



Bundeskartellamt



open markets | fair competition

# Bundeskartellamt 2019

Annual Report





# ORGANISATION CHART

**Responsibilities of the decision divisions:**

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

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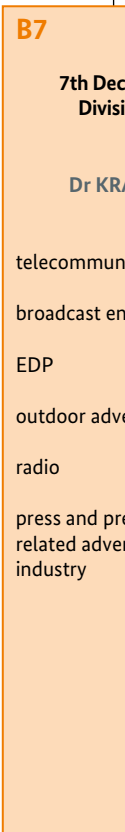
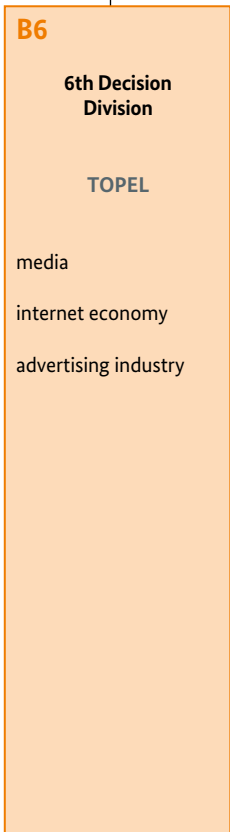
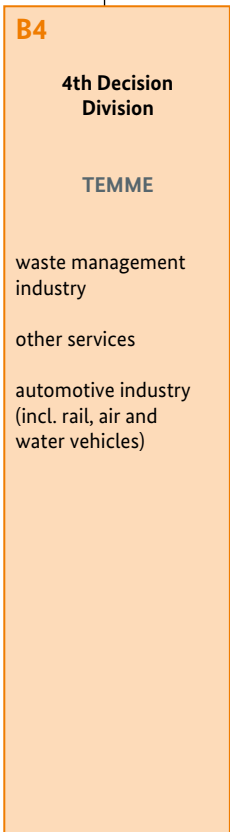
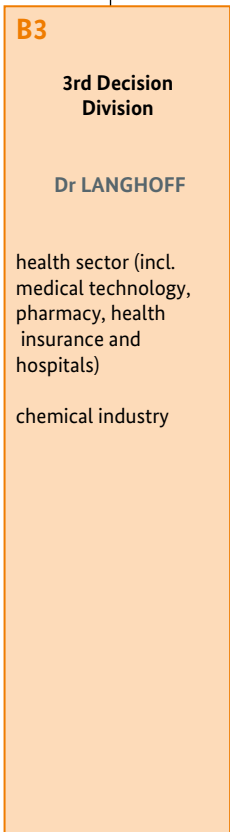
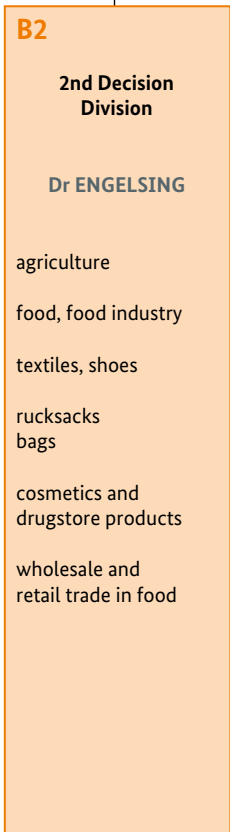
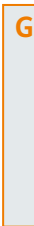
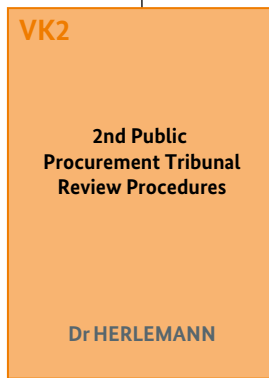
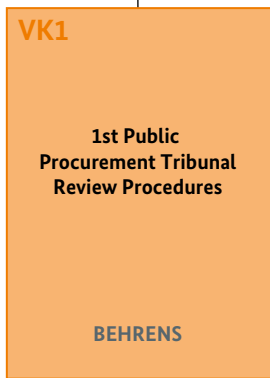
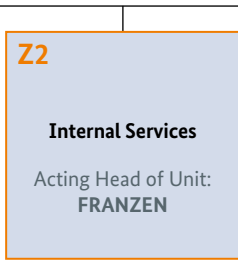
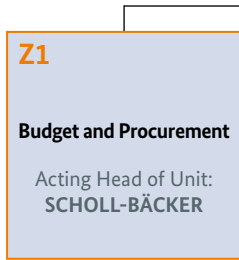
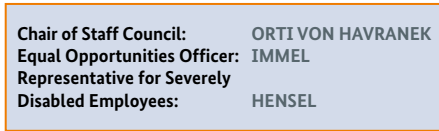
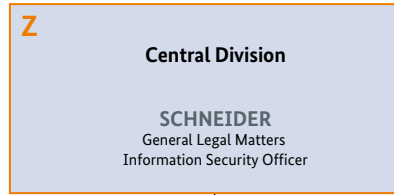
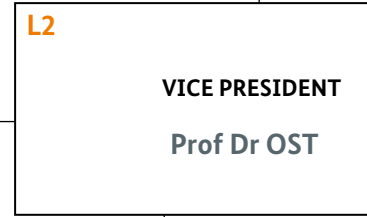
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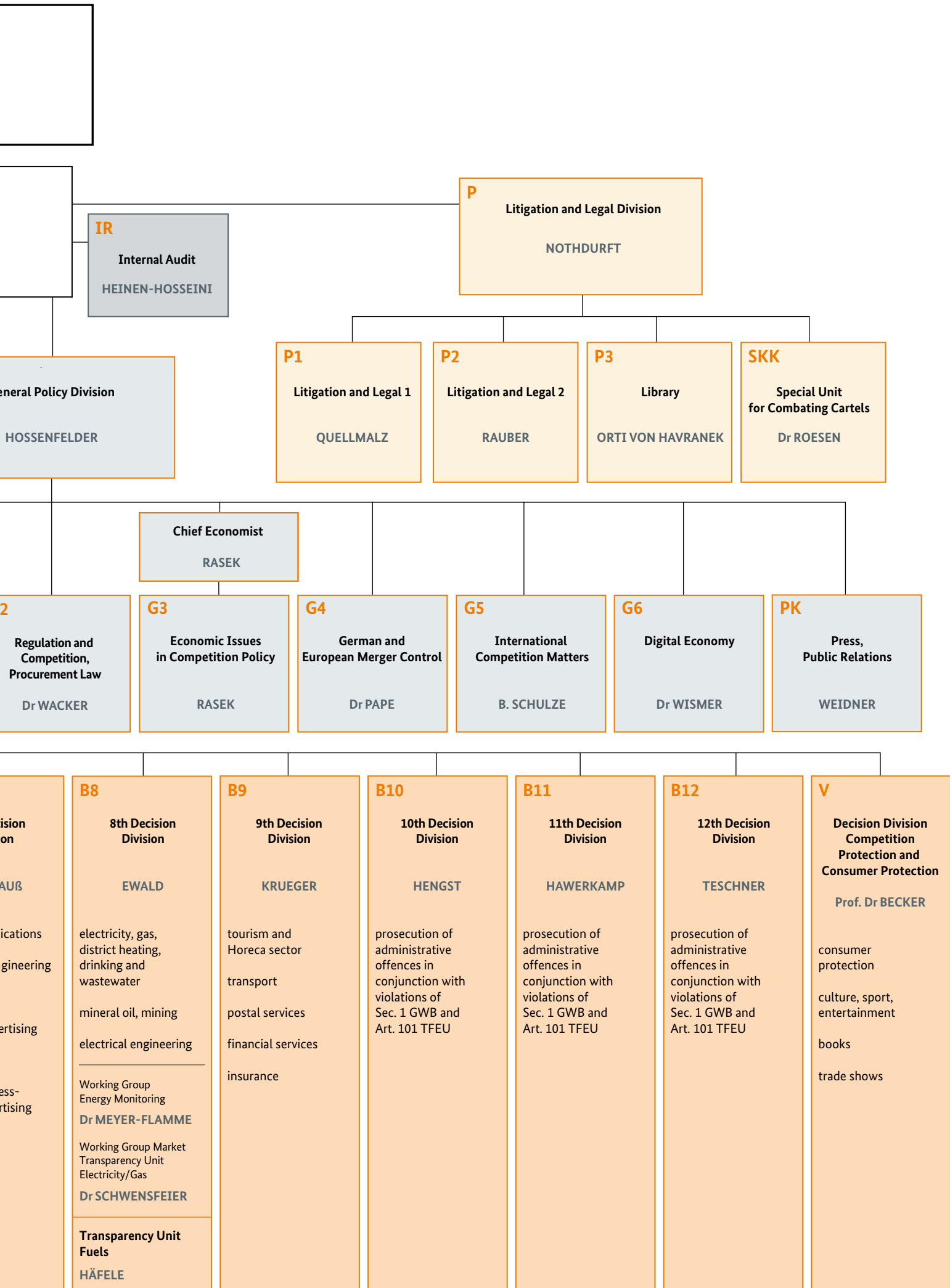
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## Message of greeting – Peter Altmaier

### Federal Minister for Economic Affairs and Energy



2019 was both challenging and successful: The Bundeskartellamt was once again able to demonstrate its key function in the protection of competition. In the course of cartel prosecution it imposed fines amounting to approximately 848 million euros. The authority examined approximately 1,400 merger notifications and initiated second phase proceedings in 14 cases. Further activities of the Bundeskartellamt include its widely acclaimed abuse of dominance proceedings.

This is the time to appreciate what has been achieved and look ahead to the future. Germany and Europe are facing enormous challenges. The Covid crisis is impacting many aspects of our lives. We have therefore taken far-reaching measures to save lives and limit economic harm.

The crisis also affects the work of competition authorities. In some cases companies have to cooperate to ensure the supply of essential goods and limit the negative effects of the pandemic. However, it has to be ensured that the extent of their cooperation does not go beyond what is necessary in order to prevent harm for consumers. In its application of the flexibility offered by German competition law the Bundeskartellamt has been exerting its discretion well. I would like to thank the Bundeskartellamt and its staff for their work and achievements.

Germany will take over the presidency of the Council of the European Union in the second half of 2020. We would like to take this opportunity to further develop European competition law, in particular with regard to digitalisation and platform economics as well as geopolitical changes. I presented the key points together with my counterparts from Poland and France in July 2019. As hosts of the presidency we will contribute our expertise to enhance the ability of EU competition law to meet the challenges posed by globalisation and digitalisation. The Bundeskartellamt will play a particularly important role in this.

In addition to being fair, competition has to provide a level playing field for all participants, an objective which we must come even closer to in the context of the European Single Market. We must make a greater effort to counteract distortions of competition caused by companies from third countries that are subsidised or controlled by the state. During our presidency we will provide constructive support to the European Commission in its endeavours to counteract such distortions of competition.

The Bundeskartellamt has again ensured the protection of competition and consumer rights and compliance with the rules on award procedures in the course of 2019. Its achievements have led to its excellent reputation and are also an obligation for the future, both in the international context and with regard to the implementation of the upcoming amendments to the German Competition Act (GWB) in the digital era. The amendments to the German Competition Act strengthen in particular the Bundeskartellamt's key role in addressing the abuse of dominant positions by digital platforms, and thus set a signal for the EU as well.

I would like to thank you for the excellent work in 2019 and wish you much continued success for the future.

A blue ink handwritten signature of Peter Altmaier, consisting of stylized initials and a surname.

Peter Altmaier



# Foreword – Andreas Mundt

## President of the Bundeskartellamt

Competition is a cornerstone of our economic and social order. As an independent institution which protects competition the Bundeskartellamt has for more than 60 years ensured that companies have to compete with one other to win customers. In doing so it prohibits cartel agreements, any mergers which pose a threat to competition and the abuse of market power.

Since the beginning of this year the COVID-19 crisis has shaped not only people's daily lives but also economic framework conditions. Competition law has proved to be a flexible tool in this special situation. In many sectors companies currently have to cooperate with one another to react to bottlenecks in the production, storage, logistics and distribution of goods. The restart of business activity may also require competitors to cooperate with one another or closely coordinate business activity with their suppliers in a way which under normal circumstances would be problematic under antitrust law. Together with the European Commission and the national competition authorities within Europe and throughout the world we have made it clear that the altered economic framework conditions are also taken into account in antitrust assessment. In a swift and unbureaucratic way we have already guided many cooperation projects and provided the companies with a certain amount of legal security. We all have to deal with an exceptional situation we have never experienced before. And protecting competition is no exception. However it is also important that even restrictions of competition which have been caused by the crisis should be kept to an absolute minimum and only accepted for a necessary interim period. We are therefore also taking special care in these times of crisis that no cartels are formed which could harm customers or that companies do not illegally abuse their market power.



However, it is not only in times of crisis that competition faces challenges. For several years already we have focused on fundamental changes in economic activity due to the digital transformation. With the conclusion of our internationally acclaimed abuse case against Facebook last year we imposed on the company extensive restrictions in the collection and processing of user data. The Federal Court of Justice's decision in June this year clarified key legal issues raised by this case. The court's decision provides important information on how we should deal with the issue of data and competition in the future. In 2019 we also concluded our proceeding against Amazon and obtained far-reaching improvements in the terms of business for sellers on Amazon Marketplace. Amazon has since implemented these improvements on its marketplaces worldwide.

In addition to our numerous antitrust proceedings in the digital economy, we are also using our competences in the area of consumer protection to closely examine digital business models such as e.g. comparison websites, online user reviews or smart TVs.

For the future it will be vital for us to keep online markets open too to give newcomers a chance, and to prevent large companies from abusing their market power to the detriment of consumers. We hope that the upcoming 10th amendment to the German Competition Act (GWB), in which we are very closely involved, will among other things reinforce abuse control over large digital companies.

I hope that our annual report will give you an interesting overview of the entire spectrum of our work and wish you pleasant reading.

Yours sincerely

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

Andreas Mundt

# TASKS AND ORGANISATION

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

*Andreas Mundt,  
President of the Bundeskartellamt*

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 legal framework for the Bundeskartellamt's work is the Act against Restraints of Competition (Gesetz gegen Wettbewerbsbeschränkungen – GWB), which came into force in 1958 and is applied and enforced by the Bundeskartellamt.

# The tasks of the Bundeskartellamt in detail:

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

## Control of abuse of a dominant position

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

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

The provisions of public procurement law ensure that public contracts are awarded under competitive conditions and through transparent and non-discriminatory procedures. The Public Procurement Tribunals at the Bundeskartellamt are responsible for reviewing tender procedures which are carried out by the Federation or public contracting entities.

## Consumer protection

The Bundeskartellamt can conduct sector inquiries into consumer protection issues if there are any indications that consumer law provisions have been infringed. As a so-called “amicus curiae” it can also make statements in court in civil consumer protection actions.

## 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 new tool was introduced in 2005 the authority has concluded a whole range of sector inquiries, e.g. into the following sectors: fuels, dual systems for packaging recycling, district heating, milk as well as into buyer power in the food retail sector. In early April 2019, within its competencies in the area of consumer protection, the Bundeskartellamt concluded a sector inquiry into comparison websites. A sector inquiry into online user reviews was also started in May 2019 (see p. 61).

## Competition Register for Public Procurement

On 2 June 2017 the Bundestag passed the Act introducing a competition register for public procurement. The register will enable contracting authorities in future to check in a single nationwide electronic search whether a company has committed relevant violations of law, which could lead to its exclusion from public award procedures for several years. However, companies listed in the register can be deleted prematurely from the register if they undertake self-cleaning measures. The register is scheduled to be operational by the end of 2020.

