Call for breaking up all-too-powerful corporations

All-too-powerful corporations dominate large parts of our economy and control markets that are vital for society. This concentration of power damages our democracy. Corporations use their power to gain economic advantages, influence policies in their favour and drive competitors out of the market. They pass on social and ecological costs to the public, not only in Europe, but all over the world. The EU and Germany must curtail corporate power. Otherwise, the necessary socio-ecological transformation of our societies will be hard to implement. The German parliament and the EU institutions must adopt laws allowing competition authorities to enforce a clean separation of markets and to break up all-powerful corporations. What Germany and Europe need are new tools for structural separation.

More and more markets are dominated by only a handful of corporations. Both in member states and the EU, markets are increasingly concentrated. Powerful corporations like Amazon, Bayer or BlackRock hold sway over our economy. Time and again, they have been able to impede binding rules on health, the environment and climate protection, as well as living wages, employee participation and labour rights. Their market power allows them to pass on costs and risks to suppliers, producers and employees, and thus, to society. Retail prices do not reflect the actual social and ecological production costs. More market concentration also leads to more social inequality, both here and in the Global South. Powerful companies can increase their margins by forcing suppliers to decrease prices, controlling market access and leveraging economies of scale. Since ownership of companies and shares is very unevenly distributed, profits mostly end up in the pockets of owners, investors and managers.

The excessive market power of dominant corporations is not touched, neither by politics nor by antitrust authorities. Even for markets with only one, two or four dominant corporations, economic policy and competi-tion law currently have no tool to break up entrenched market structures. There is very little focus on the negative impact of structural market power and of systemic dependencies on individual corporations. Politicians and authorities in Europe are reluctant to address market power, they only want to limit the abuse of dominant market positions to the detriment of other companies. These efforts to curb abuse through anti-trust or sector-specific regulation, however, are more of a never-ending cat-and-mouse game. Companies have plenty of ways to circumvent new rules. They know their own technologies and processes best, will take advantage of ambiguous legal drafting and will find new ways to treat their clients, suppliers or competitors unfairly. Much remains hid-den from the authorities and politicians anyway. Anti-abuse rules and behavioural remedies alone will not solve the problem: German and EU competition regulators have been trying that for decades. Case in point: the digital industry.

Just look at digital platforms: The strong growth of the Big Five – Amazon, Apple, Facebook, Google and Microsoft – is also due to over 800 acquisitions. In the last 20 years, every single one of them was approved by competition authorities, both at the member state and the EU level. The European Commission has brought forward a few high-profile cases of abusive behaviour against companies like Google. But the proceedings are lengthy and ineffective with companies interpreting requirements as they see fit. De-facto monopolies in markets still exist, and internet corporations control key parts of digital infrastructure. Their platform business model gives them special power: they control access to online markets, decide on the rules and analyse all interaction. This lets them put pressure on dependent companies or third-party merchants, influence their customers' purchase decisions and undermine the rights of their employees. Their sheer size, tightly integrated business segments and opaque algorithms make it particularly difficult to supervise and regulate these empires.

Moving on to the finance sector: During the financial crisis, several banks were considered "too big to fail" because their bankruptcy could have wreaked havoc on the entire financial system. Their reckless trade in toxic securities and insufficient equity ratio cost the taxpayer hundreds of billions of euros. In addition, their deposit and lending operations, which are key for both savers and the entire economy, were dangerously intertwined with their investment banking. Banks were therefore bailed out with public money, despite their own mistakes. These operations need to be separated to avoid another crisis and make the finance sector more resilient. The fact that the Big Four accountancy firms – KPMG, PwC, Deloitte and EY – audit and advise the same corpora-tions is just as much cause for concern: it creates dangerous conflicts of interest and has led to repeated large-scale financial fraud. What is more, BlackRock and other large asset managers hold too many shares in publicly traded companies, e.g. in Germany. Research indicates that compa-nies could increase their profits at the expense of clients when investors such as BlackRock are shareholders of several competing companies in a concentrated industry.

Excessive and systemic market power in the hands of few corporations presents a danger to our democracy. Political measures against (all-too-) powerful companies and monopolized sectors are meeting more and more resistance and are increasingly risky for politicians. Structural dependence on dominating companies is what prevents lawmakers from adopting stricter measures in key markets. More than that, all-too-powerful corporations have an easy time evading the enforcement of regulatory measures and the control of tax authorities alike. It is therefore difficult and tedious to assert the common good against the interests of powerful companies seeking profit. As a result, legal measures for more social justice, more environmental protection or more stability in the finance system fall by the wayside.

