It has been just over a year since our last write on EU Merger Control and the Innovation Theory of Harm. Two things have not changed. We still do not know what Brexit means, and we still do not know who will win the 2021 EU election.

And a year is too short a time to judge the Denicolo/Polo Paper, which we mentioned last year. But academic papers published in the last four weeks appear to challenge the ITOH (by Jullien/Lefouili and Denicolo/Polo) – all respected industrial economists; Denicolo is an advisor to both the Commission and the UK’s CMA.

Yesterday, the Commission approved the Bayer/Monsanto innovation, subject to remedies. These appear to include a major R&D divestment: the sale of vegetable seeds, pesticides and digital technology to BASF (see press release).

So more good things there – yet these elements are largely ignored (or mentioned in passing) by the CET Papers. We wait with baited breath to scrutinise the inevitably heavily-redacted decision. A flotilla of conference presentations (and academic papers) will be launched. The 700-page BIAC merger horizon will be further illuminated.

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The CET finds that firms are spurred to innovate by the fear that rivals will innovate and displace them. In the meantime, this new academic literature is a welcome addition to this fascinating debate.

The CET Papers: what’s all about?

The CET Papers develop an economic model that seeks to reinforce the theory that was ultimately deployed in the Commission's decision. The CET Papers are consistent with an economic model (1990) that held that mergers could affect product competition, and with a model (1996) with different conclusions.

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The new academic literature enriches the ongoing debate. It counteracts the clear and direct building up of the EU’s antitrust agencies’ concerns. The Commission should be cautious if it cannot be resisted.

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