

Rupprecht Podszun, Düsseldorf Conference Debriefing (42): 19th Annual Conference of ASCOLA

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More than 150 competition law scholars from around the world gathered in Würzburg to celebrate their job choice – could it be any better than being an academic dealing with the hottest topic on earth? This was the Annual Conference of the Academic Society for Competition Law (ASCOLA). D’Kart interviewed Rupprecht Podszun, the chairman of ASCOLA, to get a conference debriefing. Here are his insights on trends in antitrust research, German embarrassment, the winner of the best paper award, new stars on stage and a very short panel appearance by an antitrust high-flyer!

Name of the event: 19th Annual Conference of the Academic Society for Competition Law (ASCOLA)

Place & time: University of Würzburg, Germany, 4-7 July 2024. Key events took place in the Neubaukirche, a baroque church-turned-lecture hall. Awe-inspiring.

Hosts: The conference is an ASCOLA event, but of course the work lies with the local hosts – they are the ones running the show (and a show it was!): Professor Dr. Florian Bien and Dr. Björn Becker, pictured above, and their team directed the event. They did an awesome job!

Participants: Competition law scholars from around the world from A (as Oles Andryichuk, the philosopher of antitrust – just changed to Exeter University) to Z

(as Bernadette Zelger who won an Antitrust Writing Award this year for a paper on *ne bis in idem*). There were well-known ASCOLA big names such as Alexandre de Stree or former president Michal Gal, but – as usual – also many first-timers. A young delegation from Berlin was greeted with particular affection: Simon de Ridder, Lennart Enwaldt, Philipp Hornung and Maximilian Wolters are PhD students who started their PhDs with the late Heike Schweitzer who was dearly missed.¹ Her team of young scholars at least offered a glimmer of hope that her legacy lives on.

Food & drinks: An awesome barbecue, a wine-tasting in an ancient cellar – couldn’t have been better!

Question: Sorry, but these days are a bit busy with football, elections in the UK and France, Joe Biden, raging wars, and Taylor Swift on tour – I wanted to ignore the ASCOLA conference to be frank. A mistake?

Answer: Unwise! It would be so much more efficient to do competition law, since all the topics you mentioned are of course topics for the community. The issues can be analysed through the lens of power and nearly everything can be better with competition... I am exaggerating of course, but I was also surprised that the debates you mentioned did not play such a big role at ASCOLA. Judging from the titles, there was not a single paper on football, and none on war!

Q: You’re losing me.

A: Shake it off, shake it off. The reaction of antitrust researchers to the global crises is a different one: Papers turn fundamental! The young ones go to the very bottom of competition law concepts and deconstruct

¹ *Haucap, DKartJ* 2024, 33.

them. Take Andrew McLean for instance. He said that the “innovation defence” (you cannot stop our merger because we are so innovative) is just a rebranding of the Chicago School’s ideological “techno-conservatism”. Imagine: Innovation has no longer a positive connotation!

Q: Wait, the Schumpeter/Arrow controversy on the effects of competition on innovation ended with an inverted U curve – U as in undecided, right? Schumpeter wants monopolies, Arrow wants competition, and now McLean wants a U-turn?

A: According to McLean, there is evidence that the inverted U nowadays looks more like a lazy L. Of course, he cited Mariana Mazzucato (“The entrepreneurial state”) who is the well-hyped defender of state intervention in innovation.

Q: Adam Smith must rotate in his Canongate Kirkyard in Edinburgh when hearing an Edinburgh scholar promote such stuff...

A: Not so fast! Stavros Makris who works at Glasgow re-read Adam Smith, only to find out that the mainstream belief into what Smith had allegedly said is pretty flawed. Smith, so Makris argues, has not only identified the invisible hand of the market, but also a very visible hand of the public authorities who need to guarantee many functions.

Q: Adam Smith was the first ordoliberal?

A: Or so it seems. Ordoliberals are definitely back. Tristan Rohner and Helena Drewes, currently both working at my chair, argued in favour of “competition on the merits” as a benchmark for abuse cases. They say the concept could effectively remedy problems with the “more economic approach”. Did you know that “competition on the merits” was invented as a concept for a predatory pricing case with petrol stations in Benrath, close to Düsseldorf, in 1930? As Tristan and Helena showed some of the confusion with the concept lies in the fact that the term was lost in translation in EU jurisprudence.

