



Bundeskartellamt



open markets | fair competition

The Bundeskartellamt

Annual Report 2017



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Text

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Message of greeting Peter Altmaier

Federal Minister for Economic Affairs and Energy



2017 was another successful year in the Bundeskartellamt's 60-year history. Once more, the Bundeskartellamt brilliantly mastered its challenge of protecting competition. Open markets and free competition are the cornerstones of our social market economy and ensure economic efficiency. Most of all, however, they are the key incentives for new products and processes. Innovation cannot persist in the long run without competition. Protecting competition against cartel agreements and the tendency to form monopolies is therefore a key prerequisite for the lasting success and innovation of our economy on international markets.

2017 was essentially shaped by changes brought about by the digital age and the Internet. With the 9th Amendment to the German Competition Act (GWB), we have adapted the legal basis of the Bundeskartellamt's activities to these changes, and the authority has gathered initial experience in this respect. For example, the authority is conducting a prominent proceeding against Facebook on the suspicion that it is abusing its dominant position.

The impact of platforms and networks has long since affected all branches of the economy and consequently, the work of all of the Bundeskartellamt's divisions.

Network effects and economies of scale, access to competitively relevant data, the possibility to use different services at the same time (so-called multi-homing), and the potential for innovation have all become aspects of consideration in routine examinations under competition law.

The Bundeskartellamt continues to perform important and widely recognised groundwork in this area.

In this legislative period, the focus of debate in antitrust policy will be on the economic and social impact of the digital age. The objective is to develop a digital regulatory policy and match further necessary adaptations to the national and European regulatory framework to ensure continuing competition and

innovation. In doing so, the Bundeskartellamt will contribute to the development of the social market economy, making sure it is in keeping with the times!

We want to ensure that in this digital era the Bundeskartellamt continues to have the necessary power to act against restraints of competition more specifically and possibly even more efficiently in future. I am sure that the Bundeskartellamt will master the challenges of tomorrow just as brilliantly as it has mastered those of yesterday and that it will be an indispensable partner in the search for the right answers to our questions.

For years, the Bundeskartellamt actively contributed to shape antitrust policy at the European level. And it is enjoying an excellent reputation as a powerful antitrust authority even beyond the borders of Europe, which is underlined not least by its wide international network and the high-profile international attendance of the International Conference on Competition hosted by the Bundeskartellamt for the 18th time in 2017.

I welcome the fact that the Bundeskartellamt is actively using its new competences in the field of consumer protection and that its new division dedicated to this has already launched two sector inquiries. Their aim is to examine how objectively and transparently price comparison websites operate and what data are collected and processed by smart TVs. With the new task, the Bundeskartellamt is expected to have the competence and investigative powers required to detect widespread violations of consumer protection laws.

I am convinced that this effectively supplements well-established private enforcement options in the area of consumer protection and will benefit consumers. In 2017 the Bundeskartellamt examined around 1,300 notified mergers. It imposed fines amounting to around 60 million euros on 18 companies and 11 individuals for infringements of the ban on cartels. The investigations were carried out against manufacturers of industrial batteries, harbour towage service providers and automotive part manufacturers. Additionally, the Bundeskartellamt concluded a large number of abuse proceedings and decided on more than 150 applications for review in public procurement cases. The Market Transparency Unit increases the transparency of fuel prices in the interest of consumers and has carried out groundwork for the competition register, which is to be launched by 2020.

Keeping markets open, punishing abusive practices, protecting consumers and making sure that public contracts awarded by the government conform with the law: all these tasks will continue to demand a high level of commitment from all the staff at the Bundeskartellamt.

I would like to thank you for your untiring efforts to protect competition and our social market economy and wish you much success for your future work.



Peter Altmaier
Federal Minister for Economic Affairs and Energy

Foreword

Andreas Mundt

President of the Bundeskartellamt



The Bundeskartellamt celebrated its 60th Anniversary early in 2018. On 1 January 1958 the German Act against Restraints of Competition (GWB) came into force and the Bundeskartellamt began its work in Berlin with 53 members of staff. Its founding father Ludwig Erhard described the Act against Restraints of Competition as the “basic law of the social market economy”. And that is exactly what it is. Competition ensures that competing companies have to try to attract customers by offering better prices, higher quality and through innovations.

Six decades later, the Bundeskartellamt has developed both nationally and internationally into a firmly established independent institution for the protection of competition. Today, around 350 staff in Bonn are pursuing the ambitious aim to maintain effective competition across all sectors of the economy even in an age of globalisation and digital transformation.

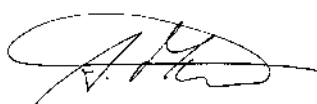
The digital economy gives rise to new issues for politicians, economic actors, consumers, and authorities alike. And competition law is no exception. Protecting competition in the digital economy means dealing with the fact that major Internet companies acquire powerful, seemingly untouchable market positions in a very short time. The accessibility and availability of data are sensitive issues, not only for consumers; their significance for competition and companies’ prospects of success is also increasing. Business models involving valuable services free of charge for the consumer while generating significant turnover with advertisers are gaining ground. Should prices be set in future according to a customer’s purchasing power and individual preferences in future, new economic assessments will have to be made. The possibilities

which algorithms offer also have to be assessed under antitrust law. What if self-learning software develops the idea to coordinate prices with competitors rather than face competition?

In Europe, the Bundeskartellamt is among those which have responded to new developments at a comparatively early stage. We have carried out the necessary groundwork, developed know-how and intensively exchanged information on an international level. A large number of “Internet cases” have already been concluded, and we are concluding further proceedings, not least against Facebook. In summer 2017, upon our initiative, the legislator amended the competition law by adding important regulations specific to the digital economy with the 9th amendment to the Act against Restraints of Competition. Of course, we have to consider how the legal framework conditions under which we operate can be further improved. And we have to ask ourselves how we can solve the conflict between fast-moving markets and the time consuming due process of law. If we are too slow, our decisions could be too late. So we have to find the right balance between speed and thoroughness.

In 2017, the legislator also granted the Bundeskartellamt new competences in the area of consumer protection, which I consider a useful addition to our toolbox. Initial important investigations into the area of smart TVs and online comparison portals are ongoing. Ludwig Erhard already saw that there was a close link between competition and consumer protection. “The State must not decide who should be victorious in the market, nor should an industrial organisation such as a cartel; it must be the consumer alone.

Yours sincerely

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. The Bundeskartellamt's task is to protect competition in Germany. Since 1958 the legal framework for this is the 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 between companies are subject to merger control by the Bundeskartellamt if they fulfil certain requirements. The Bundeskartellamt examines and assesses the effects a merger will have on competition.

If the negative effects on competition outweigh the positive effects, a merger project can either be prohibited or cleared subject to specific conditions.

Control of abuse of dominant positions

Companies holding a dominant position are exposed to little, if any, competitive pressure. Companies in a non-dominant market position also enjoy large scope for action vis-a-vis their competitors, suppliers and customers if they can exercise relative market power. 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.

Competition register for public procurement

On 2 June 2017 the Bundestag passed the act introducing a register for competition in public procurement. The Bundeskartellamt is currently establishing a federal register of substantial economic law infringements which can lead to the exclusion of companies from the award of public contracts for several years. However, companies listed in the register can be deleted prematurely from the register if they take measures to remedy their infringement.

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 into buyer power in the food retail sector. Early in May 2017, a sector inquiry analysing competitive conditions in the sector for the metering and billing of heating and water costs, so-called 'submetering', was concluded. Another sector inquiry regarding the cement and ready-mixed concrete sector was concluded in July 2017. The next section contains information about sector inquiries in the Bundeskartellamt's new area of competency, consumer protection.

Bundeskartellamt Key Facts

- President: Andreas Mundt
- Vice President: Prof Dr Konrad Ost
- Budget 2017: 30.4 million euros
- 350 members of staff
- of which approx. 150 are legal experts and economists
- five trainees
- 184 female/166 male staff

Ban on cartels

- In 2017 the Bundeskartellamt imposed fines amounting to around 66.4 billion euros on 18 companies and 11 individuals in 7 cases.

Merger control

- In 2017 the Bundeskartellamt received around 1,300 merger control notifications. The authority concluded ten second phase proceedings.
- In four cases the parties to the merger withdrew their merger notification and one merger was prohibited.

Control of abusive practices

- Number of proceedings initiated in 2017: 15
- Number of proceedings concluded in 2017: 22

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

- In 2017 the Bundeskartellamt received 165 applications for review.
- 35 applications were granted review and 49 were rejected.

Sector inquiries

- Since 2005 the Bundeskartellamt has concluded twelve sector inquiries. In 2017 sector inquiries for online comparison portals and smart TVs were initiated in the context of the Bundeskartellamt's new competency, consumer protection.
- A sector inquiry in the area of online advertising was initiated in early 2018. Five sector inquiries are currently in progress.



9th amendment to the GWB grants new competences in consumer protection

With the 9th amendment to the GWB in June 2017 the legislator granted the Bundeskartellamt new competences to conduct sector inquiries into consumer protection issues to supplement existing options to identify infringements under civil law by extending the authority's powers of investigation. The competence to conduct sector inquiries is a first step towards enabling the authority to examine in which areas the private enforcement of consumer protection, which is already well established in Germany, has its shortcomings. In this context, sector inquiries into online comparison portals and smart TVs were initiated in 2017. The Bundeskartellamt has also been granted the right to act as "amicus curiae" in the courts, i.e. in certain proceedings concerning consumer protection it will be able to appear before court as a neutral party. This role will make it easier for the authority to gain an overview of which legal issues are raised in the courts and in which areas there are enforcement deficits.

Internal organisation

The Bundeskartellamt is headed by President Andreas Mundt and Vice President Prof Dr Konrad Ost. They are responsible for organising the internal processes and representing the authority in 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. In mid-2017, another decision division for consumer protection was established.

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. Further key areas of focus of the General Policy Division's work are the digital economy and e-commerce. It advises and supports the decision divisions in developing competition law and economic policy tools and theories of harm and represents the authority at conferences on digitalisation.



"With its Consumer Protection Division, the Bundeskartellamt has become a new player in implementing consumers' rights. However, enforcement powers would be a useful supplement to the authority's new capability to closely monitor the markets."

Prof Dr Konrad Ost,
Vice President of the Bundeskartellamt

The Litigation and Legal Division advises the Bundeskartellamt on legal matters, prepares appeal 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.

Administration Division

The Administration Division is responsible for budget and human resources, organisation and internal services, IT and IT security operations, general legal matters of the Bundeskartellamt and procurement. The authority's IT Unit supports the decision divisions, for example in carrying out online surveys in major proceedings and seizing and evaluating IT data in cartel proceedings. Hans-Helmut Schneider was nominated as new Head of the Administration Division in early 2018. He is the successor to Kai Hooghoff, who has been in charge of establishing the competition register for public procurement at the Bundeskartellamt since October 2017.

Also in 2017, recruiting and training highly qualified staff was a key area of focus of the Administration Division's work. The Bundeskartellamt sees itself as a family-friendly place to work with a wide range of challenging tasks. Training and developing staff both on the technical and personal level is a high priority. The authority offers a large number of placements for practical training and internships for qualified lawyers and economists.

In 2017 the Bundeskartellamt further intensified the ongoing preparations for launching the electronic file. The aim is to simplify administrative processes in line with the provisions of the E-Government Act.

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 2017 the Bundeskartellamt ranked in the 5-star "elite" category.

The Bundeskartellamt's 60th anniversary



The Bundeskartellamt celebrated its 60th anniversary in 2018. On 1 January 1958 the German Act against Restraints of Competition (GWB) came into force and the Bundeskartellamt began its work in Berlin with 53 members of staff. The festive ceremony was held in the former plenary hall of the Bundestag in Bonn on 22 February 2018. Approx. 500 guests attended the event, among them many politicians, representatives of foreign competition authorities, the courts, the business sector and academia.

The Bundeskartellamt on Twitter



The Bundeskartellamt tweets (@Kartellamt). The latest information on the Bundeskartellamt's work and background information has been available via Twitter since the autumn of 2017.

Rating of international competition authorities

In 2017 the 5 star "elite" category was awarded to five competition authorities:

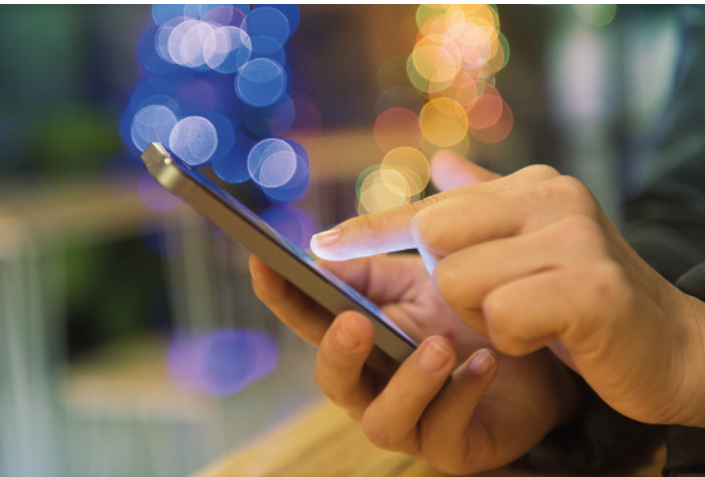
- Autorité de la concurrence (France)
- Bundeskartellamt (Germany)
- Korea Fair Trade Commission
- Federal Trade Commission (USA)
- Department of Justice – Antitrust Division (USA)

Source: GCR, Rating Enforcement 2017. The Annual Ranking of the World's Top Antitrust Authorities. The authorities are assessed on a scale of one to five stars.

General Policy Division

The General Policy Division advises the decision divisions on specific economic and antitrust issues and represents the Bundeskartellamt in the decision-making bodies of the European Union. It is involved in law reforms which have a bearing on competition and coordinates cooperation between the Bundeskartellamt and foreign competition authorities as well as international organisations. It is also responsible for the authority's press and public relations work and assists the President of the authority. The 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 and Econometrics, G4 - German and European Merger Control, G5 - International Competition Matters, PK - Press, Public Relations.

The General Policy Division is chaired by Birgit Krueger.



Reform of the German Competition Act

In June 2017 the 9th amendment to the German Competition Act (Gesetz gegen Wettbewerbsbeschränkungen, GWB) came into force, introducing some substantial changes to German competition law.

It has closed legal loopholes in the liability for fines for competition law violations. In several cases in the past these loopholes enabled companies involved in cartels to escape fines by carrying out restructuring measures. In future, the group of those liable for fines will be widened, in line with European law, to include the controlling companies of groups and legal and economic successors.

