Freedom and Efficiency - Two Approaches to Antitrust Law

1. What is Antitrust Law about?
2. The Normative Dimension
3. Freedom and Efficiency
4. Application

Markus Rehberg LL.M. (Cambr.), Muenster University
http://www.MarkusRehberg.de

What is Antitrust Law about?

Case 1: The 7 main producers of vitamin-pills agree to jointly raise prices by 20%. Furthermore they split up the market in different regions. Every company is assigned a separate region with exclusive distribution rights.

Case 2: M is the world's biggest software company. It possesses a market share of 95% for operating-systems. M decides to reward a 20% rebate for its operating systems to all those computer-sellers who also install the company’s new browser software.

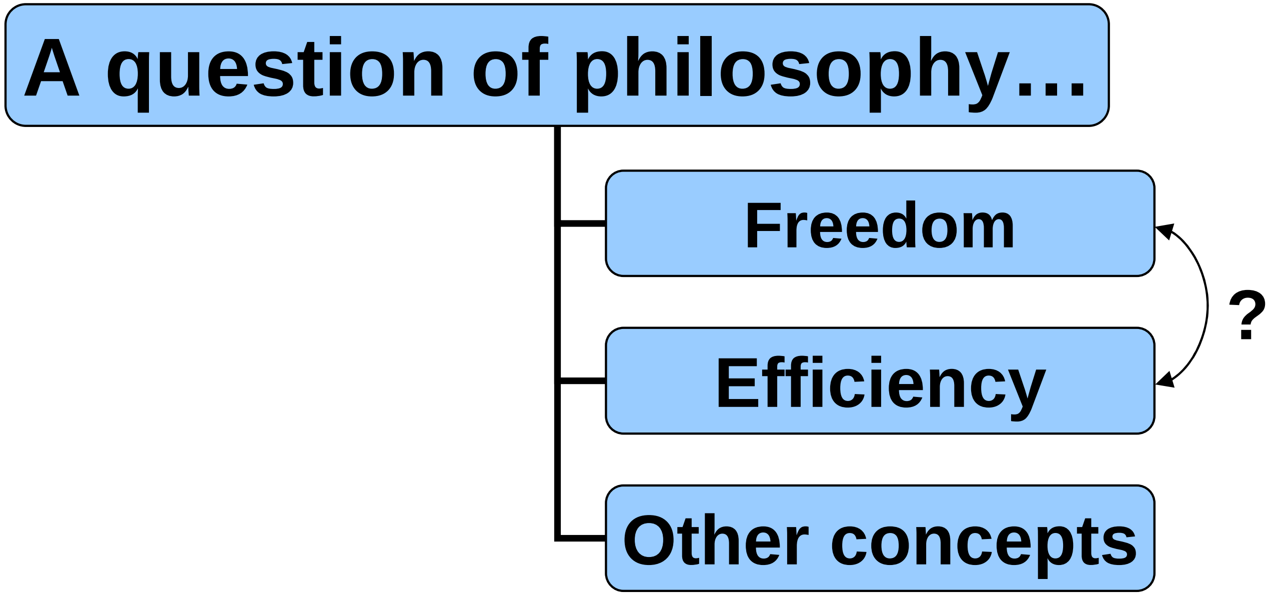
Getting an “idea”

Antitrust Law is about …

- undertakings
- commercial behavior
- competition
- consumers
- big money

The Normative Dimension

Problem: Which behavior should be banned?
What is “good”, what is “bad” competition?
Why?



Other concepts

Wide range of possibilities

↓

Depends on tradition, culture, religion etc.

↓

Specific Indonesian approach?

For Example: Socialism; "Fair Boxing Game"; Spiritualism; Anarchy and more …

Even true for countries with identical statutes – Example: German Civil Code in Japan

Islamic tradition? Others? Interesting field for research and innovation!

