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Abstract

This paper examines how corporate funding influences competition policy research across both forensic economics applications and academic research settings, ultimately shaping competition law design and implementation. The analysis builds on the premise that competition economics encompasses two distinct but increasingly interrelated communities: forensic economists working in public and private sectors who apply economic principles to concrete competition law enforcement cases, and academic economists who generate broadly applicable economic knowledge through theoretical work, empirical studies, and experimental methods. The analysis then proceeds in four parts. First, it traces the emergence of economic experts and consultants as a distinct profession, explaining how this development brought issues of bias in economic research to the forefront, initially within forensic economics presented in litigation. Second, it examines various forms of expert bias, extending beyond the market for applied economic expertise in competition regulation to encompass the broader marketplace of competition economics ideas. Third, it explores how these biases may stem not only from market dynamics but also from the concentrated structure of competition economics expertise, considering both supply and demand factors, as well as strategic efforts to influence competition policy discourse. Finally, it evaluates existing tools for containing bias and capture in forensic economics expertise markets and in the marketplace of knowledge in competition economics and proposes regulatory reforms for the future, including mandatory funding disclosure by large corporate funders and a matching of funds requirement to align corporate incentives with the public interest in unbiased research.

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Introduction

The 2007 financial crisis triggered severe criticism of the economics profession on two fronts: its failure to predict the impending economic collapse and its role in enabling the crisis through decades of advocating deregulation. This deregulatory agenda, central to the neoliberal economics paradigm that had dominated the field of economics since the late 1970s, faced particular scrutiny for its contribution to dismantling financial safeguards that might have prevented or mitigated the crisis's severity[1]. Despite these general criticisms, the 2000s and particularly the 2010s marked the high period of the dominance of mainstream (neoclassical and neoliberal) economics in competition law enforcement, not only in the United States, where they played a prominent role since at least the early 1980s[2], but also in Europe and other parts of the world[3]. The 2020s witnessed however a mounting criticism of mainstream neoclassical economics' normative role in competition law. This criticism centred on two key failures: competition economics' ineffectiveness in addressing rising economic concentration and market power[4], and its contribution to what Harry First termed "antitrust's democratic deficit"[5].

In a seminal piece published in 2013, Professor Harry First and his co-author, Professor Spencer Weber Waller, noted how the antitrust system was captured by lawyers

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[1] See, *inter alia*, D. Colander et al., The Financial Crisis and the Systemic Failure of the Economic Profession, (2009) 21 (2-3) Critical Review 249; A. Deaton, Rethinking My Economics (March 2024), available at https://www.imf.org/en/Publications/fandd/issues/2024/03/Symposium-Rethinking-Economics-Angus-Deaton .

[2] H. First, Is Antitrust "Law"?, (1995) 10 Antitrust 9.

[3] See, inter alia, L.-H. Röller, Economic Analysis and Competition Policy Enforcement in Europe, in P. A.G. van Bergeijk & E. Kloosterhuis, *Modelling European Mergers* (Edward Elgar, 2005), 11; G. Monti, EC Competition Law: The Dominance of Economic Analysis?, in R. Zäch, A. Heinemann, A. Kellerhals (eds.) *The Development of Competition Law* (Edward Elgar, 2010), 3.

[4] T. Philippon, *The Great Reversal* (The Belknap Press, 2019); J. Eeckhout, *Profit Paradox*. (Princeton University Press, 2021). A different criticism came from the right, with the so called "dynamic" Schumpeterian approaches, : see J.G. Sidak & D. Teece, Dynamic Competition in Antitrust Law, (2009) 5(4) Journal of Competition Law and Economics 581. See also, H. Hovenkamp, The Looming Crisis in Antitrust Economics, (2021) 101 B. U. L. Rev. 489.

[5] H. First & S. Weber Waller, Antitrust's Democratic Deficit, (2013) 81 Fordham L. Rev. 2543.

and economists "advancing their own self-referential goals, free of political control and economic accountability"[6]. This self-interested activity has morphed the law into an "unbalanced system" which "puts too much control in the hands of technical experts, moving antitrust enforcement too far away from its democratic roots"[7]. These calls for a more democratic antitrust, eventually leading to new directions as to the role of technocracy in setting and/or implementing the goals of competition law, have not been isolated; indeed, the interaction of democracy with competition law became a topic of intense debate among competition law, but also economics, scholars[8].

The push to realign antitrust law with democratic institutions stems largely from eroding public trust in technocrats who stand accused of hijacking competition law to serve their own interests (and to increase their rents)[9]. This scepticism has been fuelled by the emergence of a lucrative global market for technical (mostly economic) expertise in competition law, which has expanded to more than 130 jurisdictions worldwide. The role these relatively few experts deemed qualified to intervene in highly complex antitrust cases play in law enforcement and policy-design has motivated research on their role in shaping competition policy and their influence over its implementation, thus fuelling the concerns expressed about the "democratic deficit" of antitrust[10]. It also raises the spectre of their "capture" by the same corporate interests competition laws aim to regulate[11]. As Zingales astutely noted a decade ago, "[...] *why academic economists think that the*

[6] Ibid., 2544

[7] Ibid.

[8] See, *inter alia*, I. Lianos, Polycentric Competition Law, (2018) 71(1) Current Legal Problems 161; D.A. Crane, Antitrust as an Instrument of Democracy, (2022) 72 Duke Law Journal Online 21; E. Deutscher, The competition-democracy nexus unpacked—competition law, republican liberty, and democracy, (2022) 41 Yearbook of European Law 197; V.H.S.E. Robertson, Antitrust, Big Tech, and Democracy: A Research Agenda, (2022) 67(2)The Antitrust Bulletin 259; T. Davies & S. Cohen, Error Costs, Platform Regulation, and Democracy (September 15, 2024), available at SSRN: https://ssrn.com/abstract=4888631 .

[9] A separate but connected argument is the ideological drive for the use of a certain kind of economics in competition law enforcement, exemplified by the rise of the Chicago school that has led to a decline of antitrust enforcement in the US: F. Lancieri, R.A. Posner, L. Zingales,The Political Economy of the Decline of Antitrust Enforcement in the United States (March 20, 2023). Available at SSRN: https://ssrn.com/abstract=4011335 .

[10] Most recently, see J. Baker, How economists influence antitrust: the contributions of Tim Bresnahan, Janusz Ordover, Steve Salop, and Bobby Willig, (2024) Journal of Antitrust Enforcement, jnae049, https://doi.org/10.1093/jaenfo/jnae049 .

[11] See, the "capture theory that views economic analysis as produced and deployed in the interests of big business", as exposed by J. Baker, op. cit. and the references included. This is part of a broader concern about the influence of economic oligarchy on the production of knowledge: see, E. Saunders-Hastings, Plutocratic Philanthropy, (2018) 80(1) The Journal of Politics 149; M. Bertrand, M. Bombardini, R. Fisman, B. Hackinen, F. Trebbi, Hall of Mirrors: Corporate Philanthropy and Strategic Advocacy, (2021) 136(4) *The Quarterly Journal of Economics*, 2413. Regulatory capture by corporate interests is a well-known and now quite well-established in economics literature: see, M. Olson, *The Logic of Collective Action* (Harvard Univ. press, 1965); G. Stigler, Theory of economic regulation, (1971) 2 Bell Journal of Economics 3, also discussed by L. Zingales, Preventing Economists' Capture, in D. Carpenter & D.A. Moss, *Preventing Regulatory Capture* (CUP, 2013), 124.

regulators are generally captured, while they cannot stand even the thought that this might happen to one of them?"[12].

The alleged "capture" of antitrust policy by consultants and corporate-funded academic experts has garnered significant media attention, with numerous press reports highlighting anecdotal evidence of this concerning trend[13], comments by the economic profession[14], but also from the leadership of competition enforcement institutions[15]. More generally, the risk of biases of different sorts, particularly material bias, has been a recurrent theme, not just in competition economics but more generally regarding research in economics[16], but also other fields[17]. However, the distinctive prominence of economic analysis in antitrust law, combined with economists' leadership in redefining the field's objectives since the 1980s, has fundamentally transformed both the production and governance of competition-related economic knowledge.

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[12] L. Zingales, Preventing Economists' Capture, op. cit., 151 (noting the parallelism between the forces used to explain regulatory capture and those that can capture economists).

[13] See *inter alia*, B. Mullins & J. Nicas, Hidden Influence: Google Pays Scholars To Influence Policy - Search giant has given $5,000 to $400,000 to professors whose research supports business practices that face regulatory scrutiny, Wall Street Journal (July 12th, 2017); See, Google Academics Inc. (2017) https://www.techtransparencyproject.org/articles/google-academics-inc ; The Times, Google pays academics millions for key support - British and American researchers get secret funds https://www.thetimes.com/article/google-pays-academics-millions-for-key-support-tnb3zgbxp ; New York Times, When Scholars Collaborate With Tech Companies, How Reliable Are the Findings?, (June 2020), available at https://www.nytimes.com/2020/07/12/business/economy/uber-lyft-drivers-wages.htm ; New York Times, Big Tech Funds a Think Tank Pushing for Fewer Rules. For Big Tech, available at https://www.nytimes.com/2020/07/24/technology/global-antitrust-institute-google-amazon-qualcomm.html ; B. Mullins, The Hidden Life of Google's Secret Weapon, (June 6th, 2024), available at https://www.wsj.com/us-news/law/google-lawyer-secret-weapon-joshua-wright-c98d5a31 ; P. Cory, For Economists , Defending Big Business can be Big Business, New York Times (Sept. 20th, 2024), available at https://www.nytimes.com/2024/09/20/opinion/economists-conflict-interest-kanter.html ; R. Cropp & J. Panichi, Antitrust's Big Tobacco moment (September 25, 2024), available at https://insidestory.org.au/antitrusts-big-tobacco-moment . Citing these studies does not provide support or endorsement of their allegations regarding specific individuals or institutions, nor does it take position on the veracity of the facts put forward. Its purpose is only to describe the mounting concerns expressed by the media regarding corporate funding of academia involved in competition law enforcement.

[14] See *inter alia* L. Zingales, Preventing Economists' Capture, in D. Carpenter & D.A. Moss, *Preventing Regulatory Capture* (CUP, 2013), 124; T. Valletti, What Have The Consultants Ever Done For Us? (February 28th, 2024) available at https://www.promarket.org/2024/02/28/what-have-the-consultants-ever-done-for-us/ ; T. Valletti, Debate: 'Doubt is their product'—The difference between research and academic lobbying, (2024) Public Money and Management, available at https://doi.org/10.1080/09540962.2024.2404249 .

[15] US DOJ, Assistant Attorney General Jonathan Kanter Delivers Remarks for the Fordham Competition Law Institute's 51st Annual Conference on International Antitrust Law and Policy, (September 12th, 2024), available at https://www.justice.gov/opa/speech/assistant-attorney-general-jonathan-kanter-delivers-remarks-fordham-competition-law-0 .

[16] J.P.A. Ioannidis, T.D. Stanley & H. Doucouliagos, The Power of Bias in Economic Research, The Economic Journal, 127 (October 2017), F236–F265. Doi: 10.1111/ecoj.12461; J. Ioannidis & C. Doucouliagos, What's to Know about the Credibility of Empirical Economics?, (2013) 27(5) Journal of Economic Surveys 997.

[17] See, *inter alia*, L. Bero, When big companies fund academic research, the truth often comes last, available at https://theconversation.com/when-big-companies-fund-academic-research-the-truth-often-comes-last-119164 ; S. Krimsky, Do Financial Conflicts of Interest Bias Research?: An Inquiry into the "Funding Effect" Hypothesis, (2013) 38(4) Science, Technology, & Human Values 566.

Research on the role of economists in competition law has so far focused on the contribution of individual, mostly academic economists, who have also been active in the enforcement of competition law, as enforcers and consultants to competition agencies or private parties[18]. The emergence of forensic economics and its associated market for competition expertise has profoundly reshaped both the academic study of competition economics and the development of competition law and policy, though this transformation has received insufficient scholarly attention. As competition law has increasingly embraced a "more economic approach," forensic economists' methodologies, research questions, and operational concepts have extended their influence well beyond litigation, penetrating deeply into economic research performed at universities and public research centers. This evolution has effectively dissolved the traditional boundaries between the commercial market for economic expertise and the broader intellectual marketplace of competition economics knowledge through the operation of various feedback loops, corporate funding of academic research offering such a feedback loop mechanism[19].

This study examines how the structure of these markets (the one for economic forensic expertise and the one for competition economics research), the links between them and the professional aspirations of some of the actors in the field have contributed to what Harry First and his co-author identified as competition law's democratic deficit. Capture by vested interests of the marketplace of knowledge/economic discourse in competition law and economics exemplifies this democratic deficit, the democratic ideal of self-government and autonomy being essential features of academia and scientific research.

The study does not question the need for the law to open up cognitively to social sciences, including the most recent advanced in economics. This dynamic cognitive openness should be an important feature of competition law. It should not however compromise the goals of the law as set by the underlying social contract (as the law is normatively closed) and be subject also to democratic accountability as to the choice of the economic theories, methodologies put forward in the enforcement of the law[20]. Building on First's foundational scholarship on the democracy/antitrust intersection, the study argues for reclaiming this democratic self-governing space of academia and knowledge-production in competition policy research by restricting efforts of academic capture by the industry. While this analysis primarily addresses competition economists, its implications extend to other forms of expertise, including legal scholarship. The study

[18] See, J. Baker, How economists influence antitrust: the contributions of Tim Bresnahan, Janusz Ordover, Steve Salop, and Bobby Willig, op. cit.

