The Bundeskartellamt in Bonn
Organisation, Tasks and Activities
Dear Reader,

Competition is the cornerstone of the German social market economy which is founded on values that are elementary to our society: "Freedom, Initiative and Responsibility". Today, the fact that competition leads to the best overall economic results is undisputed in most societies around the globe.

Just as in sports, however, economic competition only works if there are rules which everyone has to observe. In Germany, the Act against Restraints of Competition (ARC) sets these rules and provides the legal framework within which the market participants can operate. Since 1958 it has been the task of the Bundeskartellamt to enforce the ARC and in doing so to protect competition in Germany.

Anyone who does not have regular contact with the Bundeskartellamt may not be aware of our daily work. Does the Bundeskartellamt examine every merger? What action does the Bundeskartellamt take against cartels? What possibilities does the Bundeskartellamt have to impose penalties? How does the Bundeskartellamt find out about violations of competition law?

This brochure aims to provide answers to these and many more questions. It also provides practical examples to illustrate the rather theoretical background information. Only if the general public is convinced of the benefits of competition can our endeavours to protect competition be successful in the long run.

Therefore, it is a special concern of mine to make the work of the Bundeskartellamt as transparent as possible in order to encourage discussion on competition issues beyond the professional stakeholders.

I would be glad if this brochure could contribute to achieve this aim and inspire you to take a closer look at competition issues. More detailed information is also available in our leaflets, activity reports, case summaries and decisions which you can find on our website at www.bundeskartellamt.de.

I wish you pleasant reading!

Yours sincerely

ANDREAS MUNDT
PRESIDENT OF THE BUNDESKARTELLAMT
Content

I. Protection of Competition ................................................................................................................... 6

1. Advantages of competition as an organising principle ................................................................. 6
2. Act against Restraints of Competition ("ARC") ............................................................................. 7
3. European competition law .............................................................................................................. 9

II. The Bundeskartellamt ..................................................................................................................... 10

1. Tasks of the Bundeskartellamt ....................................................................................................... 10
2. Other competition authorities ....................................................................................................... 10
3. Importance of the independence of the Bundeskartellamt ............................................................ 12
4. Organisation of the Bundeskartellamt ............................................................................................ 13

III. Cartel Prosecution .......................................................................................................................... 14

1. What is a cartel? ............................................................................................................................... 14
2. Ban on cartels .................................................................................................................................. 15
3. Exempted agreements ..................................................................................................................... 15
4. Possible sanctions and legal protection ......................................................................................... 17
5. Course of action taken by the Bundeskartellamt against cartels .................................................... 17
6. Prohibition of cartels – case practice ............................................................................................ 18

IV. Merger Control ................................................................................................................................ 21

1. What is a merger? ............................................................................................................................ 21
2. Mergers examined by the Bundeskartellamt .................................................................................... 22
3. European merger control ............................................................................................................... 22
4. Sequence of a merger control proceeding ..................................................................................... 24
5. Grounds for prohibiting a merger ................................................................................................ 25
6. Legal protection and ministerial authorisation ............................................................................. 26
7. Dissolution of mergers ................................................................................................................... 27
8. Special provisions for certain sectors of the economy .................................................................... 27
9. Mergers – case practice .................................................................................................................. 28
V. Control of Abusive Practices by Dominant Companies............................................... 30

1. What is market dominance? ......................................................................................... 30
2. Abusive conduct by dominant companies ................................................................. 30
3. Possible sanctions and legal protection ....................................................................... 31
4. Control of abusive practices – practical examples ....................................................... 32

VI. Sector Inquiries........................................................................................................... 34

1. Comprehensive market studies.................................................................................. 34
2. Sector inquiries – practical example ........................................................................... 34

VII. Instruments of Competition Law Enforcement ....................................................... 36

VIII. Exemption Areas under the ARC ......................................................................... 38

IX. Legal Protection in Award Procedures for Public Contracts......................................... 39

1. Scope of application of public procurement law ....................................................... 39
2. Award procedures ....................................................................................................... 41
3. Review procedures ...................................................................................................... 41

X. International Co-operation between the Competition Authorities............................. 42

1. European Competition Network ................................................................................. 42
2. European Competition Authorities ............................................................................. 43
3. International Competition Network ............................................................................ 44
4. OECD and UNCTAD ..................................................................................................... 45

XI. The Official Seat of the Bundeskartellamt in Bonn .................................................... 46

XII. Further Information .................................................................................................. 48

1. Information leaflets and notices of the Bundeskartellamt ............................................. 48
2. Activity reports of the Bundeskartellamt ....................................................................... 49
3. Addresses ..................................................................................................................... 50
4. Organisation chart of the Bundeskartellamt ................................................................. 51
I. Protection of Competition

1. Advantages of competition as an organising principle

In a free market economy there is no central body, e.g. the State, which plans which goods are to be produced and sold at which price. In a free market economy the supply of and demand for a product or service come together in the market place. This free interaction enables prices to be determined, which in turn perform an important steering function for the exchange of goods and services. The prices show the suppliers the areas in which they can best use their production factors, e.g. machines, most efficiently. They also indicate to customers how they can cover a certain requirement as economically as possible.

Competition means that different companies can compete with one another for the favour of their customers or their suppliers. Customers or suppliers can switch to another company offering or buying comparable services at a better price or at better conditions. However, the competition principle, i.e. protecting competition, is not an end in itself. It is the pressure created by competition which induces suppliers to drop (or at worst moderately raise) the prices of their products or services, improve quality and further develop their products technically. Consumers, in particular, benefit from a competitively organized market because they can pick from a wide range of offer the goods and services which best match their expectations (e.g. good quality, appropriate price-performance ratio, good service).

Companies which offer their customers good services at reasonable prices, in comparison to other companies, can achieve higher turnover and profits in a competitively organised market.
In a competitive situation, however, poor service or excessive prices are “punished” by losses or even elimination from the market. In his book “The Wealth of Nations” Adam Smith, the founder of classical economics, coined the metaphor of the “invisible hand”: Each company aiming to maximise its profits has to respond to the wishes and preferences of the opposite side of the market. Competition can therefore rightly be described as the driving force of the market economy.

Effective competition also prevents the creation or strengthening of power positions which are too influential in society and politics.

An economic system which is based on the competition principle and the resulting incentive mechanisms already mentioned, is the best for achieving economic aims, i.e. prosperity and technical advancement.

2. Act against Restraints of Competition (“ARC”)

Competition leads to considerable benefits for the economy as a whole. All market players – producers, traders, service providers and, in particular consumers – benefit from price and cost reductions, improvements in quality, possibilities of choice or technical advancement. However, for the individual entrepreneur who has to compete with other companies in his own market, competition is often inconvenient. Therefore there are always incentives for companies to impede or eliminate competition. These can, for example, take the form of agreements with competitors, abusive practices or the acquisition of other companies, which can in the extreme case completely eliminate competition. In order to prevent such restraints of competition and to safeguard the benefits of competition, a legal framework is required which limits economic activity wherever it
impinges on the freedom of action of others and competitive structures are no longer main-
tained.

In Germany the Act against Restraints of Com-
petition (“ARC”) provides the legal framework
for this. With the fight against cartels, merger
control and the control of abusive practices as
its tools, the ARC serves to maintain competitive
structures and to prevent anticompetitive
practices by companies and their negative effect
on the market opportunities of other compa-
nies. Because of the central importance of com-
petition the ARC is also referred to as the “Basic
Law of the Market Economy”.

Its object of protection is competition in the
Federal Republic of Germany. Competition in
Germany is to be protected against all kinds
of restraints, irrespective of whether they are
causd within or outside Germany (Section
130 (2) ARC). Although the ARC applies to all
companies, it contains certain special provisions
for some sectors, such as agriculture (see Chap-
ter VIII.).

Since 1 January 1999 the ARC has also protected
bidders in the award of public contracts (see
Chapter IX.).

The ARC came into force on 1 January 1958. It
has been amended seven times since then. The
second amendment in 1973 is of particular
significance in terms of competition policy
because of the introduction of merger control.
The last amendment of 1 July 2005 became
necessary because of extensive changes to
European law introduced by Council Regulation
(EC) No. 1/2003 (“Regulation on the implemen-
tation of the rules on competition law”). These
changes made it necessary to bring the ARC into
line with European law. The necessary reforms
were implemented into German law with the
7th Amendment to the ARC. At the end of 2007
a further amendment to the ARC came into
force. In order to more effectively combat abu-
sively excessive prices in the energy sector, a
new provision (Section 29 ARC) was introduced.
The prohibition of sales below cost price in the
food sector was also tightened. The validity of
these amendments to the ARC is limited to the
end of 2012. In August 2011 the Federal Ministry
of Economics and Technology published a con-
cept paper on an 8th amendment to the ARC
with the aim to further improve the competi-
tion law framework, in particular in the areas of
merger control, control of abusive practices,
provisions on fines and the procedure used in
the prosecution of cartel offences.
3. European competition law

The aim of the European Union is to establish a Common Market which allows for, among other things, the free movement of goods between the Member States. This aim will be undermined if companies engage in private market-sharing agreements and other restrictive practices when state barriers to trade have been removed. To prevent this happening and at the same time to create uniform conditions for companies, rules to combat cartels (Art. 101 TFEU) and to control abusive practices (Art. 102 TFEU) were incorporated into the Treaty on the Functioning of the European Union (TFEU). These were complemented by various regulations, notices and recommendations of the European Council and the European Commission. In addition the Merger Control Regulation ("EMR") was introduced at European level in 1990 as an instrument for examining concentrations. The European Commission has exclusive competence for applying the MCR (see Chapter IV.3.).

