Marburg Papers on Economics • Marburger Volkswirtschaftliche Beiträge
http://www.wiwi.uni-marburg.de/Lehrstuehle/VWL/WIPOL/Fodiskp.htm
ISSN-No.: 1860-5761

Mariana Bode / Oliver Budzinski

Competing Ways Towards International Antitrust: the WTO versus the ICN

No. 03-2005

[in: Frank Columbus (ed.), New Developments in Antitrust, New York: Nova]

Dr. Oliver Budzinski
Philipps-University Marburg
Dept. of Business Administration and Economics
Economic Policy
Am Plan 2 • D-35032 Marburg
Tel. +49-6421-2823926 • Fax +49-6421-2823936
E-Mail: budzinsk@wiwi.uni-marburg.de

Competing Ways Towards International Antitrust: the WTO versus the ICN[*]

Mariana Bode & Oliver Budzinski

ABSTRACT

Various problems coming along with the ongoing globalization of markets and business activities like international cartels, monopolization of world markets, deterrence of market access in spite of relaxed trade barriers as well as jurisdictional conflicts about transnational mergers and alleged or actual anticompetitive business strategies call for the creation of an international antitrust regime. Two alternative avenues to internationalize antitrust policy are currently advanced by governments and antitrust authorities. The first avenue is to complement the World Trade Organization (WTO) by a board of supervision for international competition issues including a harmonized antitrust code. With the Doha Declaration (2001), the WTO members agreed to engage in negotiations on an international antitrust agreement, although the time schedule remains uncertain in the light of the Cancún failure. The second avenue was opened up by the creation of the International Competition Network (ICN, 2001), which addresses global antitrust concerns by policy coordination.

This paper compares the two approaches against the background of economic and political criteria. It starts with a brief overview of the theoretical alternatives to cope with cross-border antitrust problems, such as the strengths and weaknesses of unilateral instruments (effects doctrine), bilateral agreements and (past) multilateral attempts. Following a descriptive characterization of the key features and underlying principles of the WTO and the ICN approach to international antitrust, the main section of the paper presents an analytical comparison of the two approaches. It is based on selected criteria, which are predominantly derived from institutional and political economics. The comparative performances and potentials of WTO- and ICN-styled international antitrust are evaluated regarding the internalization of externalities, agency problems and preference conformity, overall practicability & negotiation/implementation competences, efficiency of governance, protection of effective and efficient competition,

[*] The authors thank Jörg Jasper for valuable comments on earlier drafts of the paper and Barbara Majireck for editorial assistance. All remaining errors are our responsibility. Dr. Budzinski gratefully acknowledges financial

instruments of conflict resolution, and the capability to cope with changing environments. Additionally, the article examines another dimension of the process towards an international antitrust regime, which has been neglected so far in the literature. Are their benefits and/or deficiencies of having a 'competition of ways' to select the superior regime? This points to the theory of institutional (or regulatory) competition. The final section presents conclusions.

1 Introduction

In times of globalization, trade liberalization and deregulation of specific industries, competition authorities face new challenges in order to protect national as well as international competition. With companies operating in various countries, fading market frontiers and increasing cross-border trade, new strategies must be developed in order to overcome threats to domestic markets resulting of anticompetitive behavior abroad.

Even though solutions such as the "Effects Doctrine" or bilateral agreements allow – albeit imperfectly – countries to protect their domestic market, there are no laws safeguarding the global economy and international competition. Thus, the request arises to establish an international competition policy regime in order to harmonize countries' competition laws, to reduce conflicts due to cross-border anti-competitive behavior and to support developing countries in reaching Western standards.

Among several approaches, two are of significant interest: On the one hand, the World Trade Organization (WTO) could be enhanced by a board of supervision for international competition issues including a harmonized competition code for all, while on the other hand the International Competition Network (ICN) has been established to take care of global competition concerns through policy coordination [Graham 2003; Janow 2003; Budzinski 2004b].

This paper discusses whether the institutional WTO or the voluntary ICN approach represents the better path to an international competition policy regime to control private anticompetitive activities. The second part will explain the importance of an international competition policy. Subsequently, unilateral, bilateral and multilateral approaches to the prevention and solution of problems in global competition are introduced. Section 3.1 gives a short overview of the WTO's characteristics, its structural organization and its plans to integrate an international competition

support from the Volkswagen Foundation, Program on *Global Structures and Governance*.

policy. The organization and the framework of the ICN as well as its attempts to prevent international anticompetitive behavior is explored in section 3.2.

Based on the statements made in section 2 and the facts presented in section 3, the fourth section compares the WTO approach with the ICN qualities. The discussion will be divided into the following six criteria: (i) feasibility, (ii) acceptability, (iii) efficiency, (iv) negotiation and implementation of international competition rules, (v) conflict resolution and (vi) adaptability. Conclusions follow in section 5.

2 Principles of International Competition Policy

2.1 The Need for an International Competition Policy

In the course of the predominantly procompetitive process of market globalization, private anticompetitive activities also increase and bring about severe international competition problems. Among them, all the traditional types of competition problems can be found. International hardcore cartels, like the famous Vitamins Cartels (price fixing and market sharing on 12 worldwide vitamins markets among 13 companies from Europe and Japan), increase in number and seriousness, generating massive damages for consumers all around the world [Evenett/Levenstein/Suslow 2001; First 2001; Connor 2004]. The number of mergers with cross-border effects has increased during the last merger wave in the late 1990s and ever since the share of international mergers in relation to total mergers remained high.[1] Additionally, companies with dominant positions on world markets have been accused of abusing their global market power. The Microsoft case represents an outstanding example [Fisher/Rubinfeld 2001; Gilbert/Katz 2001; Grimes 2003].

Even though private anticompetitive actions have a global dimension, the competition policies of countries remain inbound focused. The absence of any kind of international regime causes a number of severe problems, for instance:

- Conflicts between different countries arise as national competition authorities mainly protect their domestic markets without taking into consideration the effects of their policy enforcement on foreign economies. The U.S.-EU conflicts on the merger cases Boeing/Mc Donnell Douglas and GE/Honeywell represent striking examples of a much

[1] See on the development of international mergers Pryor (2001), Karpoff/Wessels (2002), and Evenett (2003). Towards the end of 2004, merger activity is beginning to rapidly increase again.

larger number of jurisdictional conflicts.[2] A more aggressive variant is strategic competition policy as a deliberate 'beggar-thy-neighbor'-strategy to increase national welfare (or the one of national lobbies) at the expense of foreign/international welfare [Fox 2000; Budzinski 2002b, 2004a; Guzman 2004].

- Developing countries often powerlessly face threats of multinational companies cartelizing or monopolizing their markets. More often than not, even the ones which dispose over an enforceable competition law simply do not have enough power in terms of important domestic markets to make multinationals willing to obey to their laws [Fox 2000, 2003a; Jenny 2003a, 2003b].
- Significant inefficiencies for internationally competing enterprises arise because of multiple reviews of alleged anticompetitive behaviors and arrangements.[3] Similarly, taxpayers around the world lose from parallel proceedings by the national competition authorities (in particular regarding fact finding like interviews, data generation, market analysis etc.).

Thus, the need for converging views on competition issues and for respect of other countries' interests when making decisions is arising and the arguments in favor of having some kind of an international competition policy are gaining importance [Immenga 1994; Fox 1997, 1998, 2000, 2003b; Tarullo 2000; Jenny 2003a; Kerber 2003; Budzinski 2004a, 2004b; Guzman 2004; McGinnis 2004; Haucap/Müller/Wey 2005]. However, an international regime can have very different designs and do not need to be centralized. This allows for the consideration of justified objections against supranational giant bureaucracies with their inefficiencies and deficiencies, in particular their distance from citizens' preferences [Hauser/Schoene 1994; Janow 1998; Budzinski 2002b; McGinnis 2004; Stephan 2004].

[2] On GE/Honeywell see e.g. Drauz (2002), Kolasky (2002), Reynolds/Ordover (2002), and Gerber (2003), on Boeing/MDD see Fox (1998) and Gifford/Sullivan (2000). Overviews on conflict cases provide Klodt (2001), Zanettin (2002), and Fox (2003a)..

[3] See the comprehensive overview by ICN (2002).