Q: Wait. You say, they are “currently” working at your chair. Any job market gossip?

A: Tristan Rohner will leave us, he was appointed a Junior Professor with tenure track at Bucerius Law School in Hamburg.

Q: Wow, congrats! I mean, sorry for you! Hamburg could be the next Düsseldorf, the competition law capital of Germany! Or at least a good competitor to your Rhine dominion!

A: Nanana. Don’t want to hear that, but I concede that with Florian Wagner-von Papp at the University of the Armed Forces, Wolfgang Wurmnest at Hamburg University and Tristan at Bucerius it is a place to watch...

Q: And there is the Hamburg Max Planck Institute!

A: They do only little competition law there, nowadays, but the books that the late Ernst-Joachim Mestmäcker held in his hands are still there. Oh, by the way, over dinner I overheard a great scholar saying she would love to be able to read German. Asked why, she replied: to read Mestmäcker in the original. A colleague whispered to me: Would Kafka or Goethe be an option, maybe, too?

Q: Amazing academics!

A: You said Amazon?

Q: No, amazing. But speaking of Amazon... I assume Big Tech was Big Topic?

A: The only time I heard the term “Amazon” during this conference was when Francisco Beneke from the Munich Max Planck talked about sustainability in Latin America – and Amazon here did not refer to a gatekeeper, but a CO2-keeper. Of course, there were several panels on digital and data, but it was not as dominant as I would have expected it to be. In a final wrap-up panel of the conference, Masako Wakui, a thought leader from Japan, characterised the conference as not having “hot topics” – which she meant in a

positive way. In times of global warming “hot” has lost its appeal anyway. Scholars turn to a variety of topics and ideas, these days. The digital frenzy seems over.

Q: Still, there must have been some trends in digital competition law?

A: The spectre was pretty well given in a breakout session Digital I that I attended: Richard Li-dar Wang (National Chengchi University Taiwan) gave a very interesting account of how to measure efficacy of the new rules that we have in place. Jasper van den Boom from Düsseldorf (heyho!) – who had another very memorable moment at this conference – discussed Bytedance’s role as a gatekeeper in the DMA from a conceptual ecosystem perspective. And Marco Botta of EUI went into the legal clash of privacy rules and DMA. All three were no longer in this “we have to do something”-mode, but much more down to earth, dissecting the rules. In the wrap-up panel, Wolfgang Kerber, the economist, said he noticed as a trend throughout the conference that lawyers do legal reasoning again.

Q: Hear, hear.

A: Really! And he is right. In antitrust, we did a lot of economics effects analysis. Now, more and more lawyers look into standards of proof, the exact meaning of words in legal texts or the reconciliation of rules from different fields.

Q: That sounds dull.

A: And it is not! Because there is a world to discover! And there is a lot of inspiration from other fields: If you do not reduce competition law to a reductionist economic concept, you can do really interesting stuff. Todd Davies from UCL, for instance, gave a talk on “niche theory” from ecology as a way to understand competition law. And in the same panel, Gregory Day (University of Georgia, USA), gave a historical account of US antitrust law – explaining the Sherman Act with a view to the Reconstruction era that preceded it. It was fascinating to hear Greg relate the anti-slavery fight of John Sherman with later discrimination cases. Antitrust’s promises are still unfulfilled, he says. But what I want to say is: There is a huge diversity and variety

of approaches. That is probably the characteristic thing of academic research in 2024.

Q: Let’s talk about the stars of the conference.

A: You mean David Bosco, Liang Li and the Bien Brothers?

Q: Oh, I thought Andreas Mundt and his peers on the Enforcers Panel were the stars of this conference?

