



# Competition Policy & Public Procurement

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# Disclaimer

The views expressed in this presentation are **personal**, and do not necessarily represent those of DG Competition or of the European Commission.

# Brief history of CET

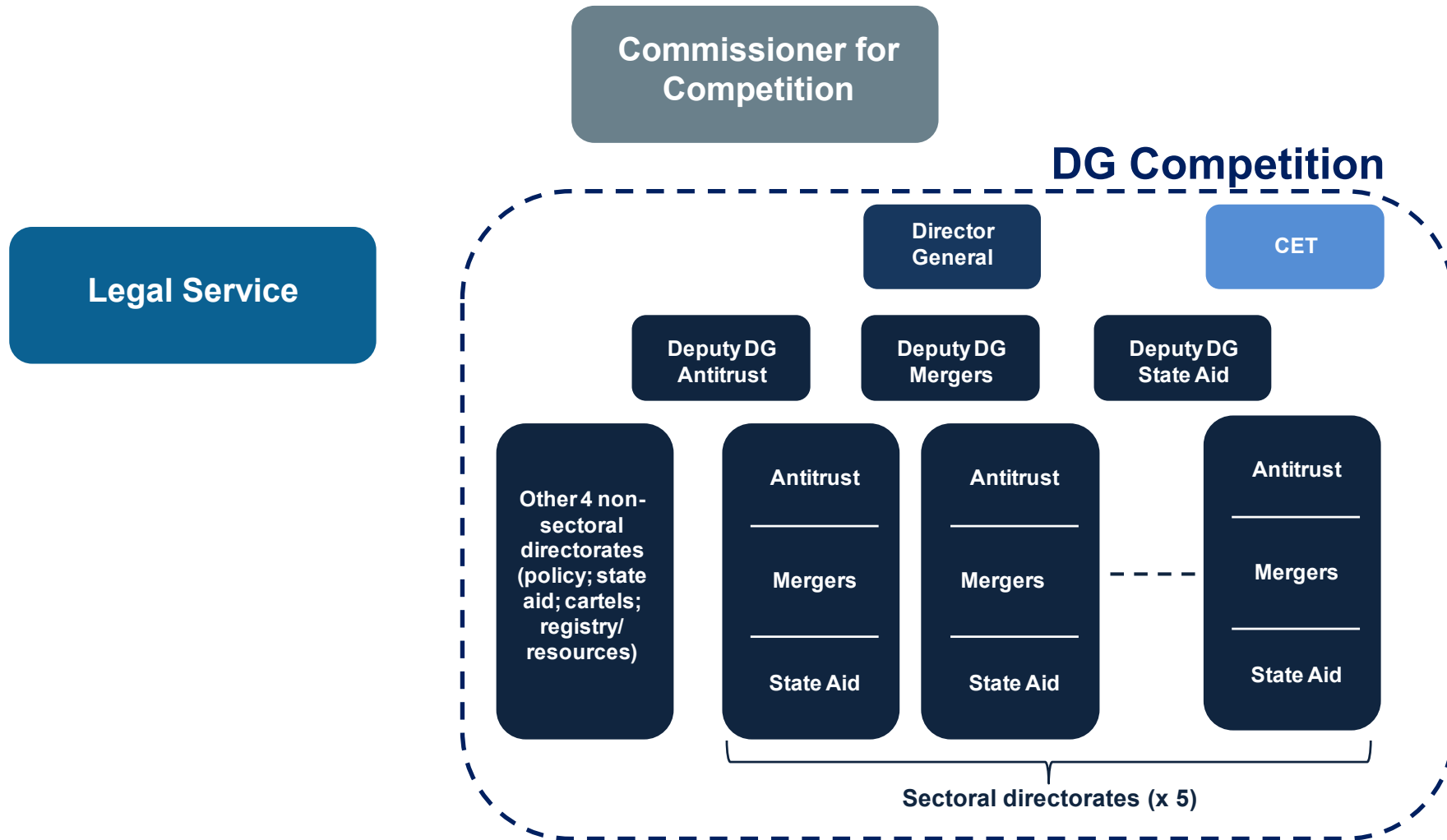
- Post of Chief Economist created in 2003 by M. Monti, to reinforce economic capabilities of DG Competition and provide independent economic perspective
- Fixed 3-year mandate
- Past and current Chief Economists
  - 2003-2006      Roller
  - 2006-2011     Neven
  - 2011-2013     Kuhn
  - 2013-2016     Motta
  - 2016-2019     Valletti

