



The competition policy agenda of the Federal Ministry for Economic Affairs and Climate Action up to 2025

10 points for sustainable competition as a pillar of the socio-ecological market economy

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We want to put ordo-liberal policy back at the centre of our economic policy, after several decades during which its importance has steadily faded away. Today's challenges – notably digitisation, equitable globalisation, and sustainability – can only be resolved through international coordination and a regulatory framework that meets the needs of our time. Where there is no suitable regulatory framework, there will be market failure with poor outcomes for the economy, for society, and the environment. For this reason, ordo-liberal policy is an indispensable component of any successful economic policy. This is why we take ordo-liberal policy seriously and promote a proactive competitive framework that is enforced by strong and independent competition authorities. This is a key component of any socio-ecological market economy. To this end, we will further strengthen the Bundeskartellamt and its legal remit, and continue to engage in regular, high-level dialogue with this authority.

1. Taking ordo-liberal policy seriously

In essence, ordo-liberal policy means two things: first, to create a clear and reliable framework that serves the common good, and second, to ensure that the framework leaves scope for private investors, market forces and competition. The competition rules make up one of the key pillars of the regulatory framework: they form a system to counteract harmful concentration of market power and its abuse. There have been areas where ordo-liberal policy used to be mistakenly equated to trusting in the market's capacity to self-regulate. The financial markets, for instance, were only reorganised once the financial crisis had acted as a catalyst for this move. Macroeconomic stability, social re-balancing and support for innovations all require an active approach to economic policy.

Ordo-liberal policy also means dismantling unnecessary privileges and subsidies that serve powerful individual interests. Subsidies are useful where the market fails to deliver or reward technical innovation and where this innovation needs an extra push. However, policy-makers must find effective ways to address the risk of over-funding and the risk

that conflicting effects of different economic-policy instruments may cancel each other out. Permanent subsidies are to be avoided, as are unnecessary costs borne by the public sector.

2. Putting an updated ordo-liberal and competition policy at the centre of economic policy

It was not least the issue of how to regulate big tech that returned competition policy back into the focus of the economic-policy debate. Policy-makers are called upon to set out the guidelines for competition policy and to update the competition rules as required at a given time. The dual (sustainable and digital) transformation of the economy is a major task for society that requires an open democratic debate, not only among experts. During this parliament, the Federal Ministry for Economic Affairs and Climate Action will evaluate the Act against Restraints of Competition and draft proposals for its further development. This process is to be inclusive: we want to focus on the particular needs of SMEs and consumers, and on innovation, sustainability and social equity. To prevent a situation whereby the law would only be enforced by government authorities, we also want to strengthen opportunities for private law enforcement, particularly in the digital sphere. Another important element will be the reform of Germany's instrument of the ministerial authorisation of mergers and acquisitions. We want to ensure that there are appropriate legal remedies against a ministerial authorisation again, and that the Bundestag is also involved in the procedure.

3. Supporting transformation

The dual transformation of the economy calls for an ordo-liberal policy in line with the needs of our time. The climate crisis is the most extreme case of market failure to have ever occurred. Climate action is the most important challenge for our generation and therefore requires the most far-reaching degree of internalisation of external effects to have ever been introduced, for instance through a carbon pricing mechanism that is as comprehensive as possible without causing carbon leakage that would compromise the competitiveness of German or European businesses. Meanwhile, economic policy will sometimes need to move away from the pure logics of market failure in order to be able to reach important and pressing political targets. This applies not only with regard to Europe's competitiveness in the digital realm, i.e. the digital transformation, but also with regard to the green transformation. Successfully mitigating the climate crisis within the shrinking window of time that is still open and mastering the transformation of our economy also requires a modern, efficient administration that is ready to invest, as well as the mobilisation of all private and public resources for the common good. This transformation is our generation's 'moon landing mission'. We are using instruments that are compatible with the market and with competition (e.g. carbon contracts for difference) to promote innovation and the take-up of innovation. To take ordo-liberal policy seriously therefore means to add rules-based, effective instruments to the regulatory framework of a socio-ecological market economy - beyond the successful competition rules. Social re-balancing must always be factored in into this work.

