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in the European Union**

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# **Competition Law Enforcement in the European Union**

**Dissertation von Verena HAHN**

## **Zusammenfassung**

This book deals with the question of public competition law enforcement. It contains two theoretical models which examine the deterrent effect of institutional variants of enforcement, a case study exploring how competition policy has affected an existing cartel, along with an analysis of how the nature of competition policy, and in particular, the nature of enforcement, fits with a nation's political economy. From a game theoretic perspective, the theoretical models analyse the impact of the recent reform in European competition policy concerning restraints of competition on the deterrent effect of law enforcement.

The first model deals with the abolition of the notification system and its replacement by an abuse control system. While the current system requires agreements which qualify for exemption under Article 81 (3) to be notified to the European Commission, the proposed system subjects them to abuse control. The model shows that the deterrent effect may be larger under a notification system because notification serves a mechanism of self-selection and therefore reduces the set of agreements subject to random control by the competition authority.

The second model deals with the problem of decentralised competition law enforcement and examines the optimal allocation of jurisdiction between a European and national competition authorities. In a public-good model, the incentives of individual countries to contribute to national or European competition law enforcement are analysed, and the optimal scope of national and European jurisdiction is derived. It is shown that a decentralised enforcement regime which involves both national and European competition authorities may be preferable.

A case study on the German power cable cartel, which was prosecuted by the German Bundeskartellamt after nearly 100 years of cartelisation in the industry, provides empirical evidence on the effects of competition law enforcement. The analysis shows that despite an overly strict enforcement of the post-war German cartel prohibition the power cable cartel was able to sustain collusion. In contrast, at times when cartel activity was legal in Germany, the cartel repeatedly suffered from price wars and the dissolution of agreements. The case study thus illustrates the relative relevance of competition law enforcement and market form in affecting the stability of collusion.

The last part of the book reaches across a law-and-economics approach to competition policy and, adding a political science perspective, presents an analysis which considers the interaction of competition policy with political and social institutions. It seeks to explore how competition policy, at the example of UK and German competition policy, is an integral part of economic organisation. An analytical framework, "varieties of capitalism", is adopted, which systematically links a nation's competitive advantage to the institutional arrangements provided by the national economy, and highlights the complementarities between institutions. The framework allows to identify how and why

particular elements of national competition policy have evolved. Competition policy and the nature of its enforcement in the UK and Germany are analysed in a comparative way, and it is shown how competition policy in both countries fits with the countries' institutional "varieties". Building upon these insights, the recent round of reforms in UK and German competition policy are analysed with regard to whether harmonisation between UK, German and European competition law can be observed, and whether there are changes in the national modes of economic organisation in the sense that there is convergence or divergence in the way in which the economies operate. The analysis explores how elements of competition policy complement institutional arrangements which are crucial for the functioning of the economy. It therefore has implications for the legislative and administrative implementation of competition policy and the feasibility of policy reform in a particular country.