More power in the hands of big companies means less governance capacity for governments and lawmakers, and poses a systemic threat to democracy. Policies become lopsided, eroding trust in the democratic process. Democracy is incompatible with ever-growing economic power imbalances. Concentrated ownership and hierarchical corporate governance aggravate the negative effects on democracy. Economic power goes hand in hand with societal and political power in the hands of a few without democratic legitimacy. This includes the owners and managers of big companies and their investors.

Germany and the EU need to turn breakups into a fully fledged tool for competition watchdogs and regulators. Currently, there are no effective tools for breaking up concentrated markets, and the issue is becoming more pressing given the need for a societal and ecological transformations. If one company creates considerable structural dependence and has so much market power that is has severe implications for society as a whole, then there must be, as a last resort, a way to break up the company without having to prove the abuse of a dominant position. Too powerful corporations could be split up into viable functional entities in order to preserve jobs. Regulators would be enabled to curtail excessive concentration of economic power. Splitting a company into several units can break up de-facto monopolies in a given market. It can also curb exploitative abuse and aggressive market behaviour towards other players, which is often incompatible with the protection of livelihoods. The structural separation of different lines of business can also reduce conflicts of interest, as markets are defined much more clearly. Two possible examples are the introduction of a separate banking system or the separation of auditing and consultancy.

Some competition authorities and political decision-makers already support break-ups. In the digital sector, this could mean separating Google Search from Android as well as Instagram and WhatsApp from Facebook. The latter is what the US Federal Trade Commission demanded in December 2020, seeking a permanent injunction in federal court that would require the sale of assets such as Instagram and WhatsApp to become independent companies. In July 2020, the UK's Competition and Markets Authority recommended that Google and Facebook separate the digital advertising business from their other operations. Since the 1960s, Germany has seen several demands for the creation of an effective break-up instrument. The German liberal party FDP presented a legislative proposal in 2010 while being in a coalition government with the CDU/CSU conservative parties. Their proposal was supported by the German Monopolies Commission and by Andreas Mundt, the president of the Bundeskartellamt, Germany's competition watchdog.

There are several international precedents and other experience with breaking up dominant companies, especially in regulated industries. Structural separation has been discussed several times in certain sectors, such as telecommunications, energy and railway. There is no known example of such a split having a negative impact on the market. In many cases, in fact, a divesture was initiated by the corporation itself. An analysis of Fortune 100 companies in the 1990s listed a total of 2,307 mergers and acquisitions as well as 1,611 divestments of certain business segments. Breaking up companies after consummated mergers is also not uncommon and can certainly be a success. This shows that structural separation is an effective and necessary tool for breaking up overly powerful market positions of individual corporations and for addressing the root causes of entrenched economic structures in sectors like the digital industry.

The tool should be used primarily in serious cases where corporations have a de-facto monopoly and their power threatens fair business operations and democratic control. A breakup instrument will also have a disciplinary effect beyond individual cases. The tool will need to be accompanied by political measures, such as open access for third-party companies, the non-discrimination of other market players, fair pricing and access to data. Breakups do not replace regulation. But they address one fundamental issue: the concentration of economic power and the resulting imbalances. A clear legal framework and stricter merger control can and must prevent broken up companies from reaching a dominant position again. Additional and targeted regulatory efforts will be necessary to make sure the economic system serves the public interest.

Breakups are one of several key instruments to ensure a socially and ecologically just economic order and policies that are balanced and working for society as a whole. German and EU lawmakers will have to provide the necessary legal base. Competition law must also ensure sufficient resources for competition authorities, stricter control of mergers and a stronger focus on public interest instead of only on consumers. In other words, the structural effects on wages, employment, suppliers and manufacturers must also be investigated within merger and abuse control. Other relevant policy areas include tax policy, the democratisation of corporate governance as well as the orientation of company aims not only towards profits, but also towards the common good. We need a broad and open debate about how to limit excessive corporate power and its negative impact.

The EU and the German government should make an effort to curb market concentration and to establish a legal base for breakups beyond the abuse of a dominant position. When a handful of corporations control the markets, they benefit economically while others are at a disadvantage. It facilitates the passing on of social and environmental costs and undermines democracy. That is why we need structural measures to rein in excessive corporate power.

www.konzernmacht.de

Contact:
Initiative Konzernmacht beschränken
c/o Forum Umwelt und Entwicklung
Marienstr. 19–20 | 10117 Berlin

info@forumue.de
www.forumue.de
+49(0)30 678 17 75 920