[19] See, I. Lianos, The Emergence of Forensic Economics in Competition Law: Foundations for a Sociological Analysis (September 1, 2012). CLES Working Paper No. 5/2012, Available at SSRN: https://ssrn.com/abstract=2197025 .

[20] The need to combine cognitive/epistemic openness and normative closure has been a recurrent feature of my work: see, I. Lianos, *La Transformation du droit de la concurrence par l'analyse économique* (Bruylant, 2007); I. Lianos, Lost in Translation? Towards a Theory of Economic Transplants, (2009) 62(1) Current Legal Problems 346.

honours First's academic legacy and extends his crucial insights into the relationship between antitrust and democracy.

The purpose of this work is to document and problematise the corporate funding of competition policy research, either in the field of its application (forensic economics) or in that of its generation (mostly academic research done in Universities). My purpose is not to criticise the use of economic evidence and knowledge within the enforcement of the law, nor to chastise individual economists, most of them decent people motivated by noble goals[21]. Rather, adopting a sociological approach to analyse the different markets for economic expertise, the study points out the mechanisms by which the rising influence of corporate interests in the production and dissemination of knowledge concerning competition law enforcement may lead to these markets not functioning well. Follow suggestions for ways to improve the practice of competition policy and law enforcement to prevent or limit such alleged "capture", particularly the implementation of mandated disclosure of industry funding of competition research imposed not only on those funded but crucially on corporate funders, and a funding matching requirement restructuring the entire research funding ecosystem to align corporate incentives with the public interest in unbiased research.

The analysis proceeds in four parts. First, it traces the emergence of economic experts and consultants as a distinct profession, explaining how this development brought issues of bias in economic research to the forefront, initially within forensic economics. Second, it examines various forms of expert bias, extending beyond the market for applied economic expertise in competition regulation to encompass the broader marketplace of competition economics ideas. Third, it explores how these biases may stem not only from market dynamics but also from the concentrated structure of competition economics expertise, considering both supply and demand factors, as well as strategic efforts to influence competition policy discourse. While grounding its theoretical framework in the sociology of professions and knowledge, this study leaves empirical validation for future research.[22]. Finally, it evaluates existing tools for containing bias and capture in forensic economics expertise markets and in the marketplace of knowledge in competition economics and proposes regulatory reforms for the future. The last Section concludes.

I. The professional project of forensic economics and their influence in the production of knowledge in competition economics

One may distinguish between two marketplaces; the marketplace for economic ideas (principally academia), and that for forensic economic expertise and advice (principally consultants). My initial hypothesis is therefore that there are two distinct sub-communities in industrial organization economics: forensic economists working in the private or public sector, applying economic ideas to concrete real problems of competition law enforcement, and academic economists, producing economic

[21] L. Zingales, Preventing Economists' Capture, op. cit., 151 seems to also depart from this premise.
[22] On this, see, I. Lianos, *The Making of Competition Law and Economics* (forth. 2025).

knowledge of general application (useful for a variety of contexts), through introspection, theoretical digressions, empirical analysis, experiments etc.

This Section articulates the role of forensic economics in competition law enforcement, exploring the structure of the market for economic expertise that has emerged in recent years. It then explores the knowledge ecosystem in competition economics through a market framework, mapping the relationships between "buyers" and "sellers" of competition economic analysis. While using market terminology to describe intellectual exchange might seem reductive, this metaphor serves a practical purpose: it illuminates the complex interactions between two traditionally distinct domains—forensic economics and the academic production of knowledge in competition economics and reveals how ideas, influence and power flow between key stakeholders in both domains, the two forming now an almost unified strategic field of action.

Forensic economics

While consulting economists have acted as witnesses in United States (US) antitrust trials since at least the 1920s, they have done so regularly only since the 1960s[23]. Connor observes that the first refereed economic journal articles explaining some of the methods used by economists in antitrust litigation were published in the late 1960s and 1970s[24]. The field of "forensic economics" is a more recent occurrence. Forensic economics extends beyond antitrust and has been defined as "the analysis of the participation of economists in the litigation process"[25]. The primary focus of forensic economics is the measurement and valuation of economic loss (damage)[26] and in the competition law/regulatory context, building theories of harm and efficiency justifications for business conduct[27].

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[23] I. Lianos, "Judging Economists": Economic expertise in competition litigation: a European view. In I. Lianos, & I. Kokkoris (Eds.), *The Reform of EC Competition Law: New Challenges* (Kluwer, 2010), 185.

24 J.M Connor, Forensic Economics : An introduction with special emphasis on price fixing, (2008) 4(1) *Journal of Competition Law & Economics* 31; M.P. Schinkel, Forensic Economics in Competition Law Enforcement, (2008), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1009573 .

25 T. R. Ireland, 'The Interface between Law and Economics and Forensic Economics', (1997) 7 J. Legal Econ. 60, 60. Remark, however, the broader definition provided by E. Zitzewitz, Forensic Economics, February 2011, available at https://www.aeaweb.org/articles?id=10.1257/jel.50.3.731, p. 1.

26 See, for instance, M. Berenbult, *Litigation Accounting: the Quantification of Economic Damages* (Scarborough, Ontario: Carswell, 1995); R.L. Dunn, *Recovery of Damages for Lost Profits* (4th ed., Westport, CT: Law press, 1992); C.L. Knapp (ed.), *Commercial Damages: A Guide to Remedies in Business Litigation* (Matthew Bender, 1993); A.N. Link, *Evaluating Economic Damages: A Handbook for Attorneys* (Westport CT: Quorum Books, 1992); G. Martin, *Determining Economic Damages* (7th ed., Santa Ana, CA: James Publishing, 1995); G.V. Smith and R. Parr, *Valuation of Intellectual Property and Intangible Assets* (2nd ed., New York: Wiley, 1994); P.A. Gaughan and R. J. Thornton (eds.), *Litigation Economics* (Greenwich, CT: JAI Press, 1993); R. Thornton & J. Ward, The Economist in Tort Litigation, (1999) 13(2) The Journal of Economic Perspectives, pp. 101-112, at 101.

27 For a recent discussion, see J Broulik, What Is Forensic Economics? In P. Cserne, & F. Esposito (Eds.), *Economics in Legal Reasoning* (Palgrave Studies in Institutions, Economics and Law, 2020), 83.

In the last three decades, economists have increasingly been involved in competition authorities' cases and are frequently called to testify as experts in court proceedings, either invited by the parties or, more rarely, appointed by the courts[28]. In their study on the development of forensic competition economics in Europe and in the US, Damien Neven[29] and Jonathan Baker[30] noted the increasing importance of forensic economic evidence in several steps of competition law litigation. Neven offers a valuable analysis of how the market for competition law economic expertise has evolved from its earlier reliance on individual academic experts in Industrial Organization, who provided occasional consulting between the 1960s and the late 1980s, to today's landscape dominated by large corporate consultancies that systematically concentrate and deploy economic expertise. This structural transformation reflects a fundamental shift in how economic advice is organized and delivered in competition law enforcement, moving from an ad hoc, academically-oriented model to an institutionalized, corporate-driven approach that brings together diverse economic expertise under unified professional service firms[31]. He observes that:

> "*(w)ith the implementation of the merger regulation in 1990, demand for economic advice seems to have risen. NERA opened an office in London in 1984 and London Economics was set up in 1986. Lexecon (Ltd) was set up in January 1991 and up until the mid-nineties, Lexecon, London Economics and NERA were the main suppliers with a total amount of fees around £ 2.5 million in 1995. This turnover corresponds to EU related competition work but also to competition work in national jurisdictions. UK related work accounts for the vast majority of the latter. The market for EU related advice grew rapidly in the late nineties, as the number of merger notifications (as well as other types of cases) grew but also following the preparation and implementation of the notice on market definition [adopted by the European Commission]. This notice, inspired by the US practice, used economic*

[28] See, P.E. Areeda, Are Economists Taking Over?, in E. M. Fox & J. T. Halverson (eds.) *Antitrust Policy in Transition: The Convergence of Law and Economics*, (Chicago: Section of Antitrust Law of the American Bar Association, 1984), 23; W.E. Kovacic, The Influence of Economics on Antitrust, (1992) 30 Economic Inquiry 294; F.S. McChesney, The Role of Economists in Modern Antitrust: An Overview and Summary, (1996) 17(2) Managerial and Decision Economics, 119; J.K. MacKie-Mason & R. Pfau, Inducements to Advocacy: The Economist as Independent Expert, in D. J. Slottje (eds.) *The Role of the Academic Economist in Litigation Support*, (Amsterdam: North-Hollan, 1999), 207; F.M. Scherer, Economic Consulting, Fire Fighting, and Similar Adventures in Daniel J. Slottje (eds.), *The Role of the Academic Economist in Litigation Support* (North-Holland, 1999), 129; D.J. Slottje (ed.), *The Role of the Academic Economist in Litigation Support* (North-Holland, 1999); I. Lianos, "Judging Economists": Economic expertise in competition litigation: a European view. In I. Lianos, & I. Kokkoris (Eds.), *The Reform of EC Competition Law: New Challenges* (Kluwer, 2010), 185; J. Broulik, *Economics in Legal Decision-Making* (Doctoral Thesis, Tilburg University, 2017).

29 D. Neven, Competition Economics and antitrust in Europe, (2006) 48(21) Economic Policy 741-781.

30 J.B. Baker, The Case for Antitrust Enforcement, (2003) 17(4) Journal of Economic Perspectives, 27-50.

[31] This is not picked up by other studies on the role of economists in competition law enforcement, such as J. Baker, How economists influence antitrust: the contributions of Tim Bresnahan, Janusz Ordover, Steve Salop, and Bobby Willig, op. cit. who examines the role of specific economists on antitrust enforcement but does not engage with the role of economic consultancies.

concepts explicitly. […] For the following ten years, total turnover grew at some 25-30% per year, reaching about £ 24 million in 2004"[32].

These estimations, from 2006, were based on assumptions that economic consultancy fees would amount to about 15 % of the total amount of legal fees, this percentage being, more-or-less, similar in Europe and in the US. Connor notes that antitrust economic consulting in the US must have exceeded $800 million per year in the late 1990s[33]. Writing in 2024, Valletti estimates that the competition law and economics related business of the top three economic consultancies "is worth well above $1 billion per year"[34]. The industry has also moved towards global consolidation with a small number of global consultancy firms with operations in Europe and in the United States, and increasingly globally, and some smaller boutique firms in important national jurisdictions around the world. Neven notes that the market structure in the market for forensic economic expertise on competition issues is "characterized by the presence of three firms with global (or at least transatlantic) operations" and highlights that "(i)n this respect, economic consultancy seems to have followed the same path as legal advice, both moves being triggered by clients with operations and antitrust filings across jurisdictions"[35].

More recent reports put the broader economic consulting services market to around $22-30 billion turnover in 2024 (revenue collected for economic consulting services globally)[36], which is still a fraction of the global consulting services market evaluated globally to be around $200-2210 billion in 2022[37] and forecasted to increase to around 290 billion in 2030[38]. The specific segment for forensic economics and antitrust consulting may represent a smaller portion, as mentioned by some authors possibly in the range of $1 billion dollars per year, depending on the volume of antitrust cases and regulatory activity in different jurisdictions.

Some economic consultancy services are very well-known for providing forensic economics services in the field of competition and antitrust law. The main firms include NERA Economic Consulting, Charles River Associates (CRA), Compass Lexecon, RBB, The Brattle Group, Economists Incorporated, Analysis Group, OXERA, and PwC Economics. The annual survey GCR100 for 2023 lists 3 "elite" economic consultancies active in competition economics expertise/advice, 8 "outstanding", 9 "highly recommended, and 4 "recommended". These firms concentrate most, if not all, the turnover (and revenues) for the market for economic expertise/advice in competition

32 D. Neven, Competition Economics and antitrust in Europe, op. cit., at p. 748.

33 J.M Connor, Forensic Economics : An introduction with special emphasis on price fixing, (2008) 4(1) *Journal of Competition Law & Economics* 31.

34 See, T. Valletti, What Have The Consultants Ever Done For Us? (February 28th, 2024) available at https://www.promarket.org/2024/02/28/what-have-the-consultants-ever-done-for-us/ .

35 D. Neven, Competition Economics and antitrust in Europe, op. cit,, at 750.

36 See for instance https://www.kentleyinsights.com/economic-consulting-services-market-size-growth-report/

37 See for instance https://www.statista.com/topics/8112/global-consulting-services-industry/

38 See for instance https://www.zionmarketresearch.com/report/consulting-services-market

investigations and litigation. From a reputational perspective we can therefore observe a clear hierarchy, between a small group of economic consultancies dominating the market for economic expertise/advice in competition economics[39]. Competition economics forms a sizable part of the activity of these firms, with, according to the same GCR statistics, 30% to 100% of their economists' staff being specialised and active in competition economics.

