

Competition Law and Regulation Law

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- What should fall into competition regulation? What into sector specific regulation?

The basic distinction between natural monopolies and non-natural monopolies calls for a clear distinction between competition law and regulation law. Regulation law is understood as specific competition law and will remain to be necessary as long as the natural monopoly persists.

However, in German present railway law, both authorities legally have jurisdiction as to regulatory measures and each authority has to submit the draft of its (related) administrative action to the other authority (Bundesnetzagentur and Bundeskartellamt) for a check, a statement and advisory opinion. In practice, the competition authority is very reluctant to act in the specific field and leaves the initiative to the regulatory authority.

- In the case of conflict, which one prevails? Who decides?

In case the statement of the other authority is not followed, the decision of the authority taking the administrative action prevails.

There need not to be mutual consensual *agreement*. It is better to make competition law applicable *unless* there is a sector specific regulation.

- What problems can arise from the unclear delimitation between competition regulation and sector specific regulation?

Overlapping jurisdiction or lacking mutual consensual agreement may produce contradictory decisions, confusing the market.

- What are the advantages and disadvantages of competition and of sector specific regulation respectively? Advantages and disadvantages for whom?

Sector specific regulation is based on sector specific knowledge. Sector specific knowledge is produced regularly and enables the regulator to act and react quickly. Competition regulation acts from a distant point of view and needs more time to scrutinize and to issue an administrative action.

- How do competition and sector specific regulation relate to the overall performance of a national railway system?

The performance of a national railway system is undisputedly mainly fostered by sector specific regulation. Competition regulation presently has a marginal role.

- Is there any room for competition regulation in the railway sector?

Legally there is room by Art. 102 TFEU, giving jurisdiction to competition authorities in the international context. Regulation 1/2003 allows national lawmakers to shift the jurisdiction (to apply Art. 102 TFEU) to regulatory bodies, making it a competition authority. This is reasonable in rail related services and businesses such as ticketing and supply of electrical energy. They are no natural monopolies but simple monopolies, but they are ancillary to natural monopolies and can be understood as quasi-natural monopolies. By way of operation (electrical energy) and marketability (ticketing) there is no possibility or reason to set up a second infrastructure.