The amendment to the GWB contributes significantly to adapting the legal framework to developments in the digital economy. It clarifies that even non-monetary exchange transactions constitute a market and can fall within the scope of competition law and its powers of intervention. Moreover, criteria which play a special role in the assessment of the market power of platforms and networks (in particular network effects and access to data) have been explicitly included in the amendment.

Last but not least, the merger control thresholds have been revised to include a threshold that is based on transaction value (purchase price criterion). Having found that the previously applied turnover thresholds are not sufficient to cover all relevant mergers and acquisitions in the digital economy, this measure was deemed necessary. The merger between Facebook and WhatsApp is an example of the new types of acquisition where high purchase prices are paid for companies which have so far achieved little or hardly any turnover. In such acquisitions, the high purchase price is often indicative of an innovative business idea with a high competitive potential.

In May 2018 the Bundeskartellamt and the Austrian competition authority Bundeswettbewerbsbehörde (BWB) jointly submitted a Guidance on Transaction Value Thresholds for Mandatory Pre-merger Notification for public consultation.

An important element and one of the main reasons for amending the GWB was to implement the EU Directive 2014/104/EU on antitrust damages actions into German law. This will further strengthen the position of injured parties claiming compensation.

Consumer protection

During the parliamentary consultations on the 9th amendment to the GWB, specific consideration was given to the issue of whether an enforcement authority for economic consumer protection should be introduced in Germany and whether such competences should be granted to the Bundeskartellamt. It was discussed whether to complement the proven system of private enforcement with particular regard to the digital economy. As a first step the Bundeskartellamt was granted competences to conduct sector inquiries under aspects of consumer protection and to act as amicus curiae in court.



Online sales restrictions

In a number of proceedings the Bundeskartellamt examined Internet-related sales restrictions imposed on traders by the brand manufacturers, for example when it comes to using online market places or price comparison portals. The resulting legal questions which the General Policy Division intensively dealt with have now also reached the highest German and European courts.

On 6 December 2017, after the Frankfurt Higher Regional Court had presented its view, the ECJ commented on the much-discussed general market place prohibition (case C-230/16-Coty). The ECJ held that such prohibitions to sell via online marketplaces like Amazon or eBay can be admissible as part of a selective distribution system, at least as far as luxury goods are concerned. Nevertheless, only days later, in its decision of 12 December 2017, the German Federal Court of Justice confirmed the inadmissibility of another type of vertical restriction of online sales. In a proceeding regarding a decision made by the Bundeskartellamt against the running shoe manufacturer Asics, the Federal Court of Justice found that a general prohibition of supporting price comparison websites was a hardcore restriction in violation of competition law as it considerably limited the retailer's visibility. While these decisions contain important clarifications, they only refer to specific case scenarios. This means that the discussion arising from different assessments of sales restrictions on the Internet under competition law is far from finished.

Economics and data analysis in the application of competition law

Economic methods and concepts of competition are an integral part of modern and effective competition law enforcement, which is also reflected by the fact that economic aspects are increasingly brought up to support theories of harm in the Bundeskartellamt's case practice. For this purpose, the two economic policy divisions support and advise the decision divisions in all major administrative proceedings and sector inquiries. Additionally, they maintain a lively exchange with academics and competition authorities of other countries.

The significance of data-based analyses in antitrust practice has kept increasing in recent years. The Bundeskartellamt conducts quantitative analyses of invitations to tender, overlaps, supply streams and samples on a regular basis. In the reporting year 2017 the authority increasingly analysed fine-grained data on geographic supply and customer flows. This method serves to precisely identify customers affected by a merger and thus to define the regional markets more clearly.

The new Working Group on Competition Economics

In October 2017 the Bundeskartellamt launched the Working Group on Competition Economics to discuss concepts and methods encountered in practical case work and general questions with academics specialising in industrial economics and antitrust policy. The topics discussed during the Working Group's second meeting in May 2018 included a planned guidance document on the control of abusive practices in electricity generation and exclusivity agreements in the area of ticketing system platforms.

New series of papers

Since October 2017 the Bundeskartellamt has been publishing a new series of papers under the title "Competition and Consumer Protection in the Digital Economy" which contains articles on current issues of competition policy in the digital world. The aim is to give new impetus to the debate about the interfaces between digitalisation, competition and consumer protection and to further the public debate. So far, topics have included data and market power, innovation competition and online advertising. All articles are available on the Bundeskartellamt's website.

The Working Group on Competition Law

During the conference of the Working Group on Competition Law in October 2017, the Bundeskartellamt dealt intensively with the topic of innovation. The significance of innovations as a key to the competitiveness and growth of economies and businesses was discussed. Competition law practice should not only focus on short-term price effects. Above all competition is meant to ensure freedom of choice for consumers and to protect and increase innovation potential. This applies just as much to traditional industries as it does to the digital economy.

Innovations can play various roles in the assessment under antitrust law, e.g. in the context of theories of harm, as a counterbalance to market power, or in the assessment of the efficiencies of a merger or cooperation. Special challenges may arise in examinations under competition law, in particular with regard to products under development. A background paper to the conference is available on the Bundeskartellamt's website.

Guidance document on merger remedies

In May 2017 the Bundeskartellamt published a guidance document on remedies in merger control and their implementation. Commitments taken by parties to a merger can dispel competition concerns about a merger which might otherwise lead to its prohibition. The guidance document explains the most important types of remedies to companies and their representatives and sets out the requirements they have to fulfil. It also describes the procedure for the acceptance and implementation of remedies.



International cooperation

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

18th International Conference on Competition (IKK)

- From 15 to 17 March 2017 the Bundeskartellamt hosted its 18th International Conference on Competition in Berlin.
- With around 400 participants from more than 50 countries the event once again confirmed its international appeal.
- The conference keynote speakers were Brigitte Zypries, then Federal Minister for Economic Affairs and Energy, Margrethe Vestager, the European Commissioner for Competition, Dr Frank Appel, Chief Executive Officer of Deutsche Post AG, and Joe Kaeser, Chief Executive Officer of Siemens AG.
- Dealing with international challenges posed by globalisation and digitalisation was the main theme of the conference.

ICN

At international level the national competition authorities work together within the International Competition Network (ICN). With more than 130 competition authorities from more than 120 jurisdictions it is the most important association of competition authorities worldwide.

Since September 2013 the President of the Bundeskartellamt, Andreas Mundt, has been the Chair of the ICN's Steering Group. In May 2017 he was reappointed for a third term of office.

In 2017 the ICN published several work products, among them recommendations regarding merger control specifying thresholds regarding the obligation to notify, clearances and efficiencies, and a framework for analysing unilateral conduct, guidelines for conducting sector inquiries and a presentation of fines imposed by ICN member authorities for cartel infringements. Further topics included the use of social media by competition authorities and internal trainings.

OECD/UNCTAD

In 2017 the Bundeskartellamt again cooperated in the competition-related activities of the Organisation for Economic Cooperation and Development (OECD) - Andreas Mundt is a member of the Bureau of the OECD's Competition Committee - and the United Nations Conference on Trade and Development (UNCTAD).

Every year the OECD hosts two conferences of the Competition Committee and a Global Forum on Competition in Paris. The Bundeskartellamt takes an active part in all these events.

ECN

The national competition authorities in the European Union work particularly closely together. Major areas of cooperation are cartel prosecution, abuse and merger control. To combat cross-border restrictions of competition, the national competition authorities have formed the European Competition Network (ECN). They assist one another e.g. in dawn raids or other investigative measures and can cooperate in case work e.g. by exchanging confidential information.

European cooperation in 2017

- Official assistance in nine cases (Articles 101/102 TFEU)
- Exchange of confidential information in 18 cases (Articles 101/102 TFEU)
- In 2017 approximately 180 mergers were examined in parallel by several national authorities. The authorities informed one another about the date of notification and the contact data of the case handlers. The Bundeskartellamt was involved in around 140 of these cases
- When mergers have to be notified to the European Commission in view of the participating undertakings' turnover volumes, but mostly affect one member state, they can be referred to the national authorities. Conversely, mergers which have to be notified to several national authorities can be referred to the European Commission.
- Germany, for example, together with three other member states, referred a merger between tire manufacturers for utility vehicles to the European Commission.

The ECN is also an important forum to discuss current issues relating to the application of competition law. In September 2017, a working group on digital markets established on the Bundeskartellamt's initiative met for the first time. It deals with specific cases and general questions regarding the digital economy.

ECN Plus

The Commission has set itself the target of improving the institutional framework conditions of the national authorities represented in the ECN in order to more effectively enforce competition law (ECN Plus Initiative).

Following a public consultation between November 2015 and February 2016, the European Commission presented a proposal for a directive in March 2017 for strengthening national authorities regarding (i) independence and resource endowment, (ii) investigative and decision-making powers, (iii) setting of fines and (iv) leniency programmes. In late May 2018, political agreement on this proposed directive was reached. It is to be formally adopted in autumn.

Litigation and Legal Division

The Litigation and Legal Division represents the Bundeskartellamt before the Higher Regional Courts (OLG), the Federal Court of Justice (BGH) and other courts. In the court of first instance, the Düsseldorf Higher Regional Court, the Division fulfils this task in co-operation with the decision division in charge of the case in question. In the case of civil actions relating to general competition law issues, the Litigation and Legal Division represents the Bundeskartellamt and acts as 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 and administrative fine proceedings. The Special Unit for Combating Cartels (SKK) is also part of the Litigation and Legal Division.

The Litigation and Legal Division is chaired by Jörg Nothdurft.



Merger of EDEKA/Kaiser's Tengelmann

Düsseldorf Higher Regional Court confirms prohibition of EDEKA/Kaiser's Tengelmann merger (file ref VI-Kart 5/16 [V])

In August 2017 the Higher Regional Court confirmed the prohibition of the acquisition of food retailer Kaiser's Tengelmann by market leader EDEKA. This case was the first in which the Bundeskartellamt based its prohibition decision on the criterion of significant impediment to effective competition, which was introduced in 2013. However, in the subsequent appeal proceedings which had become moot after ministerial authorisation had been granted, the Higher Regional Court applied the traditional market dominance test as a prohibition criterion. Based on this test, the court ruled that the Bundeskartellamt's decision was justified, even if only the creation of a dominant position in the Berlin districts Friedrichshain-Kreuzberg were taken into account. EDEKA requested the Federal Court of Justice to grant an appeal on points of law against the Higher Regional Court's decision. The Federal Court of Justice's decision is pending.

Federal Court of Justice allows appeal on points of law regarding accelerated decisions in the event of premature merger implementation (file: KVZ 5/16)

In the preceding merger proceedings, the Bundeskartellamt had prohibited the merging parties by means of an accelerated decision from taking measures it considered to be in violation of the statutory prohibition of putting a merger into effect before clearance. The Higher Regional Court reversed the decision as it did not see a sufficient degree of urgency. Following a request by the Bundeskartellamt, the Federal Court of Justice granted the appeal on points of law, a decision on the merits will be taken in the course of the year.

2017 statistics

- Three new cartel fine proceedings
- 10 new cartel administrative cases
- 209 new private antitrust cases
- 11 amicus curiae briefs



“E-commerce gives rise to a large number of new antitrust issues. While some decisions have been made that provide guidance, there is still a great need for further clarification.”

Federal Court of Justice confirms decision on the merits on premature implementation of a merger (file: KVR 57/16)

As a precautionary measure the Bundeskartellamt included the requirements of the accelerated decision in the final prohibition. In this context, the Higher Regional Court had confirmed already back in 2015 that the planned merger in the food retail sector would have been an infringement of the prohibition to implement a concentration. The Federal Court of Justice confirmed the decision in 2017.

The Higher Regional Court reached the opposite conclusion with regard to the closure of 24 Tengelmänn shops in Berlin which EDEKA was not interested in. As Tengelmänn withdrew its appeal, the Federal Court of Justice did not make a decision.

Federal Court of Justice confirmed abuse of buyer power (file: KVR 3/17)

In early 2018 the Federal Court of Justice confirmed a decision by the Bundeskartellamt which stated that, following the acquisition of the discount supermarket chain “Plus” in 2009, EDEKA had abused its buyer power against its suppliers. With its decision the authority challenged a range of EDEKA’s demands to its suppliers.

The Bundeskartellamt challenged the Düsseldorf Higher Regional Court’s decision to reverse the accusations regarding three of six demands. The Federal Court of Justice agreed with the authority’s opinion on these demands.

Düsseldorf Higher Regional Court on the award of concessions to operate an electricity network (file: VI-2 Kart 1/15 [V])

In a final decision the Higher Regional Court confirmed the Bundeskartellamt’s decision to prohibit the municipality of Titisee-Neustadt from awarding a concession to operate the electricity network to a public sector company.

The authority and all courts reviewing the case considered the conditions of the public tender to award the concession as discriminatory and thus as a violation of the competition law rules on non-discriminatory award procedures. The expedited proceedings preceding the decision had already given rise to decisions taken by the Higher Regional Court, the Federal Court of Justice, and an unsuccessful constitutional complaint.

Unlawfulness of prohibiting dealers to use Google AdWords and price comparison engines confirmed (file: KVZ 41/17)

The Federal Court of Justice confirmed a decision of the Bundeskartellamt regarding the unlawfulness of competition restraints in ASICS’s selective distribution system. The manufacturer of sports articles had prohibited its dealers to use the brand name in their online sales activities and to improve their visibility in price comparison engines. When the Düsseldorf Higher Regional Court confirmed the decision, the Federal Court of Justice rejected ASICS’s application for granting an appeal on points of law against the Higher Regional Court’s decision. In the reasons given for its decision the Federal Court of Justice explained that the unlawfulness of ASICS’s actions was confirmed and did not require any further clarification. The Federal Court of Justice also made reference to the European Court of Justice’s decision in the “Coty” case on the lawfulness of the ban on luxury goods sales via Internet platforms, which had been issued a week earlier.

Düsseldorf Higher Regional Court imposes fines against confectionery manufacturers (file: V-4 Kart 6/15 OWi)

The Düsseldorf Higher Regional Court imposed fines against several confectionery manufacturers and an association in cartel fine proceedings which in some cases even exceeded the fines imposed by the Bundeskartellamt. In 2013 and 2014 the authority had imposed fines against manufacturers exchanging customer data and information regarding the state of negotiations with their customers. This also included information on intended price increases. The parties have lodged an appeal on points of law with the Federal Court of Justice.

1st Decision Division

The 1st Decision Division is competent for the following areas: extraction of ores and other non-metallic minerals, construction industry and construction materials, real estate and related services, the wood industry, electrical appliances and consumer electronics. Last year, the Decision Division published its final report on the sector inquiry into cement and ready-mixed concrete. Two further major examinations the Division concluded referred to the takeover of a cement plant by one of its competitors and the development of a cement trading platform. The Decision Division also looked into the organisation of round timber marketing in various federal states.

