

3 March 2017, Dr Kathryn McMahon (Associate Professor, University of Warwick)

Reflections on the role of economics in the interpretation of EU competition law

For a number of years, the European Commission has been championing a 'more economic approach' to the interpretation of EU competition law. Yet, at the same time, the interpretative and institutional questions raised by this recourse to 'extra-judicial' economic 'text' as a mode of judicial adjudication are rarely considered or contested by EU competition law courts and competition lawyers.

The European Court of Justice's apparent reluctance to embrace this 'more economic approach' in recent decisions has also been much debated. This paper examines whether the interpretative practices of the European Courts impose institutional limitations, and raise broader questions of legitimacy and accountability, on the court's ability to adopt new economic theories in adjudication.

It will begin with a broad discussion of how competition law has grappled with the question of interpretation, particularly practices in the US where judges and commentators have been grappling with these questions during its more than 120 year history, and then turn to consider these practices in the EU.