

Competition and anti-trust policy in the enlarged European Union – A level playing field?[1]

by Jens Hölscher[2] and Johannes Stephan[3]

Abstract

With the Central and East European countries increasingly included into the international division of labour in the European Economic space, we are prompted to ask whether this integration operates on a level playing field with respect to competition policy. In fact, a comparison between the more advanced West European countries and countries in Central and East Europe reveals that effectiveness of implementation of competition law and policy and intensity of competition are lower in the East and in particular also in the new EU member countries of Central East Europe, where the institutional framework of the West had been largely adopted for some time now. The EU recently decided to reform competition policy by delegating some of its powers to national competition agencies. Notably, this coincided with the accession of the most advanced countries in Central East Europe to the EU. We discuss whether this reform is likely to spur competition or whether it may turn out to be rather ill-designed given the particularities in post-socialist economies.

Keywords: Competition Policy, Anti-trust, Central East Europe

JEL-Classification: L40, P51

1 Introduction

In the early years of systemic transformation in Central East Europe (CEE), the introduction of competition laws was mainly governed by the goal of promoting contestable markets within domestic economies through regulatory tools such as bankruptcy, company law and competition law. In the course of negotiations of accession to the EU, the most advanced transition countries were required to align their legislation with that of the EU which included prominently the implementation of competition policy-relevant chapters of the *acquis communautaire* (see e.g. Hölscher/Stephan, 2004). With the (near-)complete transposition of the *acquis communautaire* in the new EU member states, it is now time to take stock of the achievements of EU enlargement with regards to 'fair play', i.e. whether there is a level playing field for competition in factor and good markets between East and West.[4] Nearly all countries in the East have enacted a competition law and have installed some form or other of a competition agency during the 1990, but it remains an unresolved issue as to whether this may have resulted in having a common competition law on the books (*de jure*) without much actual enforcement and hence effect on markets (*de facto*). The wider issue relates to the degree of subsidiarity applied to competition law taking for example the United States system as an alternative approach

Research on this issue is scarce (possibly due to its political sensitivity) and mainly revolves around a control of these countries' harmonisation obligations vis-à-vis the EU. What is particularly needed is research on the issue of enforcement, i.e. the actual impact on "productivity, intensity of competition, behaviour of private undertakings, enterprise mobility and creation of a competition culture" (Cseres, 2006). This paper aims to help to fill this gap by assessing the scope of competition law in these countries, developments in the effectiveness of its enforcement and the resulting intensity of competition, and this with a particular focus on the latest reforms of EU competition policy. In an earlier study, we found that enormous progress with the introduction and maintenance of the new competitive order in the then accession countries was made, but also that quite a variety of national differences prevailed until late 2003 (Hölscher/Stephan 2004). The issue of fair play between East and West has gained further importance in Europe lately. This is mainly due to intensifying trade between East and West as well as the inclusion of CEE countries into the enlarged European division of labour in general and the extension of the European common market to the new EU members in the East in particular. In this respect, the countries in the East have become important if not the prime targets for foreign direct investment and outsourcing by European firms, which is feared to put employment within Western Europe at stake. As a result, Western governments are increasingly concerned with fair play and a level playing field between East and West. Moreover, the new member states are now included into the EU structural funding schemes which are designed to assist the weaker of member states to catch up in terms of competitiveness *vis-à-vis* their richer competitors. The use of resources granted by the latter is tied to rigid rules not least with respect to competition policy and the donor countries of course have to be reassured that their resources will not give rise to undue competitive advantages in the countries at the receiving end.

The paper reviews the most important conceptual EU policy issues related to competition, such as the role of anti trust regulations and law enforcement, with particular emphasis placed on the situation and regional particularities of the new EU member states in Central East Europe. This is the focus of the first chapter. Here, we critically review the modernization package of European competition policy that coincided the Eastern enlargement of the EU and consider the adequacy of the new EU legal and policy framework for the new EU member states. Then, the paper turns to an empirical representation of the scope of competition law, effectiveness of competition law and policy enforcement, as well as intensity of competition in Central East Europe and the new EU member states in particular. Their competition-profiles are measured

with qualitative as well as quantitative methods. The analysis operates on two levels, a macro view and an institutional perspective by comparing case numbers and by focussing on particularly important cases in the most recent past. These levels are seen as complementary, each level individually contributing to forming a picture of competition policy in CEE sufficiently wide in terms of comprehensiveness and deep in terms of preciseness. This analysis supports our main finding: that we are a long way from a level playing field between East and West as the effects of the reform package remain ambiguous. There is little that the political sphere can do to speed up things.

2 The modern EU concept of competition policy

Traditionally, the concept for competition policy in the EU was based on the West German *ordo*-liberal model of anti-cartel legislation within the social market economy. This meant that a set of prohibitions was established in order to protect competition by preventing anti-competitive practices and the abuse of market power. These regulations were enforced by a rigorous procedure, which left the Directorate General for Competition at the EU Commission (DG Comp) as the ultimate politically independent decision-making institution, which had the sole power to e.g. grant exemptions from *de jure* prohibitions where overriding economic objectives were at stake.[5] With these powers of jurisdiction, DG Comp could operate almost independently from the EU Council of Ministers and the governments of EU member states. Basically every agreement between firms was illegal until it was explicitly approved by the Commission, either in that clearance was granted (because it did not violate the codified prohibitions, Art. 81/3), or by granting an explicit exemption (or also if they fall under a *de-minimis* rule).

This procedure created its own bureaucracy with administrative overload and delays in decision making. Early proposals for reform were halted by DG Comp's fear that any step into that direction would lead to a restriction of its powers by the EU member states. On the other hand, the growing power of this institution became visible from 2001, when fines imposed exceeded with over € 1,800 million in one year[6] the sum of all fines in the entire history of cartel law enforcement with the EU. The sum of fines even kept growing with highest sum in cartel cases ever so far in 2007[7], indicating that DG Comp's enforcement of competition policy has in fact been strengthened significantly. The reform of EU competition policy in 2004 did not change that.[8] Kallaugher/Weitbrecht (2006) assume that the 2006 record "will surely be surpassed in 2007 where the first two hardcore cartel decisions have already resulted in a total of €1,743 million of fines being assessed" (p. 318).



Figure 1: Fines and Decisions by DG Comp between 1995 and 2005

Source: DG Comp annual reports and internet-site.