2.2 Alternatives in Managing Problems in International Competition

2.2.1 Unilateral Competition Policy – The Effects Doctrine

The effects doctrine[4] represents a possibility for countries to unilaterally react to international competition restraints caused abroad. According to this doctrine, a country claims antitrust jurisdiction over any anticompetitive arrangements or practice that affects domestic markets, irrespective of its location or the nationality of its participants. Even though the effects doctrine has been applied successfully in many cases, it displays several weaknesses and can not fully protect a country against international private anticompetitive activities.[5] On one hand, the problems of national competition policy in international markets as described in the preceding section can not be solved by the effects doctrine. Instead, the explicit extraterritorial claim of jurisdiction may even aggravate some of them (e.g. jurisdictional conflicts and multijurisdictional review).[6] On the other hand, specific difficulties with investigation and enforcement abroad arise, in particular if the effects doctrine is applied in a non-cooperative setting.

2.2.2 Bilateral Agreements

Many problems and conflicts accompanying the effects doctrine can be avoided by bilateral agreements whereby two competition authorities of different countries cooperate in order to evade conflicts in advance. Consequently, such cooperation has been widespread in the last decade, albeit with a focus on cartel prosecution (and negligence of merger control issues). Moreover, cooperation predominantly takes place between countries, which have well-elaborated domestic antitrust laws and which are important players in the global economy.[7]

There are different levels of cooperation for competition authorities to choose from [Budzinski 2002a: 241-245]:

---

[4] The Effects Doctrine was first applied by the U.S. in the so-called "Alcoa-Case" in 1945 and has subsequently been implemented by many other countries. See Zanettin (2002).

[5] For comprehensive analyses see Griffin (1999), Zanettin (2002), and Fox (2003a).

[6] Among the problems are the question of the appropriate threshold constituting a sufficient nexus between the effects of an alleged anticompetitive arrangement and the jurisdiction-claiming country and the implementation of blocking statutes by countries which feel their sovereignty being attacked to prevent domestic enterprises from being regulated by foreign antitrust authorities. See Zanettin (2002).

[7] See on actual cooperation agreements, prospects and limits of bilateral cooperation the much more elaborate analyses of Fullerton/Mazard (2001), Zanettin (2002) and Jenny (2003b). The whole paragraph draws on their expertise.

1. *Notification:* Competition authorities inform each other on upcoming antitrust procedures and exchange very general information, but make their decisions completely autonomously without respect to the other countries.
2. *Consultation:* Competition authorities exchange more detailed information, particularly regarding technical issues (market definition, case facts, etc.), concerning specific cases on a completely voluntary and discretionary basis. It remains in the discretion of the national agencies whether they respect the interests of other countries in their independent decision.
3. *Mutual Assistance:* The cooperating agencies mutually assist each other regarding information gathering and sanctioning in order to overcome the problems of extraterritorial investigation and enforcement. However, mutual assistance only includes cases in which the interests of the cooperating jurisdictions harmonize.
4. *Negative Comity:* The traditional comity principle means to waive the extraterritorial enforcement of the domestic antitrust laws against the explicit resistance of the foreign country (i.e. no hostile extraterritorial enforcement). Thus, each competition authority must respect serious interests and the sovereignty of the other jurisdictions.
5. *Positive Comity:* This is a far-reaching comity concept. If a domestic market is negatively affected by an anticompetitive arrangement of practice from the partner's jurisdiction, its antitrust authority can demand its associate to take enforcement actions on behalf of the affected country. The cooperating authority applies its own antitrust laws, nevertheless, with the view to avoid outbound restrictions on competition, which affect the partner jurisdiction, while the affected jurisdiction waives an own procedure and relies on its cooperation partner to protect its interests.

Most existing cooperation agreements focus on less ambitious types of cooperation (notification and consultation). The ambitious positive comity principles was written into the improved U.S.-EU cooperation agreement on antitrust (cartels issues only) in the early 1990s (further amended in 1998) but failed to be applied effectively until now.[8] Generally, bilateral agreements improve communication and trustworthiness between the cooperation partners. Due to the permanent

[8] Until now, the only formal application was the Amadeus case (1997), in which the U.S. Department of Justice formally requested the European Commission to investigate allegedly anticompetitive practices by European airlines, discriminating U.S. enterprises. More detailed, the EU computer reservation system Amadeus was said to be acting in an exclusionary way, thus deterring the concurrent U.S. system SABRE. However, the procedure seemed to proceed rather sluggish and hampered by deviating investigation techniques and evidentiary standards between the U.S. and the EU. The case was eventually settled in 2000 by private agreements between the airlines and their reservation system companies. See Zanettin (2002, pp. 188-189).

exchange of information and opinions on competition policy issues, countries might even begin to harmonize their point of views, thereby reducing the scope for conflicts and eventually even developing a common competition culture. Nevertheless, bilateral agreements experience severe limits in terms of failing to overcome substantive differences in the antitrust laws of different countries. Furthermore, since international competition restraints generally affect more than two countries, bilateral cooperation alone remains insufficient. To coordinate a large number of jurisdictions through a kaleidoscope of bilateral agreements is very ambitious and will most likely create a cacophony instead of a coherent framework. Therefore, in a world of ongoing cross-border market integration, multilateral concepts are needed.

2.2.3 Previous Multilateral Attempts

In order to overcome the regulatory loopholes and conflicts described above and to protect international competition, there is an urge for the creation and implementation of a worldwide antitrust regime. When considering the establishment of an international competition policy regime, various basic approaches can be distinguished:

1. The implementation of binding global antitrust laws being controlled by one overall competent global antitrust authority in a centralized way. Such an uniform competition policy regime represents the most strict solution, but neglects the problems of bureaucratic inefficiencies and local/regional preferences. Moreover, due to the comprehensiveness of the sovereignty transfer to an international body, consensus on such a solution among the nations of the world is unlikely.
2. A step-by-step harmonization of national competition laws by first determining a set of minimum standards. These standards can initially be limited to consensual issues (e.g. prosecution of hardcore cartels) and then incrementally be enlarged. The ultimate goal, however, remains a centralized and uniform global regime. Only the way to its implementation takes care of the nations' reluctance to give up their antitrust competences immediately.
3. The establishment of a multilevel system, in which an supranational antitrust authority takes care of competition restraints with sufficient cross-border effects, while national antitrust agencies keep their authority to enforce their domestic competition laws in all the other cases. Such a system requires a well-defined allocation and delimitation of

competences, in particular a vertical delimitation (i.e. clear-cut criteria to define and identify 'sufficient' cross-border effects).

4. A multilateral cooperation agreement to reap the advantages of cooperation without being limited to the bilateral context. In this case, the – 'virtual' – international regime is based upon network governance as a more informal approach to organize international relations. The questions is whether the will to cooperate is strong enough to effectively protect international competition.

During the last six decades, there have been several multilateral attempts to internationalize competition policy. The first one leads back to the Havana-Charter of 1948, which prescribed the creation of the International Trade Organization (ITO). It should have included provisions to prevent public as well as private cross-border restraints of competition. While regulations on public restraints had already been included in the "General Agreement on Tariffs and Trade" (GATT) in 1947, the attempt to ratify regulations on private restraints failed when the Havana-Charter was dropped in 1950 with its rejection by the previous initiator, the U.S [Wells 2002: 116-125].

In 1967 the "Organization for Economic Cooperation and Development" (OECD) made a new attempt in creating a forum for their members to debate international competition issues and to give consensus-based recommendations on competition policy. However, since the latter proved not to be achievable, the OECD amended the scope of its forum in the 1990's to an analysis and discussion level only, giving up on the attempt to harmonize the different attitudes towards world competition problems. Contrary to the ITO with its binding and potentially far-reaching provisions, the OECD attempted to provide a multilateral cooperation forum on a voluntary basis. Pointing in a similar direction, the "United Nations Conference on Trade and Development" (UNCTAD) developed a "Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices", which was adopted in 1980. The member states promised on a voluntary basis to include the code in their national competition laws with the particular aim of protecting developing countries against inbound anticompetitive behavior by powerful multinational enterprises. However, both attempts failed to gain enough influence and importance to achieve a satisfactory protection of international competition.[9]

[9] On the OECD and UNCTAD concepts see First (2003), Jenny (2003b) and Budzinski (2004b).

Recent attempts towards an international competition policy regime have been initiated by the EU, proposing the integration of binding international competition laws and enforcement within the World Trade Organization (WTO), and by the U.S., proposing the formation of the "International Competition Network" (ICN) as a multilateral cooperation forum. Currently, both avenues to create and establish an international antitrust regime are actively pursued. Therefore, we will describe them in more detail in the following sections before comparatively analyzing their prospects and limits.

