

Myths and Untold Stories - Private Antitrust Enforcement in Germany

BACKGROUND

- The last decade has seen major changes in the enforcement of European competition law. In particular, the enactment of Regulation 1/2003 has brought a notable shift towards decentralised enforcement of competition rules and the opportunity for national courts to rule on private antitrust cases.
- Decentralised *public* enforcement within the European Competition Network would appear to be a success, but the position with respect to *private* enforcement of European competition law is less clear.

METHODOLOGY

- The author undertakes an analysis of private antitrust enforcement in Germany through an analysis of current policy and a study of 368 cases that were concluded before the German courts between 2005 and 2007. The major aim of the study is to discover how many, and what type of, private antitrust actions are brought before German courts.
- For the purpose of the study, *private enforcement* is deemed to refer to individually initiated litigation, either as stand-alone or follow-on action, before a court to remedy an infringement of antitrust law.
- Information is collected on the nature and magnitude of civil antitrust actions in Germany, including: the courts involved in litigation, the characteristics of the parties, the affected industries, the remedies sought, the outcome of the claim, the alleged anticompetitive conduct, the proportion of stand-alone and follow-on litigation, and the length of proceedings before a court.

KEY FINDINGS

- The study shows that a large number of private antitrust cases are concluded in Germany relative to the number of public investigations.
- Private enforcement would appear to supplement public enforcement, with the former picking up infringements that have less impact on the economy as a whole rather than duplicating public investigations into hard-core violations of competition rules.
- In many instances, private cases are closely related to contract disputes.
- Only a small number of litigants ask for compensation of loss suffered from anticompetitive conduct, suggesting that expensive damages actions for the breach of antitrust rules may not be as important as is commonly assumed.
- Injunctions are widely and successfully used in private antitrust cases in Germany.

POLICY ISSUES

- The results of the study suggest that the European Commission and other stakeholders may have misunderstood the nature of private actions in Germany (and, possibly, in Europe). It seems that there are many situations in which injunctions or interim relief satisfy the plaintiff without the need for compensation. As a consequence, the question German and European legislators have to ask is what type of private enforcement system they want, and on which assumptions potential legislative measures will be based.

Sept 2010

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FOR MORE INFORMATION

The full working paper (10-12) and more information about CCP and its research is available from our website: www.uea.ac.uk/ccp

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