The development of British competition law: a complete overhaul and harmonization

Lever, Jeremy

Veröffentlichungsversion / Published Version
Arbeitspapier / working paper

discussion papers

FS IV 99 - 4

The Development of British Competition Law: A Complete Overhaul and Harmonization

Jeremy Lever

March 1999

ISSN Nr. 0722 - 6748

Forschungsschwerpunkt Marktprozeß und Unternehmensentwicklung

Research Area Market Processes and Corporate Development

Zitierweise/Citation:

Jeremy Lever, **The Development of British Competition Law: A Complete Overhaul and Harmonization,** Discussion Paper FS IV 99 - 4, Wissenschaftszentrum Berlin, 1999.

Wissenschaftszentrum Berlin für Sozialforschung gGmbH,
Reichpietschufer 50, 10785 Berlin, Tel. (030) 2 54 91 - 0

ABSTRACT

The Development of British Competition Law:
A Complete Overhaul and Harmonization

by Jeremy Lever

The paper analyses the development of competition law in the United Kingdom by reference to four separate regimes, each with its own rules, scope of application and mode of application, though to some extent overlapping:

(1) the common law doctrine of restraint of trade (affecting, primarily in practice, restrictions on the activities of employees after the ending of their employment and of vendors of businesses after completion of the sale);

(2) the monopolies and mergers legislation (creating a body of administrative law and practice, with eventual power vested in the government to remedy public interest detriments resulting from a wide range of monopolistic situations and ant-competitive practices as well as to prohibit such mergers as still fall within the competence of national authorities within the EU);

(3) the restrictive trade practices and resale price maintenance legislation (creating a legal, court-based system for prohibiting defined categories of restrictive trading agreements and resale price maintenance, subject to exemptions granted by the specialist court established by the legislation);

(4) the rules on competition of the European Communities (primarily Articles 85 and 86 of the EC Treaty which prohibit respectively anti-competitive agreements etc., subject to exemption by the EC Commission, and abuse of a dominant position by one or more undertakings; and, since 1989, the EC Merger Control Regulation governing all concentrations having a Community dimension.

Finally the paper discusses the impact of the UK Competition Act 1998 which modifies (2) above and substantially sweeps away (3) above, creating new rules which will bring UK competition law and practice broadly into line with EC competition law.

ZUSAMMENFASSUNG

Die Entwicklung des britischen Wettbewerbsrechts: eine Generalüberholung und Harmonisierung

In diesem Beitrag wird die Entwicklung des Wettbewerbsrechts im Vereinigten Königreich analysiert. Dabei werden vier verschiedene Regelwerke („Regime“) unterschieden, jedes mit eigenen Regeln, einem eigenen Anwendungsbereich und Anwendungsmodus, obwohl sich diese Regelwerke in manchen Aspekten überschneiden:

(1) die „Common Law“-Doktrin der Handelsbeschränkung (betrifft in der Praxis primär die Einschränkung von Aktivitäten der Beschäftigten nach Beendigung eines Arbeitsverhältnisses und die der Verkäufer nach Abschluß des Verkaufs);

(2) die Monopol- und Fusionsgesetzgebung (schafft ein System administrativer Vorschriften und Verfahren mit Eingriffsmöglichkeiten seitens der Regierung, um das öffentliche Interesse schädigende Folgen einer weiten Spanne monopolistischer und Antiwettbewerbspraktiken zu korrigieren; dazu gehört auch das Verbot von Unternehmenszusammenschlüssen, wenn es innerhalb der national zuständigen Wettbewerbsbehörden liegt);

(3) die Gesetzgebung zu Handelsbeschränkungen und zur Preisbindung der zweiten Hand (schafft ein legales, gerichtsgestütztes System zum Verbot bestimmter restriktiver Handelsvereinbarungen und Vereinbarungen zur Preisbindung der zweiten Hand. Über Ausnahmen kann von einem durch die Gesetzgebung eingerichteten Gericht entschieden werden);

(4) die Wettbewerbsregeln der Europäischen Gemeinschaften (hauptsächlich Artikel 85 und 86 des EWG-Vertrages. Diese verbieten einerseits wettbewerbsbeschränkende Vereinbarungen etc., wobei Ausnahmen durch die Europäische Kommission erteilt werden können, sowie andererseits den Mißbrauch einer dominanten Stellung durch ein oder mehrere Unternehmen. Daneben gibt es seit 1989 die Europäische Fusionskontroll-Verordnung, die Unternehmenszusammenschlüsse mit einer europäischen Dimension betrifft).

Schließlich wird in dem Beitrag der Einfluß des britischen Wettbewerbsgesetzes von 1998 erörtert, das die unter (2) genannten Regelungen modifiziert und substantiell den unter (3) genannten Bereich ändert, indem neue Regeln festgelegt werden, die das britische Wettbewerbsrecht und seine Praxis in breite Übereinstimmung mit dem EU-Wettbewerbsrecht bringen.

The Development of British Competition Law:

A Complete Overhaul and Harmonization

by Jeremy Lever Q.C.

Introduction

By the 1980s, if one includes the old judge-made rules concerning the legal enforceability of contracts that restrict competition, there were in the United Kingdom four distinct legal régimes that were concerned with monopolistic or anti-competitive situations and conduct. Each of those régimes had its own more or less complex rules and each régime covered a range of different situations. There was some overlapping in the application of the rules as between one régime and another; but the rules, the concepts underlying them and the applicable procedures were wholly different as between the different régimes. By the late 1980s it was widely recognised that, in consequence, the law was in a most unsatisfactory state, particularly because competition law should be reasonably understandable by businessmen whose conduct it is intended to regulate.

From time to time between 1989 and 1997 the Conservative Government appeared to be about to introduce amending legislation. But, for whatever reason, it did not do so. When, therefore, in 1997, shortly after its election, the new Labour Government proposed such legislation as part of its initial legislative programme, the move was widely welcomed.

The new legislation, the Competition Act 1998, was finally passed by Parliament late last year, though for the most part its provisions will not come into force until early in 2000. The Act goes a long way towards bringing UK competition law into line with European Community competition law. Although two of the other, older, legal régimes still exist, one of those two (the old, judge-made rules relating to the legal enforceability of contracts that restrict competition) is now of limited economic significance; and the scope of the remaining régime has been reduced by the new legislation, is likely to be used by the UK competition authorities more sparingly in the future in so far as the new EC law-based régime can more appropriately be applied and is likely in the future to be applied in practice increasingly along the same lines as parallel rules of EC law.

I. The Common Law

Until 1948 the United Kingdom's competition law was provided exclusively by the common law, that is to say judge-made case law. During the 18th and 19th Centuries the judges developed what came to be called the common law doctrine of undue restraint of trade. Indeed, on the other side of the Atlantic, the common law doctrine was a source of inspiration of the US Sherman Antitrust Act of 1890. The doctrine still remains part of UK law.

