

Contents

1	Introduction	1
1.1	Subject of Investigation	2
1.2	Aim of the Investigation	2
1.3	Objections to the Investigation	3
1.4	Course of Investigation	3
	References	4
2	Theoretical Discussion of Vertical Integration and Regulation	7
2.1	General Concept of Regulation	7
2.1.1	General Regulation Law	8
2.1.2	General Regulation Economics	9
2.1.3	Sector Specific Regulation	13
2.1.4	Constitutional Limits and Obligations of Regulation	17
2.2	Legal Aspects of Vertical Integration	23
2.2.1	General Regulation	23
2.2.2	Unbundling Regulations/Disintegration Regulations	24
2.2.3	Net Access	25
2.2.4	Regulation of Capacity Shortages	27
2.2.5	Transparency Regulations	27
2.2.6	Market Entry Regulation	27
2.2.7	Market Behaviour Regulation	28
2.3	Economic Aspects of Vertical Integration	29
2.3.1	Collusive Conduct	30
2.3.2	Double Marginalization	31
2.3.3	Efficiency Effects	31
2.3.4	Elimination of Competitors	32
2.3.5	Circumvention of Regulation	34
2.3.6	Additional Market Effects	35
	References	35

3	Evaluation of Vertical Integration	41
3.1	General Concerns and Positive Aspects	42
3.2	Foreclosure of Inputs	43
3.3	Foreclosure of Customers	45
3.4	Other Possible Effects	46
3.5	Assessment of Positive and Negative Aspects	47
3.6	Preliminary Conclusion	47
	References	48
4	Legal Implications and Suggested Amendments	49
4.1	Vertically Integrated Enterprises Shall Be Obligated to Forward Their Price Development Rationale to the Federal German Cartel Office to Have It Investigated in Order to Determine Whether or not They Violate the Prohibition of Margin-Squeezes	49
4.1.1	Current Legal Obligations	49
4.1.2	Legal Shortcomings	50
4.1.3	Legal and Constitutional Restraints	50
4.1.4	Suggested Legal Amendment	51
4.2	Refusal to Supply Shall Become an Element of Offence in German Competition Law	51
4.2.1	Current Legal Obligation	51
4.2.2	Legal Shortcoming	51
4.2.3	Legal and Constitutional Restraints	51
4.2.4	Suggested Legal Amendment	52
4.3	Price Discrimination on Highly Concentrated Markets Must Be Subject to Strict Regulation	52
4.3.1	Current Legal Obligation	52
4.3.2	Legal Shortcoming	52
4.3.3	Legal and Constitutional Restraints	53
4.3.4	Suggested Legal Amendment	53
4.4	A Complaint Structure Is Needed to Detect Lacking Competition in Individual Sectors	53
4.4.1	Current Legal Obligation	53
4.4.2	Legal Shortcoming	53
4.4.3	Legal and Constitutional Restraints	53
4.4.4	Suggested Legal Amendment	54
4.5	There Needs to Be a Regulation on How to Deal with Capacity Shortages	54
4.5.1	Current Legal Obligation	54
4.5.2	Legal Shortcoming	54
4.5.3	Legal and Constitutional Restraints	54
4.5.4	Suggested Legal Amendment	55

4.6	A Vertical Separation Is the Ultima Rationale and Shall Be Introduced to Competition and Regulation Law	55
4.6.1	Current Legal Obligation	55
4.6.2	Legal Shortcoming	55
4.6.3	Legal and Constitutional Restraints	55
4.6.4	Suggested Legal Amendment	56
4.7	Consumers Need to Be Educated on How the Market Functions in Order to Inform Them About Oligopoly Collusion Tactics of Major Enterprises in Particular Markets	56
4.7.1	Current Legal Obligation	56
4.7.2	Legal Shortcoming	56
4.7.3	Legal and Constitutional Restraints	57
4.7.4	Suggested Legal Amendment	57
4.8	The German Competition Authorities Should Continue Monitoring Mergers in Highly Concentrated Markets	57
4.8.1	Current Legal Obligation	57
4.8.2	Legal Shortcoming	57
4.8.3	Legal and Constitutional Restraints	58
4.8.4	Suggested Legal Amendment	58
4.9	German Regulation Authorities Should Investigate the Efficiency of the Level of the Upstream Market of Highly Concentrated Industries	58
4.9.1	Current Legal Obligation	58
4.9.2	Legal Shortcomings	58
4.9.3	Legal and Constitutional Restraints	59
4.9.4	Suggested Amendment	59
4.10	A Regulatory Regime Is Required that Focusses on the Challenges of Digital Networks (like Facebook) or Highly Integrated Market Place Enterprises (Such as Amazon)	59
4.10.1	Current Legal Obligation	59
4.10.2	Legal Shortcoming	60
4.10.3	Legal and Constitutional Restraints	60
4.10.4	Suggested Legal Amendment	60
5	Conclusion	61