



Bundeskartellamt



open markets | fair competition

# The Bundeskartellamt

Annual Report 2015



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# Message of greeting Sigmar Gabriel

Federal Minister for Economic Affairs and Energy



The megatrend of digitalisation is presenting our economy with entirely new challenges. Experience has taught us that the best response to these challenges is effective competition. It is the task of the Bundeskartellamt to safeguard competition. And it is the job of economic policy to ensure that the Bundeskartellamt has the right instruments at its disposal to be able to continue to fulfil its tasks in the digital economy of the future. One main emphasis of the upcoming Ninth Amendment to the German Act against Restraints of Competition will therefore be to adapt competition law in light of the consequences of digitalisation.

The momentum inherent in the internet allows new and important players to emerge very quickly, new and successful business models to keep springing up. It is up to the Bundeskartellamt to ensure that markets are kept open and to punish abusive conduct. Whether it is in the course of merger or abuse control proceedings, the activities of the Bundeskartellamt demonstrate clearly that it is able to meet these challenges. The strategies developed by the Internet Platforms Think Tank have already been incorporated into investi-

gations into specific proposed mergers. In its decisions on the “best price” clauses applied in travel portals, in proceedings against Amazon Marketplace and in regard to the internet terms and conditions of brand manufacturers the Bundeskartellamt has set the guideposts for competition in the digital age. I am convinced that big data and the question of how competition law will respond to the questions the internet economy raises will continue to occupy the Bundeskartellamt in years to come.

In the course of 2015 the Bundeskartellamt again imposed large fines on companies and individuals for violating the ban on restrictive practices. Orders for fines were issued on, for example, automotive parts suppliers, the manufacturers of mattresses and of prefabricated garages, and on the providers of container transport services. The Ninth Amendment to the German Act against Restraints of Competition will ensure that companies will in future no longer be able to avoid paying fines by restructuring. We will also make it easier for parties suffering damage at the hands of cartels to claim compensation.

Consumers benefit directly from the outstanding work the Bundeskartellamt does in the interests of effective competition. The proceedings initiated on account of excessive water, district heating and electrical heating prices, which have all now been concluded, as well as the work of the Market Transparency Unit for Fuels are notable examples of this work.

It was with the help of the experts in the Bundeskartellamt that we were able to reform procurement law in the German Act against Restraints of Competition, making it more transparent and thus safeguarding more effective competition in the award of public contracts.

I would like to thank all the staff of the Bundeskartellamt for their excellent work in 2015. I know I can count on your continued commitment and wish you every success meeting your future challenges as the arbiters of economic affairs.

A handwritten signature in black ink, reading 'Sigmar Gabriel'. The signature is fluid and cursive, with the first name 'Sigmar' and the last name 'Gabriel' clearly distinguishable.

Sigmar Gabriel  
Federal Minister for Economic Affairs and Energy

# Foreword

## Andreas Mundt

### President of the Bundeskartellamt



Competition is one of the mainstays of our social market economy, and Germany's competition law is the "Basic Law for the Social Market Economy". It is the responsibility of the Bundeskartellamt to act as a kind of referee to limit market power in the economic sector and to sanction illegal restraints of competition. The age of digitalisation also raises new questions in regard to competition oversight. Established business models and whole branches of the economy are being shaken up and are faced with a changing competitive environment or entirely new competition from large and rapidly expanding internet businesses.

In early 2015 the Bundeskartellamt launched its Internet Platforms Think Tank to take account of the increasing importance of the internet economy for all sectors. With increasing digitalisation we are witnessing a new economic revolution across all sectors of the economy. It is having a huge impact on our case work. On the one hand, the dominant companies in the internet economy tend to be large and to effect a concentration of the market on account of typical network effects. On the other hand, the dynamic nature of

the internet means that new players and new business models are succeeding in the markets. Our task as the guardian of competition is to rigorously prosecute abusive practices on the part of these big companies in the digital environment in order to ensure markets are kept open for new business models.

The Annual Report 2015 once again briefly spotlights the proposed merger between EDEKA and Kaiser's Tengelmann. This merger and the ministerial authorisation in the food retail sector remain the subject of much public debate.

In the course of 2015 the Bundeskartellamt imposed fines totalling some 208 million euros in a total of 11 cases concerning anticompetitive agreements. The fines were imposed on 45 companies and 24 individuals. The proceedings concerned various sectors, including automotive parts suppliers, mattress manufacturers, the providers of container transport services and the manufacturers of prefabricated garages. In 2015 the Bundeskartellamt also imposed the first fines in what has become known as the "vertical case", in which food producers and retailers agreed retail prices. Most of the proceedings were concluded in the first few months of 2016.

I hope you enjoy reading the Annual Report 2015.

A handwritten signature in black ink, appearing to be 'A. Mundt', written in a cursive style.

Andreas Mundt  
President of the Bundeskartellamt



# Tasks and organisation

The Bundeskartellamt is the most important competition authority in Germany. It is an independent higher federal authority which is assigned to the Federal Ministry for Economic Affairs and Energy. It is the Bundeskartellamt's task to protect competition in Germany. Since 1958 the legal framework for this is the Act against Restraints of Competition (German Competition Act) (*Gesetz gegen Wettbewerbsbeschränkungen – GWB*), which is applied and enforced by the Bundeskartellamt.



*“The Bundeskartellamt’s task is to protect free and fair competition in Germany.”*

## The tasks of the Bundeskartellamt include

### Enforcing the ban on cartels

Agreements between companies which prevent, restrict or distort competition are generally prohibited. Examples of these are agreements on prices, quantities, supply areas or customer groups (so-called hardcore cartels). The Bundeskartellamt prosecutes illegal cartels and can impose heavy fines on the persons and companies responsible.

### Merger control

Mergers are examined by the Bundeskartellamt if the turnover of the companies involved exceeds certain thresholds, one or more of the legally defined elements of concentration are fulfilled and the project affects com-

petition in Germany. In examining a merger project the Bundeskartellamt assesses the effects it will have on competition. If the negative effects on competition outweigh the positive effects, a merger project can be prohibited or cleared only subject to certain conditions.

### Control of abuse of dominant positions

Companies holding a dominant position are exposed to little, if any, competitive pressure. They enjoy a large scope for action vis-a-vis their competitors, suppliers and customers. Having a position of economic power is not prohibited per se but the abuse of such market power is forbidden. The control of abusive practices by the Bundeskartellamt therefore acts as a state regulatory tool in the absence of competition.

## Review of procedures for the award of public contracts by the Federation

The provisions of public procurement law ensure that public contracts are awarded under competitive conditions and through transparent and non-discriminatory procedures. The two Federal Public Procurement Tribunals which are located at the Bundeskartellamt examine whether public procurement law was observed in the award of public contracts falling within the Federal Government's area of responsibility.

## Sector inquiries

The Bundeskartellamt conducts sector inquiries in order to gain a better insight into the competition situation in certain sectors if there are indications that competition in these markets is restricted or distorted. The aim of the inquiries is to gain extensive information about the markets concerned. Since this investigative tool was introduced in 2005 the authority has concluded a whole range of sector inquiries, for example in the fuel, waste management,



district heating and milk sectors or on buyer power in the food retail sector. The Bundeskartellamt is currently analysing competitive conditions in the sector for the metering and billing of heating and water costs, so-called 'submetering'.

## Bundeskartellamt Key Facts

- President: Andreas Mundt
- Vice President: Prof Dr Konrad Ost
- Budget 2015: 28.8 million euros
- around 347 employees
- of which approx. 150 are legal experts and economists
- seven trainees
- female/male staff: 51/49 percent

## Ban on cartels

- In 2015 the Bundeskartellamt imposed fines amounting to around 208 million euros on 45 companies and 24 individuals in 11 cartel cases.

## Merger Control

- In 2015 the Bundeskartellamt received around 1,200 merger control notifications. 13 of these were closely examined in second phase proceedings.
- One merger was prohibited in 2015 and another was cleared only subject to conditions.

## Abuse control

- Number of proceedings initiated in 2015: 14
- Number of proceedings concluded in 2015: 20

## Review of procedures for the award of public contracts by the Federation

- In 2015 the Bundeskartellamt received 138 applications for review.
- 22 applications were granted review and 28 were rejected.

## Sector inquiries

- Since 2005 the Bundeskartellamt has concluded ten sector inquiries. In 2014 the results of the sector inquiry into buyer power in the food retail sector were published. Three sector inquiries are still in progress.



## Internal organisation

The Bundeskartellamt is headed by President Andreas Mundt and Vice President Prof Dr Konrad Ost, who replaced his predecessor Dr Peter Klocker in September 2015. They are responsible for organising the internal processes and representing the authority to the public. Decisions on cartels, mergers and abusive practices are taken by a total of twelve decision divisions. Nine decision divisions are responsible for specific economic sectors. The 10th, 11th and 12th decision divisions deal exclusively with the cross-sector prosecution of cartels.

As a result of the assumption of office of Vice President by the previous head of the General Policy Division, Prof Dr Konrad Ost, the following new appointments were made in autumn 2015: Birgit Krueger, formerly head of the 2nd Decision Division, is now head of the General Policy Division. Dr Felix Engelsing, formerly head of the 8th Decision Division, has now taken over as head of the 2nd Decision Division. Prof Dr Carsten Becker took over as head of the 8th Decision Division whilst initially retaining his function as Chair of the 10th Decision Division. In May 2016 Michael Teschner, Chair of the 12th Decision Division, also took charge of the 10th Decision Division. Until October 2015 the 1st Decision Division was chaired by Franz Heistermann, who has now retired. He is succeeded by Christian Ewald, formerly Chief Economist of the Bundeskartellamt. Since March 2016 the position of Chief Economist has been held by Arno Rasek, who was previously rapporteur for the electricity sector and head of the Energy Monitoring Working Group in the 8th Decision Division.

The General Policy Division advises the decision divisions in specific competition law and economic issues, represents

the Bundeskartellamt in the European Union's decision-making bodies, is involved in competition law reforms at national and European level and coordinates cooperation between the Bundeskartellamt and foreign competition authorities as well as international organisations.

The Litigation and Legal Division advises the Bundeskartellamt on legal matters, prepares ap-peal proceedings before the Düsseldorf Higher Regional Court and represents the Bundeskartellamt before the Federal Court of Justice in Karlsruhe. The Litigation and Legal Division also includes the Special Unit for Combating Cartels (SKK). The SKK assists the decision divisions in the preparation, execution and evaluation of dawn raids in cartel proceedings. It is also the contact point for companies wishing to apply for leniency in cartel proceedings.

### Change of Vice President

Since September 2015 Professor Dr Konrad Ost has been the new Vice President of the Bundeskartellamt. He succeeds Dr Peter Klocker who retired on 1st September 2015. Professor Dr Konrad Ost is a lawyer and studied at the universities of Münster, Heidelberg, Singapore and Cambridge and was awarded a doctorate in Heidelberg. Konrad Ost joined the Bundeskartellamt in 2000. He went on to head the „German and European Antitrust Law“ section and then the Litigation and Legal Section. Konrad Ost's last position within the Bundeskartellamt was head of the General Policy Division from 2010 to 2015. He teaches competition law at the University of Bonn as Honorary Professor.



*“Digitalisation has revolutionalised the economy and is affecting all areas of life. We have adjusted our organisation to this new development and are investing substantial resources to address the issues raised by the Internet economy. The Bundeskartellamt is increasingly becoming the authority for the digital economy.”*

Professor Dr Konrad Ost,  
Vice President of the Bundeskartellamt



## Administration Division

The Administration Division is responsible for budget and human resources, organisation and information technology. The Information Technology Unit assists the authority in conducting online surveys in major proceedings and in seizing and evaluating IT data in cartel proceedings.

In 2015, after carrying out the „work and family audit“ developed by the Hertie Foundation, the Bundeskartellamt was certified as a family-friendly employer. As regards the Bundeskartellamt's activities in the area of e-government, the authority has carried out conceptual work with a service provider on possible areas of use of the e-file at the Bundeskartellamt. An area of focus of the work of the Human Resources Unit remains the recruitment and promotion of highly qualified staff. The authority offers a large number of placements for practical training and internships for qualified lawyers and economists.

## Knowledge management

The Bundeskartellamt has set up a new „Knowledge Management“ unit to further improve the transfer and coordination of expert knowledge between the different divisions.

## The Bundeskartellamt in an international comparison

Every year the renowned antitrust journal Global Competition Review (GCR) analyses and evaluates the performance of leading competition authorities worldwide. In addition to the information submitted by the authorities themselves, the assessment also takes into account the opinions of experts, such as lawyers specialising in competition law, economists and academics as well as other special information which the journal derives from its own surveys and analyses. Again in 2015 the Bundeskartellamt ranked in the 5-star „elite“ category.

The authority also received the „European Agency of the Year“ and „Enforcement Action of the Year“ awards for its proceedings against hotel booking portals.

## The Bundeskartellamt in the Internet:



Clear and informative: Internet presence of the Bundeskartellamt. [www.bundeskartellamt.de](http://www.bundeskartellamt.de)

## Rating of international competition authorities

**In 2015 the 5 star „elite“ category was awarded to four competition authorities:**

- Autorité de la concurrence (France)
- Bundeskartellamt (Germany)
- Department of Justice – Antitrust Division (USA)
- Federal Trade Commission (USA)

Source: GCR, Rating Enforcement 2015. The Annual Ranking of the World's Leading Competition Authorities. The authorities are assessed on a scale of one to five stars.

## 6. GCR-Awards 2016 in Washington

**Bundeskartellamt receives awards for ...**

- ... European Agency of the Year
- ... Enforcement Action of the Year

Source: <http://globalcompetitionreview.com/news/article/40871/gcr-awards-2016-winners-photos/>

# General Policy Division

The General Policy Division advises the decision divisions on specific antitrust and economic issues and represents the Bundeskartellamt in the EU's decision-making bodies. It is involved in legislative reforms which have a bearing on competition and coordinates the authority's cooperation with foreign competition authorities and international organisations. The General Policy Division is responsible for the authority's press and public relations work and, finally, assists the President of the Bundeskartellamt. The General Policy Division is made up of seven units:

G1 – German and European Antitrust Law; G2 – Digital Economy, Regulation and Competition, Procurement Law; G3 – Economic Issues in Competition Policy; G3A – Data Analysis, Survey Techniques and Econometrics; G4 – German and European Merger Control; G5 – International Competition Matters; PK – Press and Public Relations.

Prof Dr Konrad Ost was Head of the General Policy Division until October 2015.

He was succeeded by Birgit Krueger, who had previously chaired the 2nd Decision Division.



Because the elements of the rules in German competition law are so broadly defined, it is equal to meeting these new challenges. So as to be able to continue developing its own practices, the Bundeskartellamt established an Internet Platforms Think Tank, whose findings have already been incorporated into abuse and merger control proceedings.

However, it may be worth considering amending certain aspects of the legislative framework to facilitate and safeguard the work of the authorities. Giving greater consideration to internet-specific market power criteria could be discussed. The Bundeskartellamt recommends greater legal clarity on the issue of whether free exchange relationships, which are prevalent in the internet economy, can have market quality. The acquisition by Facebook of the WhatsApp messenger service was originally subject neither to German nor to EU merger control proceedings and was only investigated after the case was referred to the European Commission by other Member States. Despite a purchase price of some 19 billion US dollars, on account

## The internet and competition

The digital economy is expanding to encompass more and more economic sectors and areas of life. The business models used by digital companies such as Google, Amazon and Facebook are not only taking up more and more space in the public debate, they are also playing an ever greater role in the work of the competition authorities. At the invitation of the Bundeskartellamt, competition law experts met in October 2015 to discuss the resulting challenges. On the one hand, the digital economy is bringing forth technological and entrepreneurial innovations which are, in part, causing disruptive changes to market conditions. On the other hand, economies of scale and network effects are facilitating the emergence of a few large platforms. The benefits these companies derive from collecting and analysing data play a central role too. Appropriate account must be taken of the specific features of digital markets and business models when applying competition law. Continuing to pursue the goal of keeping markets open and retaining their momentum and innovative power are key here.