The primary application of the doctrine has always been to –

- contracts of employment and partnership contracts that impose restrictions on the activities in which the employees and partners may engage after the termination of their employment or partnership relationship; and
- contracts for the sale of a business that impose restrictions on the activities in which the seller may engage after the transfer has been completed.

But the doctrine is also applicable to other contractually imposed restrictions on competition such as –

- cartels and
- solus petrol ties.

Unless such contractual restrictions are reasonable in the interests of the parties and are not unreasonable in the public interest, they are not enforceable in legal proceedings. Hence, the period for which and geographical area within which a restriction operates and the kind of activities to which it applies must all be shown to be no more than reasonably related to the legitimate business interests of the person in whose favour the restriction operates or the restriction will be unenforceable by legal proceedings.

The sole legal sanction provided by the doctrine is the unenforceability of unreasonable restrictions. The consensual operation of such restrictions by the parties is not, as such, unlawful either as a crime or as a tort (an *unerlaubte Handlung*) so the doctrine provides no legal remedy for third parties who suffer loss as a result of the operation of restrictions, however unreasonable they may be.

The *contractual unenforceability* of „covenants [contractual undertakings] in undue restraint of trade“ reflects a laisser faire philosophy subject to the provision of a reasonable degree of protection for the legitimate commercial interests of employers, buyers of businesses and so on. *The absence of positive legal remedies for third parties* injured as a result of the operation of such restraints reflects the unwillingness of the judiciary to become involved in disputes about the economic rights and wrongs of restrictions of competition and the related social and political issues: the training and experience of the judges simply did not equip them to decide such disputes.

Because of the development in the second half of the 20th Century in the United Kingdom of statute-based competition law, the practical importance of the common law doctrine is now largely confined to the traditional areas of its primary application – contracts of employment and the like and contracts for the sale of a business. However, the doctrine retains an importance, especially for individuals and

small firms, precisely because the restrictions of competition to which the doctrine applies are often of so little *overall* economic importance that, for that reason, more modern competition law may often not apply to them.

At the same time, the common law doctrine did not and does not in itself provide an adequate basis for a modern competition law. In particular: -

- the doctrine does not apply to abuse of economic power as such; it applies only to cases where restrictions have been accepted under agreements between the parties;
- the application of the common law doctrine depends entirely on the parties to the relevant agreement invoking it;
- the only „sanction“ provided by the doctrine is unenforceability of offending contractual terms.

II. The monopolies and mergers legislation

The first UK legislation

The common law doctrine of restraint of trade, together with its severe limitations, forms part of the legal background to the enactment by the UK Parliament of the UK’s first competition law statute, namely the Monopolies and Restrictive Practices (Inquiry and Control) Act 1948.

The factual background to the legislation includes substantial cartellization of British industry as a result of the Great Depression of the 1930s and War-time governmental price control which in practice established minimum as well as maximum prices and was generally based on costings supplied by trade associations which were therefore accustomed to participating in a centralised price-setting process. In those circumstances it would have been unthinkable for any British Government in 1948 to have introduced legislation modelled on the US Sherman Antitrust Act with its criminal and civil sanctions against agreements in undue restraint of trade.

Moreover, the Post-War British Labour Government was in any event by no means wedded to the ideas of promotion of competition and the free play of market forces. On the contrary, it was a Socialist Government that was dedicated to ultimately bringing into State ownership, as monopolies, all parts of the British economy. The 1948 legislation was therefore, I believe, primarily directed at controlling potentially – perhaps presumptively – wicked capitalists in the large parts of the economy that were still in the private sector and therefore not directly controllable by the State as owner.

The scheme of the 1948 Act was to leave both the power of initiative and the power of eventual action in the hands of a Government Minister but to establish an administrative body to investigate and to report on the situations referred to it by the Government Minister and, in particular, to report on whether those situations, or conduct related to them, operated against the public interest.

Over the years the title of the responsible Minister has changed and, for simplicity, I shall refer to that Minister as the Minister of Economics, even though no such title exists in the United Kingdom. Similarly, the name of the administrative body has changed, in fact twice, since 1948 and, for simplicity, I shall sometimes refer to that body by its title in 1998, namely the Monopolies and Mergers Commission (or MMC) even though it was not until 1965 that mergers were brought within the scope of the legislation, with a consequential re-naming of the Commission so as to refer to Mergers in its title.

Initially the matters that were capable of being referred to the new Commission were in some respects very extensive and in other respects rather limited. Important limitations were that initially only situations concerning the supply or acquisition of goods, not services, could be referred to the Commission and, as I have already mentioned, mergers as such were not referable to it.

Passing to *what* could be referred, the first kind of situation subsequently came to be called a „scale monopoly“: in any case where it appeared to the Minister of

Economics that an undertaking (including a group of companies under common control) supplied one-third or more of goods of a particular description in the United Kingdom or in a substantial part of the United Kingdom, the Minister could refer the situation to the Commission for investigation and report. In 1973 the figure of one-third was reduced by subsequent legislation to one-quarter, where it remains. But whether at one-third or one-quarter, such a share of the supply of goods of a particular description does not itself necessarily imply the possession of economic power, let alone dominance or monopoly power: a third or a quarter is not a very high share even if the particular description of goods corresponds with a relevant market; and in fact the relevant market may be wider because of demand substitutability, supply substitutability or both demand and supply substitutability. Thus, the scale monopoly provisions were and are to be seen as merely creating jurisdiction without, in themselves, implying anything about economic power, let alone misuse of economic power.

The second kind of situation that was made referable to the new Commission came to be called a complex monopoly situation. Such a situation exists where one-third or more (now one-quarter or more) of goods of a particular description are supplied by different suppliers who, however, whether by agreement or not, so conduct their respective affairs as to prevent, restrict or distort competition (the word „distort“ was introduced by subsequent legislation in 1973, no doubt reflecting the influence of the competition law of the European Economic Community which the United Kingdom joined on 1 January 1973). Initially, and obviously, this covered cartels provided that they satisfied the one-third share condition; but, as we shall see, most horizontal restrictive trading agreements, and in particular cartels, were subsequently taken out of the body of law established by the 1948 Act and were made subject to a different legal régime. Complex monopoly situations were thereafter substantially confined to cases where a number of suppliers, none of whom might have a particularly large market share, had restrictive arrangements with their customers or with their suppliers – e.g. solus arrangements between oil companies and petrol stations, tied

house arrangements between brewers and public houses – or where the suppliers operated selective or exclusive distribution policies.

The 1948 Act contained, and the current legislation that has replaced it contains, provisions parallel to those described above, covering –

- acquisition, as opposed to supply, of goods;
- situations where goods of a particular description are not supplied at all in the United Kingdom or in a substantial part of the United Kingdom and
- exportation of goods from the United Kingdom, including therefore export cartels.