3 Two Different Approaches to an International Competition Policy Regime

3.1 World Trade Organization

3.1.1 Characteristics

The World Trade Organization is an institution that takes care of international trade relations with regard to several fundamental principles such as liberalization of trade and non-discrimination. The WTO was created out of the GATT in January 1995 as a result of the Uruguay Round, where the decision was made to develop a new and more extensive world trade order [Trebilcock/Howse 1999: 21-24, 37-38]. It forms an institutional framework, which is specified by mutual agreements and their acts of law, for the trade relations between its member countries. The member states are obligated to follow and accept the rules implemented by the WTO [WTO 1994].

- *Tasks and functions:* The WTO's competence is to handle trade agreements, to resolve trade conflicts, to monitor national trade policies and to support developing countries in handling trade policy issues. Being a center of negotiations for its members and other international organizations makes the WTO an important player in multilateral trade policies. Moreover, the WTO has to further develop the existing trade order so as to coordinate cooperation in international trade questions [WTO 2003a].
- *Organizational Structure:* The organizational structure is composed of three major bodies: the Ministerial Conference, the General Council and the Secretariat. The Ministerial Conference represents the political head of the WTO and meets at the very least every two years. It contains representatives of all participating member states. The Conference handles and

reaches decisions on all tasks concerning the WTO's agreements [WTO 2004d]. The executive body is embodied by the General Council[10] and convenes monthly in order to handle affairs occurring between the conferences. Its further competence lies in the regulation of dispute settlements and the screening of member countries' behavior and their trade policies [WTO 2004d]. The Secretary takes care of all administrative functions such as the collection and distribution of relevant information on trade issues, the assistance of the organizational work of the institution and the technical support of developing countries [WTO 2004e].

- *Decision-making and Dispute Settlements:* Most decisions are reached by consensus, where all members have to agree in order to protect minorities. Besides solving conflicts, the dispute settlement system exists to assure legitimate behavior and to protect a member's commitment to the laws and regulations. If countries feel that their rights are offended, they can make their requests directly to the WTO [Trebilcock/Howse 1999: 51-80; WTO 2003a].
- *Membership:* On October 13, 2004, the WTO counted 148 member countries, with more to follow in the future. In order to become a member of the WTO, countries have to subscribe to all laws and duties of the WTO regulation and general agreements [WTO 2004c].

3.1.2 WTO International Competition Rules

The initiative from the European Union to integrate an international competition policy regime inside the WTO was taken in 1995 and followed by the "Van-Miert-Report" in 1996, raising the idea of implementing rules by defining minimal standards for national competition laws in order to undermine private anti-competitive methods. Based on those facts, the WTO established the "Working Group on the Interaction of Trade and Competition" to examine the possibilities and the practicability of such an integration as well as its connection with trade issues [Petersmann 1999].

The original WTO approach to an international competition policy, calling for a multilateral, binding framework of international competition rules leading to comprehensive harmonization was to a certain extent revised by the "Doha WTO Ministerial Declaration" of November 2001. Dealing with international competition laws in the broader context of the WTO, it signifies the following [Fox 2003b; Drexl 2003; Jenny 2003a; Pons 2003]:

[10] The General Council is supported by working groups and other committees, which take care of special issues and individual agreements. See WTO (2003a).

1. Development of a binding commitment for member states to agree upon core competition principles with respect to the WTO guidelines of transparency, procedural fairness and non-discrimination. Furthermore, countries must guarantee that they will fight against hard-core cartels.
2. Worldwide cooperation between antitrust agencies should be simplified and supported by accurate procedures including e.g. positive comity and support in the enforcement of national competition rules.
3. Integration of developing countries by assisting them technically in the establishment of domestic competition laws and providing information and experience exchange.
4. Establishment of a "WTO Competition Policy Committee" in order to control the commitment and to support cooperation and the flow of information.

In addition, the WTO is expected to guarantee a continuous development of its international competition policy approach.

Originally, the negotiations for the arrangements of the "Doha Approach" and the implementation of minimal competition rules were to start after the concrete determining of their modalities at the Fifth Ministerial Conference to be held in Cancún from September 10th to 14th in 2003 [WTO 2003b]. As competition is one of the so-called "Singapore issues"[11], which are only to be handled together, the critical question for the participants was whether to include the "Singapore issues" within the "Doha Development Agenda"[12] in order to initiate their negotiations. However, the Cancún meeting failed mostly due to the divergences concerning negotiation modalities for agriculture and to the rejection of developing countries to agree upon the treatment of the "Singapore issues" [Drexl 2004; Hoekman/Saggi 2004]. After the failure, another attempt to agree upon the "Doha Development Agenda" and to get back to work was made in July 2004, when members met in Geneva for discussion. In the end, all members reached a consensus on framework agreements of the "Doha Agenda" and paved the way to start the working program. Nevertheless, competition policy issues and others[13] were not considered in the so-called "July 2004 package" and will not become part of the program [WTO 2004a, 2004b]. Therefore, especially with the rising awareness that multilateralism might not always be the best

[11] The Singapore issues, namely competition, investment, transparency in government procurement and trade facilitation, resulted from an agreement reached during the WTO Ministerial Meeting in Singapore in 1996. See Woolcock (2003).

[12] For further information see WTO (2001).

way to solve global problems, it remains doubtful if and when the WTO should be taking care of international competition issues [Hoekman/Olarreaga 2003; Woolcock 2003; Hoekman/Saggi 2004].

3.2 The International Competition Network

3.2.1 Key Features

The International Competition Network founded on October 25, 2001, under the initiative of the US "International Competition Policy Advisory Committee" (ICPAC) "is an informal network of antitrust agencies from developed and developing countries, which deals with antitrust enforcement and policy issues of common interest" [Todino 2003]. Additionally, many non-governmental organizations, such as the WTO, the OECD, and UNCTAD, and private actors, for instance industry and consumer associations, cooperate within the ICN by giving advice and other support.[14]

- *Purpose and Competence:* With the establishment of an international forum on competition issue, the initiators strive to ameliorate the cooperation of competition authorities worldwide in order to diminish potential conflicts arising from different views and interpretations of antitrust features and to create a "common competition culture". Furthermore, they aim to stimulate a movement towards convergence of competition policies and implementation of non-binding "best practices" to better control national enforcement against private competition restraints.

  The ICN's work is not to introduce international competition laws or to undertake the work of an antitrust agency, but to initiate projects on relevant competition issues in order to develop consensus-based recommendations for its members. The ICN arranges conferences every year in order to debate on new and recent projects. Each annual conference will be hosted by a different member country, which also carries all expenses and costs arising in that year [ICN 2004b].
- *Organizational Structure:* The ICN is guided by a Steering Group, which is supported by Working Groups, in which the actual work is done. The Steering Group is comprised of fifteen members, which are elected for two years terms, and consists of representatives from

---

[13] Namely "Relationship between Trade and Investment", "Interaction between Trade and Competition Policy" and "Transparency in Government Procurement".

[14] See generally on the ICN Finckenstein (2003), Janow (2003), Todino (2003), and Budzinski (2004b).

competition authorities and the country holding the upcoming annual conference. They meet after an Annual Conference to monitor the progress of the assignments, to select the relevant projects on competition issues and to develop working plans to implement them [ICN 2004a, 2004b].

The Working Groups discuss and elaborate on the projects defined by the steering group in order to reach a consensus basis and to develop best practices on competition issues:[15]

1. The Working Group on "Mergers" takes care of problems resulting from merger review and strives for convergent proceedings. It can be divided into three subgroups, namely "Merger notification & procedures", "The analytical framework for merger review" and "Investigative techniques for conducting effective merger review".
2. The Working Group "Funding" raises money to support the member or potential member antitrust agencies, which have very scarce financial abilities.
3. The Working Group on "Memberships" is responsible for the listing of new members. It promotes the ICN's mission, features and goals in order to aid a better understanding.
4. The "Competition Policy Implementation" Working Group focuses on the support of developing countries in introducing competition laws and in generating sustainable economic growth. It can be divided into three subgroups which concentrate on:
   1) The effectiveness of technical assistance
   2) Enhancing the Standing of competition authorities with consumers
   3) Competition advocacy in regulated sectors.
5. The Working Group on "Cartels" focuses on the elements of anti-cartel enforcement and the improvement of techniques to curb cartels.
6. The Working Group on "Antitrust Enforcement in Regulated Sectors" works on matters concerning antitrust agencies operating in regulated sectors.
7. The Working Group "Operational Framework" has been established to discuss and organize specific issues, such as the structure of the steering group or the needs of the network.

- *Decision-making and Dispute Settlements:* Decisions are made consensus-based after the exchange of views. Due to the voluntary participation and the non-binding principles, the ICN has no general body to manage dispute settlements [ICN 2004b].