A: Right, yes, they were of course, but this conference also made new stars, too. Let’s discuss the enforcers first: There was Andreas Mundt from Germany – who is the boss of our sister organisation, the International Competition Network (ICN). Every time I see him on stage I am impressed how straight-forward he is in his messages, how witty he is in his answers and how well he plays the audiences. He shared the panel with Benoît Coeuré from France, Ryan J. Danks from the US Department of Justice and Juliana Oliveira Domingues, a long-time ASCOLA member who had served as the Attorney General of CADE, the Brazilian enforcer. Coeuré became an asset for the community ever since he joined the club as an outsider, coming from Finance. The show was stolen though by Doris Tshepe.

Q: She is the South African commissioner for competition, right?

A: Exactly. She flew in from an UNCTAD meeting in Geneva, landing in Frankfurt, jumping on a car, flying over the Autobahn, joining the panel 20 minutes before it closed, taking off the next morning to Greece. In between, she rocked the thing. A bit Hollywood style, this fly-in-fly-out, but then they are the stars. Or, as Andreas Mundt put it: What would you academics chew on if not for us?

Q: Haha, there you go, theorists! Nothing worth without practice!

A: Luckily, Mundt also said, it is a two-way street. To give an example of the impact of academic literature on the Bundeskartellamt’s practice he cited work by

Richard Schmalensee and David Evans on platforms. They were heavily influential, he said, for the design of section 19a, that competition law gatekeeper rule in Germany.

Q: Ouch. Not the luckiest pick of references, right?

A: Mundt had participated in an Oxford workshop at Ariel Ezrachi's a week before where – under Chatham House rules – it had been a big topic, as we understand, that academics can no longer be trusted since so many of them are paid for by big corporations. Evans and Schmalensee are certainly renowned economists, but both of them have been on the Big Tech payroll. But then they are not ASCOLA members. ASCOLA has an Ethics Declaration² in place, requiring its members to disclose all funding properly. More to be done, as Ioannis Lianos (back in academia after his time as the boss of the Hellenic competition agency) does not get tired to assert. But, to do justice to Andreas Mundt: When I asked all those people to stand up who are in favour of a break up of Alphabet, Mundt jumped to his feet – as did maybe a third of participants.

Conference Innovations:

The conference had 72 papers with speakers from all continents. They had been selected from roughly 150 submissions in a double blind peer review process. Among the innovations in the conference format this year:

- *There was a conference stream for PhD students ("Young Scholars Workshop") where experienced experts discussed intensely chapters from PhD projects.*
- *Scholars were invited to submit pitches for work-in-progress so that ideas could be floated and discussed.*
- *In a panel with heads of the ASCOLA Regional Chapters different regions were represented, presenting their regions' developments for digital competition.*
- *In a final wrap-up panel five scholars were invited to give their impressions from the 25 breakout sessions that took place in 5 parallel sessions.*

• *In line with the new Guiding Principles on Diversity, Inclusion and Social Safety at ASCOLA Events the programme had the numbers of contact persons for cases of discrimination, harassment, emergencies, etc.*

Q: I learned you have a soft spot for declarations nowadays!

A: We proudly presented the Guiding Principles on Diversity, Inclusion and Social Safety at ASCOLA events!³ After the JECLAP editorial⁴ where female members of the antitrust community spoke out we decided to raise awareness and get some very basic procedures in place. The idea is that people can only exchange arguments if they respect each other and do not bully, discriminate or harass others. People want to feel safe nowadays when going to a conference. And of course, diversity on panels is an issue. With the rules, ASCOLA is trying to send a signal. And many scholars signalled back that this was a heartening, encouraging move. It was time to put these issues into the spotlight.

Q: Speaking of spotlight: Who won the Best Junior Paper Award?

A: Liang Li is the name! She is a young professor from the Chinese University of Social Sciences in Beijing, and her paper reconceptualises the idea of "power" in competition law – broadening the term beyond mere market power. She made a lasting impression, definitely well-deserved! Seems that our jury with Fabiana Di Porto, Thomas Cheng and David Gerber had a sharp eye again. And Liang excelled in another field, too, and you will hear about this in a minute.

Q: I remember that the *Economist* ran a cover story the other day on the rise of Chinese science...

A: You see? ASCOLA is always in tune with the times.

² ASCOLA, Transparency and Disclosure Declaration, https://ascola.org/wp-content/uploads/2020/11/ascola_ethics_declaration.pdf (last accessed 26.7.2024).

