

European Competition and Consumer Day

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- Priorities of Competition Authorities
- Copenhagen, March 8, 2012

- Andreas Mundt
- Federal Cartel
- President



Bundeskartellamt

Content

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- I. The pros and cons of advocacy and enforcement
- II. Practical experience
- III. Conclusion

I. The pros and cons

1. Common Objectives

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- Common objective of instruments, but different impact
 - **Degree of deterrence**
 - **Range**
 - **Rapidity**
 - **Level of detail**

I. The pros and cons

2. Advocacy

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- + Wide range
- + Ad hoc reaction
- + Few resources needed

- Low level of details
- No specific addressee
- (Much) room for interpretation
- One voice among many
- Low level of deterrence

I. The pros and cons

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3. Enforcement

- + Penalising => strong deterrence
- + Legal certainty
- + Fair trial (access to the files, right to be heard...)
- + High level of detail
- + Support for private damage actions

- Proceedings require long-term effort
- Resource-intensive

I. The pros and cons

4. Some Examples

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- Advocacy: booklets, guidelines, interviews...
- Proceedings: different types
- Between these two approaches:
 - Sector inquiry: important advocacy tool!
 - Informal discussion
- No either...or => simultaneous use
- Case specific

- Enforcement is advocacy at its best!

II. Practical experience

1. Anti-cartel Enforcement

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- - BKartA sets priority on anti-cartel enforcement
 - OECD roundtable was held about leniency programmes in Feb 2000
 - Cartel fighting was on the top of the competition law community's agenda
 - US DOJ corporate leniency policy since 1978 (revised in 1993)
 - EU COM announced conditions in 1996
 - BKartA announced leniency programme in May 2000 (revised in 2006)

II. Practical experience

1. Anti-cartel Enforcement

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- Sharp rise in whistle blowing
- Need for additional enforcement activity
 - 3 new divisions, specialized in prosecution of hard core infringements, new Special Unit for Combating Cartels
 - Enlargement of the Litigation and Legal Issues Division
 - Adjustment of procedural rules:
settlement

II. Practical experience

1. Anti-cartel Enforcement

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- Advocacy => Booklet "Effective cartel prosecution
– Benefits for the economy and consumers"

 - Enforcement as advocacy
- => Some cases attract high level of publicity
- E.g. end consumer products / services everyone uses
 - Not intended, but not surprising either
 - Excellent opportunity to put out our message
 - No bias on case selection, but sometimes effective to make a "signal case"

II. Practical experience

2. Sector Inquiry a) Fuel

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- Fuel Sector Inquiry
 - Indications from merger control proceedings
=> possible competition problems
 - Complaints
 - Focus: fuel retail markets
 - Advocacy:
 - Public/policy debate made more objective
 - The gap in knowledge between companies and motorists narrowed

II. Practical experience

2. Sector Inquiry b) Electricity

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- Sector Inquiry into Electricity Generation and Wholesale Markets
 - Subject: Market mechanism
 - Collecting and evaluating huge amount of data => very complex
 - Retrospective analysis => unsatisfactory
 - Advocacy:
 - Need for a market transparency scheme

II. Practical experience

2. Sector Inquiry c) Food

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- Sector inquiry into food retail procurement markets
 - Highly concentrated markets
 - Complaints
 - Merger control
 - Cartel cases on the supplier side
 - Vertical cartel case
- Advocacy
 - Still ongoing

III. Conclusion

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- There is no either ... or - instruments are complementary
- Case-specific approach
- Our priority is enforcement: Enforcement is best form of advocacy

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Thank you very much
for your kind attention!