[15] For the following and more detailed information see ICN (2004c).

- *Membership:* Members of the ICN are national and international competition agencies who join and participate on a voluntary basis. Until now, more than 80 antitrust agencies representing more than 70 countries joined the International Competition Network [ICN 2004d].

3.2.2 Handling of International Competition Problems

The ICN deals with international competition issues in an informal atmosphere, trying to have as many different antitrust agencies taking part as possible. The approach is based on cooperation and interaction between competition authorities, non-governmental organizations and various associations worldwide. Thereby, assorted problems on international competition matters with common interest will be addressed in projects and discussed by the authorities in order to generate compromised solutions without threatening a country's sovereignty. Potential conflicts will be diminished by the permanent exchange of views, as the cooperation partners begin to build up anticipation of the others behavior and trust relationships [Pons 2003; Todino 2003; Budzinski 2004b].

The ICN approach neither intends to enact global competition rules nor to force the harmonization of all national competition laws. On the contrary, all recommendations developed by the working groups are non-binding, enabling each country to decide autonomously to comply with the proposal or not. Nevertheless, countries will be forced informally by the other members to implement them in the form of peer pressure. Competition authorities who do not follow the common, consensus-based practices will easily experience difficulties in being credible [Finckenstein 2003; Budzinski 2004b]. Furthermore, it is intended to develop best practices and guiding principles in order to create a "common competition culture" based on a mutual understanding of competition issues. The best practices are generated from the analysis and evaluative comparison of the differing competition policies and practices [Budzinski 2002b; Todino 2003]. By functioning as an information intermediary, the ICN provides its members with different views and possibilities to handle competition problems. Thereby, transparency is created, allowing for benchmarking and mutual learning [Budzinski 2004b].

4 Comparison of the two Approaches: WTO versus ICN

4.1 Feasibility

When comparing the two approaches to an International Competition Policy Regime, one must first consider their suitability and practicability. The goal should be the maximization of global welfare, thereby taking into account that - in general - countries strategically pursue the interests, which contribute the most to their own national well-being.[16] Furthermore, such a regime should be fair and non-excluding [ICPAC 2000].

The WTO is a respected, well experienced and established international organization, whose actions are based on the general principles of non-discrimination and transparency. Its competences are the withdrawal of trade barriers, the suppression of public competition restraints and the resolution of trade disputes [section 3.1]. Furthermore, since the WTO system relies on governance devices and trade-and-competition issues share a complementary relationship as far as their objectives are concerned, the WTO can be seen as a suitable institution for integrating an international competition policy regime [Tarullo 2000; Fox 2003b]. Nevertheless, as trade and competition policy can not be considered as complementary when looking at the operational level, an organization concentrated on trade issues could then not properly focus on competition restraints. Consequently, the implementation of binding international competition rules would only be possible as far as competition restraints have effects on free trade. One also has to take into consideration that the WTO's trade ministries are specialized in the elimination of trade-obstructing activities and not in the detection and pursuance of private anticompetitive practices. Therefore, a new department consisting of competition policy experts would have to be set up, requiring a lot of effort and costs [Janow 1998, 2003; Tarullo 2000].

Due to its brief history, the ICN does not have as much experience in handling international problems and does not possess the same reputation as the WTO. However, it is a quickly growing network with many competition experts as supporters, receiving more and more attention [Janow 2003]. It was established to fill in the gaps in the solutions of international competition conflicts and has the major advantage of being exclusively dedicated to competition issues. Competition authorities are more likely to participate and cooperate in the ICN because of its informal and unbinding character [Pons 2003; Todino 2003]. Nonetheless, its voluntary, non-binding nature

also shows its biggest disadvantage in terms of global welfare. While competition policy protection within WTO approach can be internationalized by binding WTO rules, thereby maximizing global welfare, the ICN approach is unlikely to change the countries' exclusive focus on national markets and welfare [Budzinski 2004b].

4.2 Acceptability

In order to be feasible, the approach to handling international competition issues needs to be supported and accepted by competition authorities, governments, non-governmental organizations and other associations worldwide [Graham 2003].

Initially the WTO approach to a harmonization of all competition standards was rejected mainly by the U.S., as it did not want to give up any power, as well as by developing countries fearing being oppressed. After the adjustments made with the Doha Round, however, all members agreed upon the new approach. Even though, the approaches to a WTO Competition Policy Regime and the need for negotiations on an agreement have been accepted, there are still many challenges to respond to [Pons 2003]. Already striving for binding, minimal competition principles requires the commitment of all members, thereby imposing restrictions on some competition authorities' sovereignty and their possibilities to impose non-competitive national interests, makes general agreements difficult to achieve. Furthermore, many developing countries are still questioning whether their interests will be taken into consideration. They fear that an agreement would make market access easier for foreign multinational companies without improving their own abilities to compete in other countries [Drexl 1999; Graham 2003].

The ICN enjoys high governmental support because its waiver of demanding competence transfer from national authorities to an international one. Being a global network, where various competition authorities meet voluntarily with experts in order to discuss international competition issues and develop non-binding recommendations, while not reducing the sovereignty of its members, the ICN must be viewed as the better alternative with regard to acceptance.

The WTO and the ICN have many members worldwide and support developing countries in introducing competition laws and in participating in their organizations. Nevertheless, as far as developing countries are concerned, the ICN seems to have the higher chances of them willing to participate. The developing countries skepticism towards the WTO could be well seen when

[16] Therefore, the creation of an international competition policy regime can be modelled as a prisoner's-dilemma-game (Budzinski 2004a: 6-8)

looking at the failure of Cancun due to the rejection of the Singapore Issues.[17] However, the ICN needs to make sure that developing countries' interests are considered in its projects and not oppressed by industrial countries. Otherwise, developing countries would be reluctant to join the network [Todino 2003].

4.3 Efficiency

Since unilateral and even bilateral measures lead to a loss of efficiency due to parallel investigations, cumulative punishment, contradictory sanctions and information asymmetries, a global approach should be able to diminish those problems, thereby decreasing transactional and administrative costs [section 2.2].

As the WTO approach eventually strives for a harmonized international competition law including the consensus on minimum regulations and the adoption of WTO principles, procedures will become relatively transparent. Moreover, such a binding agreement, including the principle of non-discrimination and monitored by the experienced WTO mechanisms, makes it more difficult for countries to assert national interests at the expense of others, thereby significantly reducing the scope for diverging and conflicting decisions in international cases [Graham 2003; Schoneveld 2003; Budzinski 2004b]. Altogether, the increase in procedural efficiency is a domain of the WTO approach. Nevertheless, the establishment of a framework based on minimal agreed rules might also lead to inefficiencies, in particular if the rules are too weak to reach the desired objective of the WTO approach. Considering the differences between national competition laws, an agreement on insufficient minimum standards could induce countries with higher standards to adjust their regulations, thereby setting off a "race to the bottom" until all national competition policies reach the minimum level. At the end, the protection of international competition might be less effective than in the beginning [Davison/Johnson 2002].

Permanent interaction and cooperation on international competition problems between antitrust agencies and experts of the ICN are efficiency-enhancing. As different competition authorities stay in persistent contact, procedures can be harmonized. This coordination decreases administrative costs and prevents companies from bearing the costs of multijurisdictional reviews and cumulative or contradictory decisions. In its function as an information intermediary, the ICN collects and distributes case-relevant data between its members, which improves efficiency by

[17] See more elaborate Drexl (2004) and Hoekman/Saggi (2004).

increasing transparency between the different competition authorities and by diminishing prevailing information asymmetries and transactional costs [Budzinski 2002b, 2004b]. Nevertheless, inefficiencies will persist due to the fact that countries are neither obliged to follow the agreements nor to implement the coordinated procedures. Especially where divergent substantive laws or policy interests are concerned, the harmonization of procedures alone will not yield the desired outcome [Budzinski 2004b].

4.4 Negotiation and Implementation of International Competition Rules

Global competition policies need to be coordinated in order to control private competition restraints and to avoid conflicts. Reaching a general consensus on global competition issues and problems requires fair and permanent negotiations to create adequate rules. In turn, the international competition policy regime must possess the competence to implement those rules and to force members to commit to them [Graham 2003].

