

**JOINT COMMENTS OF THE AMERICAN BAR ASSOCIATION
SECTION OF ANTITRUST LAW AND SECTION OF INTERNATIONAL LAW ON THE
BUNDESKARTELLAMT'S PUBLIC CONSULTATION VERSION OF
GUIDANCE ON REMEDIES IN MERGER CONTROL**

December 2, 2016

The views stated in this submission are presented jointly on behalf of the Section of Antitrust Law and the Section of International Law. They have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and therefore should not be construed as representing the policy of the American Bar Association.

The American Bar Association Sections of Antitrust Law and of International Law (together “the Sections”) appreciate the opportunity to submit these comments on the public consultation version of Guidance on Remedies in Merger Control (the “Guidance”) issued on October 7, 2016 by the Bundeskartellamt (the “BKartA”).¹ These comments reflect the Sections’ collective experience and expertise with respect to the application of antitrust and merger review laws in the United States, the European Union, Germany, and other jurisdictions and with important related international best practice, notably the International Competition Network’s recent Merger Remedies Guide.²

The Sections appreciate the substantial thought and effort reflected in the Guidance, the stated objective of which is to explain “the requirements that need to be met for the Bundeskartellamt to clear an otherwise problematic concentration subject to conditions and obligations (remedies).”³ The Sections commend the BKartA’s decision to hold a public consultation process⁴ on this important topic, as well as the BKartA’s recognition in the Guidance that where effective remedies are possible, the adoption of such remedies is preferable to prohibiting a transaction.⁵ The Sections offer these comments to share our experience and

¹ Bundeskartellamt, Guidance on Remedies in Merger Control (Version Public Consultation Oct. 7, 2016), available at http://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Leitlinien/Guidance%20on%20Remedies%20in%20Merger%20Control.pdf?__blob=publicationFile&v=2 (hereinafter “BKartA Guidance”).

² International Competition Network, ICN Merger Working Group, Merger Remedies Guide (2016), available at <http://www.internationalcompetitionnetwork.org/uploads/library/doc1082.pdf> (hereinafter “ICN Remedies Guide”). Additional relevant materials addressing international best practice are International Competition Network, Recommended Practices for Merger Notification Procedures (2002), available at <http://www.internationalcompetitionnetwork.org/uploads/library/doc588.pdf>, and OECD, Council Recommendation on Merger Review (2005), <http://www.oecd.org/daf/competition/mergers/40537528.pdf>.

³ BKartA Guidance, para. 1.

⁴ See Bundeskartellamt, News Release, “Public Consultation regarding Guidance on Remedies in Merger Control” (October 7, 2016), available at https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/AktuelleMeldungen/2016/07_10_2016_Public_Consultation_regarding_Guidance_on%20Remedies_in_Merger_Control.html.

⁵ BKartA Guidance, para. 7.

provide suggestions to enhance the effectiveness of the Guidance and its conformity with international best practice.

The views expressed herein are presented on behalf of the Sections of Antitrust Law and International Law. They have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the position of the Association.

Executive Summary

The Sections offer comments on two aspects of the Guidance: (i) the broad preference in favor of divestitures rather than behavioral remedies and (ii) the preference for the use of up-front buyers rather than a more flexible approach allowing for post-closing divestitures in appropriate cases.

With respect to behavioral remedies, some of the language employed in the Guidance suggests what the Sections believe is an overly narrow view of the circumstances in which behavioral remedies can be effective and, in some instances, creates uncertainty about when the BKartA would accept a behavioral remedy. For example, the Sections respectfully submit that the Guidance does not adequately distinguish between horizontal and vertical transactions, and do not agree with the contentions in the Guidance that behavioral remedies (1) impose unduly burdensome monitoring obligations on competition regulators, (2) are unacceptable where they involve the use of firewalls, and (3) cannot be employed where they would “subject the conduct of the companies involved to continued control.”

With respect to the use of up-front buyers, the Guidance expresses a “strong preference for divestment remedies in the form of up-front buyer solutions”⁶ and contemplates clearance only after the condition has been fulfilled. This approach is materially more restrictive than the approach followed by most jurisdictions, including the European Commission, which treats an up-front buyer solution as more practical in some situations, but indicates that those situations are the exception to the rule. The EC explains that its choice will depend on a number of factors, such as the risks involved in the case, which will affect what measures will be needed that enable the Commission to conclude with sufficient certainty that the commitment will be implemented.⁷ The Sections believe the EC approach is preferable in that it strikes an appropriate balance between the interests of the parties in getting the main transaction closed quickly and the interests of the regulators in getting adequate assurance that divestitures will be implemented successfully.