With case numbers and total sums of fines dropping to much lower levels after their temporary peak in 2001, work-load of DG Comp became less and less manageable and it comes as no surprise that DG Comp attempted to delegate some of the work to national competition agencies in the framework of a profound reform of EU competition policy – this at the then peak of its might. In addition to this, the implementation of the new modern competition policy package coincided with EU Eastern Enlargement (“double whammy on enlargement day”, Riley 2005) and the commission’s official rationale was that enlargement would create even further overload for Brussels and that the burden should be shared between the authorities of all EU member states

Effective since May 2004, the EU competition policy concept featured an explicit move to a more pro-active competition policy in general (EU 2004a) and the delegation of power to the competition agencies (NCA) and courts of member states (EU 2004c) with the introduction of regulation 1/2003, most prominently altering the application of Articles 81 and 82 (EU 2004b). This replaced regulation 17/1962 and is widely seen as the biggest change in competition policy over the last 40 years – sometimes even referred to as “legal and cultural revolution” (Ehlermann 2000). The reform hence altered both the body of substantial law, guidelines for its interpretation, and the institutional division of labour (or mode of cooperation) between Brussels and the member states (institutional set-up).

Main components of the competition policy modernization package

- Setting-up of the European Competition Network (ECN) consisting of 25 National Competition Authorities (NCAs) and DG Comp at its centre
- Self-assessment of companies involved in cooperation (legal exemption rule 81/3)
- Pro-active investigations and sector inquiries
- “More economic approach” to competition policy

This reform has raised a controversial discussion amongst experts well before it was enacted, prompted by a white paper in 1999 (EU 1999): at the most general level, critics such as Möschel (2000), Deringer (2000), and in a later assessment also Pirrung (2004) hold that the new system may result in a loss of critical information for DG Comp. Furthermore, markets may be expected to become less transparent also to third parties like competitors, suppliers, as well as consumers, and –what is even more– legal certainty for companies planning cooperation is feared to be compromised (e.g. Bartosch 2000). On the other side, Schaub (2000), an advocate of the new reform, stresses that the reform has the potential to better structure European competition policy by strengthening consultation and cooperation between the national agencies themselves and between those and DG Comp.

One major point of reform is the establishment of the European Competition Network (ECN), the objective of which is to reduce DG Comp's workload. This network features a hub-and-spoke design with the national competition authorities and national courts around DG Comp at the centre. The spirit of modernization emphasizes a European culture of competition and draws a picture of co-operation and co-ordination, where the network assists both the national agencies and DG Comp. In that sense, the Commission "escapes" its own agency constraints by replacing itself by the network (where it however still assumes a leading role). By establishing close collaboration and mutual consultation between all relevant European competition institutions, Schaub (2000) holds, the ECN could potentially strengthen information symmetry, coherence of judgements, and reduce conflicts between the institutions. This in turn may reduce transaction costs both in judging cases and in dealing with complaints from economic agents. Not least, and in particular with respect to the new EU member states, the ECN may then also be expected to both raise the pressure upon national institutions to converge in their actions and may increase potentials for institutional learning. Whereas the latter effect is beyond doubt, the exchange of information between agencies turned out to be a particularly sensitive problem of confidentiality.

With DG Comp and most European national competition agencies being politically independent, Wilks (2005) compares the ECN with the European Central Bank's (ECB) board of governors: the 25 national agencies would co-operate with the pre-defined goal of ensuring competition like the ECB is targeting price stability. Whilst this characterisation does catch the envisaged cooperative nature of this new institution, the analogy however is misleading: for the ECB, a system of 'one country – one vote' was introduced and obviously there is only a single currency within the Eurozone. If the power over competition policy is referred to the national agencies of the network, then the capability of practical action may well be distributed asymmetrically. Next to DG Comp, the network will most likely be dominated by the strong and most renowned agencies like the UK's Office of Fair Trading, the German *Bundeskartellamt*, and maybe the French authorities. We suspect that the new EU member states will be the weakest link in the ECN, because competition culture and institutional experience is less developed there. "Those NCAs [National Competition Agencies] are underresourced, have limited experience and expertise, face large-scale cultural and industrial challenges, and are working with inexperienced courts who are often 'illiterate' in antitrust thinking", as Wilks (2005) speculates. If this speculation turns out to be correct – and we will analyze its credibility in the next section – the modernization package is in fact a potential threat for European competition culture in general and the envisaged level playing field between East and West in particular. In 2007, Wilks coins the characterisation of the ECN as a "uniquely independent supranational network" (p. 1) of powerful government agencies that form a regional equivalent of the WTO for competition. It is, however, noteworthy that the ECN with its executive powers to enforce competition policy clearly goes beyond the institutional mandate of its transatlantic equivalent of the International Competition Network (ICN).

In this respect the new EU competition policy appears to follow the example of US

antitrust policy. Indeed this could have been a policy alternative. In the US the antitrust policy of the federal government seized to exist since the 1970s. Since then landmark cases of antitrust policy were initiated by another company or a state attorney general's office. "When important cases go to court, the federal government is simply not there" (Mueller 1996, p. 428). This however is not the practise in the EU as here a new system of regulatory co-opetition (Esty/Geradin) between the NCA, the ECNs and the DG Comp seems to emerge.

The second most controversial component of the reform of EU competition policy pertains to the legal exemption rule in cartel law, in which companies have to self-assess whether cooperation is legal or rather forms an illegal cartel. Previously, firms operated a more legal certainty because they were able to receive immunity when being granted formal approval for cooperation by DG Comp. The whole system is turned around in that now companies produce a self-assessment and can go ahead with their plans as long as the NCAs or in fact DG Comp do not interfere. In a nutshell: whereas in the past, all was forbidden that was not explicitly allowed, today, everything is allowed that is not explicitly forbidden. In a critical review of this reform component, Bartosch (2000) holds that this to be installed regulation significantly increases legal uncertainty: in economic terms, this may have an important impact on technological development in general and the intensity of innovation in particular, if one assumes that at least some innovations critically depend upon inter-firm co-operations: legal uncertainty may prevent some firms to engage in such risky yet welfare-enhancing activities. This would be particularly detrimental with respect to the Lisbon agenda in general and for Central East Europe in particular, as here, dynamic economic development and technological upgrading is needed whilst companies do not have the information, historical precedence, or experience to be able to judge whether cooperation is legal or not.

The other components of the modernization package are less disputed, as in general, they give more powers to the national authorities and national courts, which now can act deliberately on their own suspicions and their informants may be granted immunity (leniency programme). Also, decisions are now to be made under a more prominent consideration of economic issues such as power on relevant markets, the extent and effectiveness of entry-barriers, and 'dynamic economic efficiency'. Rather than focussing on a pure legal application of market share thresholds, on exclusively the legal criteria for an existence of anti-trust agreements, and on the sheer lawfulness of state-aid, the focus of the 'more economic approach' (as discussed by Schmidtchen 2005)[9] is on the economic effects of competition-related issues. Whilst most economists tend to approve of this, a clear and generalisable definition of criteria, defining 'dynamic efficiency' are until now elusive and only future can tell whether this vehicle will be abused by some NCA and whether institutional capture may become more likely.