In terms of headcount, GCR100 notes that the 3 "elite" economic consultancies employ 1241 economists specialised in competition economics, while the 8 "outstanding" consultancies operate with 1716 competition economists. In total, the number of competition economists employed by the 24 economic consultancies listed in the GCR100 amounts to 3422 economists active in competition economics, the top 5 firms in terms of employment (as identified by the GCR100) employing more than 55% of all the economists active in competition law enforcement in the economic consultancy sector.

Competition economists working as in-house consultants are not included in these figures, but it is not infrequent that large corporations, such as Google, Microsoft, Amazon, IBM, Goldman Sachs employ chief economists with economic teams to reflect on competitive strategy, and also provide support with regulatory and competition law enforcement issues whenever these arise[40].

The market for competition economics consulting exhibits clear oligopolistic features, dominated by a few global firms capable of serving multinational clients across multiple jurisdictions. Entry barriers are substantial, requiring not only expertise in Industrial Organization (IO) economics, but also experience working with lawyers, knowledge of competition law procedures, established credibility, and extensive professional networks. These firms engage in mutual monitoring of pricing and services, typically aligning their fee structures with those of major law firms in the field, enabling them to maintain significant profit margins[41].

An important factor to consider is the parallel development of a concentrated market structure for economic consultants in competition economics and a concentrated market of a small circle of multinational law firms in the legal side. The corporatisation of forensic economics, with the emergence of multinational economic consultancies specialised in support services for competition litigation, is more pronounced in the application of Industrial Organization (IO) economics to competition

[39] See, https://globalcompetitionreview.com/survey/gcr-100/24th-edition .

[40] See, for instance, the appointment of professor Hal Varian as chief economist of Google in 2002.

[41] D. Neven, Competition Economics and antitrust in Europe, op. cit., 750. The profit margins of the economic consultancies range between 15-30%, still however lower than top-tier law firms margins which in the London, New York and Brussels legal markets see their margins be between 30% to 50% or more. See, https://www.law.com/international-edition/2024/06/07/the-uk-law-firms-with-the-highest-profit-margin/?slreturn=2024102275854 ; https://adamsmithesq.com/2014/06/how-profitable-are-law-firms-really/ ; https://www.starterstory.com/ideas/law-firm/profitability . See also PWC, Facing the Future with Confidence, PwC Law Firm's Survey 2021, at 10 (noting that top 10 law firm's profitability in 2021 was 38%, close to the record 40% reported in 2014).

and regulatory litigation, than in other areas of practice regarding economic expertise. The distinctive role of forensic competition economics extends beyond providing mere evidence, as economic analysis serves a fundamental normative function in competition law. This dual purpose—both evidential and normative—distinguishes forensic competition economists as a unique professional community, separate from both general forensic economists and academic economists.

IO and competition economists have been integrated in the public authorities involved in the monitoring of competition and/or enforcement of competition law, probably to a larger extent than in other area of regulation, such as environmental regulation, employment discrimination, or even IP and trademark offices. Neven noted that in 2004 there were 83 professionals with a background in economics and around 184 with a background in law (hence roughly a ratio of 1 to 2) at the European Commission, up from a ratio of 1 economist to 7 lawyers in the early 1990s[42]. To this one could add the establishment in 2003 of the position of chief economist of the European Commission with a team consisting of 25-30 PhD economists in 2024[43]. In his study, Neven estimated that there were more than 100 professional economists working with the US Department of Justice Antitrust Division and the US Federal Trade Commission. The numbers have since increased considerably, with approximately 80 PhD-holding applied microeconomists working at the Bureau of Economics at the US Federal Trade Commission in 2024[44], in addition to a number of non-PhD economists working in other Bureaus of the USFTC, and more than 50 microeconomists at the Experts Analysis Group at the Department of Justice Antitrust Division[45]. As is noted in the most recent OECD Competition Trends covering competition law enforcement between 2015 and 2022 in 77 jurisdictions, competition authorities' staff (all categories) amounted to 9228 individuals in 2022. The percentage of economists to the whole expert staff varies from jurisdiction to jurisdiction, going from around 8% to more than 50% in some jurisdictions.

We may therefore conclude that the expansion of economic consultancies worldwide and the increasing recruitment of economists by number of national competition authorities in Europe, Asia, Latin America and Australia during the last five years may put the figure of forensic economists, working in the private sector or governmental bureaucracies to a figure of more than 5000 people[46]. The large and growing size of the sector, coupled with its important and strategic role in competition litigation, adds to the importance of understanding the systemic biases that may be present among its actors.

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[42] D. Neven, Competition Economics and antitrust in Europe, op. cit., 751.

[43] See, https://competition-policy.ec.europa.eu/chief-competition-economist_en .

[44] See https://www.ftc.gov/about-ftc/bureaus-offices/bureau-economics/careers-ftc-bureau-economics/economist-recruiting

[45] See https://www.justice.gov/atr/about-eag#:~:text=Along%20these%20lines%2C%20EAG%20can,various%20institutions%20with%20various%20specializations

46 According to the author's calculations. Note that the Antitrust Section of the American Bar Association had in recent years an average membership of 15000, some of which are economists..

The marketplace of economic knowledge

Focusing on this market for professional (forensic) economics services for competition investigations and litigation may seem reductionist, as it does not take into account the broader marketplace of ideas that may impact on or influence not just the evaluation of the available evidence in a specific case in front of a competition authority or court, but more generally on public discourses about market economy[47], the dominant paradigm of competition economics that would guide decision makers in their activity, the subsequent policy discussion and also the prevailing consensus in the way "proper" competition economics should be done.

Academic economists have been traditionally considered as the most prominent contributors to the marketplace of ideas. The leading role they play in this marketplace results from the fact that they manage the main academic journals of the discipline in which research on competition economics and IO is published (the American Economic Review, the Rand Journal of economics, the Journal of Competition Law and Economics the Review of Industrial Organization, the International Journal of Industrial Organization, Econometrica, as well as their participation as reviewers in these journals. Peer review also plays an important role for the progression of the academic career (e.g. promotions, grant applications). As academic economists are primarily responsible for the transmission of the values and principles of the discipline to their students during their formative undergraduate years, and the training of both professional and junior academic economists, through the provision of graduate and doctoral education, they hold a central role in determining the overall academic consensus and the boundaries of the discipline of competition economics/Industrial organization[48] and in the selection of the prevalent methodologies and conceptual frameworks.

Unlike the concentrated market for forensic competition expertise, the broader marketplace for economic knowledge in competition appears, at first sight, more diverse and decentralised. Although estimating the exact number of economists working as faculty in universities globally can be challenging due to variations in data reporting and definitions of "economist", the US Bureau of Labor Statistics estimates that there were 12210 economists in 2023 in the US teaching courses in economics or combining teaching and research in the post-secondary sector[49]. There are no equivalent numbers for Europe and other parts of the world. It is not possible to identify how many of these economists are in full-time positions as well as the number of economists teaching and researching competition economics or other neighbouring fields in economics. Although academic economists studying competition policy are distributed across numerous institutions—with over 230 U.S. universities alone offering graduate economics programs

[47] M. Fourcade, The Superiority of Economists, (2015) 29(1) Journal of Economic Perspectives 89.
[48] In the sense of "boundary work" as mentioned by S. Jasanoff, *The Fifth Branch* (Harvard University press, 1998), 13.
[49] See https://www.bls.gov/oes/2023/may/oes251063.htm .

that include industrial organization, econometrics, and competition policy courses—a select few programs with international prestige wield disproportionate influence over knowledge production in economics in general, and competition economics in particular.

Usually, IO (competition) economics and microeconomics is taught in all, or most, undergraduate economics programmes, which means that there should be some teaching capacity in the area, in addition to any specific investment made in building research capacity in the area, as has been done by some Universities, the most prominent example being the Toulouse School of Economics (TSE)[50]. There are 275 academic institutions in the area of industrial competition that are listed the top 10% of institutions globally, thus indicating that there are 2759 institutions overall that are active in this area[51]. The Association of Competition Economics (ACE)[52], the largest association regrouping economists working in the public and private sector in Europe often gathers between 250-300 participants in its annual conference[53], probably the most attended competition economists' event in Europe.

Public institutions or bureaucracies may also employ economists active in the marketplace of ideas including research foundations, such as the National Bureau of Economic Research, Ministerial Departments involved in competition policy but also in-house economists in publicly-owned business entities, which may participate to the marketplace of ideas through publications (academic articles, reports) or participation in conferences and public events.

In recent years, as competition law enforcement has seen its remit expand in multiple jurisdictions, we have witnessed the involvement of competition economists in a number of international organizations, research foundations, think tanks, non-profits and other non-governmental organizations involved or interested in competition policy and competition law enforcement, such as the OECD, UNCTAD, World Bank, the International Monetary Fund, the American Antitrust Institute, the Open Markets Institute, the Institute for Policy Integrity, the Progressive Policy Institute, the International Centre for Law and Economics, the Heritage Foundation, the Cato institute, the George Mason's University's Mercatus Centre, the Competitive Enterprise Institute, and lobby groups, such as the American Chamber of Commerce, the Internet Association, the Information Technology Industry Council, the Business Roundtable. These employ or are associated with an increasing number of competition economists, although their number tends to be rather limited in comparison to the other constituents of the competition economics marketplace of ideas.

Although the supply side of this "marketplace" of ideas seems at first sight decentralised, it is important to acknowledge the importance of academic reputation, first concerning the different teaching programmes and their Faculty, which may provide

[50] See, https://ideas.repec.org/top/top.com.html .
[51] Although only 1571 authors, which means that many of these authors may be affiliated with more than one institution: see https://ideas.repec.org/top/top.com.html .
[52] See, https://www.competitioneconomics.org .
[53] Communication of the author with the President of the ACE, Dr. Hans Zenger.

a significant competitive advantage in terms of their influence in the marketplace of ideas (measured by the number of their citations in publications in the top 5 journals[54]), and second of few economists academic "stars" that play a hub role for the production of academic research[55] or of a handful of leading and impactful research programmes/centers or research networks globally[56]. This shows the existence of significant geographic disparities and differentials of influence in the marketplace of ideas[57]. Although these results come from empirical research on all areas of economics and not just competition economics, it is reasonable to expect such concentration and differential impact to take place also in this context. Similarly, international organizations, such as the OECD, the IMF, the World Bank, UNCTAD, or old and well-respected research foundations and think-tanks may benefit from an institutional reputation that may provide more opportunities of impact on the marketplace of ideas to the economists that are affiliated to them.

From separate reward mechanisms to a unified field?

The reward mechanisms for each of these two markets are not the same. In the market for services of economic expertise/advice, the experts are usually hired by companies or by law firms involved in competition investigations or litigation with the purpose to provide expert evidence that supports them in their allegations and argumentation, and their remuneration is part of the litigation costs or the costs for legal compliance, which of course are more significant if the party in question has been successful in the specific litigation or matter to be resolved by a competition authority. The reputation and overall competence of the expert as this results from a past successful record, and/or the specific issues raised in the economic consultancy in question (as this may require industry or methods-based specialization) play an important role in their positioning in this market and may lead to the payment of hefty consultancy fees.

In the marketplace for ideas for economics of competition policy and enforcement, the principal actors are academics with institutional affiliations with Universities and public research centers. These earn a salary, which is sometimes completed with other sources of income, either royalties from publications, or side

[54] For a discussion, D. S. Hamermesh, Citations In Economics: Measurement, Uses, and Impacts, (2018) 56(1) Journal of Economic Literature 115.
[55] S. Goyal, M. J. van der Leij & J.L. Moraga-González, Economics: An Emerging Small World, (2006) 114(2) *Journal of Political Economy* 403.
[56] See the discussion on "citations networks" in A.S. Önder & M. Terviö, Is Economics a House Divided? Analysis of Citation Networks, (2015) 53(3) Economic Inquiry 1491.
[57] See F. Glötzl & A. Ernest, Six Dimensions of Concentration in Economics: Evidence from a Large-Scale Data Set, (2019 32(4) Science in Context 381 (showing that articles in which authors from the USA or Canada participated received 72% and those with Western European authors 24% of all citations among articles published between 1980 and 2014); E. Aigner, J. Greenspon & D. Rodrik, The Global Distribution of Authorship in Economics Journals (February 2024), available at https://drodrik.scholar.harvard.edu/sites/scholar.harvard.edu/files/dani-rodrik/files/global_distribution_of_authorship_021724.pdf .

consultancy work[58]. This is sometimes provided in the context of a forensic competition economics consultancy to which they may contribute a small or a more significant part of their time. It is possible that the income generated by consultancy and professional services related activity might be more significant than the academic salary and royalties from publications[59]. However, the reward system in science is managed by the scientific community itself. This does not exclude the intervention of the market mechanism at a second stage, after the social reward structure of collegiate science took place, "picking up" the disclosed knowledge or information brought in by the open science phase in order to develop new products and services in the forensic market for economic expertise.