Various Functions, (Side-) Effects,

Competition Law has various positive (side-) effects, that can also serve as moral justification

social/political	**redistribution and spreading of wealth and power; protection of consumers and SMEs; equal opportunities…**
economical	**encourages R&D; enables price mechanism; leads to market integration (EU-goal)…**
other	**regional policy; issues of unemployment; decentra-lisation…**

Freedom - Foundations

Freedom: Still the most important but also most controversial topic of “western civilisation”

History

- Struggle against aristocracy
- Bills of rights
- French Revolution
- Modern Constitutions

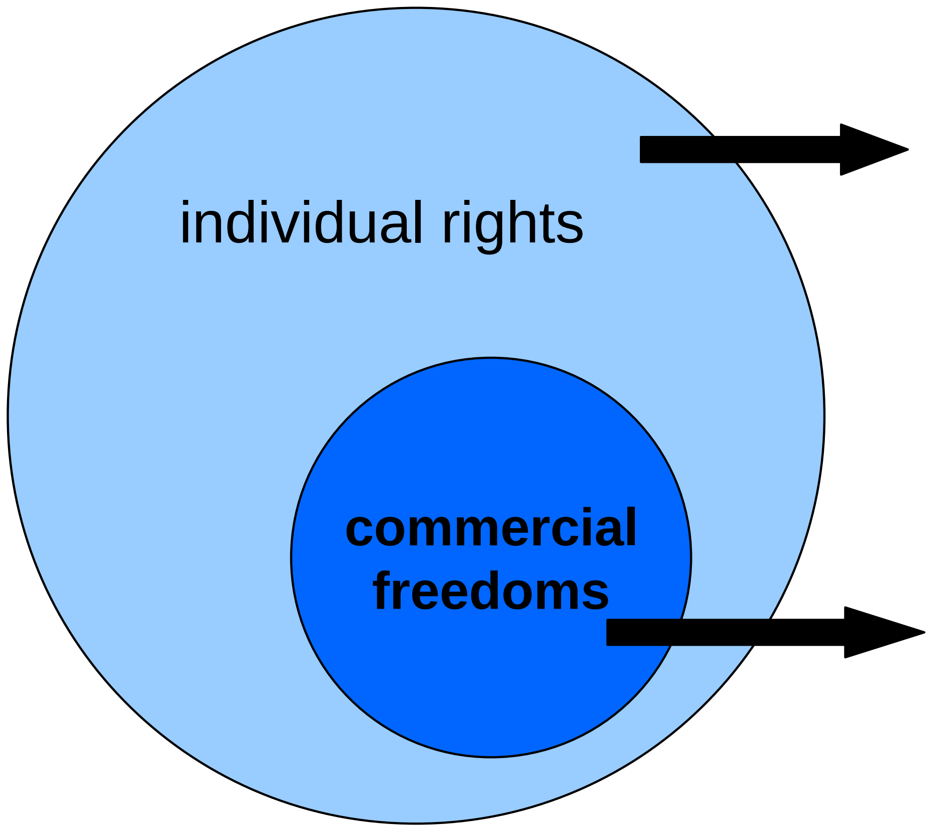
Philosophy

- GB: Mill; Locke
- D: Kant; Fichte
- F: Rousseau, Montesquieu
- Rawls, Habermas…

Situation today

- “International Bill of Human Rights”
- Regional agreements
- National constitutions
- …

Freedom - Aspects



- freedom of speech, press and expression; religion…
- freedom to vote; to demonstrate…
- equal protection, due process…

- freedom of
  - contract
  - ownership
  - establishment
  - competition

Efficiency

Historical foundation: Utilitarianism

Assumptions:

- given individual preferences
- wealth maximisation as goal

Utility <-> Preference

Efficiency Criteria

Pigou: Maximisation of overall wealth. Tendency for redistribution because of diminishing marginal returns.

Pareto: Situation A is more efficient than situation B if one person is better off and the others don’t end up worse than before.

Kaldor/Hicks: The benefiting person must be able to compensate others so that again no one ends up worse than before.

Application – Case 1

Case 1: The 7 main producers of vitamin-pills agree to jointly raise prices by 20%. Furthermore they split up the market in different regions. Every company is assigned a separate region with exclusive rights of distribution.