Due to its background, the WTO is well experienced in guiding negotiations and enforcing the accords reached. Furthermore, focusing on the enforcement of binding rules, thereby being respected for democratic negotiations and their outcomes, makes the WTO suitable to take care of negotiations on international competition rules and their implementation by its members. Furthermore, having a legislation competence allows the WTO to assure the protection of competition worldwide and to control its members [Graham 2003; Pons 2003]. Nevertheless, the WTO approach of harmonization will have to face much rejection, leading to disadvantages when compared to the ICN. National competition authorities are not likely to give up their sovereignty and to agree upon procedural and substantive standards different from their domestic ones. In order to approve binding international laws on competition issues, the benefit from having a regulating international competition policy regime must exceed the costs of loosing authority. Due to strategic bargaining, WTO negotiations on international competition issues will presumably not lead to the preferential outcome. A commitment to achievable (consensual) minimum standards might well be insufficient to face global competition challenges [Davison/Johnson 2002].

The ICN pursues a different strategy to reach agreements on antitrust issues, namely (voluntary) policy coordination. Competition authorities discuss antitrust problems, give advice and share experiences within the ICN forum. Despite procedural and substantive differences, permanent interaction can lead to a “soft convergence” of competition rules. When comparing and

evaluating the different antitrust policies, global best practices can be developed to determine benchmarks or yardsticks [Graham 2003; Budzinski 2004b]. Leaving the power and control of enforcement to the antitrust agencies leads to a high willingness to participate and to a good feasibility of negotiation and implementation of international competition laws [Graham 2003]. Compared to the WTO, the biggest disadvantage of the ICN approach is its missing competence to enforce binding rules. Even though harmonized competition rules shall be reached by best practices and peer pressure, the implementation by its members can not be guaranteed since competition authorities often depend on governmental influence and do not dispose over legislative power [Budzinski 2002a; Graham 2003; Todino 2003].

4.5 Conflict Resolution

As seen above, when competition issues affecting several countries are in play, conflicts are most likely to arise out of different interpretations, cultures and interests. Therefore, an organization or network managing international antitrust should be competent to solve jurisdictional problems. Consequently, special proceedings or mechanisms to settle disputes and solve conflicts are needed [Budzinski 2004b].

Due to its work on international trade issues and conflicts, the WTO possesses its own successful and reliable dispute settlement body, which can be used to handle international competition quarrels as well. Moreover, its competence in dealing with conflicts is very high and regarded as legitimate and fair. The WTO can take advantages of its experience at settling trade disputes and dealing with different judgments [Fox 2003a]. However, regarding antitrust cases, the WTO enters a new field of work, in which it is inexperienced. For a formal dispute settlement system to work effectively, ambitious supranational competition rules have to implemented. In spite of that, the objective of incrementally approaching harmonized substantive and procedural competition laws will simplify the solution of jurisdictional conflicts [Tarullo 2000; Schoneveld 2003].

Being an informal network, which leaves the countries' sovereignties intact, the ICN is missing any formal dispute settlement system. Potential conflicts are to be solved and prevented by cooperative interaction, exchange of views, anticipation and trust among competition authorities. In spite of being rather informal, this possesses potentials for conflict resolution which are supported by modern economic theory.[18] In particular, conflicts resulting out of different interpretations of antitrust cases vanish. However, serious conflicts will be almost impossible to

solve due to the voluntary character of commitments to the ICN. Serious antitrust conflicts often arise from different substantive regulations and non-competitive or national interests. The latter are often injected into antitrust policy by governments pursuing strategic (industrial or trade) policies [Budzinski 2004b].

4.6 Adaptability

In a dynamic environment, change and innovation will continuously challenge existing governance regimes. Regarding antitrust policy, there are two dimensions of evolutionary change:

- *Anticompetitive Practices Evolution*. The environment in which antitrust policy takes place will keep evolving. This is a never-ending, endogenously driven process. Competitively interacting business is creative and innovative. This includes the creation of new/innovative anticompetitive modes of behavior. Since future types of anticompetitive practices and arrangements cannot be completely anticipated by competition authorities and law makers, the system needs capacity to be responsive, i.e. to react to new challenges imposed by innovative business behavior to restrict competition.
- *Theory Evolution.* Scientific progress (hopefully) will produce new competition theories as well as new evaluations of existing ones. There will be no point in time where we can assume to have full and ultimate knowledge on competition. Consequently, today's best practices can only and always be temporary assessments (currently most appropriate practices) that are permanently challenged by new insights. Therefore, the system must remain open to theory innovation (and derived policy innovations).

Altogether, the capacity for adaptability represents an important evolutionary requirement for a sustainable international competition policy regime [Budzinski 2003].

At first sight, the best practice approach of the ICN represents an instrument to generate and improve an efficient competition of antitrust regimes. The systematic analysis and comparative evaluation of the different practices in the ICN Member States enhances transparency and allows for the identification of superior practices and solutions. Thus, some sort of yardstick competition produces beneficial institutional change dynamics.[19] The ICN as an information intermediary

---

[18] See Budzinski (2004a: 31-33, 2004b) for more details.

[19] This represents the only element of interjurisdictional institutional competition, which works in the context of antitrust laws and policies. More advanced elements like locational competition and direct choice of law systematically produce severe negative externalities. See more elaborate Kerber/Budzinski (2004).

heals the information deficits and asymmetries, which otherwise hamper institutional yardstick competition across jurisdictions.

The WTO approach aims in the long-run for a complete top-down harmonization of competition rules worldwide, thereby implying the waiver of processes of institutional competition and mutual learning. Decentralized elements, which are to some extent highlighted in the Doha Declaration, only serve as means to overcome resistance against more centralized regimes and to provide a soft introduction of advanced harmonization. Whether the WTO bureaucracy can maintain the necessary flexibility in the face of the evolving antitrust environment must be assessed skeptically.

However, a closer look at the ICN also reveals doubts regarding its character as an organized yardstick competition of antitrust practices. The role of institutional diversity in the long-run program of the ICN remains ambivalent. Indeed, the existing diversity of antitrust practices in the world is viewed to be beneficial to derive best practices. However, those best practices, once identified, shall be adopted by all member jurisdictions via peer pressure – thereby, bringing antitrust diversity to an end. Although the *existing* antitrust diversity is viewed to be beneficial, *future* antitrust diversity shall be eroded.[20] Consequently, there is no sustainable role for competitive elements in international antitrust in the ICN framework either. Only a different way towards harmonization is implemented – a bottom-up harmonization through a temporary competition for best practices instead of top-down harmonization through international negotiations in the WTO framework.

The crucial aspect here is that while such a best-rule-harmonization [First 1998] may indeed be the superior strategy for harmonization, it does not fulfill the criterion ‘adaptability’. Neither the evolution of anticompetitive modes of business behavior nor the evolution of competition economics as a science is institutionally accounted for. In both approaches, sustainable and permanent adaptability do not play a significant role.

However, whether the implicit harmonization potential of the ICN will materialize must be awaited. Its strongly voluntary character and the heavy weight on soft governance question its effectiveness in general and this also applies to tendencies of harmonization. Decay is an equally possible long term development of the ICN regime.

[20] This represents an inconsistency in the this approach because it is not demonstrated why institutional diversity is beneficial only today and dispensable tomorrow.

5 A Competition of Ways?

Another dimension of analysis is addressed when one asks whether a competition between different ways towards an international antitrust regime is beneficial. Such a competition currently takes place with the parallel pursuance of both the WTO- and the ICN-path.

In favor of a competition of ways, similar arguments as in regard to institutional competition of antitrust practices can be applied. A competition of ways may contribute to the revelation of advantages and disadvantages of the competing approaches and, thus, serve to identify the superior way. This selection procedure may be more efficient than a purely academic discourse about the respective prospects and limits because practical limitations and prospects will occur, which have not been foreseeable. Moreover, contrarious academic arguments can be tested in reality, allowing for a comparative evaluation of their effectiveness and importance. Yet, the additional benefits may be rather small.

However, there are also some contra arguments. First of all, pursuing multiple ways towards international antitrust is a waste of resources. The competent agencies and authorities are parallel engaged in the ICN and in the WTO working group (or, if the Doha Declaration becomes realized, in negotiations). These resources are lost for the prosecution of anticompetitive practices (e.g. hard-core cartels) or other public tasks. Eventually, taxpayers are disadvantaged. Then, having alternatives on the table may reduce the commitment, will and pressure to actively pursue one avenue towards a workable regime. Thus, a competition of ways may protract the creation and implementation of an effective international antitrust regime. In the face of the pressing problems [section 2.1], this may prove to be a high prize. Altogether, the disadvantages of a competition of ways are very likely to outweigh possible benefits.

