Case summary

Launch of an electronic trading platform for steel products (XOM Metals GmbH)

Sector: Trade in steel products
Ref: B5-1/18-001
Date of decision: 27.02.2018

I. Co-operations in machine & plant engineering and in the metal industry

At present the Bundeskartellamt receives an increasing number of enquiries from the machine & plant engineering sector and the metal industry concerning co-operations between producers or between producers and their business customers or suppliers. Often the focus of these co-operations are platform models designed to improve digital networking for market participants. This applies to business-to-business activities on the production markets (Industrial Internet of Things) as well as to endeavours to automate purchasing and sales processes.

The Bundeskartellamt generally supports co-operations which are likely to increase efficiencies and aim to improve and reduce the cost of products and production processes in these industries. Provided that plans for the co-operation are sufficiently substantiated, it is also willing to help the partners of a co-operation develop criteria which help to design their project in such a way that it does not infringe antitrust law. The Bundeskartellamt bases its assessment of co-operations on German and European competition law provisions which provide a whole range of exemption possibilities to exempt co-operations aimed at promoting innovation and increasing efficiency, including block exemption regulations. The assessment has to be market-based because competitive structures and processes can differ depending on the product and aim of the co-operation.

In its assessment the Bundeskartellamt has to ensure that the co-operation does not contain any excessive agreements or concerted practices which could harm competition in the long term to the detriment of open markets and consumers. Should a co-operation
despite these efforts be subsequently used for anti-competitive, price-fixing or customer agreements, the competition authorities reserve the right to initiate cartel administrative offence proceedings if necessary.

II. No objections to the planned steel trading platform XOM

The Bundeskartellamt has no objections to the business concept which Klöckner & Co SE, Duisburg ("KSE") presented to the Bundeskartellamt with regard to a business-to-business online platform for the sale of steel products. The Internet trading platform is to be launched and operated by XOM Metals GmbH ("XOM"), a fully owned subsidiary of KSE.

Both steel manufacturers and traders are to operate as suppliers on the platform. The suppliers also include competitors of either KSE or companies of the Klöckner group. With two subsidiaries KSE itself will also be active on the platform as a supplier of steel products.

The platform will enable a larger group of small and medium-sized suppliers and customers in the steel sector to gain access to digital distribution channels and find suitable contract partners. It should make order processing more efficient i.e. by making it possible to order products outside the opening hours of the suppliers' sales offices. Customers will have easy access to information about product availability as well as delivery periods and conditions and benefit from a structured overview of product offers as well as products already ordered by the customer.

In addition to the platform's potentially positive effects, the Bundeskartellamt had to examine whether the increased transparency in steel trading created by the platform does at the same time harm competition. This would be the case if the platform enabled the exchange of information on competition-relevant parameters, either between the suppliers represented on the platform or between the platform operator and the rest of the Klöckner group. European steel trade markets in general are already fairly concentrated and highly transparent. This makes them prone to coordinated market behaviour. Therefore, any additional transparency on these markets has to be analysed with special care.
In order to rule out coordination between suppliers via the platform, KSE has designed the platform in such a way that suppliers will not have access to data from which they can draw conclusions about their competitors' market behaviour. The platform has a technically secure and isolated “supplier area” which ensures that customer-specific data are only made accessible to the respective supplier/its customer but not to other suppliers. In order to minimize the danger of circumvention, existing and new customers have to register before logging in for the first time and a customer will have to identify itself with its VAT number in the registration process.

In order to counter the risk of increased market transparency, KSE has designed the platform in such a way that no specific information on prices or product availability will be visible to existing and new customers on the platform even outside the login area.

To prevent the exchange of any competition-relevant information or influence by Klöckner, KSE has also undertaken a whole range of measures to ensure that the platform remains a separate legal entity. In terms of organisational structure and personnel resources the platform has therefore been separated from KSE and its subsidiaries. Additionally, Klöckner has undertaken measures to prevent the exchange of anti-competitive information based on the legal right to information of a mother company towards its subsidiaries provided for under the German Limited Liability Companies Act (GmbHG).

The Bundeskartellamt considers the measures taken in the present case as sufficient and within its scope of discretion has decided not to raise any objections to the launch and operation of the online platform. This decision is based on an overall appraisal of all the measures taken by KSE. As such it does not set a precedent for how the Bundeskartellamt will assess limitations to exert influence and to exercise rights to information in other cases.