The 1st Decision Division is chaired by Dr Markus Wagemann.

Conclusion of the sector inquiry on cement and ready-mixed concrete

In mid-2017, the Decision Division published its final report on its inquiry into the cement and ready-mixed concrete sector. The inquiry showed that the structural conditions in the sector can get in the way of effective competition, one example of this being the fact that many markets are highly concentrated with few suppliers. Furthermore, the markets concerned are stable markets for homogeneous bulk goods where competitive moves by other suppliers offering innovative products are hardly possible.

Competition law may be infringed where suppliers are closely linked or cooperate, in particular in joint ventures and supply associations. The final report outlines the key principles and criteria under competition law. The Decision Division contacted the joint ventures it assessed as critical from a competition point of view. In the next few months, the facts will have to be reviewed again to clarify whether the companies will demerge their joint structures on a voluntary basis or whether the Decision Division will find that the partnership agreements are in violation of competition law.

Additionally, the sector inquiries focused on the companies' business conduct, e.g. on price increase circulars or market information systems, which further increase the already high degree of market transparency. The price increase circulars are general announcements of future price increases made by cement producers to all their customers. In December 2017 the authority called on the companies to stop or adjust this practice. The companies concerned agreed to this, so that formal proceedings were not required.

German ready-mixed concrete sector 2016

- Number of companies/plants: 530/1,800
 - Produced quantity: 49.4 million cubic metres
 - Turnover: 3.32 billion euros
 - Number of employees: 9,405
- Source: German Ready-Mixed Concrete Association (Bundesverband der Deutschen Transportbetonindustrie e.V.)

German cement industry 2016

- Number of companies/cement plants 22/53
 - Cement production: 33 million tonnes
 - Turnover: 2.5 billion euros
 - Number of employees: 7,900
- Source: Zementindustrie im Überblick 2017/2018 (annual brochure published by the German cement industry association), Verein Deutscher Zementwerke e.V. (VDZ, association of German cement plants)

Planned acquisition of Karsdorf cement plant

Schwenk KG is a cement producer which planned to acquire two cement plants in Karsdorf (Saxony-Anhalt) and Sötenich (Eifel) from its competitor Opterra GmbH. The company abandoned its plans after being informed by the Decision Division in late 2017 that there were competition concerns and that it considered Schwenk's proposal for a modification of its plans as insufficient or unsuitable. Schwenk KG's market share in Central Germany would have been 60 % after the merger. The company's closest and most active competitor, Opterra, would have been eliminated from the market. The limited production capacities of the remaining competitors would have given Schwenk additional scope for raising prices.



Launch of the ECEMENT cement trading platform

In the light of digital developments, the Bundeskartellamt recently dealt with cooperations in the industrial sector, often focusing on platform models for improved digital interconnectivity of market participants (Internet of Things). For example, the 1st Decision Division examined plans for the launch of a digital cement trading platform (“ECEMENT”, www.ecement.pro) and found the project to be unproblematic under competition law.

The platform will be available to all suppliers and purchasers of cement. It can be used to select from various supply plants and place an anonymous request for cement deliveries. The price will then be determined through an automated auction process. One of the factors important to the Decision Division was that the operators will not use the platform to provide each other with information on prices achieved in a particular region and thus to even increase the existing transparency in the market. In its current form the platform does not raise any competition concerns. On the contrary, it can be expected to stimulate competition in the cement markets.

Glass microsphere manufacturers withdraw merger notification

Potters Industries and Sovitec Mondial are leading manufacturers of solid glass microspheres. Applications of these glass beads, which are mostly made from recycled glass, include retroreflective microspheres for road and ground marking.

The results of preliminary market investigations showed that the planned merger of the two companies would have led to the emergence of by far the leading and possibly dominant supplier of solid glass microspheres in Europe. Potters and Sovitec are currently in direct competition to one another. The merger was expected to

significantly impede effective competition. The notification was withdrawn after the Decision Division had announced its concerns about the planned merger.

Approaches to round timber marketing in line with competition law in several federal states

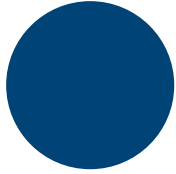
The Bundeskartellamt’s prohibition decision regarding round timber marketing in Baden-Württemberg (2015) was confirmed by the Düsseldorf Higher Regional Court in March 2017. The Land filed an appeal on points of law, which led to the decision being reversed by the Federal Court of Justice on formal grounds. The Federal Court of Justice ruled that an earlier, less strict decision against Baden-Württemberg made in 2008 could not simply be reversed. The Federal Court of Justice did not express any views of whether the system of timber marketing in Baden-Württemberg was a violation of competition law. It is therefore still possible to initiate proceedings under civil law, e.g. for damages.

The Higher Regional Court decision led Rhineland Palatinate, Hesse and North Rhine-Westphalia to plan their timber sales in compliance with competition law. These federal states also pool their marketing activities in their own state companies for timber from state, communal or private-owned forests. Some of their plans have already been implemented. Additionally, Hesse and North Rhine-Westphalia have opened up competition for services in communal forests.



Facts and Figures

Fines imposed in 2017 in euros Total of 66,382,000*



Industrial batteries
27,662,500



Harbour towage companies
12,775,000



Clothing
10,782,000

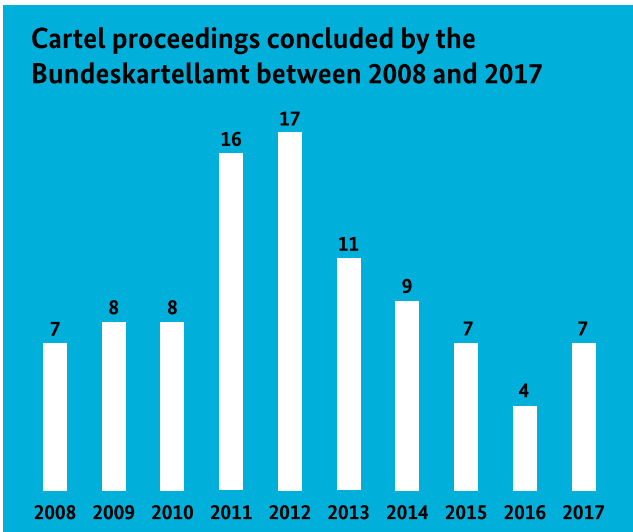


Heat shields
9,635,000

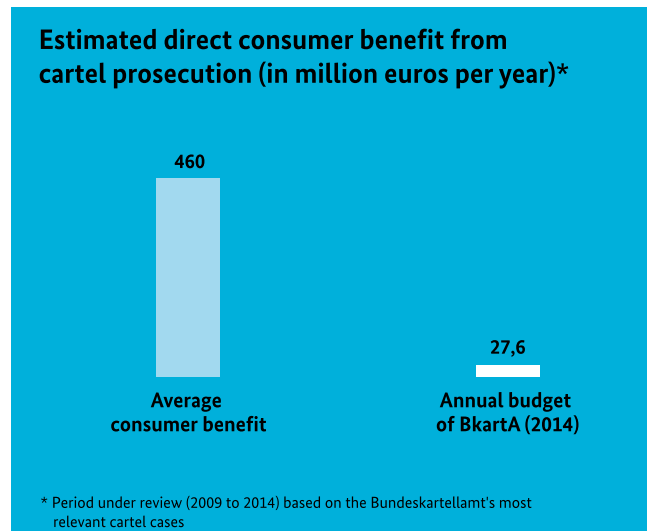
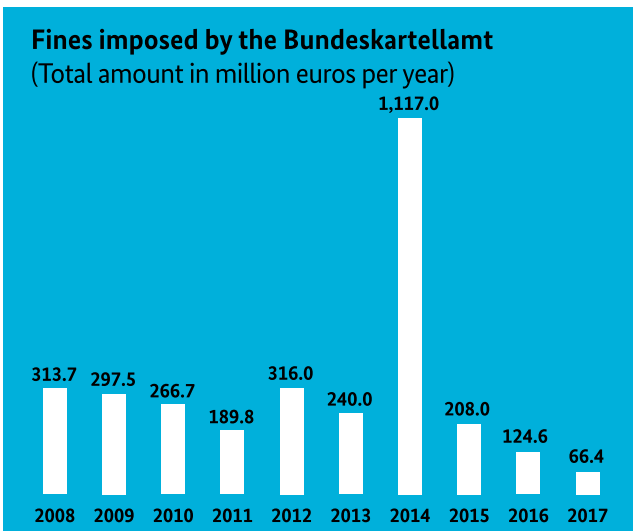
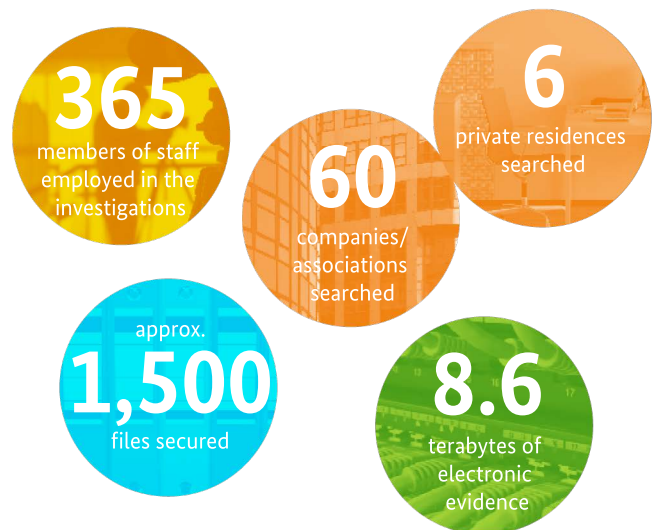


Other fines
5,527,500

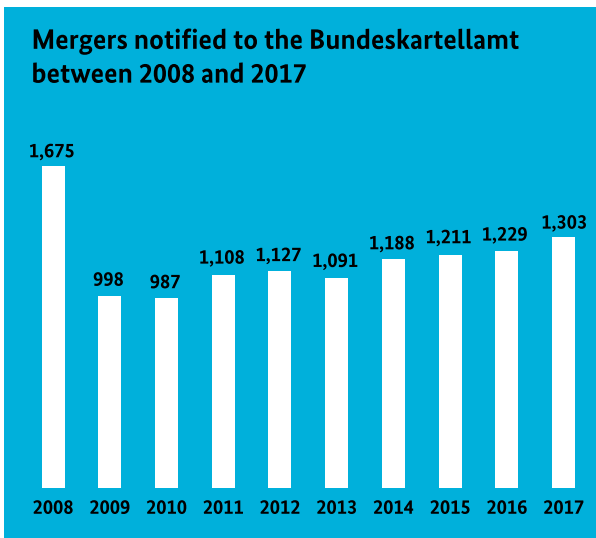
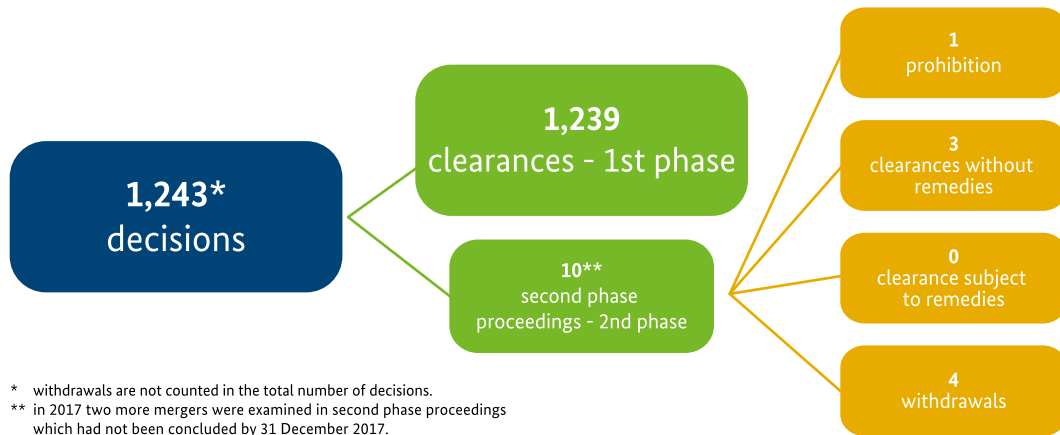
* The figures are rounded values.



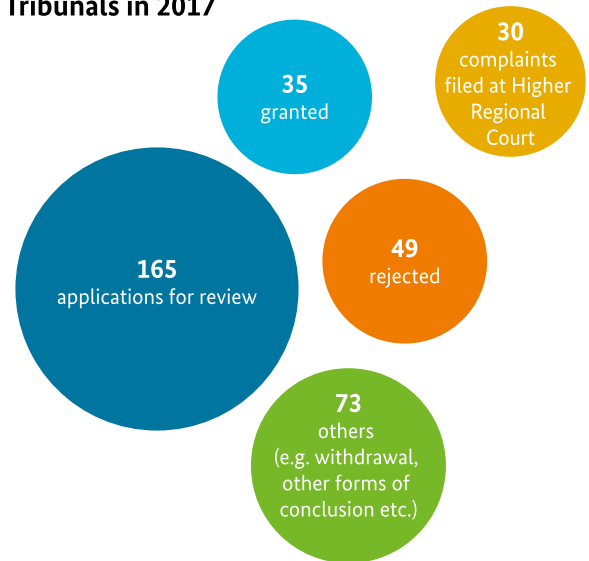
Dawn raids and evidence seized in 2017



Merger control: Bundeskartellamt decisions in 2017



Practice of the Federal Public Procurement Tribunals in 2017



Abuse of dominance proceedings in figures for 2017



2nd Decision Division

The 2nd Decision Division is competent for the following areas: agriculture, food/nutrition, textiles/shoes/backpacks, cosmetics/toiletries, and food wholesale and retail. Last year, the key work areas included a review of supply conditions in the dairy industry, the enforcement of the prohibition of vertical price fixing in the food retail sector, an examination of so-called sustainability initiatives, fine proceedings in the clothing sector, and proceedings against the German Olympic Sports Confederation (Deutscher Olympischer Sportbund, DOSB) and the International Olympic Committee (IOC).

The 2nd Decision Division is chaired by Dr Felix Engelsing.

Supply conditions in the dairy industry

The Decision Division has concluded an administrative proceeding in which it intensively examined the delivery conditions between farmers and dairies. A sample case which the Decision Division had conducted against Deutsches Milchkontor eG (DMK), Germany's largest dairy, was discontinued in January 2018.