Eventually, there is a theoretical problem with arguing in favor of competition as the instrument to chose between regime designs. If competition is necessary to select the superior way towards an international antitrust regime, rules are needed to govern this competition process. However, this competition rules for the competition of ways again can be subject to a higher-order competition in order to select the most appropriate ones. Against the background of a rigorous analysis, an indefinite regress of rules and competition emerges. One must stop this process somewhere by deliberation. It seems very reasonable to concentrate on providing protection for international competition (in order to approach a level-playing field) and securing modest decentralized elements (in order to grant adaptability) and suspend the competition of ways.

Alternatively, the WTO- and the ICN-path could be viewed as being complementary. This would promote a lasting coexistence of the two regimes. However, drawing on the current programs of both approaches, it is hard to see how a workable and at the very least approximately clear-cut division of competences, which would have to generate considerable benefits in order to overcompensate the costs of having two regimes, could look like. From today's perspective, the WTO-avenue and the ICN-path have to be viewed as being rivals.

6 Conclusion

As described above, several problems and conflicts arise on competition issues, which national approaches such as the "Effects Doctrine" or bilateral agreements can not sufficiently solve. The establishment of some type of an international competition policy regime to protect global competition and promote global welfare is eventually beneficial.

The WTO approach towards harmonization of competition laws as well as the ICN approach of policy coordination to implement 'best practices' represents an ambitious attempt to create a beneficial international antitrust regime. Each approach has its advantages and disadvantages concerning the maximization of global welfare and the protection of worldwide competition. While the WTO is superior in implementing binding international rules and solving conflicts via its existing dispute settlement body, the ICN is respected for its informal nature, not restricting the competition authorities' power, and its enhanced technique to reach consensus-based solutions through cooperation and interaction. However, neither approach sufficiently includes the evolutionary perspective of sustainable adaptability.

The coexistence of WTO and ICN leads to the question whether such a competition of ways is beneficial. This must be denied for reasons of resource efficiency and commitment. It would be better to concentrate on one of the ways in order to create a workable framework for international competition in due course. A complementary coexistence would raise the question of competence allocation and with the long-run aims of the two approaches being not too different, a clear-cut solution seems doubtful.

A theoretical framework for analyzing alternative institutional designs, which also include evolutionary aspects, is represented by the concept of multilevel systems of institutions and authorities. Although a top-level (supranational antitrust policy) is introduced, the lower-level authorities are not omitted. A major advantage of this theoretical concept is that the horizontal and vertical allocation and delimitation of competences, which is decisive for the workability of

any complex regime, can be analyzed directly. The necessity to provide a theory-driven analysis of competence allocation rules is largely neglected in the literature and, consequently, only outlines and sketches exist.[21] However, such knowledge would prove to be very helpful to overcome the deficiencies of both ways towards international antitrust, which are currently discussed. This represents an ambitious task for further research.

[21] See with regard to antitrust Kerber (2003), Budzinski (2002b, 2004a: 39-52), and Kerber/Budzinski (2004: 51-57).

References

Budzinski, Oliver (2002a). Perspektiven einer internationalen Politik gegen Wettbewerbsbeschränkungen. List Forum für Wirtschafts- und Finanzpolitik, 28 (3), pp. 233-252.

Budzinski, Oliver (2002b). Institutional Aspects of Complex International Competition Policy Arrangements. In Esser, Clemens, & Stierle, Michael H. (Eds.), Current Issues in Competition Theory and Policy (pp. 109-132). Berlin: VWF.

Budzinski, Oliver (2003). Pluralism of Competition Policy Paradigms and the Call for Regulatory Diversity (October 1, 2003). Philipps-University of Marburg Volkswirtschaftliche Beiträge No. 14/2003. http://ssrn.com/abstract=452900.

Budzinski, Oliver (2004a). Towards an International Governance of Transborder Mergers? Competition Networks and Institutions between Centralism and Decentralism. NYU Journal of International Law and Politics, 36 (1), pp. 1-52.

Budzinski, Oliver (2004b). The International Competition Network – Prospects and Limits on the Road towards International Competition Governance. Competition and Change, 8 (3), pp. 223-242.

Connor, John M. (2004). Global Antitrust Prosecutions of Modern International Cartels. Journal of Industry, Competition, and Trade, 4 (3), pp. 239-267.

Davison, Leigh, & Johnson, Debra (2002). The EU's Evolving Stance on the International Dimension of Competition Policy: A Critical Commentary. Intereconomics, 37 (5), pp. 244-252.

Drauz, Götz (2002). Unbundling GE/Honeywell: The Assessment of Conglomerate Mergers under EC Competition Law. In Hawk, Barry E. (Ed.), Annual Proceedings of the Fordham Corporate Law Institute Conference on International Antitrust Law & Policy (pp. 183-201). New York: Juris.

Drexl, Josef (1999). Trade-Related Restraints of Competition: The Competition Policy Approach. In Zäch, Roger (Ed.), Towards WTO Competition Rules (pp. 225-260). Berne: Staempfli & Kluwer.

Drexl, Josef (2003). Do We Need "Courage" for International Antitrust Law? Choosing between Supranational and International Law Principles of Enforcement. In Drexl,

Josef (Ed.), The Future of Transnational Antitrust - From Comparative to Common Competition Law (pp. 311-341). Berne: Staempfli & Kluwer.

Drexl, Josef (2004). International Competition Policy after Cancún: Placing a Singapore Issue on the WTO Development Agenda. World Competition, 27 (3), pp. 419-457.

Evenett, Simon J. (2003). The Cross Border Mergers and Acquisitions Wave of the Late 1990s. NBER Working Paper No. w9655.

Evenett, Simon J., Levenstein, Margaret C., & Suslow, Valerie Y. (2001). International Cartel Enforcement: Lessons from the 1990s. The World Economy, 24 (9), pp. 1221-1245.

Finckenstein, Konrad von (2003). International Antitrust Policy and the International Competition Network. In Hawk, Barry E. (Ed.), Annual Proceedings of the Fordham Corporate Law Institute Conference on International Antitrust Law & Policy (pp. 37-46). New York: Juris.

First, Harry (1998). Theories of Harmonization: A Cautionary Tale, in: Ullrich, Hanns (Ed.), Comparative Competition Law: Approaching an International System of Antitrust Law (pp. 17-41), Baden-Baden: Nomos.

First, Harry (2001). The Vitamins Case: Cartel Prosecutions and the Coming of International Competition Law. Antitrust Law Journal, 68 (3), pp. 711-734.

First, Harry (2003). Evolving Toward What?: The Development of International Antitrust. In Drexl, Josef (Ed.), The Future of Transnational Antitrust - From Comparative to Common Competition Law (pp. 23-51). Berne: Staempfli & Kluwer.

Fisher, Franklin M. & Rubinfeld, Daniel L. (2001). U.S. v. Microsoft: An Economic Analysis. The Antitrust Bulletin, 46 (1), pp. 1-69.

Fox, Eleanor M. (1997). Toward World Antitrust and Market Access. The American Journal of International Law, 91 (1), pp. 2-25.

Fox, Eleanor M. (1998). Antitrust Regulation Across National Borders: The United States of Boeing versus the European Union of Airbus. The Brookings Review, 16 (1), pp. 30-32.

Fox, Eleanor M. (2000). Antitrust and Regulatory Federalism: Races Up, Down, and Sideways. New York University Law Review, 75 (6), pp. 1781-1807.

Fox, Eleanor M. (2003a). Can We Solve the Antitrust Problems by Extraterritoriality and Cooperation? Sufficiency and Legitimacy. The Antitrust Bulletin, 48 (2), pp. 355-376.

Fox, Eleanor M. (2003b). International Antitrust and the Doha Dome. Virginia Journal of International Law, 43 (4), pp. 911-932.

Gerber, David J. (2003). The European Commission's GE/Honeywell Decision: US responses and their implications. Journal of Competition Law (Zeitschrift für Wettbewerbsrecht), 1 (1), pp. 87-95.

Gifford, Daniel J., & Sullivan, Thomas (2000). Can International Antitrust be Saved for the Post-Boeing-Merger World?. The Antitrust Bulletin, 45 (1), pp. 55-118.

Gilbert, Richard & Katz, Michael (2001). An Economist's Guide to U.S. v. Microsoft. The Journal of Economic Perspectives, 15 (2), pp. 25-44.

Graham, Edward M. (2003). "Internationalizing" Competition Policy: an Assessment of the two main Alternatives. The Antitrust Bulletin, 48 (4), pp. 947-972.

Griffin, Joseph P. (1999). Extraterritoriality in U.S. and EU Antitrust Enforcement. Antitrust Law Journal, 67 (1), pp. 159-199.

