Germany Sides with Institutional Investors in Competition Debate

Action Item: The German Government recently weighed in on the side of institutional investors on a competition issue that has generated vigorous academic debate in the United States: whether institutional investors’ minority shareholdings in companies in concentrated markets produce anti-competitive effects.

The Government’s pronouncement was prompted by a section of the 2016 Biennial Report of Germany’s Monopolies Commission. The Monopolies Commission saw no current need for legislation on the subject at either the national or European level, but suggested the need for further study. The Federal Government agreed, yet went a step further in concluding that the initial empirical research overly simplified the complexities of institutional investment.

Background
In 2016, two research papers claimed to show empirically that minority shareholdings by institutional investors raised prices in the U.S. airline and banking industries. These claims sparked a robust public debate. Several commentators went so far as to argue for sweeping “reform” proposals. Prominent among those urging caution and questioning the research on both theoretical and empirical grounds were Daniel O’Brien—one of the developers of the partial ownership theory that underlies the airline and banking papers—and his colleagues at Bates White Economic Consulting. The Monopolies Commission issued its report in September 2016, before these and other papers challenging the airline and banking studies appeared.

The German Government’s Parliamentary Declaration
The German Government agreed that further study of minority shareholdings is warranted, but went on to announce, “[a]t the same time,” that “the Federal Government sees a basic problem with the empirical examination of the phenomenon.” To begin with, “[c]orporate decisions can be traced to such a large number of different business, legal, microeconomic, and macroeconomic factors that each of these factor’s individual influence cannot be clearly defined.” Furthermore, institutional investors “pursue different investment goals and investment strategies with parallel minority holdings within a sector or along a value-creation chain.” The analysis becomes even more
complex, the Government declared, when one considers the often-conflicting incentives created by short-term, mid-term, and long-term investment strategies. The Government found no basis today—in either theoretical writings or empirical studies—to justify reform measures or “a sweeping accusation against institutional investors.”