## Remit of the CE\*

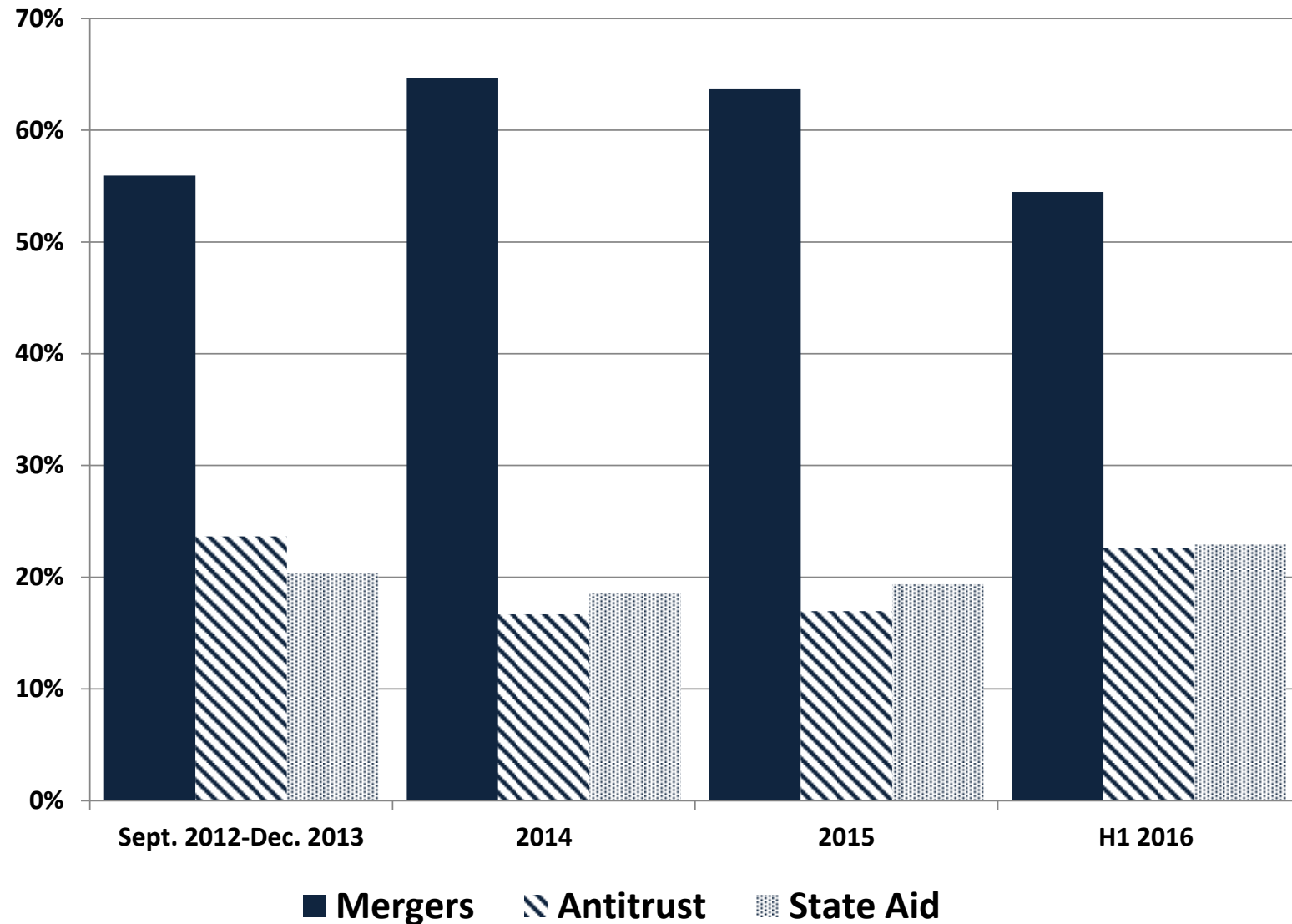
- Scrutiny (“check-and-balance”)
  - Independent advice to the Competition Commissioner (e.g. in weekly meetings with DG Competition and Legal Services; and in Final Advice)
- Support
  - Economic analysis in individual cases or issues requiring complex economic assessment
- Balance between two functions
  - Relative shift towards “support” function as size of the CET has increased over time