## Key Facts

# 2019



- President: **Andreas Mundt**
- Vice President: **Prof. Dr Konrad Ost**
- Budget 2019: **40.3 million euros**
- around **373 employees**
  - of which **158** are legal experts and economists
  - **five** trainees
  - **190 female/183 male** staff



### Ban on cartels

- Fines amounting to 848 million euros, 23 companies/associations and 12 natural persons fined



### Merger control

- Approximately 1,400 notifications
- 14 second phase proceedings during which four concentrations were prohibited, six notifications were withdrawn, one merger was cleared subject to conditions and three mergers were cleared



### Control of abusive practices

- Ten proceedings concluded and nine initiated



### Public Procurement Tribunals

- 105 applications for review
- 14 applications granted, 27 rejected, 34 withdrawn and 30 became moot



### Sector inquiries

- April 2019: Comparison websites
- June 2020: Online user reviews
- July 2020: Smart TVs
- Ongoing investigations: Waste management, hospitals, online advertising

# 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 to the public.

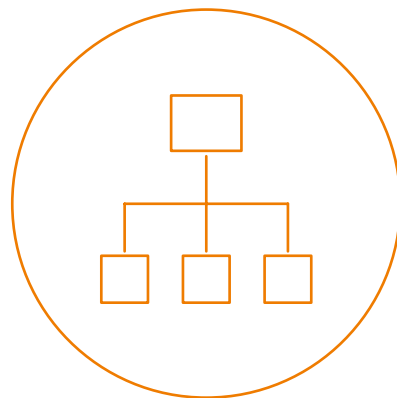
Decisions on cartels, mergers and abusive practices are taken by 13 **Decision Divisions** of the Bundeskartellamt. Nine Decision Divisions are responsible for specific economic sectors. The 10th, 11th and 12th Decision Divisions deal exclusively with the cross-sector prosecution of cartels. In the middle of 2017 a further Decision Division was established for competition protection and consumer protection. You will find an overview of the Decision Divisions, their competencies and respective chairs in the organisation chart at the end of the report.

Two **Federal Public Procurement Tribunals** are also located at the Bundeskartellamt and examine whether public procurement law was observed in the award of large public contracts falling within the Federal Government's area of responsibility.

A **Competition Register for Public Procurement** is currently being set up. It will list relevant infringements of law committed by companies.

The **General Policy Division** advises the Decision Divisions in specific competition law and economic matters and represents the Bundeskartellamt in the decision-making bodies of the European Union. The Division is closely involved in competition-relevant legal reforms, both on the national level, as for example in the 10th amendment to the German Competition Act (GWB) (see p. 14f.), and on the European level. It coordinates the Bundeskartellamt's cooperation with foreign competition authorities and international organisations. The Division is also in charge of press and PR work and assists the authority's president.

The ongoing digital transformation and the legal and economic issues associated with it are another important focus area of the General Policy Division's work. In August 2019 the new "Digital Economy" unit was set up as part of a restructuring process in the General Policy Division. It has taken over the tasks previously dealt with by the "Digital Economy, Regulation and Competition, Procurement Law" unit. The unit supports the Decision Divisions and works on conceptual projects like the joint study with the French competition authority on algorithms and competition, which was published in November 2019. It cooperates with other internal support units such as IT Forensics and Data Science and engages in exchanges with other authorities.



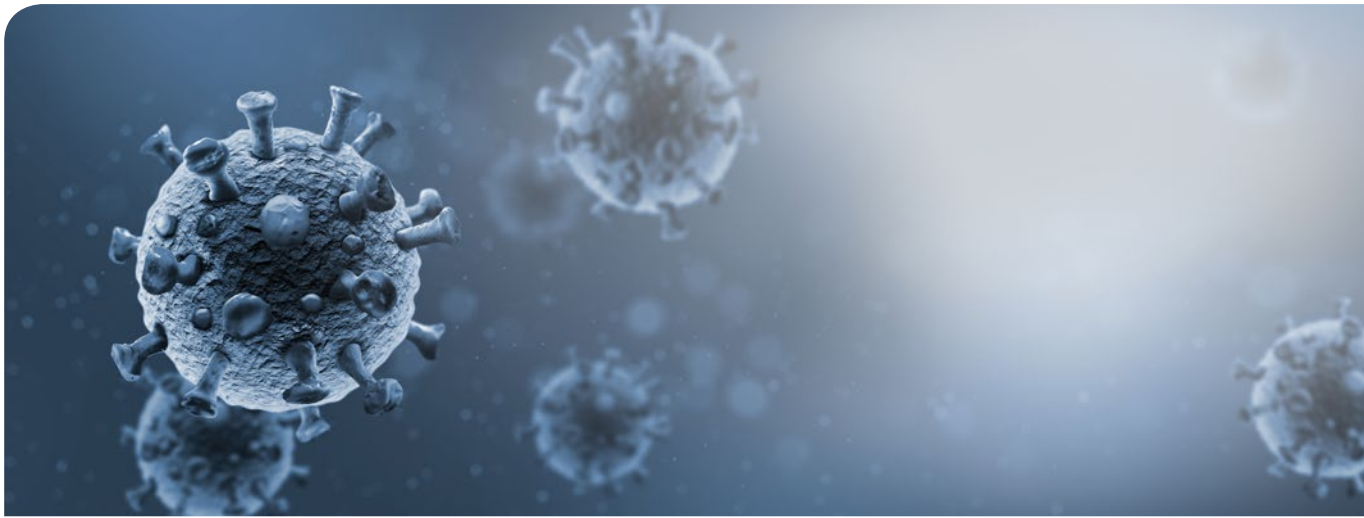
The **Litigation and Legal Division** advises the Bundeskartellamt on legal matters, prepares appeal proceedings before the Düsseldorf Higher Regional Court and represents the Bundeskartellamt before the Federal Court of Justice in Karlsruhe. The Litigation and Legal Division also includes the Special 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.

The task of the **Central Division** is to provide cross-functional services to ensure the authority's operability and assist the various organisational units in discharging their tasks. Its units for Budget and Procurement, Internal Services, Building Management, IT including Data Science, IT Forensics and IT Security, HR and HR Development, Organisation including Risk Management and General Legal Matters are the corresponding intersections facilitating the Central Division's services.

The IT Unit assists the Decision Divisions e.g. in conducting online surveys in major proceedings, in their work on digital economy cases and by seizing and evaluating IT data in cartel proceedings.

A key area of focus of the Central Division in 2019 remained the recruitment and further training of highly qualified staff. The Bundeskartellamt is a family friendly employer faced with many diverse and challenging tasks. It places great emphasis on the further training and development of its staff both in the professional as well as personal sphere. The authority offers a large number of placements for practical training and internships for qualified lawyers and economists.

In 2019 the Bundeskartellamt pushed further ahead with its concrete preparations to introduce an electronic file management system and initiated an evaluation of its personnel requirements.



## Protecting competition during the COVID-19 crisis

Since the beginning of 2020 the COVID-19 crisis has shaped not only the everyday lives of people but also economic framework conditions. Many sectors are particularly affected by the crisis and the exceptional circumstances make an intervention into the market processes necessary. However, competition is not suspended even in times of crisis. The Bundeskartellamt is there to protect consumers and companies. At the same time the Bundeskartellamt is sufficiently flexible to facilitate useful and necessary cooperations.

### Contact partner for cooperation projects

The Bundeskartellamt has examined many cooperations as a result of the crisis, giving companies legal security and protecting them against possible punishment. There are three major areas in which the Bundeskartellamt acts as a contact partner for companies looking for support: Cooperations in the area of production in order to avoid bottlenecks, in logistics, distribution and storage and in restarting complex supply chains.

### Intensive international coordination

The Bundeskartellamt has participated in joint initiatives of European

and international competition authorities to provide information and urgently needed guidance to companies.

### Participation in legislative initiatives

The Bundeskartellamt has contributed to legislative initiatives to facilitate competition law enforcement during the crisis.

### Prosecution of competition law violations

The Bundeskartellamt is particularly vigilant in preventing prohibited cartel agreements, and companies from abusing their market power to the detriment of consumers.



*„The Bundeskartellamt has adjusted its working processes to the challenges posed by the COVID-19 crisis. The authority could thus ensure its full operability at every point in time during the crisis and respond quickly to enquiries from companies looking for support.“*

*Prof. Dr Konrad Ost  
Vice President of the Bundeskartellamt*



## The Bundeskartellamt as a family friendly employer

In 2018 the Bundeskartellamt was again awarded by the Federal Minister for Family Affairs, Dr Franziska Giffey, with the “work and family audit” certificate (“audit berufundfamilie”) for a three-year period for its strategically developed family and life-phase oriented human resources policy.

### Kartell Man

The Düsseldorf University of Applied Sciences (Hochschule Düsseldorf) and the Bundeskartellamt have published a short animated film about cartel prosecution starring Kartell Man uncovering and combatting an ice cream cartel. Two media engineering students of the Hochschule Düsseldorf, Viviann Banh and Max Matthias Karl, produced the film as part of a bachelor thesis. The bachelor thesis was supervised by Prof. Isolde Asal (direction & editing) and Prof. Dr Sina Mostafawy (character design & animation) at the Media Faculty.



Go here to see the film:

<https://www.youtube.com/watch?v=5zugIftAY9M>

## Visiting the Bundeskartellamt



The Bundeskartellamt offers interested groups the possibility to visit the authority to learn about its role, tasks and current cases. This service is open to school children, students, companies, organisations and all those interested in the protection of competition and the Bundeskartellamt's work.

In 2019 and early 2020 the Press and Public Relations Unit received over 30 visitor groups. Since June 2020 visitor groups can also participate in virtual information events organised by the Bundeskartellamt.

# 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.

## ECN

The national competition authorities in the EU work very closely together. Areas of cooperation include cartel prosecution, the control of abusive practices and merger control. In order 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. In the ECN competition authorities also exchange information on their case experience and accompany the evaluation and review of guidelines and Block Exemption Regulations, for example on vertical and horizontal restraints of competition.

## ICN

At international level the national competition authorities work together within the International Competition Network (ICN). With 140 competition authorities from more than 125 jurisdictions the ICN 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. The

digital economy remains one of the ICN's key focus areas, which was also underlined by the topics selected for the ICN's 18th annual conference in Cartagena (Colombia) in May 2019. During the plenary sessions, the questions dealt with were, among others, how authorities can uncover and punish cartels in the digital age, how market power can be examined in digital and high tech companies and how authorities have to restructure to master the challenges of the digital transformation process. An event for the heads of the authorities was also dedicated to digital topics.

Fair procedural principles were another focus area at the conference at which the ICN Framework on Competition Agency Procedures (ICN CAP) with the Bundeskartellamt as a founding member was also introduced. ICN CAP is an opt-in framework built on the principles of fair and effective procedural principles for authorities that fully complies with the ICN's comprehensive work. The ICN also presented recommendations for fair and effective procedures in Cartagena. Further work products deal with leniency programmes, vertical mergers, vertical restraints of competition and private competition law enforcement.

## OECD/UNCTAD

In 2019 the Bundeskartellamt again cooperated in the competition-related activities of the Organisation for Economic Cooperation and Development (OECD) and the United Nations Conference on Trade and Development (UNCTAD).

Andreas Mundt is a member of the Bureau of the OECD Competition Committee. 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 and has provided written contributions on the topics "Hub and spoke arrangements", "Access to the case file and protection of confidential information", "Vertical mergers in the technology, media and telecom sector" and "The standard of review by courts in competition cases".

The UNCTAD Intergovernmental Group of Experts on Competition Law and Policy (IGE) holds its annual conference every year in Geneva. As a member of the Discussion Group on International Cooperation the Bundeskartellamt contributed to the Guiding Policies and Procedures under Section F of the UN Set on Competition.

# The Bundeskartellamt in an international comparison

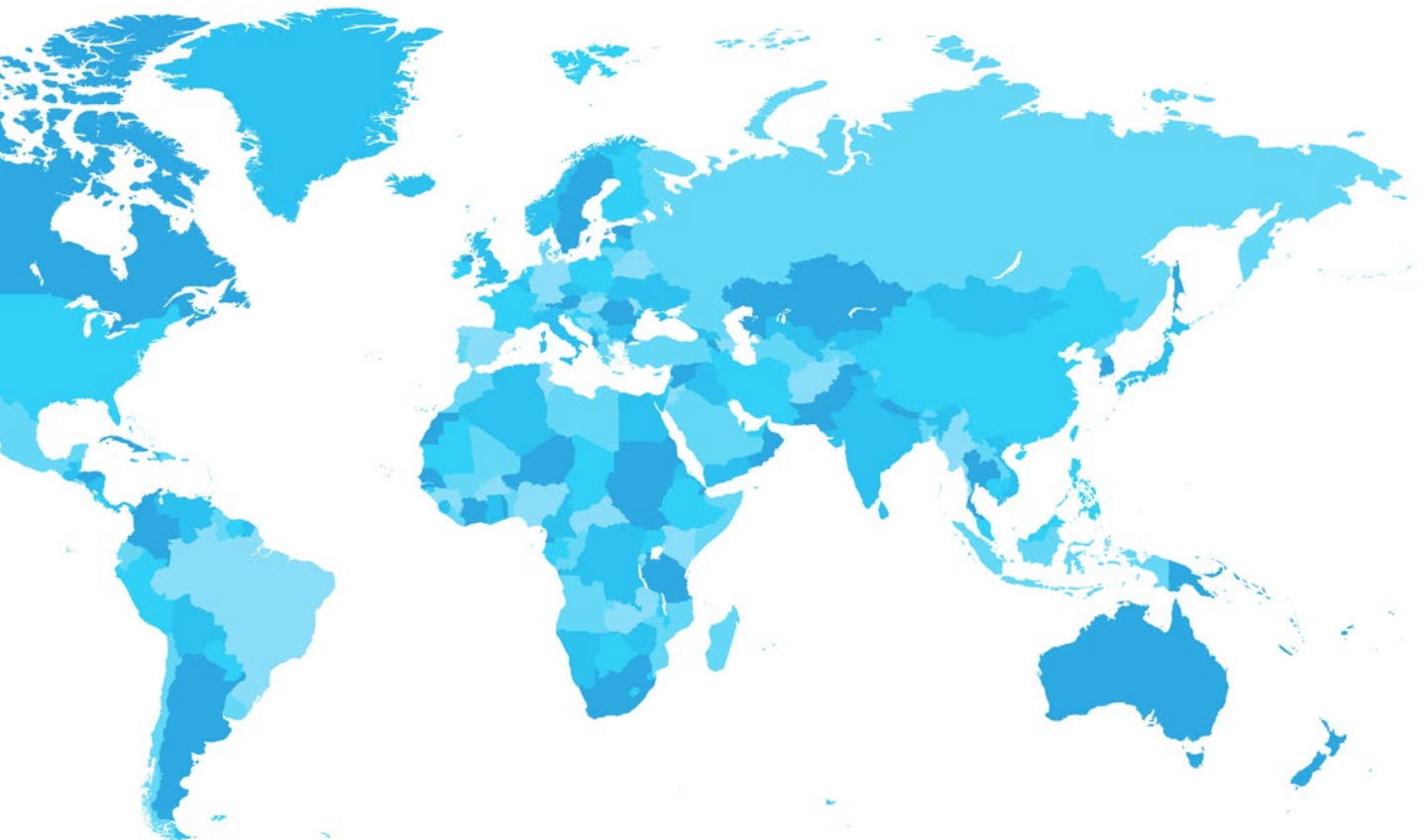
Every year the renowned antitrust journal Global Competition Review (GCR) analyses and evaluates the performance of leading competition authorities worldwide. In addition to the information submitted by the

authorities themselves, this 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 2019 the Bundeskartellamt ranked in the 5 star "elite" category together with the French Autorité de la concurrence and the US Federal Trade Commission.

## 19th International Conference on Competition (IKK)

- From 13 to 15 March 2019 the Bundeskartellamt hosted its 19th International Conference on Competition in Berlin.
- With around 400 participants from more than 50 countries the event once again confirmed its international appeal.
- The keynote speakers were Peter Altmaier, Federal Minister for Economic Affairs and Energy, Margrethe Vestager, European Commissioner for Competition, and Daniel Ek, Chief Executive Officer and founder of Spotify.
- In addition to how to deal with the challenges posed by the global rise in market power and digitalisation as well as the importance of data as a competition parameter, the interaction between leniency programmes and antitrust damages actions was another key area of focus of the conference.







## Exchange with the Monopolies Commission

The Bundeskartellamt also exchanges information with the Monopolies Commission on a regular basis, especially in the context of expert opinions that are provided by the Monopolies Commission. In 2019

talks were held in preparation for the Sector Reports on the railway, energy, post and telecommunications sectors. The Monopolies Commission prepares Biennial Reports and Sector Reports alternately every two years.

The next Biennial Report which will assess, among other things, the Bundeskartellamt's current case practice, is due in 2020.