Reputation may be a significant drive for activity in the putative marketplace of ideas, as it may lead to academic promotion and an increase of the academic salary, offering because of this reputation further opportunities for other lucrative activities, either with monetary compensation, such as consultancies for the private and/or the public sector, royalties from publications, invitation to fee-paying lectures or with non-monetary compensation, such as esteem by peers. High-status economists, particularly editors of prestigious economic journals[60], are also taken more seriously than those of other economists, leading to a rich-get-richer effect[61]. This high esteem may lead to appointments in prestigious academic positions or learning societies, government positions, more extensive media presence, participation in international conferences and events, etc. There is important empirical research on how reward systems shape behaviour in academic science, through different conduits, such as motivation, cultural socialization, psychological contract, marketplace and system effects[62]. The existence of different reward systems may therefore influence the strategies of the various actors involved in each of these markets.

Reward systems are institutionalized to respond to demand factors, that are theoretically different in each of the two "markets". Demand for forensic competition economics services is usually driven by corporations that are involved in competition authorities' investigations (including merger activity), litigation in courts or corporate compliance to competition legislation. Due to the asymmetrical character of competition law, and the fact that it is principally enforced against relatively large or quite powerful

[58] See, L. Zingales, Preventing Economists' Capture, op. cit. 125 (on the reasons of capture of economists, including career incentives and opportunities in consulting and careers outside academia).
[59] For instance, it was reported that in some cases the academic salary can be less than 25-30% of the income generated by different sorts of consultancy services. See, B. Mullins, The Hidden Life of Google's Secret Weapon, (June 6th, 2024), available at https://www.wsj.com/us-news/law/google-lawyer-secret-weapon-joshua-wright-c98d5a31 (reporting for an annual salary of around $400000 and consultancy income during the same period of more than $1 million).
[60] See, L. Zingales, Preventing Economists' Capture, op. cit. 125 (noting the crucial role of journal editors in the process of producing and disseminating economic knowledge and the risk that "if a few editors are captured, this effect spreads out through the entire profession").
[61] M. Javdani & H.-J. Chang, Who said or what said? Estimating ideological bias in views among economists, (2023) 47 Cambridge Journal of Economics 309.
[62] K. O'Meara, Inside the Panopticon: Studying Academic Reward Systems. In: Smart, J., Paulsen, M. (eds) *Higher Education: Handbook of Theory and Research. Higher Education: Handbook of Theory and Research,* (vol 26. Springer, 2011), 161.

corporations, the demand in this market is driven by these large economic players and their interests. Although the development of private enforcement and class actions has been a feature of US antitrust law for decades, leading to the emergence of other market players in the demand side of this market for professional economic expertise/advice, such as consumers and smaller undertakings, damages actions for infringement of competition law have not taken of so far significantly in other jurisdictions. Hence, there is a risk that the interests of large corporations drive the market for economic expertise in competition policy and enforcement.

In light of the fact that most of the publication and other intellectual activity by economists following their formal training is geared towards enhancing their employment opportunities in top academic institutions, the main demand factor influencing the marketplace of ideas is, in principle, the employment market for academic economists, where mostly public educational institutions, such as Universities and research centres are active. In view of the importance of the peer-review process in academic selection, the final users of academic research are first and foremost other academics in the specific field which is the primary audience for the research, also in view of the gate-keeping function they exercise regarding access to prestigious academic journals for publication and thus their control over access to a broader audience for one's research work. This autonomy and self-reference constitute defining characteristics of academia as a self-governed social sub-system that operates following rules it has mostly set for itself[63]. An important driving force for knowledge production in academia is also public funding of academic research, Universities and research centres being traditionally seen as key players in national innovation systems[64].

However, external factors, such as industry funding of research, have become prominent characteristics of scientific production during the last three decades, leading some to even argue that this leads to new modes of knowledge production and a different social contract for science[65]. Recent research has highlighted that scientific knowledge is increasingly the product of trans-disciplinary collaboration and takes place in a heterogeneous environment, where not only Universities, but also the public and the private sector contribute to knowledge production. Gibbons, Limoges, Nowotny, Schwartzman, Scott and Trow employed the term of Mode 2 knowledge to distinguish science produced in a "context of application", according to a "dialogic process" that incorporates multiple societal interests and institutions, such as universities, research centres, corporations, consultancies[66]. Mode 2 knowledge is profoundly contextualised: for example, the traditional peer review systems of Mode 1 science are supplemented by

[63] See for instance the seminal work of M. Polanyi, The Republic of Science: Its Political and Economic Theory, (1962) 1(1) Minerva 54.

[64] See R.R. Nelson (Ed.), *National Innovation Systems: A Comparative Analysis* (Oxford University Press, 1993).

[65] D.H. Guston, K. Kenniston, Introduction: the social contract for science, in D.H. Guston, K. Kenniston (Eds.), *The Fragile Contract*, (MIT Press, 1994), 1.

[66] M. Gibbons, C. Limoges, H. Nowotny, S. Schwartzman, P. Scott, M. Trow, *The New production of Knowledge: The Dynamics of Science and Research in Contemporary Societies* (SAGE, 1994).

additional criteria of economic, political, social and cultural nature. Mode 2 knowledge does not substitute but only complements Mode 1 knowledge. Nevertheless, its standards of validity are different. Some authors even claim that Mode 2 knowledge production illustrates a shift from "quality control" to "quality monitoring", a concept permitting the inclusion of new peers, such as users and lay persons, in the evaluation of knowledge and awarding greater consideration to the instrumental concerns of scientific knowledge, in the context of its application[67].

This is particularly significant in view of the rise of industry funding of academic research, particularly in competition economics, at the same time as the share of public funding for universities and academic research is decreasing. Although, due to the lack of transparency in the industry funding of academic research in competition economics, it is not possible to establish with certainty the relevant figures, anecdotal evidence that became public shows that these are quite significant and could therefore constitute an important part of the funding of academic research in the area[68], eventually with the purpose to influence the academic agenda in the discipline[69], thus eventually merging the two initially separate systems of reward put in place. The fact that some of the major actors in academic competition economics are also active in the market for consulting raises the question about the interactions between these two markets and the influence large corporations may exercise on the scientific production in competition economics, through corporate funding of academic research but also through the oligopsony they benefit in the demand for economic expertise/advice services.

Dasgupta and David have clearly shown that changes brought to the underlying reward system of science will have particular implications on the "autonomy" of the scientific process, "in the sense of the scientific community's self-governance and control over the research agenda[70]. Others, like Wible have developed a complements view of the organization of the scientific process, with market and nonmarket institutions being separate institutions but also fulfilling the "dual nature of the scientific enterprise": a unique non market structure and a "secondary science" relying on markets[71].

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[67] S. Hemlin & S.B. Rasmussen, The shift in academic quality control, (2006) 31(2) Science Technology and Human Values 173-198.

[68] O. Solon, Google spends millions on academic research to influence opinion, says watchdog 9The Guardian (July 13th, 2017), available at https://www.theguardian.com/technology/2017/jul/13/google-millions-academic-research-influence-opinion .Some of the empirical research on funding for economics, in general and not only competition economics, is only reporting public funding: see M. Mariathasan & R. Marimon, Research Funding for Economics in Europe (Report of the European Economic Association Standing Committee on Research and the Academic Careers Observatory of the Max Weber Programme, European University Institute, 2011).

[69] M. Bertrand, M. Bombardini, R. Fisman & F. Trebbi, Tax-Exempt Lobbying: Corporate Philanthropy as a Tool for Political Influence (NBER Working paper, 24451, 2018), 10.3386/w24451 (noting how firms deploy their charitable foundations as a form of tax-exempt influence seeking); L. Zingales, Towards a Political Theory of the Firm, (2017) 31(3) Journal of Economic perspectives 113.

[70] Partha Dasgupta & Paul A. David, Towards a New Economics of Science, (1994) 23 Research Policy 487, at 505

71 James R. Wible, *The Economics of Science: Methodology and Epistemology as if Economics Really Mattered* (Routledge, London, 1998), at 172.

The distinction between academic economists and forensic economists is not something specific to economics. Krohn distinguished three types of research situations, depending on the reward structure and the time spent for non-research activities:

1. "Academic basic research: scientist were hired to perform limited non-research duties, and obtained outside support for (presumably) theoretical research of their own choice.
2. Open-applied research: scientists were hired to perform limited non-research duties and obtained outside support for (presumably) practical research of their own choice.
3. Bound-applied research; scientists were hired to work full-time on problems related to the purposes of their employing organizations"[72].

Forensic competition economists (working in the public or private sector) are situated across the pole that goes from "bound-applied research" to "open-applied research", as some of them are also active academics, while academic economists concentrate at the pole of "academic basic research", with some being occasional consultants and could thus be included in the "open-applied research" category. The intermediary category of academics that are also acting as forensic economists is of particular importance for our study, as they might act as communicators of the values of each pole to the other, and indicate that the reward systems of the market for professional services in competition economics may sometimes be imbricated with that of the marketplace of ideas, establishing the possibility of feedback loops with regard to the positioning (and subsequent rewards) of an actor active in both markets. After identifying two distinct markets for economic knowledge - one for professional services in competition cases and another for competition economics knowledge and establishing how both markets sometimes involve the same actors and therefore share some form of indirect interaction, eventually merging their separate rewards systems and challenging their autonomy, I now turn to explore how different forms of "bias" may impact on the quality dimension of competition in these two markets.

II. Building the externality story: bias and conflict of interests affecting forensic and academic competition economics

Providing professional advice to a party in the context of an adversarial process of decision-making or litigation has been long recognized as being a possible source of bias in the analysis provided[73]. Economic evidence is often presented by experts employed by parties and providing advice on the economic merits of the case. These represent

[72] Roger G. Krohn, *The Social Shaping of Science* (Greenwood Pub., 1971), p. 115.

[73] On the role of expert witnesses, see L. Hand, "Historical and Practical Considerations Regarding Expert Testimony", (1901) 15 Harvard L Rev 40. To the view that party experts' role was to educate or translate economic knowledge to the judge (or the jury) some have opposed the characterization of experts as "advocates". For a discussion, see I. Lianos, "Judging Economists": Economic expertise in competition litigation: a European view. In I. Lianos, & I. Kokkoris (Eds.), *The Reform of EC Competition Law: New Challenges* (Kluwer, 2010), 185.

"persistent communities of practice outside the legal domain" but linked to it[74]. To the extent that they provide services to their clients, there is an inherent risk of bias, something the legal system recognizes, as it has imposed on these experts, in addition to their duty to their clients, a "duty to the court"[75].

Exploring the judicial assessment of expert evidence in general, Déirdre Dwyer mentions three categories of interest that may cause some form of expert bias and therefore may give rise to expert disagreement: personal interest, financial interest and intellectual interest[76]. These may exist "externally to the instant litigation", what she calls "predisposition" or arise in direct relation to the litigation, which she calls "involvement"[77]. Personal bias may arise because of moral opinions or personal relations, when the expert is associated with one of the parties (family, member of a professional organization). Financial interest originates when "the expert is employed by the party on an ongoing basis, beyond the scope of immediate litigation"[78]

Intellectual predisposition or involvement results from the fact that the expert shares a particular theory or, for instance, because she/he participates to a specific school of thought, which will influence her expertise. Expert bias may be "conscious", "where the expert chooses to adapt her opinion in order to favour one of the parties" or "unconscious", where the expert's opinion is trapped to a specific heuristic or schema, that of a specific theory or scientific discipline, for example. Déirdre Dwyer concludes that "to remove competing expert evidence does not of itself remove the problems of expert disagreement and bias", but simply "removes the issue from the sight of the tribunal[79]. The adversarial process may exacerbate the risk of expert bias because of financial interest defended by each party expert although it could be useful to reduce the risk of intellectual bias. The asymmetry of knowledge between the experts and the judges or juries may also exacerbate the risk of biased expertise[80].

Reputation effects may dissuade the expert from behaving opportunistically and from providing biased information, particularly if the expert is a repeat player in this market for professional economic advice. Credibility is an important asset that the expert has interest to preserve in order to operate in the market of legal expertise and maintain the value of her services. The market for experts may in this case have a disciplining effect in ensuring that the expertise has the required quality. Nevertheless, it is possible that the disciplining effect of the market may not work well. The expert might adopt a strategy of

[74] Déirdre Dwyer, *The Judicial Assessment of Expert Evidence* (Cambridge Univ. Pres, 2008), at 6.
[75] According to Part 33.2 Civil Procedure Rules, "An expert must help the court to achieve the overriding objective by giving objective, unbiased opinion on matters within his expertise". Part 35.3 Civil Procedure Rules: "This duty overrides any obligation to the person from whom he has received instructions or by whom he is paid".
[76] Déirdre Dwyer, *The Judicial Assessment of Expert Evidence* (Cambridge Univ. Pres, 2008), at 76.
[77] Ibid., 163
[78] Ibid., 167.
[79] Ibid., at 178
[80] As noted by R. A. Posner, 'The Law and Economics of the Economic Expert Witness', (1999) 13(2) Journal of Economic Perspectives 91, 93 experts may hide behind "an impenetrable wall of esoteric knowledge" and therefore can easily mislead judges and juries.

signalling an intellectual interest to secure continuous employment by a certain category of clients. For example, an expert may adopt a theoretical starting point which is generally positive to defendants or plaintiffs in a particular industry or area of law. It is often the case that parties shop around to identify the experts that will be the most favourable to their cause. The prospect of a continuous flow of cases from clients with a high risk of repeated litigation (e.g. dominant firms, particularly in the IT technology sector) may well motivate experts to specialize in a specific kind of argument as a signal to potential clients in order to attract employment. The market for expertise will not in this case operate as a disciplining mechanism but rather as an inducement to intellectual interest and expert bias.