³ ASCOLA, Guiding Principles on Diversity, Inclusion and Social Safety at ASCOLA Events, 2024,

<https://ascola.org/resources-2/guiding-principles-on-on-diversity-inclusion-and-social-safety-at-ascola-events/> (last accessed 26.7.2024).

⁴ Akman/Banda/Bania et al., 14 Journal of European Competition Law & Practice 2023, 379.

Q: For curiosity only: How did the Germans fare?

A: Those presenting at ASCOLA really do a good job, and people like Thomas Weck, Eckart Bueren or Oliver Budzinski are known for asking really good questions in discussions. Someone who had not been to ASCOLA conferences for a while was heavily impressed by the big questions put forward by scholars, and said: The normal German research is a bit narrow, isn't it? But at Würzburg, it was not our research that was embarrassing.

Q: What then?

A: Deutsche Bahn. It became the running gag of the conference. Or not even running, to be exact. "My train was 18 minutes late", complained one Asian participant, and I could only congratulate him that he was such a lucky person! I got so used to delays, non-working Wifi, nerve-wrecking announcements and the ignorance towards all this that I am completely numb already. But when foreigners who had pictures in their head of an efficient, high tech Germany tell you of their miserable train rides from Frankfurt to Würzburg – only to find out that the taxi driver only accepts cash... it is all there again. It is a bit of a consolation for competition teachers that Deutsche Bahn serves as the textbook example of a complacent monopoly. And you know what people simply did not want to believe?

Q: Tell me!

A: When we told them that the Bundeskartellamt is battling in court with Deutsche Bahn for real-time data access – the mobility platform case.⁵ "But that's a state-owned enterprise, how can they withhold data?!", someone asked me. Because they can! That's why we like competition. Regensburg law professor Jürgen Kühling was at the conference, too. Just days before he had presented his final expert opinion as head of the

German Monopolies Commission. Whoever wants to know what can go wrong with a state monopolist (and how to cure it) – the Monopolies Commission's "Hauptgutachten Wettbewerb 2024"⁶ is a treasure trove.

Q: I remember you love to go to this conference to learn about things happening in far away places.

A: Developments are converging everywhere – when you hear Xingyu Yan (Xiamen University) talk about competition problems in Chinese energy markets that is absolutely relatable. My favourite story came from Liana Japaridze who works at Sussex but is originally from Georgia. The Georgian competition agency did a fuel cartel case – and they did basically the same case three times within a few years. A perfect experiment: Re-running the same case. Liana told it as an evolutionary story how the young competition agency improved from case to case. Great.

Q: We have not yet spoken about private enforcement.

A: And not yet about the highlight of the conference! Private enforcement is a mess everywhere. In the US, so Filippo Lancieri (just moved from Zurich to Georgetown University) reported, private damages claims seem to have broken down. Much needed amendments are not passed. Zeyu Zhao (Renmin University) estimated that 10% of Chinese private litigation cases are successful. I was not able to hear the talk by Francisco Marcos from Spain, but he told me that the Spanish trucks damages avalanche is about to end. The enforcers, in their panel, all agreed that their authorities – sorry, but no, sorry – can do nothing in favour of private parties.

⁵ Bundeskartellamt, Düsseldorf Higher Regional Court largely confirms enforceability of the Bundeskartellamt's ruling on abusive practices against Deutsche Bahn, 2024, https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/AktuelleMeldungen/2024/11_03_2024_OLG_DB.html (last accessed 26.7.2024).

⁶ Monopolkommission, Biennial Report XXV: Competition 2024, <https://monopolkommission.de/en/reports/biennial-reports/451-biennial-report-xxv-competition-2024.html> (last accessed 26.7.2024).

Q: No hope whatsoever?

A: Björn Lundqvist from Stockholm explained that the Nordics are picking up in the field – not least due to high interest rates which makes it attractive to litigate. He said that on an interesting panel: Hosted by Peter Picht and Thomas Cheng, some heads of ASCOLA Regional Chapters reported how their jurisdictions grappled with digital issues. I learned from Maciej Bernatt, for instance, that Poland still has a very strong local competitor to Amazon, and from Zeynep Ayata that (a) Turkey is now officially Türkiye and (b) it introduces some really harsh anti-Big Tech regulation.