⁶ BKartA Guidance, para. 28.

⁷ Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (2008/C 267/01), at para. 53 (hereinafter the “EC Remedies Notice”).

I. The Treatment Of Behavioral Remedies

The Guidance expresses a “clear preference for divestments” over behavioral or conduct remedies. While this preference is often expressed by competition law regulators, some of the language employed in the Guidance appears to the Sections to express an overly narrow view of the circumstances in which behavioral remedies can be effective and, in some instances, creates uncertainty about when the BKartA would accept a behavioral remedy.⁸ In particular, the Guidance states that behavioral remedies (1) should generally be avoided as they impose unduly burdensome monitoring obligations on competition regulators; (2) are unacceptable where they involve, in whole or in part, the use of firewalls (sometimes referred to in the Guidance as “Chinese Wall commitments”); and (3) cannot be employed where they would “subject the conduct of the companies involved to continued control.” Each of these issues is addressed in greater detail below.

(1) Monitoring Obligations

The Guidance notes that “a major advantage” of structural remedies over behavioral remedies is that (once implemented) the former “do not require any further monitoring or intervention by the competition authority.”⁹ The Sections agree that completed divestiture remedies, in general, require less ongoing monitoring than behavioral remedies. In many divestitures, however, the parties enter into shared services arrangements and must continue to report to competition enforcers following the transaction. Thus, some divestitures do require ongoing monitoring. Additionally, and as discussed further in section (2) below, the monitoring obligations involved with behavioral remedies increasingly have been successfully outsourced to independent third party firms. In the Sections’ view, if a behavioral remedy can address the competitive concerns identified by a competition agency and can do so without imposing any material monitoring burden on the competition agency going forward, the mere fact that some level of monitoring may be required (at the parties’ expense) should not disqualify a behavioral remedy from consideration. This is particularly important in transactions where behavioral remedies may obviate the need to divest assets that likely would generate efficiencies gains in the hands of the merged firm.

The possibility that an effective remedy may involve some form of monitoring is explicitly recognized by the International Competition Network’s *Recommended Practices for Merger Notification Procedures*. *Recommended Practice XI.D* provides that “[a]ppropriate means should be provided to ensure implementation, monitoring of compliance, and enforcement of the remedy,” and the Commentary to this *Recommended Practice* elaborates that “[t]he remedy should contain adequate means of ensuring its implementation and/or monitoring compliance.”¹⁰

⁸ Compare ICN Remedies Guide, section 3.2 and annex 2 (discussing use of non-structural remedies and identifying various forms of such remedies).

⁹ BKartA Guidance, para. 22.

¹⁰ International Competition Network, *Recommended Practices for Merger Notification Procedures*, at *Recommended Practice XI.D*, and Comment 1 to *Recommended Practice XI.D* (hereinafter the “*Recommended Practices*”) (emphasis added). See also ICN Remedies Guide, section 4.4.1.

The Guidance deals at length with the important role that monitors and trustees play in implementing both structural and combined structural/behavioral remedies in nearly all transactions that require a remedy.¹¹ The Sections do not see a basis to otherwise discriminate against the use of a trustee in a monitoring role in the instance of a purely behavioral remedy. We also note that no such distinction is raised in the ICN’s *Recommended Practices*.

(2) Firewall Remedies

The Guidance states that “‘Chinese-Wall’ commitments are [also] not suitable because their implementation within a group of companies cannot be effectively monitored by a competition authority,”¹² that remedies such as “the obligation to implement so-called ‘Chinese walls’ to protect competitors’ business secrets” are “not effective,”¹³ and that “the obligation to implement firewalls to protect information is not an acceptable remedy.”¹⁴

The Sections respectfully disagree with these statements. In appropriate circumstances, firewall remedies can be effective in resolving competitive concerns raised by M&A transactions, particularly in vertical or joint venture transactions. Firewalls can efficiently and effectively prevent the sharing of competitively-sensitive information between, for example, joint venture partners or the upstream and downstream segments of a vertically-integrated business.