The extension of the legislation in 1965 to cover services and mergers

In 1965 services were assimilated to goods for the purposes of the legislation (but agreements and arrangements operating in the area of employment of labour continued to be wholly excluded from consideration)[1]; and, at the same time, mergers were added to the situations that were referable to what had by then become the Monopolies and Mergers Commission – both prospective mergers and, if referred promptly after they had taken place, completed mergers. Newspaper mergers were made subject to special provisions; and that continues to be so. In 1980 a further category of situations was made referable to the Monopolies and Mergers Commission, namely anti-competitive practices, to which I will come back later in this lecture.

The establishment in 1973 of the Office of Fair Trading

Under the 1948 Act references to the Commission could be made only by the Minister of Economics but after 1973 the Director General of Fair Trading, the head

---

[1] However, section 79 of the Fair Trading Act 1973 (see above) empowers the Minister of Economics to refer to the MMC „restrictive labour practices„ i.e. practices whereby, with certain exceptions, restrictions or other requirements (not relating exclusively to rates of remuneration) operate in relation to the employment of, or work done by, workers: on such a reference, the MMC is required to disregard any conduct that takes place in contemplation or furtherance of an industrial dispute.

of a newly established, independent competition and fair trading agency (the Office of Fair Trading), was also given the power to make references, except for references of mergers and in a few other special cases, and in practice since 1973 references other than merger references have been made by the Director General of Fair Trading.

The composition of the Monopolies and Mergers Commission

The Commission has always had a full time Chairman, until recently always a lawyer but now an economist; for some time past it has had several more or less full time Deputy Chairmen. Apart from that, the members of the Commission, who are drawn from industry, commerce, the trade unions, the professions and academic life, are all part-time. The Commission sits in Panels (or Chambers as they might be called in Germany save that membership of a Panel is established case by case). The Panels are supported by a full time staff of economists, accountants, lawyers and so on who do a great deal of the actual work.

In the early years of the life of the Commission the references to it were principally of old fashioned cartels and monopolies. As I explain later in this lecture, that early work of the Commission contributed to the hiving off of cartels and many other restrictive trading arrangements into a new and different legal régime so that they ceased to be referred to the Commission.

The definition of the public interest

The 1948 Act contained an open-ended definition of the public interest: it stated that:

„...all matters which appear in the particular circumstances to be relevant shall be taken into account and, amongst other things, regard shall be had to the need, consistently with the general economic position of the United Kingdom, to achieve –

(a) the production, treatment and distribution by the most efficient and economical means of goods of such types and qualities, in such volume and at such prices as will best meet the requirements of home and overseas markets;

(b) the organisation of industry and trade in such a way that their efficiency is progressively increased and new enterprise is encouraged;

(c) the fullest use and best distribution of men, materials and industrial capacity in the United Kingdom; and

(d) the development of technical improvements and the expansion of existing markets and the opening up of new markets.“

No mention was made of the desirability of competition as such. When in 1965, mergers were brought within the scope of the legislation, the Monopolies and Mergers Commission was simply told by the legislation that, in considering the public interest, it was to take into account „all matters which appear in the particular circumstances to be relevant“, though the Ministry of Economics was given power to give specific directions as to matters to which the Commission was to have regard in this connection (in fact the Ministry never gave any such directions).

The Fair Trading Act 1973

In 1973, on the initiative of by then a Conservative Government, Parliament repealed the 1948 and 1965 legislation and replaced it with up-dated provisions which included the creation of the new independent Office of Fair Trading, with extensive powers in the field of competition law. However the 1973 legislation, called the Fair Trading Act 1973, did not basically affect the work of the Monopolies and Mergers Commission, subject to the fact that, just as in 1956 cartels and most other restrictive agreements relating to goods had become subject to a different regime which I shall in due course describe and in which the Monopolies and Mergers Commission was not concerned, the Fair Trading Act made provision for the transfer to that other regime of cartels and restrictive agreements relating to services – a transfer that was actually effected in 1976. The Fair Trading Act 1973 also enumerated a new, though still non-exhaustive, list of matters to which, in assessing the public interest, for all purposes, including merger references, the Commission was to have „particular regard“. A majority, but not all, of the listed matters were concerned directly or

indirectly with the desirability of competition which, for the first time, was expressly mentioned.

The operation of the Commission in practice

At least in part because of the absence of any clear statement by Parliament of how the Commission was to approach its task, the Commission, in its approach to any particular reference, was greatly influenced by the politico-economic climate that was prevalent at the time of the reference. Thus, between 1960 and the early 1980s there were substantial periods when the old, socialist, Labour Party was in power. The Labour Government of that period attempted to grapple with the perennial problems of inflation, sluggish economic growth and a balance of payments deficit by national plans and agreements with the trade unions, which were almost an arm of government, and by governmental control of prices and wages.

In that climate the Monopolies and Mergers Commission tended to concentrate excessively on the profitability of the scale monopolists that the Commission investigated. The unfortunate consequences of that approach were compounded by the rapid inflation that occurred for much of the period which resulted in an overstatement of true profitability in companies' accounts, which generally used Historical Cost Accounting conventions. At times the MMC almost resembled a Price Control Commission.

In merger references, because of the ascendancy of the trade unions, it was extremely dangerous for the parties to draw attention to the scope for shedding labour that the merger would provide; on the contrary, parties to mergers used to assure the trade unions concerned and the MMC that the merger would not result in any redundancies or at least any involuntary redundancies – even though British industry was grossly in need of restructuring to improve productivity per employee.

Three phases in the work of the Commission

If we review the work of the MMC up to the enactment of the Competition Act 1998, which restructured UK competition law, we can divide it into three periods.

First, between the establishment of the Commission in 1948 and the passing of the Restrictive Trade Practices Act in 1956, the Commission did valuable work in investigating the old fashioned cartels, the restrictive arrangements operated by monopolies and the collective enforcement of resale price maintenance that were referred to it. That work contributed to the establishment of a more rigorous separate régime for defined classes of restrictive arrangements.

There then followed nearly a quarter of a century during which much of the MMC's work, lacking clear major premises, was unfocused and impressionistic. At least in part because of the lack of focus of the legislation itself, almost anything that a scale monopolist did or that a merged undertaking might do was liable to be questioned and condemned on the ground that it might have an adverse impact on some aspect of the public interest in its widest sense. And this despite the fact that a body in the position of the MMC was at least almost as likely to get the answer wrong as it was to get it right if it cast its net so widely. This is not to criticise the members of the Commission personally. The Commission's procedures were impeccably fair, those who were investigated were treated with the greatest courtesy and the members of the Commission and their staff conscientiously studied their papers and maintained the highest standards of integrity. If one had an objective criticism at the personal level, it would be that the Commission lacked a sufficient core of members with a sound grounding in the by then well developed legal and economic theories that ought to underpin any system of competition law. Particularly because of that fact, the vagueness of the UK legislation in relation to the definition of the public interest and the corporatist, interventionist political climate within which the Commission operated for much of this second period combined to lead to over-wide investigations and the elevation of ad hoc judgements on what were called the merits

of the individual case over the consistent and explicit application of any principles, let alone principles of competition law.