In its March 2017 progress report, the Division had criticised in particular the long durations and notice periods of supply contracts between producers and dairies, and the almost nationwide obligation of farmers to exclusively supply a specific dairy plant with their milk (exclusive supply obligation).

In the further course of the proceedings, competition activities increased in 2017/2018. Considerably more farmers changed their dairy, and new contract models are being discussed in the industry. Also the DMK changed its supply conditions, reducing the notice period for its producers to twelve months. While the Decision Division basically considered this an important step towards competition, it will wait and see what effect this reduction actually has on increasing competition in the raw milk sector.

Increased competition in milk supply conditions

- 89 dairies were questioned in preparation of the March 2017 progress report. These dairies have a combined market share of close to 100%.
- The following results were found:
 - 97.8% of the total raw milk supply volume in 2015 was subject to exclusivity obligations.
 - The notice period for more than half of the total raw milk supply volume is at least two years.
 - The actual notice period can be considerably longer because contracts for 87.5% of the total milk supply volume can only be terminated once a year.
 - For this reason, only very few producers switched dairies. In 2015, the switching rate only accounted for 1.0% of the total raw milk volume.
 - Current figures indicate increased competitive activity in 2017/2018. For example, contracts covering more than 20% of the total volume of raw milk processed by Germany's largest dairy DMK were terminated.

Sustainability initiatives

The Decision Division received several inquiries regarding the assessment of so-called "sustainability initiatives" under competition law. These initiatives are often voluntary commitments by the economic sector and pursue objectives like environmental protection or animal welfare. These objectives are often to be achieved by agreement between as many companies as possible.

The Decision Division particularly looked into the "Tierwohl" initiative, which is an industry association bringing together companies from the agriculture, meat-processing and food retail industries to promote animal welfare. To reward livestock producers for implementing measures to increase animal welfare, several cents of each kilogram of pork or poultry sold are paid to the initiative.



The Decision Division insisted that the initiative should not only label the poultry packaging, as was originally planned, but also, after a certain transition period, the pork packaging to create transparency for the consumer. The Decision Division's view is that the consumer must benefit, too, and that he has to be able to see which piece of meat was produced according to which animal welfare criteria.

The "Tierwohl" initiative

- More than 4,100 pig farmers and more than 1,800 chicken farmers participate in the "Tierwohl" initiative.
- Nine food retail companies finance the initiative.
- The retailers currently provide approx. 130 million euros each year.
- Furthermore, 127 slaughter companies participate in the initiative.

Source: Initiative Tierwohl,
as of December 2017/January 2018

Prohibition of vertical price fixing in the food retail sector

The Bundeskartellamt published a guidance note on the prohibition of vertical price fixing in the brick-and-mortar food retail sector in the summer of 2017. The aim of the guidance note is to explain the background, purpose and scope of the ban on price fixing by practical examples, particularly to small and medium enterprises. The information provided is meant to enable them to walk the thin line between necessary, reasonable communication on the one hand and illegal behaviour on the other.

In recent years, the Bundeskartellamt has conducted a significant number of proceedings in which it intensively examined the business relations between retailers and manufacturers in the food sector. In 2016 it concluded a major proceeding which has become known as the ‚Vertikalfall‘. Fines amounting to 260.5 million euros were imposed on 27 companies for having engaged in price-fixing agreements between retailers and manufacturers in the food sector.

Fine proceedings in the clothing industry

In July 2017, the Decision Division imposed fines amounting to approx. 10.9 million euros for resale price maintenance against clothing manufacturer Wellensteyn International GmbH & Co. KG and retailer Peek & Cloppenburg KG (Düsseldorf).

Wellensteyn set its retailers minimum sales prices and prohibited them from reducing prices and selling goods online. Any retailer found deviating from this strategy was threatened with a refusal to supply, which was

also implemented in several cases. Peek & Cloppenburg accepted these conditions and even asked Wellensteyn to take measures against price undercutting by other retailers.

A mitigating factor in the calculation of the fines was that they were imposed on the basis of a settlement agreement. The fines are final.



Restrictions on athlete sponsoring during the Olympic Games

The Decision Division is currently carrying out cartel administrative proceedings against the German Olympic Sports Confederation (Deutscher Olympischer Sportbund, DOSB) and the International Olympic Committee (IOC). DOSB and IOC are suspected to impose excessively strict advertising restrictions on Olympic athletes, and hence to abuse their dominant position in the market. It has to be considered that while there would be no Olympic Games without athletes' performance, they do not directly benefit from the very high advertising revenue generated by the official Olympic sponsors.

With a view to the Decision Division's concerns, DOSB and IOC proposed changes to give the athletes more scope for action as far as their own advertising activities are concerned. In the context of a so-called "market test", the planned changes were submitted to the associations, athletes and sponsors, asking for their comments. The market test and the talks with third parties have shown that further adjustments and clarifications are required. The corresponding negotiations are ongoing. However, the changed DOSB guidelines was preliminarily applied during the Olympic Winter Games in Pyeongchang.

3rd Decision Division

The activities of the 3rd Decision Division cover the health sector, including health insurance, hospitals, the pharmaceutical sector, medical products and medical technology as well as the chemical industry. In its merger control proceedings the Decision Division has been particularly preoccupied with the consolidation in the hospital market and in 2016 launched a sector inquiry into this market. Further examples of the division's activities are the intensive examination of a merger between two German Red Cross (DRK) blood donation services and the examination of mergers in the chemical industry.

Until August 2017, the 3rd Decision Division was chaired by Eberhard Temme.

He was succeeded by the former Chairman of the 5th Decision Division, Dr Ralph Langhoff.



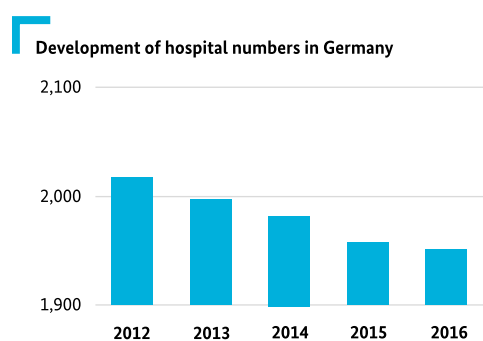
Merger control in the hospital sector

Irrespective of their operators (municipal authorities, churches, private operators) hospitals are independently active as entrepreneurs and compete with one another. Due to strict legal provisions there is almost no price competition in this area. Merger control in this sector therefore primarily aims at maintaining competition on the quality of healthcare for patients. This requires first and foremost that patients have sufficient local options to choose from.

In the case of a merger project, the Decision Division examines whether the services provided by the hospitals are comparable from the patient's point of view. There are, for example, separate market definitions for the market for acute care hospitals and the market for rehabilitation facilities or the market for retirement and nursing homes. In geographical terms, only those hospitals will be included in the examination that represent a health care alternative from the point of view of patients and that are not located too far away.

In the case of public entities' merger projects, the Decision Division conducts informal preliminary checks of the merger plans. Any possible concerns regarding the merger can thus

be considered in the political decision-making processes in the local authorities' individual committees and, if required, alternative solutions can be sought in good time.



Source: Deutsche Krankenhausgesellschaft, from destatis (Federal Statistical Office)

Preliminary results – sector inquiry into the hospital sector

In May 2016, the Bundeskartellamt initiated a sector inquiry to obtain information about the current market situation and intensity of competition in acute inpatient hospital treatment.

On the basis of this inquiry, the evaluation criteria for merger control proceedings in this sector are to be developed further. Another aim of the sector inquiry is to determine what factors influence patients in their choice of hospital and how hospitals try to set themselves apart from their competitors in terms of the services and areas of specialisation or quality management they offer. The inquiry will also look into the role of various stakeholders such as medical staff, remuneration structures and the hospitals' financial situation.

The Decision Division started by surveying approx. 500 hospitals. In a second step, the survey was extended to accredited general practitioners who refer their patients for necessary treatments to hospitals and advise them on suitable hospitals. The extensive replies are currently being evaluated.

Consolidation process in the hospital sector

- The hospitals' financial situation stabilised in the last few years and the number of notified merger projects increased.
- From 2003 to 2017 the Bundeskartellamt examined a total of more than 280 notified hospital mergers. In many cases, the Bundeskartellamt informally conducted a preliminary examination prior to the formal merger notification.
- 239 mergers were cleared and seven prohibited.
- The remaining cases were either not subject to merger control or the proceedings have not yet been concluded or the merger projects were cancelled.

DRK – a company group

The German Red Cross with its blood donor services is by far the largest supplier of blood products. The DRK has constantly expanded its position in the last few years, for example by acquiring communal blood donor services and by founding joint ventures with blood donor services of university hospitals. Only some of these consolidation processes are subject to merger control, as the external sales the hospitals generate with blood products are sometimes below 5 million euros, which is the required domestic turnover threshold for notifications. Additionally, their sales are generated in regional markets in which the market volume for each individual blood product is often below the minor market threshold and thus not subject to examination by the Bundeskartellamt.

On the occasion of the merger of the DRK blood donor services Lower Saxony, Saxony-Anhalt, Thuringia, Oldenburg, Bremen with the DRK blood donor service Mecklenburg-Western Pomerania, the Decision Division examined whether DRK qualifies as a company group. The

Decision Division found that DRK and its regional branches in Mecklenburg-Western Pomerania and Lower Saxony form at least a horizontal group (Gleichordnungskonzern) under German law. The Decision Division ruled that DRK also pursues economic activities, at least on the regional level, so it has to be assumed that a vertical group structure exists between the two regional branches in Mecklenburg-Western Pomerania and Lower Saxony and their respective county branches. The dominating influence on the member associations is established via certain provisions in the by-laws. The merger project having been an internal process in the group, there was no obligation to submit a notification of it.



As the structure and the sample by-laws apply to all regional branches, the Decision Division assumes that an examination of further DRK regional branches would not lead to a different result.

Mergers in the chemical industry

The chemical industry saw the initiation of several major mergers in 2017, which were examined by the EU Commission. The Bundeskartellamt was involved in the Bayer/Monsanto, ChemChina/Syngenta and Dow/DuPont proceedings. The Decision Division itself examined more than 50 mergers having effects in Germany in the chemicals and plastics industries.

4th Decision Division

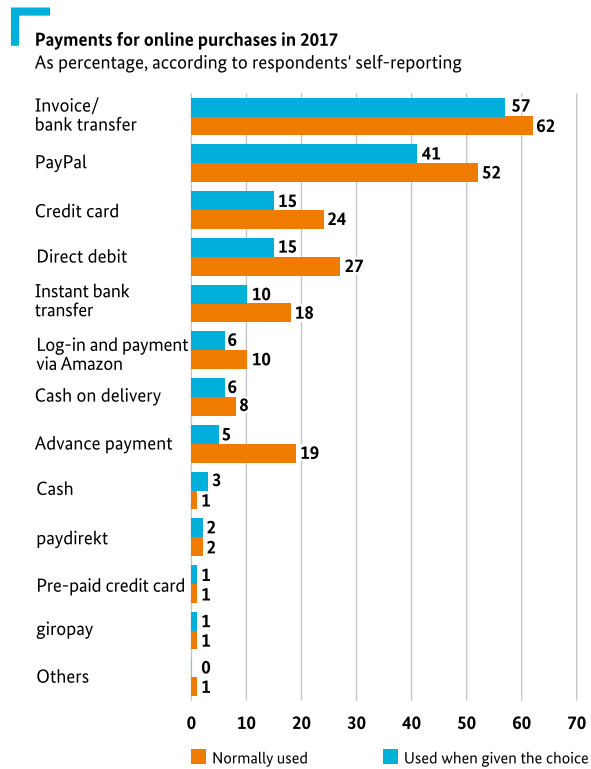
The activities of the 4th Decision Division cover the waste management industry, financial services and other services. Key activities in the area of financial services were ATM withdrawal fees for customers of other banks and competitive conditions of new payment functions in banking apps. The Decision Division continued the waste management sector inquiry, which was initiated in 2016. Additionally, there were many merger projects in this area.

Until August 2017, the 4th Decision Division was chaired by Eva-Maria Schulze. She was succeeded by the former Chairman of the 3rd Decision Division, Eberhard Temme.

ATM withdrawal fees for customers of other banks

In September 2017, the Bundeskartellamt concluded an extensive investigation into ATM withdrawal fees for customers of other banks. The investigations were initiated after consumer complaints about the level of charges and the fact that their cards were blocked on some ATMs.

The Bundeskartellamt found that a state regulation of ATM withdrawal fees for customers of other banks would currently not be expedient, as most consumers can avoid high charges by withdrawing cash using cheaper alternatives (e.g. ATMs supported by their bank, cheaper ATMs, petrol stations or supermarkets, or a credit card). If the ceiling for withdrawal fees is set too low, there is a risk that the financial institutions will no longer be willing to maintain ATMs in certain locations. Additionally, costs have been very transparent since 2011, as consumers find information on incurring costs on the ATM.



Source: Deutsche Bundesbank, Fourth study on the utilisation of cash and cashless payment instruments, 2018

Joint online offers of banks

In 2017, the Decision Division dealt with online app offers by German credit institutions on several occasions. In this context, the Decision Division did not have any objections under competition law aspects to the planned introduction of a new payment function of the 'paydirekt' online payment service allowing customers to transfer small amounts of money from one mobile phone to another (so-called "P2P payment function"). The paydirekt scheme is a joint venture of leading companies in the areas of private banks, the cooperative banks and the savings banks. The banks participating in the joint venture have jointly developed this payment system but compete with one another in other areas.

In the Decision Division's view the cooperation is likely to improve competitive conditions on the market for online payment systems. paydirekt can now add a mobile function to its online payment system which the market leader PayPal has already offered for some time. Other providers of similar payment systems include FinTechs such as Lendstar, Cringle or Tabbt and also the savings bank group ("Kwitt") and the cooperative banks ("Geld senden und empfangen" (send and receive money)). The Decision Division had no objections to the cooperations in the last two examples either.



Competition in the waste management sector

Sector inquiry on household waste collection

Regarding the sector inquiry on competition in regional markets for the collection and transport of household waste, which was initiated in 2016, initial data were collected in 2017 and are now being analysed. The sector inquiry was launched because of the increased concentration on the waste management markets and a declining participation, particularly of private companies, in public tenders for waste collection and disposal contracts in many regions. The data collected as a first step relate to the market conditions for the collection of packaging waste by contractors of the dual systems. In a second step, the Decision Division will collect data from public waste management utilities on competition in municipal tenders.

EnBW's increase in shares in MVV

Upon close examination, in late 2017 the Bundeskartellamt cleared EnBW AG's acquisition of 6.28% of the shares in MVV Energie AG, which raised EnBW's share in the company to 28.76%.