Such remedies have been effectively used with regularity for more than two decades.¹⁵ The European Commission has cleared numerous transactions relying in whole or in part on firewall remedies,¹⁶ including most recently its approval in July 2016 of Airbus Safran Launchers’ acquisition of Arianespace, following Phase II review, in which the exclusively behavioral remedy required the merging parties to:

- Implement firewalls between Airbus and Arianespace to prevent information flows that could harm competitors. In particular, the companies committed not to share information about third parties with each other save for what is normally required for the day to day operation of the business.
- Put in place measures restricting employees' mobility between the companies.

¹¹ BKartA Guidance, paras. 126-155.

¹² *Id.* para. 26.

¹³ *Id.* para. 70.

¹⁴ *Id.* para. 85.

¹⁵ For a notable early example, *see, e.g.*, In re Raytheon Co., 122 F.T.C. 94 (1996) (United States Federal Trade Commission), available at <https://www.ftc.gov/enforcement/cases-proceedings/9610057/raytheon-company>.

¹⁶ *See, e.g.*, Airbus/Safran JV, Case COMP/M.7353, Commission decision of November 26, 2014; Amer/Salomon, Case COMP/M.3765, Commission decision of October 12, 2005; and Areva/Urenco/ETC JV, Case COMP/M.3099, Commission decision of October 6, 2003. *See also* ICN Remedies Guide, annex 2.

- Provide for an arbitration mechanism to be included in all their future non-disclosure agreements signed with third parties, to ensure the effective implementation of the firewalls.¹⁷

The EC concluded that these behavioral remedies would “address the Commission’s concerns in full as they will prevent any exchange of sensitive information between Airbus and Arianespace to the detriment of competing satellite manufacturers and launch service providers.”¹⁸

The monitoring concerns expressed at paragraphs 26 (*i.e.*, that such remedies “cannot be effectively monitored by a competition authority”) and 85 (*i.e.*, that “they would require a level of monitoring that cannot be achieved in practice”) of the Guidance can be addressed using means that do not impose any material burden on the BKartA. Third-party remedy monitors can be employed, at the parties’ expense, to oversee the implementation of, and regularly audit the performance of, a firewall remedy. This approach formed the backbone of the remedies imposed, for example, by the United States Federal Trade Commission and the Canadian Competition Bureau in the cola bottling transactions.¹⁹ Notably, the firewall obligations — and their attendant supervision by an external monitor — were imposed with a twenty-year duration, which indicates that these two enforcement agencies were not concerned about the efficacy of a lengthy behavioral remedy. Similarly, European firewall remedies were subject to review by an outside monitor in, for example, the *Areva/Urenco/ETC JV* transaction.²⁰

Another technique which has been used, in addition to the appointment of a monitor, is the inclusion of private arbitration clauses in a remedy order allowing affected third parties (for example, customers, suppliers or competitors) to privately arbitrate to enforce the terms of a remedy.²¹

¹⁷ European Commission, News Release, “Commission approves acquisition of Arianespace by ASL, subject to conditions” (July 20, 2016), available at <http://europa.eu/rapid/press-release_IP-16-2591_en.htm>.

¹⁸ *Id.*

¹⁹ *See, e.g.*, United States Federal Trade Commission, News Release, “FTC Puts Conditions on PepsiCo's \$7.8 Billion Acquisition of Two Largest Bottlers and Distributors” (February 26, 2010), available online at <<https://www.ftc.gov/news-events/press-releases/2010/02/ftc-puts-conditions-pepsicos-78-billion-acquisition-two-largest>>; United States Federal Trade Commission, News Release, “FTC Puts Conditions on Coca-Cola's \$12.3 Billion Acquisition of its Largest North American Bottler” (September 27, 2010), available at <<https://www.ftc.gov/news-events/press-releases/2010/09/ftc-puts-conditions-coca-colas-123-billion-acquisition-its>>; and Canadian Competition Bureau, News Release, “Competition Bureau Requires Remedy in Coca-Cola Acquisition” (September 27, 2010), available at <<http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03290.html>>.

²⁰ *Areva/Urenco/ETC JV*, Case COMP/M.3099, Commission decision of October 6, 2003, at para. 234. A monitor was also used in *Airbus/Safran*, *supra*.