\* See Roller-Buigues, “The Office of the Chief Competition Economist at the European Commission”, 2005

# DG COMP in the broader picture



## CET work allocation across three instruments





## Recent merger case (Dow Du Pont)

- Patent analysis carried out to assess the innovative strength of firms (R&D: not very meaningful)
- Sample: all patents for the period 2000-2015
- Methodology:
  - Patent citations are an indicator of the importance/quality of R&D:
    - Significant heterogeneity in citations
    - Important to calculate patent shares: weighted by their quality
  - Patents as indicator of closeness of competition in terms of innovation
    - Look at the importance of cross-citations
    - Look at characteristics of research projects corresponding to the best quality patents (review of internal documents)



# Theory question:

## **Investments and mergers**

You typically hear:

- Inverted U
- Arrow vs Schumpeter

But... **It's not about mergers!**

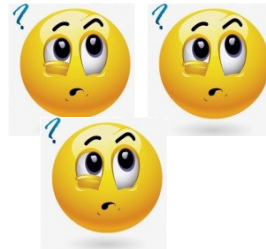
Federico, Langus and Valletti (Economics Letters 2017 + ongoing), Motta and Tarantino (2017)

Rethink collusion and (unverifiable) quality in procurement?



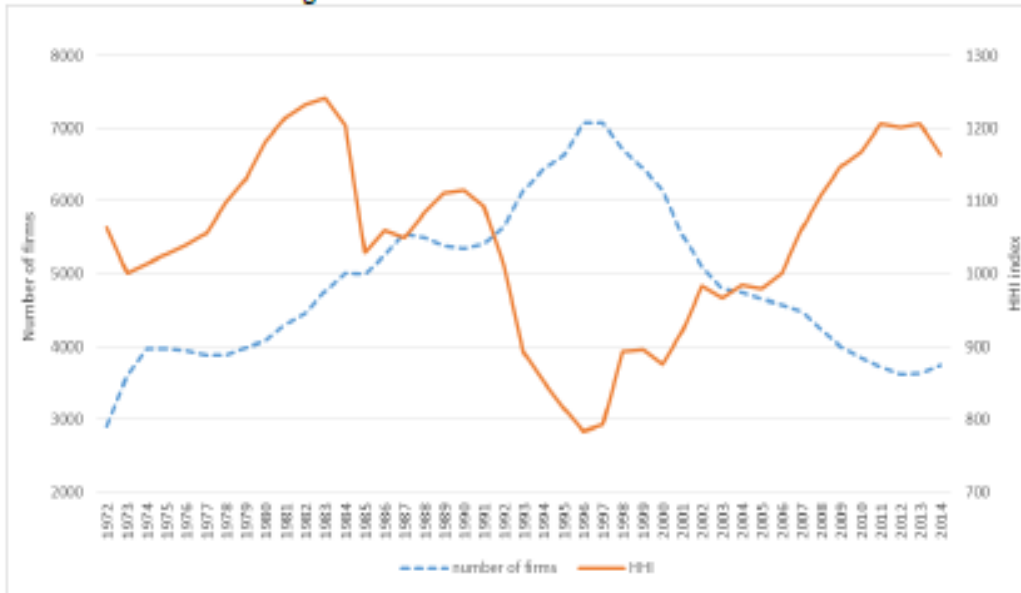
## Other projects

- Algorithmic pricing
- Common ownership
- Concentration trends
- Damages
- Screening