With the introduction of Regulation (EC) No. 1/2003 in May 2004 the Bundeskartellamt, as well as the other EU competition authorities, has been granted far-reaching competencies for the application of Art. 101 TFEU and Art. 102 TFEU in the prosecution of cartels and control of abusive practices. The Bundeskartellamt applies these European rules in addition to the provisions of the ARC if the anticompetitive practices are likely to affect trade between the Member States (see Chapters III.2. and V.1.). The rules in the ARC and the TFEU are fundamentally very similar.

Chapter X.1. illustrates under which circumstances the European Commission or the Bundeskartellamt (or another national competition authority) is competent for examining a cartel or abusive practices case under European law.
II. The Bundeskartellamt

The Bundeskartellamt is an independent higher federal authority which is assigned to the Federal Ministry of Economics and Technology. In 1999 its official seat was transferred from Berlin to Bonn as part of the relocation programme of the government.

1. Tasks of the Bundeskartellamt

The Bundeskartellamt’s task is first and foremost to apply and enforce the ARC. The Bundeskartellamt takes action against all restraints of competition which have effects in the Federal Republic of Germany. Its tasks include

- enforcing the ban on cartels,
- merger control,
- the control of abusive practices of dominant or powerful companies and
- the review of award procedures for public contracts (since 1999).

Since 2005 the Bundeskartellamt can also conduct so-called sector inquiries in order to determine the competition situation in individual sectors if there are indications that there is no effective competition in these markets.

If anticompetitive cartel agreements or abusive practices are likely to affect trade between the EU Member States, the Bundeskartellamt also applies European competition law (see below).

2. Other competition authorities

Apart from the Bundeskartellamt, each Land has its own competition authority. Violations of the ban on cartels or abusive practices, the effects of which are limited to one Land, are prosecuted by the respective Land competition authority. In cases in which the effects of violations of the ban on cartels or abusive practices extend beyond one Land, the Bundeskartellamt is the competent authority. In order to ensure an appropriate division of responsibilities, the ARC provides for the possibility to refer cases between the authorities should the circumstances of the individual case require this.

In exceptional cases the Federal Ministry of Economics and Technology also functions as a competition authority by issuing a so-called “ministerial authorisation” (see Chapters II.3. and IV.6.).
The competition authority at the European level is the European Commission in Brussels. In accordance with the European Merger Regulation ("EMR") it examines mergers between companies which exceed certain turnover thresholds (see Chapter IV.3.) and conducts abuse and cartel proceedings under European competition law (for the division of responsibilities between the EU Commission and the EU competition authorities, see Chapter X.1.).

The Federal Network Agency for Electricity, Gas, Telecommunications, Post and Railway also deals with competition issues. Its responsibility is to create effective competition in the above network-based markets (e.g. gas and electricity connections). A key feature of network-based markets is that companies wishing to sell their
products or services to customers and do not have their own network infrastructure require access to the networks of other companies. This poses the problem that the network owner can refuse access to his network or demand excessive prices to hinder the competitor from entering the market. One of the responsibilities of the Federal Network Agency in this case is to ensure that the network owner allows his competitors non-discriminatory access to his network.

In addition, the Monopolies Commission serves as an independent advisory body in the areas of competition policy and regulation. It has the statutory responsibility to monitor effective competition in Germany in general and in specific sectors of industry.

3. Importance of the independence of the Bundeskartellamt

The Bundeskartellamt bases its decisions solely on competitive criteria. It processes and decides individual cases independently, i.e. without external instructions. The Federal Ministry of Economics and Technology only has the right to give it general instructions (Section 52 of the ARC). However, it rarely makes use of this, the last general instruction was issued 30 years ago. The Bundeskartellamt’s independence is particularly important given that the competition system is not self-supporting but is constantly threatened by individual interests. Although the general public benefits from a competition system, there are always incentives for individual companies or sectors to avoid competition, especially in times of economic crises and to claim special rules for themselves. If in such situations the Bundeskartellamt were expected to base its decisions on criteria other than competition (e.g. social aspects), the competitive system would be in danger of being undermined.

It is beyond dispute that there are other important economic and social-political targets than ensuring competition. However, it is not the Bundeskartellamt’s responsibility to realise these. Other important economic and social-political objectives can, for example, be considered within the scope of the so-called “ministerial authorisation”. On request the Federal Minister of Economics and Technology can authorise concentrations which have been prohibited by the Bundeskartellamt if, in a specific case, the restraint of competition is outweighed by advantages to the economy as a whole, or if the concentration is justified by an overriding public interest (see Chapter IV.6.).
The Bundeskartellamt’s independence from political influence guarantees that its decisions are made solely on the basis of competition criteria. This makes the effects of competition restraints transparent and clearly distinguishes them from any other possible decision criteria which might play a role in e.g. a ministerial authorisation.

4. Organisation of the Bundeskartellamt

Decisions on cartels, mergers and abusive practices are taken by a total of twelve Decision Divisions at the Bundeskartellamt. These are mainly organised according to sectors of the economy. In order to make the prosecution of so-called hardcore cartels (price and quota cartels, territorial and customer allocation agreements) even more effective, three Decision Divisions were set up from 2005 to 2011 which deal exclusively with the cross-sector prosecution of such cartels. Each case is decided upon by a collegiate body consisting of the chairman of the respective Decision Division and two associate members. The decision must be a majority decision. The Decision Division decides independently.

The Public Procurement Tribunals provide legal protection for bidders in the award of public contracts falling within the Federal Government’s area of responsibility. Bidders, in particular those whose offers were not successful and who claim that the provisions governing the award of public contracts have been violated, file applications with the Tribunals for the initiation of review proceedings.

The General Policy Division advises the Decision Divisions in specific competition law and economic issues, represents the Bundeskartellamt in the decision-making bodies of the European Union, is involved in competition law reforms at national and European level and coordinates co-operation between the Bundeskartellamt and foreign competition authorities as well as international organisations.

The Litigation and Legal Issues Division advises the Bundeskartellamt on legal matters, prepares court appeal proceedings before the Düsseldorf Higher Regional Court and represents the Bundeskartellamt before the Federal Court of Justice (Bundesgerichtshof) in Karlsruhe. The Litigation and Legal Issues Division also includes the Special Unit for Combating Cartels (SKK). This unit assists the Decision Divisions in the preparation, execution and evidence assessment of search operations in cartel proceedings. In these tasks the SKK is supported by the Bundeskartellamt’s forensic IT experts.

The Bundeskartellamt has approx. 320 employees. Around 140 of these are legal experts or economists.

1 An organisation chart of the Bundeskartellamt showing the areas of competence of the individual Decision Divisions can be found in the annex of this brochure.
III. Cartel Prosecution

1. What is a cartel?

If several enterprises co-ordinate their market conduct with the object of restricting or eliminating competition, this is called a cartel. Examples of cartels are agreements between competitors on prices, quantities, territories or customer groups. The companies involved can achieve greater profits through these agreements because they are exposed to little (if any) competitive pressure. Such agreements generally lead to higher prices for consumers or a deterioration in offer and are insofar highly damaging to society.

In practice, cartels are often euphemistically referred to as “co-operations”, “interest groups” or “strategic alliances”, which, however, does not alter their restrictive character.
2. Ban on cartels

According to Section 1 of the ARC a general prohibition applies to cartels, i.e. agreements between undertakings, decisions by associations of undertakings and concerted practices which have as their object or effect the prevention, restriction or distortion of competition, are prohibited. This prohibition covers not only the above classical cartels between competing companies (horizontal agreements) but also other anticompetitive agreements between companies which are in a supplier/customer relationship with one another (vertical agreements). An example of a vertical restraint of competition is when a producer tells a free trader the price at which he should sell the product.

Under European law a general prohibition of cartels is provided in Article 101 EC. The Bundeskartellamt applies this rule in addition to Section 1 ARC if the anticompetitive agreement is likely to affect trade between the Member States.

Agreements falling under the general prohibition of cartels are allowed only if certain strict conditions are satisfied.

3. Exempted agreements

Agreements between companies are exempted from the general prohibition of cartels under certain conditions. This applies, for example, if the "exemption requirements" under Section 2 ARC are fulfilled (see below). If the Bundeskartellamt applies European law (Article 101 TFEU), the case is examined to determine whether it fulfills the exemption requirements of the prohibition of cartels under Article 101 (3) TFEU, on which Article 2 ARC is modelled.

In order to help small and medium-sized enterprises compensate for structural – size-related – disadvantages in competition with powerful large-scale enterprises, the ARC also provides for specific co-operation facilities for such firms ("Mittelstandskartelle", Section 3 of the ARC).2

Until the entry into force of the 7th Amendment of the ARC on 1 July 2005, companies could notify cartels to the Bundeskartellamt and have them cleared if the results of the examination proved that the exemption requirements were satisfied. In the amendment the notification and authorisation system was replaced by one of so-called legal exception. The ARC was thus harmonized with the respective regulations under European law. As a result of the legal exception rule, cartels will no longer be formally cleared by the Bundeskartellamt but will be automatically authorised if the exemption requirements have been satisfied.

---

2 The exemption rule for small or medium-sized cartels is a special feature of the ARC for which there is no equivalent in European law. Since within the scope of Articles 101, 102 TFEU practices which are prohibited under European law cannot be allowed under German law, Section 3 ARC can only be applied if the practices are not likely to affect trade between Member States of the European Union.
In practice this means that companies themselves have to check whether their agreements are compatible with competition law (so-called self-assessment). At best the Bundeskartellamt can decide within the meaning of Section 32c ARC that there are no grounds for action to be taken in a specific case. This offers the companies involved legal certainty. However, the companies are not generally entitled to such a decision.

Among the conditions for exemption mentioned above in accordance with Section 2 ARC is that the production of goods is improved or technical progress promoted and that consumers are allowed a fair share of the resulting profit. Such agreements should not impose on the companies concerned restrictions which are not indispensable to the attainment of these objectives or afford them the possibility of eliminating competition in respect of a substantial part of the products in question.