²¹ *See, e.g.*, Statement of the United States before OECD Working Party No. 3 on Co-Operation and Enforcement, Hearing on Arbitration and Competition (Oct. 20, 2010) (summarizing US approach to arbitration and mediation and collecting authority on arbitration in agency consent decrees and orders), available at <https://www.ftc.gov/sites/default/files/attachments/us-submissions-oecd-and-other-international-competition-fora/1010arbitrationcompetition.pdf>. A similar approach has been used by the Canadian Competition Bureau, *see*,

Neither of these instances imposed any material enforcement burden on a competition agency. In the Sections' view, each such scenario displays an alternative to the position expressed in the Guidance that "monitoring of firewall measures would require the competition authority to intervene excessively in the companies' internal processes and would therefore be disproportionate."²² To the extent that there is any limited intervention in the "companies' internal processes," it should be noted that those same companies had voluntarily agreed to abide by the terms of the remedy and that the alternative — a prohibition or an unnecessary sale of assets — would likely constitute a more "excessive," and less welcomed, intervention in those companies' activities.

The Guidance also states that firewall remedies cannot be effective since "[c]ontacts and exchanges of information within one and the same corporate group are widespread and common on a daily basis in almost every industry."²³ The Sections note, however, that nearly all companies possess, and presumably in most instances effectively protect, a wide range of confidential information internally by limiting its access to only select employees on a "need-to-know" basis and through the use of internal firewalls, protected files and computer servers, and non-disclosure agreements. Such information could range from critical intellectual property or know-how, to confidential negotiations with key customers or suppliers, to highly confidential takeover negotiations within public companies. In none of these instances does the mere fact that exchanges of information happen on a daily basis prevent a company from protecting *certain* information from disclosure within or outside the company. The same approach can be taken in the instance of a firewall remedy. Given that violation of such a remedy could involve significant financial or other regulatory penalties imposed on a company, and employment-related and professional sanctions on individuals, a strong case exists for the efficacy of firewall remedies.

In the case of newly-created joint ventures in particular, it is not difficult to ensure from the outset that staff be recruited from businesses with which the parent entities do not compete, that the joint venture use information technology (IT) systems entirely separate from those of the parent entities, and that joint venture personnel not receive access to the IT systems and other data of the parent entities.

(3) Continuous Control

The Guidance states that behavioral remedies "must not subject the conduct of the companies involved to continued control."²⁴ The Sections understand that this requirement

e.g., Commissioner of Competition v. United Grain Growers Limited, CT-2002-001; Canada (Commissioner of Competition) v. Trilogy Retail Enterprises L.P., [2001] C.C.T.D. No. 20.

²² BKartA Guidance, para. 85.

²³ *Id.*

²⁴ *Id.* para. 21.

arises from domestic legislation in Germany²⁵ and the jurisprudence of domestic courts interpreting this legislation.²⁶ However, the Guidance also identifies a range of acceptable remedies — such as access remedies, licensing remedies, and purchasing or supply contracts — that would appear, at least to an outside observer unfamiliar with German law, to involve some form of “continued control” over the conduct of the companies directly affected by the remedy.

The Sections therefore respectfully suggest that the Guidance be expanded to clarify in greater detail the concept of “continued control” under German legislation and jurisprudence. This will allow merging parties to better understand, *ex ante*, the types of remedies that may be acceptable in a given transaction, and will facilitate the realization of the Guidance’s goals to “provide[s] the business community with detailed and practicable guidance” and “assist companies in their efforts to prepare commitments that are acceptable.”²⁷

II. Up-front Buyers vs. Deferred Divestiture

In the Guidance, the BKartA articulates a “strong preference for divestment remedies in the form of up-front buyer solutions.”²⁸ The BKartA defines such a solution as a clearance, under the condition precedent that the merger can be implemented only after the up-front buyer condition has been fulfilled, “which usually occurs when the divestment business is sold and transferred to a suitable buyer.”²⁹ The BKartA furthermore explains that it intends to accept conditions subsequent and obligations only in “exceptional cases,”³⁰ but without explaining which cases could qualify for such a solution.

