

Chapter D – Competition Policy

Competition Policy and Strategy – German Title: Wettbewerbspolitik und -strategie

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English version of my 20202 lecture

Competition Policy

- Competition Policy: secure proper “functioning” of competition, prevent impediments to competition; interests of consumers in focus.
- Pillars
 - Mergers
 - Horizontal
 - Vertical
 - Cooperation between firms
 - Collusion and cartels
 - Horizontal cooperation and restraints of competition
 - Vertical cooperation and restraints of competition
 - Abuse of dominance
 - Europe: State aid

Competition Policy

- Competition agencies responsible for protection of competition
 - Federal cartel office in Germany, “Bundeskartellamt”.
 - European Commission’s DG Comp in EU.
 - *Federal Trade Commission (FTC)* and United States Department of Justice (DOJ) in USA.
 - ...
- Primary legislation EU
 - Art. 101 TFEU: collusion
 - Art. 102 TFEU: abuse of dominance
 - Art. 107 TFEU: state aid
- Secondary legislations EU
 - Regulations (“Verordnungen”) must be adopted by member states (e.g., merger control)
 - Directives (“Richtlinien”) lay out goals. Member states have to leeway in adoption.
 - Decisions (“Beschlüsse”) can address member states or firms (e.g., fines for infringements of competition laws).

Competition Policy

- Germany
 - “Gesetz gegen Wettbewerbsbeschränkungen” (GWB)
 - §1 GWB: collusion
 - §§ 18–21 GWB: abuse of dominance
 - §§ 35–43 GWB: merger control
 - Federal Network Agency (“Bundesnetzagentur”) as regulator for network industries such as railway, postal services, energy.
 - Monopolies commission (“Monopolkommission”) as consultant for government.
- USA
 - Sherman Act, Section 1: collusion
 - Sherman Act, Section 2: abuse of dominance
 - Important difference: criminal law in USA vs. civil law in EU (cartel infringement as “Ordnungswidrigkeit”).

Competition Policy

- *Total Welfare Standard*
 - Goal: maximize total welfare
 - Industry profits relevant.
 - Dynamic and productive efficiency concerns relevant, consumers as “shareholders”
- *Consumer Welfare Standard*
 - Goal: maximize consumer welfare
 - Consumers face high costs when defending their interests; makes decision making easier
- *Per se* rules
 - Prohibition of (alleged) anticompetitive practices
 - Efficient enforcement, low uncertainty
 - Risk of banning efficiency enhancing practices (e.g., potentially resale price maintenance), *safe harbor* (e.g., anticompetitive practice legal because firms are small).
- *Rule of reason*
 - Case-by-case
 - More costly than per se rules, higher uncertainty; however lower risks to make aforementioned mistakes