4. Strengthening the framework for a competition-based and socially compatible energy transition

Well-functioning competition is a prerequisite for an energy transition that is economically and socially viable and benefits consumers. Competition policy can help slow down the increase in energy prices in the short and medium terms. The competition authorities are closely monitoring the developments in the energy sector and will promptly terminate any conduct that restricts competition. We will extend the framework for tighter abuse control in the field of electricity and gas prices (section 29 Act against Restraints of Competition) and expand its scope to include district heating. The Bundeskartellamt and the Monopoly Commission are currently assessing the extent to which abusive behaviour might be playing a role in the current strong increases in energy prices, apart from global developments. We must take measures under our energy, tax and social policies to ensure that the burden on consumers and companies caused by rising energy costs is shared in a fair way.

5. Increasing legal certainty for sustainability in competition law

The primary task for competition law is to safeguard competition – a task that also makes a contribution to a sustainable economy. Antitrust agreements, for instance, have the power to prevent competition on the merits of innovation and better standards. Oligopolies have the power to restrict fair competition on fair prices, especially in the food market. This is why the Bundeskartellamt's remit to ensure abuse control under competition law is to be strengthened with a particular focus on the food industry, and why further measures are planned to combat unfair practices in commerce.

Well-functioning markets result in innovative solutions – including sustainable innovations. Wherever companies aspire to work together on shared sustainability targets or human-rights standards that go beyond those imposed by government, competition policy must give them a secure legal framework as to how this can be done without violating competition law. The Federal Ministry for Economic Affairs and Climate Action is therefore assessing the rules governing competition to see if and how they can be adjusted to make this possible. The objective is to give companies a clear legal framework for cooperation for the sake of sustainability – without this resulting in greenwashing by cartels or other types of hidden restraints of competition.

6. Improving consumer protection by the authorities

Whilst the 9th revision of the Act against Restraints of Competition has given the Bundeskartellamt the right to conduct sector-specific investigations under consumer law, the Bundeskartellamt is lacking the power to terminate any violations it finds. The sector-specific investigations carried out by the Bundeskartellamt have exposed loopholes in consumer law and uncovered shortcomings in the quality of law enforcement. It is important especially for structural deficits in law enforcement to be corrected, so that

competition is fair and in a better position to serve consumers' interests. This is why the coalition agreement states that the Bundeskartellamt is to be strengthened and put in a position to investigate and terminate significant, persistent and repeated infringements of protected economic consumer rights. Again, the Federal Ministry for Economic Affairs and Climate Action will be drafting proposals as to how this is to be put into practice.

7. Strengthening the role of public procurement as a driver of the transformation towards a socio-ecological market economy

A modern approach to procurement law is the key to fair and responsible competition for public-sector contracts. The competition register kept by the Bundeskartellamt since December 2021 is an important milestone in this regard as it gives public-sector contracting authorities reliable information about economic crimes and misdemeanours committed by companies. In this way, the public sector is strengthening fair competition by creating additional incentives for compliant behaviour. Furthermore, the sheer volume of demand generated by public procurement puts the public sector in a position to create important momentum for the socio-ecological and digital transformation. It helps establish innovative and sustainable services on the market and levels the playing field for companies that act in a socially and ecologically responsible way. The new regulations on climate-friendly procurement and mandatory consideration of a shadow carbon price lay the foundations for an approach to public procurement that is ambitious and fully geared towards serving the sustainability targets. To this end, we will make adjustments to ensure a stronger mandatory component and better harness the potential of digitisation. In addition, new provisions making public contracts contingent on compliance with representative collective labour agreements are to strengthen adherence to such agreements.