With these statements, the Sections believe the BKartA departs from the international mainstream. The ICN Merger Remedies Guide states: “In most merger remedies, competition authorities require that the terms of the Remedy Order (including the identification of a divestiture package) be determined prior to clearing a merger, but allow the identification and approval of a suitable purchaser to occur following closing of the merger.”³¹ Similarly, the

²⁵ Gesetz gegen Wettbewerbsbeschränkungen (Act against Restraints of Competition) (“GWB”) in the version published on 26 June 2013 (Bundesgesetzblatt I p. 1750, 3245), as last amended by Article 2 of the law of 26 July 2016 (Bundesgesetzblatt I p. 1786 no. 37), at section 40(3), sentence 2.

²⁶ See, e.g., BGH (Federal Court of Justice), KVR 5/05 – DB Regio/üstra, para. 58 et seq. (2006).

²⁷ See the comments of Andreas Mundt, President of the Bundeskartellamt, in Bundeskartellamt, News Release, “Public Consultation regarding Guidance on Remedies in Merger Control” (October 7, 2016), available at <https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/AktuelleMeldungen/2016/07_10_2016_Public_Consultation_regarding_Guidance_on%20Remedies_in_Merger_Control.html>.

²⁸ BKartA Guidance, para 28.

²⁹ *Id.*

³⁰ *Id.* para. 29.

³¹ ICN Remedies Guide, section 3.3.2 (addressing timing of divestiture and identifying various scenarios, leading with “post-closing divestiture”).

European Commission’s 2008 Merger Remedies Notice³² adopted a more flexible approach than the BKartA’s. In particular, the Commission explained the situations in which an up-front buyer solution would be more practical, thereby suggesting that up-front solutions are the exception to the rule. The EC explained that its choice would depend on a number of factors, such as the risks involved in the case and therefore the measures that would enable the Commission to conclude with the requisite degree of certainty that the commitment will be implemented.³³ This in turn would depend on the nature and the scope of the business to be divested, the risks of degradation of the business in the interim period up to divestiture, and any uncertainties inherent in the transfer and implementation, in particular the risks of finding a suitable purchaser.³⁴ This case-by-case approach appears to be confirmed by the Commission’s practice over the past ten years. The Commission has used up-front buyer or fix-it-first solutions in a minority of cases, although recently it seems to have a tendency to use these tools more often.³⁵ The BKartA, in contrast, leaves much less room, if any room at all, for a case-by-case analysis of the circumstances at hand.

In addition to articulating a preference for up-front solutions, the BKartA also suggests a more restrictive implementation of such a solution. Under the EC’s definition an up-front buyer means that the parties may not complete the notified concentration before having entered into a “binding agreement with a purchaser for the business, approved by the Commission”³⁶; the BKartA Guidance would be more limiting by ordinarily requiring that the “divestment business is sold and transferred to a suitable buyer.”³⁷ In other words, when requesting an up-front solution, the Commission requires only the signing of the divestiture deal, while the BKartA also requires its closing – which is a more time-consuming and complex exercise for the merging parties. Because the divestiture itself will often require antitrust clearance in one or more jurisdictions (and not only in Germany) before it will be permitted to close, the closing of the original transaction is likely to face supplemental delays due to waiting periods that necessarily will defer the divestiture and therefore the main transaction from closing.

The BKartA explains its preference mainly on the basis of certainty considerations. An up-front buyer solution would prevent anticompetitive effects of a merger from occurring in the market while the divestiture process is still ongoing.³⁸ Furthermore, an up-front buyer solution would minimize the risk of having to unwind the concentration in the event that the merging

³² EC Remedies Notice, *supra* note 7.

³³ *Id.* para 53.

³⁴ *Id.* para. 55.

³⁵ Dominique Long and Catherine Wylie, CPI October 2016, Rising tide of “Fix-it-first” and “Up-front Buyer” remedies in EU and UK merger cases, available at <https://www.competitionpolicyinternational.com/rising-tide-of-fix-it-first-and-up-front-buyer-remedies-in-eu-and-uk-merger-cases/>.

³⁶ EC Remedies Notice, para .50.

³⁷ BKartA Guidance, para. 28.

³⁸ *Id.*

parties fail to implement the divestiture.³⁹ Finally, an up-front buyer solution would create a strong incentive for the merging parties to proceed with the divestment as soon as possible.⁴⁰ Against this background, conditions subsequent have been found to be acceptable only in exceptional cases,⁴¹ even though they may appear to be more preferable from the parties' point of view. But do these observations necessarily apply in every case?