Grimes, Warren S. (2003). The Microsoft Litigation and Federalism in U.S. Antitrust Enforcement: Implications for International Competition Law. In Drexl, Josef (Ed.), The Future of Transnational Antitrust: From Comparative to Common Competition Law (pp. 237-258). Berne: Staempfli & Kluwer.

Guzman, Andrew T. (2004). The Case for International Antitrust. In Epstein, Richard A., & Greve, Michael S. (Eds.), Competition Laws in Conflict: Antitrust Jurisdiction in the Global Economy (pp.99 -125). Washington, D.C.: The AEI Press.

Haucap, Justus, Müller, Florian, & Wey, Christian (2005). Do We Need an International Competition Court?. In Conferences on New Political Economy, 23, forthcoming.

Hauser, Heinz, & Schoene, Rainer E. (1994). Is There a Need for International Competition Rules?. Aussenwirtschaft, 49 (2-3), pp. 205-222.

Hoekman, Bernard, & Olarreaga, Marcelo (2003). Economic Development and the WTO: Back to Basics?. Intereconomics, 38 (5), pp. 232-234.

Hoekman, Bernard & Saggi, Kamal (2004). International Cooperation on Domestic Policies: Lessons from the WTO Competition Policy Debate. Working Paper.

Immenga, Ulrich (1994). The Failure of Present Institutions and Rules to Respond to the Globalization of Competition. Aussenwirtschaft, 49 (2-3), pp. 201-204.

ICN (2002). Report on the Costs and Burdens of Multijurisdictional Merger Review [MS Word]. http://www.internationalcompetitionnetwork.org/costburd.doc

ICN (2004a). International Competition Network Operational Framework [pdf]. http://www.internationalcompetition network.org/2004opframewrk.pdf

ICN (2004b). Memorandum on the Establishment and Operation of the International Competition Network [pdf]. http://www.internationalcompetitionnetwork.org/mou.pdf

ICN (2004c). Working Groups [html]. http://www.internationalcompetitionnetwork.org/workinggroups.html

ICN (2004d). Members [html]. http://www.internationalcompetitionnetwork.org/members.html

ICPAC (2000). Final Report [html]. http://www.usdoj.gov/atr/icpac/chapter1.htm

Janow, Merit E. (1998). International Competition Policy and the WTO. In Hirsch, Mathias, & Bhagwati, Jagdish (Eds.), The Uruguay Round and Beyond (pp. 279-291). Berlin: Springer.

Janow, Merit E. (2003). Observations on Two Multilateral Venues: the International Competition Network (ICN) and the WTO. In Hawk, Barry E. (Ed.), Annual Proceedings of the Fordham Corporate Law Institute Conference on International Antitrust Law & Policy (pp. 47-68). New York: Juris.

Jenny, Frédéric (2003a). Competition Law and Policy: Global Governance Issues. World Competition, 26 (4), pp. 609-624.

Jenny, Frédéric (2003b). International Cooperation on Competition: Myth, Reality and Perspective. The Antitrust Bulletin, 48 (4), pp. 973-1003.

Karpoff, Jonathan M., & Wessels, David (2002). Large Mergers During the 1990s. In Gup, Benton E. (Ed.), Megamergers in a Global Economy: Causes and Consequences (pp. 45-63). Westport, Connecticut: Quorum Books.

Kerber, Wolfgang (2003). International Multi-Level System of Competition Laws: Federalism in Antitrust. In Drexl, Josef (Ed.), The Future of Transnational Antitrust: From Comparative to Common Competition Law (pp. 269-300). Berne: Staempfli & Kluwer.

Kerber, Wolfgang & Budzinski, Oliver (2004). Competition of Competition Laws: Mission Impossible? In Epstein, Richard A. & Greve, Michael S. (Eds.), Competition Laws in Conflict: Antitrust Jurisdiction in the Global Economy (pp. 31-65). Washington, D.C.: The AEI Press.

Klodt, Henning (2001). Conflict and Conflict Resolution in International Anti-trust: Do we Need International Competition Rules?. The World Economy, 24 (7), pp. 877-888.

Kolasky, William J. (2002). Conglomerate Mergers and Range Effects: It's a Long Way from Chicago to Brussels. George Mason Law Review, 10 (3), pp. 533-550.

McGinnis, John O. (2004). The Political Economy of International Antitrust Harmonization. In Epstein, Richard A., & Greve, Michael S. (Eds.), Competition Laws in Conflict: Antitrust Jurisdiction in the Global Economy (pp. 126-151). Washington, D.C.: The AEI Press.

Petersmann, Ernst-Ulrich (1999). Competition-oriented Reforms of the WTO World Trade System: Proposals and Policy Options. In Zäch, Roger (Ed.): Towards WTO Competition Rules (pp. 43-71). Berne: Staempfli & Kluwer.

Pons, Jean-François (2003). Is it Time for an International Agreement on Antitrust?.In Drexl, Josef (Ed.), The Future of Transnational Antitrust – From Comparative to Common Competition Law (pp. 349-362). Berne: Staempfli & Kluwer.

Pryor, Frederic L. (2001). Dimensions of the Worldwide Merger Boom. Journal of Economic Issues, 35 (4), pp. 825-840.

Reynolds, Robert J., & Ordover, Janusz A. (2002). Archimedean Leveraging and the GE/Honeywell Transaction. Antitrust Law Journal, 70 (1), pp. 171-198.

Schoneveld, Frank R. (2003). Cartel Sanctions and International Competition Policy: Cross-Border Cooperation and Appropriate Forums for Cooperation. World Competition, 26 (3), pp. 433-471.

Stephan, Paul B. (2004). Against International Cooperation. In Epstein, Richard A., & Greve, Michael S. (Eds.), Competition Laws in Conflict: Antitrust Jurisdiction in the Global Economy (pp. 66-98). Washington, D.C.: AEI Press.

Tarullo, Daniel K. (2000). Norms and Institutions in Global Competition Policy. The American Journal of International Law, 94 (3), pp. 478-504.

Todino, Mario (2003). International Competition Network: The State of Play after Naples. World Competition, 26 (2), pp. 283-302.

Trebilcock, Michael J. & Howse, Robert (1999), The Regulation of International Trade, London: Routledge.

Wells, Wyatt (2002). Antitrust and the Formation of the Postwar World. New York: Columbia University Press.

Woolcock, Stephen (2003). The Singapore Issues in Cancún: A Failed Negotiation Ploy or a Litmus Test for Global Governance?. Intereconomics, 38 (5), pp. 249-255.

WTO (1994). Agreement Establishing the World Trade Organization [pdf]. http://www.wto.org/english/docs_e/legal_e/04-wto.pdf

WTO (2001). Ministerial Declaration – adopted on 14th November 2001 [pdf]. http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.pdf

WTO (2003a). The World Trade Organization in brief [pdf]. http://www.wto.org/english/res_e/doload_e/inbr_e.pdf

WTO (2003b). Report (2003) of the Working Group on the Interaction between Trade and Competition Policy to the General Council [html]. http://www.wto.org/english/tratop_e/comp_e/comp_e.htm; Document Code WT/WGTCP/7

WTO (2004a). Doha Development Agenda: Doha Work Programme: The July 2004 package [html]. http://www.wto.org/english/tratop_e/dda_e/dda_package_july04_e.htm

WTO (2004b). Doha Work Programme: Decision Adopted by the General Council on 1 August 2004 [pdf]. http://www.wto.org/english/tratop_e/dda_e/ddadraft_31jul04_e.pdf

WTO (2004c). Understanding the WTO: The Organization: Members and Observers [html]. http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm

WTO (2004d). Understanding the WTO: The Organization: Whose WTO is it anyway? [html]. http://www.wto.org/english/thewto_e/whatis_e/tif_e/org1_e.htm

WTO (2004e). The WTO: Secretariat and Budget: Overview of the WTO Secretariat [html]. http://www.wto.org/english/thewto_e/secre_e/intro_e.htm

Zanettin, Bruno (2002). Cooperation Between Antitrust Agencies at the International Level. Oxford: Hart.