Besides electricity supply (cf. section on the 8th Decision Division on page 32), the acquisition also affected waste management services. The focus of the close examination was on household waste management. The regional markets for household waste management are characterised by competition for the award of public tenders by the competent local authorities. The Decision Division examined whether the veto rights gained by acquiring a blocking minority could lead to EnBW having a dominant position on this market.

Ultimately, the acquisition did not cause any competition restraints, as EnBW does not gain a sufficiently large influence on MVV, which is exclusively controlled by the City of Mannheim, despite its blocking minority.

Acquisition of glass recycling companies by the Rethmann group

Due to the ongoing consolidation process in the waste disposal sector, the Decision Division had to examine a large number of mergers also in 2017. One case which required particularly intensive investigation was the acquisition by the Rethmann group of several glass recycling companies owned by the Vanswartenbrouck family. The merger was cleared in August 2017.

The companies are active in Germany in the recycling of waste glass. Together, the companies reach very high market shares in waste glass recycling in Western Germany. Additionally, the merger gives the companies a significant lead over its competitors from the group of small and medium sized companies. However, the investigations showed that the market area is a so-called minor or "de minimis" market, so the Decision Division could not prohibit the merger project.

Minor markets

- Markets which have existed for at least five years and which had a sales volume in Germany of less than 15 million euros in the last calendar year (Section 36(1) sentence 2 no. 2 GWB).
- In these markets the prohibition of a merger by the Bundeskartellamt is expressly excluded by law.

5th Decision Division

The 5th Decision Division is responsible for the defence industry, mechanical and plant engineering, the metal industry, iron and steel, measurement and control technology, the paper industry, the sanitary, heating and air conditioning sector, watchmaking, jewellery, and toys, and the gambling industry. The 5th Decision Division is also in charge of patents and licences as an inter-divisional competence. In 2017, the Decision Division focused on the sanitary, heating and air conditioning sector and on examining cooperation and platform projects in the context of the Industrial Internet of Things. The Decision Division preliminarily concluded cartel proceedings related to the sanitary, heating and air conditioning sector and cleared a merger involving the market leader Cordes & Graefe KG only after the project was adjusted.

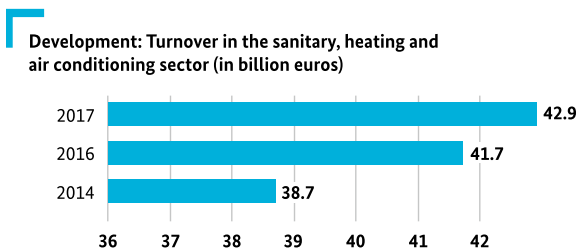
Until August 2017, the 5th Decision Division was chaired by Dr Ralph Langhoff.

He was succeeded by the former Chairwoman of the 4th Decision Division, Eva-Maria Schulze.

The sanitary, heating and air conditioning sector

Cartel proceeding against wholesalers of sanitary, heating and air conditioning installations

In early 2018, the Decision Division issued another fine against wholesalers of sanitary, heating and air conditioning installations, thus concluding the fine proceedings which were initiated with a dawn raid in 2013 for the time being. The fines issued amount to approximately 23 million euros in total. Already in March 2016, the Decision Division fined nine wholesalers and an individual involved from the sanitary, heating and air conditioning sector for having coordinated the calculation of so-called gross prices.



Source: Zentralverband Sanitär Heizung Klima (German Sanitation, Heating and Air Conditioning Association)

The companies mutually determined their calculation factors for setting their so-called gross trade prices. The subject matter of the coordinated calculation, which was also important as a calculation guide for the sector nationwide, were approximately 250,000 products from the sanitary sector. By their joint calculation, the competitors aligned their starting prices in an anticompetitive way, which led to a considerably reduced intensity of competition.

Clearance of merger between wholesalers

In March 2017 the Decision Division cleared the planned acquisition of the business operations of Wilhelm Gienger GmbH by Cordes & Graefe KG. The planned merger was first notified in autumn 2016 and the Decision Division initiated extensive investigations. Once the Decision Division informed the companies about its concerns, they withdrew their notification to adjust their project and notify it again in a form unproblematic under merger control aspects.

The merger affects the wholesale markets for sanitary, heating and air-conditioning products. Cordes & Graefe is the market leader in this area in Germany. While Wilhelm Gienger mostly operates in Baden Württemberg, Cordes & Graefe only has a few premises there. However, in the Ulm region, where their sales areas overlap, the companies would together have reached high market shares. Nonetheless the merger could be cleared after the companies divested a subsidiary in this region

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





Industrial Internet of Things (IIoT)

Digital technology is spreading, also across the area of engineering and materials trading. For this reason, in 2017 and the beginning of 2018 the Decision Division had to deal with an increasing number of cooperation projects and platform solution offers in this area.

“Adamos” cooperation in the machine tool industry

The digitalisation activities of machine tool builder DMG Mori, coating and wood-working machinery manufacturer Dürr, optical devices manufacturer Zeiss, circuit board assembly machinery manufacturer ASM and IT software specialist Software AG are pooled under the company name of “Adamos”. With “Adamos” the companies offer an open, non-proprietary Industrial Internet of Things platform which they are planning to establish as an industry standard in the area of mechanical engineering (“platform as a service”). In addition to that, they offer cloud services (“software as a service”).

The Decision Division did not have any objections to the creation of “Adamos”, as the suppliers do not compete with each other and none of the companies would have been able to implement a comparable offer on its own. Neither is the platform in its current form expected to have a restraining effect on competition because of the information exchanged. Additionally, the platform competes with similar offers from companies like Siemens,

GE and Bosch. If the platform’s significance in the market increases, however, it must be ensured that access is granted according to transparent, non-discriminatory criteria.

XOM Metals – a digital platform for trading steel products

XOM Metals GmbH is a subsidiary of Klöckner group. Its business-to-business Internet trading platform for steel products was cleared after the company substantially modified its original project at the suggestion of the Decision Division.

Both steel manufacturers and steel traders use the platform. Two Klöcker subsidiaries will represent the company as a supplier on the platform.

The platform has been designed to make the order process and order management easier, both for new and existing customers. However, an online platform for offering steel products increases market transparency in a way that can either facilitate agreements or even make them unnecessary. For this reason and following corresponding feedback from the Decision Division, Klöckner designed the market platform in a way that it does not allow a competition-restraining exchange of information on prices and availability of steel products, neither between the suppliers nor between the platform operator and other companies of the Klöckner group.

6th Decision Division

The 6th Decision Division is responsible for the media sector, the digital economy, culture, sports and entertainment, the advertising industry and trade fairs. The 6th Decision Division also includes a think tank which is tasked with assessing online platforms under competition law. A key focus of the division's work in the reporting period was an ongoing abuse of dominance proceeding against Facebook. The Decision Division also prohibited an acquisition and some exclusivity agreements used by ticketing system operator CTS Eventim. Furthermore, the Decision Division dealt with ticket allocation for the 2018 World Cup matches.

The 6th Decision Division is chaired by Julia Topel.

Online platforms

The digital economy raises many new issues for antitrust enforcement. There are intensive discussions regarding anticompetitive practices and strategies of large Internet companies and their alleged powerful position in the market. At the same time many digital markets are very dynamic and innovative. A think tank dealing with these developments has been launched in the Decision Division ("Think Tank Internet"). The key focus of its work is on online platforms and the competitive conditions under which they operate. The think tank's findings are reflected in the Decision Division's practical case work.

Initial assessment in the Facebook proceeding

In December 2017, the Decision Division sent Facebook a preliminary assessment notice for suspected unilateral conduct. The Decision Division's preliminary findings are that Facebook has a dominant position in the German market for social networks and that it abuses this position by making the use of its social network conditional on the permission to unrestrictedly collect any kind of user data from third party sources and merge them with the respective user's Facebook account.

Third party sources include company-owned services like WhatsApp or Instagram but also websites and apps operated by other providers which Facebook can access via APIs. This means that Facebook can obtain data if a website with the Facebook 'like' button is accessed, even if the button is not clicked. The Decision Division holds that this fact is most likely unknown to the users. With a view to the company's dominant position in the market, the Decision Division considers it unlikely that the user has given effective consent to this form of data collection and processing.

Facebook's market position

- The Bundeskartellamt's preliminary findings are that Facebook has a dominant market position in the German market for social networks.
- In Germany, Facebook has approximately 30 million users per month and 23 million users per day.
- Google+ and some smaller, German social network providers operate in the same market as Facebook. However, these networks do not serve the exact same purposes. From the users' perspective, decisive criteria for the choice of a social network are its size and the possibility to find exactly the persons they want to be in contact with.
- Professional networks such as LinkedIn and Xing, as well as messaging services such as WhatsApp and Snapchat or other social media such as YouTube or Twitter are not part of the relevant product market.

Acquisition and exclusivity agreements used by CTS Eventim prohibited

In November 2017, the Decision Division prohibited CTS Eventim's plans to acquire the majority stake in the companies belonging to the Four Artists concert and event agency.

As the operator of by far the largest ticketing system in Germany, CTS Eventim holds a dominant position in the market. Concert and tour organisers as well as advance booking offices are dependent on it. Additionally, CTS Eventim has a very powerful market position in the sale of tickets via its own online ticket shop "eventim.de". By acquiring Four Artists, the company would have gained control of additional relevant ticket quotas and expanded its market position further. Four Artists represents approximately 300 national and international artists.

In December 2017, the Decision Division prohibited CTS Eventim from using exclusivity agreements which the ticketing company concluded with organisers of live entertainment events and advance booking offices. The clauses in question stipulate that the contracting parties may only sell tickets exclusively or to a considerable extent via CTS's "eventim.net" ticket sales system. The Decision Division considered these agreements an abuse of market power.



Sector inquiry into online advertising initiated

Early in 2018, the Decision Division initiated a sector inquiry into the online advertising sector in view of the high economic significance of online advertising, both for advertisers and Internet content providers, and ongoing discussions relating to difficult competition conditions in this market.

The market significance of some large enterprises like Google or Facebook is considerable. The Decision Division will examine whether these providers, as some market players claim, have actually established closed systems commonly referred to as "walled gardens", and what significance these systems have, if any.

Additionally, the Decision Division will focus on the effects of current technical developments on the online advertising market and the various players' market opportunities. Such technical developments concern for example visibility measurement or procurement of advertising space.

Online advertising in Germany

- Online advertising has experienced an extraordinarily high growth rate in the last 20 years.
- The market volume in Germany alone is estimated at five to nine billion euros.
- Today online advertising is a complex system of very different forms of advertising which is highly technical. One example of this is the fully automated real-time trade in advertising space.
- Early in February, the Bundeskartellamt published on its website a paper on online advertising in a series of papers on "Competition and Consumer Protection in the Digital Economy".

Enhanced access to World Cup tickets

In administrative proceedings, the Decision Division looked into the allocation of tickets for the 2018 World Cup matches. The proceedings were discontinued in late 2017 after the Deutsche Fußballbund (German Football Association, DFB) facilitated the purchase conditions for tickets.

The application for a ticket from DFB's ticket allocation for the 2016 European Championships or for away matches in World Cup qualifying rounds was conditional on the applicant being a member of the national team's fan club. Membership costs an annual fee of 40 euros. Numerous complaints were filed against the DFB for making ticket applications conditional upon membership of the fan club.

The DFB put forward to the Decision Division that the membership helped to improve security in the stadium. The DFB agreed with the Decision Division to introduce a considerably cheaper limited tournament membership for ten euros to ensure easier ticket access while still taking account of security considerations.



7th Decision Division

The activities of the 7th Decision Division focus on the areas of telecommunications and broadcast engineering, EDP, electrical engineering, press and radio, press-related advertising and outdoor advertising. Last year, the Decision Division's activities included examining the takeover of Mediengruppe Frankfurt by the Ippen group. Another subject of thorough examination was a merger between outdoor advertisers. Examples of the Decision Division's work in the field of mobile communications include the examination of the takeover of Drillisch AG by United Internet AG and the takeover of the English company Sepura plc. by the Chinese company Hytera Communications Corporation.

Until July 2017, the 7th Decision Division was chaired by Dr Markus Wagemann.

He was succeeded by the former head of the Special Unit for Combating Cartels, Dr Katharina Krauß.



Merger between newspaper publishers

In early March 2018, the Decision Division cleared the Ippen group's project to take over Mediengruppe Frankfurt from the FAZIT foundation. Among the newspaper titles of Mediengruppe Frankfurt are "Frankfurter Neue Presse" and "Frankfurter Rundschau". Ippen also acquired the advertising newspaper "Mix am Mittwoch".

The Decision Division considers the merger an improvement, especially for readers in the city of Frankfurt/Main. Prior to the merger, the FAZ group used to hold a monopoly position in the area with the three newspaper titles "Frankfurter Neue Presse", "Frankfurter Rundschau" and the regional edition of the "Frankfurter Allgemeine Zeitung". After the merger, "Frankfurter Neue Presse" and "Frankfurter Rundschau" will be in competition with the regional edition of "Frankfurter Allgemeine Zeitung" and readers will be able to choose between two independent media groups.

The takeover will also have an effect on numerous advertising markets in the South of Hesse. However, as the markets concerned fall under the de minimis notice due to their low turnover volumes, they must not be

considered in the authority's decision on a planned merger. On the reader markets affected the merger creates overlaps in the city of Offenbach, the Offenbach district and the Wetterau district. However this did not prevent the project from being cleared because the improvements on the reader market in the City of Frankfurt are significantly more important than any potential disadvantages caused by the merger in these districts.

Merger in outdoor advertising

In October 2017 the Decision Division cleared the Ströer group's plans to acquire a majority shareholding in UAM Media Group GmbH.

Ströer is by far the largest company marketing outdoor advertising in Germany. UAM is an advertising company operating in Germany. It mostly places advertising formats in restaurants, cinemas or universities (so-called ambient advertising) where it also markets digital advertising media. The company also offers giant advertising spaces in several major German cities.

The Decision Division found that both the digital advertising media and the giant advertising spaces offered by UAM

are part of a national outdoor advertising market, so Ströer and UAM are direct competitors. However, the locations of the advertising screens marketed by UAM usually focus on specific target groups. The analogue and digital advertising media of the parties to the merger complement each other but are generally not directly interchangeable from a customer perspective.

Share of advertising media in the total net turnover in Germany 2016

Percentage figures, rounded

| Advertising media | 2016 |
|----------------------------|----------|
| TV | 30 |
| Daily newspapers | 16 |
| Advertising newspapers | 12 |
| Online and mobile | 10 |
| Outdoor advertising | 7 |
| Popular magazines | 7 |
| Journals | 6 |
| Directory media | 6 |
| Radio | 5 |
| Weekly/Sunday newspapers | 1 |
| Cinemas | 1 |
| Newspaper supplements | 1 |

Source: Central Association of German Advertising Industry (Zentralverband der deutschen Werbewirtschaft, ZAW).