The growing scepticism over the role of expert witnesses and more generally expertise in litigation with the emergence of the expression "junk science" or pseudo-science exemplifies how the perceived bias of experts may be a persistent problem, not only for them, but also for all actors in this market for professional services, thus producing externalities. The term "junk science" was used by Peter Huber to refer to "the science of things that aren't so"[81] science that is based on bad data and spurious inferences. The definition of the boundaries of "junk science" as opposed to "good science" is ambiguous. At which side of the boundary would idiosyncratic or minority views fall? What are the criteria that apply in setting the boundaries at the first place?

A remarkable shortcoming of the concept of "junk science" is also that it totally ignores the broader social context in which scientific research is produced and is based on an idealistic conception of science. Recent theories of philosophy of science as well as empirical observations emphasize the role of social context and socialisation as an instrument of consensus formation in scientific communities[82]. Scientists work in the context of paradigms or research programmes, which may operate under different assumptions or prior beliefs. The concept of "junk science" does not take into account the plurality of scientific discourse and the possibility that opinions which are now at the fringe may become part of the mainstream among the scientists of the specific group. Others have put forward the expression "snake oil" economics to indicate how sometimes "sophisticated" mathematical models are used to make tendentious arguments without proper support by the facts in the relevant industry[83].

One of the sources of the problem of expert bias is that parties are interested in bringing forward experts that would be favourable to their cause. Judges and juries are aware of this strategic objective and may eventually ignore the expert's testimony. The side effect may be that good quality scientists are dissuaded from participating as experts in legal proceedings in order to avoid tarnishing their public image by appearing in court. This issue is related to one of the strongest manifestations of conscious financial interest

[81] Peter W. Huber, *Galileo's Revenge: Junk Science in the Courtroom* (Basic Books, 1991), at 24.
[82] Gary Edmond & David Mercer, "Trashing "Junk Science", (2008) Stanford Technology Law Rev 3, 6.
[83] S. Bishop, Snake-Oil with Mathematics is Still Snake-Oil: Why Recent Trends in the Application of SoCalled Sophisticated Economics Is Hindering Good Competition Policy Enforcement, (2013) 9 Eur. Competition J. 67.

of the expert leading to expert bias: the risk that expert witnesses become "hired guns" for the parties that employ them. "Hired guns" are driven in their testimony by the successful outcome of the case (for their employers) rather than by the loyalty and independent judgment they owe to their science/field. Their motivations can be diverse: ensure a continuous working relation with one of the parties, particularly if this party is involved in a great number of litigations or any other personal benefit by defending views that are not the result of independent (in motives) study and research.

The problem of "hired guns" illustrates the paradox of the position of scientific expert witnesses in modern litigation. The dominant conceptualization of expert witnesses' role relies on a principal/agent model, with the judge being the principal. The expert has a duty to the court to act as the honest representative of her academic field. Her role as educator and translator of scientific knowledge assumes that she would place herself outside the actual (legal) controversy. Nonetheless, at the same time, the expert witness is hired by one of the parties and she participates in an adversarial procedure and may therefore be tempted to put forward sophist arguments as to confuse the principle for their own benefit. One could therefore oppose the dominant conception of the scientific expert witness as the representative of her field to that of the expert acting as an advocate[84]. The development of the field of forensic expertise and the professionalization of the role of expert witnesses, with the establishment of multinational corporations specialising in economic expertise, underlines the ongoing transformation of the role of economic expert witnesses. The duty of the expert to her employer may overstep the duty she owes to the court, the administrative authority or eventually her academic institution.

If material bias is an important issue affecting the quality of expertise in the market for competition economics advice, the prevalence of industry funding in some areas of competition economics may similarly also affect the quality (impartiality) of academic work in the marketplace of ideas. Drawing on the work of Robert Merton on the reward system of open science[85], one could argue the specificity of the academic community of economists with regard to community of forensic economists, which is not marked by openness (there is an inherent bias that only the results that could be positive to the client are publicly shared). Furthermore, as explained in Section I above, the structure of rewards in these two markets is different. In the marketplace of ideas it is not expected, as is probably more the case in the market for economic expertise for litigation, that economists will put forward views and arguments with the sole purpose of satisfying their clients and attract industry funding. As Herman describes, "more problematic [...] is the possibility that [...] a segment of the (academic economists) profession will shift views to satisfy the market demand", those receiving grants and serving as consultants and witnesses "gradually" coming "to accept the premises of those funding them or whose

[84] I. Lianos, "Judging Economists": Economic expertise in competition litigation: a European view. In I. Lianos, & I. Kokkoris (Eds.), *The Reform of EC Competition Law: New Challenges* (Kluwer, 2010), 185.
85 Robert Merton, *The Sociology of Science: Theoretical and Empirical Investigations* (University of Chicago Press, 1979), Chapter 4.

views and interests they are paid to represent"[86]. Corporate-funded conferences can serve as amplification chambers for specific viewpoints, potentially influencing participants — especially junior researchers eager to present at prestigious venues—who may not recognize the subtle shaping of academic discourse. In this context, as Herman writes "(t)his mobilization of bias suggests the possibility that the entire drift of the science -its principles and their refinements appropriate to special applications – may be decisively shaped by market forces"[87], further accentuating the "credibility crisis" in economics[88].

Any material bias in the marketplace of ideas may thus lead to a larger negative externality, as it may affect the integrity of the autonomous and self-governed system of academia, or at least its perception as such. A possible externality is the intrusion of the market for economic expertise/advice in the organization of knowledge production in academia, and more generally the marketplace of ideas. Of essence to the concept of "marketplace of ideas", by analogy to the economic concept of free market, is the idea of intellectual competition, the intellectual exchange that occurs between the different participants to this "marketplace" being grounded to the freedom of speech, the best ideas rising to the top. Diversity of ideas and competition "on the merits" between them is therefore of essential importance for the marketplace of ideas to work.

This dimension shows that the negative externality of blurring the distinction between the reward system of academic economics and that for forensic economics in the market for economic expertise may expand beyond the simple issue of the misalignment of incentives between the agent (academic) and its principle (the academic community or the public at large) and affect the integrity of the competitive process of knowledge production in economics. Wible emphasizes the need to preserve this institutional and epistemic diversity noting that "a variety of qualitatively differentiated organizations are essential for resolving epistemic scarcity. Humanity cannot depend on just one institution like the market or even the primacy of one institution among others. We cannot pull all our organizational 'eggs' into one institutional basket"[89]. Calls for epistemic diversity have also been recently made in competition economics literature. Oliver Budzinski, among others, has highlighted the risks of "monoculture" in competition economics and proposed "theory pluralism" of competition policy paradigms as being an essential prescription for public policy in this area[90]. "Sustainable pluralism of competition theories" should thus serve as an imperative for science and public policy.

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[86] E.S. Herman, The institutionalization of bias in economics, (1982) 4 Media, Culture and Society 275, 284.
[87] Ibid., 285.
[88] See J.P.A. Ioannidis, T.D. Stanley & H. Doucouliagos, The Power of Bias in Economics Research, (2017) 127(605) The Economic Journal 236 (describing the "credibility crisis" in economics).
89 J. R. Wible, *The Economics of Science: Methodology and Epistemology as if Economics Really Mattered* (Routledge, London, 1998), at 174-175.
90 O. Budzinski, 'Pluralism of Competition Policy Paradigms and the Call for Regulatory Diversity', N014/2003, Volkswirtschaftliche Beiträge, Marburg, 2003, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=452900 ; O. Budzinski, Monoculture versus diversity in competition economics, (2008) 32 Cambridge Journal of Economics 295.

Material bias is not the only source of negative externalities in this context. There has been significant research in economics about ideological bias, and how this may affect public discussion of competition economics related issues[91]. There is also a significant literature on the impact of ideology in economics[92], and that of schools of economic thought in defining the agenda of competition law enforcement[93].

Barrios et al. use the terminology of "conflict of interest" to portray multiple factors that may affect the "trustworthiness" of the process of formation of scientific belief, and which may influence a researcher's prior beliefs towards the conclusion reached in the specific output[94]. In addition to material (financial) conflict of interest, the authors cite professional interest resulting from motivated interest to arrive to a specific conclusion because of career or academic conflicts, thus affecting the integrity of scientific findings, data conflicts to the extent that a privileged access to private data may enhance the influence of vested interests in the direction of the results, or political (ideological) conflicts, emerging when a researcher's political ideology aligns with specific results[95].

Following empirical analysis based on surveys results, the authors put forward the thesis that the presence of certain conflict of interests may lead to discounting the value of the research to the eyes of a group of selected academic economists, a group of ordinary academic economists and the general public. According to the authors, the value of the research in the intellectual marketplace is determined by its ability to shift people's priors[96], the conflict of interest discount being the "percentage reduction in the value of a paper due to the presence of a conflict of interest"[97]. The results reported indicate that a considerable number of research papers published present conflict of interests, these reducing trust in the results on average around 30%.[98] This discount is higher in the presence of material bias resulting from corporate funding and data access facilitation by corporations than in the presence of ideology and partisan affiliation-related bias. The authors also note that although ideology and career incentives are more evenly distributed, and therefore cancel each other out, the same cannot be said for

[91] E.S. Herman, The institutionalization of bias in economics, (1982) 4 Media, Culture and Society 275; G. Saint-Paul, The Possibility of Ideological Bias in Structural Macroeconomic Models, (2018) 10(1) American Economic Journal: Macroeconomics 216; M. Javdani & H.-J. Chang, Who said or what said? Estimating ideological bias in views among economists, (2023) 47 Cambridge Journal of Economics 309; J. Barrios, F. Lancieri, J. Levy, S. Singh, T. Valletti & L. Zingales, The Conflict-of-Interest Discount in the Marketplace of Ideas (Stigler Center New Working Paper Series N0. 348, October 2024) (hereinafter J. Barrios et al.).

[92] T. Piketty, *Capital and Ideology* (Belknap Press, 2020).

[93] See, for instance, E. Elhauge, Harvard, not Chicago: Which Antitrust School Drives Recent Supreme Court Decisions?, (2007) 3(2) Competition Policy International, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1010769 ; J. Wright, The Robert Court and the Chicago School of Antitrust: The 2006 term and beyond, (2007) 3(2) Competition Policy International, available at http://www.globalcompetitionpolicy.org/index.php?&id=582&action=907; Alberto Pera, Changing Views of Competition, Economic Analysis and EC Antitrust Law, (2008) 4 European Competition Journal 127.

[94] J. Barrios et al., The Conflict of Interest Discount in the Marketplace of Ideas, op. cit., 1.

[95] J. Barrios et al., 1-2.

[96] Ibid., 8.

[97] Ibid., 4.

[98] Ibid.

financial support/funding that remains unbalanced in favour of large companies (and thus shows a pro-defendants bias) and it is even more unbalanced regarding access to data, in view of the important data harvesting and processing asymmetry between Big Tech platforms and other businesses (or even public authorities).

In conclusion, theoretical research and empirical evidence indicate the existence of considerable negative externalities affecting both the market for forensic economic expertise and the intellectual marketplace, from conflict of interests and different forms of bias. In the absence of specific mechanisms to address the "distrust deficit" created by these conflicts, internalizing the negative externalities, the presence of these conflicts of interests may lead to a "systemic problem in which the negative externalities of conflicted research affect the entire academic community"[99]. This "misalignment" of private and public incentives leads to "an overproduction of conflicted papers from a societal perspective" and calls for measures addressing such biases. Before however addressing possible remedies, it is important to explore the nature of these externalities.

III. The theoretical hypothesis of the strategic nature of these externalities examined

Arguing for pluralism may seem to be a valid goal in the context of academic economics but it may be difficult to transpose this discussion to the field of the market for forensic economic expertise. Would, for instance, emphasis on pluralism lead the courts or the competition authority to choose a minority theory instead of a majority one, the two theories being equal from the point of view of explanatory power, for the simple reason that choosing a dominant theory will be considered as a reduction of pluralism in the marketplace of ideas? On what practical basis should this choice for pluralism be made? Would that require the artificial preservation of failing research programmes for the simple sake of pluralism? These difficult questions show that any analysis of pluralism should focus on the consideration of the selection process and in particular the reasons that led to the emergence of biased non pluralistic results in the first place.

The concept of a "dominant" paradigm in economic thought extends beyond mere description of prevalent theoretical frameworks. This terminology illuminates how knowledge production in academia is shaped by external power dynamics. The dominance of certain economic paradigms often stems not from their inherent theoretical superiority, but from the leveraging of influence from adjacent social spheres - particularly the market for economic expertise and private research funding. This interplay between academic economics and external power structures raises important questions about the autonomy of economic thought and the mechanisms through which certain theoretical perspectives achieve and maintain their dominant status[100].

[99] Ibid., 42.