In the third and last period the position has improved. The improvement was initially attributable, at least in part, to the establishment of „Thatcherism“ with its emphasis on free market forces. Specifically in the field of mergers in particular, Thatcherism found expression in the announcement by the then Minister of Economics, Mr. Norman Tebbitt, that henceforth mergers would ordinarily be referred to the MMC only if they appeared to threaten effective competition. Although the „Tebbitt doctrine“ formally related to the grounds on which mergers would be referred to the MMC and not to the criteria by reference to which the MMC was to judge them, which continued to be governed by the same legislative provisions as before, in practice the doctrine influenced the MMC to focus increasingly on the impact, if any, that a merger might be expected to have on competition. That trend was, in turn, reinforced by the adoption by the European Community Council in 1988 of a Merger Control Regulation which transferred to the EC Commission jurisdiction over all large mergers unless within the EC the merging parties operated to a substantial degree only in one and the same Member State. Under the Merger Control Regulation the EC Commission can block a merger only if it would create or strengthen a dominant position and thereby impede effective competition in the Common Market. After the coming into operation of the Merger Control Regulation it was obvious that it would be anomalous for the MMC to recommend that a relatively small merger should be blocked in circumstances in which, if the merger had been larger and more significant and therefore subject to control at the European Community level, it would necessarily have been permitted to proceed.

Another development that happened near the beginning of this third period in the development of the work of the MMC should be mentioned here. In 1980 Parliament enacted a further piece of legislation which enlarged the scope of the MMC’s work. That legislation created a new concept – the so-called „anti-competitive practice“. Even in the absence of scale monopoly or complex monopoly, an anti-competitive

practice in which any undertaking above a minimum size engaged might be investigated by the Director General of Fair Trading; if he found that the practice did constitute an anti-competitive practice, as defined by the legislation, the matter would automatically be referred to the MMC if the undertaking concerned rejected the Director General's finding that its conduct constituted an anti-competitive practice or contended that in any event the practice was not against the public interest. That was clearly an unsatisfactorily ad hoc system but it may at least have reinforced the emerging competitionist approach of the MMC.

Finally, this last period of the operation of the MMC saw the appointment of first one and then, after an interval, another Chairman of the MMC with a greater interest in the legal and economic principles underlying competition law as it exists outside the United Kingdom. Indeed the present Chairman, the first economist to hold the post, had done a great deal of work in the field as an economic consultant and expert before becoming a member of the MMC.

A weakness of the régime established by the legislation

A weakness of the whole of the régime that I have been describing has always been and remains that until –

- a particular situation has been referred to the MMC,
- the MMC has investigated it and reported that it or conduct related to it operates or may be expected to operate against the public interest and
- the authorities have then obtained satisfactory undertakings from the parties or, in the absence of such undertakings, have made orders governing their future conduct,

the régime provides neither public law nor private law remedies to the authorities or to injured third parties in respect of the situation or conduct in question even if it is of a kind that has previously been condemned in other cases; and even after the process that has been described above has been completed, the régime provides

remedies only in respect of the situation or conduct that has been prohibited in so far as it continues thereafter. This is subject only to the possibility of the authorities making interim orders to prevent the consummation of mergers before they have been investigated and cleared.

I will come back to the future of the MMC after reviewing the two other competition law régimes that were operative alongside the common law and the monopolies ad mergers legislation by the 1980s and 1990s.

III. The restrictive trade practices and resale price maintenance legislation

The Restrictive Trade Practices Act 1956

The first of those other régimes was initially established by the Restrictive Trade Practices Act 1956. That Act was introduced by a Conservative Government that adopted a competitionist industrial policy as an explicit alternative to the Labour Party's policy of bringing the British economy increasingly into State ownership and, so far as practicable, exercising State control over almost all aspects of economic activity. By 1956 the work of the Commission established by the 1948 Act had made it clear that British industry was still widely cartellized, with damaging results for consumers and the economy generally, and that dealing with cartels by referring them, one by one, to the Commission, which in any event worked rather slowly, would take far too long. The Conservative Government of the day also had an ideological objection, not to resale price maintenance, or „rpm", as such but to its collective enforcement which, for legal reasons was the only way in which a supplier could enforce his rpm conditions against a price-cutter who, as was usually the case, had acquired the supplier's goods through an intermediary. Collective enforcement of rpm conditions involved the use of private tribunals to determine whether a distributor had been guilty of price-cutting in breach of a supplier's rpm conditions and, if so, whether a boycott or some lesser penalty such as a „fine" should be imposed on the price-cutter. Such a system of private courts and fines offended against the „rule of lower case" which the Conservative Party was dedicated to upholding – not least for its significance in controlling the exercise of power by the

trade unions. Consistency required that the rule of law should also apply to arrangements made by industrialists.

Part I of the Restrictive Trade Practices Act 1956 was concerned with the control of a broadly but precisely defined category of restrictive arrangements relating to goods. Part II of the Act was concerned with the enforcement of rpm conditions.

Thus Part I of the Act created in the first place a category of arrangements that were required to be notified to a governmental agency which entered particulars of them on a public register and would then in due course refer each of the notified agreements to a newly established Court, the Restrictive Practices Court, which was presided over by a High Court judge and had its courtroom in the Royal Courts of Justice.

The arrangements to which Part I of the 1956 Act applied included not only agreements that were intended to be legally enforceable but also informal arrangements that created feelings of mutual obligation as between the parties, even in the absence of legal obligation. The arrangements also included recommendations by trade associations.

The principal characteristics of the arrangements to which Part I of the 1956 Act applied were –

- first, that two or more of the parties carried on business in the production or supply of goods in the United Kingdom, and
- secondly, that two or more of the parties accepted restrictions of one or more specified kinds relating to the production, supply, processing, or acquisition of goods.

Thus international cartels to which there was only one British party, perhaps a monopolist in the UK, and agreements under which only one party was subject to a restriction fell outside the scope of Part I of the Act which also expressly excluded pure export cartels and many kinds of bilateral vertical agreements, though such

situations continued to be referable to the Monopolies and Mergers Commission under the regine that I have described.