The Decision Division found that Ströer's market position in the outdoor advertising sector will not be significantly strengthened as a result of its acquisition of UAM. In addition, the terms of UAM's contracts with the providers of advertising locations are relatively short. This means that the market position held so far by UAM can still be challenged by other competitors. The Decision Division cleared the merger also in consideration of the large number of further competitors.

Acquisition of mobile providers

In June 2017, the Decision Division cleared the acquisition of mobile provider Drillisch AG by United Internet AG. The major network operators on the German mobile telecommunications market are Telekom, Vodafone and Telefónica. The Decision Division found that if Drillisch joins forces with United Internet, this may have a stimulating effect on the market.

Drillisch is a so-called mobile virtual network operator and does not have a mobile telecommunications network of its own. However, in the context of the Telefónica/E-Plus merger, Telefónica gave an undertaking to the European Commission to grant Drillisch access to up to 30 per cent

of the capacities used in the merged Telefónica/E-Plus mobile telecommunications networks. Additionally, Drillisch was granted access to 4G (LTE) and other new technologies. With the takeover of Drillisch, United Internet will gain access to these network capacities.

In 2015 the Bundeskartellamt had already cleared the acquisition by United Internet of a minority stake in Drillisch.

In another proceeding the Decision Division closely examined the acquisition of the English company Sepura plc. by the Chinese company Hytera Communications Cooperation Limited. Both companies are internationally operating manufacturers and providers of systems and solutions for professional mobile communications.

The Decision Division assessed that the project would have significantly impeded effective competition on the market for mobile devices which have been certified for use in German authorities and organisations with security functions. Unlike in previous years, however, the statutory turnover thresholds for mandatory examination were not reached in the course of the proceedings, so the project of the companies involved could ultimately be implemented without examination.

The calculation of the turnover threshold is based on the last business year preceding the concentration. Sepura's business year ended at a very advanced stage of the second phase proceedings. Unlike in previous years, the companies involved, according to their turnover statements, no longer reached the turnover thresholds for mandatory examination. Consequently, the parties withdrew their notification.



8th Decision Division

The 8th Decision Division's key responsibilities include mineral oil, gas, electricity, district heating and water. The Energy Monitoring Working Group and the Working Group Market Transparency Unit for Electricity/Gas are also located within the Decision Division. One of its focus areas in the last few months was an in-depth examination of a merger project in the electricity sector. The Decision Division also published the results of its sector inquiry into the submetering of heating and water costs. Following commitments by district heating suppliers, price abuse proceedings could be concluded, and, despite ongoing concentration tendencies, several mergers affecting sales of mineral oil products could be cleared.

Until June 2017 the 8th Decision Division was chaired by Prof Dr Carsten Becker.

He was succeeded by the former Chairman of the 1st Decision Division, Christian Ewald.



Merger control in the age of energy transition

At the end of the year, following an in-depth examination, the Bundeskartellamt cleared the acquisition of 6.28% of the shares of MVV Energie AG by EnBW AG, increasing its stake to 28.76%. Electricity supply and waste management (cf. section on the 4th Decision Division on page 25) services were affected by the acquisition. Besides the market for the first-time sale of conventional electricity which is not remunerated according to the German Renewable Energies Act (Erneuerbare-Energien-Gesetz, EEG), and the balancing energy markets, the investigations now also focused on redispatching, i.e. the management of capacity bottlenecks in the transmission grid. As wind energy in particular is mostly generated in the north of Germany, whereas the energy consumption centres are located in the south of the country, there has been an increasing number of such bottlenecks since the energy transition was initiated. To eliminate bottlenecks, transmission system operators have the right to intervene in the scheduled operation of power plants by reducing the electricity feed-in from power plants before a bottleneck occurs and stepping it up after bottlenecks. The power plant operators affected are remunerated in return. While the

amount of remuneration is stipulated for domestic power plants, there are no provisions for foreign power plants. The authority's close examinations showed that the market positions were not critical in any of the affected areas from a competition law perspective. In the case of redispatch, this finding is based in particular on the due consideration of power plants abroad. Power plants abroad significantly contributed to eliminating bottlenecks, especially in southern Germany.

Market Transparency Unit for Electricity and Gas Wholesale Trading

The Decision Division is involved in setting up a Market Transparency Unit for Electricity and Gas Wholesale Trading which is based at the Bundesnetzagentur (Federal Network Agency). The tasks assigned to this unit will be jointly carried out by the two authorities. These tasks include the monitoring of electricity and gas wholesale trading in order to be able to detect any irregularities in wholesale price development which could indicate an abuse of market power. In 2017, the focus of the Unit's work continued to be on establishing the IT system, with particular regard to database infrastructure, and on starting to include data supplied by the Agency for the Cooperation of Energy Regulators (ACER).

Competition in the energy sector

In November 2017 the Bundesnetzagentur and the Bundeskartellamt published their joint annual Monitoring Report on developments in the German electricity and gas markets.

Results of the 2017 Energy Monitoring:

Electricity

- The market concentration for end consumer supply continues to decline.
- The assumption that competition is increasing, albeit at a low level, is supported by the growing tendency to change the electric heating supplier.
- Liquidity on electricity wholesale markets at the highest level since recording began.
- Major electricity producers' market power continues to decrease.
- Despite increases in grid charges and the EEC surcharge on household electricity prices as of 1 April 2017, prices remained largely stable. Industrial and commercial consumers, however, faced higher electricity prices.
- Renewable energy generation is increasing; the level of energy generated remained stable solely because 2016 was not a very windy year.

Gas

- Largest number of household customers changing supplier since the beginning of market liberalisation.
- Further reduction in market concentration in the gas retail area.
- Market concentration also decreased with regard to underground natural gas storage facilities; the aggregate market share of the three leading suppliers, however, remained high with 68.2% by the end of 2016.
- Gas prices for household and industrial customers decreased again compared to the previous year as of 1 April 2017.
- Considerably increased volume achieved in natural gas wholesale while wholesale prices decreased.

Increasing concentration in the heating oil sector

While the fuel market is often a subject of public interest, an ongoing consolidation process in the area of mineral oil products has gone largely unnoticed. The heating oil market is most significantly affected. An increasing number of small retailers have withdrawn from the heating oil supply market for final customers. As a result, the Decision Division is examining a considerably larger number of mergers in this area. While the notified merger projects have been cleared so far, the market concentration found in some regions will need to be closely monitored in future.

Submetering

- In 2014 the volume of turnover achieved from submetering in Germany amounted to approx. 1.47 billion euros.
- The supply side is highly concentrated. The two market leaders Techem und ista together account for more than 50% of the total market volume and the largest five providers together account for more than 70%.

Sector Inquiry into Submetering of Heating and Water Costs

In early May 2017 the Decision Division presented its final report on its sector inquiry into submetering. Submetering services cover the consumption-based metering and billing of costs for heating and water within buildings as well as the provision of the necessary metering equipment. The results of the inquiry indicate that the market is dominated by a few providers. Competition is restricted in the market and it is difficult for customers to switch supplier due to the different structural features and business models of the submetering service providers. The Bundeskartellamt therefore recommends, among other things, legislative measures to stimulate competition.

Commitments in abuse proceedings against district heating suppliers

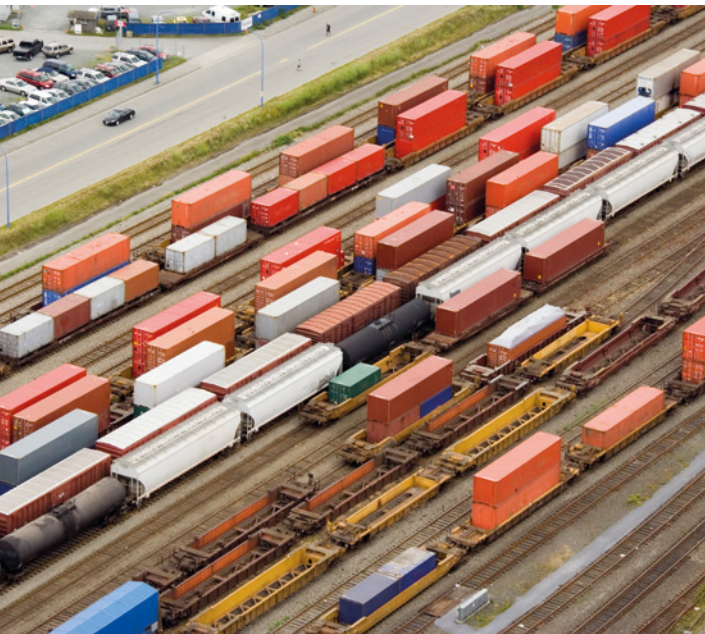
In spring 2017 the Decision Division concluded its proceeding on abusive pricing against district heating suppliers. The Decision Division conducted investigations against seven district heating suppliers following up an initial suspicion of abusive pricing in some district heating supply areas. The suppliers concerned then offered commitments, with customers benefiting from reimbursements or future price reductions amounting to approximately 55 million euros. In some supply areas the suspicion of excessive pricing could not be confirmed.



9th Decision Division

The focal areas of activity of the 9th Decision Division are the tourism, hotel, restaurant and catering sector, transport, postal services and the automotive industry including rail, air and water vehicles. Examples of the Decision Division's work include a merger of rail wagon leasing companies, a merger of car rental companies as well as fine proceedings against harbour towage service providers. The Decision Division also examined the consequences of the insolvency of Air Berlin and enforced major changes in railway ticket sales.

The 9th Decision Division is chaired by Silke Hossenfelder.



Rail wagon leasing companies may merge subject to condition precedent

In March 2018 the Decision Division cleared the acquisition of CIT Rail Holdings including its subsidiary Nacco by VTG Rail Assets GmbH subject to a condition precedent. VTG is a railway logistics company and Europe's largest rail wagon leasing company. Nacco is a lessor of rail wagons, too.

VTG taking over Nacco would have considerably limited competition between rail wagon leasing companies, in particular because VTG would have obtained a dominant position in the market as a result.

Clearance was therefore conditional on a significant share of Nacco's business in western Europe being sold to an independent third party. However, the commitments undertaken have not been implemented yet.

Deutsche Bahn's commitments regarding ticket sales

Following investigations by the Decision Division, Deutsche Bahn AG has implemented major changes to the sale of passenger tickets to improve competitors' sales opportunities.

Commission charges which are paid by Deutsche Bahn AG and its competitors for the reciprocal sale of passenger tickets for local public transport have now been standardised and, in most cases, reduced. Competitors of Deutsche Bahn are also to be given easier access to ticket sales points in station shops and can now also sell Deutsche Bahn long-distance tickets via their own ticket machines.

Competition in the aviation sector

Insolvency of Air Berlin

In 2017 the aviation sector saw the insolvency of what had been Germany's second largest airline, Air Berlin. Lufthansa initially intended to acquire a significant part of Air Berlin's assets after the insolvency. The project to acquire Air Berlin's subsidiary NIKI, which was formerly owned by entrepreneur Niki Lauda, failed due to opposition from the European Commission. In the subsequent insolvency proceedings relating to NIKI, Niki Lauda was the highest bidder and purchased the company he had once established. However, just a short while later, he sold the majority of shares in the company to Irish low-cost airline Ryanair. The European Commission is currently examining this merger.

Lufthansa ticket prices

After the insolvency, when Lufthansa held a monopoly position for some domestic flight routes in Germany, its prices on these routes increased. The Bundeskartellamt therefore examined the pricing mechanism and the extent of price increases on these routes. In the end, however, no proceedings for abusive pricing on domestic routes in Germany were initiated against Lufthansa. A random sample analysis of Lufthansa’s and Eurowings’ price information had shown that by the end of 2017, the ticket prices on the post-insolvency monopoly routes had increased by approximately 25-30% compared to the previous year. However, these price increases did not last for most of these routes as the British easyJet airline started offering domestic flight routes in Germany. The average price level on routes also offered by easyJet fell back to where it had been before Air Berlin left the market. Additionally, it had to be considered that the analysed domestic German routes had suffered a significant capacity shortage as a result of Air Berlin’s insolvency, which would have resulted in price increases even if the competition situation had been intact.

Concentration process in the aviation sector

When comparing concentrations and margins in Europe and North America, it becomes evident that consistent merger control is necessary. Whereas only five airlines cover 85% of the US market, generating an average EBIT margin above 10%, Europe’s five leading airlines only cover approximately 64% of the market. The corresponding EBIT margin in Europe does not reach 4% (cf. figure below, which is based on BDL data).

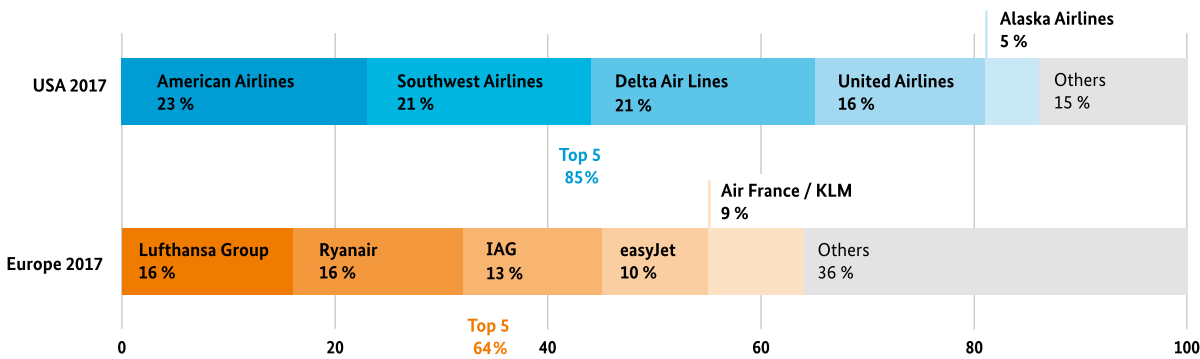


Agreements between harbour towage service providers

In the period covered by the report, the Decision Division imposed fines amounting to approximately 17.5 million euros against four harbour towage service providers and their representatives. No fine was imposed on another company and its subsidiary which had also participated in the cartel agreement because they had reported the cartel to the Bundeskartellamt. For discretionary reasons, a company which has since exited the market was not fined either.

At least between 2002 and 2013 the harbour towage companies divided orders and turnover earned from several German ports among themselves. The companies set quotas based on turnover which they use to allocate orders.

