E.CA Economics

Overview of recent Article 101/102 practice

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Expert Forum on Pricing Strategies

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Recent practice in Article 101/102 cases

What cases does the Commission prioritise?

How are the cases analysed in terms of actual or likely effects?

Commission's 101/102 focus in the recent past and near future

(Decisions, Appeals, SOs, Market Tests, Openings, 2010 – 2012)

	Air/ Transport	Energy/ Utilities	Telecoms	Financial Services	Pharma/ Chemical	IT-Hardware/ Manufact.	IT-Software
Rebates/ Exclusive Dealing	1	1			1	2	
Margin Squeeze			4				
Refusal to Supply (broadly)		4	1			1	3
Exploitative Pricing (broadly)		1		3		4	
Resale Price Maintenance					1		1
Pay for Delay					4		
Code-Sharing	4						

Notes: Overviews excludes COMP/39736, COMP/39839, COMP/39230, COMP/39876, COMP/38381, COMP/37507

Focus in the **recent past**: margin squeeze and refusal to supply in the telecoms and energy sector

	Air/Transport	Energy/Utilities	Telecoms	Financial Services	Pharma/Chemical	IT-Hardware/Manufact.	IT-Software
Rebates/Exclusive Dealing		1			1	2	
Margin Squeeze			3				
Refusal to Supply (broadly)		2	1			1	1
Exploitative Pricing (broadly)		1		2		1	
Resale Price Maintenance					1		
Pay for Delay							
Code-Sharing	1						

Notes: Overviews excludes COMP/39736, COMP/38381, COMP/37507

Focus in the **near future**: essential patents in the IT sector and pay for delay in pharmaceuticals

	Air/ Transport	Energy/ Utilities	Telecoms	Financial Services	Pharma/ Chemical	IT-Hardware/ Manufact.	IT-Software
Rebates/ Exclusive Dealing	1						
Margin Squeeze			1				
Refusal to Supply (broadly)		2					2
Exploitative Pricing (broadly)				1		3	
Resale Price Maintenance							1
Pay for Delay					4		
Code-Sharing	3						