### Meeting of the Working Group on Competition Law discusses internet platforms

The meeting of the Working Group on Competition Law was held in Bonn on 1 October 2015.

- The topic of the meeting was “The Digital Economy – Internet Platforms between Competition Law, Privacy and Consumer Protection”.
- The meeting was attended by more than 100 competition law experts, including professors of law and economics, high-ranking representatives of national and European competition authorities and ministries, and judges sitting on the competition divisions at Düsseldorf Higher Regional Court and the competition panels at the Federal Court of Justice.
- The Bundeskartellamt has been organising these annual meetings, which always address fundamental competition policy issues, for more than 40 years.



of WhatsApp's very low revenues the merger reached neither German nor EU merger control thresholds. There are plans, as part of the Ninth Amendment to the German Competition Act, to add a further criterion to the merger control procedure which relates to the transaction value. The Bundeskartellamt was closely involved in work on this amendment.

### Cartel law

The Bundeskartellamt is closely involved in prospective legislative changes in the field of cartel prosecution. For example, one of the objectives of the Ninth Amendment to the German Competition Act is to close the loopholes which companies can exploit when they are fined. Experience has shown that in spite of the legislative changes made in 2013 it is still possible for those involved in a cartel to evade paying fines by restructuring their companies. The Bundeskartellamt believes that so as to ensure that effective sanctioning of large group companies in particular is not jeopardised a new rule in line with EU law should be introduced which provides that the company as a whole is liable.

In addition, the upcoming Ninth Amendment to the German Competition Act will implement the EU's Antitrust Damages Directive (Directive 2014/104/EU). The new regulations make it much easier for those suffering damage on account of the conduct of cartels or other breaches of competition law to claim compensation. More specifically, it is to become much easier to get hold of information. Further, the leniency programme will be applied to those who provide the competition authority with information leading to a cartel being exposed, meaning they will, in future, be better placed when it comes to civil liability for damages.

### The role of economics and data analysis when applying competition law

Each of the Bundeskartellamt's decisions is underpinned by conceptual economic considerations and quantitative analyses. That is why the Economic Issues in Competition Policy and/or the Data Analysis, Survey Techniques and Econometrics units are involved in nearly all large-scale merger control proceedings, sector inquiries and other administrative proceedings. The two units cooperate closely, which is also why conceptual considerations and quantitative analysis are closely dovetailed.

At the conceptual level, one focus is on issues such as market definition and developing and reviewing theories of competitive harm. These always need to be based on a sound understanding of how the competition in the market in question works. Implementation of the SIEC test specifically in the area of merger control thus forms one main emphasis.

Recourse is increasingly being taken in the context of empirical analyses to market participants' own databases, since they can generally be made available quickly and with relatively little effort on the part of the company concerned. This is an advantage especially in time-limited proceedings. For example, comparing various providers' customer lists allows conclusions to be drawn about a market's geographical dimensions or the competitive closeness of various providers. Statistical analyses of actual bookings made in advertising markets can help in the investigation and, where necessary, refinement of the geographical market definition on the basis of booking units. Analysing customers lists ahead of a survey can ensure that those companies on the opposite market side are investigated which may potentially be most affected by a merger. Finally, a list of various market participants' suppliers can help quantify the significance of individual upstream markets. Such analyses were conducted in the context of various cases in the period under review.





## Energy and competition

In the debate on the shape and form of Germany's future electricity market, the Bundeskartellamt has always emphatically come out in favour of competitive structures. In particular, the Bundeskartellamt is critical, from the point of view of competition law, of the idea of introducing a capacity market and feels this is currently not in fact necessary. The German government's draft law on the electricity market does not provide for the introduction of a capacity market.

The fear has been expressed by some that the ban on abusive practices under competition law could impact the electricity sales market, acting like an implied upper price limit and preventing price peaks caused by shortages of supply. The Bundeskartellamt does not share these concerns. It suggested publishing guidance on the control of abusive practices under competition law in regard to electricity generation to dispel any concerns. The Federal Ministry for Economic Affairs and Energy's White Paper took up this suggestion and listed it as one of 20 measures for developing the electricity market. The Bundeskartellamt also proposed in future regularly publishing a report on electricity market conditions as part of this measure. This will enable companies to better assess whether they are dominant and thus prohibited from engaging in abusive practices. The Cabinet draft of the act on the electricity market contains regulations pertaining to this report.

## Guidelines on commitments in merger control procedures

The Bundeskartellamt is currently drafting guidelines on commitments made in merger control proceedings. Where a merger raises competition issues, companies can avoid the merger being prohibited by offering com-

mitments which are suited to completely eliminating the problem. The draft will be published shortly as part of a consultation procedure. The guidelines describe the most relevant types of commitments and explain which conditions they must fulfil. The procedure for accepting and implementing commitments and the role of trustees are also addressed in detail.

## Merger control notifications via DE-Mail

It will soon be possible to submit merger control notifications to the Bundeskartellamt via DE-Mail. It will, of course, still be possible to forward them by mail, fax or email together with a qualified electronic signature.

### Cooperation within the EU in 2015

- Administrative assistance was provided in 11 cases (Articles 101, 102, TFEU)
- Confidential information was exchanged in 19 cases (Articles 101, 102, TFEU)
- Some 140 mergers were investigated by several national authorities. They shared the date of notification and contact details of the person handling the case. The Bundeskartellamt was involved in some 100 cases.
- The Bundeskartellamt cooperates closely with other national authorities and with the European Commission. For example, the Amadeus/Navitaire case was referred to the European Commission following close coordination between the competition authorities of the United Kingdom (CMA), Spain (CNMC), Austria (BWB) and the Bundeskartellamt. The Bundeskartellamt was already close to opening second-phase investigations, but then decided to avert investigations, at least of EEA-wide markets, being conducted in parallel in four Member States.



## International cooperation

The Bundeskartellamt cooperates closely with competition authorities all over the world. This cooperation is either conducted on a bilateral basis or within international networks.

### International Conference on Competition

The Bundeskartellamt held its 17th International Conference on Competition in Berlin from 25 to 27 March 2015. The conference was attended by a record 400 attendees from more than 50 countries. The main topic of the conference was “Big Data, Media and Competition”, which also addressed the issue of whether and to what extent the digital economy needs a regulatory framework.

### ICN

National competition authorities cooperate at international level within the International Competition Network (ICN). With more than 130 competition authorities from approx. 120 jurisdictions, it is the most important association of competition authorities worldwide.

The President of the Bundeskartellamt, Andreas Mundt, has chaired the ICN's Steering Group since September 2013. He was confirmed in office for a further two years in April 2015.

In 2015 the ICN finalised various work products, including guidance on the investigative process which sets out key tools and the principles underlying fair proceedings, a new chapter in the ICN Manual on cartel prosecution dealing with the relationship between competition authorities and contracting authorities, guidelines on international cooperation in regard to merger control, a chapter in a manual on tying and bundling practices, as well as a study on vertical restraints in online trade.

### OECD/UNCTAD

The Bundeskartellamt was last year again involved in the competition-related activities of, for instance, the Organisation for Economic Cooperation and Development (OECD) – Andreas Mundt is a member of the Bureau of the OECD's Competition Committee – and of the United Nations Conference on Trade and Development (UNCTAD).

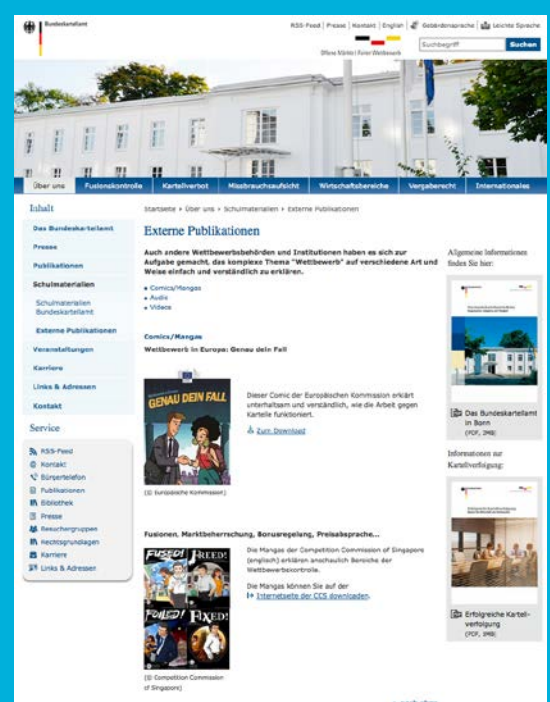
The OECD each year organises two meetings of its Competition Committee and a Global Forum on Competition. The Bundeskartellamt is actively involved in all these events. Topics addressed in 2015 included disruptive innovations, for example.

### ECN

The national competition authorities of the EU Member States cooperate very closely, both in regard to the application of Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) and merger control. They established the European Competition Network (ECN) to combat cross-border restraints of competition. Since 2015 the involved authorities have been providing mutual assistance, for example in the context of dawn raids or other investigative measures such as decisions requesting information. The national competition authorities also exchanged confidential information which can be used as evidence in proceedings.

### Teaching materials

- The Bundeskartellamt expanded its range of information material in 2015 and published a folder containing teaching materials on competition oversight in Germany as well as an extensive list of links to videos and other material on its website ([www.bundeskartellamt.de](http://www.bundeskartellamt.de)).
- Teachers can use the materials in business or social studies classes to teach pupils about the role of competition in our economic system and the regulatory framework the state has put in place to protect it.



# The Litigation and Legal Division

The Litigation and Legal Division represents the Bundeskartellamt before the higher regional courts, the Federal Court of Justice and other courts. In proceedings before the court of first instance, Düsseldorf Higher Regional Court, it represents the authority in conjunction with the decision division in charge of the case in question. The Litigation and Legal Division represents the Bundeskartellamt in civil actions relating to general competition law issues. In such cases the authority often acts as an *amicus curiae* to the Federal Court of Justice. The Division also advises the Bundeskartellamt on all legal matters and assists the decision divisions in their cartel administrative and cartel fine proceedings. The Special Unit for Combating Cartels (SKK) is also part of the Litigation and Legal Division.

Jörg Nothdurft is Head of the Litigation and Legal Division.

## Federal Court of Justice denies claim for damages after merger prohibited (file ref. KZR 71/14)

The Federal Court of Justice rejected a complaint about the denial of leave to appeal filed by the Danish company GN Store against a judgment handed down by Düsseldorf Higher Regional Court in which it had rejected the company's claim for damages totalling more than 1.1 billion euros against Germany.

GN Store had planned to sell its hearing aid and audio-logical diagnostic devices manufacturing and global sales division to Phonak Holding AG. The Bundeskartellamt did not clear the merger because it believed it would create a dominant oligopoly. Düsseldorf Higher Regional Court and the Monopolies Commission confirmed this decision. In 2010 the Federal Court of Justice then reversed the Bundeskartellamt's decision, as it held there was substantial internal competition between the remaining competitors.

In the subsequent proceedings on the claim for damages, Düsseldorf Higher Regional Court confirmed both that the Bundeskartellamt had investigated the factual and legal aspects of the case with particular care and that the legal opinion it had reached was reasonable. The court therefore held that the members of the competent decision division had not been at fault. However, such fault is the precondition for liability on the part of the authority. This decision is now final.

## Düsseldorf Higher Regional Court confirms the anticompetitiveness of HRS's "best price" clause (file ref. VI-Kart 1/14 (V))

Düsseldorf Higher Regional Court confirmed the Bundeskartellamt's decision to prohibit HRS from applying its "best price" clause. Under this clause hotels were obliged to grant HRS the cheapest hotel price, the largest room capacity and the most favourable booking and cancellation conditions in online booking portals. The Bundeskartellamt had prohibited the use of this clause on

account of its restricting competition between different hotel portals.

The Bundeskartellamt's legal position, which has now been confirmed by final and binding order, has an impact on areas over and above hotel booking platforms. The energy comparison portal Verivox, for example, has now also given up its "best price" clauses. The authority was therefore able to drop its investigations into Verivox's practices.

## Düsseldorf Higher Regional Court confirms injunction issued by the Bundeskartellamt in the EDEKA/Tengelmann merger control proceedings to prevent premature execution of key aspects of the merger (file ref. VI Kart 1/15 (V))

The Bundeskartellamt issued a temporary injunction in the merger control proceedings to prevent the two companies implementing parts of the proposed merger before the Bundeskartellamt had concluded its investigations. The participating companies were thus required not to implement the previously concluded framework agreement on the purchase of goods and the corresponding central settlement, and not to close or devalue the branches (so-called "carve-out"), warehouses and meat factories as set out in the purchase agreement.

Düsseldorf Higher Regional Court held, contrary to the Bundeskartellamt's legal opinion, that denying Tengelmann the right to purchase goods via EDEKA was unlawful to the extent that there had been no special need for urgency, the precondition for an injunction. In the Higher

### 2015 statistics

- 1 new cartel fine case
- 18 new cartel administrative cases
- 218 new civil antitrust cases
- 13 *amicus curiae* statements

*“A survey of civil proceedings reveals that actions for damages following violations of competition law are no longer the exception but the rule. It remains to be seen what knock-on effects this will have in regard to the leniency programme and new authority procedures.”*

Regional Court's view, the short-term purchase of goods via EDEKA in the period up until a decision was taken on the planned merger in the second-phase investigations would not have given rise to any irreversible adverse effects. The Higher Regional Court rejected the participating companies' other complaints. Both parties filed a complaint against the denial of leave to appeal with the Federal Court of Justice.

**Düsseldorf Higher Regional Court issues decision in summary proceedings on safeguarding the ban on execution in the Bundeskartellamt's decision to prohibit the merger between EDEKA and Tengelmann (file ref. VI Kart 5/15 (V))**

The companies concerned filed an appeal with Düsseldorf Higher Regional Court, which has now also ruled on identical orders in the Bundeskartellamt's subsequent decision to prohibit the merger. The competent Division confirmed that the delivery of goods to Tengelmann at EDEKA's terms and conditions and the central settlement violate the statutory prohibition of execution. However, contrary to the Bundeskartellamt's legal opinion, the Higher Regional Court held that the closure or devaluing of the carve-out stores referred to in the purchase agreement between EDEKA and Tengelmann did not already constitute the anticipated integration of Tengelmann into EDEKA. Since, according to the purchase agreement, Tengelmann was in fact to sell or close these stores in order to be able to implement the merger, and these were

thus not the subject of the merger, such measures by Tengelmann could not in fact have been aimed at anticipatory execution. Both parties filed the appeal granted with the Federal Court of Justice.

**Düsseldorf Higher Regional Court upholds decision to prohibit Tönnies from acquiring Tummel issued in merger control proceedings (file ref. VI-Kart 8/11 (V))**

Düsseldorf Higher Regional Court rejected the parties' appeals against the decision to prohibit the merger. Tönnies procures pigs, sows and cattle for slaughter, sells fresh meat, processes meat and utilises slaughterhouse waste. Tummel operates a slaughterhouse for pigs and sows. The Bundeskartellamt did not clear the merger as it would have further strengthened Tönnies' dominant position on the markets for the procurement of living sows for slaughter in Germany and for the sale of the cut sow meat in Germany.

