

Impulsreferat I: Academic Standards as Example?

DICE, University of Düsseldorf & Bundeskartellamt
17. Juni 2010

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Schinkel, M.P., “Forensic Economics in Competition Law Enforcement,”
Journal of Competition Law and Economics, 2007

- “Application of theoretical and empirical industrial organization economics in the legal process of competition law enforcement”

- Saukko and Knupfer, *Encyclopaedia of Forensic Sciences*, 2000

- National Association of Forensic Economics (NAFE)

- Forensic IO finds wide application:

- Detection and investigation

- Case development (causality, theory of harm)

- Decision making and litigation

- Remedies, sanctions and damages

- (Applied) academic discipline



Why first and foremost academic?

- Advanced economic analysis
- Academic methods (including its limitations!)
- The right incentives:
 - Intrinsic motivation
 - Less business pressure
 - Committed in publications
 - Reputation mechanism
- Landmark cases are often at the scientific frontier
- Cross-fertilization academy-practice (research and teaching)



Standards for Experts (USA)

- *Frye* (1923) - Federal Rules of Evidence (FRE): Anyone who has relevant expertise “by knowledge, skill experience, training or education” is permitted to be classified as an expert witness
- Independent professional, who testifies to the court
- Moral and professional obligation to testify honestly to professional opinion
- *Daubert* (1993):
 - What are reliable scientific principles and methods?
 - Who qualifies as a scientific expert?
- Methodological (hence hot) debate: falsifiability, replication, limitations, potential error margins, peer review, publication, general acceptance by consensus in the academic community



- Revision of rule 702 of the FRE in 2000:

“If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training of education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.”

- In economics: Slottje (1999), Posner (1999), Gavil (2000), *Antitrust* (Spring 2003), Werden (2007)



Some structural conditions, recommendations

- Best practice rules
- Knowledgeable bridgeheads (in-house, counsel, contacts)

- Straight incentives – no contingency fees
- Impressive CV, coupled with detailed knowledge of the case
- Availability of a support team

- Ex ante possibility for public challenge
- Public record of past testimony (Posner, 1999)
- Likelihood of public cross-examination

- White/black list

- Court-appointed expert