Notes: Overviews excludes COMP/39839, COMP/39230, COMP/39876

Recent practice in Article 101/102 cases

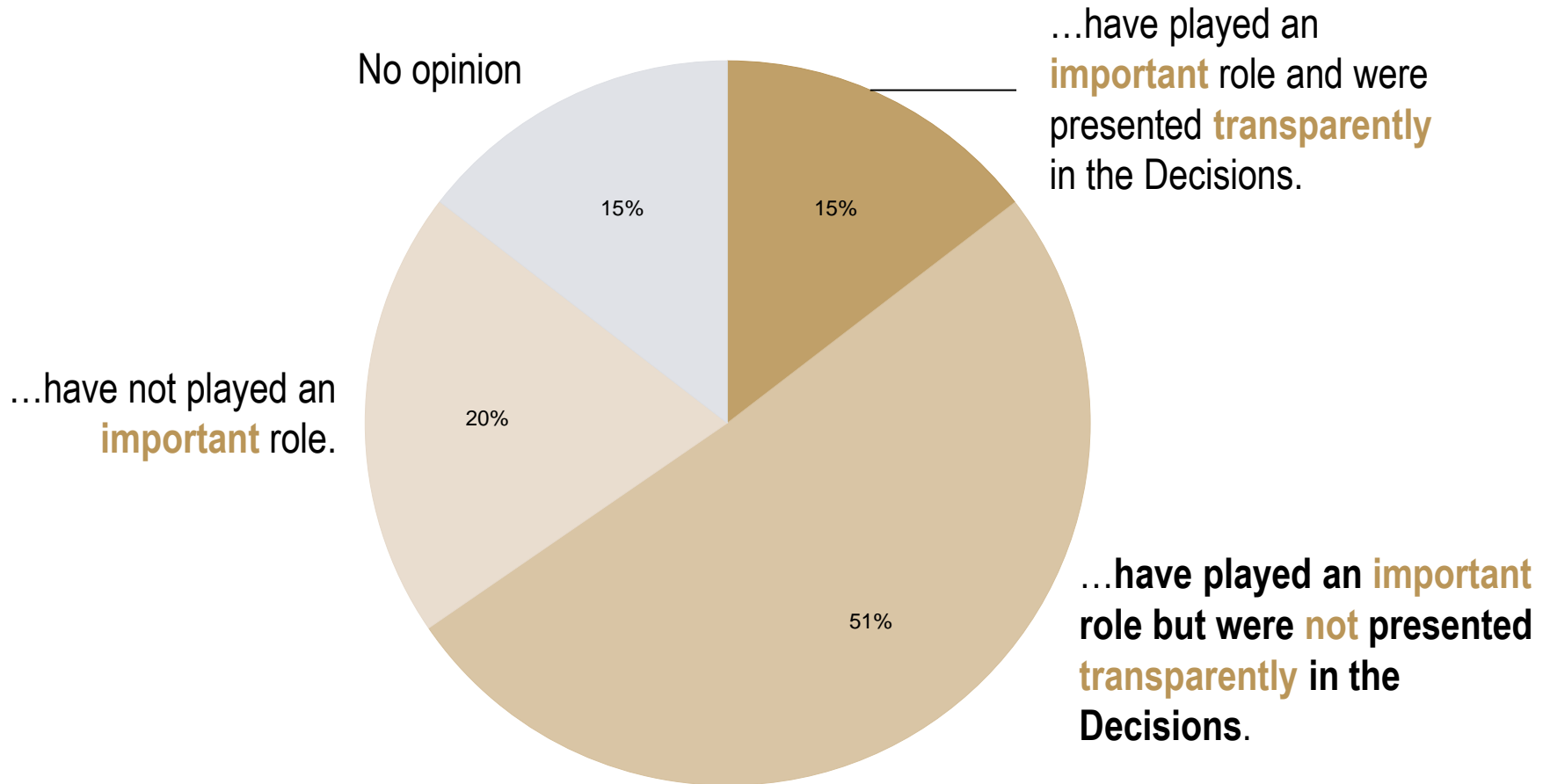What cases does the Commission prioritise?

How are the cases analysed in terms of actual or likely effects?

Commission Decisions: limited references to effects-based (economic) analyses in 101/102 cases