Moreover, the Higher Regional Court pointed out with regard to the judicial review of the prohibition order that it was the legal situation at the time of the conclusion of the oral hearing before the appellate court which was relevant, regardless of the legal situation when the proposed merger was notified or the Bundeskartellamt issued its decision.

**Düsseldorf Higher Regional Court confirms unlawfulness of Deutsche Post's price setting (file ref. VI-Kart 9/15 (V))**

Further, Düsseldorf Higher Regional Court confirmed a decision in which the Bundeskartellamt held that Deutsche Post's former setting of prices for individual large-volume mailers impeded its competitors in a manner which violated competition law. First, Deutsche Post had agreed fees and charges with some big telephone companies which were lower than those for the advance services competitors would have had to purchase from Deutsche Post in order to be able to make their own offers to these telephone companies. Second, Deutsche Post had made the granting of reductions to some telephone companies dependent on whether they drew more than 90 percent of their postal services from Deutsche Post.

The Higher Regional Court found that the prohibition of the abuse of a dominant market position under EU and German law had been violated. In regard to the EU regulation the Higher Regional Court remarked – following the case-law of the European Court of Justice – that the European Commission's communication on its priorities in cases of abuse could not provide the basis for any restrictive interpretation of this rule.

# Federal Public Procurement Tribunals

The federal public procurement tribunals are responsible for reviewing tender procedures conducted by the Federation or public contracting entities. The review procedure is similar to proceedings in court and is launched if a company wishing to participate or having participated in a tender bid finds evidence of a violation of public procurement law and applies to one of the public procurement tribunals for a review of the award procedure.

The 1st Public Procurement Tribunal is chaired by Hans-Werner Behrens.

The 2nd Public Procurement Tribunal is chaired by Dr Gabriele Herlemann.



The review procedures conducted by the federal public procurement tribunals in 2015 again covered a broad spectrum of subject matters. A number of them concerned procurements made by the statutory health insurance funds, primarily in regard to discounted drugs. Others concerned tender procedures for mail and labour market services, for the overhaul of the railway network and procurement in the military sector.

## Neutral and independent patient information services

A tender procedure conducted by the independent consumer and patient information offices is indicative of the broad range of matters the federal public procurement tribunals have to deal with. The outcome was the subject of very controversial public debate. The tender was issued under Section 65b of the Fifth Book of the Social Code (*Sozialgesetzbuch Fünftes Buch, SGB V*), in accordance with which the leading association of statutory health insurance funds (*GKV-Spitzenverband*) provides funding to the tune of approx. 9 million euros each year to consumer and patient advisory services. These, for example, cover the treatment of diseases or reimbursement of medical services by the statutory health insurance funds.

One of the key statutory conditions in this new tender for the next funding period was that the information services had to be neutral and independent. The previous service provider doubted that the proposed contracting partner was able to meet this condition, and therefore contacted the federal public procurement tribunals. The main accusation raised was that the new provider currently operates, among other services, a medical hotline for statutory and private health insurance funds and pharmaceutical companies. It was therefore to be feared that the new provider would inform consumers and patients in the interests of the statutory health insurance funds and the pharmaceutical industry, on which it is economically dependent.

The public procurement tribunal did not share this opinion. What was decisive, it held, was that the bidder concerned had proposed founding a non-profit limited liability company (gGmbH) which would be linked under company law with the parent company but would be independent in terms of financing and personnel. The funding available fully covers the advice centre's financial needs. Professional independence is, for instance, guaranteed because the director and the other members of staff work exclusively for this enterprise, without there



being any overlaps with the parent company. All of those employed in advising consumers and patients are required to regularly sign neutrality declarations. The neutrality and independence of the service is also ensured on account of regular controls carried out by an independent individual. The funding agreement to be concluded also includes diverse sanctions which can be applied in the event of a breach of the duties of neutrality and independence.

### Required self-cleansing procedures following cartel agreements

In one case the competent public procurement tribunal had to address the issue of what self-cleansing procedures are required in order for a company which was previously involved in cartel agreements to the detriment of the public client to be able to participate in a new tender procedure.

When, four years earlier, the public contracting authority concerned had issued a call for tenders for comparable construction services, several contractors had formed a bidding syndicate to its detriment. The competent public prosecution office and the Bundeskartellamt took up the case. Orders imposing fines have since been issued against several contractors.

In the tender at issue here, the contracting authority required the companies involved in the cartel to provide concrete information about self-cleansing measures, in particular the consequences they had drawn in regard to their organisation and personnel.

The applicant in the review procedure stated, among other things, that it was not its own company but another group company which had been involved in the cartel, and that in addition those who had been responsible for reaching the anticompetitive arrangements, currently directors in its company, were now only authorised to act jointly.

### The Federal Public Procurement Tribunals in figures

- Applications to institute review proceedings: 138
- Total monetary value of the awards on which the tribunals issued decisions: 5 billion euros
- Cases in which appeals were filed with Düsseldorf Higher Regional Court against the tribunals' decisions: 15

As at: 12 February 2016

### Outlook for 2016

- A new regulatory framework regarding public procurement was adopted at EU level in 2014. It needed to be implemented into national law by 18 April 2016. The new regulations apply to all tenders issued after that date.
- The "new procurement law" contains fundamental amendments to the previous rules on public procurement and numerous new regulations.
- For example, the public procurement tribunals now review both construction and services concessions.
- In addition, public clients have more options available to them. They can, for instance, now also prescribe strategic goals, including environmental, social or innovative aspects, in the tender.
- As a result the federal public procurement tribunals will be dealing intensively with the new regulatory framework from mid-2016 onwards.

However, the respondent felt that insufficient consequences had been drawn and therefore excluded the applicant from the tender on the grounds of a lack of reliability.

The public procurement tribunal rejected the application to launch a review procedure. In its decision the tribunal made it clear that the applicant had to accept that the group company's conduct would be attributed to its own company on account of close personnel links and the fact that the two companies were largely identical. In addition, the applicant had not undergone a sufficient self-cleansing process in terms of the personnel measures required in the tender documents. The only measure taken, the tribunal stated, had been that the two directors who had been involved in the cartel agreements were now only authorised to represent the company jointly. However, the fact that they were still directors in the company did not guarantee that the applicant would in future act reliably and in line with the law. The appeal against the decision was withdrawn, which is why the decision is now final.



# 1st Decision Division

The 1st Decision Division is responsible for the following industries: the extraction of ores and other non-metallic minerals, construction (building materials, glass and ceramics), real estate and related services, and wood, including furniture. Examples of the 1st Decision Division's work in 2015 include proceedings against the federal state of Baden-Württemberg concerning the joint marketing of round timber, divestiture proceedings in the rolled asphalt industry and the evaluation under competition law of supplier groups in that industry. Increased concentration in the furniture retail sector led to the investigation of several planned mergers. The 1st Decision Division also conducted merger controls into two major mergers in the residential real estate sector.

The 1st Decision Division is chaired by Christian Ewald, who was previously the Bundeskartellamt's Chief Economist. He succeeded Franz Heistermann, who retired in October 2015.

## Proceedings against the marketing of round timber in Baden-Württemberg

In July 2015 the 1st Decision Division prohibited the system applied in the federal state of Baden-Württemberg for the joint marketing of round timber. Baden-Württemberg had used the state-owned Forst-BW company to market wood both from its own state forest and from municipal and private forests. Forst BW negotiated the prices for all forest owners and, by providing services directly related to the marketing of timber, also determined the quantities, qualities and product ranges offered. In the 1st Decision Division's view, such far-reaching cooperation with the participation of the federal state is not permissible under competition law.

In the course of the proceedings Baden-Württemberg had undertaken to dispel the competitive concerns, but then in January 2015 retracted the commitments it had made. The 1st Decision Division thereupon continued with the proceedings and ultimately prohibited the system. Baden-Württemberg appealed this decision. The appeal will be heard by Düsseldorf Higher Regional Court.

This decision does not affect wide-ranging cooperations entered into by private and municipal forest owners, but they must not involve the federal state. Likewise, the prohibition does not cover arrangements made with the federal state if a corporation, a private forest owner or an association of forest owners each owns an area of forest of no more than 100 hectares.

### Divestitures in the rolled asphalt industry

- The 104 divestiture proceedings concerning joint ventures have now all been concluded.
- 25 proceedings were terminated.
- As a result, numerous information sharing practices which were problematical from the point of view of competition law and other restrictive contracts between competing businesses were stopped.

## Report on divestitures in the rolled asphalt industry

In July 2015 the 1st Decision Division published its report on progress made in proceedings to eliminate anticompetitive corporate links in the rolled asphalt industry. The report describes the goal and the course of the divestiture proceedings and the benchmarks applied. The Bundeskartellamt had initiated the proceedings based on the insights it gained in the course of the sector inquiry into rolled asphalt it completed in 2012. The inquiry showed that there was a dense Germany-wide network of corporate links in the industry, some of which were in breach of competition law. These links have now all been completely eliminated on account of the proceedings initiated by the 1st Decision Division.

## Spotlight on supplier consortiums in the asphalt sector

The number of independent suppliers in the asphalt sector has increased on account of the successful divestiture of anticompetitive joint ventures. In order to ensure that the

### Forests as an economic factor

- Generating a national turnover of more than 4 billion euros, the German round timber market is an important economic factor.
- According to the Bundeskartellamt's investigations, Baden-Württemberg achieves a large market share of between 55 and 65 percent of the round timber harvested in the federal state.
- Sales of the coniferous woods it harvests from its state-owned forest achieve a market share of approx. 15 to 25 percent. The remaining market share of between 35 and 45 percent derives from the federal state's sales cooperations.

resulting positive competitive effects are not jeopardised, it must be ensured that the network of linked companies which reduced the level of competition is not replaced by a network which ultimately has the same effect, possibly even leading to the creation of bidding and supplier consortiums which may be prohibited under competition law. Supplier consortiums comprising small and medium-sized enterprises may indeed be necessary and efficient, for instance in the context of large public tenders. Although it is currently not involved in any specific proceedings, the 1st Decision Division is engaged in an intensive exchange with representatives from the sector in which it aims to discuss and communicate the legal and economic aspects which need to be taken into account in the context of this assessment. Its overall aim is to effectively minimise the risk of the emergence of anticompetitive supplier consortiums.

### Vertical resale price maintenance between mattress manufacturers

In October 2015 the 1st Decision Division concluded what has become known as the “mattress case” by imposing a fine totalling 15.5 million euros on Tempur Deutschland GmbH. From August 2005 to July 2011 those responsible at Tempur reached prohibited agreements with their retailers to the effect that they would have to offer various mattresses both online and in standard retail stores at sales prices defined by Tempur. Only non-binding price recommendations are permissible under competition law.

Back in August 2014 and February 2015 the 1st Decision Division had imposed fines on Recticel Schlafkomfort GmbH and Metzeler Schaum GmbH for resale price maintenance. Proceedings conducted against two other manufacturers, two purchasing associations and an online retailer were terminated on discretionary grounds.

### Mergers in the furniture trade

XXXLutz made various acquisitions in 2015, thereby increasing the level of concentration in the furniture sector in the Ruhr region of Germany. In the first half of the year, for example, XXXLutz bought shares in the furniture retailers Zurbrüggen, Sonneborn and Zimmermann,

which have several stores in North Rhine-Westphalia. XXXLutz dropped its plans to set up a joint venture with Ostermann after the 1st Decision Division launched second-stage investigations and an extensive examination of the relevant product and geographical market.

Besides, XXXLutz focused on expanding in regions in which the company had so far had few of its own stores. In the second half of 2015 the company then bought shares in Möbel Mahler, which has stores in Baden-Württemberg and Bavaria, and it acquired Wohnwelt Pallen, which also has one store in North Rhine-Westphalia. None of these acquisitions was prohibited, however.

### Merger control: Residential property market definition

- As part of its review of market conditions on account of the planned merger between Deutsche Annington and GAGFAH, investigations were for the first time carried out on the basis of several different market definition models.
- Up until now it has been assumed that the rental housing market is a uniform relevant product market. In the past local markets were defined geographically and usually comprised the city area and the peripheral area.
- After investigating the market shares of the participating companies in the relevant rental housing markets, the relevant markets are now also to be divided up according to size category and, in a further step, account is also to be taken of the rental price level.

### Major mergers in the real estate market

In January 2015 the 1st Decision Division cleared the largest merger in the field of residential real estate to date – the acquisition of GAGFAH S.A. by Deutsche Annington Immobilien SE. It was able to give clearance as all the players in the affected regional rental housing markets had market shares well below 40 percent and the participating parties’ scope for competitive action is sufficiently restricted.

In December 2015 the 1st Decision Division also cleared Vonovia SE’s plans to acquire 100 percent of the shares in Deutsche Wohnen AG by way of a public takeover bid. Vonovia SE was the result of the aforementioned merger. Since, in the event of a successful takeover, Vonovia would expand its position as Germany’s leading company in this area, the 1st Decision Division conducted very thorough investigations into the relevant local and regional rental housing markets. Private landlords, municipal housing companies, housing cooperatives and other commercial operators are so strongly represented in all the relevant regions that no restraints of competition are to be expected. The takeover did not, in the end, go through, though.



# 2nd Decision Division

The 2nd Decision Division's remit covers the agricultural sector, the food industry, leather and leather goods, shoes, cosmetics and drugstore products, as well as the wholesale and retail trade in food and beverages.

The food retail sector remains one of the main emphases of its work. In 2015 the 2nd Decision Division put the spotlight on the planned merger between the EDEKA and Kaiser's Tengelmann retail groups. It also conducted divestiture proceedings concerning organic dairies. The 2nd Decision Division held that ASICS had engaged in restrictive practices with respect to the online sales of its running shoes.

The 2nd Decision Division was chaired by Birgit Krueger until October 2015.

She was succeeded by Dr Felix Engelsing, who had previously chaired the 8th Decision Division.



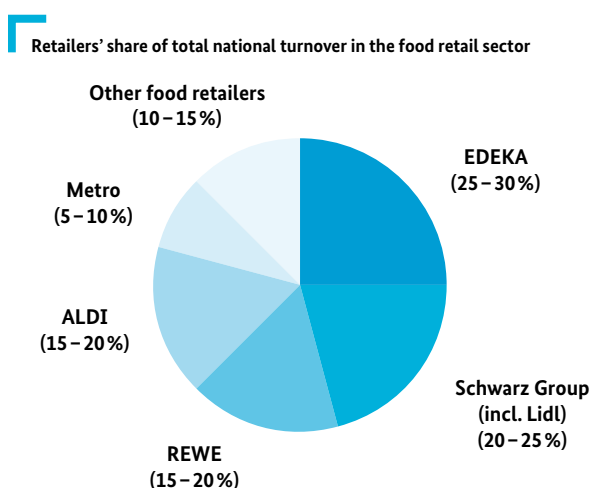
The 2nd Decision Division has in recent years investigated the local competitive situation for consumers in the context of various merger control proceedings. That means it examines whether sufficient alternatives are still available after a competitor takes over a store. Another focus has been the question of whether the retail groups' procurement practices restrict competition in this sector.

Proposed merger between EDEKA and Kaiser's Tengelmann

## Food retail sector

The food retail sector in Germany is highly concentrated. Four big retail groups – EDEKA, REWE, ALDI and the Schwarz Group (which includes Lidl) – together account for a share of more than 85 percent of the market as a whole. The leading food retailers have a structural competitive advantage over their competitors and in their relations with suppliers. They are, for instance, able to use their strong market position to their advantage in negotiations with their suppliers.