Under Section 3 ARC, cartels of small or medium-sized companies are exempt from the prohibition of cartels if their subject matter is the rationalisation of economic activities. This only applies, however, if competition in the market is not substantially impaired thereby and the agreement serves to improve the competitiveness of small or medium-sized companies. As a consequence, some quite extensive co-operations between SMEs are admissible that under general competition law would be inadmissible.

The system of legal exception places great demands on companies, who have to examine themselves whether their forms of co-operation can be exempt from the prohibition. In order to give companies more legal certainty in assessing whether their co-operations are admissible, the Bundeskartellamt has published the so-called “de minimis Notice” and its Information leaflet on the possibilities of cooperation for small and medium-sized enterprises (“SME Information Leaflet”).

In the “de minimis Notice” the Bundeskartellamt explains how it exercises its discretion in taking up a case, i.e. which agreements it considers to have such an insignificant effect on competition that it generally refrains from intervening. Of crucial significance in this aspect are certain market share thresholds which may not be exceeded. The SME information leaflet gives companies advice in particular on how small and medium-sized co-operations are assessed under Section 3 ARC.

3 Both notices are available on the website of the Bundeskartellamt at www.bundeskartellamt.de
4. Possible sanctions and legal protection

There are two possibilities for the Bundeskartellamt to act against anticompetitive agreements. Firstly, by means of administrative proceedings the authority can impose an order to discontinue the conduct objected to. Secondly, it can impose fines in administrative offence proceedings (see Chapter VII.). The Bundeskartellamt opens administrative offence proceedings in particular in the case of cartel agreements which lead to particularly severe distortions of competition. These can take the form of agreements between competitors on prices, quantities, territories or customer groups.

The companies can appeal against the Bundeskartellamt’s decisions (see Chapter VII.).

5. Course of action taken by the Bundeskartellamt against cartels\(^4\)

The Bundeskartellamt can receive information about existing cartels from competitors, customers, suppliers or from the members of a cartel. The Bundeskartellamt can grant cartel participants, who by their co-operation contribute to uncovering a forbidden cartel, immunity from or a reduction of fines. In its key witness programme, the so-called "Leniency Programme", the Bundeskartellamt sets the conditions under which immunity from or a reduction of fines is possible.

In 2006, as a result of the opportunities for co-operation and increased endeavours towards harmonisation within the European Competition Network ("ECN", see Chapter X.1.) the Bundeskartellamt revised its Leniency Programme.

---

\(^4\) See also the Bundeskartellamt’s brochure “Effective cartel prosecution – Benefits for the economy and consumers”.
This was published on the Bundeskartellamt’s website as Notice no. 9/2006.

Depending on his contribution to uncovering the cartel, a cooperative cartel member can be granted a reduction of up to 100 per cent of the fine imposed. However, immunity from fines can only be granted to the company which is the first to notify the Bundeskartellamt. Exempted from immunity is the ringleader of the cartel as well as those who coerced others into joining the cartel.

### 6. Prohibition of cartels – case practice

**Coffee cartels**

**Coffee I:** In July 2008, based on information from a leniency application filed by Kraft Foods Deutschland GmbH, the Bundeskartellamt searched the premises of three coffee roasters (Tchibo GmbH, Melitta Kaffee GmbH and Alois Dallmayr Kaffee oHG).

From at least early 2000 until the companies were searched, directors and sales managers of the companies involved had met regularly in
III. KARTELLVERFOLGUNG

A discussion group. The aim of the discussion group was above all to maintain the “price architecture” of the companies’ final sales prices and special offer prices for their major roasted coffee products. To achieve this objective the four coffee roasters agreed among themselves on the level, extent, date of announcement and implementation of planned price increases. The agreements always applied to the main products (per 500g pack) of the four companies, i.e. “Feine Milde” and “Gala” (Tchibo), “Krönung”, “Meisterröstung” and “Onko” (Kraft), “Auslese” (Melitta) and “Prodomo” (Dallmayr). However, all participants knew that in addition to the prices explicitly agreed on for their main products, the prices for other products (filter coffee, whole bean products/espresso and coffee pads) would also be raised. Moreover, the Bundeskartellamt was able to prove the existence of a total of five price increase agreements for the period between early 2003 and July 2008. The agreements resulted in an increase in the final sales and special offer prices of up to € 0.70 per 500g pack.

In December 2009 the Bundeskartellamt imposed fines totalling approx. €160 million on Tchibo, Melitta and Dallmayr, and six members of staff involved in these illegal agreements. The key witness, Kraft Foods, was granted immunity from a fine. The three other companies also co-operated with the Bundeskartellamt during the cartel proceedings and were thus each granted a (substantial) reduction in fine. Coffee II: In June 2010 the Bundeskartellamt concluded further cartel proceedings against eight coffee roasters and the German Coffee Association (Deutscher Kaffeeverband e.V., DKV) as well as ten employees involved. In this case the authority dealt with price agreements in the so-called “out-of-home” market, i.e. the supply to the catering trade, hotels, vending machine operators and other bulk consumers. The proceedings were triggered by a leniency application filed by Alois Dallmayr Kaffee oHG; further applications for leniency were filed during the course of the proceedings by Melitta and Darboven. Dallmayr was granted full immunity from the fine; the fines on Melitta and Darboven were reduced under the Bundeskartellamt’s Leniency Programme in view of their co-operation in the proceedings.

In a DKV working group, directors and sales managers of the companies Kraft Foods Außer Haus Service GmbH, Tchibo GmbH, J.J. Darboven GmbH & Co.KG, Melitta SystemService GmbH & Co. KG, Luigi Lavazza Deutschland GmbH, Seeberger GmbH, Seeberger KG, Segafredo Zanetti Deutschland GmbH and Gebr. Westhoff GmbH & Co. KG coordinated prices for roasted coffee in the so-called out-of-house sector from at least 1997 to mid 2008. In the working group’s sessions the companies agreed on price increases of up to 1.40 €/kg and isolated price cuts. Depending on each company’s participation in the cartel agreements, the Bundeskartellamt took into account different time periods and the extent to which each company was involved in the agreements before imposing fines totalling approx. €30 million.
III. CARTEL PROSECUTION

Ophthalmic lenses cartel

During searches of the premises of ophthalmic lens manufacturers, the Bundeskartellamt uncovered two illegal agreements which were punished by fines totalling € 115 million.

Since mid-2000, directors and sales managers of the five leading German manufacturers of ophthalmic lenses (Rodenstock GmbH, Carl Zeiss Vision GmbH, Essilor GmbH, Rupp+ Hubrach Optik GmbH and Hoya Lens Deutschland GmbH) had met several times a year to coordinate several competitive parameters and exchange information on their market behaviour. Corresponding to the first letters of the participating companies’ names, the group was called the “HERRZ group”. In these “HERRZ” meetings the representatives of the companies agreed inter alia on price surcharges as well as terms and conditions, bonuses and discounts granted to opticians. In addition, they regularly informed one another of specific competitive measures, such as upcoming price increases, and agreed on a uniform behaviour towards buying and marketing groups. As a result of the agreement, competition on price and conditions between the five major manufacturers of ophthalmic lenses in Germany was limited at least to the extent that they were able to coordinate price increases for opticians on a regular basis, while at the same time ensuring that any bonuses and discounts granted would not be undermined by the other members of the group. As a result, competitive moves on prices by individual manufacturers of ophthalmic lenses became less likely and competition in general was weakened.

Secondly, the directors or sales managers of the five manufacturers of ophthalmic lenses concluded another anticompetitive agreement with representatives of the German central association of opticians (ZVA) on the “non-binding price recommendations” in the price lists for opticians. This agreement enabled the manufacturers to raise the cost prices of opticians on a regular basis, while the opticians were able to pass these price increases on to their customers by means of the non-binding price recommendations.

The fines amounted to approx. € 85 million for the “HERRZ” group and approx. € 30 million for the “pricing structure working group”. Due to their co-operation in uncovering the offence, Rodenstock, Hoya, Carl Zeiss Vision and the ZVA association were granted fine reductions in accordance with the Bundeskartellamt’s Leniency Programme. In addition, two of the companies concerned and the ZVA have agreed to have their proceedings terminated by way of settlement, which led to a further reduction of their fines.
IV. Merger Control

1. What is a merger?

Whereas companies participating in co-operations remain legally independent, those which were independent prior to corporate mergers are either merged into one new uniform enterprise or at least capital links are created as a result of a merger. Corporate mergers are generally allowed in Germany and to a certain degree are also desirable. Through mergers companies can, for example, optimise or reorganise their areas of business.

At the same time corporate mergers can also have negative consequences. This can best be illustrated by a scenario, by no means merely hypothetical, in which all the suppliers in a market merge together, thereby obtaining a monopoly position. Such a position would, for one thing, allow them to demand higher prices. Secondly, there would be only limited incentive for the companies to push ahead with innovations because they would not have to fear any future competition from their rivals. Thus business concentration can restrict competition just as much as a cartel agreement.

The Bundeskartellamt does not examine every merger. The merger project only becomes subject to merger control by the Bundeskartellamt if the participating companies exceed certain turnover thresholds. The companies then have to notify the Bundeskartellamt of their merger project. The aim of merger control is to prevent the creation or strengthening of dominant positions of companies.

A general distinction is made between horizontal mergers (with the companies in competition with one another) vertical mergers (the participating companies are in a supplier/customer relationship) and conglomerate mergers (the participating companies are neither in competition with one another nor in a supplier/customer relationship).
2. Mergers examined by the Bundeskartellamt

Mergers between companies fall under the merger control of the Bundeskartellamt if they jointly achieve a worldwide turnover of more than 500 million euros, and if at least one participating company has achieved a turnover in Germany of more than 25 million euros and one further company a turnover in Germany of at least five million euros. The calculation of the relevant turnover is based on the turnover achieved by the entire company group in the last business year preceding the merger.