## Exchange with academic experts

The Bundeskartellamt organises an annual meeting of the Working Group on Competition Law and semi-annual meetings of the Working Group on Competition Economics. These formats offer legal and economic experts an opportunity to discuss current topics in the context of competition law and politics. During the 2019

Working Group on Competition Law meeting the participants discussed with competition law experts how rules on vertical agreements have to be adjusted in the age of the digital economy in order to keep pace with the digital transformation and the challenges associated with it. In its first 2019 meeting the Working Group

on Competition Economics discussed fuel markets, minority shareholdings and the modernisation of abuse control. Current issues of competition economics such as effects of vertical mergers, algorithms and abusive data processing conditions were at the heart of the second event which took place late in 2019.

# CLOSE INVOLVEMENT IN THE 10TH AMENDMENT TO THE GERMAN COMPETITION ACT (GWB)

On 24 January 2020 the draft bill of the 10th amendment to the German Competition Act was published by the Federal Ministry for Economic Affairs and Energy, which is primarily responsible for the bill. The Bundeskartellamt worked closely together with the Ministry in the preparation of this draft. At its core, the draft bill is intended to implement the European Directive to empower the competition authorities of the Member States (ECNplus) and to modernise abuse control with particular regard to digital platforms.

In the area of abuse control the draft bill widens the scope of application of the rules on relative market power and provides for stricter rules for so-called undertakings of paramount significance for competition across markets. The new provisions set forth in Section 19a of the German Competition Act are intended to enable the Bundeskartellamt to impose mandatory conduct requirements on such companies. The draft bill also clarifies the regulations on data access for companies, criteria for the assessment of the market position of so-called intermediaries and the standard for causality in general abuse control. The Bundeskartellamt considers these aspects to be well-justified reforms to even better meet the challenges

posed by markets and undertakings in the digital economy.

To implement the ECNplus Directive the Bundeskartellamt requires new investigative powers, a statutory provision for its leniency programme and, in particular, stronger rights in judicial fine proceedings. Furthermore the amendment is intended to make instruments for applying penalties more effective and to enhance the scope for cooperation

with other European competition authorities. Further changes to be implemented by the draft bill include in particular the expedition of administrative proceedings by facilitating interim measures, the possibility of oral hearings as well as the provision of comprehensive access to file rules. The amendment is also intended to readjust merger control thresholds and further develop the provisions on damages actions.

#### New Section 19a GWB (draft bill)

- According to the new Section 19a, the Bundeskartellamt could prohibit undertakings of paramount significance from preferring their own offers over competitors' offers when providing access to supply and sales markets.
- Self-preferencing can lead to market foreclosure and hinder competitors, e.g. from developing and marketing innovative offers.
- However, especially on dynamic or newly emerging markets, undertakings are supposed to be able to compete for market shares and customers on the merits of their performance and positions of power are to remain contestable.



# CARTEL PROSECUTION



Technical building services | Wholesalers of plant protection products  
Plate embossing companies | Liquefied gas suppliers | Steel manufacturers  
Automotive manufacturers | Bicycle wholesalers | Magazine lending services  
Private damages actions

In 2019 the Bundeskartellamt imposed fines of around 848 million euros on a total of 23 companies or trade associations and 12 individuals. The industries concerned were technical building services, wholesalers of plant protection products, plate embossing companies, liquefied gas suppliers, steel manufacturers and purchasers of automotive steel, magazines and bicycle wholesalers.

# Agreements on the provision of technical building services

The Bundeskartellamt imposed fines totalling approx. 110 million euros on eleven technical building service providers. The companies had colluded to a varying extent on the award of major contracts for the design and installation of technical equipment for large building complexes such as power plants, industrial facilities, shopping centres and office buildings. The proceeding was initiated in November 2014 following a leniency application.

Based on the agreement the companies submitted fictitious bids to protect their competitors in the corresponding award procedures. In return the companies in many cases received specific services such as for example subcontracts or compensatory payments or were offered cover quotes in another tender procedure. In all anticompetitive practices were proved in 37 different award procedures in the period from 2005 to 2014. The order volume for the technical building service disciplines concerned usually amounted to between

four and 35 million euros, in one case to around 100 million euros.

The fines against eight companies are already final. Three companies each appealed the decisions and their findings to the Düsseldorf Higher Regional Court. The Düsseldorf

Higher Regional Court discontinued the proceeding against one company upon its appeal due to the expiry of the limitation period. The Düsseldorf General Public Prosecutor's Office appealed the Higher Regional Court's decision to the Federal Court of Justice.



## Selected maximum fines\*

Year	Antitrust proceeding	Total fines imposed in euros	Highest single fine against a company
2019	quarto plates	646,405,000	370,000,000
2018	special steel	304,050,050	118,000,000
2014	beer	338,000,000	160,000,000
2014	sausage	338,500,000	128,050,000
2014	sugar	281,700,000	195,500,000
2009	coffee	159,000,000	83,000,000
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.

\*\* Total sum of final fines based on a judgment issued by the Federal Court of Justice in 2013.



## Proceeding against wholesalers of plant protection products

In early 2020 the Bundeskartellamt imposed fines totalling 157.8 million euros on eight wholesalers of plant protection products and their representatives for agreeing on price lists, discounts and some individual sales prices for retailers and end customers in Germany. The companies agreed on price lists for plant protection products in the spring and autumn of each year between 1998 and the dawn raid in March 2015. Their agreements were based on a joint calculation by the wholesalers that led to largely uniform price lists for retailers and end customers. Especially during the first few years, some

companies simply used the agreed price list to set their own prices and basically just added their company logo to the final list.

All the wholesalers concerned cooperated with the Bundeskartellamt during the proceeding and helped to clarify the matter by applying for leniency. All eight fined companies and the individual employees fined have acknowledged the facts as established by the Bundeskartellamt and agreed to a settlement. The orders imposing the fines have now become final.

### The Leniency Programme in brief

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- 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 and later leniency applicants can have their fines reduced by a maximum of 50 percent, provided they cooperate with the Bundeskartellamt and produce decisive evidence to prove the offence.
- 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.

## Agreements between plate embossing companies

In December 2019 the Bundeskartellamt imposed fines totalling approx. eight million euros on four plate embossing companies and five individuals involved for their anticompetitive practices in the sale of embossed vehicle registration plates. Number plates are stamped on special machines in the stamping shops and the finished number plate (still without the technical inspection sticker and official seal) is sold to the customer. Afterwards the number plate is presented to the vehicle licencing office where the official seal is applied.

At least between 2000 and early 2015 the companies exchanged competition-relevant information and cooperated with one another in various ways.

The companies agreed for example on which company would be allowed to operate a stamping shop on a certain local market and which companies would not. The total income, costs and profits of the designated stamping shop would then be pooled to rule out any entrepreneurial and competitive risk. The anticompetitive cooperation took place in different forms and at various levels of involvement on approx. 40 percent of

over 700 local number plate supplier markets in Germany.

When setting the fine, it was taken into account that all the companies and individuals involved except one acknowledged the facts as established by the Bundeskartellamt and agreed to a settlement. One individual involved appealed the decision and the findings to the Düsseldorf Higher Regional Court.



*„We invest many resources in cartel prosecution. It remains a key focus of the Bundeskartellamt's work. Cartels harm the economy and consumers because of artificially increased prices, inferior quality and restrained innovation.“*

*Andreas Mundt,  
President of the Bundeskartellamt*

## Territorial agreements in the sale of liquefied gas

The Bundeskartellamt imposed fines totalling approx. 195,000 euros on four companies for entering illegal territorial agreements for the sale of liquefied gas. The territorial agreements covered the period between November 2006 and July 2016. The proceeding was initiated following a leniency application filed by another company, which was therefore granted immunity from its fine.

Moderate fines were imposed in this case as the effects on the German market for liquefied gas were insignificant due to the very small market shares of the companies involved. The Bundeskartellamt therefore refrained from imposing a fine on the individuals involved, i.e. individual managers of the companies.

### Calculation of fines

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- Fines are calculated according to the seriousness and duration of the infringement. Under the German Competition Act, GWB, the maximum fine is limited to 10 percent of a company's total annual turnover.
- Another significant aspect in the calculation of the Bundeskartellamt's fines is the cartel-related turnover, i.e. the turnover achieved with the products that were the subject of the cartel agreement.

## Price-fixing agreements for quarto plates

The Bundeskartellamt imposed fines totalling around 646 million euros on Ilseburger Grobblech GmbH, thyssenkrupp Steel Europe AG and voestalpine Grobblech GmbH as well as three individuals responsible for exchanging information on and agreeing certain price supplements and surcharges for quarto plates in Germany. The anticompetitive agreement was in place from mid-2002 until June 2016. Dillinger Hüttenwerke, a public limited company which also participated in the agreement, was the first company to cooperate with the Bundeskartellamt and was therefore granted full immunity from fines.

Quarto plates are hot rolled flat steel products. These are used for example in steel construction, bridge building, building construction, general mechanical engineering, wind tower and pipeline construction.

Representatives of the steel manufacturers regularly met from July 2002 to August 2008 and agreed on the most important price supplements and surcharges for specific quarto plates in Germany. Until mid-2016 the companies continued to calculate these price components according to the uniform

models agreed on or adopted them in coordination with one another.

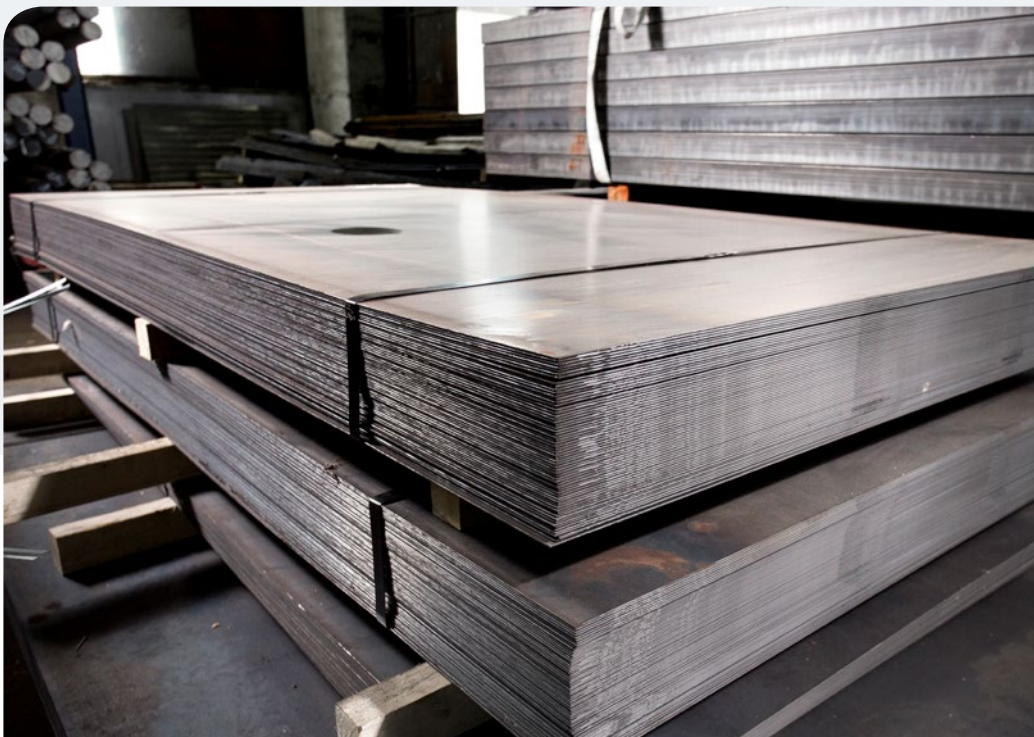
The companies admitted to the accusations and agreed to a settlement. This was taken into account by the Bundeskartellamt when calculating the fines.

Voestalpine Grobblech GmbH cooperated with the Bundeskartellamt in the course of the proceeding, which was also taken into consideration when setting the fine. The orders to impose the fines are final.

### Positive effects of cartel prosecution

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The prosecution of illegal cartels has immediate positive effects on the economy and consumers. Cartels cause great harm to the overall economy because they lead to higher prices, lower product quality and less innovation. Scientific studies indicate that cartels result in average price increases of up to around 15 percent. Uncovering a cartel often directly leads to lower prices. The companies need to make an effort to win customers.





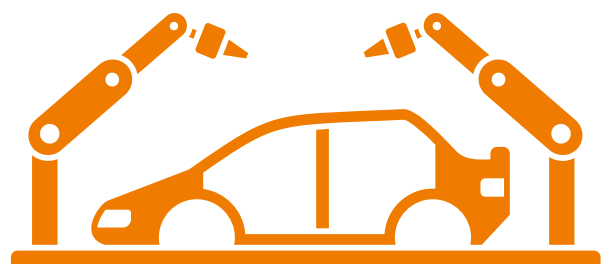


## Automotive manufacturers concluded agreements on the purchase of steel

In November 2019 fines totalling around 100 million euros were imposed on Bayerische Motoren Werke AG, Daimler AG and Volkswagen AG for anticompetitive practices in the purchase of long steel products. Between 2004 and the end of 2013 representatives of the companies regularly met twice a year with steel manufacturers, forging companies and large systems suppliers and exchanged information on uniform surcharges for the purchase of long steel products.

The price for long steel products consists of a basic price and scrap and alloy surcharges. During the period of infringement the surcharges, which fluctuated in amount, accounted on average for approximately a third of the end price of the long steel products concerned here. The purchase costs of long steel account for less than one percent of the total costs of a car.

The companies admitted to the accusations and agreed to a settlement. This was taken into account by the Bundeskartellamt when calculating the fines as was the fact that the car manufacturers had cooperated with the authority throughout the proceeding. The fines imposed are final.





## Vertical price-fixing by bicycle wholesaler ZEG

The Bundeskartellamt imposed fines totalling around 13.4 million euros on the bicycle wholesaler ZEG Zweirad-Einkaufs-Genossenschaft eG (ZEG) and its representatives for fixing retail prices with 47 bicycle retailers.

ZEG agreed with its member companies on retail prices for certain bicycle models. The independent retailers were asked not to undercut the minimum sales prices set by ZEG for different bicycle models. This greatly restricted price competition between the members of the purchasing cooperation to the detriment of the consumer.

ZEG is a purchasing cooperative consisting of approx. 960 independent bicycle retailers in Europe, around 670 of which are in Germany alone. It has a strong market position in Germany both on the purchase and sales sides.

In setting the fine the Bundeskartellamt took into account that ZEG had cooperated with the authority in uncovering the agreements and that a settlement could be reached. The fining decisions are final.

### Vertical price fixing

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- Vertical price fixing denotes a process where a manufacturer commits its customers (usually retailers) to resell its products at a certain price (or at least not below a certain minimum price).
- This kind of fixed or minimum resale price maintenance imposed on retailers by manufacturers generally violates the prohibition of anticompetitive agreements under Section 1 GWB and Article 101 TFEU because retailers can no longer compete with one another on the price of the product.
- An exception to the rule is possible in individual cases, e.g. for a short period during the launch of a new product.

## Customer allocation agreements by providers of magazine lending services

In early 2019 fines amounting to approx. three million euros were imposed on eight magazine lending service providers. The companies are accused of having concluded illegal customer allocation agreements.

Providers of magazine lending services purchase different magazines from

publishers in order to create magazine packs which they usually rent out to their customers for a period of one week. Their customers include private individuals and in particular doctors' practices, hairdressers or restaurants. The agreements were concluded between the magazine lending services providers to prevent them

from poaching business customers from one another. The customer allocation practice prevented price competition between the services. All the companies concerned agreed to have the proceedings terminated by settlement. The orders to impose the fines are final.

### Settlement

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- Administrative fine proceedings can be concluded in the form of a negotiated settlement between the Bundeskartellamt and the parties concerned to terminate the proceedings.
- A settlement generally expedites and shortens resource-intensive antitrust proceedings.
- The formal requirement for settlement is a confession and a settlement declaration in which the company or individual involved acknowledges the facts of the infringement with which it/he is charged and accepts the fine up to the amount announced.
- A settlement declaration can lead to a reduction of fine of max. ten percent.
- A waiver of the right to appeal is not part of a settlement declaration.

## Increase in number of private damages actions

Companies which violate the prohibition of cartels not only have to expect fines from the competition authorities but also claims for damages from customers or suppliers harmed by the cartel. The number of damages actions following cartel proceedings by the Bundeskartellamt or the European Commission ("follow-on claims") increased significantly in recent years. The actions concerned a variety of product areas such as sugar, trucks, rails, bathroom fittings, electronic cash, chipboard panels, detergents, television tubes, packaging, cement, steel abrasives, wallpapers, gas-insulated switchgears, drugstore products, flour (mills cartel) or confectionery.