In spring 2015 the 2nd Decision Division prohibited EDEKA's plan to acquire 451 Kaiser's Tengelmann stores. The merger would, it argued, considerably worsen the competitive situation in numerous strongly concentrated regional markets and in districts in the greater Berlin area, in Munich, Upper Bavaria and in North Rhine-Westphalia. Consumers' local options and alternatives would be severely restricted as a result. The proposed merger would also give rise to competitive problems in the context of procurement, including on account of the fact that the manufacturers of branded articles would no longer have an important independent buyer as an alternative outlet. The 2nd Decision Division indicated which stores EDEKA could have and which it could not have acquired. Its objective was to retain a third competitive force in those regions in which only EDEKA and REWE would have been left over as strong food retail brands following the merger.



\* Source: Sector inquiry into buyer power in the food retail sector (September 2014)

## Ministerial authorisation (Section 42, GWB)

- The Federal Minister for Economic Affairs and Energy shall, upon application, authorise a merger prohibited by the Bundeskartellamt if ...
  - ... in the individual case, the restraint of competition is outweighed by advantages to the economy as a whole resulting from the concentration or
  - ... if the concentration is justified by an overriding public interest.
- Since the introduction of merger controls there have been nine successful applications for ministerial authorisation.



The companies were, however, not prepared to accept the conditions imposed for clearance to be given, which is why the merger as a whole could not be given clearance.

The two companies then applied for ministerial authorisation. Under this procedure the Federal Minister for Economic Affairs and Energy examines whether the restraint of competition is outweighed, in an individual case, by advantages to the economy as a whole or by an overriding public interest. In this specific case the companies claimed that the only way to retain the jobs of the around 16,000 staff employed by Kaiser's Tengelmann would be to allow this merger to go ahead. The Federal Minister authorised the merger in March 2016, subject to the obligation that these jobs be safeguarded.

Higher Regional Court issues decision on the prohibition of unjustified benefits

In 2015 Düsseldorf Higher Regional Court reversed the 2nd Decision Division's decision in the case against EDEKA. The company had insisted on certain special conditions after taking over stores previously owned by Plus in 2009. The 2nd Decision Division held that the demands made of the suppliers – some were retroactive, some were inappropriate for other reasons – violated the prohibition of inducing suppliers to grant benefits without any objective justification (known as the "Anzapfverbot") laid down in Section 19 (2) no. 5 of the GWB. The Higher Regional Court did not agree. The Bundeskartellamt filed a complaint against the denial of leave to appeal with the Federal Court of Justice.

### Demerger of organic dairies

The 2nd Decision Division succeeded in ensuring that Germany's two largest organic dairies – Andechser Molkerei Scheitz GmbH and Molkerei Söbbeke GmbH – would in future compete independently of one another on the market. The two dairies were affiliated via the large French dairy Savencia SA. In 1999 Savencia acquired shares in Andechser and between 2011 and 2013 also acquired Söbbeke. Savencia only succeeded in having the merger cleared in merger control proceedings conducted in 2011 because it submitted incorrect statements. Once it became clear that the company had supplied false information, the 2nd Decision Division initiated divestiture proceedings.

To prevent the merger between Savencia and Söbbeke being dissolved, Savencia offered to give up its participation in Andechser. Once the shares had been sold, the Bundeskartellamt terminated the divestiture proceedings against Savencia and Söbbeke.

The 2nd Decision Division imposed a fine totalling 90,000 euros on Bongrain Europe SAS, part of the Savencia Group, for supplying false information when notifying the merger.

### Claims for damages in sugar cartel case

In 2014 the 2nd Decision Division imposed fines totalling around 280 million euros on Germany's three big sugar manufacturers Pfeifer & Langen GmbH & Co. KG, Südzucker AG Mannheim/Ochsenfurt and Nordzucker AG for reaching anticompetitive territorial, quota and price agreements. Following these regulatory fine proceedings, numerous companies in the sugar processing industry are planning to file for damages against the companies involved in the cartel. Some of these actions are already pending before the courts. More than 120 companies who feel they have been adversely affected by the cartel applied for access to the Decision Division's files so as to be able to better prepare their cases.

### Decision on ASICS's selective distribution

In the summer of 2015 the 2nd Decision Division issued its decision in the case against ASICS Deutschland GmbH. It classified as unlawful the distribution system which ASICS had previously been using. In the view of the 2nd Decision Division, ASICS may not prohibit its retailers from using price comparison search engines on their website or from using ASICS trademarks on third-party websites to divert customers to their own online shops. In the view of the Decision Division, this prohibition primarily served to control the price competition in regard to both online and offline sales.

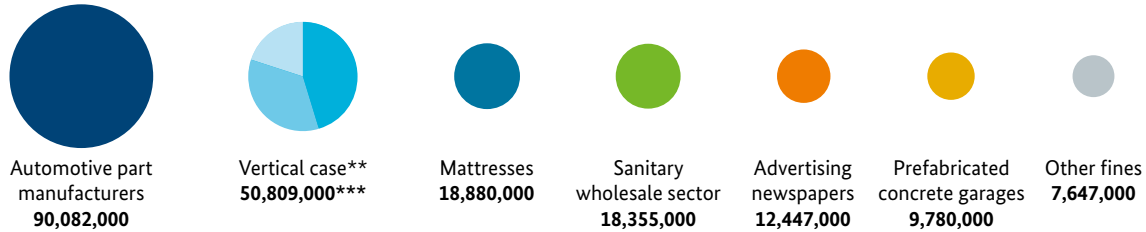
The Bundeskartellamt also criticised the fact that the retailers had in the past been issued with a blanket ban on using online marketplaces such as eBay or Amazon. However, no final decision has yet been taken on this matter. A discussion process is still underway in this regard at EU level. Also, important court decisions which are relevant are still pending.

ASICS amended the contested distribution clauses. The company has filed an appeal with Düsseldorf Higher Regional Court against the decision.



# Facts and Figures

## Fines imposed in 2015 in euros Total of approx. 208,000,000\*

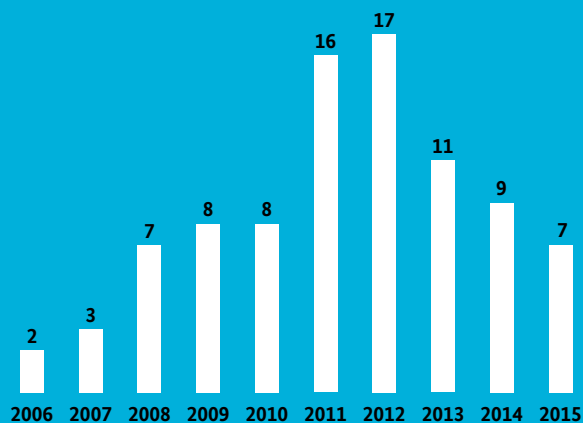


\* The figures are rounded values. A small amount of the fines was already imposed in 2014.

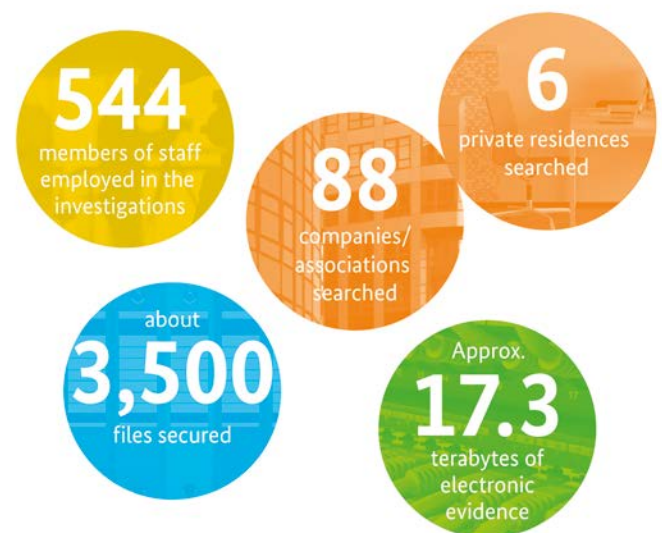
\*\* part of the proceedings described as "vertical case" proceedings

\*\*\* (Beer: 23,113,000; coffee: 17,545,000; confectionary: 10,151,000).

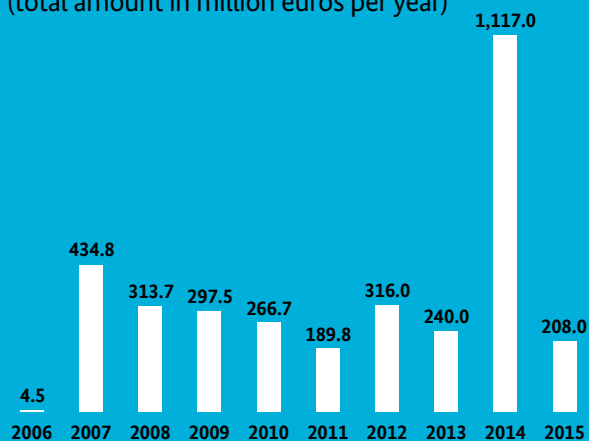
## Cartel proceedings concluded by the Bundeskartellamt between 2006 and 2015



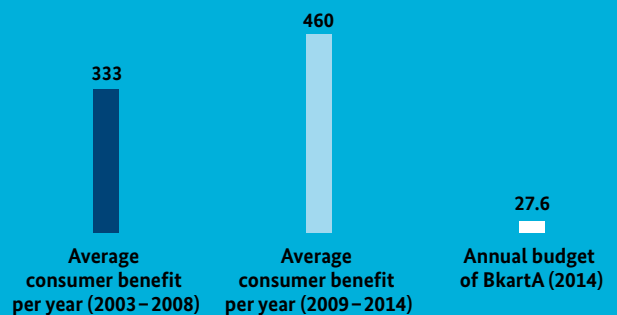
## Dawn raids and evidence seized in 2015



## Fines imposed by the Bundeskartellamt (total amount in million euros per year)

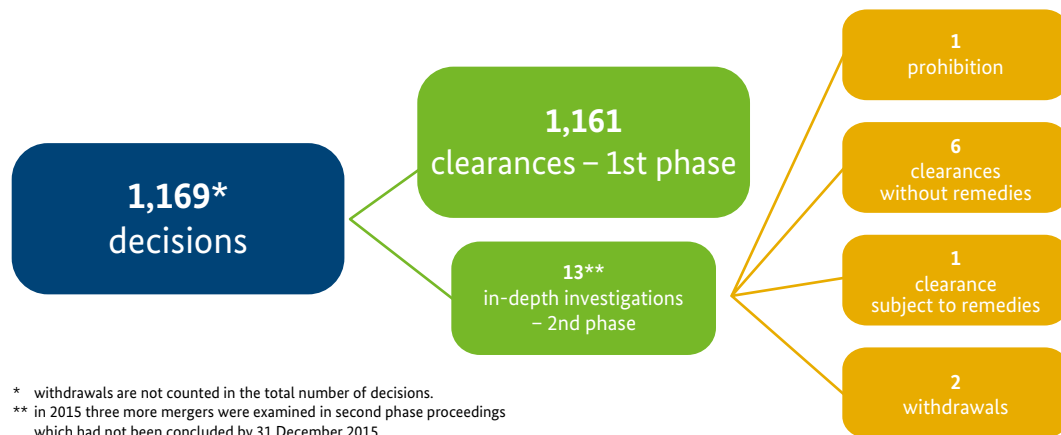


## Estimated direct consumer benefit from the prosecution of hardcore cartels by the Bundeskartellamt (in million euros per year)\*

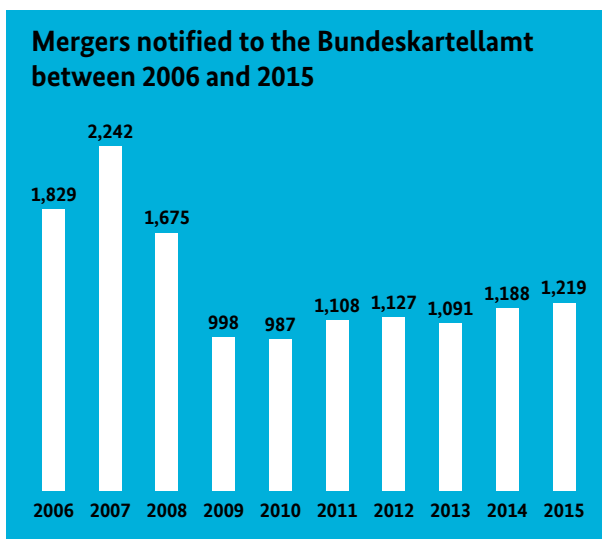


\* The estimated direct consumer benefit for the entire period 2009–2014 is around 2.75 billion euros.

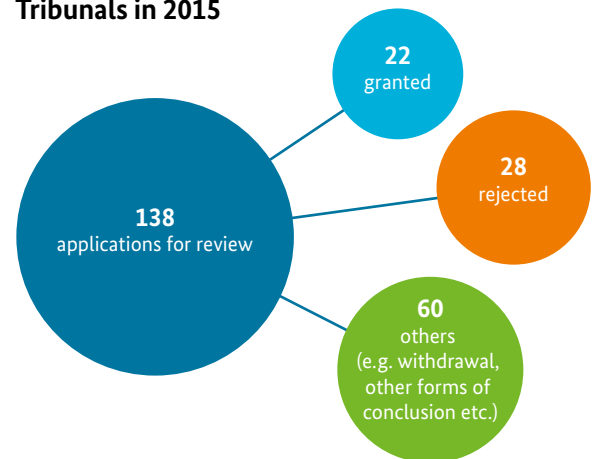
## Merger control: Bundeskartellamt decisions in 2015



## Mergers notified to the Bundeskartellamt between 2006 and 2015



## Practice of the Federal Public Procurement Tribunals in 2015



## Abuse of dominance proceedings in figures for 2015



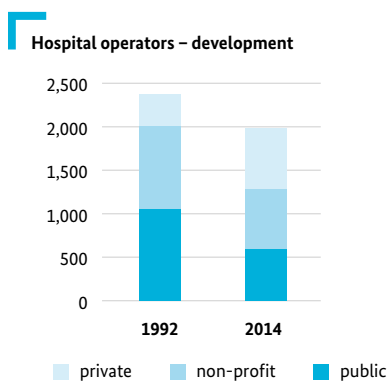
# 3rd Decision Division

The 3rd Decision Division's remit covers the healthcare sector, including health insurance, hospitals, pharmacy and medical technology, the chemical sector and the textiles industry. Merger control proceedings regarding consolidation in the hospital sector are an ongoing matter for the 3rd Decision Division. In 2015 the Division conducted two intensive investigations into the hearing aid industry and concluded abuse proceedings against SodaStream GmbH.

The 3rd Decision Division is chaired by Eberhard Temme.

## Merger control in the hospital sector

Regardless of the type of operator (local authorities, churches or private organisations), hospitals are business enterprises and thus in competition with one another. Owing to the strict statutory requirements, there is hardly any price competition in this sector. That is why merger control primarily aims to safeguard competition for the quality of healthcare provided. The key factor here is that patients should have sufficient alternatives following a merger.



Source: German Hospital Federation, Hospital Statistics 2014;  
Federal Statistical Office, basic hospital data 2013/2014

Before a merger the Bundeskartellamt investigates the competitive situation involving hospitals providing services which patients regard as comparable. The market for acute care hospitals, for instance, is separate from the market for rehabilitation facilities or residential care homes and nursing homes for the elderly. Hospitals are only included in an investigation in a particular geographical area if they represent an alternative in the eyes of the patients and are not, for example, located too far away. Among other data, patient flows are analysed to that end.