Marburg Papers on Economics · Marburger Volkswirtschaftliche Beiträge

http://www.wiwi.uni-marburg.de/Lehrstuehle/VWL/WIPOL/Fodiskp.htm
ISSN-No.: 1860-5761

Coordination: Prof. Dr. Wolfgang Kerber
Dept. of Business Administration and Economics
Economic Policy
Am Plan 2 • D-35032 Marburg • Tel. +49-6421-2823921 • Fax +49-6421-2823936
E-Mail: kerber@wiwi.uni-marburg.de

For earlier papers cf. http://www.wiwi.uni-marburg.de/Lehrstuehle/VWL/WIPOL/Fodiskp.htm

---

03-2005 Mariana Bode / Oliver Budzinski
Competing Ways Towards International Antitrust: the WTO versus the ICN
[in: Frank Columbus (ed.), New Developments in Antitrust, New York: Nova]

02-2005 Bernd Hayo / Boris Hofmann
Comparing Monetary Policy Reaction Functions: ECB versus Bundesbank

01-2005 Arndt Christiansen
Die Reform der EU-Fusionskontrolle ökonomisch betrachtet
[in: WuW – Wirtschaft und Wettbewerb, 55. Jg., Heft 3, März 2005, erscheint in leicht modifizierter Form]

31-2004 Helmut Leipold
Grundlegende Institutionenreformen im Spannungsverhältnis zwischen ideellen und materiellen Einflussfaktoren
[in: Eger, Th. (Hrsg.), Voraussetzungen für grundlegende institutionelle Reformen, Berlin, 2005, forthcoming]

30-2004 Lars P. Feld / Horst Zimmermann / Thomas Döring
Federalism, Decentralization, and Economic Growth

29-2004 Lars P. Feld / Stefan Voigt
Making Judges Independent - Some Proposals Regarding the Judiciary
[in: Roger D. Congleton (ed.), Constitutional Design, Cambridge University Press, Cambridge, 2004, forthcoming]

28-2004 Lars P. Feld
Der Wettbewerbsföderalismus als Rahmenbedingung und Impuls wirtschaftlichen Handelns
[in: H.-J. Blanke (ed.), Zur Lage des deutschen Föderalismus, Mohr Siebeck, Tübingen, 2004, forthcoming]

27-2004 Thomas Döring / Lars P. Feld
Reform der Gewerbesteuer: Wie es Euch gefällt? - Eine Nachlese
[in: Perspektiven der Wirtschaftspolitik 2004, forthcoming]

26-2004 Lars P. Feld / Bruno S. Frey
Illegal, Immoral, Fattening or What?: How Deterrence and Responsive Regulation Shape Tax Morale
[in: Friedrich Schneider, Chris Bajada (eds.), Size, Cause and Consequences of the Underground Economy, 2004, forthcom

25-2004 Lars P. Feld
On Tax Competition: The (Un-)Expected Advyntages of Decentralized Fiscal Autonomy
[in: Kurt Leube (ed.), Austrian Economics Today II: Reforms for a Competitive Economy, FAZ-Buch, Frankfurt, 2004, forthcoming]

24-2004 Lars P. Feld / Gebhard Kirchgässner
Sustainable Fiscal Policy in a Federal System: Switzerland as an Example
[in: Hanspeter Kriesi / Peter Farago / Martin Kohli, Milad Zarin (eds.), Contemporary Switherland: The End of Exceptional Palgrave Macmillan, Basingstoke, 2004, forthcoming]

23-2004 Lars P. Feld / Gebhard Kirchgässner
The Role of Direct Democracy in the European Union
[in: Charles B. Blankart / Dennis C. Mueller (eds.), A Constitution for the European Union, MIT Press, London, 2004, forthcoming]

22-2004 Jean-Robert Tyran / Lars P. Feld
Achieving Compliance when Legal Sanctions are Non-Deterrent

21-2004 Christoph A. Schaltegger / Lars P. Feld
Do Large Cabinets Favor Large Governments? Evidence from Swiss Sub-federal Jurisdictions

20-2004 Lars P. Feld / Gebhard Kirchgässner / Christoph A. Schaltegger
Fiscal Federalism and Economic Performance: Evidence from Swiss Cantrons

19-2004 Lars P. Feld / Jan Schnellenbach
On Government Centralization and Fiscal Referendums: A Theoretical Model and Evidence from Switzerland

18-2004 Lars P. Feld / Christoph A. Schaltegger
Voters as a hard budget constraint: On the determination of intergovernmental grants
[in: Public Choice, 2005, forthcoming]

17-2004 Lars P. Feld
La décentralisation fiscale en Suisse, quelles conséquences en termes de concurrence fiscale, redistribution, fourniture de services publics et développement régional?
[in: Economie et Statistique, 2005, forthcoming]

16-2004 Lars P. Feld
Le fédéralisme financier en Allemagne: Coopération ou concurrence?
[in: Journal des Economistes et des Etudes Humaines, 2004, forthcoming]

15-2004 Lars P. Feld
The European Constitution Project from the Perspective of Constitutional Political Economy
[in: Public Choice, 2005, forthcoming]

14-2004 Wolfgang Kerber und Simonetta Vezzoso
EU Competition Policy, Vertical Restraints, and Innovation: An Analysis from an Evolutionary Perspective
[Paper presented at the 10th International Joseph A. Schumpeter Society Conference (ISS), Milan/Italy, 9-12 June 2004]

13-2004 Friedrich Gröteke und Wolfgang Kerber
The Case of Ryanair – EU State Aid Policy on the Wrong Runway
[erscheint in: ORDO – Jahrbuch für die Ordnung von Wirtschaft und Gesellschaft, Bd. 55 (2004), Lucius & Lucius, Stuttga

12-2004 Bernd Hayo
Happiness in Eastern Europe

11-2004 Lars P. Feld
European Public Finances: Much Ado About Nothing?
[erscheint in: M. Peter van der Hoek (ed.), Public Administration and Public Policy in the European Union, Marcel Dekker, York, 2004]

10-2004 Oliver Budzinski, Jörg Jasper, Reinhard Kohler und Ralf Tostmann
Geldpolitik im Europäischen System der Zentralbanken
[Schwerpunktbeiträge für das Gabler-Wirtschaftslexikon, 16. Auflage, Wiesbaden, voraussichtlich Herbst 2004]

09-2004 Oliver Budzinski und Gisela Aigner
Institutionelle Rahmenbedingungen für internationale M&A-Transaktionen – Auf dem Weg zu einem globalen Fusionskontrollregime?
[erscheint in: M.F. Strohmer (Hrsg.), International Mergers & Acquisitions, Frankfurt/M., voraussichtlich Herbst 2004]

08-2004 Thomas Döring
Politik- und Politikerberatung – eine Analyse vor dem Hintergrund von Transformationsprozessen
[Beitrag zum 37. Forschungsseminar Radein „Wissenschaftliche Politikberatung – Theorien, Konzepte, Institutionen“, erscl im Tagungsband (2004)]

07-2004 Thomas Döring, Stefan Heiland und Martin Tischer
Kommunale Nachhaltigkeitsindikatorensysteme in Deutschland – Zum aktuellen Stand von Entwicklung und Anwendung
[erscheint in: Vierteljahreshefte zur Wirtschaftsforschung, Jg. 73 (2004), Heft 1, S. 96-111]

06-2004 Oliver Budzinski und Arndt Christiansen
Aktuelle Reformen in der Europäischen Wettbewerbspolitik
[erscheint in: Wirtschaftswissenschaftliches Studium, 33. Jg., Herbst 2004]

05-2004 Helmut Leipold und Sandra Ludwig
Soziale Marktwirtschaft und europäische Wirtschaftsordnung
[erschienen in: Andersen, Uwe, u.a. (Hrsg.), Soziale Marktwirtschaft. Stagnation, Umbau oder Neubeginn? Politische Bildu Jg. 37, H. 1, 2004, S. 43-59]

04-2004 Wolfgang Kerber
Applying Evolutionary Economics to Public Policy: The Example of Competitive Federalism in the EU

03-2004 Franziska Rischkowsky und Thomas Döring
E-Commerce und europäische Verbraucherpolitik
[erscheint in: Wirtschaftsdienst, Jg. 84, 5/2004]

02-2004 Jochen Röpke
Blinde Flecke der Wirtschaftspolitik: Von der Theorie der Parallelwelten und der Notwendigkeit einer De-Ontologisierung Wirklichkeit
[erschienen in: Telepolis, 27.10.2003,
http://www.heise.de/tp/deutsch/html/result.xhtml?url=/tp/deutsch/inhalt/co/15825/1.html&words=Blinde%20Flecke]

01-2004 Ralf Geruschkat und Dirk Wentzel
Virtuelle Integration: Zur Rolle der Internet- und Medienwirtschaft im Integrationsprozess
[erschienen in: Cassel, Dieter / Welfens, Paul J.J. (Hrsg.), Regionale Integration und Osterweiterung der Europäischen Integration, Schriften zu Ordnungsfragen der Wirtschaft, Bd. 72, Stuttgart 2003, S. 157-186]