How does Germany's Monopolies Commission combat market concentration? By making sure that no good data is available

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How many companies have merged into corporate groups in Germany? We don't know. The official figures are completely unconvincing. We have a Monopolies Commission which, together with the German Federal Statistical Office, has the legal mandate to monitor market concentration. Germany's parliament wanted to ensure that the necessary information about the possible emergence of problematic market power is available, only to discover this no longer fits in with the neoliberal ideology inspired by the Chicago School, which has apparently become the ruling ideology at Germany's Monopolies Commission.

The figures presented by the Monopolies Commission and the Federal Statistical Office appear unreliable. According to the Commission's main 2008 report, more than 500,000 companies were part of corporate groups in 2003. Following a parliamentary question by the Left Party (die Linke) in the Bundestag the Federal Government recently compiled data from the Federal Statistical Office for the period from 2005 to 2017 concerning the number of corporate groups. According to this study, the number of merged companies in 2005 was surprisingly only one-third as high as in 2003, and the number of corporate groups was 75% less than two years previously. Over the following years there was a clear increase, although with strong fluctuations.

When I queried the Statistical Office about its inconsistent data, it distanced itself from its own results. With regard to the figures from 2003 it claimed that it was only involved as a junior partner of the Monopolies Commission. Concerning the other years the Statistical Office wrote that the published statistics did not allow an analysis of the development of the number of corporate groups over time. The basis for such a calculation has not yet been created. In other words, the information is worthless.

It appears that Germany's Federal Government is not aware of this. The question raised by parliamentarians as to which "reliable and plausible" data sources the government uses to assess the development of market concentration was answered with data, which, according to the statisticians' who provided it, is not fit for purpose.

No one feels responsible

The explanation for the dramatic fall in the number of corporate groups and conglomerates from 2003 to 2005 is quite banal. Previously the Monopolies Commission had combined the official company data set with two private databases to identify cross-ownership [OK?]. The Statistical Office changed its methodology, employing only a single provider who, according to the Monopolies Commission, "was reporting on fewer German companies". Nevertheless, according to the Monopolies Commission, the Statistical Office had come to the conclusion in an internal report that this had "only a minor influence on market-concentration values" despite no longer including the more comprehensive second database. At the annual meeting of the German Statistical Society in 2016, Rainer Feuerstack, formerly in charge of reporting on corporate concentration at the Monopolies Commission, described the Statistical Office's view that this had a "minor influence" as incomprehensible and empirically false. The Statistical Office refuses to provide further information on this amazing claim, citing a need to protect the data privacy of the companies involved.

This did not go down well in the Bundestag. In 2009 its research department found that "the restriction to a single commercial data source” constituted “a limitation of data quality and its verifiability”. When I sought a reaction form the Statistical Office they replied that the market concentration ratios had been calculated “according to the specifications of the Monopolies Commission”. The methodology for the comparative calculation was derived from this. The Monopolies Commission is therefore claiming that it was relying on the statisticians’ judgement, while the statisticians reply that they only carried out the calculations according to the specifications of the Monopolies Commission.

In June of this year this game of hide-and-seek received judicial backing. The Federal Administrative Court ruled that the Statistical Office does not have to make its calculations public. Since the statisticians had not carried out a “dominance check” to ensure that no individual company could be identified, the statistical secrecy law forbade publication. The statisticians profess it is not possible to carry out a dominance check anymore, because they had to erase the data.

Bespoke euthanasia for the monopolies reports

In 2010, the Ministry of Economics, then under the aegis of Germany’s Liberal Party, the FDP, assisted the Monopolies Commission to free itself of providing information on corporate linkages. The ministry commissioned the research institute ZEW to investigate how the Monopolies Commission could improve its market-share reporting. The ZEW was of the opinion that “from the point of view of modern competition research and competition policy, detailed reporting on market shares in individual industrial sectors is of little relevance”. It might be possible to use such market concentration indicators to identify potential competition problems that could be examined in more detail; however they deemed it questionable whether an early warning system would be “desirable from a regulatory point of view”. The Monopolies Commission should “no longer spend any effort on reporting on market concentration”.

And so the 2008 report should be the last one in which sentences appeared like:

> Very restrictive assumptions have to be made in order to be able to assume that there is no market power where there is high market concentration.

The current chairman of the Monopolies Commission and director of ZEW, Achim Wambach, is convinced that:

> It is by no means the case that increasing market share necessarily leads to a decrease in competition.

The ZEW had made it clear in its report that a new paradigm in competition policy was behind the realignment. According to the formerly dominant Ordoliberal School of economics which favours a role for the state and the structure-behaviour-paradigm of Harvard University, it was necessary to counteract market concentration to guarantee competition. From the 1980s onwards, the competing view of the free-market Chicago School became increasingly prevalent. This claims that higher profits in more concentrated markets are due to more efficient companies gaining market share rather than to market power being abused. The question whether problematic market power exists depends on many factors, it maintains. According to the philosophy of the “New Empirical Industrial Organisation” school of economics, these factors must be examined on a case-by-case basis.

How the Monopolies Commission’s “New Empirical Industrial” philosophy is received in the business world depends on the competitive position of those you ask. Paul-Bernhard Kallen, head of the Burda publishing house, said in a recent interview with the business daily *Handelsblatt* that he found it odd that the Monopolies Commission did not recognize monopolistic structures in Google’s 96 percent market share. Questioned on this criticism, professor Wambach replied that the Monopolies Commission did not question a de facto monopolistic position, but added that this market position remained unproblematic as long as it was not abused. If Google were to abuse its position the antitrust authorities would step in.

Note: This piece has been translated by and crossposted on braveneweurope.com from the German section of this blog. Do have a look at this very interesting site on Éuropean economics and politics from a progressive angle.

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