In regard to the overall reform package, Geradin/Henry 2005 report scientists that are concerned with the reform leading to 'forum shopping' (quoting Jenny 2000), to a fragmentation process (quoting Mavroidis/Neven 2000), and possibly even to misguided decisions by inexperienced authorities (quoting Riley 2003). They themselves are a bit more cautious and stress the importance of 'structural weaknesses', including inefficiencies in the judicial system and a lack of teaching and research programmes in universities in areas relevant to competition policy. They also challenge the view of the Commission that firms and their councils in the East have sufficiently good knowledge to be able to perform self-assessment with respect to legal exemption rule (p. 26).

3 Observations

The new EU-member countries in Central East Europe (in our empirical analysis, we focus primarily on Poland, the Czech Republic, and Hungary) have already fully adopted the chapters

relevant to competition and competition policy[10] in and around 1999 to 2001: Poland amended its national competition law in several steps since the late 1987 and enacted the “Act on Competition and Consumer Protection” in 2000.[11] The modern Czech Republic’s competition law was first drafted in 1991 and after two amendments in 1992 was harmonized with European law with the “Act No. 143/2001 on the Protection of Competition” in 2001. Hungary also aligned its national competition law to suit the conditions of a market-based economic system already in 1990 and after four subsequent amendments enacted the so far last amendment to the “Act XXXVI on the Prohibition of Unfair Market Practices” to match the *acquis communautaire* in 2001. All three countries have installed competition agencies as politically independent offices. In fact, the officials in the then-transition countries appear to have fully acknowledged the necessary contribution that competition makes to systemic change and catch-up development. This is suggested by several statements made at the OECD Global Forum on Competition (see report by Kronthaler/Stephan/Emmert 2005). Never-the-less, most accession states have in fact negotiated some transitional derogations for the full implementation of European Union Competition Policy (see EU 2005 or the section on “Transitional measures negotiated by acceding countries” on euractiv.com, prepared by the French Ministry of the Interior MINEFI – DREE): most of those transitional agreements grant exemptions only until 2008 and none concern Arts. 81 and 82. Transitional agreements for the phasing-out of incompatible fiscal state-aid mainly for small and medium enterprises were concluded until 2011 with Hungary, Malta, and Poland (for more on derogations, see Cseres, 2006, p. 7 and Känkänen, 2003, p.26-28).

3.1 THE MACRO VIEW ON INTENSITY OF COMPETITION

Empirical research assessing this development of competition policy implementation in CEECs is rare and slightly dated. In an earlier study, we found that enormous progress with the introduction and maintenance of the new competitive order in the then accession countries was made, but also that quite a variety of national differences prevailed until late 2003 (Hölscher/Stephan 2004). The most comprehensive study by (Dutz/Vagliasindi 2000) could only sketch the beginnings of the process and suggested that having formal implementation on the books is not enough. Their assessment leads them to conclude that there is a robust relationship between efficient competition policy (enforcement, advocacy, and institutional design) and intensity of competition in transition economies (see also: Campbell/Vagliasindi 2004). This will be updated and questioned by using different methods below, bearing in mind that full compliance with EU competition policy is politically not at stake until today. In empirically describing and comparing competition policy across national jurisdictions, we are constrained by only a very small number of possible indicators. We identify a set of four country-level indicators[12]: the first is an indicator of the scope of competition policy (Hylton/Deng, 2006), including seven sub-categories which makes this index very comprehensive indeed (for a more precise description, see box below): extraterritoriality, remedies, private enforcement, merger notification, merger assessment, dominance, and restrictive trade practices. The second index for competition policy combines the state of development of competition law and policy enforcement and relates this to the state-of-the-art in West Europe (EBRD), the third attempts to quantify the effectiveness of anti-trust policy by way of interrogating individuals in business and politics (WEF), and finally the fourth provides an average of the intensity of local competition again by use of interrogation (also WEF).

As a first overview of competition policy, the “competition policy scope index” developed by Hylton and Deng is an extensive institutional analysis of 102 national competition agencies and their governing laws provides a rating that is explicitly designed to be comparable across countries. Table 3 lists our countries of concern in CEE and as a comparison in West Europe additionally Germany for the year of 2004, the only available assessment made by Hylton and

The highest score in any of the Central and East European countries is achieved by Estonia with a 4-, just two marks off of the highest possible score of 4+. With other policy-areas achieving higher EBRD scores (e.g. for enterprise-reform, price liberalisation, trade and forex systems, financial institutions, and infrastructure), this indicates that competition policy in those countries clearly lags behind the other economic policy areas (for the countries' rankings in these fields, refer to EBRD, 2007).

The EBRD-indicator unfortunately is only constructed for Central and East European transition countries with the score of 4+ serving as a proxy rating for the western EU members. This does however not measure the gap between the new and old EU member states. A direct comparison with a comparator country from the group of West European economies, in our case Germany, is only possible by use of other indicators, constructed for the World Economic Forum and published annually in the Global Competitiveness Report: the first is the Effectiveness of Antitrust or Anti-monopoly Policy indicator, and the second is the Intensity of (local) Competition indicator. Both are constructed by way of interviewing experts and practitioners and use a scale between 1 and 7 with increasing effectiveness of anti-trust or anti-monopoly policy at promoting competition on the domestic market (Figure 2)[13] and with increasing intensities of competition on local markets (Figure 3).



Figure 2: Effectiveness of anti-trust policy between 1999 and 2007
Ranked between 1 and 7, whereas 1 indicates that in the specific country effectiveness is lowest and highest with 7.

Source: World Economic Forum, various issues.

The direct comparison confirms our observation that the effectiveness of anti-trust policy is lower in our selection of Central East European Countries, with levels around 6.0 for Germany as a benchmark in the West and around 4.0 for Poland and slightly more for the Czech Republic and Hungary.[14] At variance to the EBRD-indicator, the variability of the WEF rankings over time is higher which may be rooted in the differing methods of generation of the two sets of indicators. In particular, the rankings appear to have fallen in Poland and Hungary in the early years of 2000 and improving thereafter. In contrast, the ranking of Germany has even increased in the mid-2000s, further widening the gap between the East and the West. This provides further evidence that the implementation of a strong competition policy in post-socialist countries is a particularly difficult and time-consuming process that even may experience steps backward. Possibly, the disciplining effect of the negotiation process in the relevant chapters of the *acquis*

communautaire was strongest immediately after the negotiations have come to a close and only picked up with the latest reforms of the European Competition Policy framework. The implementation of the modernisation package in 2004 appears to have had a positive impact on the transition countries under observation.