Extension of the legislation to information agreements and services

Over the years, as a result of subsequent legislation, in 1976 agreements relating to services were also brought within the scope of the Act, as too, largely in 1969, were certain information agreements, only some information agreements having been covered by the original Act; on the other hand, over the years a substantial number of additional specific exemptions were provided by various Acts of Parliament. Also, as a result of subsequent legislation, in 1968 operation of an arrangement to which Part I of the Act applied became unenforceable as between the parties and a civil wrong (eine *unerlaubte Handlung*) if the arrangement had not been duly notified in accordance with the Act; and public law and private law remedies were made available for use in such cases.

Once an agreement had been notified, whether voluntarily or as a result of an investigation by the responsible official – from 1973 onwards, the Director General of Fair Trading – he would refer it to the Restrictive Practices Court unless he and the Minister of Economics agreed that it was too insignificant for that to be required.

The Restrictive Practices Court

The Restrictive Practices Court operates a typical U.K.-style adversary court procedure including the advocates wearing wigs and court dress and gowns – wholly unlike the informal non-adversarial procedure of the Monopolies and Mergers Commission.

The public interest: the „gateways“ and the“ tailpiece“

In the Restrictive Practices Court the parties to the referred arrangements bear the burden of proving, by evidence and argument, that the restrictions contained in their

arrangements do not operate against the public interest. To establish that that is so, the parties have to do two things:

- first, they have to pass through one or more specified „gateways“: e.g. that the restrictions confer a specific and substantial benefit on purchasers, consumers or users or that the operation of the restrictions substantially relieves what would otherwise be long-term regional unemployment, or that the restrictions materially contribute to UK exports, or that the restrictions are required to counter the exercise of economic power by a third party and so on, or, as a result of subsequent legislation, that the restrictions do not materially prevent, restrict or distort competition in any market;
- secondly, the parties have to satisfy a condition called „the tailpiece“ which they can do by establishing that the restrictions are not unreasonable having regard to the balance between what has been proved for the purpose of getting through one or more of the gateways and any detriments suffered by persons not parties to the agreement (purchasers, users or consumers of the products covered by the agreement and, also, competitors and would-be competitors) as a result of the operation of the restrictions.

Unless the parties get through one or more gateways and the tailpiece condition is satisfied, the Court prohibits the parties from continuing to operate the referred arrangements and from operating any other arrangements to the like effect. Breach of such an order attracts quasi-criminal sanctions.

The operation of the legislation

Part I of the 1956 Act led to a substantial number of cases before the Restrictive Practices Court in which the parties to arrangements to which Part I applied sought to justify those arrangements. Most of the cases concerned horizontal price - fixing agreements and, in the absence of very special circumstances, the attempts to justify them generally failed. A case that did not concern horizontal price - fixing merits special mention here; it concerned an agreement between book publishers that

enabled, but did not oblige, them individually to establish effective minimum resale prices for books that they published and to do so on terms that provided for reasonable, common, exceptions. The publishers' successful defence of their agreement contributed to the subsequent legislative treatment of resale price maintenance.

However, by about 1970 attempts at justification more or less ceased and the Restrictive Practices Court was only rarely assembled – and then generally to hear cases where it was alleged that a party or parties had broken an earlier Court order (a quasi-criminal „contempt of court") or had unlawfully operated a notifiable agreement without having duly notified it. However, the Court is currently hearing its last case which concerns agreements between the Association Football Premier League with on the one hand B Sky B and on the other hand the BBC. The case raises issues about the whole future of the organisation of English football and admirably illustrates the unsuitability of the Restrictive Trade Practices Act and the court-room procedures that it involves for dealing with complex economic issues of the kind that the case raises.

The Restrictive Trade Practices legislation served a valuable purpose in the 1950s and 1960s in educating businessmen, especially in the large corporations, that cartels were no longer acceptable. But in the longer run the legislation turned out to be a dead-end: especially as the legislation was extended to services and information agreements and new, ad hoc statutory exceptions were created, what was even from the outset drafted in technical and legalistic terms became ever more obscure even to non-specialist lawyers and certainly to the average businessman.

The Restrictive Trade Practices legislation will shortly cease to have effect and one cannot regret its imminent demise: an agreement might have no economic significance yet fall within the terms of the legislation; unless the parties were properly advised by a lawyer who had the legislation in mind, the parties might then fail duly to notify it; the terms of the agreement that constituted relevant restrictions

were then in many cases irretrievably void so that either or both of the parties were then able to avoid contractual obligations that they had undertaken in good faith.

Even in terms of deterring the making of obviously unjustifiable cartel agreements, the application of the legislation became highly anomalous. In effect an undertaking was allowed its first bite free of public law remedies; any second or subsequent bite then exposed the undertaking to draconian, quasi-criminal sanctions. Undertakings, which perhaps 40 years ago had abandoned an old cartel agreement when it was referred to the Restrictive Practices Court, would then have been subjected by the Court to prohibition orders. Thereafter a quasi-criminal public law régime applied to those undertakings. By contrast, undertakings none of which happened ever to have been subjected to a prohibition order might engage in an indefensible cartel for several years before being detected and subjected to Court orders; no quasi-criminal sanctions attached to their conduct in the interval.

Resale price maintenance

Before I leave the Restrictive Practices legislation, I need to complete the history of the treatment of resale price maintenance in the United Kingdom.

You will recall that the Conservative Government in 1956 had ideological (as well as practical) objections to the collective enforcement of rpm by means of collective boycotts and the like. Part II of the Restrictive Trade Practice Act 1956 therefore unconditionally prohibited the collective enforcement of rpm. In return, suppliers were given a new statutory right to enforce their rpm conditions against price-cutters irrespective of whether the price-cutters were in direct contractual relations with the supplier.

However, in 1964 Mr. Heath's relatively competitionist Conservative Government decided to ban even individual rpm. Because the agreement between publishers that enabled them to impose effective rpm conditions on books that they published had been justified before the Restrictive Practices Court under the Restrictive Trade

Practices Act, the Government felt unable to impose an absolute ban on rpm and therefore introduced a régime for it that resembled the Restrictive Trade Practices legislation in that it enabled suppliers to notify the authorities of their desire to continue to operate rpm for their goods; the authorities would then refer the description of goods in question to the Restrictive Practices Court and the suppliers then needed to justify their practice by passing through one or more specific public interest gateways and satisfying a general tailpiece balancing condition.

Books gained exemption on the basis of the earlier judgment of the Restrictive Practices Court in the *Books* case under the Restrictive Trade Practices Act; and the suppliers of pharmaceutical products successfully defended their practice of rpm. No other goods were exempted; and today only pharmaceuticals enjoy exemption, though it is not clear whether that exemption will continue.

IV. The rules on competition of the EC Treaty and the ECSC Treaty

The direct effect of EC competition law in the United Kingdom since 1973

I have now covered the first three of the four régimes of competition law that were operative in the United Kingdom before the recent reforms and that brings me to the fourth régime. The fourth régime was provided by the rules on competition of the EC Treaty which of course still continue to apply as before.