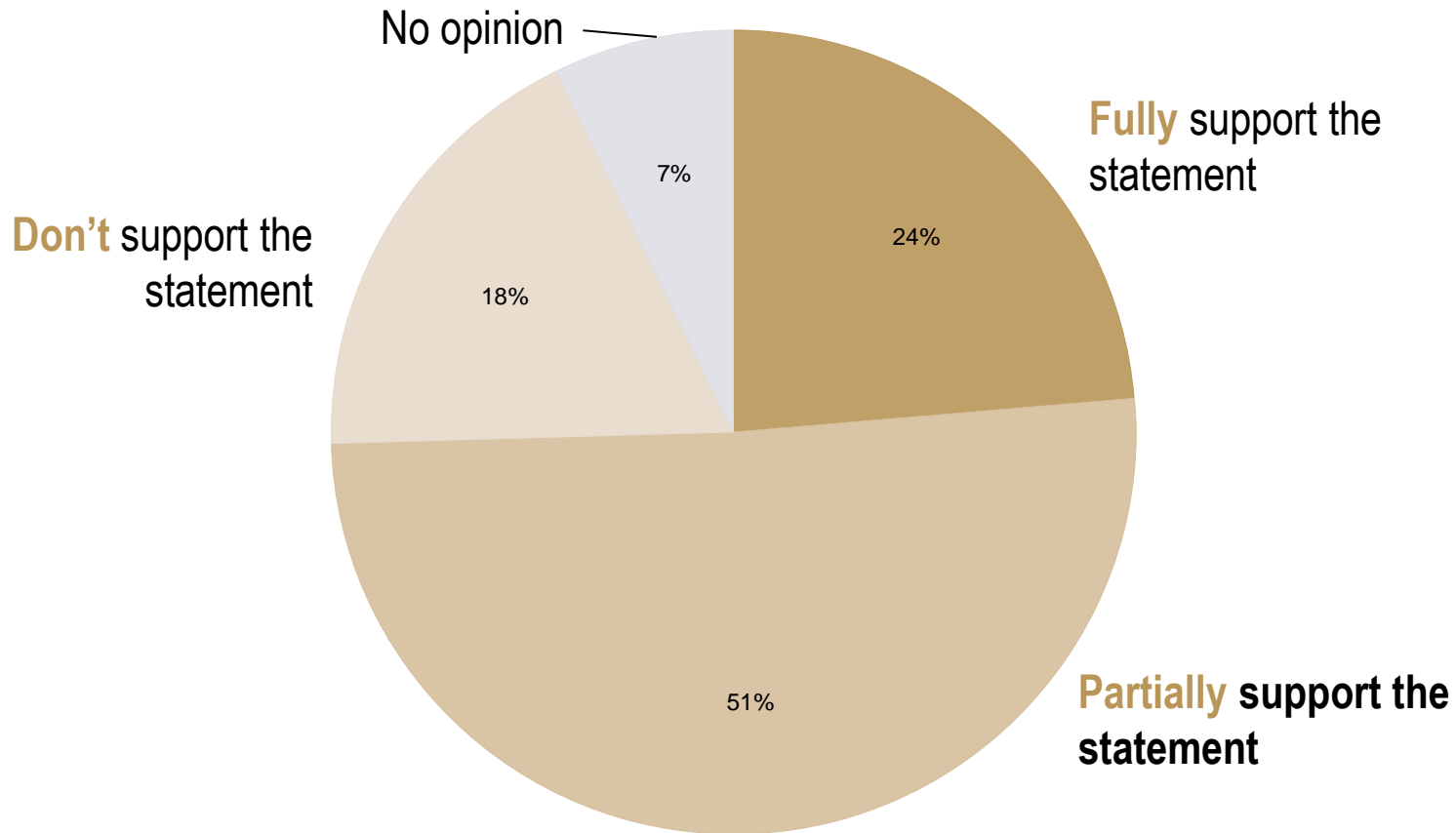| Key Words	Recent Commission Decisions (19) 2010 – 2012	General Court 102 Judgements (30) 2000 – 2010 (Geradin/Petit 2011)
Market power	53%	23%
Elasticity of demand	21%	7%
Efficiencies	53%	40%
Economies of Scale	26%	27%
Consumer (including through competition)	63%	n/a
Consumer welfare (directly)	11%	0%
Measuring actual effects (empirical or econometric or correlation or economic evidence or regression)	37%	n/a

Notes: Court Judgements taken from Geradin, D. and N. Petit (2011), "Judicial Review in European Union Competition Law: A Quantitative and Qualitative Assessment", Tilec Dicussion Paper DP 2011-008