In spite of reaching the turnover thresholds, mergers are not subject to notification if a company which achieved a worldwide turnover of less than ten million euros in the last business year, merges with another company (so-called “de minimis clause”) or if a market is concerned in which goods or commercial services have been offered for at least five years and in which in the last year less than 15 million euros turnover was achieved (so-called “minor market clause”).

Until a notifiable merger project has been cleared by the Bundeskartellamt a prohibition on its implementation applies (Section 41 (1) ARC) which means that companies may not put a merger into effect which has not been cleared by the Bundeskartellamt. If, nevertheless, a merger has been put into effect, the Bundeskartellamt can subsequently dissolve the concentration and impose a fine (see Chapter IV.7.).

3. European merger control

Any mergers found to have a so-called “Community dimension” are examined under the European Merger Regulation (EMR). The European Commission has exclusive competence for applying this regulation. A merger has a community dimension if the thresholds indicated in Article 1 (2) or (3) of the EMR have been exceeded.

If, for example, the companies participating in a merger jointly achieve a worldwide turnover of more than five billion euros and at least two of the companies achieve an aggregate community-wide turnover of more than 250 million euros, the merger is examined exclusively by the European Commission (Art. 1 (2) EMR); a parallel examination by the national competition authorities does not take place.

Even if the turnover thresholds indicated in Article 1 EMR have been achieved, the European Commission is, as an exception to the rule, not competent for examining a merger if the participating companies have each achieved more than two-thirds of their aggregate community-wide turnover in one and the same Member State (so-called two-thirds rule). In these cases competence falls to the competition authority of the territory in which the participating companies achieve more than two-thirds of their community-wide turnover. The two-thirds rule emanates from the subsidiarity principle embodied in European law and takes account of the national relevance of a merger.

Irrespective of the above regulations, the EMR provides for the possibility to refer a case from the originally competent authority to another competition authority. For example, the Bundeskartellamt can request to have the whole or
The following transactions are deemed to be mergers within the meaning of the ARC (Section 37 (1) ARC):

- the acquisition of all or of a substantial part of the assets of another undertaking ("acquisition of assets"),
- the acquisition of direct or indirect control by one or several companies of the whole or parts of one or more other undertakings, whereby the control can be constituted by rights, contracts or any other means ("acquisition of control"),
- the acquisition of shares in another enterprise if the shares, either separately or together with other shares already held by the acquirer, reach 50 percent or 25 percent of the capital or voting rights of the other undertaking ("acquisition of shares"),
- any other combination of enterprises enabling one or several enterprises to directly or indirectly exert a competitively significant influence on another undertaking ("competitively significant influence").
part of a case already notified to the European Commission transferred to it instead (Article 9 EMR).

Vice-versa, the Bundeskartellamt can request for a case which has been notified to it to be transferred to the European Commission on grounds of its effects on trade between Member States (Article 22 EMR). Since the beginning of May 2004, companies themselves can also apply to the Commission for the referral of a case to the competition authority of a Member State (Article 4 (4) EMR) or the European Commission (Article 4 (5) EMR) before notifying a merger project. These regulations offer a high degree of flexibility and ensure that the competition authority best placed to do so examines the merger project.

4. Sequence of a merger control proceeding

After receipt of the complete notification documents at the Bundeskartellamt the competent Decision Division has one month to examine the project (so-called “pre-examination proceedings” or “first phase”). If the merger project proves unproblematic, the Decision Division clears it informally before the expiry of the one-month time limit. The merger can then be put into effect. If the Decision Division considers further examination necessary, it will notify this to the companies in a so-called “one-month letter”. This measure introduces the “main examination proceedings” (the so-called “second phase”) and the time-limit for examining the merger project is extended. If main examination proceedings have been initiated, the Bundeskartellamt has to decide the case within four months of receipt of the complete notification. In the main examination proceedings the Bundeskartellamt decides by way of a formal decision whether the merger is to be cleared, where necessary subject to obligations or conditions, or prohibited. Clearance subject to obligations or conditions is a likely outcome if the merger project affects several different markets and there are competition concerns in only some of the markets.

Before the Bundeskartellamt makes a decision prohibiting a merger or clearing it only subject to obligations or conditions, it has to give the participating companies an opportunity to comment, that is, to inform them of the main grounds for the decision. This gives the companies an opportunity to put forward counterarguments.5

The Bundeskartellamt has extensive investigatory powers (under Sections 57–59 of the ARC) in order to obtain a comprehensive picture of the market conditions. It may, for example, request information from competitors, suppliers and customers of the companies concerned and inspect business documents.

5 Companies requesting to be admitted to the proceedings must be granted an opportunity to comment, even if there are plans to clear the merger in the main examination proceedings.
5. Grounds for prohibiting a merger

The Bundeskartellamt prohibits a concentration which is expected to create or strengthen a dominant position unless the participating undertakings prove that the concentration will also lead to improvements in the conditions of competition, and that these improvements will outweigh the disadvantages of dominance (Section 36 (1) of the ARC).

Dominance exists if a company has no competitors or is not exposed to any substantial competition, or if it has a paramount market position in relation to its competitors (Section 19 (2) ARC). In order to examine whether a merger will create or strengthen a dominant position, the relevant market has firstly to be defined according to product type and geographic area (and in exceptional cases also time-frame). An important criterion in market definition is the demand-side oriented market concept. According to this concept such products or services belong to the same market which the informed consumer considers equally suitable to satisfy a certain requirement on account of their properties, purpose of use and price.

In examining whether a company has a paramount market position in relation to its competitors, several criteria have to be taken into account. A good starting point for the examination is the market share held by the company concerned in the relevant market: A dominant position is presumed to exist within the meaning of the ARC if a company has a market share of one third (“single firm dominance”, Section 19 (3) 1 ARC). A dominant position held by several companies is presumed to exist if three or fewer companies reach a combined market share of two-thirds ("oligopolistic market dominance", Section 19 (3) 2 ARC). In the latter case these presumptions can be refuted if the undertakings concerned prove that the competitive conditions between them are likely to result in substantial competition, or the companies taken together do not have a paramount position compared to the other competitors. An important factor for assessing the market share is not only the absolute but also the relative market share, i.e. the market share of the company under consideration in comparison with the market shares of its competitors.

In addition to the extent of market share, the Bundeskartellamt conducts an extensive examination of the competition situation in the relevant markets to determine whether the merger can effectively be expected to create or strengthen a dominant position. Further criteria considered in the examination are specific expertise, access to supply or sales markets, links with other companies, financial power, legal or factual barriers to market entry, actual or potential competition from companies established within or outside Germany, the ability to shift supply or demand to other goods or commercial services, as well as the ability of the opposite market side to resort to other companies (Section 19 (2) 2 ARC).

In assessing whether a merger will lead to competition problems it is important that an overall appraisal of company and market-related factors be made.

In its almost 40 years of practice in merger control the Bundeskartellamt has prohibited a total of approx. 180 proposed mergers. The majority of the prohibitions have become final. Some of
the decisions, however, were revoked by the courts.

When in doubt, firms approach the Bundeskartellamt to discuss projects before they ever reach the notification stage. Many projects raising competition concerns are abandoned or modified by firms at this early stage, once Bundeskartellamt officials have signalled that prohibition is likely. In 2009 and 2010, for example, there were a total of 33 such cases which are not featured in the prohibition statistics. The particular significance of the withdrawal of a notification in the “run-up stage” of a (prohibition) decision is that the creation or strengthening of a dominant position can be prevented without a final decision by the Bundeskartellamt. It has to be noted that clearance decisions of the Bundeskartellamt that are tied to conditions or obligations can also significantly influence the effects of a merger on competition.

6. Legal protection and ministerial authorisation

The companies concerned can appeal against a Bundeskartellamt decision before the Düsseldorf Higher Regional Court. Appeals on points of law against decisions of the Higher Regional Court can be lodged with the Federal Court of Justice (BGH) in Karlsruhe.

The ARC also provides for the possibility of the so-called “ministerial authorisation”. This means that companies, whose merger projects have been prohibited by the Bundeskartellamt,

Diagramme 3
Number of mergers prohibited by the Bundeskartellamt (according to reporting period)*

<table>
<thead>
<tr>
<th>Reporting Period</th>
<th>Number of Mergers Prohibited</th>
</tr>
</thead>
<tbody>
<tr>
<td>1989/90</td>
<td>18</td>
</tr>
<tr>
<td>1991/92</td>
<td>4</td>
</tr>
<tr>
<td>1993/94</td>
<td>7</td>
</tr>
<tr>
<td>1995/96</td>
<td>7</td>
</tr>
<tr>
<td>1997/98</td>
<td>12</td>
</tr>
<tr>
<td>1999/00</td>
<td>4</td>
</tr>
<tr>
<td>2001/02</td>
<td>8</td>
</tr>
<tr>
<td>2003/04</td>
<td>14</td>
</tr>
<tr>
<td>2005/06</td>
<td>11</td>
</tr>
<tr>
<td>2007/08</td>
<td>11</td>
</tr>
<tr>
<td>2009/10</td>
<td>4</td>
</tr>
</tbody>
</table>

* The reporting period is based on the Bundeskartellamt’s biennial activity report.
can apply to the Federal Ministry of Economics and Technology for authorisation. The requirement for the issue of an authorisation is that the restraint of competition in the particular case is outweighed by advantages to the economy as a whole resulting from the concentration, or that the concentration is justified by an overriding public interest (Section 42 (1) of the ARC). The fact that competition-based and politically motivated decisions are made in a two-stage process and that authorisations are the exception rather than the rule have both proved useful in practice. Since merger control was introduced in 1973, by mid-2010 a ministerial authorisation had been granted in only 8 cases (some of which were subject to obligations), in a total of 21 cases in which ministerial authorisation had been applied for.

