

Globalization and its Discontents: What role for competition law?



Congratulations on 25 years of Swiss competition law

- If American historical experience is anything to go by, after 25 years Swiss competition law should be reaching “escape velocity.”
- Of course, the context is very different—Switzerland is a much more open economy now than the U.S. was 25 years after the enactment of the Sherman Act.
- But what of the contemporary context in which competition law operates worldwide?
 1. Two global economic shocks in 15 years have in different ways called into question market forces as the mechanism to determine corporate success and resource allocation.
 2. Supporters of industrial policy gain in strength. Digital markets “change everything.”
 3. Others emphasize social and environmental priorities that were unheard of the decades after the Fall of the Berlin Wall—for example, the Sustainable Development Goals.
 4. Growing cynicism about capitalism, globalization, and large firms in particular.

But worldwide markups have risen, including in Switzerland

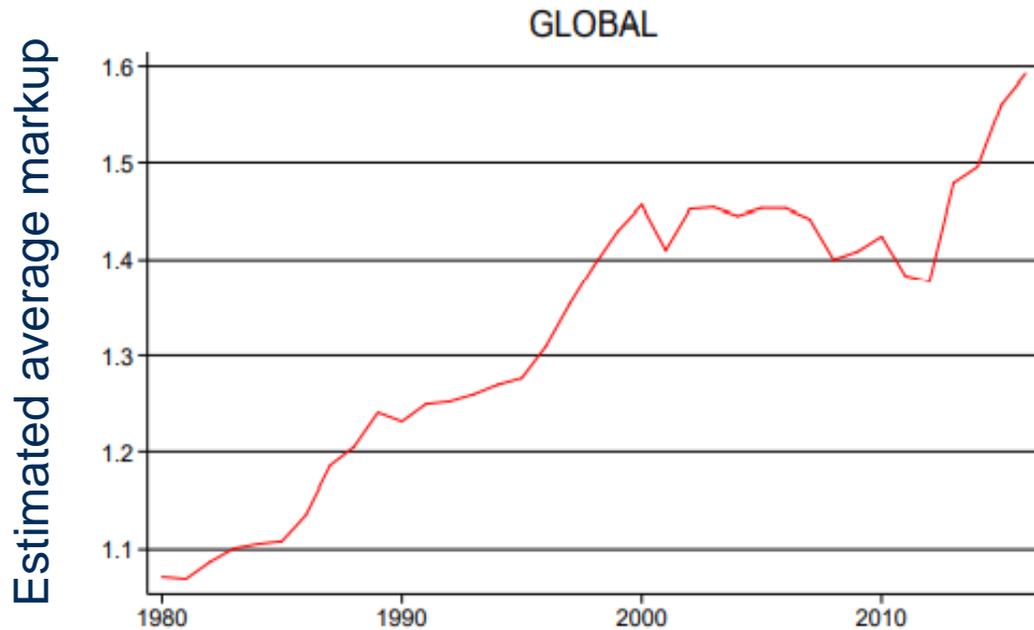
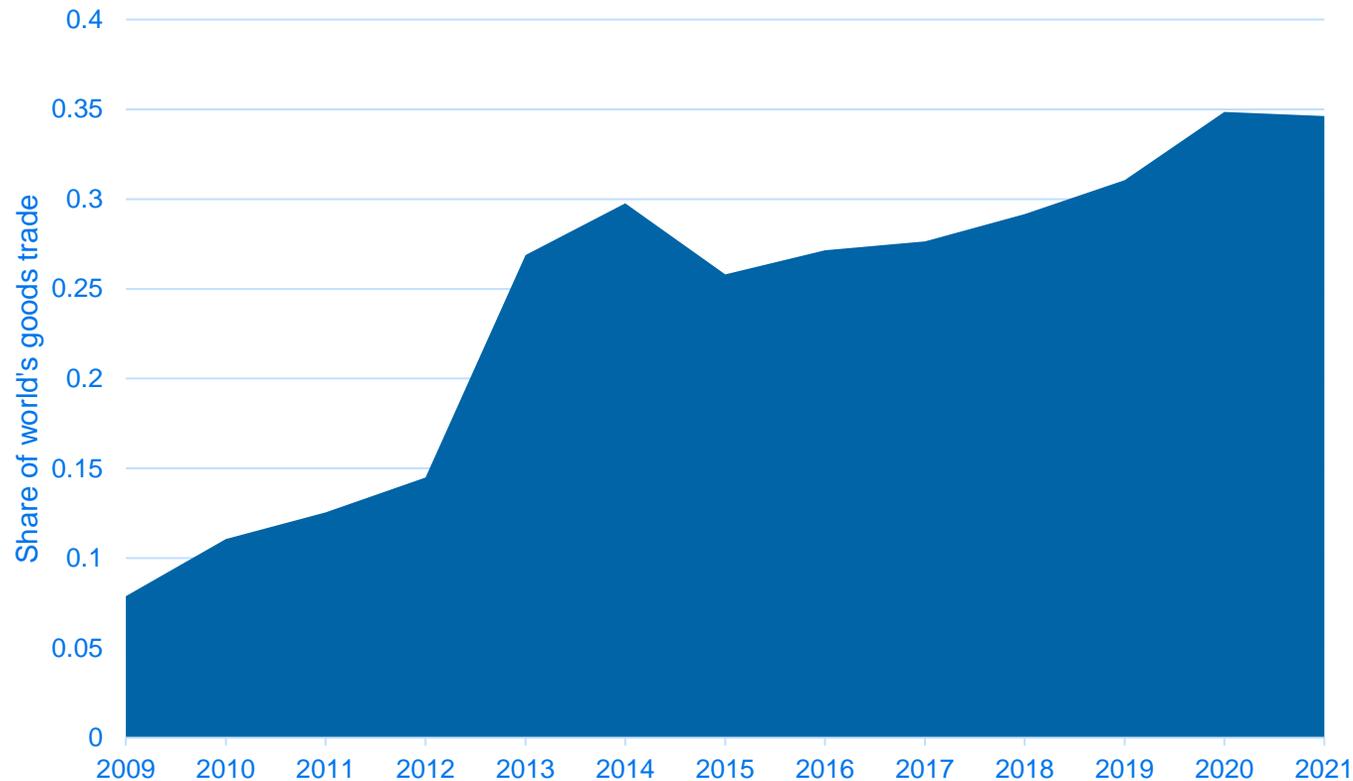