The truck cartel is a good example of the significance of follow-on actions. In 2016/2017 the EU Commission had imposed fines on several truck manufacturers for agreeing on their sales prices for freight vehicles over a number of years. In Germany alone over 400 actions were filed in connection with the case. The actions for damages vary greatly in terms of the amount of damages and the value in dispute. The claimants are mainly from the construction, transport, freight forwarding and logistics sectors but also from other sectors such as the food retail trade. Many actions were also brought by small companies. What is more, last year about half of all actions were brought by the public sector (cities and municipalities, municipal undertakings, federal states, the federation, etc.).

While the number of actions concerning the truck cartel decreased in 2019 compared to the previous year, these still account for approximately 80 percent of the follow-on claims in the period covered by the report. The amount of compensation (approx. 420 million euros) was still fairly high, but approximately 380 million euros of this was paid to a single company which had bundled the claims of several damaged companies and brought them to court. Various district courts have already ruled in the first instance that this kind of bundling of claims in one company is inadmissible, but the legal situation has not yet been clarified by the Federal Court of Justice. For this reason it remains to be seen whether the bundling model will prevail for such claims in future.

The Bundeskartellamt estimates that in private damages proceedings

the majority of all compensation payments is usually enforced in out-of-court negotiations (also partly by offsetting claims in future deliveries.) It is therefore generally not possible to calculate exactly the amount of compensation actually paid in such damage actions.

Further professionalisation in the bundling and assertion of damages claims can be observed, which is encouraged by the market entry of law firms specialising in damages actions and litigation funding.

With the implementation of the EU Directive on Antitrust Damages Actions 2014/104/EU in the 9th amendment to the GWB in the summer of 2017, the conditions for damages actions were further improved so that a further increase in the assertion of damages claims can be expected.





# AVOID CONCENTRATIONS - PRESERVE DIVERSITY OF COMPETITION

**CRRC/Vossloh Locomotives | CinemaxX/Cinestar | Telekom/EWE**

**Loomis/Ziemann | Harry's Inc./Edgewell Personal Care Company**

**Miba/Zollern | IBM Deutschland/T-Systems**

**Heidelberger Druckmaschinen/MBO Maschinenbau Oppenweiler Binder**

**Bidding syndicates and supplier consortia in the ready-mixed concrete industry | Hospital mergers**

**"Alliance of publishing houses"/BPVG | Berliner Morgenpost/Der Tagesspiegel**

**Heinrich Bauer Verlag/MDZ | REMONDIS/DSD**

Mergers between companies are subject to merger control by the Bundeskartellamt if they fulfil certain requirements. They may be implemented only after clearance by the Bundeskartellamt. 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 be prohibited or cleared only subject to certain conditions. The Bundeskartellamt also often makes antitrust assessments of cooperations between companies, which provide companies with guidance on how to specifically structure their project. Provided that the restrictions of antitrust law are observed, meaningful and necessary cooperations are explicitly allowed.

## Thorough examination of acquisition by Chinese state-owned company



The Bundeskartellamt examined the acquisition of **Vossloh Locomotives** by the **CRRC group** (People's Republic of China) in great detail in second phase proceedings. Vossloh's strong market position on the one hand and CRRC's still very weak position on the European market on the other hand made it difficult to assess the participation of Chinese state-owned companies in the context of merger control. The project could be cleared in April 2020 after an in-depth examination.

The CRRC group is the world's largest manufacturer of rolling stock. Its activities have mainly focused on China so far. The company has more than 150,000 employees and operates a large number of factories in China and other countries. Its

success in Europe has been limited so far. Vossloh is the market leader for the manufacture of diesel-powered shunters in the European Economic Area and in Switzerland. The Chinese state's aid for CRRC played an important role in the assessment of the case under competition law: The Bundeskartellamt's considerations included possible state subsidies, the risk of low-price and dumping strategies, strategic advantages obtained through other participations and cost advantages due to state funding for CRRC activities in many other markets.

Based on the Bundeskartellamt's investigations it was possible to ultimately rule out that the merger would considerably impair competition on the European shunter

market. It is true that in the context of the complex approval processes for shunters CRRC can benefit in future from the expertise it obtains from Vossloh as an established manufacturer. However, the company has only played a minor role on the European market so far. Vossloh's competitiveness has considerably decreased over the last few years and several strong competitors are now active on the market. What is more, new competitors providing innovative traction technologies have entered the market since.

This case has shown that although Chinese state-owned companies enter markets with strong economic power, they cannot be assessed as a general threat to competition.

## More than one local operator of cinemas? Merger of two cinema chains

In March 2020 the Bundeskartellamt cleared the merger between the two cinema chains **CinemaxX** and **Cinestar** subject to the merger parties selling six of their cinemas to other operators first.

A merger between CinemaxX and Cinestar would create the leading cinema operator in Germany in terms of turnover and number of cinema screens. The acquisition would have led to such high joint market shares in the

six regions of Augsburg, Bielefeld/Gütersloh, Bremen, Magdeburg, Wuppertal/Remscheid and the western part of the Ruhr region that it would have been expected to significantly impede local competition between the cinemas there. The cinema operators undertook to sell one cinema each to a competitor to avoid disadvantages, for example in the form of higher ticket prices, for consumers in the affected regions.

## Enhanced fibre deployment for telecommunications and internet connections

In late December the Bundeskartellamt cleared plans by **Telekom Deutschland GmbH** and **EWE AG** to found a joint venture for fibre deployment in north western Germany. As both companies were among the

region's largest providers of internet connections, the Bundeskartellamt asked the parties to make far-reaching commitments regarding their cooperation beforehand.

The Bundeskartellamt estimates that the cooperation and the obligatory investments associated with this will lead to a significant improvement on the telecommunications markets in the region concerned and in rural areas.

### Far-reaching commitments for cooperation between Telekom and EWE

- Telekom Deutschland GmbH and EWE AG would like to **cooperate** in the deployment of fiber broadband networks in north-west Germany.
- Both companies are among the **largest providers** of internet connections in this region.
- The Bundeskartellamt demands far-reaching **commitments** for the cooperation between Telekom and EWE.
- The commitments undertaken will ensure an **extensive build-out** of fiber networks and **prevent anti-competitive effects**.

Networks are to be developed in parts of Lower Saxony, North Rhine-Westphalia and Bremen.



#### Binding commitments:

- ✓ Deployment of at least 300,000 broadband connections, to some extent also in rural areas
- ✓ Participation independently of one another in tender procedures for the funding of gigabit-ready telecommunication networks (especially in rural areas)
- ✓ Refrain from strategic defense measures vis-à-vis other telecommunications companies
- ✓ No exclusive focus on more urban areas which already have cable networks
- ✓ Non-discriminatory network access for third-party telecommunications companies
- ✓ Specific share of the expanded connections to be handed over to competing telecommunications companies for marketing

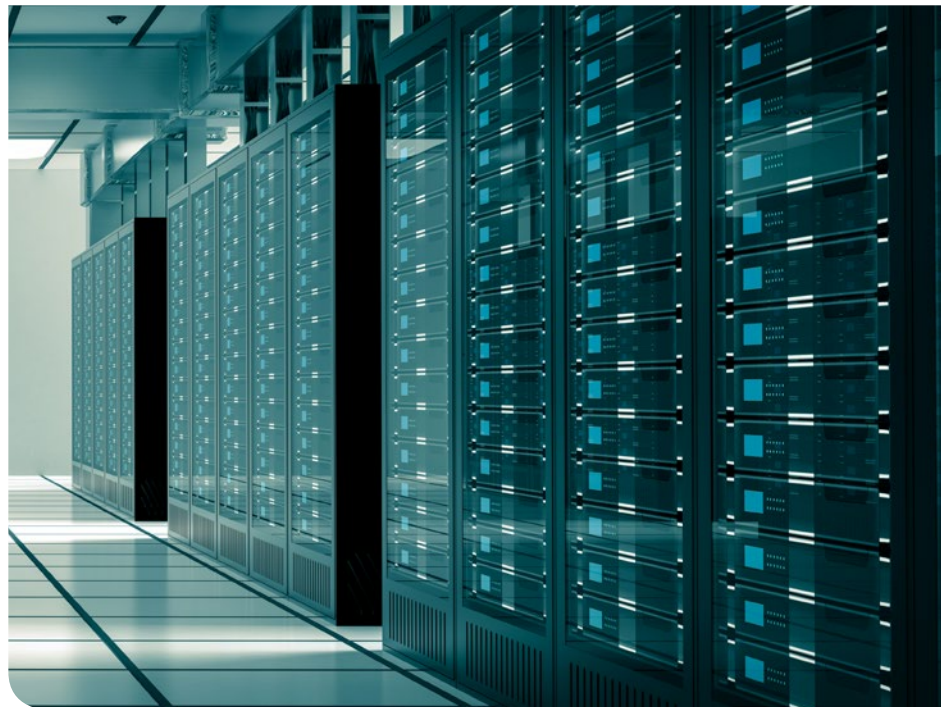
## Merger notification for services for high-performance computers withdrawn

In June 2019 **IBM Deutschland** withdrew its notification of the planned acquisition of significant parts of the hardware and software business and several hundred expert staff from **T-Systems' mainframe business** following concerns expressed by the Bundeskartellamt. Mainframes are powerful computers mostly manufactured by IBM and used by large companies and public institutions worldwide to reliably store and process large amounts of information and for high-speed bulk data processing. The relevant infrastructure outsourcing services for the mainframe business account for a market worth billions.

The Bundeskartellamt preliminarily assessed that IBM had a dominant position in the European Economic Area for mainframe infrastructure outsourcing which would have been strengthened by its acquisition of sought-after specialists and key

infrastructure of its competitor T-Systems. As a result of the planned acquisition T-Systems would no longer have been independent and would not have been active to the same extent on the market as previously,

which would have benefited IBM in particular. The merger project was closely examined in second phase merger control proceedings which involved extensive investigations.



## Choice of cash handling services ensured

Late in December 2019 the Bundeskartellamt prohibited the proposed acquisition of all shares of Germany's second-largest cash handling service, **Ziemann Sicherheit Holding GmbH**, by **Loomis AB**, an internationally active Swedish cash handling service.

The merger project mostly affected the provision of cash for businesses and banks. This includes the transport

of coins and banknotes to and from customers, cash processing in cash centres and the refilling and maintenance of ATMs.

Already in summer 2019 the Bundeskartellamt had assessed the merger project as critical as Loomis/Ziemann and Germany's market leader Prosegur would have been the only two companies active on the markets concerned.

This development would have considerably impeded effective competition in several very concentrated regional markets for cash handling services. The commitments offered by the companies were not sufficient to eliminate the Bundeskartellamt's competition concerns. The project was therefore prohibited. The decision is final.



## Acquisition of a supplier of wet shave razors prevented

The Bundeskartellamt closely examined the intended acquisition of **Harry's Inc.** by **Edgewell Personal Care Company** in second phase proceedings.

Edgewell manufactures personal hygiene products and distributes them worldwide. Edgewell distributes wet shaving products, including the "Wilkinson Sword" brand, and is the second most important supplier

of branded products in this market after The Procter & Gamble Company, which distributes its products under the "Gillette" brand. Edgewell also offers wet shaving products as own-brand products, i.e. private labels. Harry's also manufactures wet shaving products and is one of Germany's leading suppliers of private label products.

The preliminary investigation results of the authority have shown that the

concentration would have considerably impeded effective competition in the national market for private label wet shave razors. In November 2019 the Bundeskartellamt informed the parties to the merger of its competition concerns. The parties withdrew their notification in February 2020 following a critical assessment of the project by the US Federal Trade Commission.

## Market concentration in plain bearings segment

In January 2019 the Bundeskartellamt prohibited the formation of a joint venture between **Miba AG** and **Zollern GmbH & Co. KG**. The companies had planned to pool their hydrodynamic plain bearing production activities in a joint venture.

The authority's investigations showed that the two companies are the major competitors in a market which is already highly concentrated. The merger would have exacerbated the situation because Miba and Zollern,

two very close competitors from the customers' perspective, would join forces.

After the merger was prohibited the parties applied to the Federal Ministry for Economic Affairs and Energy (BMWi) for ministerial authorisation.

In a special opinion commissioned by the Ministry for Economic Affairs and Energy, the Monopolies Commission recommended against granting ministerial authorisation. However,

the Ministry granted the authorisation subject to conditions, holding that the merger was significant for achieving the energy transition and environmental objectives associated with it, which would mean that there was an overriding public interest to authorise the merger. Miba and Zollern then filed an appeal against the Bundeskartellamt's prohibition decision with the Düsseldorf Higher Regional Court. The Court will probably decide on the appeal in the second half of 2020.

### Ministerial authorisation (Section 42 of the German Competition Act, GWB)

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- The Federal Minister for Economic Affairs and Energy can, upon application, authorise a merger which has been prohibited by the Bundeskartellamt if ...
  - ... in a specific case the restraint of competition is outweighed by advantages to the economy as a whole following from the concentration or
  - ... the concentration is justified by an overriding public interest.
- Since the introduction of merger control there have been **ten** successful applications for ministerial authorisation



## Prohibition of merger of folding machine manufacturers

The Bundeskartellamt prohibited plans by **Heidelberger Druckmaschinen AG** to acquire all the shares in an asset management company which is a shareholder of the folding machine manufacturer **MBO Maschinenbau Oppenweiler Binder GmbH**. The merger especially affects the market for special machines for the manufacture of sheet folding machines for industrial printing processes.

Heidelberger Druckmaschinen AG is already the market leader on the European market for sheet folding machines. With the merger the parties would have achieved joint market shares far exceeding 50 percent. There are already only four companies active on the relevant market throughout the

whole of Europe. The merger would have created a dominant position for Heidelberger Druckmaschinen and have significantly impeded competition in the market to the detriment of customers.

The investigations also showed that market entry seems difficult due to the high costs and time involved,

the high level of customer loyalty and the customers' requirements for prompt service and spare parts. In fact no market entries were witnessed in the last 20 years. The decision is final. Komori Corporation, which manufactures offset printing machines, has acquired MBO in the meantime. The acquisition was not subject to merger control.



## Guidelines for cooperations in the ready-mixed concrete industry

In 2019 the Bundeskartellamt assisted the **German Ready-Mixed Concrete Association** (Bundesverband der Deutschen Transportbetonindustrie e. V.) in drafting guidelines to check whether bidding syndicates and supplier consortia in the ready-mixed concrete industry are admissible under competition law.

Cooperations between companies which are necessary and reasonable are explicitly allowed under compe-

titution law. The guidelines explain the antitrust aspects to be considered when assessing such cooperations. What matters most in the assessment is for example the question whether an offer could only be submitted after a syndicate was formed and whether the cooperation is economically advantageous and commercially reasonable. The guidelines also explain the extent to which it is permitted to exchange information between partners and contains some relevant case examples.

In 2017 the Bundeskartellamt published a sector inquiry into cement and ready-mixed concrete which also deals with the limitations for supplier consortia under competition law. The subsequent divestiture proceedings of joint ventures which were problematic under competition law were concluded by 2019.

# Competition between hospitals for the benefit of the patient

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 sector. It is therefore important first of all to maintain competition in the quality of healthcare for patients. It is crucial to ensure that patients have sufficient local options to choose from.

When examining a proposed merger the Bundeskartellamt first of all assesses whether the services provided

by the hospitals are comparable from the patients' point of view. There are, for example, separate market definitions for the market for acute hospitals and the market for rehabilitation centres or senior citizens homes and nursing homes.

As for the geographic market definition, only those hospitals will be examined which patients actually choose as an alternative. In merger projects between public service operators, in particular, the Bundeskartellamt also often conducts an informal preliminary examination

of the plans. In this way any possible competition concerns about the merger can be considered at an early stage of the political decision-making processes of the individual local authority bodies and, if necessary, alternative solutions be sought.

## Merger control proceedings

Despite high market shares, the planned merger between the hospital group **Klinikverbund Kempten-Oberallgäu** and the district clinics **Kreiskliniken Unterallgäu** under the management of **Sana Kliniken** was cleared in the first phase of merger

### Merger control in the hospital sector

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- In recent years the number of notified merger control projects has increased.
- From 2003 to May 2020 the Bundeskartellamt examined a total of 323 notified hospital mergers.
- 270 mergers were cleared, seven prohibited. In two cases the notifications were withdrawn in second phase proceedings after the authority had expressed its concerns.
- In the other cases the mergers were either not subject to merger control, the proceedings have not been concluded or the parties had abandoned their plans.
- In many cases the Bundeskartellamt carried out an informal pre-assessment before the mergers were formally notified. Since 2011, there have been eight cases in which the intended merger was not notified after the authority had expressed its preliminary competition law concerns.



control. Klinikverbund operates four general hospitals, one rehabilitation clinic and medical care centres in the Kempten-Oberallgäu region and Kreiskliniken operate two general hospitals and medical care centres in the neighbouring region of Mindelheim-Unterallgäu. Sana is not active in any of the two regions.