7. Dissolution of mergers

The ARC does not provide for the divestiture of companies which have gained a dominant position not as a result of a merger but (internal) growth. These companies are subject to abuse control (see Chapter V.).

Mergers which are subject to notification may not be put into effect before clearance by the Bundeskartellamt (Section 41 (1) ARC). If companies violate this prohibition or put into effect a merger which the Bundeskartellamt has prohibited or whose clearance it has revoked, they must dissolve the merger if the requirements for prohibition are fulfilled (Section 41 (3) ARC). In such a case, the Bundeskartellamt orders the measures necessary to dissolve the merger. A violation of the prohibition of putting a merger into effect can also be punished by a fine.

8. Special provisions for certain sectors of the economy

Special rules apply to the press and trade sectors, particularly with regard to the calculation of the level of the turnover, on which the obligation to notify a merger depends.

In the case of mergers of press and broadcasting companies, lower turnover thresholds are applied. For the publication, production and distribution of newspapers, magazines and parts thereof and for the production, distribution and broadcasting of radio and television programmes and the sale of radio and television advertising time, the twenty-fold amount of the turnover shall be taken into account (Section 38 (3) of the ARC). This special regulation is necessary because only in this way can the trend towards concentration be effectively prevented in these markets, which in terms of turnover are very small.

Special regulations also apply to companies in the trade sector as regards the calculation of turnover thresholds. For trade in goods, only three quarters of the turnover shall be taken into account (cf. Section 38 (2) of the ARC).
Furthermore, credit institutions, financial institutions and insurance companies are exempt from merger control if they acquire shares in another undertaking for a limited period of time only in order to resell them within a year (Section 37 (3) of the ARC). However, they must not exercise the voting rights attached to those shares. Among other things, this provision is intended to prevent merger control from being triggered immediately by a bank or insurance company acquiring new shares when a joint stock company is created or its share capital is raised.

9. Mergers – case practice

**Magna/Karmann – prohibition**

In May 2010 the Bundeskartellamt prohibited the Canadian automotive supplier Magna from acquiring Karmann’s European convertible roof systems business.

At the time of the examination of the case, there were only three companies in Europe which supplied convertible roof systems (Karmann, Magna and Webasto/Edscha). Not only would a merger between Magna and Karmann have cut the number of competitors down to two, Magna/Karmann and Webasto/Edscha would also have had similarly strong market shares and a comparable company size. It was to be expected that the two remaining competitors would no longer engage in any substantial competition with one another. The consumer would ultimately have had to pay for this negative impact on competition in the form of higher prices. With the prohibition this negative effect could be successfully prevented and the number of competitors maintained. Karmann, which had been involved in insolvency proceedings, was ultimately acquired by the Finnish company Valmet and thus remained a competitor in the market.

**EDEKA/Tengelmann – clearance subject to conditions**

A merger project notified by EDEKA and Tengelmann in 2008 could only be cleared subject to conditions precedent. The companies intended to merge the discount chains “Netto Marken-Discount” and “Plus” and to operate the joint venture under the name “Netto Marken-Discount”. Furthermore EDEKA and Tengelmann wished to set up a purchasing co-operation for their respective supermarket businesses.

The Bundeskartellamt’s investigations revealed that the merger project in the form notified would lead to competition problems. The German food retail market is already highly concentrated. Almost 90 per cent of the domestic market volume is accounted for by the five major retailers. The planned concentration entails the merge of the number one (EDEKA) and five (Tengelmann) in the German food retail trade. It would have further strengthened EDEKA’s position as market leader.

Furthermore, the EDEKA Group would have substantially expanded its regional and nationwide coverage of the market. The notified concentration would have also intensified the already high level of market concentration in the procurement of goods and led to an even greater dependence of the suppliers. This would have further strengthened EDEKA’s market position on the sales markets because of plans to largely adapt the newly acquired supermarkets to Netto’s brand discount concept which has been more economically successful.
To avoid a prohibition, EDEKA and Tengelmann approached the Bundeskartellamt with an offer to undertake certain commitments. After intensive negotiations the case was closed with the following commitment solution: Tengelmann sold almost 360 supermarkets to independent buyers before the merger was put into effect. This measure was able to prevent the EDEKA Group from further strengthening its market position in the markets which the Bundeskartellamt considered problematic. In addition, the Bundeskartellamt has not cleared the planned purchasing co-operation between EDEKA and Kaiser’s Tengelmann. Kaiser’s markets will continue to purchase on a separate basis. With this decision the Bundeskartellamt has taken a clear stand against the growing concentration in the food retail sector.

**Bertelsmann/Brockhaus – clearance**

In 2009 the Bundeskartellamt examined a merger between F.A. Brockhaus GmbH and a subsidiary of Bertelsmann AG.

Brockhaus and Bertelsmann have been the major publishers of German universal and thematic encyclopaedias for years and have held a prominent market position. However, the turnover achieved with reference books in Germany had significantly decreased in the years preceding the examination, i.e. by more than 50 per cent since 2006. As a consequence, the market for universal encyclopaedias and the market for thematic encyclopaedias had become so-called minor markets with a market volume of less than € 15 million each (see Chapter IV.2.). This development was caused by a structural change in consumer behaviour and the growing significance of online encyclopaedias. As minor markets these markets are not subject to German merger control. As the acquisition was not expected to create or strengthen a dominant position on one of the other book markets, the merger was cleared.
V. Control of Abusive Practices by Dominant Companies

1. What is market dominance?

The purpose of merger control is to prevent the creation or strengthening of dominant positions by means of concentrations, i.e. external growth. However, there are also companies which hold dominant positions resulting from internal growth, i.e. without merging with other companies, or because of former monopoly rights.

Companies holding a dominant position are not exposed to competitive pressure, or only to a minor extent. Their scope of action is thus not sufficiently controlled by competition. For this reason dominant companies are subject to a special control of conduct: the control of abusive practices under competition law. The control of abusive practices therefore represents a regulatory tool of the state which compensates for the absence of substantial competition.

To check whether a dominant position exists, the ARC provides for so-called presumption thresholds for the market shares of the companies concerned as well as further company and market-related evaluation criteria (see Chapter IV.5.).

The abusive exploitation of a dominant position by one or several undertakings is prohibited (Section 19 (1) of the ARC). But even companies which do not hold dominant but powerful positions because small or medium-sized companies depend on them as suppliers or purchasers, are subject to a special prohibition of discrimination and unfair hindrance (Section 20 ARC).

If the abusive conduct is likely to affect trade between the Member States, the Bundeskartellamt also applies European law (Art. 102 TFEU).

2. Abusive conduct by dominant companies

In principle, all practices that significantly and without any objective justification impair the scope of economic activities of other companies (competitors, customers or suppliers) constitute an abuse of economic power.

The evaluation as to whether a company abuses its market power requires a differentiated examination. Even if companies are dominant they
may not be prohibited from engaging in purely competitive conduct. However, practices a company can only pursue because of its market power and which hinder or discriminate other companies in a way that would not be possible if effective competition existed, are abusive. Such other companies could be competitors, customers or suppliers.

The different forms of abusive conduct include so-called exclusionary abuse and so-called exploitative abuse.

Exclusionary abuse exists, for example, where a dominant company uses its superior position to deny its competitors access to its networks or other facilities essential for competitive activities (Section 19 (4) no. 4 ARC). Exclusionary abuse can also be established where a dominant company tries to squeeze its competitor out of the market by means of a specific cut price strategy. The sale of goods or commercial services below cost price is also prohibited under certain preconditions (Section 20 (4) 2 ARC). This provision was tightened at the end of 2007. Sales below cost price are generally prohibited in the food sector; objective justification for this is only possible in very limited exceptional cases.

Exploitative abuse can be established if a company imposes unreasonable prices or terms and conditions on its customers or suppliers. To ascertain whether a certain conduct is abusive, the Bundeskartellamt applies inter alia the so-called “comparative market concept”. Possibly excessive prices are compared with prices that have formed in comparable competitive markets.

At the end of 2007, the control of price abuse by dominant companies in the energy and food retail sectors was tightened. The validity of this amendment is limited to the end of 2012. If companies induce other companies to refuse to sell or purchase with the intention of unfairly harming certain companies, this constitutes a boycott which is in violation of competition law (Section 21 (1) of the ARC).

Indications of possibly abusive practices pursued by a certain company are brought to the Bundeskartellamt’s attention by competitors, suppliers and customers.

3. Possible sanctions and legal protection

There are two possible ways for the Bundeskartellamt to act against abusive conduct. Firstly, by means of administrative proceedings the authority can impose an order to discontinue the conduct objected to. Secondly, it can impose fines in administrative offence proceedings (see Chapter VII.).

The companies can appeal against the Bundeskartellamt’s decisions (see Chapter VII.).
4. Control of abusive practices – practical examples

Gas prices for household customers

In December 2008 the Bundeskartellamt terminated its abuse proceedings against 30 gas suppliers. The proceedings were initiated because, according to the Bundeskartellamt’s evaluation, the case raised considerable competition law concerns that the companies involved had charged household customers abusively excessive prices in 2007 and 2008, thus abusing their dominant position in the market.

The proceedings were preceded by extensive price inquiries and investigations which were carried out by the Bundeskartellamt. For the purposes of the abuse control proceedings it was decisive whether, even after the deduction of fees for network use, taxes and duties, the prices charged were more expensive than those of other gas suppliers without the companies involved in the Bundeskartellamt’s proceedings being able to provide any objective justification for such deviations. In these proceedings the Bundeskartellamt made use of the provisions of Section 29 ARC, introduced at the end of 2007 (see p. 8), which make it easier for the competition authorities to prosecute excessive pricing in the energy markets.