Furthermore we would expect that this lesser effectiveness of competition policy enforcement may also result consequently in a lower intensity of competition on markets in Central East Europe. Despite the fact that West and East form an integrated economic area with intense exchange both in terms of trade in goods and services and in terms of Foreign Direct Investment and Joint Ventures, a lower intensity of competition in the East may be the result of a lesser effectiveness of competition policy. This can be tested empirically by use of the World Economic Forum indicator of Intensity of (local) Competition.



Figure 3: Intensity of local competition between 1999 and 2007
Ranked between 1 and 7, whereas 1 indicates that in the specific country intensity is lowest and highest with 7. The bars for 2001 do not directly compare with other years due to a change in method.

Source: World Economic Forum, various issues.

Here, differences between East and West are not as pronounced as for anti-trust effectiveness.[15] Still, a clear picture emerges: the intensities of local competition are lower in even the most advanced transition economies and new EU member states in Central East Europe. In 2007, they reach a level of around 4.7 and 5.7, whereas our West European benchmark reaches a level around 6.3. Admittedly, West European countries like Greece (4.8) and Portugal (4.9) are closer to transition countries (later entrant Luxembourg with a level of as low as 4.4 is hardly comparable due to its specific nature), but never-the-less, we may conclude that not only competition policy is less developed and less effective in Central East European transition economies, also the intensities of competition are lower.

In terms of the development of indicators over time[16], we again observe that intensities of competition tend to increase in Germany, whereas the trend is more erratic in Central East Europe which may well be a result of privatisation programmes in the early phase and foreign direct investment all over the period observed. Again, we observe a widening of the gap in competitiveness between the 'old' member of the EU and Poland as well as Hungary, whereas the Czech Republic appears to catch up.

Another and more refined method of statistical analysis enquiring the intensity of competition and the effectiveness of enforcement of competition laws at the macro level would be the distribution of firms according to their individual markets shares; *Herfindahl* or *Gini* indices would then be able to highlight the extent to which the largest firms dominate relevant markets, indicators already quite close to intensity of competition. For such an analysis, however, cross-country comparable data is generally not available.

3.2 The Institutional view on Intensity of Competition

A FURTHER WAY OF APPROACHING the development of competition policy and intensity of competition would be an analysis at the institutional level, i.e. the national competition agencies. Here, however, the limitations of any quantitative comparative analysis of competition policy effectiveness are reached (Nicholson 2004). *Prima facie* NCAs in the East are typically converted departments from former central planning administrations and are today in some cases surprisingly well resourced in terms of the sheer numbers for budgets and staffing (this pertains in particular to the Polish agency, not so much to the Hungarian).[17] When joining the Union, the Central East European economies were required to introduce the complete legal competition policy framework of the *acquis communautaire* into their national laws. But staff working in the agencies need time to catch up to the new requirements and to gather new experience, whilst the most capable experts will tend to be attracted into private sector law firms in general and consulting firms in particular offering a multiple of their former salaries (and the Commission has likewise dried up the market to staff its DG Comp). “This loss of quality staff may explain why there is some criticism from executives and counsel as to the quality of decisions coming out of some of the NCAs. Sometimes basic antitrust principles are not applied or an unfortunate anachronistic formalistic approach to antitrust law is applied” (Riley 2005a). It is the set of very special particularities in the new member states that make the application of a western-style competition policy so difficult in formally socialist economies: Eastern NCAs tend to be much more burdened with work on cases related to cartels and state-aid[18] which is mainly rooted in a lack of competition culture and a knock-on effect of privatisation programmes. Furthermore, NCAs in the East are much more burdened with merger cases than their counterparts in the West due to intense market restructuring and the sheer volume of foreign direct investment that had been attracted into the region by policies often at variance with competition law. These burdens prevented Eastern NCAs to devote as much time to hard-core cartel busting as would have been necessary to reach Western levels of anti-trust effectiveness. Finally, NCAs in the new member states remain to establish a powerful politically independent track record to be able to vigilantly apply competition rules to the still very substantial economic activities of their state sectors (Riley 2005b).

In this respect, tables 3.1 and 3.2 offer an overview of the number of cases that led to a decision by the competition authorities of our selection of Central East European Countries and Germany as a point of reference.[19] Naturally, the numbers cannot be compared easily between countries: not only is the size of the country the most important determinant of the number of cases. Also the definition of what constitutes a case and a decision is country-specific. Still, the information gathered in this table can provide a general picture of the intensity with which the competition authorities apply competition law: the cross-country comparisons and the developments in time of shares of decisions deemed unlawful, or in the case of mergers the share of prohibitions and conditional approvals, are in fact insightful. Merger control, a field, where companies planning to merge would typically notify the competition authority(ies) involved themselves (hence a low share of cases initiated *ex officio*), could be expected to play a particularly important role in transition countries: privatisation of large former state-owned

conglomerate companies often resulted in their break-up into small units that subsequently found themselves below optimal sizes, and the so-called 'bottom-up' privatisation from start-ups equally may seek strategic merger partners to secure competitiveness via scale economies (see Table 3.1).

Table 3.1 Merger control case-decisions, 1997-2007

Mergers	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	Czech Republic													
No. of decisions	58	57	51	57	140	238	225	164	n/a	n/a	n/a		...conditional approval	n/a	n/a										
n/a	6	6	9	7	11	13	n/a		...prohibitions	n/a	n/a	n/a	n/a	1	2	1	1	1	0	n/a					
Hungary																									
No. of decisions	25	49	46	70	81	65	68	65	49	43	46		...ex officio	0	3	2	3	5	5	1	2	1	2	2	
...conditional approval	0	0	0	2	2	3	1	2	1	3	3		...prohibitions	0	0	0	1	0	1	0	0	0	0		
Poland																									
No. of decisions	¹ 1387	1872	1079	1107	542	169	151	218	276	267	n/a		...conditional approval	0	0	0	0	1	2	1	2	1	2	2	
...conditional approval	0	0	0	0	1	2	1	2	1	n/a		...prohibitions	2	1	0	0	0	0	0	2	0	1	n/a		
Germany													No. of decisions	² n/a	n/a	40	49	51	44	34	25	29	35	29	
approval	n/a	n/a	5	5	14	11	7	2	4	6	8		...prohibitions	6	4	2	2	2	6	2	12	6	5	7	

¹ The numbers of cases initiated *ex officio* were very small and only concerned such cases where a fine was imposed on companies that did not notify a merger and where a company was divided into parts. However, there were no such decisions after 1996.

² Only second phase.

Sources: National competition authorities' official publications and unpublished agency information.