Klinikverbund and Kreiskliniken are the market leaders in their respective neighbouring home regions. The merger could be cleared nonetheless because it did not significantly reduce the existing options for patients. It also did not reduce the operators' incentives to promote innovation and provide high quality. More important competitors than the respective merging partner remained in both regions. What is more, the district Kreiskliniken were relatively important only for patients from part of the Kempten-Oberallgäu

region and were generally only a comparably remote competitor of Klinikverbund Kempten-Oberallgäu in terms of number of cases and range of treatments. The merger between **Katharinen-Hospital Unna** and **Ev. Krankenhaus Unna** could also be cleared in the first phase following market investigations even though the parties hold a paramount market position in the city of Unna and its surroundings. Patients still have sufficient alternative clinics to choose from after the merger. These clinics are located to the west and north of Unna.

The acquisition of 100 percent of the shares and sole control over **Rhön Klinikum AG** by **Asklepios** could also be cleared in the first phase of merger control. Asklepios operates a total of 160 health care centres throughout Germany, including, apart from hospitals, medical care centres and rehabilitation clinics. Besides several

medical care centres Rhön also runs five hospitals in the federal states of Hesse, Bavaria, Thuringia and Brandenburg. Asklepios and Rhön are mainly competitors in the provision of acute in-patient hospital services in the Gießen/Marburg region. Universitätsklinikum Gießen und Marburg, operated by Rhön, is the only privately run university clinic in Germany. Asklepios is also active in this region with several hospitals. However, the planned acquisition did not raise any serious competition concerns as the parties' hospitals are not close competitors, neither geographically nor functionally. Since 2012 the Bundeskartellamt has examined several acquisitions of shares in Rhön by Asklepios. Over the last few years Rhön has sold a large number of hospitals. In 2017 the Bundeskartellamt already cleared Asklepios' acquisition of a 25% participation in Rhön.



## Disadvantages in press wholesale distribution for small publishing houses eliminated

In January 2020, following competition law concerns expressed by the Bundeskartellamt, the “Alliance of publishing houses” consisting of seven major publishing houses and the **Association of German Book, Newspaper and Magazine Wholesalers (BPVG)** refrained from applying the minimum sales requirement in the press wholesale sector.

The minimum sales requirement had been part of an agreement that had been in force since March 2018. It stipulated a wholesale surcharge for publications

not achieving a minimum average turnover per retailer per year. As a result, the distribution of smaller publications generating less sales became more expensive. The publishing houses represented in the German working group of small or medium-sized publishing houses (Arbeitskreis Mittelständischer Verlage e. V.) objected to this provision.

The Bundeskartellamt holds that this new remuneration system could discriminate against publishing houses predominantly distributing low-sell-

ing niche publications. This discrimination contradicts the intention of the German Competition Act (GWB) that allows in exceptional circumstances the formation of a cartel by all competitors on the side of the wholesalers and of the publishing houses in the interest of non-discriminatory press distribution.

With the current provision having been abandoned, the Bundeskartellamt has discontinued the proceeding against the alliance of publishing houses and the BPVG.

### GWB: Exemption regulation for the press sector

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- In order to ensure press diversity, Section 30 (2b) sentence 1 of the German Competition Act, (GWB) allows cooperations between publishers to strengthen their economic basis for intermedia competition.
- However, even under this provision which was introduced in summer 2017, price-fixing, territorial and customer agreements and editorial cooperation are not exempted from the prohibition of cartels.
- This exemption is only applicable under German competition law. If the cooperation also appreciably affects trade between the Member States of the EU, Article 101 TFEU applies.

## No objections to the cooperation between publishing houses

**Berliner Morgenpost GmbH** and the publishing house **Der Tagesspiegel GmbH** asked the Bundeskartellamt for an assessment under competition law of their planned cooperation agreement. The planned cooperation will include the joint marketing of advertising space, joint newspaper distribution, a joint call centre, joint promotion activities and possibly cooperation in procurement. The cooperation agreement will not affect the editorial offices of Berliner Morgenpost and Der Tagesspiegel. The Bundeskartellamt has no objections to the cooperation.

In February 2020 the authority also cleared plans by the publishing house **Heinrich Bauer Verlag** to acquire all the shares in the media group **Mitteldeutsche Zeitung GmbH & Co. KG, Mitteldeutsches Druck- und Verlagshaus Geschäftsführungsgesellschaft mbH** and **MZ Druckereigesellschaft mbH** (together “MDZ”). The newspapers published by Bauer include “Volksstimme” and several advertising newspapers in the north of Saxony-Anhalt. MDZ publishes the daily “Mitteldeutsche Zeitung” and two advertising newspapers in its distribution area.

The Bundeskartellamt considers the planned merger to be unproblematic because the circulation areas of “Volksstimme” and “Mitteldeutsche Zeitung” do not overlap. Their circulation areas adjoin one another in the Harz, Salzlandkreis and Anhalt-Bitterfeld districts. As a result the two newspapers practically do not compete for the same readers. For the same reason, no restriction of competition is expected on the advertising and radio broadcasting markets either because there are no geographical overlaps.

## Concentration in the waste management sector stopped

The trend towards concentration in the German waste management sector continued in 2019. The Bundeskartellamt examined in particular detail the proposed acquisition by **REMONDIS SE & Co. KG** of all the shares in the dual system **DSD - Duales System Holding GmbH & Co. KG**.

The planned acquisition was prohibited in July 2019 as it would have considerably impeded effective competition in the dual system sector for packaging recycling. It would

have led to higher costs for DSD's competitors, significant market share gains for DSD and finally higher prices for the disposal of sales packaging. A further problematic aspect is the fact that the two companies achieve joint market shares of 40 to 60 percent in the marketing of recycled glass. The commitments offered by the companies were not suitable to eliminate the Bundeskartellamt's competition concerns.

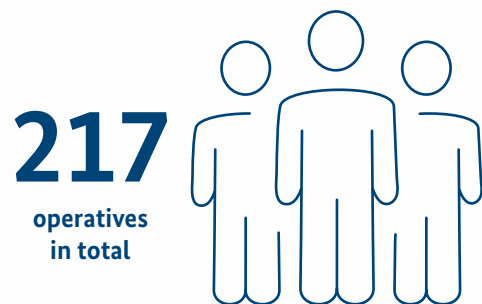
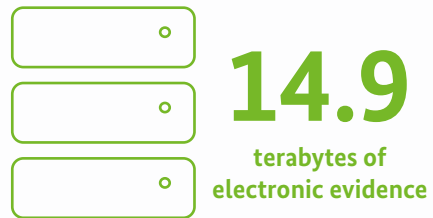
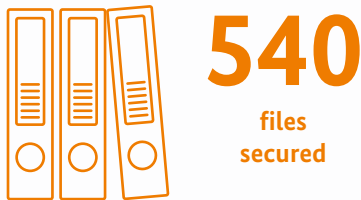
In mid-April 2019 the Bundeskartellamt already notified the parties

to the merger that it took a critical view of the merger project. Remondis and DSD then offered commitments, but they were not sufficient to eliminate the Bundeskartellamt's competition concerns. The Düsseldorf Higher Regional Court also confirmed the Bundeskartellamt's prohibition decision in the Remondis/DSD case as, contrary to the parties' view, the merger would have led to a market share level which would have been problematic under competition law and to a dominant position in the waste glass marketing sector.



# FACTS AND FIGURES

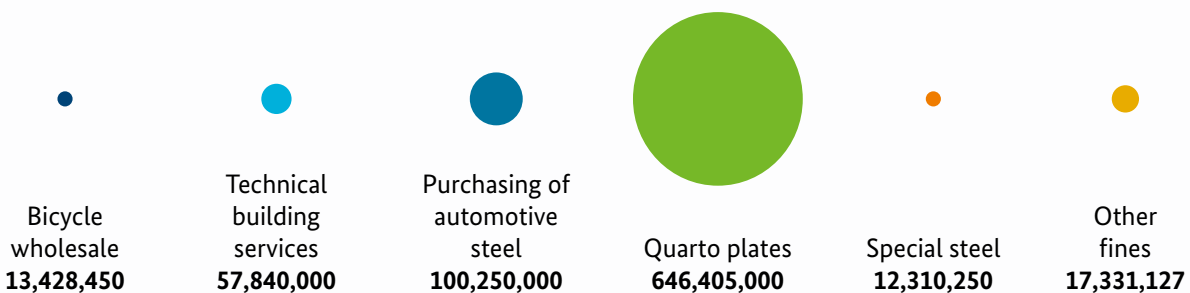
## Prohibition of cartels 2019



## Fines imposed in 2019 in euros

**848.000.000 Euros\***

\* The figures are rounded values.



## Merger control: Bundeskartellamt decisions in 2019



## Figures of the Federal Public Procurement Tribunals in 2019



## Abuse control figures 2019



# THE DIGITAL ECONOMY

**Facebook | Amazon | Mobility platforms | DATEV**  
**Sector inquiry into online advertising | Cooperations in the digital economy**  
**Unamera digital platform | Policy work for the digital economy | Algorithms**

As a truly interdisciplinary topic, the digital transformation affects all sectors of the economy. Many digital markets have a tendency towards concentration or are dominated by a few big players. The Bundeskartellamt started looking into this issue at a very early stage and is now one of the internationally leading and most active competition authorities in this area.

Besides its enforcement activities in specific individual cases the Bundeskartellamt contributes its expertise in discussions on urgent competition policy matters raised by the digital economy. This also goes for the 10th amendment to the German Competition Act (GWB) scheduled for 2020, which is intended to strengthen abuse control in the digital economy.



# Abuse proceeding against Facebook

In early 2019 the Bundeskartellamt imposed on Facebook far-reaching restrictions in the processing of user data. The company was prohibited from combining its users' data from different sources without the users' consent.

The Bundeskartellamt assumes that Facebook has a dominant position on the German market for social networks. The company collects not

only information about the users which is available in Facebook's network itself but also information from Facebook-owned services such as WhatsApp and Instagram, as well as data generated from the surfing behaviour of users on countless third-party websites.

Dominant undertakings must not impose unfair contract conditions on consumers. This applies especially

if the conditions also impede competitors that are not able to amass such a treasure trove of data. The Bundeskartellamt considers that Facebook violated the prohibition to abuse its dominant position by making the use of its social network conditional on the unlimited collection of user data from third-party sources and their combination with the users' Facebook accounts for various purposes.

## Facebook is the largest social network

32 million users per month in Germany

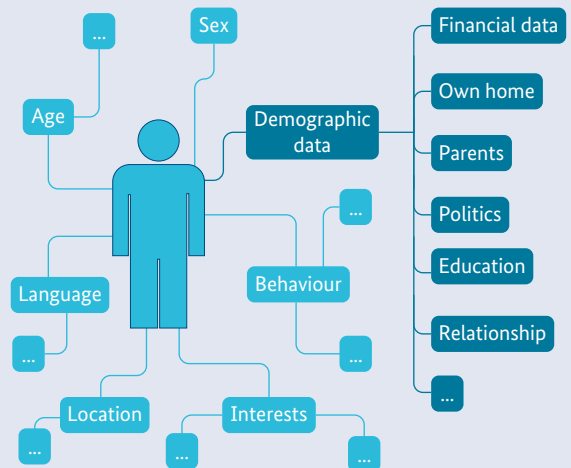
23 million of these use Facebook on a daily basis

Date: End of 2018

In 2018 Facebook achieved a global turnover of approx. 55 billion US dollars.

98 per cent of its turnover is generated through advertising.

## Facebook tracks users in every detail of their lives



### The Bundeskartellamt's decision

For the above reasons the Bundeskartellamt's decision prohibits this extensive collection and use of data without the express and voluntary consent of the users. In view of the network's market power, voluntary consent means that the use of Facebook's services must not be subject to the users' consent to their data being collected and combined in this way. The use of the social network must also be possible without such consent.

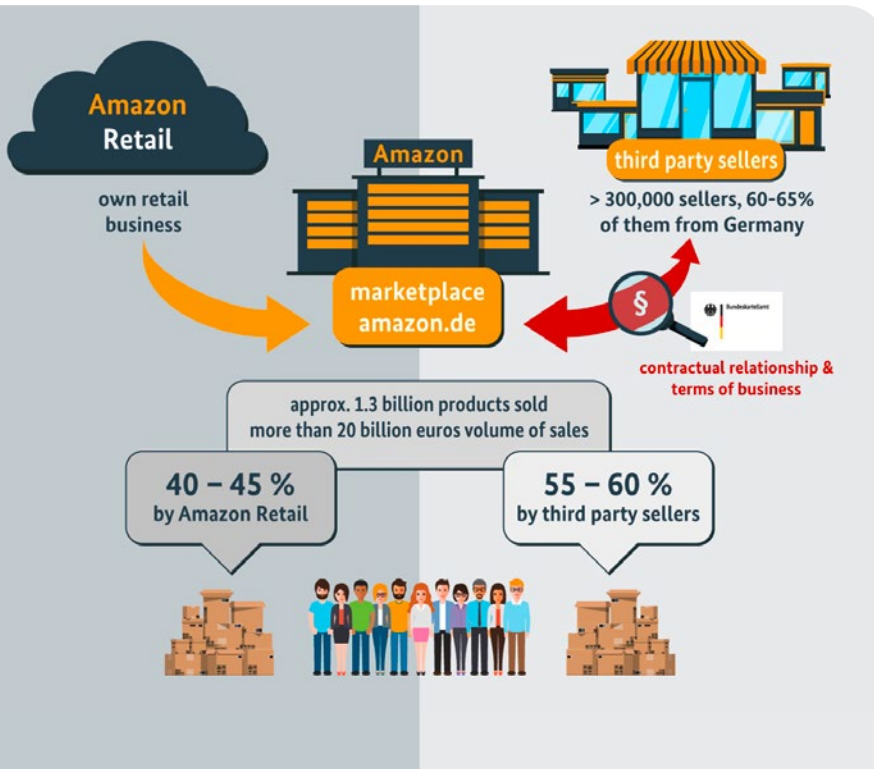
After the Facebook Group's successful emergency appeal of the authority's decision to the Düsseldorf Higher Regional Court, the Bundeskartellamt lodged an appeal on points of law with the Federal Court of Justice in order to clarify key legal issues.

### The judgment of the Federal Court of Justice

On 23 June 2020 the Federal Court of Justice reversed the decision by the Higher Regional Court of Düsseldorf.

The Bundeskartellamt decision is thus immediately enforceable. The court said there are neither serious doubts about Facebook's dominant position on the German market for social networks nor about Facebook abusing this dominant position by leaving its users no choice but to accept the processing of their "off Facebook" data.

# Amazon adjusts its terms of business for its marketplace worldwide



In July 2019 the Bundeskartellamt made Amazon adjust its terms of business for sellers on Amazon online marketplaces worldwide.

The adjustments have led to considerable improvements for the sellers, who often depend on their presence on the Amazon marketplace.

In view of Amazon's phased adjustments, the ongoing sector inquiry into "online user reviews" (see p. 61) and the European Commission's inquiry into Amazon's collection and use of transaction data, the Bundeskartellamt has for the time being deferred further proceedings regarding product reviews and seller ratings, which have been objected to by many sellers.

## Improvements for sellers:

### ■ Liability provisions:

Amazon was almost exempted from any liability towards sellers. Amazon will now be liable to the same extent as sellers for intent or gross negligence for any breach of major contractual obligations.

### ■ Termination and blocking of seller accounts:

Amazon had an unlimited right to immediately terminate and block seller accounts without justification. Now an ordinary termination will require a 30 days' notice. Extraordinary termination and blocking of an account by Amazon is now subject to justification.

### ■ Court of jurisdiction:

Until now Luxembourg was specified as the only court of jurisdiction in the event of legal disputes. The competency for legal disputes can now also lie with national courts.

### ■ Returns and reimbursements:

In cases where Amazon had decided to reimburse a customer, the sellers had to bear the incurring costs. Sellers can now object to the reimbursement if they consider it unjustified and may be entitled to compensation from Amazon. Nevertheless, the relationship between Amazon and the customer remains unchanged.