### Hospital mergers

- The financial situation of municipal hospitals in particular has further deteriorated in recent years. This has led to a speeding up of the process of consolidation.
- Between 2004 and 2015 the Bundeskartellamt investigated more than 230 hospital mergers.
- 197 mergers were cleared, seven were prohibited.
- The remaining cases were either not subject to merger control or the proceedings have not yet been concluded.

The 3rd Decision Division again conducted wide-ranging investigations in 2015. Particular mention should be made of Rhön-Klinikum AG's plans to acquire Bad Neustadt an der Saale District Hospital from the district of Rhön-Grabfeld. Whilst it was prohibited 10 years ago, the 3rd Decision Division gave the merger clearance this time, as the market conditions in the Bad Neustadt an der Saale region have changed significantly. The merger was not expected to be detrimental to competition in any significant way. In 2014 Rhön-Klinikum AG had, among others, sold the Saint Elisabeth Hospital in Bad Kissingen and Meinigen Clinic to Helios Clinics. Since then Helios has been a key competitor in the Bad Neustadt an der Saale region.

## Mergers in the hearing aid industry

The 3rd Decision Division investigated two mergers in the hearing aid industry.

The hearing aid manufacturer Sonova – which is represented in Germany under the brands Phonak, Unitron, Advanced Bionics and Lyric and also has shares in the two hearing aid acoustician chains Vitakustik GmbH and Fiebing Hörtechnik GmbH – notified its plan to acquire Hansaton Akustik GmbH. The merger was cleared, although the market for sales of hearing aids through hearing aid acousticians is already highly concentrated. The three manufacturers Sonova, Sivantos (formerly



Siemens' hearing aid division) and William Demant together account for a market share of more than 80 per cent. The acquirer Sonova was the leader though not dominant in this group.

The merger did not lead to any significant impediment of effective competition by creating or strengthening a dominant oligopoly. Based on its investigations the 3rd Decision Division concluded that the aforementioned industry leaders, all regarded as innovative, are close competitors though not the target company Hansaton. The rate of customer change in this market has also been high in recent years, which is why the hearing aid manufacturers' market shares have fluctuated.

One special feature of this merger was the vertical integration of the acquirer Sonova on account of its participation in the chains. The hearing aid acoustician chains are among the biggest customers nationwide, but they are too insignificant in the market as a whole for any market foreclosure to be expected.

In early 2016 Vitakustik GmbH, a hearing aid acoustician chain in which Sonova has a participating interest, acquired the Lindacher chain. The merger did not raise any concerns on the demand side because the three hearing aid acousticians which are now part of the Sonova Group do not have any critical buyer power and the further vertical integration of the Sonova Group currently does not give rise to any market foreclosure effects. On the supplier side the merger only gave rise to overlaps in one regional market in the affected hearing aid acousticians'



areas of activity. However, according to the 3rd Decision Division's investigations, this is a minor market within the meaning of Section 35 (1) no. 2 of the GWB. The planned merger was therefore also cleared in the first stage of investigations.

### Abuse proceedings against SodaStream

In early 2015 the 3rd Decision Division imposed a fine totalling 225,000 euros on SodaStream GmbH.

SodaStream (formerly Soda Club), the dominant company in the market, had reserved the exclusive right to refill the carbon dioxide cylinders for use in its carbonation devices. Back in 2006 the 3rd Decision Division had decided that this constituted an anticompetitive practice. The Federal Court of Justice upheld this order in 2008.

Subsequent to this judgment SodaStream modified its sales concept. Its warnings, safety advice and disclaimers nevertheless gave the impression that it alone was authorised to refill the cylinders. The 3rd Decision Division thereupon instituted new proceedings in 2012.

When setting the fine it took account of the fact that SodaStream had cooperated with the Bundeskartellamt and had reached a settlement. The company undertook to correct the texts under complaint and for a further three years to fit the carbon dioxide cylinders with a sleeve which clearly indicates that the cylinders can also be refilled by other companies.



# 4th Decision Division

The 4th Decision Division's remit covers the waste management industry, financial services and other services. Competitive terms and conditions in regard to various payment systems (e.g. electronic cash, credit card transactions and online payment systems) continued to be a main emphasis of the Division's work in the financial services sector. The 4th Decision Division is preparing to carry out a sector inquiry into the waste management sector. It also dealt with numerous planned mergers.

The 4th Decision Division is chaired by Eva-Maria Schulze.



## Assessment of the openness of competition in the electronic cash system

In 2015 the 4th Decision Division monitored whether the leading national credit card associations are complying with their commitment to open up the electronic cash system to more competition. It also carried out initial evaluations in regard to whether the new regulation is bearing fruit.

In the past, retailers had to pay 0.3 percent of the card revenue to the bank issuing the card for each payment made. The amount of the fee was determined by Germany's leading associations in the banking industry. The 4th Decision Division initiated proceedings against this practice.

As of November 2014 electronic cash transactions are only being invoiced on the basis of fees negotiated between retailers and banks. The 4th Decision Division's initial assessment shows that retailers have been able to negotiate significantly lower prices.

The EU Regulation on internet banking fees came into force in December 2015. It provides that internet banking fees charged in the debit card system are to be limited to 0.2 percent of the card revenue.

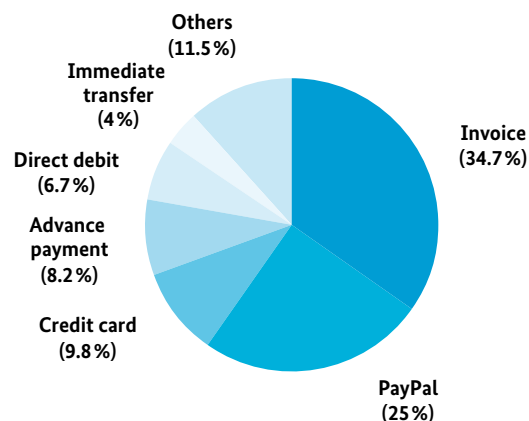
The 4th Decision Division is currently conducting new investigations in the market in this context. The aim is to assess the competitive impact of the commitments entered into under the new EU regulations.

## Statement of objections regarding online payment services

In September 2015 the 4th Decision Division issued a statement of objections regarding the hitherto standard online banking terms and conditions in the German credit industry. The Decision Division informed the associations of banks and savings banks that, based on its current assessment, these conditions breach competition law to the extent that they aim to force independent online payment services such as sofortüberweisung.de out of the market.

The current online banking terms and conditions provide that customers are only permitted to enter their personalised security data (PIN and TAN) on websites which have

**Internet payments 2014**  
Share of payment methods in online revenues (in %)



Source: EHI Retail Institute, German Retail Association (HDE)

been authorised by the banks, and not, for example, on retailers' websites. According to the Decision Division, this prevents customers using independent online payment services.

The banks justified their practice citing security requirements. However, in the view of the 4th Decision Division, the current online banking terms and conditions are not necessary to guarantee the required level of online security.

### Merger between Verifone and InterCard

The 4th Decision Division cleared the acquisition by Verifone Systems Inc., USA of the German company InterCard AG. Verifone is a global provider of electronic point-of-sale (POS) terminals. InterCard operates a network for electronic payment transactions using payment cards in Germany.

Verifone is one of the leading providers of POS terminals in the German market. By comparison, based on the 4th Decision Division's investigations, InterCard's market share of the national market for network service providers is less than 10 percent, that is less than its leading competitors. The investigations did not provide any indications that the companies concerned would be in a position, for instance on account of foreclosure strategies, to significantly impede effective competition.

### Competition in the waste management industry

Following a wave of privatisation in the 1990s it has emerged in recent years that many municipalities are again engaging in economic activities, including in the waste management industry. For example, in the debate around the planned new Recyclable Materials Act, it has been suggested that competitive structures in regard to the disposal of packaging be abolished and responsibility for the management of recyclables be transferred to a central body and the municipalities. The Bundeskartellamt is committed to ensuring that private companies continue to be responsible for the disposal of packaging and is striving to counter monopolisation with regard to the disposal of recyclable materials.

### The waste management industry in Germany

- Total turnover of the waste management industry in Germany in 2012: approx. 50 billion euros
- Workforce: 250,000
- Total municipal waste in Germany in 2013: approx. 50 million tonnes

Source: Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety (BMUB), "Development of Waste Management Policy"; Federal Environment Agency (UBA)

### Merger between REMONDIS and Cortek

The process of consolidation in the waste disposal industry continued in 2015. The 4th Decision Division investigated numerous mergers in this sector. Its investigations into the acquisition of the Cortek Group by REMONDIS were particularly intensive. The merger was cleared in November 2015.

The companies, part of the Cortek Group, primarily offer commercial waste disposal services in the southern part of Saxony-Anhalt as well as in neighbouring regions in Thuringia and Saxony. REMONDIS is Germany's largest waste management company and the market leader in the relevant regions when it comes to the collection of household waste. The takeover will lead to the REMONDIS Group expanding its network of sites. In addition, after acquiring the Cortek Group REMONDIS will also become the market leader for commercial waste in the region.

However, the Decision Division's investigations showed that competitors active in the region also have good site networks and, like REMONDIS, actively participate in tenders for the collection of household and packaging waste, meaning that there is sufficient competitive pressure. In the course of its investigations the Bundeskartellamt also established that in many municipalities in the region household waste is collected by municipal undertakings contracted without a tender procedure. This practice has a negative impact on competition between the economically active providers of waste management services.

### Sector inquiry into household waste collection

The sector inquiry into household waste collection, launched in spring 2016, is investigating the competitive conditions for waste management companies, market structures and the results of tender procedures for the collection of household waste (pick-up at point of collection and transportation to point of transshipment or recycling plant) on behalf of public-law waste management providers and the dual disposal system. The investigations will initially focus on the collection of packaging on behalf of the dual disposal systems.

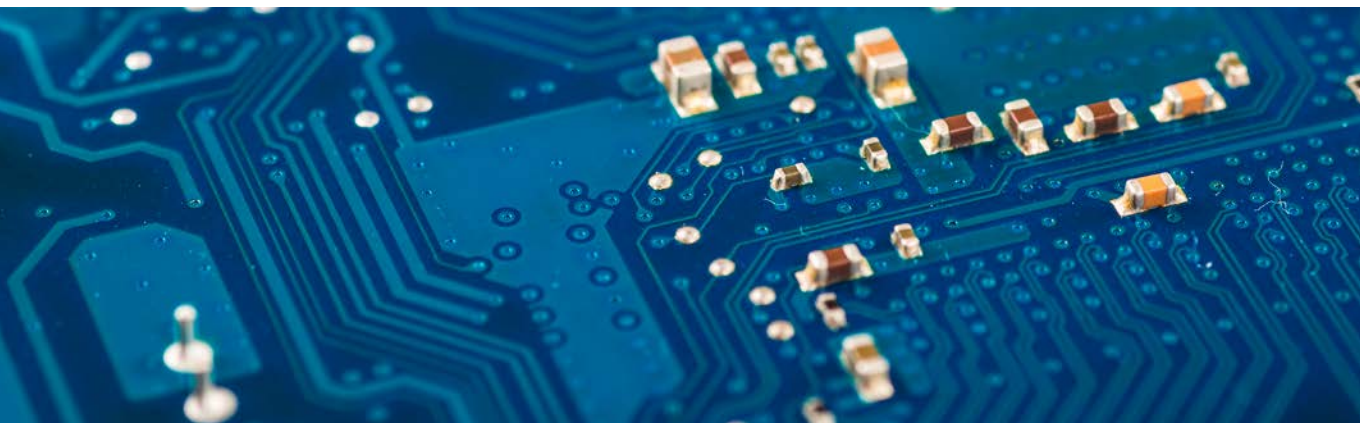




# 5th Decision Division

The 5th Decision Division is responsible for the mechanical and plant engineering sector, the metal industry, iron and steel, measurement and control technology, patents and licences, the paper and the gambling industry. Last year the 5th Decision Division investigated two major mergers in the armoured vehicles industry. There were also mergers between the manufacturers of locking systems. Another focus of the Decision Division's activities was the sanitary, heating and air conditioning sector. It also imposed a fine on the toy manufacturer LEGO for vertical resale price maintenance.

The 5th Decision Division is chaired by Dr Ralph Langhoff.



## Proceedings against sanitary, heating and air conditioning wholesalers

The Bundeskartellamt imposed fines totalling around 21.3 million euros on nine wholesalers and one individual in the sanitary, heating and air conditioning sector on account of their coordinating the calculation of their gross price lists. Proceedings against another company are still ongoing.

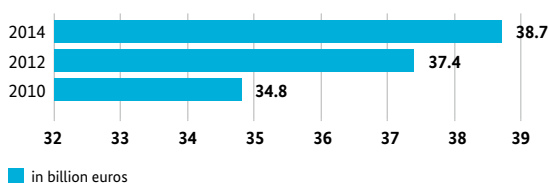
The companies had coordinated the calculation factors used to determine their gross prices vis-à-vis the trades. This coordinated price calculation, which was also relevant as a calculation guide for the sector nationwide, was applied to at least 250,000 products in the sanitary sector.

It also led to an anticompetitive convergence of the initial price level and thus to a significantly lower level of competition.

## Merger between the manufacturers of equipment for the production of semiconductors

In spring 2016 the 5th Decision Division cleared the merger between KLA-Tencor Corporation, Milpitas, USA and Lam Research Corporation, Fremont, USA. Both companies are internationally active manufacturers of equipment used in the production of semiconductors (chips), which is why they had to notify the proposed merger to several competition authorities.

**Development of turnover in the sanitary, heating and air conditioning sector**



Source: German Sanitation, Heating and Air Conditioning Association

## Three-stage distribution channel in the sanitary, heating and air conditioning sector





The companies produce highly sophisticated technical equipment. They are not in direct competition with one another because their respective businesses manufacture different types of equipment which is used at different stages in the semiconductor production process and these different stages have their own separate relevant markets. In addition, the customers of these plants include several large companies with significant buyer power, which will further limit the parties' scope of action following the merger.

The Bundeskartellamt had already conducted wide-ranging market investigations in the sector in 2013/14 in the context of the planned merger between Applied Materials and Tokyo Electron.

### Mergers between the manufacturers of locking systems

In 2015 the 5th Decision Division cleared two major mergers between the manufacturers of locking systems. The planned mergers between DORMA Holding GmbH + Co. KGaA, Ennepetal and Kaba Holding AG, Rümlang, Switzerland and between Allegion Luxembourg Holding & Financing S.à.r.l., Luxembourg and Simons-Voss Technologies GmbH, Unterföhring were investigated separately but simultaneously.

Even after these two big mergers have gone through customers will still have a number of other strong competitors to choose from in Germany and neighbouring European countries.

The investigations also showed that the sector has undergone changes since Düsseldorf Higher Regional Court upheld the Bundeskartellamt's decision to prohibit the merger in the Assa Abloy/SimonsVoss case in 2008. Since then new players have entered the market and there have also been technical developments in the sector.

### Mergers in the armaments industry

There were also important mergers in the armaments industry. In August 2015 the 5th Decision Division cleared the merger between Wegmann & Co. GmbH and the French GIAT Industries S.A.

The business activities of their two subsidiaries Krauss-Maffei Wegmann GmbH & Co. KG (KMW) and Nexter Systems S.A. (Nexter) are to be incorporated into a new 50/50 joint venture. KMW and Nexter both manufacture heavy battle tanks, among other products.

