Abstract

CONVERGENCE IN THE TREATMENT OF DOMINANT FIRM CONDUCT:
THE UNITED STATES, THE EUROPEAN UNION, AND THE
INSTITUTIONAL EMBEDDEDNESS OF ECONOMICS

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Economics is a science, but when it is used in institutions its use is shaped by the characteristics and dynamics of those institutions. It is, therefore, "embedded" in these institutions. Analysis of this embeddedness can thus be of much value for understanding the decisions of antitrust instutions, and it can be particularly revealing in drawing comparisons between competition law regimes. This article provides an analytical framework for the embeddedness of economics and applies it to claims about convergence between the competition law regimes of the United States and Europe. It identifies critically important differences between U.S. and European competition law regimes that often go unnoticed. There are major differences on central issues, such as how much access economists have to data, what kinds of incentives there are for acquiring data, how the tools of economics can be employed in analyzing the data, and many others. These factors necessarily shape decisional outcomes and thus influence the likelihood of convergence and the potential value of any convergence that does occur. There has been and will continue to be convergence between the two systems, and this analysis aids in identifying the factors that will influence the convergence process.