The gas suppliers involved have agreed to make financial concessions for the benefit of consumers in the form of credits, price reductions and deferred price increases. In most cases the Bundeskartellamt made use of its powers of decision to declare the commitments to be binding on the companies as provided for by Section 32b of the ARC (see p. 36). All in all the companies involved have offered monetary compensation for consumers amounting to approx. € 130 million. An examination of the concessions made by the companies also revealed that in 2008 and 2009 increases in gas procurement costs of more than € 314 million net were not passed on to the final customers. Household customers were therefore spared costs totalling approx. € 444 million in gas prices. In addition household customers saved the taxes and duties payable on the prices, of which value-added tax alone accounts for approx. € 84 million.
Soda-Club

The Bundeskartellamt has prohibited Soda-Club GmbH from preventing its competitors from refilling Soda-Club cartridges for carbonation machines.

Carbonation machines are used to add carbon dioxide gas to tap water. The CO₂ required is contained in cartridges which are regularly refilled. With a market share of more than 70 per cent Soda-Club is the dominant company in the market for filling CO₂ cartridges. A major part of its turnover is achieved in the market for filling cartridges. For many years the process of refilling cartridges was based on an exchange system. Consumers exchanged their empty cartridges for filled cartridges at filling stations (usually retail companies). They only paid for the service of having the cartridges refilled with CO₂. Originally all retailers and filling companies took back all cartridges in circulation in the market and exchanged and filled them. This allowed for undistorted competition within the framework of an exchange pool. However, Soda-Club refused to participate in the existing exchange pool and set up a “rental system” for the distribution of cartridges. Distributors were thus exclusively tied to Soda-Club and committed to have empty cartridges filled exclusively by Soda-Club. Having the cartridges filled by other filling companies was claimed by Soda-Club to be a violation of its alleged property right. In view of Soda-Club’s superior market power and financial power, the rental system ultimately represented an abusive exclusionary conduct. The aim of the rental system was to squeeze competitors out of the filling market by systematically excluding competing filling companies from filling rented cartridges, while at the same time increasingly clogging the market with Soda-Club’s rental cartridges. For this reason the Bundeskartellamt prohibited this conduct and obliged Soda-Club to indicate on the labels of its cartridges that it was admissible to have them refilled by competitors. This decision was confirmed in its entirety by both the Düsseldorf Higher Regional Court and the Federal Court of Justice. The Federal Court of Justice, however, limited the period of the obligation placed on Soda-Club (to indicate on the labels of its cartridges that it was also possible to have them refilled by competitors) to three years after the date on which its ruling became final, because after this period end consumers would have had sufficient time to learn about this possibility.
VI. Sector Inquiries

1. Comprehensive market studies

Since the 7th Amendment of the ARC in 2005 the Bundeskartellamt can conduct sector inquiries to gain an impression of the competition situation in certain economic sectors if rigid price structures or other circumstances give reason to assume that competition in these sectors may be restricted or distorted.

Sector inquiries are not targeted against individual companies nor do they follow up a concrete suspicion of a cartel violation. Their purpose is to gain extensive information about the markets concerned. For example, the Bundeskartellamt launched a milk sector inquiry to examine all market levels from the dairy farmer through the dairy to the retail trade. The inquiry was triggered by evidence that there was only limited competition at individual market levels of the milk sector.

Market knowledge acquired from a sector inquiry can also be useful to the Bundeskartellamt in other proceedings. A sector inquiry in the fuel sector, for example, has furnished evidence that there is a dominant oligopoly on the German petrol station markets (see Chapter IV.5.) consisting of Shell, BP, ExxonMobil, ConocoPhillips and Total. This knowledge is important for merger control proceedings as they must determine whether a merger is expected to create a dominant position or strengthen an existing dominant position.

If a sector inquiry finds evidence of a cartel agreement or abuse of market power under competition law, specific proceedings can be initiated. Where competition law instruments fail to produce sufficient evidence, sector inquiries can provide the legislator with options on how to improve competition control.

2. Sector inquiries – practical example

Fuel sector inquiry

In its sector inquiry the Bundeskartellamt not only examined structures in the market but also collected and analysed extensive data on petrol station prices. The Bundeskartellamt’s analysis is the first systematic examination of petrol station prices in Germany which is based on objective data. The inquiry provided the following results: Petrol stations often change their prices more or less uniformly. In other words, they react within a very short time to price changes at their neighbouring petrol stations. Such parallel price conduct is possible without the companies having to agree on prices. Every petrol station operator of the major oil companies is contractually bound to notify the headquarters of its oil company of the prices charged by neighbouring petrol stations. This is usually done electronically. Furthermore, the prices on the display boards and pumps at the petrol stations are not changed by an individual petrol station operator but by the headquarters of the oil company. The oil companies receive information about their competitors’ prices from their petrol stations and are able to change prices at their own petrol stations nationwide at the press of a button. As a result the oil companies have everything they need to react within a very short time to their competitors’ prices. The analysis has also shown that there are less individual price increases than price cuts. However, the upward steps in price, i.e. increases are greater than the price reductions. This means that prices are raised less often but in
greater amounts than in the case of price reductions. Fuel prices are generally highest on Fridays and lowest on Mondays. The inquiry also confirms the widely held assumption that the price level rises at the beginning of holiday periods. Contrary to the assertions made by the mineral oil sector, this cannot be explained merely by particularly high demand.

On the oil markets we are faced with a case of collective dominance, a so-called oligopoly of the major oil companies. It is on account of this competitively problematic market structure that prices can be adjusted as described above. As a result, none of the five companies are inclined to swerve from the pricing architecture and reduce its prices over a longer period. The only exemption are the independent petrol stations.

This anti-competitive behaviour leads to high prices without necessarily constituting a violation on the ban against cartels. Since the Bundeskartellamt cannot counter such behaviour with the tools available to it under competition law, the legislator is challenged to examine how improvements can be achieved which would benefit the consumer.
VII. Instruments of Competition Law Enforcement

The Bundeskartellamt has extensive investigatory powers under Sections 57–59 of the ARC in order to be able to access information necessary for the evaluation of a case. It may request information from companies, inspect business documents and, by judicial order, search companies and seize evidence.

By means of administrative proceedings the Bundeskartellamt can require companies to end an infringement of the ARC or of Articles 101, 102 TFEU (Section 32 ARC). For this purpose it may impose on the companies all measures which are necessary to effectively bring the infringement to an end and at the same time are proportionate to the infringement established. Furthermore, in urgent cases the Bundeskartellamt may order interim measures ex officio if there is a risk of serious and irreparable damage to competition (Section 32a ARC). In proceedings under Section 32 of the ARC the companies may offer to enter into commitments which are capable of dispelling the Bundeskartellamt’s concerns. The Bundeskartellamt may by way of a decision declare those commitments to be binding on the companies (Section 32b ARC).

Within the framework of administrative offence proceedings the Bundeskartellamt can impose fines for violations of prohibitions under the ARC. The 7th amendment to the ARC of July 2005 raised the level of fines imposed for violations of competition law to amounts of up to € 1 million. In addition, certain violations can be punished by a fine of up to 10 per cent of the company’s total turnover. German law has thus been harmonised with European law, and the former level of fines, which was based on a maximum level of three times the additional proceeds generated by the infringement, has been abolished. The fines are allocated to the general public budget.

In 2006, with its notice no. 38/2006, the Bundeskartellamt issued guidelines on the setting of fines. These specify how the Bundeskartellamt applies the new provisions on fines. In setting the amount of a fine both the gravity and the duration of the infringement must be taken into account. On this basis further criteria such as deterrence and aggravating or extenuating circumstances are also considered. Companies may appeal against decisions of the Bundeskartellamt to the Düsseldorf Higher Regional Court. Appeals on points of law against decisions of the Düsseldorf Higher Regional Court can be lodged with the Federal Court of Justice in Karlsruhe.

6 The guidelines are available on the website of the Bundeskartellamt at www.bundeskartellamt.de
Diagramme 4
Fines imposed by the Bundeskartellamt from 1993 to 2010 (total amount in million euros per year)

<table>
<thead>
<tr>
<th>Year</th>
<th>Fines (in million euros)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1993</td>
<td>7.1</td>
</tr>
<tr>
<td>1994</td>
<td>6.7</td>
</tr>
<tr>
<td>1995</td>
<td>3.9</td>
</tr>
<tr>
<td>1996</td>
<td>9.7</td>
</tr>
<tr>
<td>1997</td>
<td>10.8</td>
</tr>
<tr>
<td>1998</td>
<td>143.6</td>
</tr>
<tr>
<td>1999</td>
<td>20.2</td>
</tr>
<tr>
<td>2000</td>
<td>21.3</td>
</tr>
<tr>
<td>2001</td>
<td>4.5</td>
</tr>
<tr>
<td>2002</td>
<td>58.0</td>
</tr>
<tr>
<td>2003</td>
<td>163.9</td>
</tr>
<tr>
<td>2004</td>
<td>717.0</td>
</tr>
<tr>
<td>2005</td>
<td>434.8</td>
</tr>
<tr>
<td>2006</td>
<td>58.0</td>
</tr>
<tr>
<td>2007</td>
<td>163.9</td>
</tr>
<tr>
<td>2008</td>
<td>313.7</td>
</tr>
<tr>
<td>2009</td>
<td>297.5</td>
</tr>
<tr>
<td>2010</td>
<td>266.7</td>
</tr>
</tbody>
</table>
VIII. Exemption Areas under the ARC

Exemption regulations under competition law are increasingly viewed in a critical light. Monopolies, which in the past were considered indispensable in some areas with regard to the provision of services of general interest, are now looked at in a more differentiated way. In the energy industry sector it has now become an accepted notion that gas and electricity can be supplied and purchased in a competitively organised market without jeopardizing the security of supply. The exemption for the network-based energy sector was therefore abolished in 1998. With the 7th amendment to the ARC the exemption regulations for the credit and insurance industry, the sports sector and copyright collecting societies were also abolished.