The investigations showed that the merger would not have any adverse effects on the procurement activities of the armed forces in the respective countries. In the armaments industry the customer, generally the state, has

a great influence on the finished product and commands a strong position. In addition, there are sufficient competitors on the market. There were no indications of any particular degree of competitive closeness between the participating companies. The merger also had a security policy dimension, which was investigated by the Federal Ministry for Economic Affairs and Energy. The Ministry cleared the merger as well. In spring 2015 the 5th Decision Division had already cleared KMW's acquisition of a part of Diehl Defence Land Systems GmbH. The merger concerned the track production and repair business for Diehl's armoured vehicles, which was transferred to DST Defence Service Tracks GmbH, Freisen.

#### Vertical resale price maintenance

- Vertical resale price maintenance is an arrangement in which the manufacturer obliges buyers to resell the delivered goods at a fixed price (or at any rate not below a specific predetermined price).
- Such vertical or minimum price-fixing is prohibited under the German Competition Act.
- Individual case-by-case assessment under the German Competition Act may be possible in regard to some restrictions in the manufacturer-retailer relationship.

### LEGO fined

In January 2016 the 5th Decision Division imposed a fine totalling 130,000 euros on LEGO GmbH for enforcing vertical resale price maintenance in regard to sales of its "highlight articles". The measure affected retailers in northern and eastern Germany in 2012 and 2013, who were forced by LEGO GmbH sales representatives to raise their retail prices.

The articles concerned and carefully selected retailers were included in regularly updated lists. Some retailers were threatened with a reduction in supply or even with the refusal to supply if they fell short of the retail prices set down in these lists. In other cases LEGO GmbH made the amount of the discount on the retailers' purchase prices conditional on their adherence to the listed retail prices.

After proceedings were initiated, LEGO carried out wide-ranging internal investigations and from the outset contributed significantly to the clarification of facts. LEGO drew the necessary organisational and personnel consequences of its own accord. When setting the fine, account was taken of this extensive cooperation and the fact that a settlement was reached.

# 6th Decision Division

The 6th Decision Division is responsible for the media and the press, culture, sports and entertainment, the advertising industry and trade fairs. A think tank was set up in the 6th Decision Division to evaluate online platforms under competition law. The main focuses of the work of the 6th Decision Division in 2015 included mergers between dating and real estate platforms; abuse proceedings were instituted against Facebook.

The 6th Decision Division is also conducting proceedings in regard to audiobooks and the future marketing of TV broadcasting rights for German football league matches.

The 6th Decision Division is chaired by Julia Topel.

## Online platforms

The internet economy is raising numerous new questions as regards competition law. In order to further build capacities in this area the Bundeskartellamt set up a think tank in the 6th Decision Division which will look into the competitive conditions in regard to online platforms. Initial findings have already been incorporated into several of the 6th Decision Division's decisions.

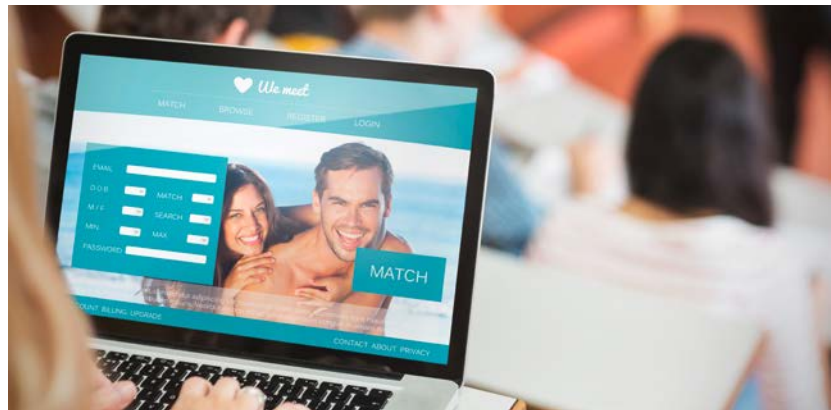
### Proceedings initiated against Facebook

In March 2016 the 6th Decision Division initiated proceedings against Facebook. It is investigating whether Facebook's specific terms of service regarding the use of user data constitute an abuse of its possible dominant position in the social network market.

There is an initial suspicion that Facebook's terms of use breach data protection regulations. Not every legal infringement by a dominant company constitutes an infringement of competition law. However, user data are hugely important to ad-supported internet services such as Facebook. The 6th Decision Division is investigating whether consumers are being sufficiently informed about the type and extent of data being collected. The use of unlawful terms of use could constitute the abusive imposition of unfair conditions on users.

### Facebook's market position

- Facebook is the world's largest social network and one of the most popular websites.
- By its own account, it has some 1.59 billion active users each month (as at: December 2015).
- Facebook has some 28 million users in Germany.



### Mergers between online dating platforms

In October 2015 the 6th Decision Division cleared the acquisition of EliteMedianet GmbH, Hamburg by Oakley Capital Limited, London following second-phase investigations. The merger concerns the online dating platform market. EliteMedianet owns the platforms elitepartner.de and academicpartner.de. Oakley Capital Limited's portfolio already includes Parship GmbH and its platform parship.de.

The online dating portals concerned are among the largest in Germany. Nevertheless, it is not expected that competition will be significantly impeded on account of the merger. There are sufficient alternative providers in the online dating platform market. As new customer business is key in this industry, users do not generally tend to stick to only one platform. Market entry is comparatively easy. Further, this market is a prime example of the innovative force and dynamic nature of the Internet, as its business models are under great pressure from mobile apps. The recent emergence of successful mobile dating platforms such as Tinder and Lovoo bear witness to this.

### The network effect

- The term refers to an increase in value with a concomitant increase in the number of users (positive network effect).
- A network effect can be indirect or direct, depending on whether it concerns a platform or network.
- The network effect is indirect if another user group benefits from an increase in the number of users. Such effects tend to occur in regard to transaction portals, e.g. real estate portals.
- A direct network effect occurs where the increase in value is simultaneous to an increase in the number of users in one and the same group. In the Internet such effects occur in particular in social networks.
- If the increase in the number of users leads to a drop in value, e.g. because of overload, this is termed a negative network effect.

### Merger between Immowelt and Immonet

The 6th Decision Division also investigated a merger between various real estate platforms. It cleared the acquisition of sole control of Immowelt AG, Nuremberg by Axel Springer SE, Berlin as well as the founding of a joint venture involving Immowelt AG and Immonet GmbH, Hamburg. These mergers concern Germany's second- and third-largest online real estate platforms: immowelt.de and immonet.de. Even after the merger the platform immobilienscout24.de remains the market leader.

Even though the number of real estate platforms is dropping, competition with the market leader will actually intensify following the merger. Customers (both real estate suppliers and demanders) generally prefer large platforms, as a rising number of users increases the value for them (positive network effect). The risk in having numerous smaller competitors is that it will be the market leader in particular which wins new customers. The merger gives customers another such large platform.

### Audiobooks: Proceedings against Amazon's subsidiary Audible and Apple

In November 2015 the 6th Decision Division initiated administrative proceedings against Amazon's subsidiary Audible.com and against Apple Computer Inc. The companies have a long-standing arrangement on the purchase, by Apple, of audiobooks from Audible for sale in Apple's iTunes Store.

Since both companies hold a strong position in the market for digital audiobooks in Germany, the 6th Decision Division wants to investigate more closely the agreement reached between these two competitors. In the Decision

Division's view it must be ensured that audiobook publishers have sufficient alternative channels for the sale of their digital audiobooks.

The proceedings were initiated following a complaint by the German Publishers and Booksellers Association against various practices by Audible, including its exclusive supply of audiobooks to Apple's iTunes Store. A corresponding complaint was also submitted to the European Commission, which has also launched preliminary investigations.

### TV broadcasting rights: German Football League commits to abide by "no single buyer" rule

The 6th Decision Division investigated the marketing model applied by the German Football League (DFL) when awarding TV broadcasting rights in German football league matches as from the 2017/18 season onwards. In order to dispel the Bundeskartellamt's concerns, the German League Association and the DFL made commitments that they would comply with wide-ranging criteria when awarding media rights in 1st and 2nd football league matches.

The DFL had approached the Bundeskartellamt to ensure that the various packages and the award procedure met any existing antitrust concerns. The DFL's joint selling of media rights in matches in the 1st and 2nd football league in principle represents an anticompetitive agreement. Such agreements can only be exempt from the ban on cartels if the joint selling results in product improvements which benefit consumers and which make the restraints of competition indispensable.

The 6th Decision Division aims to ensure that (as is the case in other European countries) more than one single provider acquires the rights in live transmissions of football matches wherever possible. As long as there is only one proprietor on the market holding these rights in live transmissions there is a risk that the competition in innovation (esp. in regard to internet-based services) will be restricted.



# 7th Decision Division

The 7th Decision Division's remit is focused on telecommunications and broadcast engineering, electronic data processing (EDP), electrical engineering and the press. In 2015 it investigated agreements between the publishers of advertising newspapers in Saxony, the acquisition of the digital mapping service HERE by German car manufacturers, a merger between two providers of airline services systems, for example, and it imposed a fine on the manufacturers of navigation devices for vertical resale price maintenance.

The 7th Decision Division is chaired by Dr Markus Wagemann.

## Prohibited agreements between advertising newspapers in Saxony

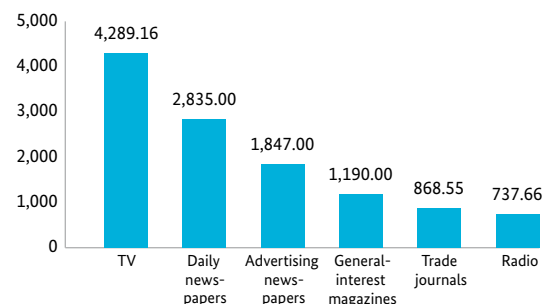
In December 2015 the 7th Decision Division imposed fines amounting to 12.44 million euros on three publishers of advertising newspapers and the persons responsible in the Dresden and Chemnitz regions. They had concluded prohibited agreements on the closure of competing advertising newspapers. Such coordinated closures, referred to as the "buying off" of competition, are prohibited under competition law.

The companies had agreed that publication of the advertising newspaper WochenSpiegel Sachsen in the Chemnitz region by Dresdner Druck & Verlagshaus GmbH & Co. KG and WM Beteiligungs- und Verwaltungs-GmbH & Co. KG was to be discontinued. Up until then it had been competing with the advertising newspaper Blick published by Chemnitzer Verlag und Druck GmbH & Co. KG (CVD). In return, CVD agreed to close down its advertising newspaper Sächsischer Bote, published in Dresden, in favour of the advertising newspapers published there by WM Beteiligungs- und Verwaltungs-GmbH & Co. KG (Wochenkurier) and Dresdner Druck & Verlagshaus GmbH & Co. KG (DaWo and FreitagsSZ).



**Media advertising revenues in 2014**  
in million euros

Total advertising revenues: 15,322.08



Source: Association of German Advertising Journals (BVDA); April 2015

A settlement was reached with all three companies and the persons responsible.

## BMW, Daimler and Audi cleared to acquire Nokia's mapping service

In autumn 2015 the 7th Decision Division cleared the acquisition of the HERE mapping service, previously owned by the Finnish Nokia Corporation, by a consortium of German car manufacturers comprising BMW, Daimler and Audi.

HERE supplies digital mapping databases, chiefly to companies in the automotive and automotive supply industry, together with the required maps for navigation. In the view of the automotive industry, these digital maps, in combination with the sensors fitted into the vehicles which allow for map updating in real time, will be an essential prerequisite for autonomous driving in the future.

The investigations conducted by the 7th Decision Division focused on the question of whether the merger would lead to the exclusion of other car manufacturers from the supply of digital maps and whether HERE's only competitor to date, TomTom, might in the future be denied access to





car manufacturers and automotive suppliers. However, the Decision Division concluded that such foreclosure effects can currently be ruled out, at least in regard to classic navigation systems. Given that autonomous driving is not set to become a relevant issue for many years to come, it is very difficult to predict any robust competitive effects. It can be assumed that car manufacturers using the respective sensors in their vehicles will also cooperate with TomTom in this field and that a larger number of car manufacturers will thus have to be involved in developing autonomous driving systems.

### **International merger between passenger services systems providers**

In August 2015 the 7th Decision Division investigated the Spanish Amadeus IT Group's plans to acquire Navitaire, the American provider of passenger services systems.

Passenger services systems are IT systems primarily used by airlines for reservations, stock-taking and departure control. Amadeus and Navitaire chiefly compete in tenders issued by what are known as hybrid airlines which have both low-budget and full-service offerings. Based on passenger figures, the two companies together control a share of almost half of the market.

The proposed merger, which is of international significance, was notified in the United States, Brazil as well as in four EU Member States (the United Kingdom, Austria, Spain and Germany). Upon application by the UK, which Austria, Spain and Germany supported, the proceedings were ultimately handed over to the European Commission for further investigation. The European Commission examined the plans in December 2015 and cleared the merger in early 2016.

### **Resale price maintenance for portable navigation systems**

In May 2015 the 7th Decision Division imposed a fine totalling 300,000 euros on United Navigation for vertical resale price maintenance. The company had put pressure on retailers to raise their sales prices so as to be able to influence the retail sales price of its portable navigation devices. This is clearly in breach of competition law. Manufacturers are not permitted to make binding requirements of their retailers in terms of concrete prices or minimum sales prices for specific products. Only non-binding price recommendations are permitted.



In the first half of 2014 the Austrian competition authority (BWB) carried out a dawn raid (with administrative assistance from the Bundeskartellamt) after being given information which raised the suspicion of a breach of competition law. The company then cooperated fully with the authorities. This cooperation and the fact that a settlement was reached were taken into account when setting the amount of the fine.

# 8th Decision Division

The 8th Decision Division is mainly responsible for the mineral oil, gas, electricity, district heating and water sectors. The Working Group Energy Monitoring and the Working Group Market Transparency Body Electricity/Gas are both attached to the Division. In 2015 the 8th Decision Division conducted abuse control proceedings against municipalities on account of their excessive district heating and water prices. It also continued its investigations into the unlawful remuneration system applied in the “Irsching contracts” in regard to power stations. An updated version of its guidelines on the award of gas and electricity concessions was also published. Until October 2015 the 8th Decision Division was chaired by Dr Felix Engelsing, who now chairs the 2nd Decision Division. He was succeeded by Prof Dr Carsten Becker.

## Abuse control of district heating and water prices

Stadtwerke Leipzig lowers district heating prices

In spring 2013 the 8th Decision Division instituted abuse control proceedings against several municipal utilities on suspicion of their charging excessive prices for district heating. The investigations encompass more than 30 different district heating regions across Germany. The proceedings were initiated based on the results of a sector inquiry into district heating which was concluded in August 2012.

In October 2015 a settlement was reached in proceedings against the Leipzig municipal utility. Stadtwerke Leipzig agreed to lower its district heating prices by just over 8 million euros per year over a period of five years. The total volume of the price reduction thus amounts to some 40.8 million euros. Five proceedings are still ongoing.

Proceedings against Wuppertal municipal utility for excessive water prices

The 8th Decision Division has also recently conducted a number of abuse proceedings against water suppliers, as a result of which water prices were significantly reduced.

In October 2015 a settlement was reached with the Wuppertal municipal utility Wuppertaler Stadtwerke,



which agreed to repay 15 million euros to its customers in Wuppertal. Between 2009 and the end of April 2013 the Stadtwerke had been charging prices well above those charged in comparable regions. The City of Wuppertal remunicipalised its water supply services after proceedings were instituted. As of early May 2013 water prices are being levied by a municipal undertaking. As abuse control under competition law does not extend to fees and charges made by public-law entities, the Bundeskartellamt was unable to order price reductions for the future.