In fact, numbers for decided cases are quite high in the Czech Republic, Hungary, and Poland even if compared with much larger Germany. However, enforcement does not appear to be overly strict: prohibitions in all countries assessed here occur very rarely indeed and approval, even if only conditional, make up the vast majority of decisions.[20] More interestingly, the peaks in numbers correspond to the privatisation processes of the respective countries: Hungary first privatised large companies and started relatively late with small-scale privatisation, and the proper Czech privatisation programme (neglecting the largely failed voucher-privatisation) also took effect at an even later stage. In Poland on the contrary, the high numbers peak much earlier and then fall consistently, and indeed, small scale and in particular 'bottom-up' privatisation here have a longer history. In Germany, the more time-consuming and more meticulous assessment in the second phase involves, as expected, much lower numbers than in the Central East European countries and this even despite the size-differences of the countries (e.g. in terms of the sheer number of firms). With respect to the kinds of decisions taken, the shares of decisions resulting in prohibitions and/or approvals involving some form of conditions turn out to be consistently lower in our Central East European countries than the shares in Germany. This does suggest a more lenient competition policy, however, it may be rooted to some degree and in some cases in the above explained efficiency-increasing motivation of mergers.

In the case of restrictive agreements (cartel) and abuse of dominance cases (which typically are initiated *ex officio*), we would expect a falling trend with the gradual enforcement of the new competition laws and the equally gradual emergence of a competition culture amongst firms as potential violators and the deterring effect of fines in previous cases (see Table 3.2). In reality, however, we cannot observe any clear-cut time-trends in the case-numbers for our Central East European Countries as a whole, neither for cartels nor for dominance abuses. The comparison of numbers of case-decisions between individual Central East European countries and Germany provides a diverse picture: for cartel cases, the numbers of decisions in the Czech Republic and Hungary appear to correspond to the German ones (corrected for size differences), the Polish do not and are much lower than the size-differences between the two countries would suggest. For dominance-abuse case-decisions, the Polish and Hungarian numbers seem to correspond to the German ones, whereas the numbers of decisions in the Czech Republic appear to be much lower than size would suggest. In terms of enforcement track record,

indicated by the share of cases where unlawful behaviour was established in the cartel case-decisions, all our transition economies appear to have a stricter enforcement record than Germany with Hungary and Poland closer to Germany than the Czech Republic. The result of this East-West comparison, however, may be attributed to a lower level of competition culture amongst firms entering some form of agreement and may have less to do with the strictness of competition law enforcement. In terms of case-decisions on abuses of dominance, the relation between shares is reversed: here, the German competition authority has decided in much higher shares of cases that unlawful behaviour can be established. Here, Poland is close to Germany than Hungary and the Czech Republic. In total, the Czech Republic stands out with an apparently rather weak policy enforcement *vis-à-vis* Germany, whereas Hungary's and Poland's shares correspond to the ones for Germany.

Table 3.2 Cartel and abuse of dominance case-decisions, 1997-2007

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	
Restrictive agreements												Czech Republic
No. of decisions	1	(27)	67	54	36	14	25	21	19	4	5	n/a
...unlawful	n/a	n/a	n/a	n/a	1	11	10	13	0	4	n/a	Hungary
No. of decisions	5	16	15	18	10	18	20	28	21	19	15	1
...unlawful	1	5	6	11	1	10	12	12	9	15	12	Poland
No. of decisions	2	n/a	(306)	355	374	354	40	38	26	(144)	33	n/a
...unlawful	2	n/a	124	127	178	113	19	20	14	n/a	18	n/a
No. of decisions	244	178	161	127	156	146	139	104	270	141	n/a	Germany
...unlawful	60	61	38	23	41	59	49	36	46	27	n/a	Abuses of dominance
No. of decisions	1	(5)	4	13	11	1	16	3	3	12	3	n/a
...unlawful	n/a	n/a	n/a	n/a	0	4	2	0	5	0	n/a	Hungary
No. of decisions	28	47	36	56	33	36	31	30	18	33	13	4
...unlawful	4	10	7	19	3	15	8	7	6	11	10	Poland
No. of decisions	2	n/a	(306)	355	374	354	353	150	126	(144)	170	n/a
...unlawful	2	n/a	124	127	178	113	82	51	45	n/a	95	n/a
No. of decisions	203	213	261	326	434	442	370	306	908	514	n/a	Germany
...unlawful	36	94	52	92	259	284	201	144	478	206	n/a	Notes:

¹ 1997 to 2000: number of cases started in that year, not decisions taken in the respective years (numbers are provided in parenthesis).

² 1997 to 2001, as well as 2005: the case numbers are the sums for "Restrictive agreements" and "Abuses of dominant position" (numbers are provided in parenthesis). The Polish authority does not distinguish in its official publications between those two categories for those years.

Sources: National competition authorities' official publications and unpublished agency information.

Some of the more advanced new member states in Central East Europe have begun to crack down on anti-competitive behaviour and have already imposed significant fines under the national competition rules. An assessment of the most significant cases in Poland, the Czech Republic, and Hungary, in particular considering the size of the fines, the fields of law violated, and the industries involved, already provides some important information: the size of most the highest fines tended to fall since the early 2000s; each country-agency appears to focus on a particular kind of violation of competition or fields of anti-trust law (with Poland on abuse of dominant market position, the Czech Republic on abuse of dominant market position and additionally cartels, and Hungary on bid-rigging and other forms of cartels; and on particular industries (with Poland on utilities, the Czech Republic on telecommunication, and Hungary on the construction industry). In the following, we list only the most significant cases with the highest fines levied:

In Poland, the largest fines were imposed against firms abusing their dominant market position. The most severe cases include:

- a fine of € 9.5 million upon the power generating company Polskie Górnictwo

Naftowe i Gazownictwo in October 2004 for abusing its dominant market position to ward off the efforts of a large-scale customer to get a user-classification in a more favourable tariff group in September 2001;

- two fines totalling € 12.9 million upon the Polish State Railway PKP and PKP Cargo in June 2004 for abusing its dominant market position to tie its clients into long-term contracts in which the company forces its clients to accept onerous co-operation terms;
- three fines amounting to € 6 million upon Telekomunikacja Polska in May 2004 and April 2005, for abusing its dominant market position to force licensees to accept onerous contractual terms and for not complying with the order of the competition agency to discontinue this practice.

Cases of restrictive agreements and cartels did not play a significant role in Poland in 2004 and the first half of 2005 with fines amounting to € 0.9 million in only four cases involving pharmaceuticals and publishing houses. In February 2004, i.e. slightly before the reform of EU competition law, two merger cases were found to have been unlawful due to the failure to notify the competition agency of the take-over. Both cases involved publishing houses and fines of € 50,000 were levied in both cases. Neither in the Czech Republic nor in Hungary could we find cases in merger-control that ended in the imposition of a fine.

