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Presenting leaving the European Union as a simple binary choice comparable to switching sports clubs is misleading. European geography compels co-operation on very many aspects of daily life. The UK has for 45 years regulated these matters with its EU partners collectively. Leaving the EU will not free the UK from EU rules. Many questions remain about how to resolve textual disputes about standards. The interests of over 4 million expatriate citizens deserve close attention; the coarsening of the debate is to be regretted; and if more time is needed it should be taken.

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Amidst a wave of politically fuelled interventionism and the renaissance of a “big is bad” philosophy, competition authorities are under pressure to demonstrate that they can address the challenges of an increasingly digitising economy. Several governments are looking to newly appointed panels of experts for advice on the extent to which a far-reaching overhaul of the legislative framework governing antitrust and merger control is needed. In the meantime, pending any potential reform efforts, there is a risk of merger reviews being unduly influenced by wider macro-economic observations about a slow-down in productivity growth, higher corporate profits and greater inequality, rather than being informed by case-specific, economic evidence. These macro-economic factors and a perception of underenforcement appear to drive competition authorities to expand speculative theories of harm revolving around “innovation competition” to justify interventions where the economic evidence would not otherwise indicate competition concerns. An empirical analysis of a much wider body of cases should be conducted before authorities or policy-makers jump to conclusions that could have harmful, unintended consequences.

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State aid may be granted only when it is necessary and proportional for the achievement of an objective of common interest. Current state aid rules have interpreted the principle of proportionality to require a balancing of positive and negative effects. This article argues that in practice no balancing is carried out. Moreover, it would be very cumbersome to attempt to carry out a true balancing of quantifiable or measurable effects. In reality the Commission ensures that the negative effects are kept to the minimum possible. This is indeed consonant with the case law, if the principle of proportionality is understood to mean the minimum necessary affectation of trade and distortion of competition. The article proposes that the Commission should stop referring to balancing, that it should explicitly expound the principle that unnecessary distortions make state aid incompatible with the internal market and that in the next generation of guidelines it should identify “manifest” negative effects that Member States must avoid.

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