## Market Transparency Body for Electricity and Gas Wholesale Trading

The 8th Decision Division is involved in the setting up of the Market Transparency Body for Electricity and Gas Wholesale Trading, which is based with the Federal Network Agency and whose tasks are performed jointly by the Federal Network Agency and the Bundeskartellamt. The Market Transparency Body is tasked with monitoring electricity and gas wholesale trading in order to identify irregularities in price developments at the wholesale level. These can, for example, be an indication of abusive practices.

The Market Transparency Body's main priority in 2015 was further expanding its IT system, in particular creating a hardware infrastructure, implementing the necessary security measures and preparing its software so that the

### The German water supply sector

- More than 6,000 water suppliers in Germany
- Price differences of up to 100 percent
- In accordance with the Eighth Amendment to the German Competition Act, adopted in 2013, the Bundeskartellamt is now only responsible for monitoring water prices.
- Fees and charges are not subject to competition oversight.
- Suppliers are increasingly making use of the fact that they can evade competition oversight by restructuring.

trade and fundamental data to be provided by the Agency for the Cooperation of Energy Regulators (ACER) can be incorporated. The legally required cooperation agreement on the joint operation of the Market Transparency Body was concluded in early 2015.

## Energy Monitoring

In November 2015 the Federal Network Agency and the Bundeskartellamt published their annual monitoring report on main developments in the German electricity and gas markets. According to the report, the competitive situation in the electricity markets has further improved and there is already more competition in the gas markets as well.

## Sector inquiry into heating and water metering services

In July 2015 the 8th Decision Division launched a sector inquiry into submetering services. Submetering services over the consumption-based metering and billing of heating and water costs in buildings as well as the provision of the necessary metering equipment such as heating cost distributors or heat or water meters. The aim of the sector inquiry is to analyse the current market situation and intensity of competition in regard to submetering services and to identify any competition problems there may be.

## New edition of the Guidelines on the Award of Concessions

In May 2015 the Federal Network Agency and the Bundeskartellamt published a revised edition of their Joint Guidelines on the Award of Gas and Electricity Concessions and on a Change of Concession-Holder. This new edition takes account of legislative amendments and developments in court practice since the first edition was published in 2010, and thus offers communities orientation so they can allow legally sound competition in regard to networks.

## Electricity power plants: Remuneration system applied in the “Irsching contracts” breaches competition law

In late April 2015 Düsseldorf Higher Regional Court confirmed the 8th Decision Division’s view that the remuneration system applied in the “Irsching contracts” restricts the amount of electricity generated and therefore violates the prohibition of anticompetitive agreements.

In order to ensure the stability of the German electricity grid, network operators must intervene in the operation of power plants when there are network bottlenecks. Power plant operators are required to increase or reduce the output of their power plants (termed “redispatching”). They

## Competition in the energy sector – results of energy monitoring

### Electricity

- Electricity consumers benefit from the large number of providers in the end-customer markets.
- There is more competition in the electrical heating sector: switching rates have doubled since 2014.
- There is still a high level of liquidity in wholesale markets.
- The market power of the largest electricity producers has decreased significantly.
- Grid expansion cannot yet keep pace with the increase in electricity generated from renewable sources. More measures are needed to maintain network and system stability.

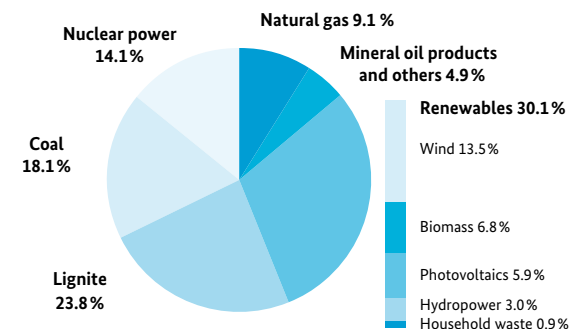
### Gas

- Gas import and export volumes increased year on year.
- Gas prices dropped slightly for both household and industrial customers (by approx. 0.1 ct/kWh) year on year (as at: 1 April 2015).
- The level of liquidity in the wholesale market for natural gas has again increased. The volume of exchange gas trading has more than doubled.
- There is more competition between providers in the end-customer markets.

are paid remuneration by the respective network operator for taking these measures. The costs are passed on to electricity consumers via network charges.

Power plant and network operators had reached agreement in the “Irsching contracts” in respect of the Irsching 4 and Irsching 5 power plants that the remuneration for redispatch measures would be higher the less electricity the power plant generated. The financial incentive to generate as little electricity as possible in Irsching was thus huge.

**Gross electricity generation in 2015 by energy source**  
Total: 651.8 billion kWh\*



\* preliminary

Source: German Association of Energy and Water Industries (BDEW), Working Group on Energy Balances; as at: January 2016

# 9th Decision Division

The work of the 9th Decision Division focuses on the tourism sector, the hotel, restaurant and catering sector, all the transport sectors, postal services and vehicle manufacturing, including railed vehicles, aircraft and watercraft. In 2015 the 9th Decision Division's main emphasis was again on restraints of competition due to the "best price" clauses used by hotel booking portals. It concluded abuse control proceedings against Deutsche Post AG (concerning wholesale prices) and continued proceedings against Deutsche Bahn AG (concerning ticket sales). Further examples of the work of the 9th Decision Division include the monitoring of mergers in the automotive industry and proceedings against car manufacturers' anticompetitive internet standards.

The 9th Decision Division is chaired by Silke Hossenfelder.

## Booking's narrow "best price" clauses also anticompetitive

In December 2015 the 9th Decision Division prohibited Booking from continuing to apply its "best price" clauses and ordered the hotel booking portal to delete these clauses from its contracts and general terms and conditions by 31 January 2016 as far as they concern hotels in Germany. In January 2015 Düsseldorf Higher Regional Court had already confirmed the 9th Decision Division's decision of late 2013 that the "best price" clauses of Booking's competitor HRS were unlawful.

Booking had originally obliged hotels to offer its hotel booking portal the cheapest room price, maximum room capacity and the most favourable booking and cancellation conditions available on all online and offline booking channels ("wide best price clause"). In the course of the proceedings the company then introduced modified "best price" clauses in Germany ("narrow best price clauses") in July 2015, despite the fact that the 9th Decision Division had already issued a statement of objections. Under these "narrow best price clauses" Booking permits hotels to offer their rooms on other hotel portals, though the room price on the hotel's own website may not be lower than that on Booking's portal.

Booking lodged an appeal with Düsseldorf Higher Regional Court against this order and moved for the appeal to have suspensive effect. Other proceedings concerning "best price" clauses against Booking's competitor Expedia are still ongoing.

*"So-called 'narrow best price clauses' also restrict competition. Hotels have little incentive to reduce their prices on a hotel booking portal if they simultaneously have to quote higher prices on their own websites. Such measures also continue to make market entry difficult for new platform operators."*

## Deutsche Bahn: Far-reaching changes to ticket sales

Following investigations carried out by the Bundeskartellamt, Deutsche Bahn AG will be making far-reaching changes to its ticket sales. These measures will improve its competitors' sales opportunities. In early 2014 the Bundeskartellamt had instituted proceedings against Deutsche Bahn on suspicion of its having abused its dominant position in regard to sales of passenger rail tickets. These proceedings were terminated on account of the commitments which Deutsche Bahn had entered into.

In future, Deutsche Bahn's competitors for local passenger rail services will also be able to sell Deutsche Bahn tickets for long-distance travel via their own ticket machines. It will also be easier for competitors to sell tickets in railway station shops. Up until now, rental agreements for railway station shops have contained clauses which made this virtually impossible. The commissions paid by Deutsche Bahn and its competitors for the reciprocal sale of tickets will likewise be standardised and largely reduced.

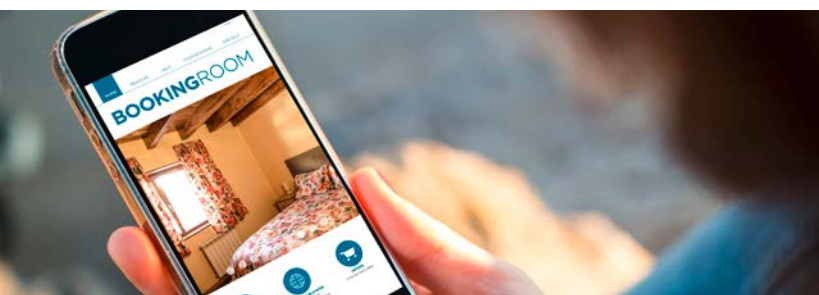
### Competition in the rail transport market in 2014\*

- Long-distance passenger rail services  
36 billion passenger kilometres, of which 99 percent Deutsche Bahn AG  
< 1 percent competitors
- Local passenger rail services  
54 billion passenger kilometres, of which 81 percent Deutsche Bahn AG  
19 percent competitors

\* Share of transport performance

Source: Federal Network Agency, Market Research Railways 2015





### Proceedings against Deutsche Post: Margin squeeze on orders from major clients

The 9th Decision Division concluded its abuse control proceedings against Deutsche Post AG. The company had agreed letter prices with major clients which were below those a competitor has to pay to gain access to Deutsche Post AG's delivery network.

The company had thus abused its dominant market position in regard to mail services and provoked a margin squeeze. This prevents Deutsche Post AG's competitors from making the mail customers concerned a competitive offer. As the dominant mail services provider, Deutsche Post AG is required to offer its competitors partial access to its network.

The company had also made some cheaper rates dependent on whether large-volume mailers covered their entire mail service needs from Deutsche Post AG. Such loyalty rebates likewise prevent Deutsche Post AG's competitors from entering the market.

Düsseldorf Higher Regional Court has since dismissed Deutsche Post's appeal and confirmed the 9th Decision Division's decision in full.

### Car manufacturers' restrictive online sales rules

In December 2015 the 9th Decision Division terminated proceedings against the car manufacturers Ford Werke GmbH, Adam Opel AG and PSA Peugeot Citroën Deutschland GmbH. The companies had introduced

anticompetitive rules to restrict cooperation between brand retailers and independent customer agencies.

Ford, Opel and PSA had implemented so-called "internet standards" for the introduction of end customers to brand retailers via internet-based new car portals. If they infringed these standards the retailers risked losing a substantial part of their bonuses or sales support. The proceedings were terminated after the car manufacturers changed their sales rules.

### Mergers in the automobile industry

In autumn 2015 the 9th Decision Division cleared the acquisition of the "junited AUTOGLAS" network and three individual garages offering vehicle glass repair services by Belron GmbH, the parent company of Carglass GmbH.

The proposed merged was cleared because the majority of vehicle owners in Germany have their glass repairs done by the various car manufacturers' contracted repair shops. In addition, the majority of glass repair work is paid for by vehicle insurers. These can restrict the scope of action of companies providing glass repair services in negotiations on framework contracts.

Another merger between Trost Auto Service Technik SE and Wessels & Müller SE was cleared in August 2015 subject to conditions. Both companies sell ranges of what are known as free automotive parts via their branches.

The acquisition would have led to Wessels & Müller becoming the market leader in various regional markets with a clear lead over its competitors. This would have significantly impeded the competition between wholesalers in these regions. That is why the Bundeskartellamt imposed the condition that the parties would first have to sell branches in the aforementioned regions to an independent third party. In addition, Wessels & Müller undertook to leave the purchasing cooperation Auto Teile Ring of which it had previously been a member.

Market shares (in %)

Year	Turnover			Mail volume*		
	2012	2013	2014**	2012	2013	2014
Deutsche Post Group***	88.5	87.7	87.3	88.6	87.7	87.0
Competitors	11.5	12.3	12.7	11.4	12.3	13.0

\* Partial access volumes are included in the Deutsche Post Group figures

\*\* Expected figures for 2014

\*\*\* DP AG, incl. subsidiaries (DHL, Deutsche PostCom and Deutsche Post InHaus Services)

Source: Federal Network Agency, Market survey – Report on the Licensed Letter Segment 2014

# Cartel prosecution

The 10th, 11th and 12th Decision Divisions are responsible for the cross-sector prosecution and sanctioning of illegal cartels. They are assisted in the planning, implementation and evaluation of investigatory measures such as dawn raids by the Special Unit for Combating Cartels (SKK). In 2015 the Bundeskartellamt imposed fines amounting to a total of 208 million euros on 45 companies and 24 individuals in 11 cases. These included the so-called “vertical case”, investigations into companies in the armaments industry and in the container transport services industry, as well as fines imposed on the manufacturers of prefabricated garages and on automotive parts suppliers.

The 10th Decision Division was chaired by Prof Dr Carsten Becker until 15 April 2016, when Michael Teschner took over as acting chair.

The 11th Decision Division is chaired by Ulrich Hawerkamp.

The 12th Decision Division is chaired by Michael Teschner.



*“Retailers and manufacturers in the food retail sector, like in any other sector, are not permitted to conclude agreements on shop prices to the detriment of end customers. Manufacturers are not allowed to put pressure on retailers or give them monetary incentives to maintain certain retail prices.”*

## So-called “vertical case” in the food retail sector

In the course of 2015 and the first few months of 2016 the Bundeskartellamt concluded most of the cartel proceedings it had grouped together and termed the “vertical case” against manufacturers and retailers in the food sector for illegally maintaining the resale prices of well-known brand products. The proceedings concerned confectionary, coffee, pet food, beer and toiletries.

Between 2014 and 2016 fines totalling just over 242 million euros were imposed on nine retail companies/groups and four brand manufacturers, with fines totalling 103.2 million euros being issued in 2015 alone. All but one of the fine notices were issued as part of a settlement and are now final.

The “vertical case” began with dawn raids on 15 premises in January 2010 following a tip-off in horizontal cartel proceedings in the coffee and confectionary sectors.

## Price-fixing agreements between armaments suppliers

The Bundeskartellamt imposed fines totalling 1.3 million euros on three Bundeswehr suppliers of rubber protection pads and vibration absorbers for military vehicles. No fine was imposed on another supplier involved in the agreements after the leniency programme was applied, since it was this supplier who had reported the cartel to the Bundeskartellamt.

### Bid-rigging agreements

- Agreements reached by companies in the context of public bids.
- Unlike other infringements of competition law, bid rigging is a criminal offence. Jurisdiction is thus split.
- Under Section 298 of the German Criminal Code (Strafgesetzbuch, StGB), the persons responsible risk imprisonment or a fine, which is why the public prosecution office has jurisdiction over them.
- Prosecution of the companies concerned falls to the competition authorities, which can impose fines. The authorities cooperate closely during the investigations.

### How to spot inadmissible bid-rigging agreements

- In 2015 the Bundeskartellamt published a brochure containing a checklist of typical indicators which aims to make it easier for contracting entities to recognise the signs that companies have reached agreements in the context of award procedures.
- The brochure is available (in German) at: [www.bundeskartellamt.de](http://www.bundeskartellamt.de)



The companies are accused of having reached price-fixing agreements between 2010 and 2014 in tender procedures conducted by the Federal Office of Bundeswehr Equipment, Information Technology and In-Service Support concerning rubber protection pads and vibration absorbers as well as agreements on mutual subcontractors. They agreed who would win the bid, i.e. make the cheapest offer, and who would supply how much to the winner and at what price.

All the companies cooperated with the Bundeskartellamt in the course of the proceedings. The orders imposing fines are now all final. The proceedings against the individuals responsible were passed on to Koblenz Public Prosecution Office on account of the suspicion of bid rigging.