### ■ Further improvements:

Further improvements were achieved regarding product information and rights of use, confidentiality with regard to sellers' statements and transparency.

## Proceeding on mobility platforms

Innovative, modern mobility concepts and the online sale of travel tickets are on the rise. Digital platforms via which travellers can book all means of transport to their destination from a single source will be an important market in the future.

Late in 2019 the Bundeskartellamt initiated an administrative proceeding against **Deutsche Bahn AG** concerning ticket sales via so-called mobility platforms. In this proceeding the authority is examining whether DB AG as the leading railway group wrongly restricts the visibility and attractiveness of mobility platforms for consumers.

One question in the focus of the Bundeskartellamt's investigation is whether DB AG imposes restrictions on mobility platforms in respect of advertising in app stores, search engines and social networks. Among further aspects under examination are conditions according to which online platforms cannot grant discounts on DB tickets. Another aim of the examination is to clarify to what extent mobility platforms must have access to current departure and delay data of services.



## More competition in the area of tax advisory software

In late 2019 the Bundeskartellamt concluded a proceeding to facilitate more competition in the area of software solutions for tax advisors.

The **German Chamber of Tax Consultants** had commissioned **DATEV** as the only operator of what they refer to as the mandate database. This database is a prerequisite for electronic access to client data and facilitates the legally required authentication of the tax advisor towards the tax authorities.

DATEV's ability to provide both a tax advisory software and the database exclusively from a single source

constituted a considerable competitive advantage over other providers of tax advisory software. With its proceeding the Bundeskartellamt ensured that in future all software providers will be

able to synchronise data with the tax authorities themselves and develop their own authentication solutions in a competitive environment.

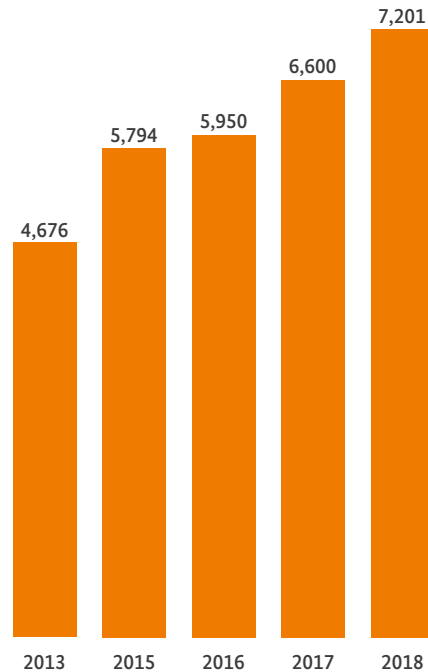


## Sector inquiry into online advertising

Online advertising has generated considerable increases in turnover in the last few years. The market volume in Germany is estimated at five to nine billion euros. Accordingly online advertising is very significant from an economic point of view, both for advertisers and for online content providers. The difficult competitive environment of this market, on which major companies like Google or Facebook are very significant, is also a subject of frequent discussion.

Against this background the Bundeskartellamt is conducting a sector inquiry into this market which was further advanced in the course of 2019. The sector enquiry looks among other factors into the very complex and highly technological system of various forms of online advertising and how they are sold and examines whether a few major players operate in closed systems, as is claimed by some market players, and if so, what significance these systems have. The formal investigation will involve comprehensive talks with all market players.

Costs for digital advertising in Germany from 2013 to 2018 (in million euros)



Source: Statista 2020

## Digital platforms

Many companies approach the Bundeskartellamt for its assessment of cooperations in the digital economy in order to clarify any competition law issues. Digital platforms can make commerce considerably more efficient; however, they must not restrict competition.

### Digital platform for agricultural products can be launched

Early in 2020 the Bundeskartellamt announced that it had no objections to the launch of unamera, a digital platform for agricultural products. The platform is to serve the trade in particular in grain and oil seeds between agricultural trading companies on the one side of the platform and farmers and processors on the other side. As offering standard products on a platform goes hand in hand with increased transparency, which can facilitate collusion, market participants first have to register as providers and customers by creating a customer log in. The trading prices will then be shown anonymously. The contracting partner is disclosed only in the final stage before a contract is concluded. Against this background the Bundeskartellamt decided not to object to the launch of the trading platform.

### The Bundeskartellamt has so far provided guidance i.a. for the following digital platforms:



- **unamera** – an online trading platform for agricultural products (2020)
- **XOM Materials** – a trading platform for steel products (2018)
- **ECEMENT** – a trading platform for cement (2017)
- **ADAMOS** – a platform for the mechanical engineering sector focussing on Industry 4.0 and the Industrial Internet of Things
- **OLF** – a trading platform in the mineral oil sector (2020)

### Antitrust assessment of cooperations in the digital economy



- Digital platforms can make trade considerably more efficient; however, they must not restrict competition.
- Such networks should not result in price-fixing agreements, they should be non-discriminatory and they should not create an excess of transparency.
- For this reason, the antitrust assessment primarily focuses on the type and volume of information exchanged, the publication of market statistics and the disclosure of the trading partners' identities.

# Policy work for the digital economy



Policy work is of outstanding importance especially as regards the digital economy. Besides its role as an enforcer the Bundeskartellamt contributes its expertise in national and international discussions of urgent competition policy issues raised by the digital economy. This also goes for the 10th amendment to the German Competition Act (GWB) which is intended to further strengthen abuse control in the digital economy (see p. 14). In early 2020 the Bundeskartellamt published its comments on the government draft bill of the amendment. The authority also works on conceptual projects.

## Policy work includes

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- Advising the Decision Divisions
- Commenting on new laws
- Cooperation with the academic community
- Participation in conferences and workshops
- Reports and publications

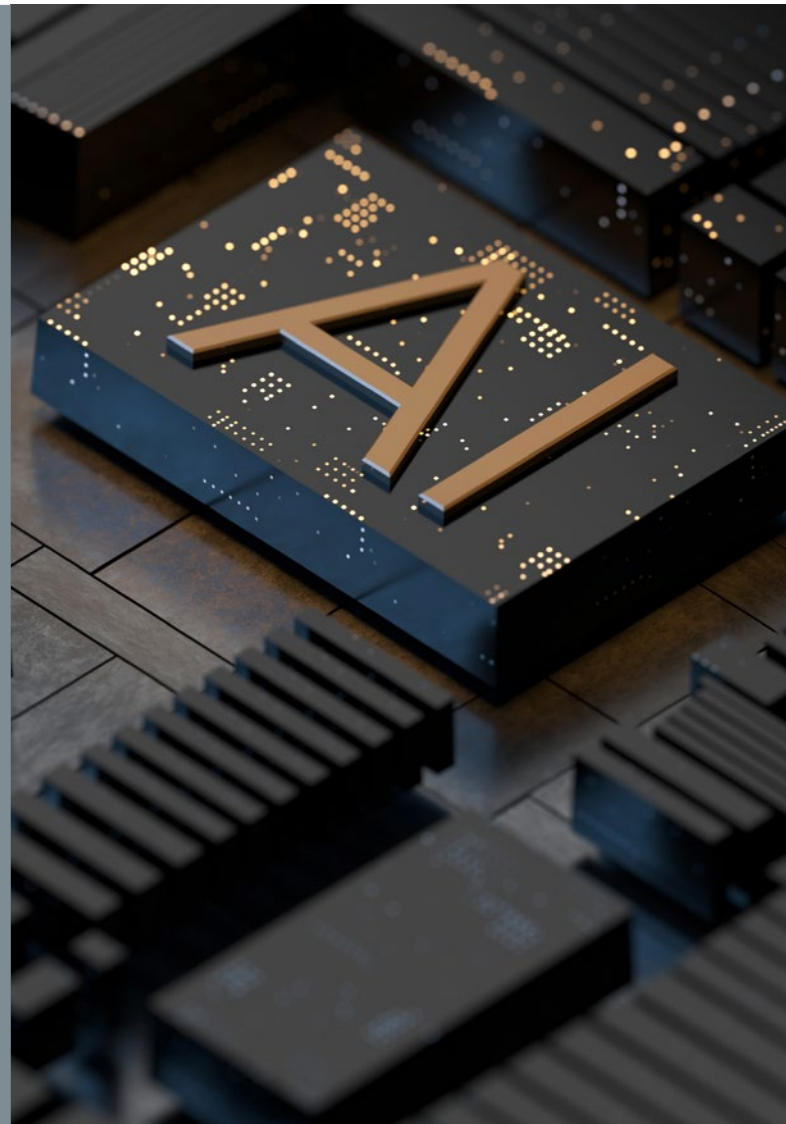
## Algorithms project

One example of the Bundeskartellamt's conceptual work is the study on the effects of algorithms on competition which it published together with the French competition authority Autorité de la concurrence in November 2019. Algorithms are gaining in importance in the digital age. They are used for example for matching and ranking purposes, but also for pricing, and are becoming more and more elaborate. Algorithms help companies become more innovative and efficient.

The increasing use of algorithms by companies has, however, also triggered a broad discussion about their effects on competition and the consequences for society in general. The two authorities worked together to broaden their expertise on algorithms and one of the topics they looked into was whether algorithms could have negative effects on competition. They also considered the practical challenges of examining algorithms.



A summary of the study  
"Algorithms and Competition"  
is available here.



# ENERGY SECTOR



**RWE/E.ON | Report on market power in the electricity generation sector  
Guidelines for the control of abusive practices | Energy monitoring  
Market Transparency Unit for Electricity and Gas**

Since the liberalisation of energy supply in the late 1990s, there has been a continuous surge of competitive activity in the electricity and gas markets. Customers can choose from a variety of offers provided by various energy suppliers. The Bundeskartellamt protects competition on markets that are upstream and downstream of the energy networks. These markets cover in particular the generation, trading and supply of energy to end customers.

## RWE acquires share in E.ON

In February 2019 the Bundeskartellamt cleared plans by **RWE AG** to acquire a 16.67 percent minority shareholding in **E.ON SE**. The acquisition is part of an extensive exchange of business activities between the two companies. At the same time as the Bundeskartellamt's decision the EU Commission cleared RWE's acquisition of further E.ON assets as a further part of the overall transaction. In September the EU Commission also cleared subject to conditions E.ON's acquisition of a majority holding in innogy SE.

The part of the overall transaction examined by the Bundeskartellamt mainly concerned the market for the generation and first-time sale of electricity e.g. to wholesalers, distributors and bulk customers but not the distribution of electricity to the final consumer. The Bundeskartellamt examined this part of the transaction because, unlike the other parts of the overall transaction, it did not constitute a merger (acquisition of control) under European law. However it does fulfil the elements of an acquisition of a material competitive influence on another undertaking

under German law and was therefore subject to notification in Germany.

The Bundeskartellamt's examination of the acquisition, which was conducted in close cooperation with the EU Commission, showed that although RWE is not dominant, it could become so as a result of the nuclear phase-out which is due for conclusion by the end of 2022. However, as the nuclear power plants remaining with E.ON are also to be shut down, any competition concerns against the merger could be ruled out.



## Market power report on the competition conditions in the electricity generation sector

The market power report presented by the Bundeskartellamt for the first time in December 2019 also focused on the further development of the market power situation in electricity generation and the first-time sale of electricity in 2019. This report has so far been part of the annual monitor-

ing report jointly published by the Bundeskartellamt and the Bundesnetzagentur. The market power analysis for the whole of 2019 confirms that RWE is currently still not dominant. However, in contrast to all the other electricity producers, the company is relatively close to the dominance threshold.

As in the RWE/E.ON merger control proceeding (see above) the Bundeskartellamt based its current assessment on considerably extensive data on the actual use of power plants and analysed in greater detail whether and to what extent the capacities of a pro-

ducer are indispensable for meeting the demand for electricity. The analysis shows that only RWE is indispensable for meeting the demand for electricity in a significant number of hours which, however, are not sufficient to assume a dominant position. RWE could in future cross the dominance threshold already in the event of a relatively minor additional reduction of production capacities as a result of the phase-outs of nuclear and now also coal power plants. In this connection the report also analyses the increasing importance of electricity imports for the market power situation in Germany.



## Guidelines for the control of abusive practices in electricity generation

In view of possible developments in the market power situation in electricity generation, effective abuse control can become more important in the coming years. The Bundeskartellamt is well prepared for this. In September 2019 the Bundeskartellamt and the Bundesnetzagentur published guidelines for the control of abusive practices in the electricity generation/wholesale trade sector under antitrust and energy wholesale law. The guidelines set out

in detail the main intention, rules of application and scope of abuse control in electricity generation. They also improve the necessary legal certainty for companies for new investments in power plants.

### Market Transparency Unit for Electricity and Gas

The Bundeskartellamt is also involved in the further expansion and work of the Market Transparency Unit for Electricity and Gas Wholesale Trading (MTU-E) which is based at

the Bundesnetzagentur. The unit's task is to monitor electricity and gas wholesale trading in order to detect any irregularities in price developments at the wholesale level which could be attributed to the abuse of market power.



# 2019 Monitoring Report

In November 2019 the Bundesnetzagentur and the Bundeskartellamt published their joint 2019 Monitoring Report on developments in the electricity and gas markets.

Key findings:

- Electricity generation from renewable energy sources rose by 2.9 percent in 2019 whilst generation from conventional power plants continues to decrease.
- In 2018 average electricity wholesale prices rose significantly.
- The average price of electricity for household customers on 1 April 2019 was around one cent per kilowatt hour higher than in the previous year; the price of gas for household customers and commercial consumers also rose by 1 April 2019.
- On average household customers can choose between 130 electricity and over 100 gas suppliers. Many households can still save money despite increasing prices by switching provider.
- However, the number of supplier switches is stagnating both in respect of gas and electricity customers.
- The share of household customers on expensive default supplier contracts is still too high.





# MARKET TRANSPARENCY UNIT FOR FUELS

The Market Transparency Unit for Fuels (MTU Fuels) monitors the fuel market.

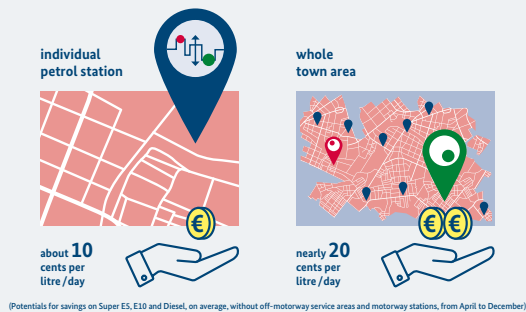
It enables consumers to obtain immediate information about current fuel prices via different channels and a number of information services. The Bundeskartellamt also publishes annual reports on the work of MTU Fuels. These reports can provide consumers with comprehensive information on pricing at the petrol stations which can help them in their choice of petrol station. By using this information, consumers can benefit from lower petrol prices and create competitive impulses with their decision on where to buy petrol.

# 2019 Annual Report

The Bundeskartellamt published the current annual report in April 2020. Its key findings include:

- At one and the same petrol station, average price differences of approx. 10 cents/litre can be observed every day. A comparison of all petrol stations in one town shows that there are even average price differences of up to 20 cents/litre every day.
- The average price differences between towns and rural areas are relatively low. Off-motorway service areas often charge somewhat higher prices (+2-4 cents/litre). Motorists refuelling at a motorway station must expect considerably higher prices (+20-25 cents/litre).

## POTENTIALS FOR SAVINGS AT INDIVIDUAL PETROL STATIONS AND IN TOWN AREAS

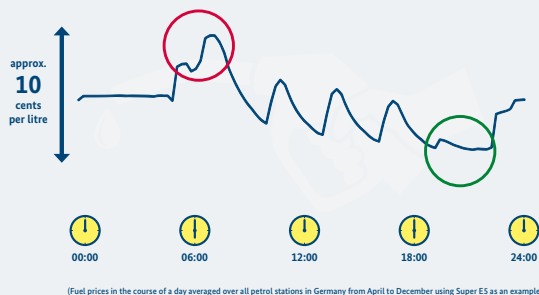


## PRICE DIFFERENCES BETWEEN TOWN/RURAL AREAS, OFF-MOTORWAY SERVICE AREAS AND MOTORWAYS



- Fuel prices are in most cases still highest in the mornings and lowest in the evenings. In between these periods, prices on average vary significantly. They are normally highest between 5 and 8 am and lowest between around 6 and 10 pm. However, even during the evenings when prices are normally at their lowest, customers should check whether prices have increased in the meantime. Towards the night time prices are significantly raised by most of the petrol stations which are still open and remain that high during the night.
- The relative price position of the different petrol stations compared to each other is quite stable. "Cheap" petrol stations mostly remained relatively cheap. "Expensive" petrol stations mostly stayed relatively expensive.