[100] I refer here to the concept of dominance as envisaged by Michael Walzer, in the sense that some actors may control a social good (here economic power), whose control commands wide range of other goods, presumably in other spheres of social activity, thus blurring or collapsing the necessary boundaries that

It is obvious that if the selection process, which can be conceived as applied practical reason, worked well, there would be no "dominant" paradigm, in the sense that the representatives of all "research programs" and "paradigms" will feel confident that their positions are equally taken into consideration in adjudicating each case, according to the merits and fit of their arguments and theory *to the facts in question*. The lack of trust in the selection process could thus be explained by the fact that there is the perception that actors behave strategically. These actors can be internal to academia ("research programmes", "schools of thought", "paradigms") or external to it (e.g. corporations funding research). Several structural market features illuminate potential sources of leverage in shaping economic paradigms. The highly concentrated nature of the forensic economic expertise market, combined with the oligopsonistic power wielded by corporate clients, creates conditions where certain theoretical perspectives may be privileged over others. To the extent that the same (useful to the defence) arguments come up again and again in litigation, and judges become more familiar with those modes of thought compared to other arguments, this may facilitate their eventual acceptance and lead to change in the interpretation of the law[101]. Furthermore, the strategic positioning of major funding entities in competition economics research within the broader marketplace of ideas provides insight into which actors possess both the means and motivations to exercise such intellectual leverage. These market dynamics help explain the mechanisms through which particular economic paradigms achieve and maintain their dominant position in academic discourse.

The hypothesis to empirically examine is therefore whether the concentrated structure of the market for economic expertise, and intentional strategies followed by the actors present in this market (either as sellers of expertise or as buyers of it) may affect the process of scientific knowledge production in competition economics and thus the marketplace of economic discourse about competition matters, which in turn also influences the process of forensic economic expertise, as this often relies as argumentation drawing on academic economic studies in the area. It is relevant in this context to note that, in contrast to other disciplines, in which forensic scientists and academic researchers form distinct scientific communities, the leading forensic competition economists are academics who actively participate in theoretical economic debates. Consequently, it may be expected that the emergence of a market for economic experts, and its structure, will impact on the research agenda of certain areas in economics (e.g. industrial organization) linked to competition policy. The empirical validation, or not, of this hypothesis, forms part of ongoing work by the author of this study.

However, it is already possible to put forward some theoretical arguments drawing on sociology of professions and sociological literature to support the intuition behind this hypothesis.

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should exist in the structuration of society along different "spheres of justice: M. Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (Basic Books, 1983).

[101] I am thankful to Todd Davies for making this point.

In some of her recent work renown sociologist of professions Magali Larson has focused on the relations between knowledge and power preferring the terminology of "discipline", rather than the narrower concept of "profession"[102]. For Larson, the monopolization of a specific discourse constitutes the means through which power is exercised. This discursive monopoly is granted if the profession, transformed into a discipline, succeeds in presenting its theoretical apparatus as scientific, that is, empirical, objective, disinterested and methodologically rigorous. Larson notes that the University departments constitute the core regions where professional discourse develops[103]. The links between the communities of academic economists and forensic economists in competition economics guarantee the semblance of neutrality of the produced knowledge, conceived as a strategy for exercising power. But what is the social space on which interactions, transactions and eventually the power is exercised?

Bourdieu and Wacquant also understand each social field of practice as a competitive game or a field of struggles in which social agents strategically interact in the quest to maximize their positions[104]. The stakes of this competitive game will be the accumulation of capital. Capital can take four forms: economic (e.g. money, assets), cultural (e.g. knowledge), social (e.g. networks, affiliation) and symbolic (e.g. credentials). Moving the analogy of the field further, it is possible to conceive the social arena of competition law and economics as a specific strategic action "field"[105], entangling multiple markets (e.g. the market for competition economics expertise/advice, the marketplace of ideas about competition) on which different players, forensic economists, lawyers, academic economists, regulators, judges develop strategies. Each of them competes with one other for the acquisition of symbolic and, consequently, economic and social capital. Despite their different dispositions and strategies, these actors should be conceived as being entangled in a mutual process of influence that contributes to the ongoing co-construction of the "field".

It follows that focusing the analysis on the emergence of the profession of forensic economists without examining the complex relations forensic economists develop with other actors they interact with, and the field's topologies of power, may profoundly misunderstand their strategies and misses the important changes that take place in their dispositions, their specific *doxa*, when internalizing the specific economic and social conditions that characterize the field on which they are active.

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102 M.S. Larson, "In the Matter of Experts and Professioinals, or How Impossible is to Leave Nothing Unsaid", in M Burrage and R. Torstendahl (eds.), *The Formation of the Professions*, (SAGE, 1990), pp. 24-50, p. 37.

103 M.S. Larson, In the Matter of Experts and Professioinals, or How Impossible is to Leave Nothing Unsaid, op. cit., pp. 37-38.

104 P. Bourdieu & L. Wacquant, *An Invitation to Reflexive Sociology*, vol. 1 (Polity Press: Cambridge,1992), pp. 127.

105 A "strategic action field" is "a constructed mesolevel social order in which actors (who can be individual or collective) are atuned to and interact with one another based on shared (which is not to say consensual) understandings about the purposes of the field, relationships to others in the field (including who has power and why), and the rules governing legitimate action in the field": N. Fligstein & D. McAdam, *A Theory of Fields* (Oxford Univ, press, 2012), 9.

As Sheilla Jasanoff explains in her work, "science carried out in non-academic setting may be subordinated to institutional pressures that critically influence researcher's attitudes to issues of proof and evidence" and "in turn affect the packaging and presentation of scientific results"[106]. An important difference between pure and mandated science, respectively academic economics and forensic economics, resides in the definition of standards by which each is evaluated. Jasanoff rightly notes that "(a)cademic research, on the whole, works within established scientific paradigms, subject to relatively well-negotiated prior understandings about what constitutes good research methodology [...] Instead, the guidelines for validating science in the regulatory context tend to be fluid, controversial and arguably more politically motivated than those applicable to university-based research"[107].

This indirect reference to the different ethos of "ordinary" science has resolutely a Mertonian taste. The assumption is that the "regulatory science" of economics will fulfil four sets of institutional imperatives: universalism with its requirement of objectivity and impartiality, communism with its aversion to secrecy, disinterestedness with its emphasis on competition and testability, and organized scepticism with its opposition to crystallization[108]. One could identify in the efforts of "regulatory science" to integrate peer review processes and a strict scrutiny by experts of the verifiability of results, an attempt to emulate the institutional imperatives of "ordinary" or "academic science"[109]. It is well known that the Mertonian conception of disinterestedness advocates a primordial distinction between the éthos of the scientist and the professional éthos: "The scientist does not stand vis-á-vis a lay clientele in the same fashion as do the physician and lawyer for example. The possibility of exploiting the credulity, ignorance and dependence of the layman is thus considerably reduced [...]"[110]. In the Mertonian conception of science, rewards for scientists are "largely honorific, since even today, when science is largely professionalized, the pursuit of science is culturally defined as being primarily a disinterested search for truth and only secondarily a means of earning a livelihood"[111]. Merton went even further by warning that "(t)o the extent that the scientist layman relation does become paramount, there develop incentives for evading the mores of science"[112]. The intervention of an external authority, outside the realm of the process of scientific discovery, is, thus, seen as a major anomaly to the Mertonian framework of impartial science[113].

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[106] S. Jasanoff, *The Fifth Brand – Science Advisers as Policy Makers* (Harvard University Press, 1990), p. 78.
[107] Ibid., p. 79.
[108] R.K. Merton, The Ethos of Science (1942), in R.K. Merton, *On Social Structure and Science* (University of Chicago Press, 1996), pp. 267-285.
[109] S. Jasanoff, *The Fifth Brand – Science Advisers as Policy Makers* (Harvard University Press, 1990). On the importance of peer review in science see, R.K. Merton, The Reward System of Science (1957), in R.K. Merton, *On Social Structure and Science* (University of Chicago Press, 1996), p. 296.
[110] R.K. Merton,The Ethos of Science (1942), above, p. 275.
[111] R.K. Merton, the Reward System of Science (1957), above, pp. 303-304.
[112] R.K. Merton, The Ethos of Science (1942), above, p. 275.
[113] R.K. Merton, Science and the Social order (1938), in *On Social Structure and Science* (University of Chicago Press, 1996), p. 280.

Ironically, Merton's concern over the influence of the external authority on the definition of norms of scientific validity seems to describe well the situation of competition economics: this time it is the market for economic advice that interacts with the scientific process, and not political authorities or the State in general, as was feared by Merton in the late 1930s. This concern was also expressed by Mannheim who referred to these extra-theoretical factors that are not driven by the "inner dialectic" of the thought[114]. The "Strong Programme" in sociology of knowledge will not also disagree with the view that social interests, in particular "vested professional interests", influence the standards and conventions of science[115].

In his research, Coats also examined the significance of the professionalization process of economics and the interrelationships between the various economics professions (academic, government economists, business)[116]. Drawing on the Strong Programme in sociology of knowledge[117], Coats explained how "the rise of professionalism both within the academic community and in society at large represented an effort by new specialist groups to gain social status and market power"[118]. In this context, he describes the "academization" of economics, the university becoming "the principal intellectual and social context for the advancement of scientific economics" in the late 19th century as an important milestone in this strategy[119], but he also notes that the rapid growth of non-academic opportunities, in particular in government in the 1930s may have affected the content of economic thought produced, its methodology and its standards of validity.

The influence of social networks and power relations on competition economics is now widely acknowledged, significantly shaping both research agendas and the emergence of dominant theoretical frameworks in the marketplace of ideas. A particularly notable dynamic exists in the complex interplay between forensic economics and academic discourse. The boundary between courtroom expertise and scholarly debate is increasingly porous, with expert witness interactions extending well beyond legal proceedings into academic journals, conferences, and research networks like SSRN.

This integration serves a strategic purpose: the development and defence of particular theoretical positions in academic forums becomes an integral component of establishing legitimacy for courtroom arguments. Such academic validation carries special significance due to the judiciary's inherent scepticism toward expert testimony. Competition authorities (and courts) may accord greater weight to peer-reviewed economic literature than to expert witness reports, creating a feedback loop where forensic economic arguments seek legitimation through academic channels.

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[114] K. Mannheim, *Ideology and Utopia – Introduction to the Sociology of Knowledge* (Harcourt, Brace & Company, 1949),
[115] D. Bloor, *Knowledge and Social Imaginery* (2nd ed., University of Chicago Press, 1991), at 170.
[116] A.W.B. Coats, *The Sociology and Professionalization of Economics* (Routledge, 1993).
[117] D. Bloor, *Knowledge and Social Imagery* (Routledge & Kegan Paul, 1976).
[118] A.W.B. Coats, *The Sociology and Professionalization of Economics*, op.cit., at 138.
[119] Ibid., p. 40.

This dynamic reveals a subtle irony: judicial scepticism toward expert testimony has inadvertently strengthened the connection between forensic and academic economics, as parties strategically leverage scholarly discourse to enhance the credibility of their positions. The result is an intricate ecosystem where legal, academic, and market forces continuously interact to shape the evolution of competition economics thought. The legal system emerges as a crucial strategic ally in the ongoing intellectual contests between competing academic networks in economics. This alliance operates through a sophisticated feedback mechanism: the legal system's normative authority ensures that dominant economic paradigms fundamentally shape legal interpretation and application, both in specific cases and through analogical reasoning in subsequent litigation. Once a research paradigm becomes juridified, by being incorporated into the law as an economic transplant[120], this may lead to path-dependence in academic research, as research that contributes to this juridified now research paradigm is more easily accepted than research that challenges it. The resultant interdependence between academic economic discourse and the forensic expertise market creates lucrative opportunities for academic economists who also serve as consultants.

Empirical research has demonstrated that legal system adoption of particular economic frameworks serves as a powerful determinant of success in the intellectual competitions between rival economic networks. This process generates a stabilising effect for mainstream economic thought, as legal recognition provides both legitimacy and durability to specific theoretical approaches. The integration of economic reasoning into legal doctrine thus functions not merely as a validation mechanism but as an institutional force that reinforces and perpetuates particular economic paradigms. This dynamic reveals how the intersection of legal authority and economic expertise creates a self-reinforcing cycle: dominant economic theories shape legal interpretation, which in turn cements their position within both academic discourse and forensic practice, ultimately generating sustained economic returns for practitioners aligned with these prevailing paradigms[121].

Current changes in scientific practice with a more systematic industry funding of economic research challenge the traditional conception of knowledge production as being located primarily in scientific institutions, such as Universities, or the public sector (government), and structured by scientific disciplines. Whatever the name given to this description of the evolution of knowledge production[122], Mode 2, “post-normal science”, “Triple-Elix”, “post-academic science”, the general question of validity of the knowledge produced in this context is an issue generally not examined. As Ziman observes, the “meta-scientific spotlight has shifted to ethical issues”, but *in fine* more general

[120] I. Lianos, Lost in Translation? Towards a Theory of Economic Transplants, (2009) 62(1) Current Legal Problems 346.
[121] Y. P. Yonay, *The Struggle over the Soul of Economics* (Princeton Univ. Press).
[122] See, for a literature review, L.K. Hessels, H. van Lente, Re-thinking new knowledge production: A Literature review and a research agenda, (2008) 37 Research Policy 740-760.

questions of validity of established scientific theories or the weight that should be given to a highly unorthodox scientific opinion, or an opinion produced outside the academic environment remain largely unexplored[123].

