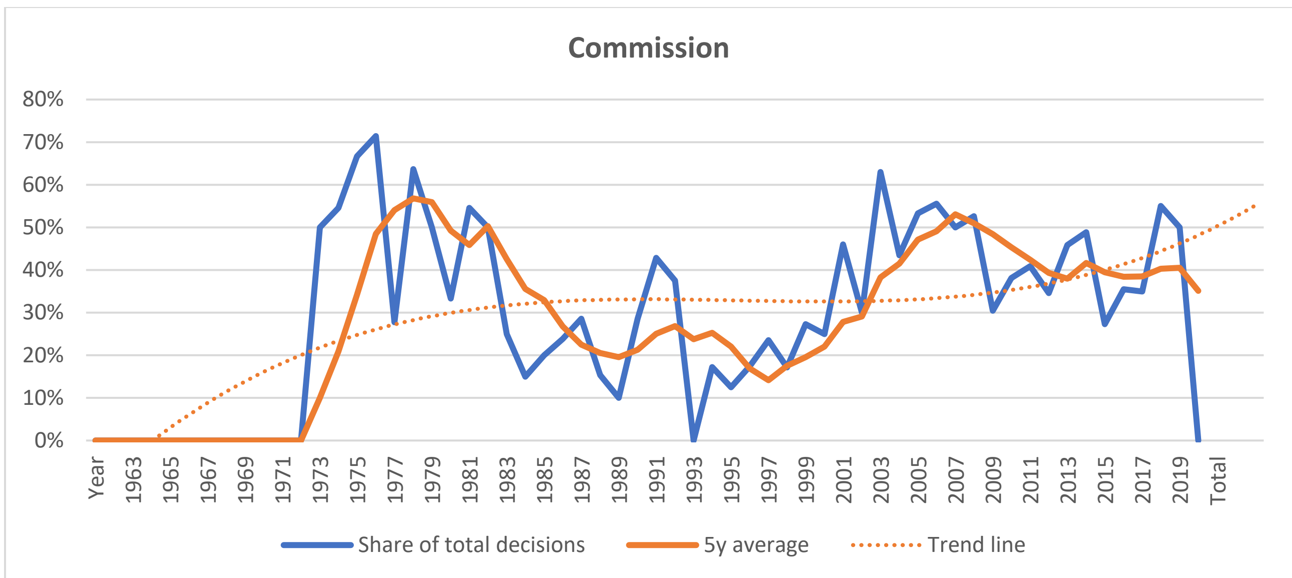

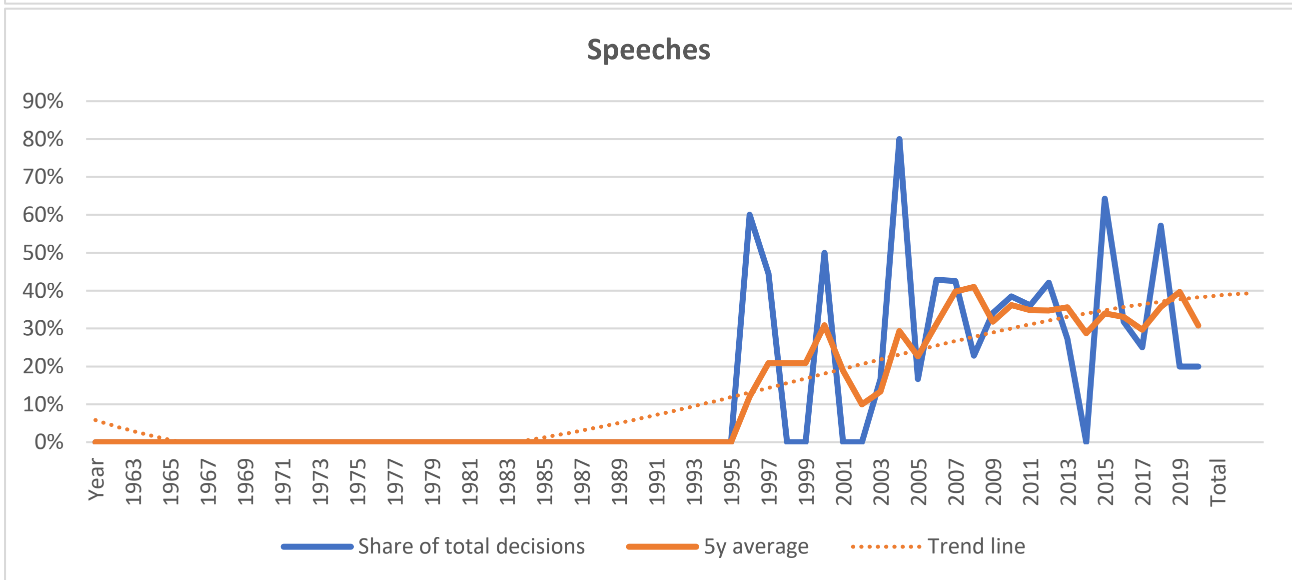

Figure 7: Ratios (blue) and 5-year averages (orange) of the sources referencing competition law goals to total sources. A mostly steady to upward trend is noticed, except for the Commission which shows a doubling of rate since the early 2000s. See also Table 9.

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