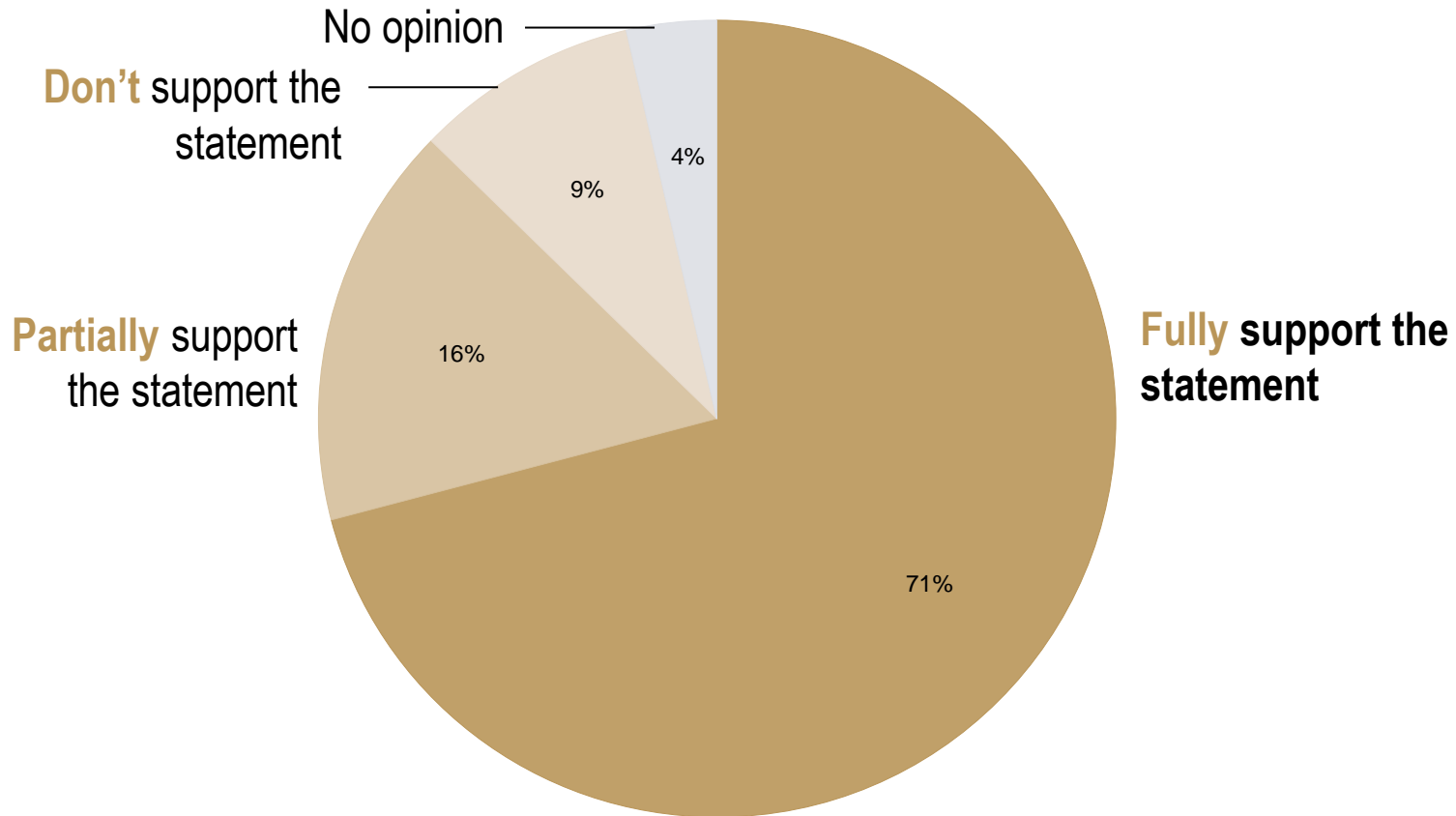# Survey (1): Analyses of actual or likely effects in 101/102 cases...

No opinion

...have played an **important** role and were presented **transparently** in the Decisions.

...have not played an **important** role.

...**have played an important role but were not presented transparently in the Decisions**.

15%

15%

20%

51%

Source: E.CA Expert Forum Survey (55 respondents)