The United Kingdom acceded to the European Communities on 1st January 1973. The EC rules on competition then became of direct effect in the United Kingdom, notably Articles 85 and 86 of the European Economic Community Treaty, as it was then called, which took effect in addition to national competition law, and Articles 65 and 66 of the European Coal and Steel Community Treaty, which, so far as coal and steel Treaty products were concerned, took effect to the exclusion of national competition law.

Article 85 of the EC Treaty

Article 85 (1)of what is now the European Community Treaty prohibits agreements and concerted practices between undertakings and decisions of associations of undertakings that have as their object or effect the prevention, restriction or distortion of competition within the Common Market and that may affect trade between Member States. Article 85 (2) provides that such agreements shall be automatically void. Article 85 (3) provides for the possibility of exemption from the prohibition contained in Article 85 (1) if certain specified conditions are fulfilled. The prohibition contained in Article 85 (1) does not apply to an agreement that does not *appreciably* affect competition and trade between Member States either because of the economic insignificance of the agreement and of any network of agreements of which it forms part or because of the application of a still ill-defined „rule of reason".

Article 86 of the EC Treaty

Article 86 prohibits abuse by one or more undertakings of a dominant position where the abuse may affect trade between Member States.

Articles 65 and 66 of the ECSC Treaty

Articles 65 and 66 of the ECSC Treaty contain broadly parallel provisions save that Article 66 established merger control for coal and steel Treaty undertakings from the outset whereas merger control at Community level of other undertakings was not established until 1989 when the Council adopted the EEC's Merger Control Regulation (see further below).

EC Regulations in the field of competition law

By the 1980s there were in place a substantial number of Council and EC Commission Regulations providing for the detailed application of the relevant Treaty provisions, including –

- procedural regulations that entrusted the enforcement of the Treaty provisions as public law primarily to the EC Commission, regulated its procedures and gave it power to impose potentially large penalties on undertakings that infringed the rules;
- exempting regulations that create block exemptions from the prohibition imposed by Article 85 (1) for entire classes of agreements that satisfy specified conditions and that thus supplement the EC Commission's power to grant individual exemptions under Article 85 (3).

The rôle of national courts

Only the EC Commission can grant exemptions, whether individual exemptions or, subject to authorisation by the Council, block exemptions. However, apart from exemptions, the rules can be applied by the national authorities; and national courts are bound to give effect to the rules by treating infringing agreements as void and granting appropriate private law remedies to third parties who have been injured by infringements.

EC merger control

The Merger Control Regulation gives to the EC Commission exclusive competence with regard to concentrations having a Community dimension, that is to say control of all large mergers unless the turnover of each of the merging parties is substantially concentrated in one and the same Member State or unless, at the request of a Member State, the EC Commission cedes to that Member State the power to apply its national competition law in the case of a particular merger which threatens to create or to strengthen a dominant position as a result of which effective competition would be significantly impeded on a market within that Member State which presents all the characteristics of a distinct market. Control is exercisable ***ex ante***. Mergers can be blocked by the Commission only if they will create or strengthen a dominant position and will thereby impede effective competition within the Common Market; and when, exceptionally, the Commission refers a case to a

Member State, that Member State may take only the measures that are strictly necessary to safeguard or restore effective competition on the market concerned. However the Merger Control Regulation preserves the right of Member States to take appropriate measures to protect „legitimate interests“ such as public security, plurality of the media and operation of prudential rules e.g. relating to the provision of financial services, if such interests are threatened by a merger. Member States may also assert exclusive jurisidiction in respect of a merger in so far as it considers it necessary to do so for the protection of its essential interests in the defence sector.

The differences between the four régimes

Even from the brief descriptions of the four régimes that I have given – the common law doctrine of restraint of trade, the monopolies and mergers régime, the restrictive practices and resale price maintenance régime and the EC rules on competition and mergers, it can be seen that they differ from each other in fundamental respects.

In particular the EC régime lays down *ex ante* prohibitions, breaches of which expose the responsible undertaking or undertakings to liability to the imposition of potentially massive penalties by an administrative body, namely the EC Commission. By contrast the UK monopolies legislation prohibits nothing *ex ante* and relies almost entirely on investigation of individual situations and subsequently adopted remedies having only prospective effect. Secondly, the EC régime concentrates on economic effects on competition; by contrast the UK monopolies and mergers legislation adopts an open-ended definition of the public interest; and the application of the restrictive trade practices régime depends on technical rules relating to legal form rather than economic effect.

The need for reform of UK competition law

By the late 1980s informed opinion in the United Kingdom was unanimous in advocating radical reform of UK national competition law. The general view was that since, for better or worse, EC competition law had direct effect in the United Kingdom and businessmen therefore necessarily ought to understand at least the

broad outlines of EC competition law, UK national law had better be modelled on the EC rules.

However, there was widespread dissatisfaction in the United Kingdom, as in other Member States, with the EC Commission's procedures.

Despite the general recognition of the need for reform of UK national competition law, the Conservative Government failed to bring forward amending legislation and it was left to the new Labour Government, which was elected in May 1997, to do so. The Competition Bill was one of the first pieces of legislation that new Labour introduced and in November 1998 the Bill became law as the Competition Act 1998.

The Competition Act 1998

The principal reforms effected by the 1998 Act are –

- it creates two prohibitions, called the Chapter 1 prohibition and the Chapter 2 prohibition, which are very closely modelled on Articles 85 and 86 of the EC Treaty, but without a requirement that the prohibited conduct should have any effect on trade between Member States;
- in relation to the administration and enforcement of the Chapter 1 and Chapter 2 prohibitions, it puts the Director General of Fair Trading and the regulators of the utilities (telecommunications, electricity, gas, water and the railways) into broadly the same position as that occupied by the EC Commission in relation to the administration and enforcement of Articles 85 and 86;
- it provides that the new UK law is to be interpreted and applied in accordance with the case law of the European Court of Justice and the Court of First Instance and with the decisional practice of the EC Commission;
- it repeals the Restrictive Trade Practice Act and the legislation that created the concept of anti-competitive practice; and it also repeals the specific legislation relating to resale price maintenance, though it does so in such a

way as to render resale price maintenance impracticable save, at least temporarily, for pharmaceuticals;

- it creates a new Competition Commission which will have two distinct components:

  The first of those components will be what is currently the Monopolies and Mergers Commission; this part of the Competition Commission will continue to be responsible for investigating and reporting on scale and complex monopolies and mergers that are referred to it; such mergers may be mergers that are not of Community dimension, mergers that are of Community dimension if exceptionally, at the request of the United Kingdom, the merger has been referred by the EC Commission to the United Kingdom and, thirdly, any merger that is referred to it on account of a perceived threat to one of the recognized legitimate interests of a Member State or for protection of the essential interest of the United Kingdom in the defence sector. This part of the Competition Commission will also continue to deal with cases where a utilities regulator and a regulated company cannot agree on the terms of the regulated company's statutory licence.