Figure 1: Global Market Power

Source: De Loecker & Eeckhout (2018).

		Markup	
		2016	change*
Global Average		1.59	+0.52
Europe		1.64	+0.66
1	Denmark	2.84	+1.95
2	Switzerland	2.72	+1.63
3	Italy	2.46	+1.46
4	Belgium	2.06	+1.03
5	Greece	1.80	+0.85
6	United Kingdom	1.68	+0.74
7	Norway	1.60	+0.74
8	Ireland	1.82	+0.66
9	France	1.50	+0.53
10	Sweden	1.31	+0.50
11	Netherlands	1.52	+0.47
12	Finland	1.36	+0.44
13	Austria	1.33	+0.41
14	Spain	1.34	+0.33
17	Germany	1.35	+0.29
16	Portugal	1.19	-0.06

State aid control has deteriorated worldwide



29%

of intra-EU trade is in products and markets where there is at least one subsidised firm in a EU member state

Source: Estimates based on over 24,000 subsidies documented by the Global Trade Alert

Are we winning the battle and risk losing the war?

- Competition law has spread widely and is regarded as part of government toolkits, agencies have gained in experience, and considerable talent has been attracted to this important area of public policy.
- Yet, the trend towards higher margins, more concentration, and greater subsidization continue. Populists scorn competition law, while others call for a fundamental rethink.
- What do we learn from this? Some hypotheses:
 1. Matters would have been worse without recent competition law enforcement (the “counterfactual defense”).
 2. Focus on enforcement cases means that competition agencies and the bar miss the forest from the trees (“silo critique”).
 3. Competition law enforcement isn’t as strong as some might have thought—and maybe that’s a deliberate policy outcome (“reality check”).