Survey (2): "Analyses of actual or likely effects in 101 and 102 cases are *likely* to play a larger role in the future"
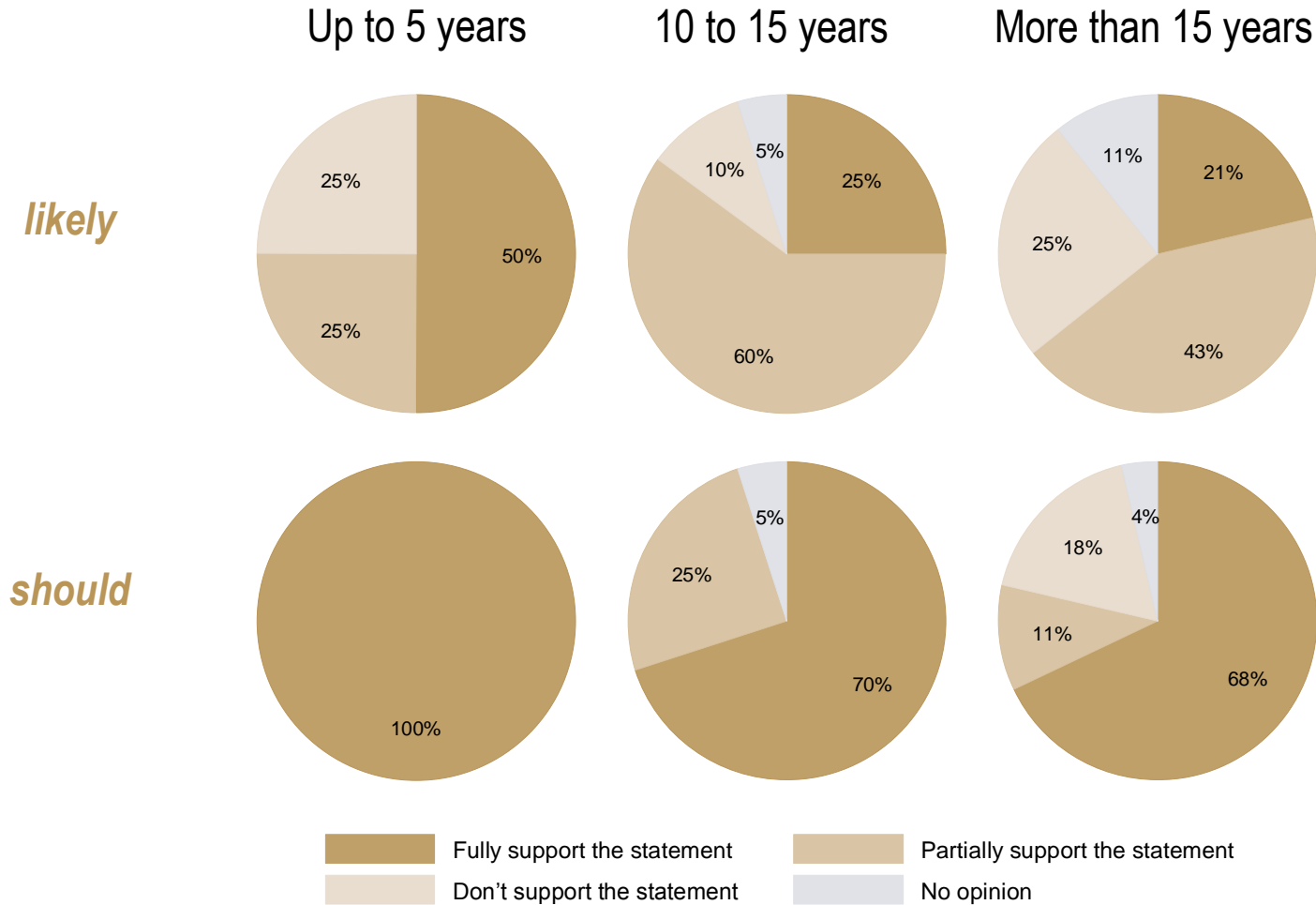

No opinion

Fully support the statement

24%

7%

Don't support the statement

18%

Partially support the statement

51%

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Survey (3): "Analyses of actual or likely effects in 101 and 102 cases *should* play a larger role in the future"

No opinion

Don't support the statement

Partially support the statement — 16%

9%

4%

Fully support the statement

71%

Source: E.CA Expert Forum Survey (55 respondents)

Support for effects based analyses weakens with experience

	Up to 5 years	10 to 15 years	More than 15 years
likely	50%, 25%, 25%	25%, 60%, 10%, 5%	21%, 43%, 25%, 11%
should	100%	70%, 25%, 5%	68%, 11%, 18%, 4%

Legend:
- Fully support the statement
- Partially support the statement
- Don't support the statement
- No opinion

Source: E.CA Expert Forum Survey (55 respondents)

11

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Summary

	Recent past	Near Future
What cases does the Commission prioritise?	Margin Squeeze ~ Telecoms Refusal to Supply ~ Energy	Exploitative Pricing ~ IT Pay for delay ~ Pharma
How are the cases analysed in terms of actual or likely effects?	Important but not presented transparently in Decisions	Should become more important but some scepticism whether it will (…to the extent desired)

Thank you!