  The second component of the new Competition Commission will be an Appeal Tribunal which is intended to enjoy full jurisdiction on all appeals from decisions by the Director General of Fair Trading and the utilities regulators, taken by them under the Competition Act.

The Appeal Tribunal will have more extensive powers than the EC Court of First Instance since the Appeal Tribunal will not be confined to annulling appealed decisions but will be able to exercise the powers of the body that took the appealed decision if the Appeal Tribunal thinks that a different use of the powers is appropriate. The procedural rules of the Appeal Tribunal have not yet been drawn up but it is greatly to be hoped that they will be much more flexible and much less technical than typical UK court room procedures.

The common law doctrine of restraint of trade is wholly unaffected by the 1998 Act.

The possibility of reference to the Competition Commission of scale monopolies and complex monopolies survives but Ministerial statements in Parliament suggest that in future the power to make such references will be exercised more sparingly and largely, if not exclusively, in cases where application of the Chapter 1 and Chapter 2 prohibitions will not provide an adequate remedy for a perceived problem.

Lastly, although the same legislative provisions as before will govern references to the Competition Commission of mergers that lack Community dimension, it is to be expected that in practice the Competition Commission will be very slow to recommend that a merger should be blocked unless *either* –

- it will create or strengthen a dominant position, if only locally, in the United Kingdom, and will thereby impede effective competition in the United Kingdom *or*
- it will have an adverse impact on a specific aspect of the UK public interest of a kind recognised by the EC as entitling national authorities to block a merger – e.g. public security, plurality of the media, stability of the financial system or national defence.

The Competition Act 1998 has thus gone a long way towards harmonising UK competition law with EC competition law, partly by adopting an adapted version of the latter for application in the United Kingdom, partly by repealing the restrictive practices legislation which was entirely alien to EC law and partly by creating a new régime which, even where it differs from the EC régime, can be expected to be operated in a way that provides a compatible complement to EC law. Whilst experience of the operation of the 1998 Act (or amendment of EC competition law) may necessitate further amendment of UK competition law, the 1998 Act should enable the United Kingdom to enter the 21st Century with a far more satisfactory system of competition law than that which had grown up, rather unsystematically, over the previous half century.

Bücher des Forschungsschwerpunkts Marktprozeß und Unternehmensentwicklung

Books of the Research Area Market Processes and Corporate Development

(nur im Buchhandel erhältlich/available through bookstores)

Lars Bergman, Chris Doyle, Jordi Gual, Lars Hultkrantz, Damien Neven, Lars-Hendrik Röller, Leonard Waverman
Europe's Network Industries: Conflicting Priorities - Telecommunications
Monitoring European Deregulation 1
1998, Centre for Economic Policy Research

Manfred Fleischer
The Inefficiency Trap
Strategy Failure in the
German Machine Tool Industry
1997, edition sigma

Christian Göseke
Information Gathering and Dissemination
The Contribution of JETRO to
Japanese Competitiveness
1997, Deutscher Universitäts-Verlag

Andreas Schmidt
Flugzeughersteller zwischen globalem Wettbewerb und internationaler Kooperation Der Einfluß von Organisationsstrukturen auf die Wettbewerbsfähigkeit von Hochtechnologie-Unternehmen
1997, edition sigma

Horst Albach, Jim Y. Jin, Christoph Schenk (eds.)
Collusion through Information Sharing? New Trends in Competition Policy
1996, edition sigma

Stefan O. Georg
Die Leistungsfähigkeit japanischer Banken Eine Strukturanalyse des Bankensystems in Japan
1996, edition sigma

Stephanie Rosenkranz
Cooperation for Product Innovation
1996, edition sigma

Horst Albach, Stephanie Rosenkranz (eds.)
Intellectual Property Rights and Global Competition - Towards a New Synthesis
1995, edition sigma.

David B. Audretsch
Innovation and Industry Evolution
1995, The MIT Press.

Julie Ann Elston
US Tax Reform and Investment: Reality and Rhetoric in the 1980s
1995, Avebury

Horst Albach
The Transformation of Firms and Markets: A Network Approach to Economic Transformation Processes in East Germany
Acta Universitatis Upsaliensis, Studia Oeconomiae Negotiorum, Vol. 34
1994, Almqvist & Wiksell International (Stockholm).

Horst Albach
"Culture and Technical Innovation: A Cross-Cultural Analysis and Policy Recommendations"
Akademie der Wissenschaften zu Berlin (Hg.)
Forschungsbericht 9, S. 1-597
1994, Walter de Gruyter.

Horst Albach
Zerissene Netze. Eine Netzwerkanalyse des ostdeutschen Transformationsprozesses
1993, edition sigma.

Zoltan J. Acs/David B. Audretsch (eds)
Small Firms and Entrepreneurship: An East-West Perspective
1993, Cambridge University Press.

Anette Boom
Nationale Regulierungen bei internationalen Pharma-Unternehmen: Eine theoretische Analyse der Marktwirkungen
1993, Nomos Verlagsgesellschaft.

David B. Audretsch/John J. Siegfried (eds),
Empirical Studies in Industrial Organization
1992, Kluwer Academic Publishers.

Zoltan J. Acs/David B. Audretsch
Innovation durch kleine Unternehmen
1992, edition sigma.

Hanfried H. Andersen, Klaus-Dirk Henke, J.-Matthias Graf v. d. Schulenburg (Hrsg.)
Basiswissen Gesundheitsökonomie, Band 1: Einführende Texte
1992, edition sigma.

Hanfried H. Andersen, Klaus-Dirk Henke, J.-Matthias Graf v. d. Schulenburg unter Mitarbeit von Georg B. Kaiser
Basiswissen Gesundheitsökonomie, Band 2: Kommentierte Bibliographie
1992, edition sigma.