Recent efforts to discuss the standards of validity of such "contextualized science" have not been convincing. Nowotny, Scott and Gibbons[124] argue that knowledge is produced in a new heterogeneous public space than the University, what they call "the agora", where society and science meet, and note the evolution in terms of standards of validity from reliable knowledge to "socially robust knowledge", the latter being "relational" and "process oriented". However, no clear explanation is provided on what distinguishes this type of social robustness from the scientific robustness required for Mode 1 knowledge produced in the traditional setting of the University. Of particular interest is also that the claim of expertise is not only based on scientific reputation but also on the ability of the expert to "orchestrate" the many heterogeneous and context-specific knowledge dimensions that are involved in this fuzzier process of knowledge production.

This literature and the analysis of the way the consultancy industry in forensic economics is organised demonstrates fundamental structural links between the forensic economic expertise market and the marketplace of ideas in competition economics, evidenced through both actor interdependencies, and strategic alignments across these domains. Market conditions and power dynamics in each sphere inevitably influence the other due to this structural integration, with dominant actors able to orchestrate resources across both markets. This influence extends beyond immediate market outcomes to shape the very foundations of the field, including the epistemological standards that define valid economic analysis and "good science" in competition economics.

Large digital platforms occupy a uniquely influential position in competition economics through their dual role as major consumers of forensic services and significant funders of academic research. This strategic positioning stems from their global involvement in antitrust investigations and litigation, coupled with their substantial funding of academic research in competition economics. This dual market presence enables these platforms to effectively orchestrate substantial resources and shape the production of knowledge and discourse in competition economics.

Their distinctive positioning across both the academic funding and forensic services markets facilitates their growing dominance in the broader field of competition law and economics. This concentration of influence raises significant concerns about potential conflicts of interest and their impact on the intellectual marketplace. The ability to simultaneously influence both academic research directions and forensic economic analysis creates risks for the independent development of competition theory and practice.

[123] J. Ziman, *Real Science: What It Is and What It Mean* (Cambridge University press, 2002), p. 17.
[124] H. Nowotny, P. Scott, M. Gibbons, *Re-thinking Science: Knowledge in an age of modernity* (Polity, 2011).

Addressing these power dynamics becomes crucial for preserving the integrity of both the marketplace of ideas and the forensic competition economics market. Without appropriate safeguards, the selection process for superior theories and arguments may be compromised by the outsized influence of these digital platforms. This situation calls for structural interventions to ensure that theoretical and analytical developments in competition economics emerge from genuine scholarly discourse rather than being shaped by the strategic interests of dominant market players

IV. Tools for the containment of conflict of interests

A number of procedural and substantive law reforms were introduced in order to limit the risk of partisanship in the market for economic forensic expertise services, including the development of hybrid mid-adversarial, mid-consultative expert witness procedures, admissibility standards for expertise, greater involvement of "neutral" or impartial (judge-appointed) experts in the process[125]. These reforms were all based on the assumption that through these tools expertise can become "objective". In the received view, expertise cannot be normative or involve value-judgments. As is rightly explained by Gary Edmond, "(t)ypically, objectivity is equated with qualities such as independence, impartiality and neutrality. Good science, so this story goes, derives its authority from being evidence-based, efficacious, communal, critical and driven by a powerful method. These characteristics, which are often seen as dimensions of scientific (or mechanical) objectivity, purportedly function to liberate science from a range of contaminants such as subjectivity, personal interests, partisanship, fraud, speculation, bias, gratuitous assumptions and so forth"[126] Emphasizing the specific role of judges or competition authorities as gatekeepers in this process would therefore lead to an increase in the amount of processing in presence of conflicting expert testimony.

The gatekeeping role of judges in the market for forensic economics

The *Daubert* principle for the admissibility of economic evidence in US civil procedure provides a specific theory for consideration in clear-cut cases of "junk science" where there is no doubt that the theory presented is totally unfounded or the expert is not qualified, and judges move to exclude evidence from consideration by the jury[127]. Similar, although less strict, admissibility rules apply in the UK[128], and have given

[125] For a discussion, see I. Lianos, "Judging Economists": Economic expertise in competition litigation: a European view. In I. Lianos, & I. Kokkoris (Eds.), *The Reform of EC Competition Law: New Challenges* (Kluwer, 2010), 185.
[126] G. Edmond, "After Objectivity: Expert Evidence and Procedural Reform", (2003) 25(2) Sydney Law Review 8.
[127] *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993).
[128] See, for instance, *BSkyB Limited and Sky Subscribers Services Limited v HP Enterprise Services UK Limited (formerly Electronic Data Systems Limited) and Electronic Data Systems LLC (formerly Electronic Data Systems Corporation)* [2010] EWHC 86 (TCC); Competition Appeal Tribunal, *British*

rise occasionally to an extensive analysis of the qualifications and possible conflicts of interests of expert witnesses, even if there is no jury trial and all competition-related litigation is heard by a specialised tribunal[129]. Such procedural rules show that there is some recognition that reputational costs in the market for forensic economic expertise or the adversarial process may not be enough to deal with most cases of biased expertise, hence the need to regulate any possible conflicts of interest *ex ante*. However, the exclusion of the expertise from being considered may not be an adequate solution for most cases, where there is a suspicion of structural intellectual, material or other bias, but the expert is otherwise competent and has the required qualifications. Litigation-driven or materially biased research would most likely satisfy the Daubert criteria and will then be assessed in equal terms with independent academically created research.[130] However, it is expected that decision-makers will consider, to the extent they dispose of that information, the material (and other) conflicts of interest in evaluating and weighing the sufficiency of evidence provided by the expert[131]. This may lead to procedures that will attempt to exclude all external factors from the academic discipline-related discussion between expert witnesses, for instance by removing the lawyers of the parties, at least momentarily, from the cross-examination of experts to ensure the academic nature of the discussion. The expert "hot tub" procedure, developed by the Australian Competition Tribunal in the 1970s[132], and emulated in the UK[133], aims to maintain the basic principles of the adversarial system while at the same time to orchestrate a more "neutral" interaction among experts.

Self-regulation and disclosure policies

Telecommunications v Office of Communications (BCMR), Case No: 1260/3/3/16 (2017), para. 87; Competition Appeal Tribunal, *Lexon (UK) Limited v Competition and Markets Authority,* Case No: 1344/1/12/20 (2021); Competition Appeal Tribunal, *Royal Mail Group Limited v DAF Trucks Limited and Others*, Case Nos.: 1284/5/7/18, 1290/5/7/18 (2023), paras 25 & 235.

[129] See for a discussion, J. Davies & L. Nilausen, Technicians or Master-Economists? The role of testifying economists in competition litigation (June 2023), available at https://www.catribunal.org.uk/sites/cat/files/2023-11/Paper%20-%20The%20Role%20of%20Testifying%20Economists%20in%20Competition%20Litigation%20%28Compass%20Lexecon-Davies-Lau%29.pdf .

[130] N. Giocoli, Rejected! Antitrust Economists as Expert Witnesses in the Post-Daubert World, (2020) 42(2) Journal of the History of Economic Thought 203.

[131] On the role of the standard of proof and the analysis of the expert's possible conflict of interests in analysing the sufficiency of evidence, see I. Lianos, "Judging Economists": Economic expertise in competition litigation: a European view. In I. Lianos, & I. Kokkoris (Eds.), *The Reform of EC Competition Law: New Challenges* (Kluwer, 2010), 185.

[132] G. Edmond, Secrets of the 'Hot Tub': Expert Witnesses, Concurrent Evidence and Judge-led Law reform in Australia, (2008) 27 Civil Justice Quarterly 51, at 58; M. Brunt, Antitrust in the Courts: The Role of Economics and of Economists, Chapter 20 in Barry Hawk (ed.), *1998 Fordham Corporate Law Institute – International Antitrust Law and Policy* (1999), 357, at 364-366

[133] Part 35.7 of the UK Civil Procedure Rules. Its first application in the UK was in the *Streetmap v Google*, [2016] EWHC 253 (Ch), Judgment of 12 February 2016, para. 47.

Professional self-regulation has emerged as one approach to managing conflicts of interest in forensic economics, particularly through the establishment of ethics frameworks by key professional organizations. The National Association of Forensic Economics (NAFE), established in 1988, and the American Academy of Economic and Financial Experts (AAEFE), formed in 1989, have both developed ethical guidelines aimed at preserving professional integrity. These organizations' ethics statements emphasize crucial principles, including the rejection of predetermined positions in litigation, avoidance of ethically questionable assignments, prohibition of contingent compensation, and mandatory disclosure of received or anticipated benefits. By establishing these guidelines, these professional bodies attempt to standardize ethical practices in forensic economic analysis through voluntary compliance mechanisms[134]. The American Economic Association (AEA) has also issued a policy with detailed rules about disclosure concerning the sources of financial support for the research[135].

The competition law and economics academic community's commitment to disclosure is exemplified by the Academic Society for Competition Law (ASCOLA)'s Declaration of Ethics, adopted by its General Assembly in New York in 2018. This declaration establishes three foundational principles: independence and objectivity in research, transparency in funding sources, and fairness in presenting academic findings. Through detailed disclosure requirements, the declaration provides a structured framework for maintaining academic integrity in competition law scholarship, representing a significant step toward standardizing ethical practices in the field[136]. The Declaration was accepted as good practice by some of the leading academic journals in the area of competition law and policy[137]. Additional approaches put forward include the "naming and shaming" of experts that are captured, the sharing of the data code as well as of the disclosure agreements that may limit the use of data provided by corporations, and the mandatory disclosure of expert testimonies, even when a case is settled, so as to enable peer-review and critical engagement with the content of the expertise[138].

Disclosure rules with some form of sanctioning

134 American Academy of Economic and Financial Experts, Statement of Ethical Principles, available at http://aaefe.org/Documents/AAEFE_Ethical_Principles.pdf . See also, for a similar effort, NAFE, Statement of Ethical Principles and Principles of Professional Practice, available at http://nafe.net/about-nafe/nafes-ethics-statement.html Note that the AAEFE has a stronger disclosure statement than NAFE, requiring that such disclosure "should be in sufficient detail to allow identification of specific sources relied upon and replication of the analytic conclusions by a competent economist with reasonable effort".

135 See, https://www.aeaweb.org/journals/policies/disclosure-policy and the examples of disclosure provided in https://www.aeaweb.org/journals/policies/disclosure-policy/disclosure-examples .

136 See https://ascola.org/declaration-of-ethics .

137 This includes the Journal of Competition Law and Economics, the Journal of Competition Law and Practice and the Journal of Antitrust Enforcement. See, for a discussion, https://chillingcompetition.com/2020/07/29/on-disclosure-and-conflicts-of-interests-three-years-later-we-are-in-a-better-place .

138 L. Zingales, Preventing Economists' Capture, op. cit., 146-147.

The persistent emergence of non-disclosure cases and the proliferation of opaquely funded research centers in competition law and policy suggests however the inadequacy of self-regulatory approaches. Despite established ethical guidelines, the same corporate entities continue to fund research through complex, often obscured networks, indicating that reliance on individual authors' ethical compliance and self-regulation has failed to address the significant negative externalities of corporate funding. This pattern demonstrates that voluntary disclosure of material conflicts of interest, however well-intentioned, proves insufficient to safeguard academic integrity in this field.

Barrios and al. highlight fundamental flaws in assuming that research users can effectively discount conflicted research. Their analysis identifies two critical issues. First, incomplete or absent disclosure enables biased research to erode trust in the entire field, creating negative externalities that damage the credibility of non-conflicted work. Second, current academic evaluation systems fail to incorporate conflict of interest considerations when assessing research impact. Publication metrics, whether based on raw publication counts, citation numbers, or journal prestige, typically weigh conflicted and non-conflicted research equally, offering no mechanism to apply appropriate discounting in career advancement decisions[139]. This leads, according to these authors, to the result that "the marketplace of ideas overvalues conflicted research"[140]. Rather than advocating for an outright ban on corporate funding or conflicted research, Barrios et al. propose a nuanced approach to managing its impact on academic credibility. Their recommendations center on two key mechanisms: implementing systematic discounting of conflicted research in academic evaluations and promotions, and establishing more rigorous transparency requirements for data access agreements between academics and private sector providers. This approach acknowledges the reality of corporate funding while seeking to mitigate its potential negative effects on research trustworthiness through institutional reforms and enhanced disclosure requirements[141].

Mandated Disclosure Sunshine Regulation for Corporate Funders

Another avenue for addressing corporate influence in academic research recognizes the fundamental connection between market power and the above-mentioned negative externalities. This approach acknowledges how dominance in both the professional economic expertise market and the marketplace of ideas can shape research outcomes. Whether through the buying or selling of expert services in competition matters, or through industry's strategic demand for favourable research, positions of economic power directly influence the creation and dissemination of knowledge in competition economics. Concentrated industries may hire a large portion of academic expertise in their field and exercise control over what those academics publish through agreements governing the use of the data they provide them.

[139] J. Barrios et al., The Conflict of Interest Discount in the Marketplace of Ideas, op. cit., 43.
[140] Ibid.
[141] Ibid., 39-41.

Understanding these power dynamics in both professional and academic spheres provides essential context for developing effective regulatory responses[142].