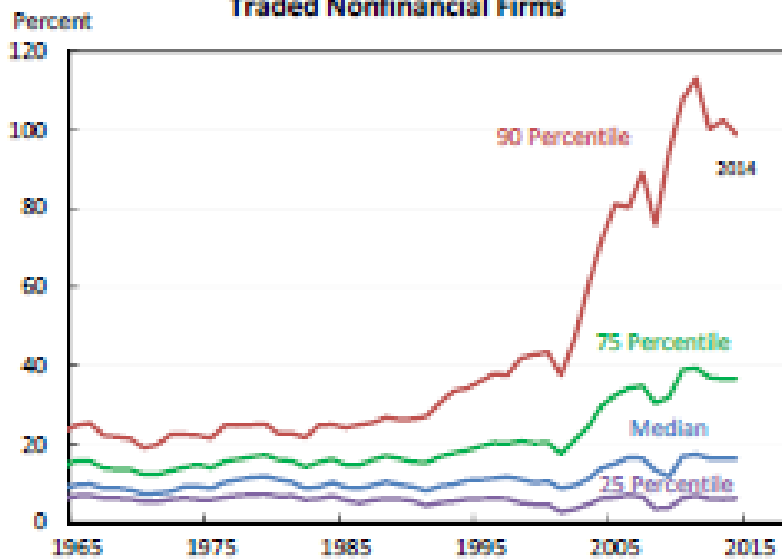


**Figure 1-A: Number of Public Firms and HHI**

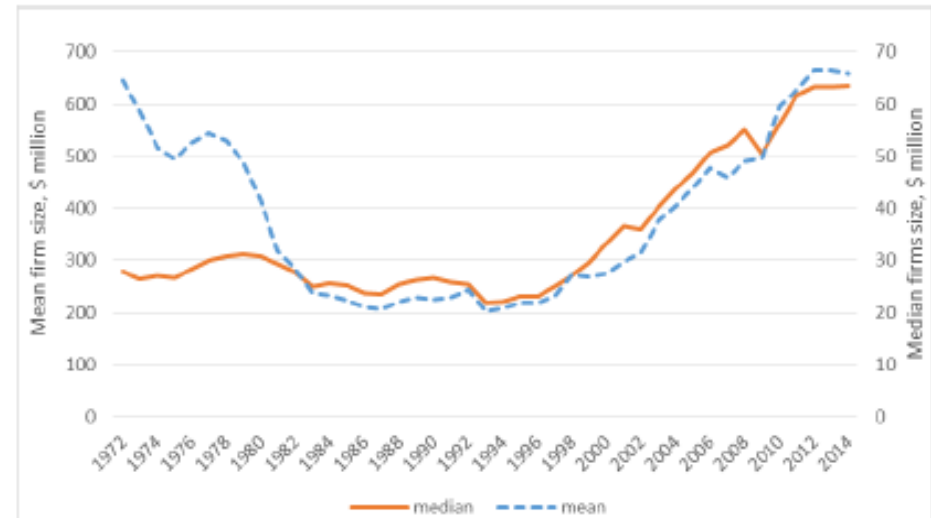


**Figure 8**

**Return on Invested Capital Excluding Goodwill, U.S. Publicly-Traded Nonfinancial Firms**

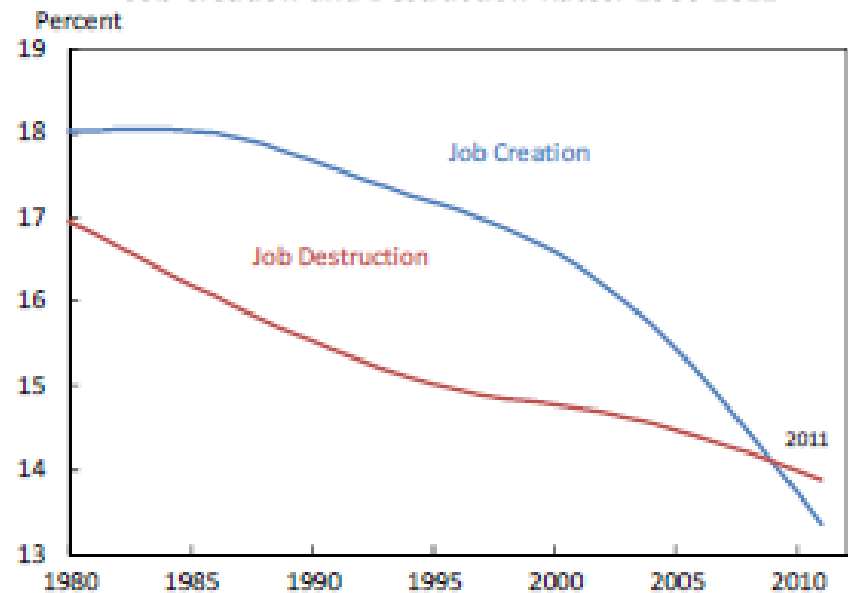