DISCUSSION PAPERS 1997

Rabah Amir John Wooders	**R&D Rivalry and Cooperation under One-Way Spillovers**	FS IV 97 - 1
Frank Verboven	**Testing for Monopoly Power when Products are Differentiated in Quality**	FS IV 97 - 2
Frank Verboven	**Localized Competition, Multimarket Operation and Collusive Behavior**	FS IV 97 - 3
Jim Y. Jin	**Comparing Cournot and Bertrand Equilibria Revisited**	FS IV 97 - 4
Reinhard Koman Dalia Marin	**Human Capital and Macroeconomic Growth: Austria and Germany 1960-1992**	FS IV 97 - 5
Lars-Hendrik Röller Mihkel M. Tombak Ralph Siebert	**Why Firms Form Research Joint Ventures: Theory and Evidence**	FS IV 97 - 6
Rabah Amir John Wooders	**Cooperation vs. Competition in R&D: The Role of Stability of Equilibrium**	FS IV 97 - 7
Horst Albach Jim Jin	**Learning by Doing, Spillover and Shakeout in Monopolistic Competition**	FS IV 97 - 8
Dietmar Harhoff	**Innovationsanreize in einem strukturellen Oligopolmodell**	FS IV 97 - 9
Catherine Matraves	**Die deutsche Industriestruktur im internationalen Vergleich**	FS IV 97 - 10
Yair Tauman Amparo Urbano Junichi Watanabe	**A Model of Multiproduct Price Competition**	FS IV 97 - 11
Dalia Marin Monika Schnitzer	**The Economic Institution of International Barter**	FS IV 97 - 12
William Novshek Lynda Thoman	**Capacity Choice and Duopoly Incentives for Information Sharing**	FS IV 97 - 13
Horst Albach	**Wirtschaftspolitische und technologie-politische Folgen der Globalisierung**	FS IV 97 - 14
Horst Albach	**Humankapitaltheorie der Transformation**	FS IV 97 - 15
Horst Albach	**Gutenberg und die Zukunft der Betriebs-wirtschaftslehre**	FS IV 97 - 16
Horst Albach Dieter Köster	**Risikokapital in Deutschland**	FS IV 97 - 17
Hiroyuki Okamuro	**Risk Sharing in the Supplier Relationship: New Evidence from the Japanese Automotive Industry**	FS IV 97 - 18
Bernard Sinclair-Desgagné Olivier Cadot	**Career Concerns and the Acquisition of Firm-Specific Skills**	FS IV 97 - 19

Petra Korndörfer	**The Link Between Interest Rates on Interbank Money and for Credit Lines: Are Asymmetric Interest Rate Adjustments Empirically Evident?**	FS IV 97 - 37
Damien J. Neven Lars-Hendrik Röller Zhentang Zhang	**Union Power and Product Market Competition: Evidence from the Airline Industry**	FS IV 97 - 38
Horst Albach Ulrike Görtzen Tobias Miarka Andreas Moerke Thomas Westphal Rita Zobel	**Dokumentation der Kaisha-Datenbank - Zur Datenbank der Jahresabschlüsse japanischer Industrieaktiengesellschaften 1970-1997**	FS IV 97 - 39
Tobias Miarka Jianping Yang	**New Directions in Japanese Bank-Firm-Relationships: Does a Relationship Matter for Corporate Performance?**	FS IV 97 - 40
Ulrike Görtzen	**R&D Activities and Technical Information Flow in Japanese Electronic Corporations**	FS IV 97 - 41
Andreas Moerke	**Japanische Unternehmensgruppen - eine empirische Analyse**	FS IV 97 - 42
Andreas Moerke	**Does Governance Matter? Performance and Corporate Governance Structures of Japanese *keiretsu* Groups**	FS IV 97 - 43
Rita Zobel	**Employee-Transfer as an Instrument of Information-Transfer through Vertical Relations?**	FS IV 97 - 44
Dietmar Harhoff	**Are there Financing Constraints for R&D and Investment in German Manufacturing Firms?**	FS IV 97 - 45
Lutz Bellmann Dietmar Harhoff Norbert Schulz	**Zur Analyse von Gründungen und Schließungen auf Grundlage der Beschäftigtenstatistik**	FS IV 97 - 46
Andreas Stephan	**The Impact of Road Infrastructure on Productivity and Growth: Some Preliminary Results for the German Manufacturing Sector**	FS IV 97 - 47
Jim Y. Jin	**Incentives and Welfare Effect of Sharing Firm-Specific Information**	FS IV 97 - 48
Jim Y. Jin	**Information Sharing about a Demand Shock**	FS IV 97 - 49

DISCUSSION PAPERS 1998

Horst Albach	**Unternehmensgründungen in Deutschland Potentiale und Lücken**	FS IV 98 - 1
Dietmar Harhoff	**Vertical Organization, Technology Flows and R&D Incentives - An Exploratory Analysis**	FS IV 98 - 2
Karel Cool Lars-Hendrik Röller Benoit Leleux	**Der Einfluß des tatsächlichen und des potentiellen Wettbewerbs auf die Rentabilität von Unternehmen der pharmazeutischen Industrie**	FS IV 98 - 3
Horst Albach	**Blühende Landschaften? Ein Beitrag zur Transformationsforschung**	FS IV 98 - 4
Shiho Futagami Tomoki Waragai Thomas Westphal	***Shukko* in Japanese Companies and its Economic and Managerial Effects**	FS IV 98 - 5
Dietmar Harhoff Timm Körting	**Lending Relationships in Germany: Empricial Results from Survey Data**	FS IV 98 - 6
Johan Lagerlöf	**Are We Better Off if Our Politicians Know How the Economy Works?**	FS IV 98 - 7
Justus Haucap Christian Wey Jens Barmbold	**Location Costs, Product Quality, and Implicit Franchise Contracts**	FS IV 98 - 8
Manfred Fleischer	**Patenting and Industrial Performance: The Case of the Machine Tool Industry**	FS IV 98 - 9
Dieter Köster	**Was sind Netzprodukte? - Eigenschaften, Definition und Systematisierung von Netzprodukten**	FS IV 98 - 10
Andreas Blume	**Coordination and Learning with a Partial Language**	FS IV 98 - 11
Andreas Blume Uri Gneezy	**An Experimental Investigation of Optimal Learning in Coordination Games**	FS IV 98 - 12
Andreas Blume Douglas V. DeJong George R. Neumann Nathan E. Savin	**Learning in Sender-Receiver Games**	FS IV 98 - 13
Hans Mewis	**The Stability of Information Cascades: How Herd Behavior Breaks Down**	FS IV 98 - 14
Lars-Hendrik Röller Mihkel M. Tombak Ralph Siebert	**The Incentives to Form Research Joint Ventures: Theory and Evidence**	FS IV 98 - 15
Christine Zulehner	**Econometric Analysis of Cattle Auctions**	FS IV 98 - 16

DISCUSSION PAPERS 1999

Absender/From:

Versandstelle - WZB
Reichpietschufer 50

D-10785 Berlin

BESTELLSCHEIN / ORDERFORM

Bitte schicken Sie bei Ihren Bestellungen von WZB-Papers ***unbedingt*** eine ***1-DM-Briefmarke pro paper*** und einen an Sie adressierten ***Aufkleber*** mit. Danke.

For each paper you order please send a ***"Coupon-Réponse International"*** (international money order) plus ***a self-addressed adhesive label***. Thank You.

Bitte schicken Sie mir aus der Liste der Institutsveröffentlichungen folgende Papiere zu:

Please send me the following papers from your Publication List:

Paper Nr./No.	Autor/Author + Kurztitel/Short Title