8. Strengthening the Bundeskartellamt's role in enforcing competition law

The Bundeskartellamt is the key authority when it comes to enforcing the above aspects of the regulatory competition framework at national level. Digital markets, in particular, are complex, with business models and technologies in permanent flux. There are manifold possibilities for market abuse and distortions of competition. There must be no competitive edge gained by law infringement. To ensure that the Bundeskartellamt is ready to tackle new challenges, the Federal Ministry for Economic Affairs and Climate Action is in favour of strengthening this authority in the fields of enforcement of competition law and merger control. This goes for its human resources and its IT infrastructure. It is important that the Bundeskartellamt remain capable of addressing abusive behaviour by undertakings with an overriding cross-market impact on competition (section 19a Act against Restraints of Competition) following the entry into force of the EU Digital markets Act (DMA).

9. Strengthening EU competition policy and making it more transparent

Given the challenges listed above, and beyond this, competition policy can only be effective if it is European in nature. The Federal Ministry for Economic Affairs and Climate Action will continue to generate momentum at European level and actively table constructive, ambitious proposals for European competition policy. The ARC (Act against Restraints of Competition) Digitisation Act, which took effect in early 2021, is an example of a piece of legislation that has met with international recognition, especially for its new provisions targeting large digital companies. The European Commission followed suit by tabling its proposal for the DMA. In the negotiations on this, the Federal Ministry for Economic Affairs and Climate Action is advocating a high level of ambition. This would also mean ensuring interoperability for basic functionalities of messenger services and social networks to give consumers more choice and strengthen smaller competitors. Greater interoperability and improved data portability will strengthen new competitors. Open access to data in combination with strong data protection pave the way for innovative new market participants. Large digital platforms must treat all users and service providers fairly rather than abusing their position on the market or acting as data highway robbers. The Federal Ministry for Economic Affairs and Climate Action also advocates for strict controls on companies that hold large market shares and plan to buy up potential rivals. All of the provisions set out in the DMA must be enforced in an effective way. The national competition authorities ought to support the Commission in this work. At the same time, close coordination is also needed at international level, with a view to creating modern competition rules for digital markets. Germany will use its Presidency of the G7 to expand discussions on this issue.

Beyond the DMA and merger control, we want to strengthen the prosecution of cartels through an initiative for better protection of leniency applicants and for a reform of the EU Directive on antitrust damages actions. Our long-term objective is to introduce a possibility for unbundling to be used at European level as a measure of last resort on markets that have become encrusted. The Federal Ministry for Economic Affairs and Climate Action will work towards a more transparent approach to European legislative projects in the field of competition law that allows for greater participation, and for a better institutional balance between the European Commission, the Council and the European Parliament. On account of the high relevance of competition policy to society as a whole, debates on such matters should be public in nature. The Federal Ministry for Economic Affairs and Climate Action is also in favour of continuous revision of the vertical and horizontal Block Exemption Regulations and the Guidelines relating to these, as well as of some of the procedural aspects of EU merger control and of the notification process for market definitions.

10. Strengthening fairness in global competition

Safeguarding fair competition also means taking effective measures against distortions of competition that result from global competition between different economic systems. We thrive on open trade and investment and have no interest in isolating ourselves. But we must not be naive. Where competition is not based on shared rules, we must make good use of the strength that the European Single Market and European competition law

bestows on us and use it to strive for a level playing field and to confidently defend our interests at global level. This is primarily a task for European trade policy, which is called upon to use the multilateral framework and diplomacy to successfully address distortions of competition. At the same time, it is right for the EU to continue to sharpen, develop and deploy its toolbox when combating unfair distortions of competition and other unfair practices used by third countries. Where third countries resort to unfair practices, subsidies and systematic market intervention to distort competition on the European Single Market, we need to find effective ways of safeguarding fair competition on our own markets. The Federal Ministry for Economic Affairs and Climate Action therefore supports the negotiations on a new Regulation on third-party subsidies causing distortions on the Single Market.