## PRICE DIFFERENCES IN THE COURSE OF A DAY



## Saving money on petrol with MTU Fuels i

- 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 the 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.
- For a list of authorised consumer information services and MTU Fuels' annual reports (in German), please refer to [www.bundeskartellamt.de](http://www.bundeskartellamt.de) → Market Transparency Unit for Fuels

# TRADE



**Food trade | EDEKA/Handelshof | REWE/Lekkerland | real-stores  
Peeters Group/Wilhelm Reuss GmbH (Krüger Group) | Thalia/Mayersche | Sport and Outdoor  
Signa (incl. Karstadt and Kaufhof)/SportScheck | Furniture | Sustainability initiatives  
Purchasing cooperations | XXXLutz/Roller  
Boundaries for demanding special rebates**

Whether it be in food, sports articles, furniture or books, trade covers a diverse range of goods and is always subject to competition control. In addition to brick-and-mortar retail and wholesale, the large internet platforms have long been active players. Last year the Bundeskartellamt had to deal with numerous cases in this multi-faceted sector. The competitive pressure exerted by online sales has posed a special challenge. In its case practice the authority endeavours to ensure that consumers have an adequate number of shopping alternatives with various groups of retailers. It also closely examines the procurement side, i.e. demand on the retail side vis-a-vis the manufacturers and suppliers. Its aim is to ensure effective and fair competition both online and offline ultimately for the consumers' benefit.

## Food trade



The German food retail market is highly concentrated. The four big retailers EDEKA, REWE, Aldi and the Schwarz Group (Lidl, Kaufland) account for more than 85 percent of food sales to the consumer (excluding drugstores, specialist retailers and online sales). This should be clearly distinguished from the food wholesale sector, which sells goods to commercial customers (e.g. retailers, the gastronomy sector and bulk buyers). In assessing both the food retail and food wholesale sectors, the Bundeskartellamt always examines both the sales side and the relationship between the retailers and their suppliers, for example in merger control proceedings or in the control of the abusive practices of powerful or dominant companies.

The Bundeskartellamt has also applied its expertise in the European legislation process. In 2019 the EU Commission introduced its Unfair Trading Practices Directive (UTP) which prohibits certain unfair trade practices of powerful buyers towards suppliers of agricultural produce. This directive is currently being implemented into national law.

## EDEKA can acquire Handelshof

In July 2019, after intensive examination within the one-month first phase of merger control, the Bundeskartellamt cleared the acquisition of **Handelshof** by **EDEKA**.

The findings of the examination showed that the merger ultimately did not pose a problem to competition in any of the regional food wholesale markets. In a nationwide comparison the merged company EDEKA/Handelshof ranks only third in the food wholesale sector behind its competitors Metro and Transgourmet.

Based on the total procurement volume of the German food trade (retail and wholesale) the results of the Bundeskartellamt's investigations showed that the Handelshof Group's share at well below 0.5 percent was so low as to assume that the increase in EDEKA's market position on the procurement markets post merger would have no significant effect on competition.

The food wholesale market includes the sale of food, products from the so-called non-food-segment (espe-

cially drugstore products) and additional product ranges from the non-food segment to commercial customers (e.g. retailers, the gastronomy sector and bulk customers).





## Supply of convenience products – REWE acquires Lekkerland

The Bundeskartellamt conducted extensive investigations in preparation of another merger in the food wholesale sector, namely **REWE**'s acquisition of **Lekkerland**. In July 2019 this merger was referred to the Bundeskartellamt by the European Commission as it affected markets in Germany. The merger was finally cleared in October 2019.

Together REWE and Lekkerland only achieve an unproblematic market share of less than 10 percent in the

food wholesale market. The merger mainly affected the supply of food products to petrol stations and other convenience stores. The parties are together by far the strongest supplier in this market. However the parties' scope for action and setting prices is limited by the strong buyer power of the large oil companies. Operators of small and medium-sized petrol stations also have sufficient alternative suppliers, e.g. suppliers of individual product categories.

After EDEKA, REWE, along with the Schwarz Group, is one of the three largest buyers from manufacturers and suppliers for the food retail and wholesale trade in Germany. However in this case, too, the increase in the procurement volume (based on the entire food trade) following the acquisition of Lekkerland was marginal at less than 0.5 percent.

## Examination of sale of real stores

In several proceedings concerning the food retail sector last year the Bundeskartellamt examined the proposed sale of **real stores**. It initially assessed and cleared the proposed acquisition of the real stores by the property investor Redos. It then began a close examination of plans in particular by EDEKA to acquire 87 real stores from Redos. In addition, from October 2019 it began extensive investigations into the sales markets to examine the current mar-

ket situation in Germany and extended its investigations to include all 277 real stores in order to collect the necessary data for any other proposed acquisitions by further acquiring companies. However, the planned survey of the top suppliers in the individual product categories on the procurement side was ultimately not conducted as the project was not implemented due to the selection of another purchaser by Metro, the owner of the real stores.

Instead of Redos, the investor SCP will now acquire all real stores from Metro. This acquisition has been cleared by the European Commission. The Bundeskartellamt will very closely examine under merger control any further sale by SCP of real stores to food retail companies.



## Merger between manufacturers of chocolate and nougat spreads

In March 2019 the Bundeskartellamt cleared the acquisition of the Dutch **Peeters group**, a manufacturer of chocolate and nougat spreads, by **Wilhelm Reuss GmbH, a member of the Krüger Group** based in Bergisch Gladbach. This merger is of great significance for food retailers because it creates a manufacturer which is by far Germany's leading producer of chocolate and nougat spreads for third parties such as

food retailers and other manufacturers (so-called private labels).

The merger narrows the choice of manufacturers producing private label chocolate and nougat spreads available to food retailers. The authority's investigations have shown, however, that competitors in and outside Germany could easily expand the capacities available to them and that it

would also be possible to switch from manufacturer brand to private label production without any problems. In addition, the role of Nutella which has a share of over two-thirds of the chocolate and nougat spread market, is so important in the German food retail sector that this also limits the two merging manufacturers' scope of action as well as their scope to set prices for private labels.

### Who is competent?

#### Merger control:

The European Commission examines cases with a Community dimension (rule of thumb: if the combined turnover of all the companies involved is higher than five billion euros.) Cases can be referred between Brussels and the Bundeskartellamt in Bonn on application.

#### Cartel prosecution and control of abusive practices:

Cases in which European law is (also) applicable, are notified within the European Competition Network (ECN) and are dealt with by the best placed authority. As a rule the European Commission is to be considered the best placed authority if an infringement affects competition in more than three Member States.

## Sustainability – a real competitive factor

Sustainable production is becoming increasingly important for consumers, companies and politicians alike. The chief aim of sustainable production is to maintain social and ecological standards in the supply chain (from the purchase of raw materials through to the manufacture and distribution of the product). Sustainability is a genuine competitive factor for companies because they can distinguish themselves from their competitors with sustainable products. However, new sustainability initiatives can be expensive and risky for companies. The aims

of such initiatives are often meant to be achieved through agreements between as many companies as possible, which requires that they comply with competition law criteria.

Against this background the Bundeskartellamt is receiving a growing number of requests from companies wishing to cooperate in achieving sustainability. Examples of such initiatives which the authority has had to examine in the recent past include the animal welfare initiative “Tierwohl” and “Fairtrade”.

### Sustainability initiatives

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In examining sustainability initiatives the Bundeskartellamt focuses on the following aspects:

- How great are the restrictions of competition, e.g. alignment of cost components?
- How does this affect the sales prices?
- Is access to the cooperation non-discriminatory?
- Were the sustainability criteria developed in an open process?
- Is there sufficient transparency for consumers (“labelling”)?



## Merger between Thalia and Mayersche bookstore chains

In May 2019 the Bundeskartellamt cleared the merger between **Thalia** and **Mayersche Buchhandlung** after an intensive examination in the first phase. Altogether the two companies operate 288 bookstores in Germany.

The authority’s investigations showed that the merger will result in relatively high joint shares for the parties in the brick-and-mortar retail market for printed books in individual regional markets in North Rhine-Westphalia.

Nevertheless, no major competition concerns were expressed about the merger either from the perspective of consumers or book publishers in the course of the authority’s detailed investigations.

Consumers will still have good shopping alternatives with growing online sales and a number of small and medium-sized booksellers in the traditional book retail sector.

### Book resale price maintenance

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- The German Book Resale Price Maintenance Act (BuchPrG) stipulates that book sales in Germany are subject to resale price maintenance.
- Competition in book retailing is therefore primarily not on prices but on the quality of offers, e.g. range of selection, advisory services and shop design, which also offers opportunities for smaller bookstores.



## Turnover development in e-commerce

(turnover in offline and online retailing in Germany in billion euros)



IFH Köln, \*forecast

Offline sales Online sales

## Signa (incl. Karstadt and Kaufhof) can acquire SportScheck

In February 2020 the Bundeskartellamt cleared the acquisition of **SportScheck GmbH** by **Signa Retail GmbH** (Austria). With Karstadt Sports, the Galeria Karstadt/Kaufhof department stores and several specialist retailers like the Tennis-Point Group and the Outfitter Group, Signa Retail is active in the sport and outdoor retail sector. Up until now SportScheck belonged to the Otto Group. With its 19 stores and online shop, the company is a significant retailer in this sector.

The authority's investigations showed that a large number of competitors, including specialists and the direct retailing operations of the sports goods manufacturers, offer local shopping alternatives for consumers. Online sales pose some of the closest competition for most brick-and-mortar outlets.

Ultimately the merger project did not give rise to any competition law concerns.



# Major furniture purchasing cooperation prevented

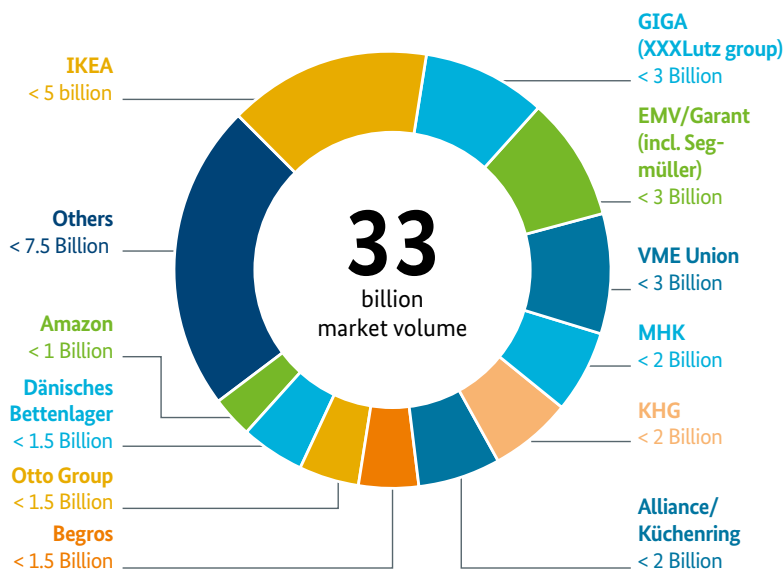
The Bundeskartellamt prevented the merging of the furniture purchasing cooperations **VME Union GmbH** and **KHG GmbH & Co. KG** (Krieger/Höffner Group). VME Union (including the MHK kitchen trade association which cooperates with VME) is the largest purchasing cooperation in the German furniture sector.

Together with KHG the new association would have gained market shares in the German furniture sector and in particular in the kitchen furniture sector, which would have clearly exceeded the limits for admissible purchasing cooperations under competition law. According to current European-wide standards, purchasing cooperations potentially restrict competition if their market shares exceed 15 percent. As the merger project was abandoned by the parties, the Bundeskartellamt discontinued its administrative proceeding.



## The big players in the furniture sector

Domestic turnover in furniture retail in euros\*



\* According to information available to the BKartA, partly supplemented by information from official sources (2018)

### Purchasing cooperation in furniture sector



- The German furniture sector is characterised by large chains like IKEA and XXXLutz on the one hand and a large number of small and medium-sized retailers on the other.
- In order to be able to compete with the “big” market players both on the purchase and sales side, most furniture retailers are members of purchasing cooperations.
- This is acceptable and appropriate under competition law. However, these cooperations should not become too large because this would create disadvantages for consumers and small and medium-sized furniture manufacturers.



## XXXLutz plans to acquire Roller

In the area of merger control the Bundeskartellamt also closely monitors any further increase in concentration in the furniture sector. In second phase proceedings it is currently examining the proposed acquisition by **XXXLutz KG** of 50 percent of the shares and joint control of **Roller GmbH & Co. KG** and other companies of the Tessner Group.

Following a partial referral from the EU Commission, the Bundeskartellamt initiated a second-phase proceeding in this case in spring 2020 which extended the examination period. The authority is extensively examining the effects of the merger project on the supply side for consumers. The EU Commission is assessing whether the merger will create excessive buyer power which would be to the detriment of the primarily small and medium-sized manufacturers.

## Boundaries for special rebates

The demand for special rebates (“wedding rebates”, “integration bonuses”, “concentration bonuses”, etc.) from suppliers is becoming a frequent phenomenon following the acquisition of smaller competitors or mergers between trade associations in this sector. These demands can raise competition concerns if the new company or the new association has a powerful or even dominant market position and no objectively viable service is offered in return, e.g. additional exhibition space or guaranteed listing.

In many cases such demands are even made during a business year within the framework of ongoing supply contracts, which means manufacturers have to worry about

their products being de-listed in the following year if they do not agree to grant a special rebate.

In September 2019 the Bundeskartellamt had taken up the general anniversary rebate demanded by the **XXXLutz Group** to celebrate the company’s 75th anniversary and asked the company to comment. At the authority’s insistence XXXLutz abandoned this general demand from its suppliers of a 7.5 percent rebate to be granted over two three-month periods in 2020 and instead has now individually negotiated the rebate with each supplier and agreed on services in return for the rebate. In view of this the Bundeskartellamt has decided not to further examine the facts of the case.

### Federal Court of Justice’s decision of principle on “wedding rebates”

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- After its takeover of the “Plus” stores in 2008, EDEKA had made one-sided demands of its suppliers.
- These included demands made with retroactive effect, the “cherry picking” of individual preferential conditions and the general and unjustified demand of substantial special payments.
- The Bundeskartellamt had selected the demands on sparkling wine manufacturers as an example and prohibited them in its

2014 decision of principle because they violated the so-called “Anzapfverbot” which prohibits retailers from demanding unjustified benefits from their suppliers.

- In 2018 the Federal Court of Justice confirmed the Bundeskartellamt’s decision in key points. This was an important signal to the entire food retail sector.

# SPORT



DOSB/IOC | DFL media rights  
Sky/DAZN | 50+1 Rule of DFL

Professional sport is of great economic value. The organisation of various types of sport by associations and other organisations is therefore always of relevance to competition law. Markets closely related to professional sport like advertising and the media sector also raise competition issues.