**Figure 1-C: Average and Median Size of Public Firms**



**Figure 12**

**Job Creation and Destruction Rates: 1980-2011**





# Damages Directive (2014, European Parliament, European Council)

**Principle of full compensation** of harm from infringement of competition law

## **No over- or under-compensation**

Claim by direct customers  
Claim by indirect customers

possibility of pass-on defence  
rebuttable presumption of a pass-on

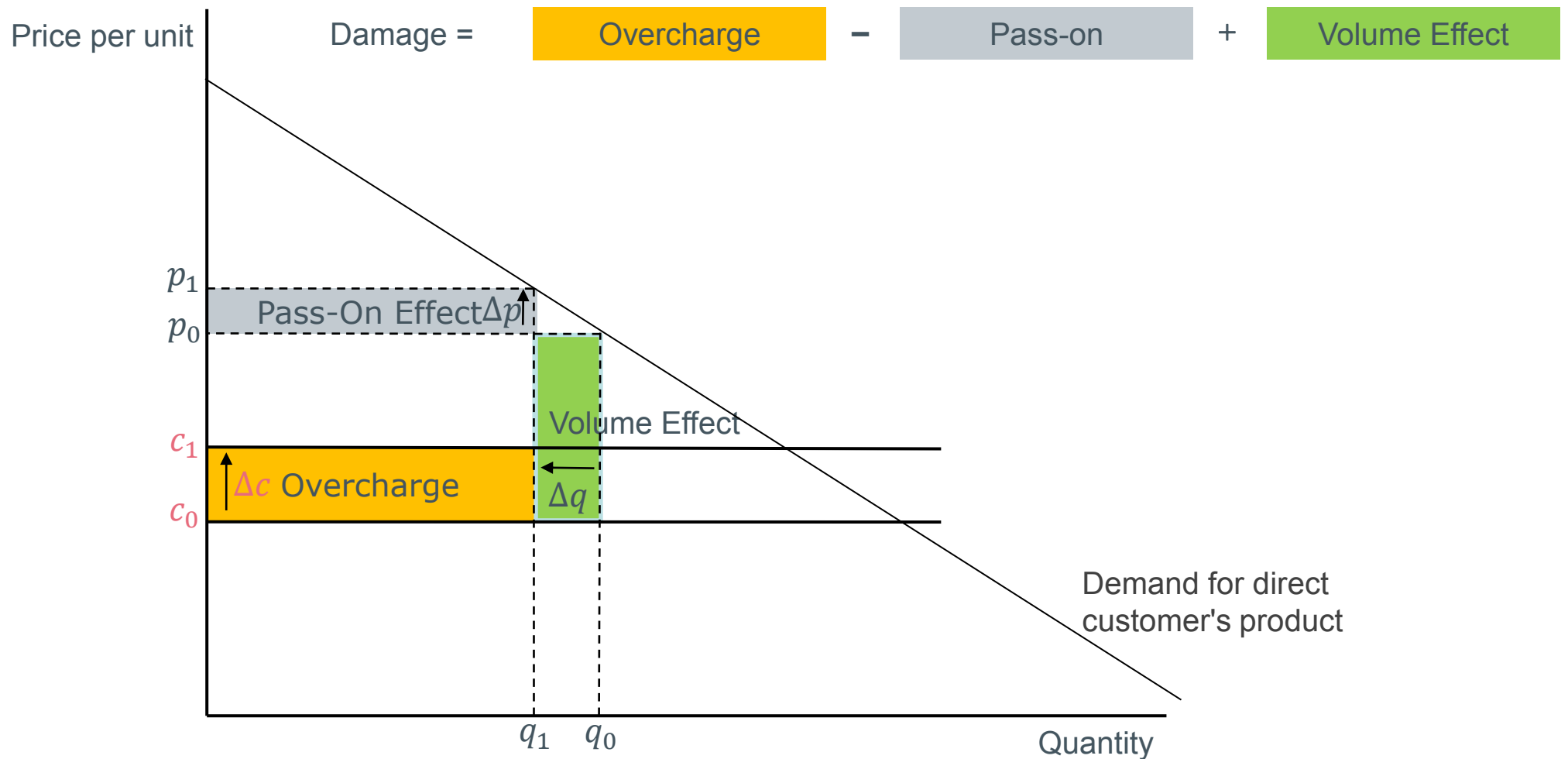
## **Quantification of harm**

**National Courts** must be empowered to estimate harm

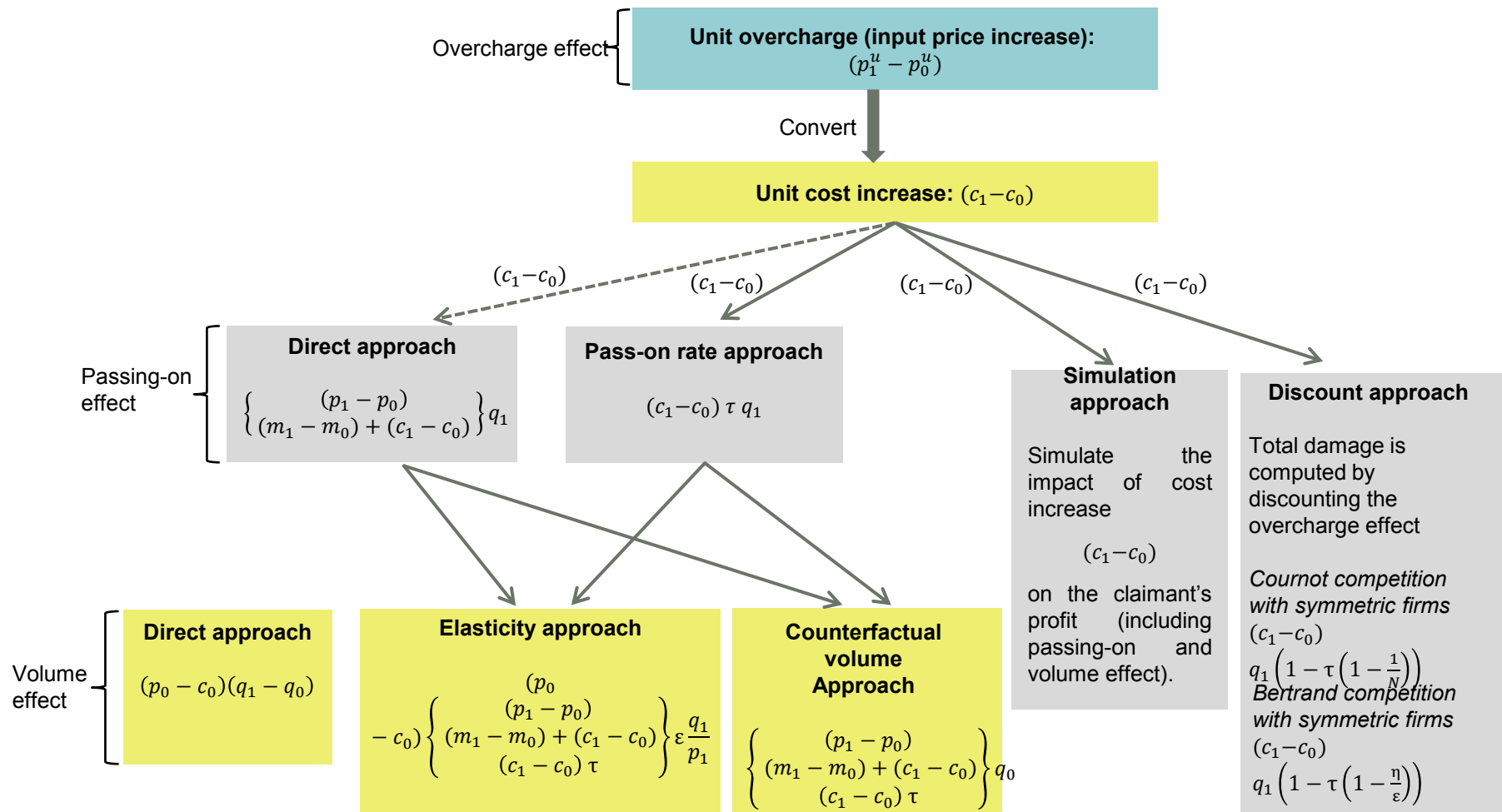
How the market would have evolved had there been no infringement