The Czech competition agency imposed the largest fines on Czech telecommunication firms and mobile operators in four cases of abuse of dominant position and cartel agreements:

- a fine of € 2.1 million upon the companies Eurotel Praha, spol. s.r.o. and RadioMobil a.s. in May 2002 for abuses of dominant positions in 2000 and 2001 (charging higher per-minute prices between their respective networks than mutually invoiced), the Eurotel Praha-fine was finally settled in February 2005;
- a fine of € 1.4 million upon the companies Eurotel Praha (again), Český Telecom, and T-Mobile Czech Republic in September 2004 for cartel agreements (the agreements obliged signatories, except for sporadic cases, to interconnect their networks exclusively by a direct form thereby excluding services of third parties) in 2000 and 2001;
- a fine of € 0.8 million upon the company Český Telecom (again) in late 2004 for abuse of its dominant position (in the market for provision of access to the Internet services and data transmission services via broadband technology xDSL (ADSL) at the public fixed telecommunication networks to the detriment of competitors and final consumers) in 2002;
- a fine of € 0.3 million upon the company Český Telecom (again) in March 2005 for threatening competition on the market of supply of modems and accessories for Internet connection through ADSL technology (prohibited and invalid price agreements and including them into supply contracts).

Two even larger fines were levied in other industries: in August 2004 against a cartel agreement on the market of building savings in 2001 with a total fine of € 15.8 million (case still pending because the appeal period is not over) and in September 2002 against a cartel agreement between fuel distributors with a total fine of € 9.6 million (involving the companies Agip Praha, a.s., Aral ČR, a.s., BENZINA a.s., ConocoPhillips Czech Republic s.r.o., OMV Česká republika, s.r.o. and Shell Czech Republic a.s. for fixing sale price for car petrol Natural 95 sold by their petrol stations in the period beginning on 28 May 2001 and ending on 30 November 2001. This practice was aimed at restricting competition on the market of the car petrol delivered to consumers).

In Hungary, the Office of Economic Competition had to mainly focus on the construction industry. Here, the largest fines occurred in 6 cases of bid-rigging and the formation of cartels:

- a fine of € 2.6 million upon three construction firms in March 2004 for colluding in a public tender for a larger construction project in Budapest in 2002, the firms fined included Baucont Rt., ÉPKER Kft. and KÉSZ Kft.;
- a fine of € 1.2 million upon the companies Baucont Rt. (again) and Középületépítő Rt. (charges against KÉSZ Kft. were dismissed) also in March 2004 for concluding a restrictive agreement in a public tender for a construction project for the University of Kaposvár in 2002;
- a fine of € 1 million upon the companies Strabag Rt., EGUT Rt., and RING Kft. also in March 2004 for coordinating their bids for an underground Metro construction project in Budapest in 2002;
- a fine of € 0.64 million upon the companies Holcim Hungaria Rt. (Holcim), Duna-Dráva Cement Kft., BÉCEM Cement és Mészipari Rt., and Magyar Cementipari Szövetség in October 2002 for concluding and implementing an illegal information cartel agreement and for abusing their dominant position in 2000 and 2001;
- two smaller fines against construction firms colluding in a public tender bidding process in two cases. Both fines were levied in 2004, well after the legal changes of May 2004.

The Office of Economic Competition also had to deal with restrictive practices of telecommunication firms and levied fines amounting to € 1.7 million between 2002 and 2005 in four cases of deception of consumers, restrictive agreements and abuse of dominant position (of which three smaller fines were all levied in 2005 for unlawful conduct in 2004, and one fine with € 1.4 million having been levied in 2003 for misconduct between 1998-2001). A whole variety of cases in other industries concerned restrictive agreements with fines between 2002 and 2005 in five cases amounting to € 2.5 million (of which only one had been concluded after May 2004), the abuse of dominant positions with fines during the same time-span in five cases summing up to € 1.1 million (all of which had been levied between 2002 and 2003, none thereafter), and deception of consumers with fines in ten cases amounting to € 0.8 million (of which most had been concluded after May 2004).

Whilst such an analysis at individual case-level can only provide incidental evidence and can hardly be compared across countries, we may still conclude that our countries in the East have evidently competition policy enforcement that they can draw attention to in a debate about the laxness of their regimes. However, most of cases selected here would belong to sectors that would in the West be subject to economic regulation and hence do not serve to signify particularly effective enforcement of competition law. What is most striking is that the countries do not yet appear to have a positive record of a comprehensive scope of competition policy enforcement across the whole scope of industries and of fields of violation. Rather, the agencies of these countries appear to focus on particular issues and industries, and it remains an open question as to whether the “omitted” areas in fact enjoy a cartel paradise à la Pirrung.

5 Conclusions

Switching from a state-controlled economic system to one where firms are governed by the forces of markets in general and competition in particular, competition policy has to make previously monopolised markets competitive in the first place. With the main challenge for the formerly socialist economies to technologically catch up, competition policy should be expected to be regarded as the prime policy-instrument to motivate firms to generate innovations (for an empirical account of the competition-innovation nexus in transition economies, see: Carlin et al.,

2004)[21].

This study established that competition policy enforcement in East European transition economies is less stringent, less effective: there is still no level playing field with respect to competition law enforcement between the West and the East and in particular also not with the new EU member states of Central East Europe. This could be shown on macro and institutional levels with a review of case-numbers. This picture was complimented by anecdotal evidence on the cases that led to significant fines for anti-competitive behaviour. Intuitively, these findings seem to call for policy action. However, given the diagnosis that the lack of competition has systemic reasons rooted in the socialist past of the new EU member countries and the particularity of transformation of the economic system itself, there seems to be no fast track for effective competition policy implementation. Formally, the law is already sufficiently introduced and its effective enforcement comparable to Western European levels will have to follow in the future with both the intensity of market restructuring slowly abating the national institutions moving up the learning curve.

In addition to this conclusion the context of EU modernization of competition law itself has to be taken into account. Despite the fact that the reform of the EU competition policy framework was not tuned to the particularities of the new member states in the East and despite the expectation that the new institutions may potentially be more difficult to digest in the East (increased legal uncertainty and a gap in institutional learning), it appears from the empirical data that the most advanced CEE countries did not experience a significant draw-back in their effectiveness of national competition policy. Taking the major changes of EU competition law into consideration leads us to the conclusion, that it is most likely that Brussels' DG competition will fill the existing power vacuum in the new EU member countries. This will be the function of the newly established cooperative institution of the European Competition Network (ECN). It will lead to a very powerful European institutional authority under the guidance of DG Competition, which raises the long-standing doubts about its democratic legitimacy and degree of subsidiarity. However, for the foreseeable future the EU does not follow the example of the US. Apart from political and legal aspects, the economic conclusion with a view on protecting competition in eastern markets is that although competition policy in the new EU member states is weak, there is no need for action. The modernized European institutions seem to be fit to deal with the problem. Rather, it will in the near future be in particular state-aid that will prove to be much more of a problem in the case of the new EU member states (Dias, 2004, with a focus on steel-industry Lienemeyer, 2005, and on the next EU enlargement cases Castele, 2005).