2017 market shares of the five major airlines in the US and Europe (by seats)



53 airlines in total (domestic flights)
 146 airlines in total (in Europe, including Switzerland)

Source: Federal Association of the German Aviation Industry (Bundesverband der Deutschen Luftverkehrswirtschaft)

Cartel prosecution

The 10th, 11th and 12th Decision Divisions are responsible for the cross-sector prosecution of illegal cartels. The Special Unit for Combating Cartels (Sonderkommission Kartellbekämpfung, SKK) assists them in the planning, execution and evaluation of investigative measures such as e.g. dawn raids.

In 2017 the Bundeskartellamt imposed fines amounting to around 66.4 billion euros on 18 companies and 11 individuals in 7 cases, among them proceedings against potato packaging companies, automotive suppliers and manufacturers of industrial batteries.

Since the beginning of March 2017 the 10th Decision Division has been chaired by Daniela Hengst, Michael Teschner previously served as interim chair.

The 11th Decision Division is chaired by Ulrich Hawerkamp.

The 12th Decision Division is chaired by Michael Teschner.



Fines imposed against companies for potato and onion packaging

In spring 2018 the Bundeskartellamt imposed fines amounting to 13.2 million euros in total against two potato and onion packaging companies for price-fixing agreements regarding their supplies to the Metro Group. The companies concerned are Hans-Willi Böhmer Verpackung und Vertrieb GmbH & Co. KG and Kartoffel-Kuhn GmbH. The proceeding was initiated in May 2013 with a sector-wide dawn raid following a leniency application.

The company representatives had regularly contacted each other by phone prior to making their weekly offers to Metro Group for packaged potatoes and onions between the beginning of 2005 and the initiation of proceedings in 2013. In their phone calls the company representatives informed one another of their purchase prices for potatoes and onions (so-called “raw product prices”) and agreed to use uniform raw product prices for potatoes and onions as the basis for their internal calculations of offer prices to be presented to Metro. In addition they agreed to apply the same or approximately the same amounts for other cost items in their internal offer price calculations. Unlike the raw product prices, the other costs mostly remained constant. The proceedings against other potato and onion packaging companies suspected of price-fixing in their supply to other food retailers were terminated for discretionary reasons. Since the dawn raid carried out

by the Bundeskartellamt the companies have ended all these practices.

In calculating the fine the Bundeskartellamt took account of the fact that Kuhn had cooperated extensively with the authority in uncovering the agreements. The fining decisions are not yet final. The companies Böhmer and Kuhn and their representatives involved appealed their fines to the Düsseldorf Higher Regional Court.

Cartel proceeding against metal packaging manufacturers

The Bundeskartellamt has referred cartel proceedings concerning metal packaging, which have been ongoing since the spring of 2015, to the Directorate General for Competition of the European Commission in April 2018.

Following an anonymous tip-off, the Bundeskartellamt initiated proceedings against several manufacturers of metal packaging early in 2015. Starting in March 2015, several manufacturing sites for metal packaging, chemical-technical substances and vacuum seals for jars were searched. In the course of the proceedings, information was obtained which suggested that the suspected infringements did not only affect the German market, but more than three EU member states. During the proceeding some of the companies concerned also carried out restructuring measures. As the legal situation in place in Germany until

mid-2017 still applies to old cases, the Bundeskartellamt might not be able to punish the offences.

Proceeding against automotive suppliers

In June 2017 the Bundeskartellamt has imposed fines amounting to 9.6 million euros on three manufacturers of heat shields and their representatives. The companies involved are Elring Klinger Abschirmtechnik (Schweiz) AG, Sevelen (Switzerland), Estamp S.A.U., Terrassa (Spain) and Lydall Gerhardt GmbH & Co. KG, Meinerzhagen (Germany).

In accordance with the authority's leniency programme, no fine was imposed on Carcoustics International GmbH, which was also involved in the agreements. A settlement agreement was reached with the other three companies.

The companies are accused of agreeing in 2011 to pass on increased material costs to their customer VW.

Heat shields are used in vehicles to shield radiated heat emitted from the engine compartment and exhaust gas system from other areas (passenger compartment, fuel tank, etc.).



Fines imposed on manufacturers of industrial batteries

The Bundeskartellamt has imposed fines amounting to approximately 28 million euros on two manufacturers of industrial batteries and their representatives.

The companies are accused of having, in view of increasing lead prices, fixed a significant part of the price of lead-containing batteries sold as network power batteries (e.g. for emergency power supply) by applying the lead surcharge.

The amount of the lead surcharge was not part of their agreement as it is fixed to the lead price quoted by the London Metal Exchange. The surcharge serves to pass on price modifications directly to the customers.

The companies concerned are Hawker GmbH and Hoppecke Batterien GmbH & Co. KG. The proceeding was initiated with a sector-wide dawn raid in April 2014 following an application for leniency by Exide Technologies GmbH upon which no fine was imposed in accordance with the Bundeskartellamt's leniency programme.

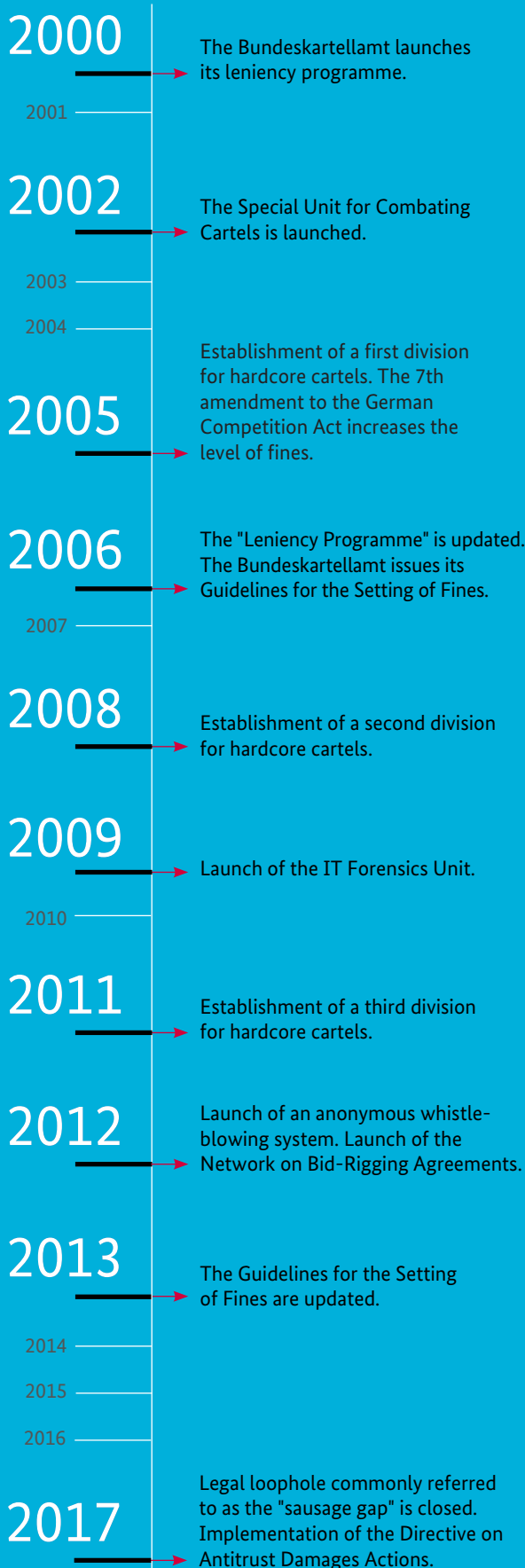
Additionally, an agreement between the three companies existed from 11 September 2012 until 18 March 2014 to pass on the increased costs for lead, and in particular for lead alloys, via the lead surcharge to customers in the sale of motive power batteries (for use in industrial trucks, e.g. fork lift trucks).

The fines against Hoppecke are already final. The proceeding against Hawker concerning its infringement in the sale of motive power batteries was concluded with a settlement. As far as infringements in the sale of network power batteries are concerned, Hawker and its representative appealed their fines to the Düsseldorf Higher Regional Court.

The Leniency Programme in brief:

- Whoever as the first participant in a cartel agreement uncovers a cartel of which the Bundeskartellamt has no previous knowledge, receives immunity from a fine ("first come, first served" principle). Immunity from fines can also be granted at a later date if the Bundeskartellamt is provided with decisive evidence without which the existence of a cartel could not have been proved. The sole ringleader and those members of a cartel who have coerced others to participate in the cartel are excluded from immunity.
- All other applicants can have their fines reduced by a maximum of 50%, provided they cooperate with the Bundeskartellamt and produce decisive evidence to prove the infringement.
- The requirement for immunity from and reduction of fines is the continuous and unlimited cooperation of the leniency applicant with the Bundeskartellamt throughout the proceedings.

Measures to increase the effectiveness of cartel prosecution



Illegal agreements between sausage manufacturers - liability loophole in the German Competition Act

In June 2017 the Bundeskartellamt terminated proceedings in the so-called "sausage cartel case" as again the companies involved were able to make use of a legal loophole which existed at the time. The orders imposing fines amounting to 99.6 million euros on Bell Deutschland Holding GmbH and 3.2 million euros on Marten Vertriebs GmbH & Co. KG, as well as 6.9 million euros on Sickendiek Fleischwarenfabrik GmbH & Co. KG, had to be revoked because of internal restructuring measures taken by the companies.

In October 2016 the Bundeskartellamt already had to terminate fine proceedings against two companies of the "Zur Mühlen" group. The fines totalling 128 million euros, which were imposed on Böklunder Plumrose GmbH & Co. KG and Könecke Fleischwarenfabrik GmbH & Co. KG, had also become void due to internal restructuring measures taken by the companies.

This means that in these proceedings alone fines amounting to around 238 million euros could not be collected.

The legislator solved these problems arising in the context of liability for fines by the 9th amendment to the Act Against Restraints of Competition. The amendment harmonised the German law with the rules on corporate fines which already existed in European law. According to these rules a company's responsibility for competition law violations also extends to the legal and economic successors of the company which was originally responsible and to the controlling parent company.

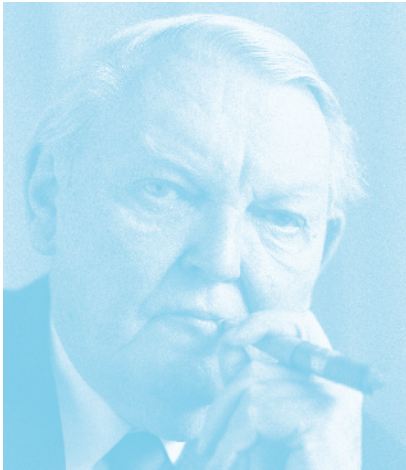
Increasing number of private damages actions

Companies infringing the ban on cartels can not only expect to be fined by the competition authorities, but also to receive claims for damages by the customers or suppliers having suffered damage. The number of damages actions following cartel proceedings by the Bundeskartellamt or the European Commission ("follow-on claims") has significantly increased in recent years. The actions concerned a variety of product areas such as sugar, freight vehicles, rails, chipboard panels, detergents, drugstore products, television tubes, coffee, cement, mattresses and power transformers.

The sugar cartel is a good example of the significance of follow-on actions. After the antitrust proceedings, numerous buyers of sugar brought damages actions before several regional courts. The damages claims known to the Bundeskartellamt amount to above 660 million euros. The actual sum could well be higher. Some of the courts have informed the Bundeskartellamt of further actions that seek to establish an - as yet unquantified - liability for damages incurred.

The Bundeskartellamt assesses that the majority of compensation payments in damages actions is normally negotiated out of court, sometimes also by setting the amount off against future supply periods. For this reason, it is generally not possible to determine the amount actually paid as damages in such actions.

There is a general tendency towards further professionalisation in bundling and claiming damages, which is further increased by law firms specialising in damages actions and litigation funders entering the market. With further improvements of conditions for damages actions achieved by implementing the EU Directive 2014/104/EU on antitrust damages in the 9th amendment to the GWB in summer 2017, it is expected that the number of claims for damages enforced will increase.



© Bundesregierung; photo: Engelbert Reinke

“There have never been as many unemployed in German economic history as in the period when cartels flourished most strongly. Cartels always have to be paid for by a lower standard of living.”

Ludwig Erhard: Prosperity for all,
Düsseldorf/Vienna, 8th edition 1964, p. 185 f.

Selected maximum fines*

| Year | Cartel proceeding | Total fines imposed in euros | Highest single fine against a company |
|------|----------------------|------------------------------|---------------------------------------|
| 2015 | Automotive suppliers | 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 | Rails – 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 | Liquefied 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. Since litigation is still pending in individual cases, not all the fines are final.

** Now final based on a 2013 judgment issued by the Federal Court of Justice.

Cartel prosecution in 2017 in figures

- Fines imposed: approx. 66.4 million euros
- Leniency applications: 37 in 23 proceedings
 - filed by companies: 34
 - filed by individuals involved: 3
- Dawn raids: 10
- Sites searched:
 - 60 companies/associations
 - 6 private residences
- Total number of operational staff: 365
 - Number of Bundeskartellamt staff: 216
 - Police officers: 149
 - of which IT personnel: 57
- Items of evidence seized:
 - approximately 1,500 files
 - approximately 8.6 terabytes of electronic evidence

Federal Public Procurement Tribunals

The Federal Public Procurement Tribunals are responsible for reviewing tender procedures which are carried out by the Federation or public contracting entities. The review procedure is similar to a court proceeding and is carried out if a company that wishes to participate or has participated in an invitation to tender has found evidence of a violation of public procurement law and applies to the public procurement tribunals for a review of the award procedure. In 2017 the focus was again on review procedures of the procurement activities of the statutory health insurance funds. Considerable increases were found in the areas of security, defence and construction services.

The Chairman of the 1st Public Procurement Tribunal is Hans-Werner Behrens.

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

Award of contract for the construction of five more corvettes

The public procurement tribunal decided in May 2017 that repeated procurements of military equipment, in this case five corvettes of the type K130, must also be carried out in competitive procedures. Any exceptions would have to be strictly conditional.

A Kiel-based company had complained that the construction of the corvettes was to be awarded to a consortium which had previously supplied the Bundeswehr with the same type of ship without letting others participate in the competition. The contracting entity, however, held that only this consortium of bidders was able to reproduce the ships within a set timeline due to its previous knowledge.

The public procurement tribunal found that insufficient proof was provided that only the previous contractor was able to reproduce the ships within the required period. It therefore allowed the application for review.

The decision was immediately appealed to the Düsseldorf Higher Regional Court. However, the appeal was withdrawn when the members of the existing consortium agreed to let the Kiel-based company participate in said consortium.