Monopolies and Freedom

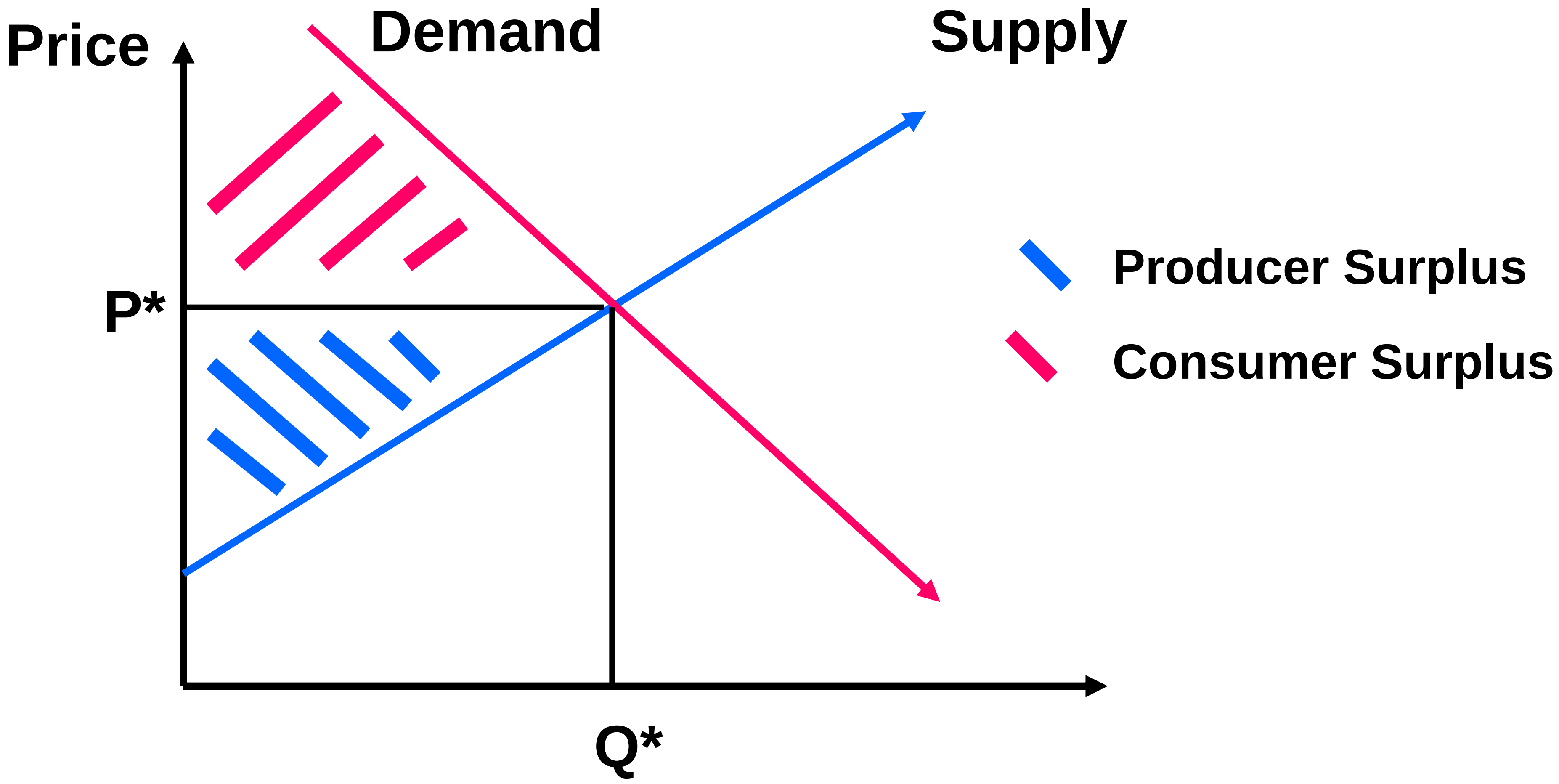
- One aspect of the case: creation of local monopolies
- Consumers can no longer choose. They have to accept the conditions dictated.
- Commercial freedoms are not unlimited. Companies should prosper because of the good quality and price of their product; not manipulation, market power etc.
- The state should take steps to ensure the freedom to chose; should protect diversity of options

