



Platform Paper for the Initiative "Curbing Corporate Power"

Corporations like Bayer, Google, and VW possess tremendous market power. Large corporations often have branches located in tax havens in order to avoid paying taxes. Mega-mergers, frequently financed by banks and investment companies, vastly increase market concentration. The larger the market share a company has, the larger its power is vis-à-vis suppliers, manufacturers, producers, and customers. This concentrated buying power is no less of a problem than the power of monopolies or oligopolies. Whenever a small number of corporations divide a market among them, the risk of price-fixing, cartel formation, and other abusive practices increases. The problem is especially grave when a small number of companies control several levels of the production and trade chain.

Why market concentration affects us all

The consequences of market concentration impact everyone. In the area of IT, market concentration allows internet corporations to surveil and control our communications and to fix the rules of use unilaterally for their own benefit. Google controls 90 percent of the market for search engines while Facebook accounts for 75 percent of mobile communication services. Their zealous collection of data creates annoyance for users. Amazon not only controls 65 percent of the market for online-book sales, but has also introduced a model of relying on digital crowdworkers paid by the job and subject to total surveillance. Other companies have scarcely any chance of establishing themselves in the market, owing to the powerful network effects of the established IT corporations.

The nitrogen oxide scandal in Germany has vividly demonstrated the power of the automobile lobby and the weakness of our political institutions: car manufacturers continue to be allowed to sell vehicles whose exhaust contains nitrogen oxide at levels several times what is formally permissible under law, thereby damaging the health of city dwellers. The official maximum levels of CO₂ in the EU are exceeded on average by more than 40 percent – to the detriment of clients, citizens, and the climate. Manufacturers use their market power to exploit suppliers mercilessly. Suppliers are required to disclose their price calculations in full, enter into oppressive contracts, and even pay “entrance fees” to obtain commissions from the large automobile corporations. Anyone who decides not to comply will go out of business.

In the German retail food segment, Edeka, Rewe, and the Schwarz Group (which owns Lidl and Kaufland) together with Aldi control 85 percent of sales. Suppliers are threatened with being delisted if they do not agree to the prices and conditions dictated by the buyer. The downward pressure exerted on prices and costs is passed on at every stage along the supply chain in Germany, in Europe, and ultimately onto farmers in the Southern Hemisphere. Prices adequate to cover the costs incurred by farmers and pay a living wage to farm-workers – especially migrant workers – are difficult to achieve. There are hardly any alternative markets in which farmers can sell their produce locally, and in the future, they will likely become more and more dependent on Bayer-Monsanto & Co. for the purchase of seed and pesticides.

Market concentration jeopardizes democracy

Concentrated markets create concentrated political power. The bigger the corporations, the more power and financial leverage they have to influence politics in their favor. They spend millions of euros on lobbying. Even today, risk assessments on hazardous pesticides like glyphosate demonstrate just how far the influence of agrochemical corporations reaches. In Brussels, ambitious limits on greenhouse gas emissions for cars have been frustrated time and again through pressure from automobile corporations. The powerful financial sector has prevented imposition of restrictions on excessive speculation in foodstuffs. The large financial institutions of Europe remain "*too big to fail*" and "*too complex to regulate*," although the enormous risks for stability and any financial market regulation oriented to the common weal are readily apparent.

A self-reinforcing political system is emerging, in which politicians are showering favors on big corporations, while they destroy small businesses and aggravate market concentration. The private interests of large corporations often prevail over the public interest. The result: increasing inequality, fuelling of climate change, destruction of the environment, and the all too frequent violation of human rights – a burden borne disproportionately by people living in the southern hemisphere. Crucial rights for the protection of consumers and employees, as well as health and privacy, are being trampled underfoot.

The national political mainstream is all too willing to kowtow to the powerful lobbyists, and the international institutions have thus far proven impotent to do anything about the increasing market concentration. The nightmare scenario of "*too big to control*" has already become a reality in many sectors. The outrage and helplessness felt by citizens in the face of this kind of political decision-making has exacerbated political disaffection and worn thin the popular trust in political institutions.

Weak merger regulation encourages market concentration

It sounds paradoxical, but it is true: merger control as practiced by the German Federal Competition Authority (*Bundeskartellamt*) – since its introduction in 1973 – does not hinder, but facilitates market concentration. Up through the beginning of 2015, only 189 of 36 675 registered mergers were prohibited by the *Bundeskartellamt*. That is a slim 0.5 percent! While the incessant growth and merging of large corporations over the past few decades has not gone unnoticed by the public, the rules governing this growth are all too rarely discussed. As recently as 2013, in the context of renewing and revising the German Act Against Restraints of Competition (*Gesetz gegen Wettbewerbsbeschränkungen* or *GWB*), the market share required for a presumption of market dominance by a corporation was raised from one third to 40 percent.

