Introduction: On the Way to an International Competition Order

After the failure of the Havana Charter in 1947, the WTO took over the role of mediator for questions regarding trade, except for cases involving foreign competition policy. Even in trade policy the influence of the WTO remains limited, however, because it can neither act of its own accord nor apply sanctions in cases of violations against the trade rules of GATT, as a national authority would. There are no competition policy instruments to deal with international violations of competition that negatively effect foreign countries, such as abusing a position of market control, export cartels, vertical or horizontal limitations to competition on export markets and mergers that effect third-party countries.¹

With trade liberalization as the backdrop for the GATT rounds, any effective competition policy must be international in scope if it is to deal with growing globalization and the ever increasing number of international mergers. The volume of global mergers and takeovers reached a level of 2.5 trillion US dollars in 1998, five times that of the early 1990s.² Owing to the globalization of economies, companies want not only to sell and produce internationally but also to merge. The current controls on international merging are inefficient, which leads to overlapping and uncoordinated investigations. This type of multinational merger is laborious and opaque for firms, since they have to apply for permission separately in each country. Applications in multiple countries means having to deal with two different legal systems, and the national competition authorities are unable to provide the necessary information for an evaluation because of a fundamental lack in international cooperation and

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coordination. These stumbling-blocks explain why the demand for a global legal institution is constantly growing, and the USA and EU find themselves under immense pressure to better coordinate their merger approval processes. Other issues addressed in the various approaches to competition regulation include state aid, dumping rules, cartels and rules of distribution.

It will not be easy to find a solution for every problem area in international competition. For instance, the USA suspects that international competition regulations would deprive it of its heavy influence on international competition policy, or that a third party could gain more influence. The USA fears a threat to its anti-dumping rights above all else. Japan and the EU in turn tend to support the extension of the WTO's competence. The EU hopes for a restriction on the extraterritorial application of US laws on the basis of the effects doctrine by which the USA uses its national competition law against foreign companies if they have an impact on the domestic market. Japan wants to stem anti-dumping measures in order to ease Japanese exports. The developing countries also support the WTO with regard to dumping. The EU, which frequently implements anti-dumping measures, is very opposed to it on this particular point.

Many authors suggest adding an international code of rules for competition to the GATT. The proposed discussion on competition policy reform for the new world trade rounds in Doha also seems to be developing in the same direction. An important item here is the intention to begin negotiations on international rules of competition. The developing countries refused to enter the negotiations immediately, since they claim to have neither the know-how nor the capacity to pass their own competition laws and build competition institutions. The industrial nations have declared their readiness to support the developing countries both administratively and financially.

This book represents an attempt to work out conceptions for a better international competition order on the basis of the scientific approach ‘law and economics’. Chapter 1 presents the dominant concepts of competition policy as a basis for an international competition order and tries to formulate a synthesis. The result is a new neo-ordoliberal approach. The ideas offered in this chapter are intended to serve as guidelines for the upcoming discussions on reform, and are based upon the international concepts of competition policy.