# The components of damages: 3 rectangles

Example: direct claimant, passing-on defence, volume effect



# Road map to quantification methods



## Funny case

Cartel in elevators (Otis, ThyssenKrupp, Schindler)

Commission asked for damages (on behalf of EU)

Commission (as plaintiff) asked the Commission (as investigator) to have access to files... Cartel members argued that it would undermine leniency programs!

Belgian appeals court sided with EU

# Cartels

CET not very involved (but COMP is)

Leniency:

- Drying up?
- Why?

What to do next:

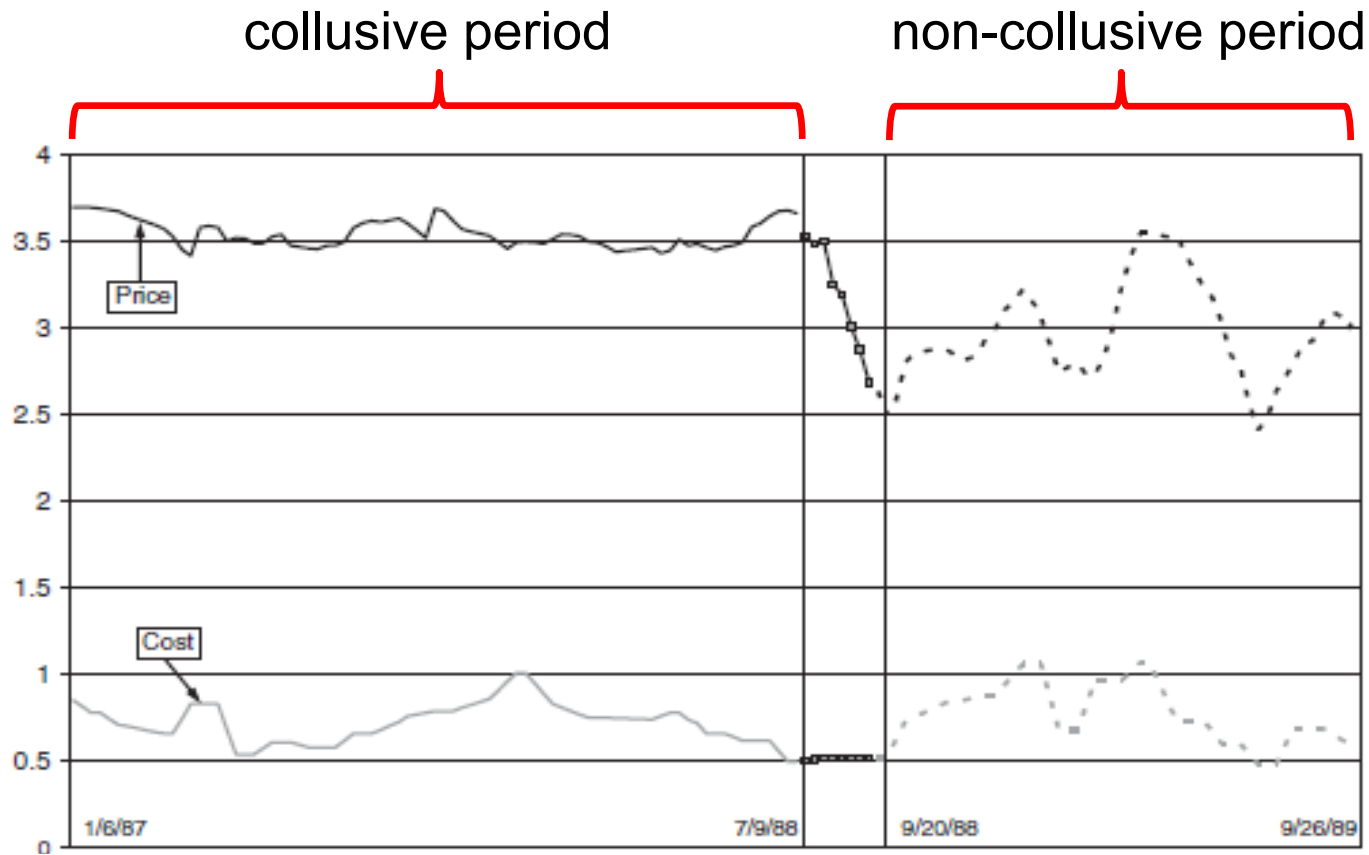
- Internal exercise (especially from M, also SA)
- Screening (chicken-and-egg problem)

# Behavioural Screening

- Collusion is difficult and affects firm behaviour
  - **Behavioural indicators** include
    - **Structural breaks** caused by cartels' birth and death
    - **Collusive markers** related to cartelists' need to coordinate and to build trust (low price variability, regular price changes, stable market shares, etc.)
    - **Anomalies.** Prices are not related to cost as expected under competition
- Not every form of collusion is illegal → Further verification is needed ("hard" questions can be asked)
- Remark: current discussion on analytical framework for collective dominance (COMP, CNECT)



# Example - Variance Screen



A variance screen detects collusion in prices for frozen perch (Abrantes-Metz et al., 2005)

# Where to screen (Harrington, ICN 2016)

- Screen markets where **collusion is likely**
  - Markets where collusion has been observed in the past
  - Markets where buyers decisions are mainly based on price (procurement, intermediate goods markets with homogenous goods)
- Screen markets where good **data is available**
- **Government procurement** auctions should be a good start!
  - Data is available, collusion is likely to take illegal forms
  - Procurement auctions account for about 15% of GDP

# What about **public procurement**

- Pre-DD:
  - Dutch court awarded damages to a state-owned direct claimant (TenneT)
  - Rejected the infringer's pass-on defence (unlikely that that all buyers of electricity would sue ABB. If they do at later stage, ABB could make TenneT liable)
- COMP not very present – why?
- TED
- SA: presence of a tender evidence there was no aid (reasoning: tendering ensures efficient pricing)
- If there is a cartel -> reopening of the case?



**THANK YOU!**

<http://www.imperial.ac.uk/people/t.valletti>

**GRAZIE!**