While all of these explanations seem to make sense from an authority's perspective, the BKartA does not appear to factor in that, from an administrative law perspective, an authority must apply the principle of proportionality when choosing between conditions precedent and conditions subsequent. In applying this principle, the authority must weigh the interests of both sides on a case-by-case basis, *i.e.*, weigh the interests of the merging parties against the interest of competition policy.⁴² Such an assessment is required by the rule of law. By stating a clear preference for up-front solutions in the Guidance, the BKartA *de facto* pre-empts the result of the required balancing without leaving adequate room for the assessment of the potential interests of the parties and the particularities of the case at hand.

For example, in the 2005 Merger Remedies Study conducted by the Commission⁴³, some interviewed sellers and purchasers pointed out that requiring an up-front buyer could produce unwanted negative side-effects on the overall effectiveness of the remedy.⁴⁴ As the consummation of the notified transaction depends upon the parties finding a suitable purchaser, the seller might be tempted to carry out the sales process in an inordinate rush.⁴⁵ They noted that, in seeking to present a purchaser too quickly, the seller might fail to pursue an adequate sales procedure, and grant too little time to the purchaser to review the information regarding the divested business.⁴⁶ This may lead to the purchaser's being unable to carry out a proper due diligence, or end up proposing a problematic purchaser that may ultimately lead to delays in the purchaser approval process, which could in turn affect the future viability and competitiveness of the divested business.⁴⁷ Other interviewees stated that that they would have preferred to refrain

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* para. 29.

⁴² Bundesgerichtshof of 24. June 2003 – KVR 14/01 – Habet/Lekkerland.

⁴³ European Commission, DG COMP Merger Remedies Study of October 2005, Public Version, http://ec.europa.eu/competition/mergers/legislation/remedies_study.pdf (hereinafter “Merger Remedies Study”).

⁴⁴ Merger Remedies Study, at 107.

⁴⁵ *Id.*

⁴⁶ *Id.* at 108.

⁴⁷ *Id.*...

from undertaking the notified transaction altogether, rather than offering an up-front buyer provision, because they considered the costs of such a provision too high.⁴⁸

While up-front and fix-it-first-remedies may be preferable where there is a risk that an appropriate buyer for a divestment business may be difficult to find, there are clearly also situations in which a condition subsequent is preferable. The Guidance does not leave much room for such an assessment, which contrasts with the BKartA's decisional practice to perform a balancing of the interests of both sides. Although the authority mostly concluded that an up-front solution is more feasible,⁴⁹ the BKartA allowed divestitures under a condition subsequent in numerous cases.⁵⁰ This suggests that the black-and-white preference for up-front solutions articulated in the Guidance is not confirmed by case law. Against this background, it appears unnecessary to articulate a clear preference for up-front solutions in the Guidance. The Sections respectfully suggest that the BKartA take the opportunity to explain how the authority intends to apply the principle of proportionality when discussing with the merging parties up-front solutions versus conditions subsequent. In this context the BKartA could, for example, explain how potential concerns can be alleviated by using a divestiture trustee or by applying hold-separate measures, and the role which financial investors could play.

Conclusion

The Sections appreciate the opportunity to comment on the Guidance. The Sections would be pleased to respond to any questions that the BKartA may have regarding these comments or to provide any additional comments or information that may assist the BKartA in finalizing the Guidance.

⁴⁸ *Id.*

⁴⁹ *See, e.g.*, BKartA, B8-93/07, para. 43 – RWE/Stadtwerke Krefeld Neuss (2007); BKartA, B2-333/07, p. 138 – Tengelmann/EDEKA (2008); BKartA, B8-163/08, p. 19 – SaarFerngas/Energie Südwest (2009); BKartA, B2-52/10, p. 149 – EDEKA/trinkgut (2010).

⁵⁰ *See, e.g.*, BKartA, B5-1003/06, para. 135 – Atlas Copco/ABAC (2007); BKartA, B9-125/07, para. 164 – Globus/Distributa (2007); BKartA, B8-96/08 – EnBW/EWE (2009); BKartA, B1-243/08 – Werhahn (2009).