## More advertising opportunities for athletes competing in the Olympic Games

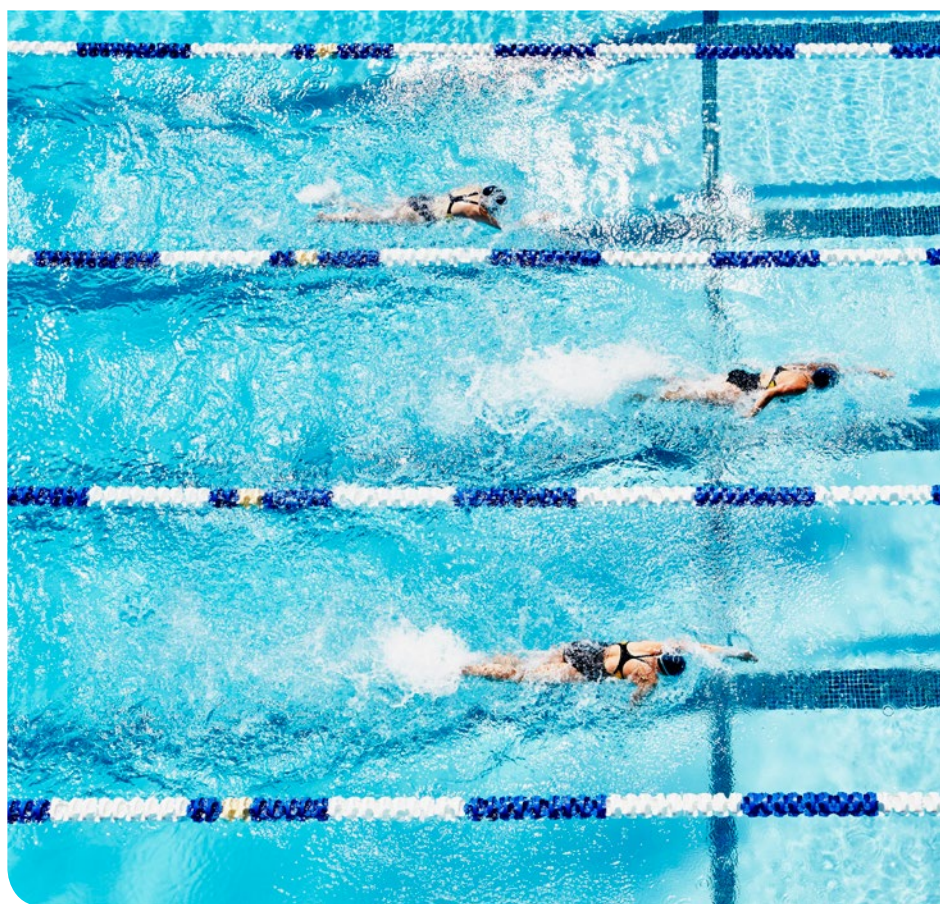
At the beginning of 2019 the Bundeskartellamt obtained further advertising opportunities for German athletes from the **German Olympic Sports Confederation (Deutscher Olympischer Sportbund, DOSB)** and the **International Olympic Committee (IOC)** for the duration of the Olympic Games. Due to the competition concerns expressed by the Bundeskartellamt, DOSB and IOC undertook appropriate commitments to considerably relax the extensive restrictions on advertising which had previously existed under rule 40 bye-law 3 of the Olympic Charter.

According to the Bundeskartellamt's preliminary assessment the Olympic Movement has a dominant position on the market for the organisation and marketing of the Olympic Games. The Bundeskartellamt examined whether the IOC and DOSB as members of the Olympic Movement had abused their market power by imposing far-reaching advertising restrictions on German athletes participating in the Olympic Games. Rules of any sport association are also generally subject to national and international competition law insofar as they refer to economic activities. However this does not apply if they serve legitimate objectives and are thus proportionate to the legitimate objectives pursued. Athletes nominated for the Olympic Games must undertake towards the DOSB and the IOC to observe the Olympic Charter in order to be admitted to

the games. Pursuant to rule 40 No.3 of the Olympic Charter, no athlete participating in the Olympic Games may allow his person, name, picture or sports performances to be used for advertising purposes during the Games and several days before and after the Games.

However, as the games mark the height of their careers, self-marketing during the games plays a very important role. As the possibilities of exemption from the rule were very restricted, it was barely or virtually

impossible for athletes to organise advertising activities with their individual sponsors. Even if the prevention of legally inadmissible forms of advertising to ensure that the games can take place on a regular basis could be deemed a legitimate aim, such an extensive ban on advertising was not considered proportionate. With the easing of rule 40 bye-law 3 there are now clearly more advertising possibilities, including the activities of athletes on social media channels and for the use of certain "olympic" terms and pictures from other competitions.



# Award procedure of media rights to football matches complying with competition law

In March 2020 the **German Football League (DFL)** undertook towards the Bundeskartellamt to observe comprehensive criteria when awarding media rights for the matches of the Bundesliga and Bundesliga 2 from the 2021/2022 season onwards. DFL had offered various self-commitments, in particular a so-called 'no single buyer' rule, to dispel the authority's competition law concerns. In this way the Bundeskartellamt has ensured that no single bidder can exclusively acquire all live rights and act as a monopolist in providing coverage for viewers.

In principle, DFL's joint selling of the media rights relating to the individual football matches represents an anti-competitive agreement. However, under German and European competition law such an agreement

can be exempted from the ban on restrictive practices if it results in specific advantages for which such a restraint of competition is indispensable. As in other national leagues and at the international level, it is acknowledged in Germany that the joint selling of media rights by a central association involves advantages for consumers and can thus be acceptable under competition law if certain preconditions are met.

As in the previous award of media rights the Bundeskartellamt has called for rules which ensure that no single supplier can exclusively acquire the rights to all matches and thus enable competition between different TV and streaming providers. The award of rights should result in more than one supplier broadcasting football matches. This requirement does not

automatically mean that viewers need more than one subscription to be able to view all the matches. As in the previous award procedure DFL still has several options for meeting the authority's competition law requirements without viewers who would like to watch all the matches live having to purchase different subscriptions.

According to the marketing model proposed by DFL for the 2021/2022 to 2024/2025 seasons, the broadcasting rights are to be sold within the framework of an auction for live games in four packages. Every package covers all transmission channels (satellite, cable, internet). It is not possible for a single bidder to acquire all of the four packages exclusively (no single buyer rule). DFL can grant individual packages of rights to different acquirers if they submit bids to this effect. Should one acquirer nevertheless win the award for all four packages of rights, DFL will grant two of the four packages on a co-exclusive basis to a second acquirer for OTT coverage.



## Award procedure for Champions League broadcasting rights - Proceeding against Sky and DAZN discontinued

In April 2020 the Bundeskartellamt discontinued its proceeding against **Sky** and **DAZN** for discretionary reasons; the proceeding had been conducted due to suspected anti-competitive agreements in connection with the award of UEFA Champions League broadcasting rights.

Sky and DAZN had been suspected of agreeing prior to the award procedure to split the broadcasting rights for Germany for the seasons 2018/2019 to 2020/2021 between them. At that time Sky was the only company to acquire the broadcasting rights for all matches and then sublicensed some of the rights to DAZN. One of the consequences of the award procedure was that Champions League matches were no longer broadcast live on free TV.

Although Sky and DAZN's conduct at first seemed problematic under competition law, the Bundeskartellamt decided to discontinue the proceeding. New players entering the market are increasing its dynamism, which was again demonstrated by the award procedure in early 2020 for Champions League broadcasting rights for matches as from the 2021/2022 season. What is more, the effects of the COVID-19 crisis on the current football season in Germany, as in national and international football, made near-term market developments hardly predictable in early 2020. For this reason, it would currently be particularly difficult to assess the effects of an intervention under competition law.

Unlike collusion prior to the award procedure, subsequent cooperations between broadcasters after the bidding



and award processes are permissible under certain circumstances under competition law. In case of doubt these cooperations have to be assessed beforehand by the competent competition authorities.

## Examination of DFL's 50+1 rule

The Bundeskartellamt is currently examining whether the so-called 50+1 ownership rule in the statutes of the **German Football League (Deutsche Fußball Liga, DFL)** violates German and European competition law.

The 50+1 rule stipulates that if the professional players division is outsourced into an independent capital company, the parent club retains the majority of the voting rights in the independent company. This applies in particular if the parent club holds more than 50 percent of the voting shares plus at least a further voting share in the

shareholders meeting (hence 50+1 rule). The purpose of this rule is to prevent commercial investors from acquiring the majority of the voting rights and consequently having a strong influence on the strategies of the capital company.

On request the Presidency of the DFL can grant an exception from the 50+1 rule. An investor can be exempted from the rule if it has provided uninterrupted and substantial support for the parent club's football for over 20 years.

The Bundeskartellamt is examining in an administrative proceeding whether the application of the 50+1 rule in the annual licensing process and process for the approval of an exemption from the 50+1 rule violate competition law. The proceeding is still ongoing.



# CONSUMER PROTECTION



With the 9th amendment to the German Competition Act (GWB) which came into force in early June 2017, the Bundeskartellamt was for the first time granted competences in the area of economic consumer protection. Consumer law provisions include rules on unfair competition and the Law governing General Terms and Conditions of Business. Public consumer protection is to be intensified in order to address possible shortcomings in the enforcement of consumer rights, especially in the digital economy. The Bundeskartellamt can now conduct sector inquiries into consumer law issues and also act as an *amicus curiae* (“friend of the court”) in civil consumer protection actions. However, the authority has as yet not been granted powers to intervene in such matters e.g. order the termination of the infringement.



## Comparison websites

In April 2019 the Bundeskartellamt published the results of its sector inquiry into comparison websites. A large number of website operators were questioned on topics such as rankings, financing, corporate links, reviews

and market coverage. The inquiry uncovered consumer unfriendly tricks practised by some of the websites and gives advice on how best to use comparison websites.

### Consumers should pay attention to the following points when using comparison websites:

- Some key providers are not included in the comparison.
- Some websites leave out certain offers in their initial rankings.
- Providers can influence positions in the ranking list by payment.
- Some websites display selected offers above the actual ranking ("position 0") and receive payment for this from the providers.
- Sometimes the websites indicate shortages, benefits or exclusive offers in a misleading manner that may put consumers under pressure.
- Services can often only be rated by users who were able to procure them via the website.
- Comparison websites in all sectors cooperate with one another with the result that different websites show

identical search results which could simply have been copied.

Video with tips for consumers using comparison websites:



## Smart TVs

In July 2020 the Bundeskartellamt published its final report on its sector inquiry into smart TVs. Smart TVs are connected to the internet which not only means that viewers receive data and TV programmes but also that their user data is transmitted.

The sector inquiry has shown that smart TVs can collect personal usage data in many forms. Almost all the smart TV manufacturers use privacy policies that have serious shortcomings in terms of transparency and thus violate the General Data Protection Regulation.

The Bundeskartellamt therefore demands that the manufacturers provide consumer information that is easily understandable and recommends legal regulations especially for updates and liability issues.

## Online user reviews

A third sector inquiry in the area of consumer protection deals with online user reviews. As well as prices, online user reviews are often a key criterion influencing consumers in their online purchases. However there are many indications that user reviews are frequently faked or manipulated.


The Bundeskartellamt is therefore examining how ranking systems work to find out how trustworthy they are and whether they violate consumer

law. It has therefore questioned numerous internet platform operators and companies offering review services.

The results of the inquiry were published in June 2020 in a consultation paper. The affected market participants are invited to comment on the results of the inquiry. A conclusive report on the sector inquiry is due to be published in the autumn of 2020.



# FEDERAL PUBLIC PROCUREMENT TRIBUNALS

A modern conference room with a long table, chairs, and large windows overlooking a city and mountains at sunset. The room is dimly lit, with the primary light source being the natural light from the windows. The table is set with water bottles and papers. The windows provide a panoramic view of a city and mountains under a sunset sky.

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. The focus of the public procurement tribunals in 2019 lay with review proceedings concerning the procurement of security and cleaning services, the award of contracts for employment services, the maintenance and modernisation of transport systems, hydraulic engineering projects and procurements in the areas of security and defence.

### The Federal Public Procurement Tribunals in figures

- In 2019, 105 applications were filed for the initiation of review proceedings.
- Around 55 percent of the cases concerned the award of contracts for public supplies and services, followed by construction contracts which accounted for 28 percent of the cases. These were followed by the award of contracts for defence and security services and by sectoral contract services.
- 41 decisions were taken, 27 of which in favour of the public contracting entities and 14 in the applicants' favour. In all other cases the review proceedings were terminated without a decision on the merits either because applications were withdrawn (34) or cases were concluded by other means (30).
- In 12 cases the decisions of the public procurement tribunals were immediately appealed to the Düsseldorf Higher Regional Court.

## Framework agreement for the procurement of office furniture

In 2019 the Public Procurement Tribunals had to decide in a case in which a major public contracting entity had awarded a new framework contract for the procurement of office furniture although the old contract had approximately another two years to run. However the contract was re-awarded because the maximum supply quantity which had been specified by the contracting entity had already been reached.

Framework contracts for commodities such as office material are an effective tool under procurement law because the contracting entity can call off any quantity it requires based on its current needs. However, the European Court of Justice has already decided that unlimited call-off orders from a framework contract are inconsistent with the principle of unrestricted competition.

The previous supplier now claims in the review proceeding that a new award would be unlawful and argues that the contracting entity is obliged to use up the designated period of the old framework contract first.

However, the public procurement tribunal fully confirmed the position of the public contracting entity. It also raised the fundamental question of whether an application for review aimed at preventing a tender could be at all admissible. According to the general principles of procurement law it was appropriate for the contracting entity to issue a new award after the pre-defined maximum quantity had been reached. This was supported by the decision of the European Court of Justice, which also justified the re-award procedure in the present case. The results of this proceeding will be presented in a report upon conclusion of the tribunal's investigations.

## Statutory Fee Schedule for Architects and Engineers

In 2019 a decision by the European Court of Justice attracted much public attention. The Court decided that the parts of the Statutory Fee Schedule for Architects and Engineers (HOAI) which set binding fees violated European provisions. According to the Court, these regulations could hinder offices, especially outside Germany, from establishing an office in Germany.

This decision was already taken into account in a review proceeding of the public procurement tribunals concerning a functional specification for planning services, in which the binding fee structures had been accepted as a mandatory specification. The functional specification was thus declared as an infringement of public procurement law.

### Public procurement law



Public procurement law defines the rules which have to be observed by public contracting entities in procurement procedures and the possibilities which suppliers have to defend themselves against any violations of procurement law. The aim of procurement law is to ensure the efficient use of budgetary resources whilst at the same time protecting fair competition between the companies and guaranteeing free market access to the European Single Market.

# COMPETITION REGISTER FOR PUBLIC PROCUREMENT

The Competition Register is intended to quickly and electronically provide contracting authorities, sector contracting entities and concession grantors with information on the relevant law violations committed by senior staff of companies for their procurement procedures. The register is scheduled to be operational by the end of 2020.

# Reporting and inquiry obligations of the Competition Register

The reporting and inquiry obligations of the Competition Register will ensure that public contracts and concessions are only awarded to those companies which have not committed any serious offences and have acted fairly in competition.

The reporting and inquiry obligations will come into effect only once the ordinance comes into force. Contracting authorities will then be obliged to consult the register on whether an entry exists before awarding contracts with a minimum

estimated value of 30,000 euros net. However, the decision on whether to exclude a company listed in the Register from the procurement procedure will remain with the contracting entity.

## Strengthen the preventive effect of the law

A company whose senior staff have committed serious economic offences should not be able to benefit from public contracts and concessions. Under the public procurement law provisions under Sections 123 and 124 GWB companies are thus to be excluded from participating in procurement procedures on compulsory or facultative grounds if their senior staff have committed certain crimes or administrative offences.

The data stored in the Competition Register is intended to quickly provide contracting authorities, sector contracting entities and concession grantors with the necessary information to reliably examine the grounds for exclusion. The purpose of the Competition

Register is therefore to help fight economic crime. This transparency for contracting authorities will increase the preventive effect of criminal and administrative offence law, including competition law.

Search enquiries in the Competition Register can only be made by contracting authorities in procurement procedures. The register is not accessible to the general public. Entries of companies in the Register will be deleted after the expiry of certain periods (three or five years).

Companies listed in the Register will also have the opportunity to apply for premature deletion from the register once they have implemented suitable remedies ("self-cleaning").

### Award of contracts by state agencies



- The State is an important contractor for many companies.
- In the future contracting authorities will be obliged to electronically consult the Competition Register before they award any contract with a minimum value of 30,000 euros net.
- They will have the possibility to consult the register if the value of the contract is less than this amount.
- If the company concerned is listed in the register, it is for the contracting authority to decide whether the company should be excluded from the procurement procedure.

*The Competition Register is to help fight economic crime and antitrust violations. This new transparency will strengthen the preventive effect of criminal and competition law.*

# IMPRINT

## **Published by**

Bundeskartellamt  
Kaiser-Friedrich-Straße 16  
53113 Bonn  
[www.bundeskartellamt.de](http://www.bundeskartellamt.de)

## **as of / status**

July 2020

## **Print**

Brandt GmbH, Bonn

## **Design and production**

ORCA Affairs GmbH, Berlin

## **Photo credits**

Getty Images:

Cover: Orbon Alija/E+; p. 6: dem10/iStock; p. 9: fotograzia/Moment; p. 10: skynesher/E+;  
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Other references:

Bundeskartellamt

## **Text**

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Kaiser-Friedrich-Straße 16  
53113 Bonn

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It is distributed free of charge and is not intended for sale.

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