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Questions on *likely / should*, differently *framed*

Same screen (50% randomly)
1. Should
2. Likely

Different screens (50% randomly)
1. Likely
2. Should

Analyses of actual or likely effects *should* play a larger role in the Commission's assessments of Article 101 and 102 cases in the future.

○ Fully support the statement
○ Partially support the statement
○ Don't support the statement
○ No opinion

Analyses of actual or likely effects *are likely* to play a larger role in the Commission's assessments of Article 101 and 102 cases in the future.

○ Fully support the statement
○ Partially support the statement
○ Don't support the statement
○ No opinion

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Analyses of actual or likely effects *are likely* to play a larger role in the Commission's assessments of Article 101 and 102 cases in the future.

○ Fully support the statement
○ Partially support the statement
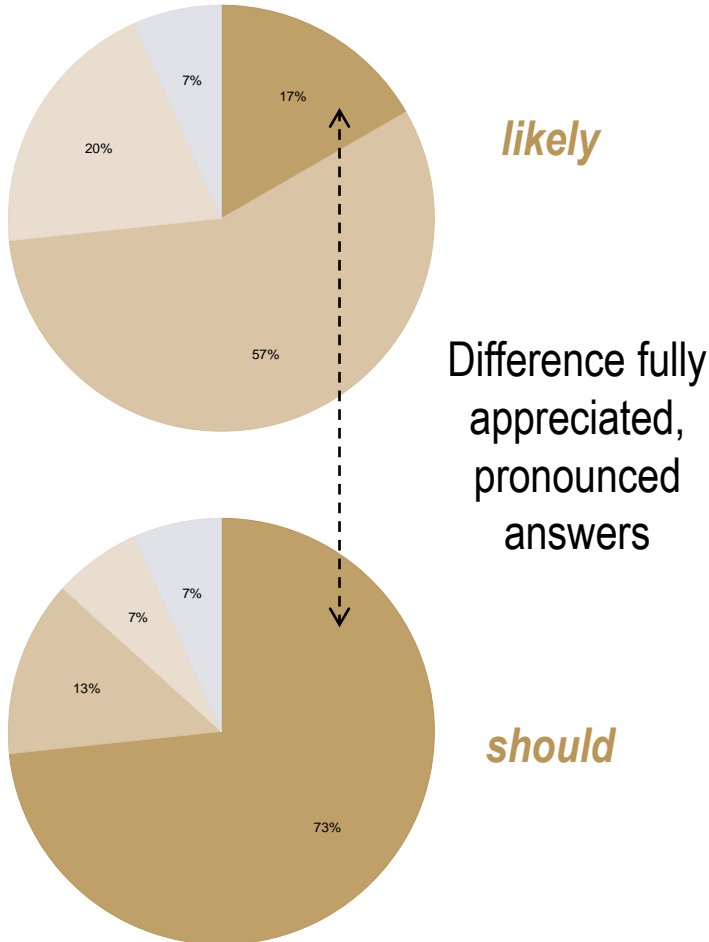○ Don't support the statement
○ No opinion

>>

Analyses of actual or likely effects *should* play a larger role in the Commission's assessments of Article 101 and 102 cases in the future.

○ Fully support the statement
○ Partially support the statement
○ Don't support the statement
○ No opinion

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Results on *likely / should*, depending on the *framing*

Same screen (50% randomly)

likely

17%
7%
20%
57%

Difference fully appreciated, pronounced answers

7%
7%
13%
73%

should

Different screens (50% randomly)

likely

32%
8%
16%
44%

Difference less well appreciated, answer biased towards preference

12%
20%
68%

should