Bibliography

- Audretsch, D. B., Baumol, W. J. and A. E. Burke, 2001, Competition Policy in dynamic markets, *International Journal of Industrial Organisation* 19, pp. 613-634.
- Barros, P.B., 2003, Looking behind the curtain – effects from modernization of European Union competition policy, *European Economic Review* 47, pp. 613-24.
- Bartosch, A., 2000, Von der Freistellung zur Legalausnahme - was geschieht mit der Rechtssicherheit?, *Wirtschaft und Wettbewerb* 5, pp. 462-473.
- Bose, P. and D.M. Kemme, 2002, Liberalization, entry and product quality in transition economies, *Economic Systems* 26, pp. 353–66.
- Campbell, L. and M. Vagliasindi, 2004, *The EBRD: promoting transition through competition*, EBRD, London.
- Carlin, W., S. Fries, M. Schaffer, and P. Seabright, 2003, *Competition, Restructuring and Firm Performance: Evidence of an Inverted-U relationship from a Cross-country Survey of Firms in Transition Economies*, unpublished discussion paper, mimeo.
- Carlin, W., M.E. Schaffer, and P. Seabright (2004), *A minimum of rivalry: evidence from transition economies and the importance of competition for innovation and growth*, William Davidson Institute Working Paper No. 670. Available at SSRN: <http://ssrn.com/abstract=533085> or DOI: 10.2139/ssrn.533085.
- Castele, Koen van de, 2005, Next EU enlargement: Romania and State aid control, *Competition Policy Newsletter* 1/2005, pp. 39-42.
- Cseres, K.J., 2006, *The Interface between EC Competition Law and the Competition Laws of the New Member States: Implementation or Innovation?* Amsterdam Center for Law & Economics Working Paper No. 2006-06. Available at <http://ssrn.com/paper=905960>
- Deringer, A., 2000, Stellungnahme zum Weißbuch der Europäischen Kommission über die Modernisierung der Vorschriften zur Anwendung der Art. 85 und 86 EG-Vertrag (Art. 81 und 82 EG), *Europäische Zeitschrift für Wirtschaftsrecht* 1, pp. 5-11.
- Dias, P., 2004, Existing State aid in the acceding countries, *Competition Policy Newsletter* 2/2004, pp. 17-18.
- Dutz, M.A. and M. Vagliasindi, 2000, Competition policy implementation in transition economies: an empirical assessment, *European Economic Review* 44, pp. 762-72.
- EBRD, 2004, *Law in transition 2004: Competition law and policy*, EBRD, London.
- EBRD, *Transition Reports*, various issues, EBRD, London.
- Eekhoff, J. (eds), 2004, *Competition policy in Europe*, Springer, Berlin et al.
- Ehlermann, C.-D., 2000, The Modernization of EC Antitrust Policy: A Legal and Cultural Revolution, *Common Market Law Review* 37, pp. 537–74.
- Esty, D. C. and D. Geradin, 2000, Regulatory Co-optation, *Journal of International Economic Law* 3 (2), PP. 1-15
- EU, 1999, *White Paper on Modernisation of the Rules Implementing Articles 85 and 86 of the EC Treaty*, Commission Programme No 99/027, Brussels.
- EU, 2003, *Report on the results of the negotiations on the accession of Cyprus, Malta, Hungary, Poland, the Slovak Republic, Latvia, Estonia, Lithuania, the Czech Republic and Slovenia to the European Union*, prepared by the Commission's departments, Brussels.
- EU, 2004a, *A pro-active Competition policy for a Competitive Europe*, Communication from the

- Commission (COM(2004) 293 final), Brussels.
- EU, 2004b, *Modernisation of EC antitrust enforcement rules Council Regulation (EC) No 1/2003 and the modernisation package*, European Commission, Directorate-General for Competition, Brussels.
- EU, 2004c, Commission Notice on cooperation within the Network of Competition Authorities, *Official Journal C 101 (27.04.2004) 43-53*.
- EU, 2005, *Report on the Results of the Negotiations on the Accession of Bulgaria and Romania to the European Union*, Prepared by the Commission's Departments, February 2005, No. 5859/05, Brussels.
- Geradin, D. and D. Henry, 2005, 'Competition Law in the new Member States: Where do we come from? Where do we go?', in D. Geradin (ed.), *Modernisation and Enlargement: Two Major Challenges for EC Competition Law*, Intersentia, Antwerp, pp. 273-309.
- Hölscher, J. and J. Stephan, 2004, Merger Control and Competition Policy in Central Eastern Europe in the Light of EU Accession, *Journal of Common Market Studies* 42, pp. 321-45.
- Hylton K.N. and F. Deng, 2006, Antitrust around the world: an empirical analysis of the scope of competition laws and their effects, Boston University School of Law working paper series, Law and Economics Working Paper No. 06-47. Available at http://ssrn.com/abstract_id=950964
- Jenny, F., 2000, 'On the Modernisation of EU Antitrust Policy', in C.D. Ehlermann and I. Atanasiu (eds), *European Competition Law Annual 2000 - The Modernisation of EC Antitrust Policy*, Hart Publishing, Oxford, pp. 360-8.
- Känkänen, J. 2003, Accession negotiations brought to successful conclusion, *Competition Policy Newsletter*, 2003/1, pp. 24-8.
- Kallaugher, J. and A. Weitbrecht, 2006, Articles 81 and 82 EC in 2006 - The Year in review, *European Competition Law Review*, pp. 316-24.
- Kroes, N., 2005, Competition Policy - Past, Present and Future, Speech in a meeting with the Committee on Economic and Monetary Affairs of the European Parliament, Brussels, 21 June 2005, SPEECH/05/368.
- Kronthaler, F., J. Stephan, and F. Emmert, 2005, *Analysis of statements made in favour of and against the adoption of competition law in developing and transition economies*, Halle Institute for Economic Research (IWH).
- Lienemeyer, M., 2005, State aid for restructuring the steel industry in the new Member States, *Competition Policy Newsletter* 1/2005, pp. 94-102.
- Nicholson, M.W., 2004, Quantifying Antitrust Regimes, Federal Trade Commission - Bureau of Economics, *Bureau of Economics Working Papers* No. 267.
- Mavroidis, P. and D. Neven, 2000, 'The White Paper: A Whiter Shade of Pale of Interests', in C.D. Ehlermann and I. Atanasiu (eds), *European Competition Law Annual 2000 - The Modernisation of EC Antitrust Policy*, Hart Publishing, Oxford, pp. 207-21.
- Möschel, W., 2000, Systemwechsel im Europäischen Wettbewerbsrecht? Zum Weißbuch der EG-Kommission zu den Art. 81 ff. EG-Vertrag, *Juristenzeitung* 2, pp. 61-7.
- Mueller, D. C., 1996, Lessons from the United States's antitrust history, *International Journal of Industrial Organisation* 14, pp. 415-445.
- Pirrung, M., 2004, EU Enlargement towards cartel paradise? *Erasmus Law and Economics Review* 1 (February 2004), pp. 77-109.
- Riley, A., 2003, 'EC Antitrust Modernisation: The Commission Does Very Nicely - Thank You! Part One: Regulation 1 and the Notification Burden', *European Competition Law Review* 24/11, 604-15.
- Riley, A., 2005a, An Antitrust Double Whammy on Enlargement Day, *CEPS Commentaries* 331

(January, 2005) Brussels.