Curbing Corporate Power

Those with political responsibility need to protect small(er) businesses, farmers, employees, and consumers from excessively powerful corporations. It is their duty to ensure a fair balance of interests among all parties involved in the supply chain. A diverse economy, predominantly characterized by small and mid-sized companies, is better suited to achieving societal goals such as full employment, social justice, and lively rural areas. Tightening up the regulation of mergers and abusive trading practices is a crucial condition to reigning in the power of big corporations – though it is not a sufficient condition.

At the same time, it is essential to set a new course in the laws governing taxation, liability, intellectual property, and the financial markets, as well in government policies on agriculture, trade, and investment. To reign in the lobbying power of big corporations, a major effort must be made to improve transparency and democracy.

- (1) **Adopt a law on lobby transparency; Shape legislation in a participatory process:** We need, among other things, a law on lobby transparency that includes introduction of a mandatory register for lobbyists. The public in a democracy has a right to know who in Berlin is acting on whose behest and with what funding for the purpose of influencing political decision-making. Legislation should in the future be shaped in a participatory process

ensuring that non-governmental actors have equal opportunities to access the law-making system.

The organizations signing below demand moreover a shift away from defining competition policies primarily in terms of efficiency considerations and towards implementing a holistic, comprehensive strategy to reign in the power of large corporations: fairness should be introduced as a basic principle of regulatory policy, the public interest should be more coherently protected, and objectives benefiting society as a whole should be pursued more diligently. In competition law, in particular, the following changes, among others, are urgently needed:

- (2) **Better protection of the public interest:** Societal objectives such as social justice, human rights and women's rights, as well as protection of the environment, consumers, and privacy, should be recognized in competition law as on a par with the objective of freedom of competition. In the regulation of mergers, a balancing of interests that takes the public interest fully into account should be required.
- (3) **Forced divestiture of business segments or subsidiaries in the case of excessively powerful corporations:** this remedy should be available, as a last resort, in order to ensure the independence of various business sectors and/or restore effective competition in particular markets ("unbundling instrument not tied to the proof of abusive practices").
- (4) **Restrict the cross-sectoral bundling of power:** Mergers of companies across levels in the supply chain ("vertical mergers") should be subjected to more restrictive merger regulations. It should be made possible to separate the business of selling seed from the business of selling pesticides within the framework of unbundling measures. Any expansion of platform monopolies to other sectors should be rigorously restricted.
- (5) **Commercial platform operators should be regulated, monopolies broken up, and the exploitation of data restricted:** The neutrality of the internet must be maintained and the cross-market exploitation of data should be restricted. Legislators should introduce a law regulating the internet comparable to the German Energy Act (*Energieversorgungsgesetz*) and make an effort to break up the monopolies that have established themselves in the IT sector. Mergers with any connection to big data should be subjected to a special review process.
- (6) **Set lower thresholds for the presumption of market dominance:** A corporation should be presumed to have a dominant market position whenever its market share exceeds 20 percent (currently: 40 percent).
- (7) **Establish an office for filing anonymous complaints on abusive market practices:** As an agency of first instance prior to intervention of the German Federal Competition Authority (*Bundeskartellamt*), there should be a government arbitration office that investigates anonymously filed charges of abusive market practices and has responsibility for documenting such cases, prosecuting them, and where appropriate imposing sanctions or recommending further investigation by the *Bundeskartellamt*. This office should explicitly address the concerns of farmers, consumer protection organizations, and suppliers.
- (8) **Create market transparency:** Transparency must be ensured with regard to market power, corporate ownership and control, interlocking economic structures, and intellectual property. The entire value chain should be made public, including the names of all suppliers. Market power in the IT sector should be coupled with heightened duties of transparency. This would include a duty of transparency relative to the use of tracking. The need for regulation should be tied to the amount of personal data that a company uses.
- (9) **Strengthen the role of the Parliament in merger procedures:** Any special approvals of mergers should be entrusted to Parliament and not to any ministry acting on its own authority (as with the "ministerial approvals" currently in use).
- (10) **Provide the competition authorities with adequate personnel:** The authorities need to be provided with sufficient personnel to ensure that corporations cannot overwhelm the government with their cohort of competition lawyers.