This further step will justify the move towards some form of asymmetric sunshine regulation imposed on corporations and business groups for which there is now public information on their systematic effort to influence academic research in competition policy[143], and which are also, in view of pending investigations and litigation, also active in the use of forensic competition economics experts.

Disclosure requirements regarding payments to consultants, experts, and academic institutions are well-established within various regulated industries in the US, operating through both federal and state mechanisms. At the federal level, the Securities and Exchange Commission (SEC) mandates publicly traded companies, including telecommunications firms, to submit detailed financial information through annual Form 10-K filings, which may also encompass comprehensive reporting of consultant-related expenses. Additionally, these companies must file Form 8-K to report significant events, including major consulting contracts or expert engagements.

In the telecommunications sector specifically, the Federal Communications Commission (FCC) implements parallel disclosure requirements through Form 499-A, which requires service providers to report detailed financial information, including payments to contractors and consultants. While companies also typically disclose expenditure information in their annual shareholder reports, these documents generally provide less granular detail about specific payment allocations and rarely include exhaustive lists of funded consultants, experts, or research institutions.

At the state level, telecommunications companies face additional disclosure obligations through reporting requirements established by state public utility commissions (PUCs). These state-level annual reports often parallel federal disclosure requirements but may demand more specific financial details, including payments to consultants and experts. PUCs can also mandate project-specific disclosures, particularly for major infrastructure initiatives or regulatory proceedings, requiring detailed documentation of expenditures on external expertise and consulting services.

Despite these various disclosure requirements, payments to academics and consultants often remain partially obscured in corporate financial reporting. In SEC filings like Forms 10-K and 8-K, such expenditures may not meet the materiality threshold for explicit disclosure, particularly when individual payments are modest relative to a company's overall spending. Companies frequently categorise these expenses under broad classifications such as “professional fees” or “consulting expenses” in their financial statements, especially when dealing with routine, recurring payments of relatively small magnitude for their scale of operations. This aggregation practice is

[142] See also, J. Barrios et al., The Conflict of Interest Discount in the Marketplace of Ideas, op. cit., 42 (noting that in concentrated industries or academia, career concerns may exert significant pressures on people to skew their results, this highlighting “a major cost of industrial concentration”, which is the fact that it “ultimately destroys the diversity of ideas in the marketplace of knowledge”).
[143] See the media references in footnote 9 above.

particularly evident in cases where multiple payments occur throughout the year, as could be demonstrated by available public records of corporate funding patterns. Furthermore, disclosure limitations may be reinforced by legal constraints, including confidentiality agreements and EU GDPR regulations, which can restrict the publication of specific payment amounts and engagement details.

A first step towards more transparency, and also in order to enable the systematic use of the conflict-of-interest discount in promotion and other evaluation procedures (e.g. grants, academic positions), would be to impose a clear duty of disclosure to some large corporate funders, which due to the position of economic power they enjoy, may attempt to leverage this position in the marketplace of ideas. The Digital Markets Act (DMA) may provide the tool to impose such disclosure duties to gatekeepers, in a similar vein as the information requirements imposed on them under Article 14 DMA, which require them to inform the Commission about any intended concentration, where the merging entities or the target of concentration provide core platform services or any other services in the digital sector[144]. This duty of disclosure will not only apply to the part of the gatekeeper's business that has been designated as a core platform service. It will also extend to all the activities of the undertaking within the meaning of Article 5(1) of Regulation (EC) No 139/2004, but also to funding by business entities in the gatekeeper's relevant ecosystems which to their knowledge have a similar purpose. This broad information obligation will guarantee that the gatekeeper takes an active role in monitoring the relevant activities of its ecosystem, in the same way as this is envisioned in the context of the corporate sustainability due diligence directive for responsible corporate behaviour across companies' global value chains[145].

A future revision of the Digital Markets Act could establish comprehensive disclosure obligations for gatekeepers' academic and research funding activities. This expanded framework would require annual reporting of all payments for consulting and professional services to academics and research centers, either directly or indirectly though industry groups and foundations. The disclosure requirements would encompass both monetary compensation and in-kind benefits, such as data access privileges, conference participation support, and travel accommodations. Following models established by professional organizations like the American Economic Association (AEA) and the Academic Society for Competition Law (ASCOLA), these disclosures would need to include detailed explanations of payment amounts and underlying rationales for significant engagements. To ensure accessibility and transparency, all disclosures would

[144] This proposal thus only covers gatekeepers in core platform services, but not other powerful firms in other industries (pharmaceuticals, agriculture, etc). The reason for that is that the sheer economic power of digital platforms in many markets, their control of data resources and also publicly available information about corporate funding of academic research identify them as the appropriate personal scope for this legislative initiative. Once experience has accumulated, similar schemes mandating disclosure could also be extended to other industries for powerful actors.

[145] Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859, OJ L, 2024/1760.

be centralized and publicly available through a dedicated portal on the European Commission's website.

To establish a comprehensive historical record of corporate funding in academia, the disclosure requirements should include a retrospective component covering at least the preceding decade of payments and funding arrangements. This lookback provision is particularly important given the documented evidence of corporate funding dating back to 2005-2006, and acknowledges the extended timeframe typically involved in academic research and publication processes. Verification of these disclosures would be conducted by auditors seconded from national tax authorities to the European Commission, who would be granted unrestricted access to relevant corporate financial records, including books, accounts, and vouchers. The European Commission would integrate this funding transparency data into its annual DMA implementation reports required under Article 35, ensuring ongoing public accountability and oversight of corporate influence in academic research.

This centralised disclosure framework would represent a significant shift from the current fragmented system, which relies primarily on individual academics' voluntary compliance with ethical guidelines. By monitoring corporate funding at its source and empowering the European Commission with substantial enforcement authority, the new approach would ensure systematic oversight and accountability. This transition from a discretionary, decentralized model to a mandatory, centralized system acknowledges that effective transparency requires both comprehensive monitoring capabilities and meaningful enforcement mechanisms. The Commission's authority to impose substantial remedies and sanctions for non-compliance under the DMA would provide the necessary incentives for corporate funders to maintain accurate and complete disclosure records[146]. Access to gatekeepers' comprehensive financial records would serve multiple regulatory objectives beyond mere transparency. Such access would enable Commission staff to develop deeper insights into gatekeepers' operational strategies, particularly regarding their influence on academic discourse. This broader visibility would be further enhanced by the Commission's inspection powers under Article 23 of the DMA, which could uncover internal documents revealing undisclosed long-term commitments and strategic initiatives. The combination of regular financial disclosure requirements and targeted inspection capabilities would create a more complete picture of how gatekeepers leverage their resources to shape academic and policy discussions.

Matching of funding requirement imposed to corporate funders

While mandatory disclosure represents a step toward addressing the negative externalities of industry-funded academic research, its effectiveness relies on potentially optimistic assumptions about information processing by end users. The proposed approach assumes that knowledge of funding sources will enable readers to

[146] The usual sanctions of the DMA will apply as for infringements of the information requirements under Art. 14 DMA.

appropriately discount research findings through conflict-of-interest considerations. However, this assumption may prove unrealistic in practice. Even with full transparency about funding sources and research programs, end users may struggle to properly evaluate and contextualize research findings, particularly in an environment increasingly dominated by industry-funded studies. This challenge is further compounded by the considerable "communication power[147]" of digital platforms and social media, which can amplify and promote research findings regardless of their funding sources. In this context it would be important to ensure that any algorithms used to promote content on the platform are applied according to objective and non-discriminatory criteria, with regard to the content in terms of academic views[148].

The mere identification of funded scholars and programs, without explicit negative implications, may prove insufficient to enable meaningful discounting of potentially biased research in an increasingly crowded intellectual marketplace. Mere disclosure requirements fail to address the historical trust deficit created by years of cross-subsidization between unfunded and industry-funded research. A more comprehensive solution would involve restructuring the entire research funding ecosystem to align corporate incentives with the public interest in unbiased research. This could be achieved through two alternative approaches. First, requiring all corporate funding to flow through objective, competitive processes overseen by public research foundations or the European Research Council (ERC), thereby limiting potential distrust to the selection process itself. Alternatively, implementing a matching requirement where corporations must provide equivalent funding for independent research projects for every euro spent on industry-directed research. Under this approach, if a corporation invests €10 million in regulatory science research advancing its interests, it must contribute an equal amount to independent projects selected through peer review processes managed by academic institutions such as the American Economic Association or ASCOLA.

This matching mechanism would help restore balance between industry-funded and independent research. Furthermore, the framework should explicitly promote academic diversity by ensuring that a portion of the matching funds benefits researchers from developing and emerging economies. This provision acknowledges that these scholars often lack access to robust public research funding systems and are consequently underrepresented in academic discourse. By expanding participation beyond traditional research centers, this approach would enhance the representation of diverse stakeholder perspectives in academic discussions.

The proposed matching requirement, while seemingly ambitious, would be narrowly targeted to regulatory science research rather than encompassing all corporate-funded academic work. This focused approach recognizes the unique significance of

[147] M. Castells, *Communication Power* (OUP, 2013).
[148] With the exception of course of the protective legal provisions against "hate speech" and the spreading of illegal content, under the Digital Services Act.

"regulatory science"[149], particularly in competition law, where economic theories and interpretations can significantly influence market dynamics and regulatory outcomes. The strategic value of regulatory science research makes it an especially powerful lever for dominant firms seeking to shape policy discourse and legal interpretations in their favour. By limiting the matching requirement to regulatory science, the proposal acknowledges that corporate funding of technical or commercial research serves different purposes and warrants different treatment. This targeted intervention is justified by the need to correct the longstanding imbalance created by years of unregulated corporate influence in regulatory science, where economic and legal theories can be strategically deployed to reinforce market dominance and potentially limit intellectual diversity in competition policy discourse.

Conclusion

The landscape of competition economics has undergone significant transformation with the emergence of a market for forensic expertise and increased industry funding of academic research. This evolution has introduced considerable risks of "capture" by powerful vested interests, of competition policy research. The phenomenon has gained particular prominence amid ongoing competition investigations and litigation against major digital platforms, which have attracted attention for their extensive funding and support of research aligned with their interests and preferred policy directions.

The growing concentration of industrial power has intensified the problem of conflicts of interest and material bias, a challenge that has existed since the expert witness emerged as an independent actor in litigation during the first half of the 20th century, but has intensified in recent years in the field of competition economics as a result of industrial concentration, also in the market for forensic competition economics, and the rise of Big Tech. While the analysis primarily focuses on competition economics, its implications extend to other forms of expertise, including legal scholarship, to which similar principles (in terms of mandated disclosure and matching) should also apply.

Initially, the adversarial process and reputational considerations in the forensic expertise market were deemed sufficient safeguards against excessive expert bias, whether material or ideological. However, the distinction between the forensic economic expertise market and the broader marketplace of competition economics knowledge has become increasingly nebulous. Key actors frequently operate across both domains as part of the applied economic knowledge field in competition matters. This overlap creates a complex web of interdependencies between forensic economists, academics, companies under investigation, and corporate funders. Dominant players in the forensic competition economics market or concentrated industries, such as Big Tech, providing academic funding can leverage their influence across the entire field of competition economics, leading to significant negative externalities.

[149] S. Jasanoff, The Practices of Objectivity in Regulatory Science, in C. Camic, N. Gross & M. Lamont (eds.), *Social Knowledge in the Making*, (University of Chicago Press, 2011), 307.

These externalities manifest primarily as a "trust deficit" - a burden imposed by conflicted research on non-conflicted research and researchers. This dynamic results in an overproduction of biased research and an underproduction of unbiased work. Moreover, it threatens to reduce the diversity of economic discourse, potentially compromising research quality and undermining academia's independence, self-governance, and autonomy as a distinct institution promoting valuable social activity, thus contributing to the “democratic deficit” of competition law as identified by Harry First in his co-authored work.

In response to these challenges, judges and competition authorities have developed increasingly stringent gatekeeping roles, in addition to the duty the experts have to the court, either by excluding conflicted research or by scrutinizing its evidential sufficiency more carefully. This evolution suggests that mere disclosure and reliance on adversarial processes and reputation mechanisms may be insufficient safeguards. While ensuring appropriate disclosure in academic economics might provide necessary transparency and help align public goals (as these were identified by the social contract of the specific polity) with private incentives, it perhaps expects too much from knowledge users in their ability to identify and appropriately discount conflicted research.

A more robust approach might involve incorporating the conflict of interest discount into promotion procedures and career development activities, thereby internalizing the negative externality and reshaping actor incentives. However, such measures may prove inadequate in addressing poor disclosure practices or reversing the existing legacy of corporate funding and influence on academic research in competition economics. Once intellectual positions and concepts stemming from conflicted research become established, they acquire independent momentum and become embedded in academic consensus, requiring significant time and effort to dislodge.

The implementation of mandated disclosure of industry funding imposed on gatekeepers emerges as a potentially superior solution. This approach could be particularly relevant in the context of the information requirements imposed to gatekeepers by the Digital Markets Act (DMA). Furthermore, requiring transfer payments from industry to non-conflicted research could help counterbalance the risk that corporate influence poses to the diversity of economic discourse in the knowledge marketplace. Such measures would help preserve the integrity and independence of academic research while ensuring a more balanced and diverse scholarly debate in competition economics thus contributing to the reversal of the “democratic deficit” of competition law.