Riley, A., 2005b, Cartels first: The Top Priority for the New Competition Commissioner, *CEPS Commentaries* 386 (January, 2005) Brussels.

Schaub, A., 1999, Das Weißbuch der Europäischen Kommission über die Modernisierung der Vorschriften zur Anwendung der Art. 81 und 82 EG-Vertrag, *Wirtschaft und Wettbewerb* 11, pp. 1055-70.

Schmidtchen, D., 2005, Effizienz als Leitbild der Wettbewerbspolitik: Für einen „more economic approach“, in U. Böge et al., *Effizienz und Wettbewerb*, Duncker & Humblot, Berlin, pp. 9 - 42.

Singh, A., 2003, Competition, corporate governance and selection in emerging markets, *Economic Journal* 113, pp. F443-F464.

Török, A., 2001, *Is Merger Control Too Lax in Transition Countries?*, final report of an ACE Phare project, mimeo, Budapest.

Wilks, S., 2005, Agency Escape: Decentralization or Dominance of the European Commission in the Modernization of Competition Policy? *Governance* 18(3), pp. 431-52.

Wilks, S. 2007, *The European Competition Network: what has changed?*, mimeo, Paper presented at the European Union Studies Association Conference in Montreal, 17-19 May 2007.

World Economic Forum, Global Competitiveness Report, various issues, Geneva Switzerland.

[1] Comments received by participants of the BASEES conference in Cambridge and staff seminars at the Universities of Brighton and the West of England as well as by Andrew Mullineux are gratefully acknowledged. Jens Hölscher thanks the Halle Institute for Economic Research (IWH) for inviting him for a research stay, during most of the study has been written. Finally we wish to thank an anonymous referee of this journal for very useful comments on the fist submission.

[2] Brighton Business School, University of Brighton: J.Holscher@bton.ac.uk

[3] Halle Institute for Economic Research: Johannes.Stephan@iwh-halle.de

[4] A very comprehensive overview at a much earlier point of time can be found in Török, 2001, a final report of an ACE Phare research project on “Is Merger Control Too Lax in Transition Countries?”.

[5] Apart from case-by-case exemptions, there are the so-called ‘block exemptions’ which allow cooperative behaviour with respect to vertical agreements, licensing agreements for the transfer of technology, horizontal co-operation agreements, and in the insurance sector.

[6] This includes ~ 855 million for the vitamin cartel, of which ~ 462 million was levied against Hoffman La Roche alone..

[7] This includes ~ 992 million for the elevators and escalato This includes €855 million for the vitamin cartel, of which €462 million was levied against Hoffman La Roche alone..

[8] This includes €992 million for the elevators and escalators cartel (including €480 million for ThyssenKrupp), €751 million for the gas insulated switchgear cartel (including €397 million for Siemens AG), €487 million for the flat glass cartel (including €148 million for Guardian), and €329 million for the hard haberdashery: fasteners cartel (€including 150 million for YKK group).

[9] The rise in fines is also rooted in a change of rules in the determination of size fines, where the total firm-turnover has replaced the turnover of the product in question. Still, the number of cases also follows a rising trend over time.

- [10] This is a concept that runs through official EU papers and presentations since 1999 under Commissioner Mario Monti, and cumulated in the appointment of a chief economist at DG competition. In fact, also the successive competition DG commissioner Neeli Kroes refers to the role of “more use of economic analysis” to give more emphasis to the Lisbon priorities (Kroes, 2005, p. 4).
- [11] Those are in particular: chapter 6 (competition policy), chapter 15 (industrial policy), chapter 16 (small and medium-sized enterprises), as well as chapter 5 (company law). For a review of competition policy implementation in Central East Europe, see Hölscher/Stephan (2004).
- [12] It is obvious that the early enactment in 1987 produced nothing but a competition law on the books with an agency without real portfolio: significant free market reforms that would grant the concept of competition some value only set in at the early 1990s.
- [13] Arguably, quantitatively measuring competition policy will always remain a problematic area, as its effects will diverge significantly between sectors and industries. As our level of analysis is the national level, and because our aim is to assess level playing field between countries in the East vis-à-vis the West (event the latter is not homogenous), such a problematic analysis is still worth doing.
- [14] As the scaling in the competitiveness reports varies for selected years we have adjusted those to the 1-7 scale in order to be able to make comparisons over time.
- [15] An analysis of averages and standard deviations confirms that the lower rankings for all our three CEECs are in fact statistically significant when compared to Germany.
- [16] Again, an analysis of averages and standard deviations confirms that the lower rankings for all our three CEECs are in fact statistically significant when compared to Germany.
- [17] Here, the dataset is problematic for a methodological reason: in 2001, the questionnaire had a different wording with respect to the intensity of competition: whilst in the other years, experts and practitioners had been asked for the “intensity in the local market”, in 2001, the question was reworded to “In most industries” and back to the original thereafter. Because this change applied to all countries alike, we can still compare across countries in 2001, but across time, we have to exclude the 2001-results.
- [18] For an attempt to compare numbers across countries in the new member states, see Geradin/Henry 2005, p. 22, using data from “The 2004 Handbook of Competition Enforcement Agencies”.
- [19] In the case of Hungary, this may be less severe, because here, the responsibilities for anti-trust and state-aid are split between the Gazdasági Versenyhivatal (Office of Economic Competition) and the Ministry of Finance, respectively.
- [20] The cases counted in the following two tables focus on “promoting and defending competition between companies, suppliers” and not on “consumer protection”. In fact, however, misconduct towards consumers (consumer deception) still forms an important part of competition policy-work in CEECs.
- [21] Some of this, however, may well be due to the fact that in these very open and small economies, the relevant market typically includes the whole EU, hence a dominant position becomes less likely.
- [22] The observation by Audretsch et al. (2001) that EU competition policy appears to emphasise static welfare optimisation rather than dynamic aspects of innovation could not be explored here in detail, but is important to note.