



BUNDESKARTELLAMT

Notice no. 18/2007
of the Bundeskartellamt

on the Non-Prosecution of Cooperation
Agreements of Minor Importance¹

(“de minimis Notice”)

of 13 March 2007

¹ This notice replaces the Bundeskartellamt’s notice no. 57/80 of 8 July 1980 on the non-prosecution of cooperation agreements of minor importance, published in the Federal Gazette no. 133 on 23 July 1980.

A. Preliminary remark

- 1** The Bundeskartellamt can oblige undertakings or associations of undertakings to put an end to agreements, decisions and concerted practices which have as their object or effect the prevention, restriction or distortion of competition. It is within the Bundeskartellamt's discretion to initiate proceedings on the suspicion of such an infringement. The de minimis Notice lays down the discretionary principles establishing when proceedings are generally not initiated (on the grounds of insignificance).
- 2** The principles do not preclude the possibility of an infringement of Section 1 of the Act against Restraints of Competition (ARC) or Article 81 of the EC Treaty (EC). In particular, the Notice offers no statement about the consequences of the agreements under civil law.
- 3** Agreements exempted under Section 2 ARC or Article 81 (3) EC remain unaffected by this Notice.

B. Definitions

- 4** For the purposes of this notice, the terms "undertaking", "party to the agreement", "distributor", "supplier" and "buyer" shall include their respective affiliated undertakings (Section 36 (2) ARC).
- 5** Horizontal agreements, for the purposes of this notice, are agreements between undertakings which are actual or potential competitors in at least one of the markets affected (agreements between competitors). All other cases constitute non-horizontal agreements.

C. Exercise of discretion by the Bundeskartellamt

- 6** In the case of agreements between undertakings, decisions of associations of undertakings and concerted practices which fall under the scope of application of this notice, the Bundeskartellamt assumes that these generally only have an insignificant effect on competition, which does not warrant intervention by the competition authority.
- 7** The Bundeskartellamt shall generally refrain from initiating proceedings based on Section 1 ARC, Article 81 EC where

- 8** a) the combined market share of the undertakings involved in a horizontal agreement does not exceed 10 per cent in any one of the markets affected or
- 9** b) the market share of each of the undertakings involved in a non-horizontal agreement does not exceed 15 per cent in any one of the markets affected.
- 10** If it is uncertain whether a horizontal or non-horizontal agreement was concluded, the 10 per cent threshold applies.
- 11** If there are grounds for suspicion that competition in a market affected is restricted by a cumulative market foreclosure effect of agreements, the market share threshold under paras. 8 to 10 is set at 5 per cent in each case. A cumulative market foreclosure effect generally exists if 30 per cent or more of the affected market is covered by parallel networks of suppliers' or distributors' agreements for the sale of goods or offer of services, which have similar effects on the market.
- 12** In exceptional cases, even if the thresholds mentioned in paras. 8 to 11 are not attained, the Bundeskartellamt can arrive at the conviction that measures provided for under competition law are necessary. This comes into consideration, for example, if the restraint of competition is expected to cause a deterioration in trading conditions for suppliers or purchasers in the market as a whole (prices, terms, etc.). In such cases, however, the Bundeskartellamt shall generally refrain from initiating administrative fines proceedings and grant the undertakings an adequate transitional period to put an end to the practices objected to.

D. Hardcore Restrictions

- 13** This notice does not apply to horizontal or non-horizontal agreements which directly or indirectly, in isolation or in connection with other factors under the control of the contracting parties, have the following as their object or effect:
- 14** a) with regard to third parties, the fixing of prices or price elements when purchasing² or selling products or procuring or providing services;

² In the case of purchasing cooperations which have a combined market share of less than 15 per cent in the purchase and sales markets affected, the European Commission assumes that a violation of Article 81 (1) EC is unlikely or at least that clearance under Section 81 (3) EC is probable. The Bundeskartellamt is not bound by this estimation of the European Commission.

- 15** b) the restriction of production, sourcing or distribution of goods or services, in particular by means of sharing sources of supply, markets or customers.

Bonn, 13 March 2007

Dr Böge
President of the Bundeskartellamt

However, it also assumes that clearance is probable under Article 81 (3) EG or Section 2 ARC in the case of market shares below the thresholds quoted. See the Bundeskartellamt's information leaflet on cooperation possibilities for small and medium-sized companies, para. 38.