For some economic sectors, however, the ARC still includes special rules due to structural reasons or other special features. This applies to the publishing and agricultural sectors: For example, some forms of co-operation between agricultural producers are exempted from the ban on cartels under Section 1 of the ARC. Also some forms of co-operation in the publishing sector are exempted from the ban on cartels under Section 1 ARC.

The existing exemption rules of the ARC have also become less important since in some areas the European competition rules can be applied (see footnote 4 on p. 13).
IX. Legal Protection in Award Procedures for Public Contracts

Basically public procurement law stipulates which rules have to be observed by public contracting entities in their procurement transactions and what possibilities there are for bidders wishing to defend themselves against any procurement law violations.

Since 1st January 1999, based on the provisions of the Fourth Part (Sections 97 ff.) of the ARC, extensive procedural rules and a high standard of legal protection have been in place specifically for the award of economically important public contracts.

1. Scope of application of public procurement law

There are several categories of contracting entities that have to observe the law on public procurement under the ARC. These are above all the Federation, Länder and municipalities as so-called “traditional” public contracting entities, also legal persons who, loosely defined, are controlled by traditional public contracting entities and meet public interest objectives, and, under certain preconditions, further entities operating in the areas of drinking water, energy supply or the transport sector (so-called “sectoral contracting entities”).

Only contracts which reach or exceed certain contract values are covered by the ARC’s public procurement rules. The threshold for building contracts is approx. € 5,000,000 and for supplies and services between € 100,000 and € 500,000. The threshold values are subject to change; exact values can be found in the ordinances on the implementation of the ARC’s public procurement rules.
Diagramme 5
Applications for review received by the federal public procurement tribunals from 1999 to 2010

<table>
<thead>
<tr>
<th>Year</th>
<th>Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>32</td>
</tr>
<tr>
<td>2000</td>
<td>47</td>
</tr>
<tr>
<td>2001</td>
<td>49</td>
</tr>
<tr>
<td>2002</td>
<td>102</td>
</tr>
<tr>
<td>2003</td>
<td>157</td>
</tr>
<tr>
<td>2004</td>
<td>225</td>
</tr>
<tr>
<td>2005</td>
<td>169</td>
</tr>
<tr>
<td>2006</td>
<td>163</td>
</tr>
<tr>
<td>2007</td>
<td>167</td>
</tr>
<tr>
<td>2008</td>
<td>219</td>
</tr>
<tr>
<td>2009</td>
<td>238</td>
</tr>
<tr>
<td>2010</td>
<td>156</td>
</tr>
</tbody>
</table>
2. Award procedures

Under the ARC, public contracts have to be awarded under competitive conditions. Award procedures have to be transparent and the participating parties have to be treated equally. In practice, the most important types of procedures available are open procedures, restricted procedures (restriction of the number of participants) and negotiated procedures. Open procedures can be conducted under all circumstances, all other procedures only in certain cases.

Under the ARC contracts shall be awarded to suitable companies, i.e. companies that are skilled, efficient, law-abiding and reliable. The contract is awarded to the company submitting the most economically advantageous offer. The public contracting entity specifies and examines the exact requirements regarding the suitability of the bidder as well as the offer to be submitted on a case by case basis.

3. Review procedures

The companies have a right to the provisions concerning the award procedure being complied with by the contracting entity. In addition to the respective provisions of Part IV of the ARC, this also applies to the relevant rules on its implementation (such as, e.g., the Ordinance on the Award of Public Contracts (Vergabeverordnung, VgV)) and award procedures for construction services (VOB/A), public supplies and services (VOL/A) and for independent professional services (VOF), if the relevant ordinances are applicable.

Accordingly, under certain conditions, every company has the right to file an application if it has an interest in a contract to be awarded subject to the provisions of the ARC. In particular, it has to claim that its rights in the award procedure have been violated by non-compliance with the provisions governing the award of public contracts and show that as a consequence of the alleged violation it has suffered a loss or may be about to suffer a loss. Certain procedural rules and time limits also have to be observed for the submission of a review contract.

The respective applications for review are decided by the specialised public procurement chambers which have been established by the Federal Government and the Länder. The public procurement tribunals of the Federation, which are responsible for reviewing the award of public contracts falling within the scope of responsibility of the Federation, are located at the Bundeskartellamt. The public procurement tribunals, which operate in a similar way to courts, are independent and not bound by instructions in their decision-making. In the public procurement tribunals decisions are taken by a chairperson and two associate members, one of whom serves in an honorary capacity.

Decisions of the federal public procurement tribunals can be appealed before the Düsseldorf Higher Regional Court within a period of two weeks in the form of a so-called immediate appeal.
X. International Co-operation between the Competition Authorities

As a result of globalisation markets are increasingly merging. This enables companies to organise cartels or engage in abusive conduct which affects several countries. Against this background a closer co-operation between the competition authorities is required, not only in the European Union, but also worldwide, to fight the cross-border effects of cartel agreements and abusive practices more systematically.

1. European Competition Network

The “European Competition Network” (ECN) is the network of the EU competition authorities which was created by EC Regulation 1/2003 with the aim to fight cross-border restrictions of competition more effectively. The Regulation applies if the facts of a case are examined under Articles 101, 102 TFEU, i.e. if cross-border trade is affected.

The Regulation, which has been in force since May 2004, has considerably improved the possibilities for co-operation among the EU competition authorities and between the authorities and the European Commission. They can assist each other in searches, exchange confidential information and use this as evidence in proceedings.

The European Commission and the competition authorities have jointly compiled rules which serve the implementation of the Regulation, e.g. rules for handling information received, rules for the flow of information and case allocation criteria.

It is the objective of case allocation to ensure that the best placed authority deals with a cartel (or abuse) case. At the start of its proceedings each EU competition authority posts a case in which European law is (also) applied on the Intranet of the EU competition authorities. In this way the information is made available to all the other competition authorities within the ECN. Criteria for finding the best placed authority are the geographical scope of the effects of a competition infringement, the possibilities for gathering evidence and the means for ending the infringement. As a rule the European Commission is to be considered the best placed authority if e.g. an infringement affects competition in more than three Member States.

Against the background of the EU competition authorities’ possibilities for co-operation, the common fight against cartels at European level has gained increasing importance. Here the competition authorities are very eager to make the fight against cartels more effective by maximally uniform regulations. To this end a Model Leniency Programme has been developed.
within the ECN by which the competition authorities have agreed on a uniform standard for processing leniency applications. In the programme the competition authorities agreed to bring their own regulations into line with the Model Programme or, in the absence of their own programme, to issue one based on this. Both the European Commission’s Leniency Programme and the Bundeskartellamt’s Leniency Programme (see Chapter III.5.) are modelled on the ECN Model Leniency Programme.

The cases of official assistance already rendered bear witness to the effective and successful co-operation within the ECN. This can be illustrated by the following recent cases: In 2009 and 2010 the Austrian competition authority provided official assistance by conducting searches on behalf of the Bundeskartellamt in two cases. Since 2008 the Bundeskartellamt has been closely cooperating with the French and the Netherlands competition authorities in another case. Staff members of the Bundeskartellamt participated in a dawn raid conducted by the French authority, and the Bundeskartellamt examined witnesses on behalf of its French and Dutch colleagues. Furthermore, requests for information regarding several proceedings have been issued on behalf of the competition authorities of Belgium, the Netherlands and Austria.

2. European Competition Authorities

In April 2001 the national competition authorities within the European Economic Area founded the European Competition Authorities (“ECA”) forum. This forum mainly focuses on horizontal co-operation between the authorities in specific cross-border competition issues such as merger control, the imposition of fines or in general organisational issues.
3. International Competition Network

At the international level the International Competition Network ("ICN") was founded in 2001. The ICN is an informal, project-oriented network of competition authorities.

A special feature of the ICN is the fact that the individual competition authorities and not the respective member states make up its membership. The ICN is therefore the only international forum whose members are competition authorities. Currently the ICN comprises 114 competition authorities from 100 jurisdictions. The ICN’s executive committee, the so-called “Steering Group”, is newly elected every two years. The Bundeskartellamt is a member of this steering group and in 2005/2006 chaired the group.

Another special feature of the ICN is the direct involvement of so-called non-governmental advisors, i.e. lawyers, professors and non-governmental organisations, who play an active role. Its conceptual work is achieved in working groups and is thus to a large extent project-oriented. The working groups operate independently and either disband on completion of individual projects or start on new issues. There are currently four working groups dealing with the themes merger control, cartels, effective enforcement of competition law (agency effectiveness), unilateral conduct and competition advocacy (promotion of the principle of competition). Two more working groups deal with organisational issues. The Bundeskartellamt is an active member of all working groups. Together with the US Federal Trade Commission it also chairs the working group on unilateral conduct.

The work results of the individual working groups are presented, discussed and adopted at the ICN’s annual conferences.7

7 All the work results are available on the website of the ICN at www.internationalcompetitionnetwork.org
4. OECD and UNCTAD

The Bundeskartellamt also participates in the activities of other international organisations dealing with competition law and policy issues.

Under the umbrella of the Organisation for Economic Co-operation and Development (OECD) the Competition Committee and its two working groups “Competition and Regulation” and “International Co-operation” have met three times a year since 1967. At the meetings participants discuss issues relating to competition policy, competition law and competition economics at so-called roundtable discussions. The Bundeskartellamt submits contributions in coordination with the Federal Ministry of Economics and Technology. The OECD Competition Committee’s steering body is the Competition Bureau, of which the President of the Bundeskartellamt is a member.