monopolies are unwanted

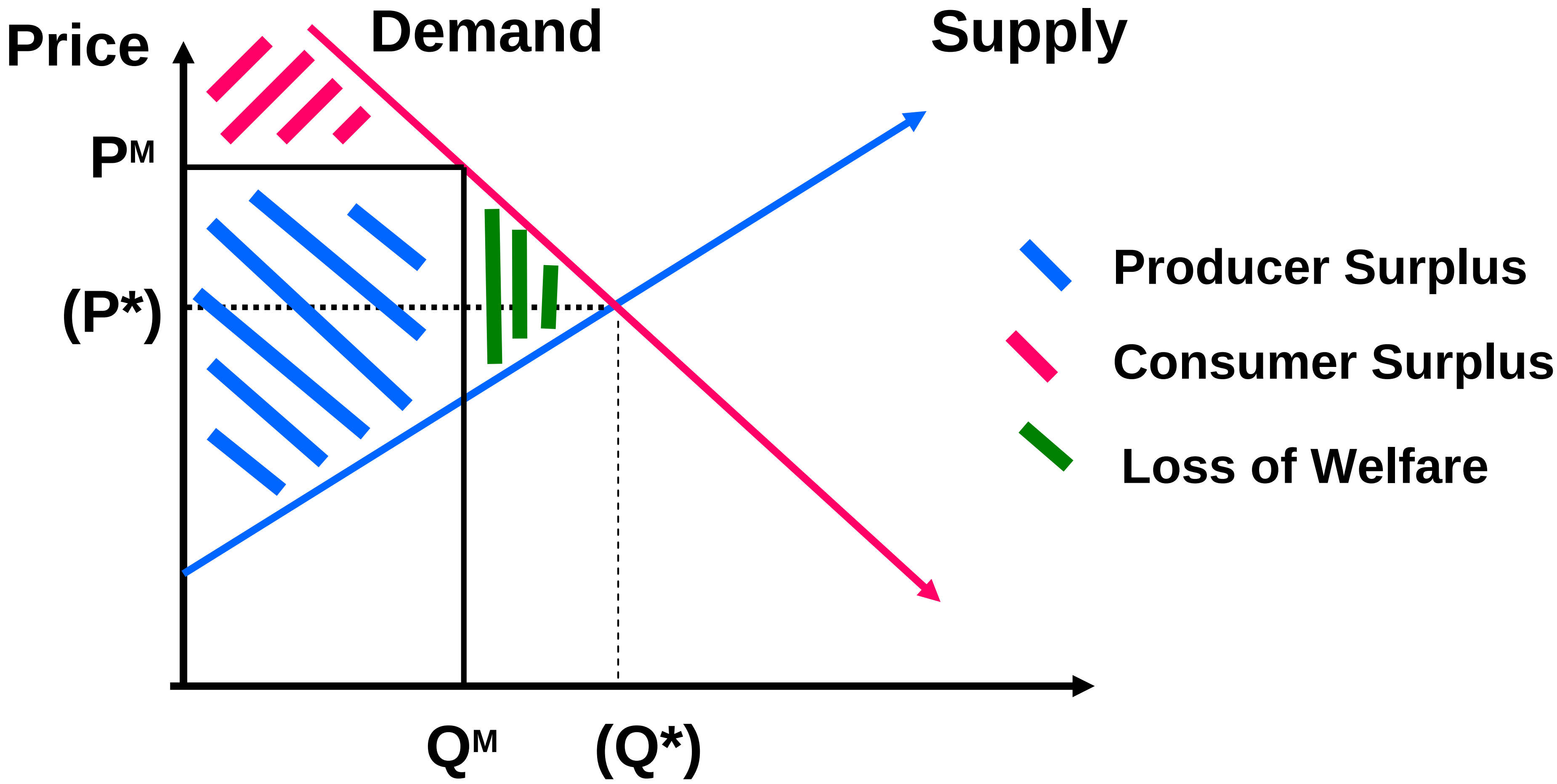
Monopolies and Efficiency

- monopolist will demand higher prices and produce less than under stiff competition
  - reason: monopolist can set the price as he wishes; whereas normal competitors take price as given
- this reduces welfare, especially on the side of the consumers, but also overall
- less incentives for effective production, general “slackness”

Perfect Competition



Monopoly


Price
Demand
Supply
PM
(P*)
QM
(Q*)
Producer Surplus
Consumer Surplus
Loss of Welfare

Application – Case 2

Case 2: M is the world's biggest software company. It possesses a market share of 95% for operating-systems. M decides to reward a 20% rebate for its operating systems to all those computer-sellers who also install the company’s new browser software.

Discussion of Case 2

Suggestions please…