### Agreements between the providers of container transporter services in German seaports

The Bundeskartellamt imposed fines totalling around 4.56 million euros on seven companies, the persons responsible in the companies and on an association of companies for coordinating their activities in regard to container transport services in the German seaports of Hamburg, Bremen and Bremerhaven.

The companies had agreed that cost increases they faced in the container transport industry would, as far as possible, be passed on to customers. To that end they regularly met

to discuss and coordinate possible reactions to various cost increases. They agreed on percentage rates of increase for freight rates, as well as on the introduction or increase of various surcharges on the basic freight rate, such as a diesel surcharge or a toll surcharge, various incidental charges, mutual settlement rates in cases where an order was fulfilled in collaboration with a competitor and, in 2014, what was termed the “Hamburg traffic congestion surcharge”.

The Bundeskartellamt launched investigations after the companies had announced in a joint statement in April 2014 that they would be introducing this “Hamburg traffic congestion surcharge”.

A settlement was reached with all the companies concerned, those responsible in the companies and with the association of companies. Several of the companies cooperated with the Bundeskartellamt in establishing the facts. The orders imposing fines are all final.

### Price-fixing agreements between the manufacturers of prefabricated garages

The Bundeskartellamt imposed fines against 10 manufacturers of prefabricated garages totalling 11 million euros for their involvement in price-fixing agreements.

Between 2005 and 2012 numerous company representatives met several times a year in southern Germany to agree new minimum sales prices for standard-sized prefabricated concrete garages. They set different price zones and differentiated minimum sales prices according to sales volume and typical customer groups (private clients or architects and construction companies as commercial clients). They also agreed on the introduction and the amount of various surcharges for toll, energy and steel costs as further price components. In addition, between 2005 and 2009 individual manufacturers also set higher sales prices for the postcode areas 78 and 79 and agreed on the reciprocal allocation of regular customers.

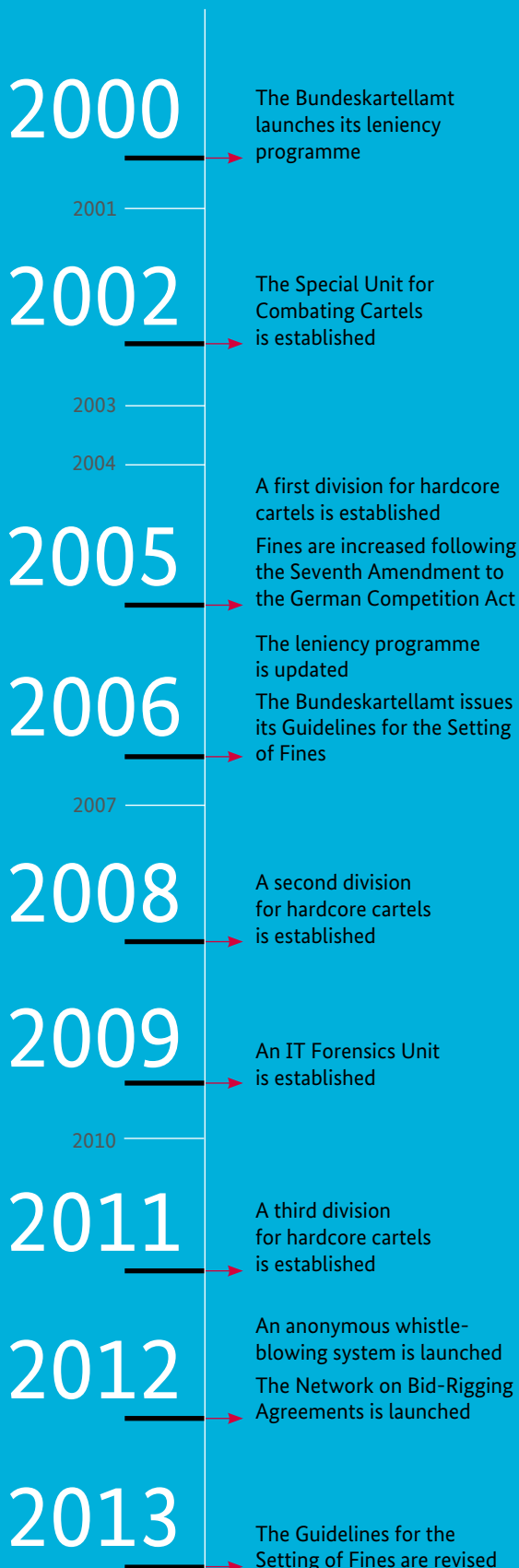
The relevant Decision Division also imposed a fine on another company for its involvement in an anticompetitive bilateral price and customer protection agreement in the northern Germany region.

The Bundeskartellamt launched its investigations after receiving a leniency application from one of the companies concerned.

The 10 companies all cooperated extensively with the Bundeskartellamt throughout the proceedings. Settlements were reached with all of them. All the orders imposing fines are now final.



## Measures to increase the effectiveness of cartel prosecution



## Fine proceedings against automotive suppliers

In December 2015 the Bundeskartellamt concluded proceedings against the manufacturers of acoustically effective components by imposing a fine for agreements reached on the supply of components to the automotive industry. Fines had already been imposed in June 2015 on five other companies. The total fines imposed in the course of these proceedings amount to some 90 million euros. All the orders imposing fines are now final.

Between May 2010 at the latest and January 2012 anti-competitive agreements were reached in the context of procurement procedures and contracts awarded by car manufacturers. The companies concerned agreed they would not target the others' existing business or their competitors' follow-on contracts. The companies reached agreement on, for example, minimum price levels, passing on raw material price increases, discounts to be granted, compensation for tool costs and the inclusion of cost escalation clauses in their contracts.

The proceedings were launched after an anonymous tip-off was made via the Bundeskartellamt's electronic whistle-blowing system. In May and September 2013 the Bundeskartellamt then conducted dawn raids on various companies in the industry.

No fine was imposed against one of the companies after the leniency programme was applied.

## "Rail case" concluded

In early 2016 the Bundeskartellamt concluded the so-called "rail case". In 2012 and 2013 the Bundeskartellamt had already imposed fines totalling some 135 million

### Bundeskartellamt's Guidelines for the Setting of Fines of 25 June 2013

- Following a new Federal Court of Justice ruling (order of 26 February 2013, file ref. KRB 20/12), the Guidelines for the Setting of Fines needed to be adapted. Maximum fine: 10 percent of the company's total previous year's turnover.
- When calculating total turnover, account is to be taken of the "economic entity", i.e. the group of companies of which a company is a part.
- Individual fines are calculated in line with the statutory framework based on the duration and severity of the infringement.
- Relevant turnover is the key factor when setting the fine, i.e. the turnover achieved during the infringement period with those products and services which were the subject of the agreement.
- Account is taken of the size of the company and its financial circumstances.





euros for agreements reached by the manufacturers of railway tracks in the context of tender procedures conducted by Deutsche Bahn, and it imposed fines totalling just under 100 million euros for agreements to the detriment of local public transport companies, private, regional and industrial railway companies, and construction companies. In the latter case a settlement was reached with eight companies. In March 2016 the Bundeskartellamt imposed a fine totalling just under 3.5 million euros on Vossloh Laeis, with whom no settlement was reached. Vossloh Laeis lodged a complaint against the decision.

Further, the Bundeskartellamt concluded its investigations into the manufacturers of concrete and wooden railway sleepers. The investigations revealed that several manufacturers of concrete sleepers had agreed prices to the detriment of Deutsche Bahn AG. The cartel comprised Durtrack GmbH, Möllenhagen, voestalpine BWG GmbH, Butzbach and Rail.One GmbH, Neumarkt. The Bundeskartellamt imposed a fine of 1.5 million euros on Durtrack GmbH. No fines were imposed on voestalpine BWG GmbH and Rail.One GmbH because their cooperation with the authority had contributed to the cartel being exposed and a legal infringement being established. The proceedings in the case of wooden sleepers were terminated as the suspicion of agreements between the relevant manufacturers to the detriment of Deutsche Bahn AG was not confirmed.

#### Selected maximum fines\*

Year	Cartel proceedings	Total fines imposed in euros	of which highest individual fine imposed
2015	Automotive supplier	89,700,000	29,500,000
2014	Beer	338,000,000	160,000,000
2014	Sausage	338,500,000	128,050,000
2014	Sugar	281,700,000	195,500,000
2013	Railways – DB	134,500,000	103,000,000
2010	Ophthalmic lenses	115,000,000	28,760,000
2009	Coffee	159,000,000	83,000,000
2008	Decorative paper	61,000,000	25,000,000
2008	Clay roof tiles	188,081,000	66,280,000
2007	Liquid gas	249,000,000	67,200,000
2005	Industrial insurance	151,400,000	33,850,000
2003	Cement	396,000,000**	175,900,000

\* Figures are rounded. Some cases are still pending and so not all the orders imposing fines are final.

\*\* Based on a judgment issued by the Federal Court of Justice in 2013 now final.

#### Cartel prosecution in 2015 in figures

- Fines imposed: approx. 208 million euros
- Leniency applications: 76 in 29 cases
  - filed by companies: 74
  - filed by individuals concerned: 2
- Dawn raids: 18
- Premises searched:
  - 88 companies/associations
  - 6 private residences
- Number of investigators involved: 511
  - Bundeskartellamt staff: 313
  - Police officers: 195
  - of whom IT staff: 87
  - Public prosecutors: 3
- Items of evidence seized:
  - some 3,500 files
  - 17.3 terabytes of electronic evidence

# Market Transparency Unit for Fuels

The Market Transparency Unit for Fuels (MTU Fuels) provides consumers with information about current fuel prices. Following a successful three-month trial period the MTU Fuels went live on 1 December 2013.

The operators of public petrol stations or companies with the power to set petrol station prices (e.g. oil companies) are required to report each price change in the fuel categories Super E5, Super E10 and diesel in real time to the MTU Fuels. The MTU Fuels then passes these data on to

consumer information services, which in turn make the information available to consumers. Motorists can use the internet, their smartphone or navigation device to look up current fuel prices and then drive straight to the cheapest petrol station in the area or along a specific route.



*“Even in times of low fuel prices, motorists can still save money by comparing prices and filling up at a petrol station offering the cheapest prices. And it pays to keep an eye on the clock.”*

## Second Annual Report

The Bundeskartellamt published the MTU Fuels' Second Annual Report in December 2015.

The main findings of the report are as follows:

- On average, petrol stations still tend to markedly raise their prices at least once in the evening and then make several smaller price reductions the next day.
- Since early summer 2015 many petrol stations have stopped reducing their prices gradually throughout the course of the day. Instead, prices drop in the morning. They then often increase again by an average of approx. 3 cents per litre around noon. Prices then drop again until the evening.
- The best time to refuel is still between 6 pm and 8 pm. Although some petrol stations still raise their prices during this period, most price increases occur between 8 pm and midnight.

- The amount of the potential savings customers can still make has essentially stayed the same.
  - Those refuelling at the cheapest petrol station in town at the cheapest time can on average save between 15 and 20 cents per litre.
  - Those refuelling at one and the same petrol station in town at the cheapest time of the day can on average still save approx. 10 cents per litre.
  - Those filling up on diesel can on average save even more.
- Since spring 2015 some oil companies have been using the data provided by the MTU Fuels to inform customers of prices.
- Unlike in previous years, there were no fuel price hikes during the 2015 Easter and Whitsun periods.

### Market Transparency Unit for Fuels

- More than 14,500 petrol stations in Germany report their price changes to the MTU Fuels. This represents almost full coverage of the market.
- Around 150 consumer information services are approved to use the system (as at: 1 March 2015).
- Around 50 consumer information services have already gone live (as at: 1 March 2015).

# Organisation Chart

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## Responsibilities of the decision divisions:

All decisions in administrative and fine proceedings;  
participation in proceedings of the supreme *Land* authorities

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53113 Bonn

## Federal Public Procurement Tribunals

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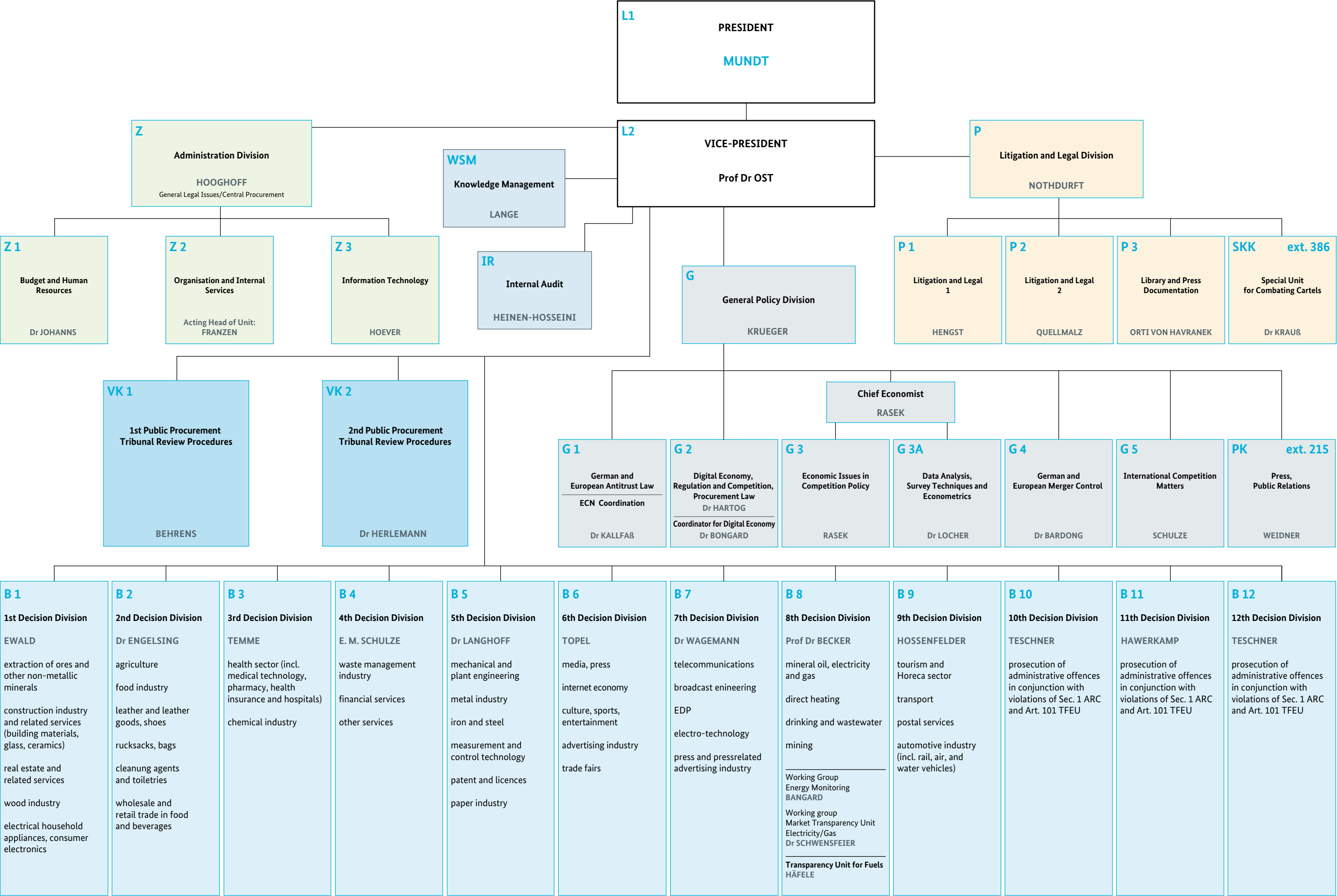
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May 2016





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