In addition to informal roundtable discussions, the OECD Competition Committee also prepares formal recommendations on competition law, for example the “Best Practices for the Formal Exchange of Information between Competition Authorities in Hard Core Cartel Investigations”. These Best Practices are intended to facilitate international co-operation by providing guidelines for the formal exchange of information in international cartel investigations.

In 2001, as part of the so-called Outreach Programme, the Global Forum on Competition was established with the aim of also including non-member countries of the OECD, in particular developing and transformation countries, in the debate about global competition issues and allowing them observer status for a limited period of time.

The UNCTAD, which devotes itself to specific problems faced by the transformation and developing countries in the world trading system, also deals with competition law and competition policy issues at its meetings. Together with the Federal Ministry of Economics and Technology, the Bundeskartellamt regularly participates in the OECD and UNCTAD meetings.
XI. The Official Seat of the Bundeskartellamt in Bonn

Today the official seat of the Bundeskartellamt in Bonn consists of the buildings I to IV in the Kaiser-Friedrich-Straße on the Rhine, formerly the Office of the Federal President, and “Haus Axe” on the Konrad-Adenauer-Allee. The offices are located directly adjacent to Villa Hammerschmidt, the second official residence of the Federal President, and close to Palais Schaumburg and the former buildings of the Federal Chancellor’s Office, Bundestag and Bundesrat.

The buildings now standing on the premises were constructed between 1863 and 1933, beginning with Villa Hammerschmidt and ending with building III. Building II, a good example of the double villa typical of the style built at the turn of the century, has been a listed building under a preservation order since 1999.

In 1950, after the Federal Republic of Germany was founded and it was decided that Villa Hammerschmidt was to be the official residence of
the Federal President, building I was erected as an office building. This not only housed the administration department of the Federal President but until President Scheel’s term in 1974 also the private office of the Federal President. Gradually, the Office of the President also took possession of buildings II to IV. At the end of 1999, in the wake of the government’s move to Berlin, the Bundeskartellamt transferred its official seat from the Platz der Luftbrücke (Airlift Square) in Berlin to the premises of the Office of the Federal President and also moved into “Haus Axe” at the west side of Kaiser-Friedrich-Straße. Later a large conference assembly hall was added to the south side of building II.

Since July 2010 the Federal Public Procurement Tribunals have been located on the premises of the Federal Ministry of Economics and Technology in Bonn-Duisdorf.
XII. Further Information

1. Information leaflets and notices of the Bundeskartellamt

Merger control

- Information leaflet on the German control of concentrations (currently under revision in view of the second domestic turnover threshold)
- Information leaflet on domestic effect (currently under revision in view of the second domestic turnover threshold)
- Notice on introduction of second domestic turnover threshold
- Form for the notification of a merger to the Bundeskartellamt (only available in German)
- Draft Guidance on Substantive Merger Control
- Model texts for commitments and trustee mandate in merger control proceedings
- Information leaflet on procedures for post-merger notification (only available in German)
- Factsheet on the scope of EU merger control
- ECA principles
- Best Practices on Co-operation between EU National Competition Authorities in Merger Review

Cartel prosecution and control of abusive practices

- Possibilities of co-operation for small and medium-sized enterprises
- Notice of the Bundeskartellamt on the Non-Prosecution of Cooperation Agreements of Minor Importance ("de minimis Notice")
- Guidelines on the setting of fines
- Leniency Programme for hardcore cartels
- ICN Anti-Cartel Enforcement Template
- Notice on the application of Section 20 (4) sentence 2 ARC (offer below cost price) (only available in German)

Legal protection in the award of public contracts

- Information leaflet on the legal protection available in the award of public contracts
- Checklist for application for review

This and further information is available at www.bundeskartellamt.de
### 2. Activity reports of the Bundeskartellamt

The Bundestag printed papers are available from

**Bundesanzeiger**
Verlagsgesellschaft mbH
Amsterdamer Straße 192
50735 Köln
Phone: ++49 221 976680

The activity reports since 1974 are also available at the Bundeskartellamt’s website; the current activity report can be directly ordered from the Bundeskartellamt against a nominal charge of 6 euros.

<table>
<thead>
<tr>
<th>Year</th>
<th>Bundestag printed papers</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1958</td>
<td>3rd Electoral Term Printed Paper 1000</td>
<td>–</td>
</tr>
<tr>
<td>1959</td>
<td>3rd Electoral Term Printed Paper 1795</td>
<td>–</td>
</tr>
<tr>
<td>1960</td>
<td>3rd Electoral Term Printed Paper 2734</td>
<td>–</td>
</tr>
<tr>
<td>1961</td>
<td>IV/378</td>
<td>–</td>
</tr>
<tr>
<td>1962</td>
<td>IV/1220</td>
<td>–</td>
</tr>
<tr>
<td>1963</td>
<td>IV/2370</td>
<td>–</td>
</tr>
<tr>
<td>1964</td>
<td>IV/3752</td>
<td>–</td>
</tr>
<tr>
<td>1965</td>
<td>V/530</td>
<td>–</td>
</tr>
<tr>
<td>1966</td>
<td>V/1950</td>
<td>–</td>
</tr>
<tr>
<td>1967</td>
<td>V/2841</td>
<td>–</td>
</tr>
<tr>
<td>1968</td>
<td>V/4236</td>
<td>–</td>
</tr>
<tr>
<td>1969</td>
<td>V/950</td>
<td>11 June 1970</td>
</tr>
<tr>
<td>1970</td>
<td>VI/2380</td>
<td>28 June 1971</td>
</tr>
<tr>
<td>1971</td>
<td>VI/3570</td>
<td>19 June 1972</td>
</tr>
<tr>
<td>1972</td>
<td>7/986</td>
<td>5 Sept. 1973</td>
</tr>
<tr>
<td>1973</td>
<td>7/2250</td>
<td>14 June 1974</td>
</tr>
<tr>
<td>1974</td>
<td>7/3791</td>
<td>18 June 1975</td>
</tr>
<tr>
<td>1975</td>
<td>7/5390</td>
<td>16 June 1976</td>
</tr>
<tr>
<td>1976</td>
<td>8/704</td>
<td>4 July 1977</td>
</tr>
<tr>
<td>1977</td>
<td>8/1925</td>
<td>–</td>
</tr>
<tr>
<td>1978</td>
<td>8/2980</td>
<td>20 June 1979</td>
</tr>
<tr>
<td>1981/82</td>
<td>10/243</td>
<td>13 July 1983</td>
</tr>
<tr>
<td>1983/84</td>
<td>10/3550</td>
<td>26 June 1985</td>
</tr>
<tr>
<td>1987/88</td>
<td>11/4611</td>
<td>30 May 1989</td>
</tr>
<tr>
<td>1989/90</td>
<td>12/847</td>
<td>26 June 1991</td>
</tr>
<tr>
<td>1991/92</td>
<td>12/5200</td>
<td>24 June 1993</td>
</tr>
<tr>
<td>1993/94</td>
<td>13/1660</td>
<td>14 June 1995</td>
</tr>
<tr>
<td>1995/96</td>
<td>13/7900</td>
<td>19 June 1997</td>
</tr>
<tr>
<td>1997/98</td>
<td>14/1139</td>
<td>25 June 1999</td>
</tr>
<tr>
<td>2003/2004</td>
<td>15/5790</td>
<td>22 June 2005</td>
</tr>
<tr>
<td>2007/2008</td>
<td>16/13500</td>
<td>22 June 2009</td>
</tr>
<tr>
<td>2009/2010</td>
<td>17/6640</td>
<td>20 July 2011</td>
</tr>
</tbody>
</table>
3. Addresses

**Bundeskartellamt**  
Kaiser-Friedrich-Straße 16  
53113 Bonn  
Phone: ++49 228 9499-0  
E-mail: info@bundeskartellamt.bund.de  
(Only informal contacts are possible via e-mail)  
www.bundeskartellamt.de

**Public Procurement Tribunals**  
Villemombler Straße 76  
53123 Bonn

**Federal Ministry of Economics and Technology**  
Scharnhorststraße 34–37  
10115 Berlin  
Phone: ++49 30 2014-0  
E-mail: info@bmwi.bund.de  
www.bmwi.de

**Federal Network Agency for Electricity, Gas, Telecommunications, Post and Railway**  
Tulpenfeld 4  
53113 Bonn  
Phone: ++49 228 14-0  
E-mail: info@bnetza.de  
www.bundesnetzagentur.de

**Monopolies Commission**  
Heilsbachstraße 16  
53123 Bonn  
Phone: ++49 228 338882-30  
E-mail: info@monopolkommission.bund.de  
www.monopolkommission.de

**Competition authorities of the Länder**  
See list of addresses on the Bundeskartellamt’s website, “Links and Addresses”

**European Commission**  
Directorate-General for Competition  
Rue Joseph II 70  
B-1000 Brussels  
E-mail: comp-mergers@ec.europa.eu  
ec.europa.eu/dgs/competition/index_de.htm
4. Organisation chart of the Bundeskartellamt
Updated: 1 September 2011

Responsibilities of the Decision Divisions:
All decisions in administrative and administrative fine cases; participation in proceedings of the supreme Land authorities

Postal address
Kaiser-Friedrich-Straße 16
53113 Bonn

Public Procurement Tribunals
Villemombler Straße 76
53123 Bonn

Phone: ++49 228 9499-0
Telefax: ++49 228 9499-400

E-mail: poststelle@bundeskartellamt.bund.de
(Only informal contacts are possible via e-mail)

Please read the information provided on
www.bundeskartellamt.de
(“About our website”)