“Adequacy” of public contracts

When reviewing award decisions, the issue of what is called “adequacy” of offers often comes into play. The term “adequacy” refers to the question whether the price offered by the bidding company would cover its costs or whether the company would go without profit or even incur losses were it awarded the contract.

Such offer prices not covering the costs must not be accepted under public procurement regulations. This stipulation has been set up to protect public contracting entities from losing

public funds, as contractors offering to work for prices which do not cover their costs may not be able to complete their work as agreed.

So far, companies excluded from competition for lack of adequacy of their offers have been able to appeal to the public procurement tribunal, whereas competitors making a more expensive offer and wanting to protest against the award of contracts to competitors they consider too cheap have not had this option.

The Federal Court of Justice made a decision in January 2017 which set new standards in this respect. Competitors having submitted more expensive offers can now demand that a cheaper offer by a competitor be excluded by the public procurement tribunal if they consider said offer to be inadequate.

Inadequacy issues became frequent subjects of review for the public procurement tribunals as a result. Two examples:

In one case the public procurement tribunal had to review, the company which was awarded a contract clearly admitted that the offer was inadequate. The company stated that the inadequacy was due to the fact that it had made capacities available for another contract which was not implemented, so it now had to utilise these capacities “at all costs”. After the contracting entity had verified that the bidder was able to complete the task, the contract was awarded despite the fact that it would not cover the costs. As a result, the public procurement tribunal rejected the application for review by the more expensive competitor.

In another case, the competitors offered very similar prices. The more expensive competitor held that while its cheaper competitor had not offered a better price for the construction job, which accounted for the largest part of the offer in terms of value, it had offered an unusually low price for maintenance, which would have to be considered when



reviewing the issue of adequacy. The public procurement tribunal found that the two elements of “construction job” and “subsequent maintenance” were part of a combined offer. In addition, the applicant had not requested to have the contract divided into lots. The relevant fact was thus the lower total price offered by the company that was awarded the contract. However, as this price differed less than 5 per cent from the next higher offer made by the applicant, the contracting entity was not obliged to accept it.

New operator for the German toll system for heavy goods vehicles

The operator of the German toll system for heavy goods vehicles is Toll Collect GmbH, the shares of which are held by a consortium of companies. The Federation has a so-called call option which it intends to exercise to acquire the shares held by the consortium by 1 September 2018. These shares are then to be transferred to the successful bidder in an invitation to tender. The new operator contract will then be concluded with that company.

The German Ministry of Transport called for a two-stage tender procedure to select, in a first step, companies or consortia to negotiate their offers.

At one point in the procedure, AGES Road Charging Services GmbH & Co. KG was not admitted to proceed. Compared to its competitors, the Ministry of Transport held that the company provided a poorer reference to prove its experience in operating a toll system.

AGES challenged this assessment at the public procurement tribunal, which ultimately decided to reject the application for review. AGES immediately appealed to the Düsseldorf Higher Regional Court, which confirmed the public procurement tribunal’s decision in December 2017.

The Federal Public Procurement Tribunals in figures

- In 2017, 165 applications were filed for the initiation of review proceedings.
- Almost 75 per cent of the cases concerned the award of public supplies and services, followed by construction contracts. Further contracts concerned were security and defence contracts and orders from sectoral contracting entities (e.g. Deutsche Bahn AG).
- 84 decisions on merits were made, of which 49 were decided in favour of the public contracting entities and 35 in favour of the applicants. In 73 cases, the review procedures were terminated without a decision as the application was either withdrawn or concluded otherwise.
- In 30 cases the decisions of the public procurement tribunals were immediately appealed to the Düsseldorf Higher Regional Court.

The Remedies Directive

In 2017 the European Commission reviewed the so-called Remedies Directive. The Directive is the basis for national review procedures and stipulates the key requirements for the procedure (e.g. standstill period prior to awarding the contract, possible declaration of invalidity of a contract if the tender was not announced publicly). The European Commission found that the Remedies Directive does not need to be amended. To support the existing regulations, the European Commission established a regular exchange of experience between the institutions in EU member states in charge of reviewing award procedures in the first instance. This facilitates the exchange of “best practices” and contributes to guaranteeing similar legal protection in all EU member states. Both the kick-off meeting and a regular meeting of this newly established network took place in 2017.

Consumer Protection Division

The Bundeskartellamt set up its Consumer Protection Division in mid-June 2017. It combines the new competencies in the area of consumer protection conferred to the Bundeskartellamt with the 9th amendment to the German Competition Act (Gesetz gegen Wettbewerbsbeschränkungen, GWB). In 2017 the Division initiated two sector inquiries in the areas of online comparison portals and smart TVs, and acted as amicus curiae in a civil proceeding regarding online ticketing.

The Consumer Protection Division is chaired by Prof Dr Carsten Becker.

9th amendment to the GWB grants new competences

The 9th amendment to the GWB entered into force in early June 2017 and granted the Bundeskartellamt new competences in the area of consumer protection under economic aspects. The authority can now conduct sector inquiries under aspects of consumer protection and act as amicus curiae in civil proceedings in that area.

However, the legislator merely focused on granting an analysing and consulting function for the time being, so the authority cannot directly intervene, e.g. by imposing an order to terminate an infringement.

Sector inquiries

Online comparison portals

In October 2017 the Division launched a sector inquiry into online comparison portals.

The authority is collecting information from a large number of Internet portal operators concerning e.g. rankings, financing, corporate links, reviews or market coverage in order to uncover and specify possible infringements of consumer law provisions.

After receiving and evaluating the replies and consulting with the respective business communities, the Division will publish the results of this sector inquiry in a report and make recommendations if appropriate.

Smart-TVs

In December 2017 the Consumer Protection Division initiated another sector inquiry in the area of smart TVs. The inquiry will focus on the suppliers' handling of user data. In contrast to conventional TV sets, smart TVs have an Internet connection, which can not only be used to receive data and programmes, but also to transmit user data.

The aim of the sector inquiry is to find out if and to what extent the producers of such devices register, share and commercially exploit personal data, and if the affected persons are informed accordingly.

Again, the results of this sector inquiry will be summarised in a report.

Amicus curiae statement

In October 2017 the Consumer Protection Division acted as amicus curiae in appeal proceedings regarding the online ticketing sector. This legal dispute is based on a complaint filed by a consumer association against a ticket provider which had its customers pay for the actual provision of the tickets (by printing the tickets themselves or having them sent by mail). A date for the hearing has not been fixed by the Federal Court of Justice yet.



Competition Register for Public Procurement at the Bundeskartellamt

On 2 June 2017 the Bundestag passed the Act introducing a register for competition in public procurement. Serious infringements of any kind will be recorded in a central federal register. The Competition Register will enable contracting authorities to check in a single nationwide electronic search whether a company has committed relevant violations of law. The register will be kept at the Bundeskartellamt.

Kai Hooghoff is in charge of establishing the competition register.

So far several federal states have kept their own registers, but there are considerable differences between them. The register kept at the Bundeskartellamt is to be up and running by 2020. It will be available to public contracting entities.



Public contracting entities will then be obliged to check whether a company is registered prior to accepting a bid in tenders worth more than 30,000 euros net. If bidders have an entry in the register, the contracting entity retains the power to decide on whether or not to exclude them from the award procedure.

Increasing the laws' preventive effect

Companies whose responsible employees commit serious economic offences should not benefit from public contracts and concessions. The public procurement sections 123 and 124 of the German Competition Act (GWB) therefore stipulate that companies will either have to be excluded or can be excluded from the award procedure when committing certain offences or infringements.

The competition register is designed to provide public contracting entities with the information they need to quickly and reliably examine reasons to exclude a company from the procedure. Its purpose is to contribute to the fight against economic crime and violations of

competition law. The preventive effect of the criminal and administrative laws including competition law is to be increased by enhancing transparency for public contracting entities.

Only public contracting entities participating in award procedures will be able to check the competition register for entries. The public will not have access to the register. After a period of three to five years, the registered companies must be deleted from the register. Having taken measures to remedy their infringement (so-called "self-cleaning"), registered companies can apply for advance deletion of their entry from the register.

"The competition register is to contribute to the fight against economic crime and infringements of competition law. The preventive effect of criminal and competition law is to be enhanced by increased transparency."

Award Procedure of Public Contracts

- The state is an important customer for many companies.
- In future, public contracting entities will be obliged to check the competition register for entries prior to awarding contracts worth 30,000 euros net or more.
- Any public contracting entity wishing to check the register can do so, even if the threshold is not reached.
- If a company is registered, the contracting entity has to decide whether or not to exclude it from the award procedure.

Market Transparency Unit for Fuels

The Market Transparency Unit for Fuels (MTU Fuels) enables consumers to obtain direct information about current fuel prices via different channels and a number of information services. The Bundeskartellamt also publishes annual reports on the work of MTU Fuels. These reports can provide consumers with comprehensive information on pricing at the petrol stations which can help them in their choice of petrol station. They help consumers to not only buy cheaper fuel, but also to set competitive impulses by deciding where to buy their fuel. The Market Transparency Unit for Fuels is chaired by Steffen Häfele.



The operators of public petrol stations or companies which have the power to set prices at them (e.g. oil companies) are required to report every change in price for the fuel categories Super E5, Super E10 and diesel “in real time” to MTU Fuels. The unit then passes these price data on to consumer information services, which in turn inform the consumers. Via the internet, a smartphone or navigation system, motorists are thus able to gain information on current fuel prices and find the cheapest petrol station in their vicinity or along a specific route.

“It’s worthwhile using an app to monitor price developments at petrol stations. Consumers can save a lot by refuelling at a cheap petrol station at the right time.”

Annual Report 2017

In March 2018 the Bundeskartellamt published its current annual report on the work of the Market Transparency Unit for Fuels.

The key findings are:

- There can be differences of up to 30 cents/litre between the average highest and lowest fuel price within one town. Some randomly selected districts, particularly in rural areas, showed differences between 15 and 25 cents/litre.
- Differences of around 10 cents/litre can be seen between the average highest and lowest daily fuel price at one petrol station.

- It was observed between mid-January and mid-February 2018 that the prices increased on average at four different times within 24 hours, namely early in the morning (at approximately 5am, around midday, in the afternoon (at approximately 5pm) and late at night (approximately 10pm). Prices drop again after these hours.
- Generally speaking, prices tend to be lowest late in the evening.
- Prices charged at German motorway petrol stations were on average 15 cents/litre more expensive than others.
- The relative price position of the different petrol stations compared to each other is quite stable. “Cheap” petrol stations often remained cheap. “Expensive” petrol stations often stayed expensive.
- In the observation period the development of fuel prices essentially followed that of the crude oil price.
- Finally, as in previous years, fuel prices did not increase significantly in 2017 at Easter and Whitsuntide.

Further information

A list of authorised consumer information services and the MTU Fuels’ annual reports are available at:
www.bundeskartellamt.de > Market Transparency Unit for Fuels

Organisation Chart

Competences of the Decision Divisions:

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

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Please read the additional information provided under “Legal Notice”
on our website www.bundeskartellamt.de

July 2018

L1

PRESIDENT

MUNDT

Chair of Staff Council
BRAUER
Equal Opportunities Officer
Dr **IMMEL**
Representative for Severely Disabled Employees
HENSEL

Z

Administration Division

SCHNEIDER

WSM

Knowledge Management

LANGE

L2

VICE PRESIDENT

Prof Dr OST

P

Litigation and Legal Division

NOTHDURFT

Z 1

Budget and Human Resources

Dr JOHANNNS

Z 2

Organisation and Internal Services

Acting Head of Unit:
FRANZEN

Z 3

Information Technology

HOEVER

IR

Internal Audit

HEINEN-HOSSEINI

G

General Policy Division

KRUEGER

P 1

Litigation and Legal 1

QUELLMALZ

P 2

Litigation and Legal 2

RAUBER

P 3

Library

ORTI VON HAVRANEK

SKK App. 386

Special Unit for Combating Cartels

Dr ROESEN

VK 1

1st Public Procurement Tribunal Review Procedures

BEHRENS

VK 2

2nd Public Procurement Tribunal Review Procedures

Dr HERLEMANN

V

Decision Division Consumer Protection

Prof Dr BECKER

WebReg

Establishment Team Competition Register for Public Procurement

HOOGHOFF

G 1

German and European Antitrust Law

ECN Coordination

Dr KALLFAß

G 2

Digital Economy, Regulation and Competition, Procurement Law

Dr HARTOG

Coordinator for Digital Economy

N.N.

G 3

Economic Issues in Competition Policy

RASEK

G 3A

Data Analysis and Econometrics

Dr CHRISTIANSEN

G 4

German and European Merger Control

Dr PAPE

G 5

International Competition Matters

SCHULZE

PK App. 215

Press, Public Relations

WEIDNER

Chief Economist

RASEK

B 1

1st Decision Division

Dr WAGEMANN

extraction of ores and other non-metallic minerals

building materials, construction industry and related services

real estate and related services

wood industry and furniture

electrical household appliances, consumer electronics

B 2

2nd Decision Division

Dr ENGELSING

agriculture

food, food industry

textiles, shoes

rucksacks, bags

cosmetics and drugstore products

wholesale and retail trade in food

B 3

3rd Decision Division

Dr LANGHOFF

health sector (incl. medical technology, pharmacy, health insurance and hospitals)

chemical industry

B 4

4th Decision Division

TEMME

waste management industry

financial services

other services

B 5

5th Decision Division

E. M. SCHULZE

mechanical and plant engineering

metal industry

iron and steel

measurement and control technology

patents and licences

paper industry

gambling industry

patents and licences

B 6

6th Decision Division

TOPEL

media

internet economy

culture, sports, entertainment advertising industry

trade fairs

B 7

7th Decision Division

Dr KRAUß

telecommunications

broadcast engineering

EDP

outdoor advertising

radio

electrical engineering

press and press-related advertising industry

B 8

8th Decision Division

EWALD

mineral oil, electricity and gas

district heating

drinking and wastewater

mining

Working Group Energy Monitoring
MEYER-FLAMME

Working Group Market Transparency Unit Electricity/Gas
Dr SCHWENSFEIER

MTS-K App. 525

Transparency Unit Fuels

HÄFELE

B 9

9th Decision Division

HOSSENFELDER

tourism and Horeca sector

transport

postal services

automotive industry (incl. rail, air and water vehicles)

B 10

10th Decision Division

HENGST

prosecution of administrative offences in conjunction with violations of Sec. 1 GWB and Art. 101 TFEU

B 11

11th Decision Division

HAWERKAMP

prosecution of administrative offences in conjunction with violations of Sec. 1 GWB and Art. 101 TFEU

B 12

12th Decision Division

TESCHNER

prosecution of administrative offences in conjunction with violations of Sec. 1 GWB and Art. 101 TFEU

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