Q: There we are, another mentioning of Amazon! I knew it!

A: True, but Maciej also said, and this is a general feeling, that we must not forget other egregious competition law violations over our appetite for Big Tech. Björn chimed in that we still have an “oligopoly gap”. Maciej mentioned state-owned enterprises in particular, and this brings me back to...

Q: ...the German railway system, okay, okay. Now, before we have another “Verzögerung im Betriebsablauf”: What was this highlight of the conference that you have been mentioning over and over again?

A: “All of me, why not take all of me, lalala...” That was so good! You know Florian Bien and Björn Becker? Our hosts are the kind of people who schedule a musical concert for Friday at six o’clock. That was exactly the same time when the German national football team hit the pitch to meet Spain. When the audience shuffled into beautiful Toscanasaal in the Würzburg residence many were looking at their mobiles to follow the match. I sat close to two well-known German law professors who know as much about football tactics as about merger control. But a couple of minutes later – all this was gone! People were immersed in the first ASCOLA concert which certainly will remain one of the most memorable conference events ever. (And the Germany match can easily be forgotten anyway).

Q: So what did Florian and Björn do?

A: Florian opened the concert with two études by Chopin, played beautifully on the piano. This was followed by Helena Drewes playing a Poulenc sonata on flute. Liang Li (at this time still unaware of her later honours) played a self-composed fantasia on a Chinese flute, taking us to her village. That was so emotionally moving! After that, Björn Becker took over at the piano and opened the jazzy part of the concert. Björn is a postdoc with Florian, and the co-organiser of the conference, but when you saw Florian turning the sheets for him you noticed that the two are far more than brothers in competition.

Q: You mentioned the Bien brothers, earlier.

A: Yes, Florian’s children are highly talented top-musicians. They had already performed at the conference start with a young chamber orchestra which was wonderful in that former church. Now, they were the supporting act for ASCOLA members playing music, together with economics professor Toker Doganoglu.

Q: Who else took the stage?

A: There were two further memorable moments: Jasper van den Boom (formerly Tilburg, now Düsseldorf) was sitting in the first row, getting more and more uncomfortable when seeing Bien, Becker, Drewes and the likes performing like pros. “I thought this was easy-going and fun”, he said when it was his turn. He was visibly shaken – and not the Shakin’ Stevens style of shaking. I felt him so much! I would have died in my shoes if I had had to perform a song in this concert. But Jasper didn’t bow out and had our hearts when he said “Remember me for being brave” – and then he started to sing a decent version of “Holiday in Spain”, a song by the Counting Crows in a Dutch-Anglo version. A professor from the Netherlands, sitting close to me, sighed, touched. And Jasper deserves to be remembered for his ecosystem paper anyway!

Q: And the other memorable moment?

A: David Bosco! We know him as a French competition law expert, and also as the organiser of the hottest

ASCOLA conference ever, 2019 in Aix-en-Provence.⁷ But now, we got to know him as a guitarist and a singer with the air of a rockstar! He sang the jazz standard “All of me” and – as an encore – “Fly me to Würzburg” (a re-written funny version of that big standard). It was simply fabulous to hear him and that goes for the whole ASCOLA band! The music added to this perfectly organised event, giving it a very personal Bien/Becker-special flavour. We loved it! David Bosco, by the way, has a band at home and plays big concerts in the Marseille area! I still have “All of me” in my ears today.

Q: “Fly me to Würzburg” would have been better than taking the A-train to Würzburg, right?

A: Don’t get me started again...!

Q: And next year?

A: The ASCOLA family will meet in Chicago upon invitation by Spencer Waller! So excited!

⁷ *Podszun, Conference Debriefing (11): ASCOLA Conference, Aix-en-Provence, June 2019, [*\[kart.de/blog/2019/07/02/ascola-conference-aix-en-provence-2019/\]\(https://www.d-kart.de/blog/2019/07/02/ascola-conference-aix-en-provence-2019/\).*](https://www.d-</i></p></div><div data-bbox=)*