

Annual Report 2021/22

Bundeskartellamt



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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CONTENTS

Message of greeting – Dr Robert Habeck	4
Foreword – Andreas Mundt	6
Tasks and organisation	8
Cartel prosecution	16
Avoiding concentrations – preserving diversity of competition	22
Facts and figures	32
The digital economy	34
Mineral oil sector	40
Electricity & gas markets	44
Trade	46
Sustainability & competition	50
Sport & media	52
Consumer protection	56
Federal Public Procurement Tribunals	58
Competition Register for Public Procurement	60
Publication details	62



Message of greeting - Dr Robert Habeck

Federal Minister for Economic Affairs and Climate Action

The political year of 2022 has been characterised by Russia's war of aggression against Ukraine. Apart from the catastrophic consequences of the war for the people in Ukraine and the international political order, this war has also major economic effects. In Germany we are feeling these effects, for example when we look at the sharply increased energy prices and high fuel prices. As a reaction to this, we are expanding the competences of the Bundeskartellamt's Market Transparency Unit for Fuels to enable the authority to intensify its monitoring of refineries and the trade in fuels.

When I visited the Bundeskartellamt on 21 February 2022, I presented the competition policy agenda of the Federal Ministry for Economic Affairs and Climate Action up to 2025, which includes 10 points for sustainable competition as a pillar of the socio-ecological market economy. A key point for me is an updated ordo-liberal and competition policy. Competition policy must be able to use suitable tools to analyse market structures. Ordo-liberal policy means dismantling unnecessary privileges and subsidies that serve powerful individual interests.

The war in Ukraine has accelerated inflation, which now poses an even greater challenge for economic policy. The connection between inflation and competition is not unequivocal. However, certain mechanisms are obvious: Competition in innovation can make prices fall drastically. In some markets competition policy can restrain exploitative pricing. And in competitive markets tax reductions should be passed on to consumers. Conversely, the lack of competition has significant negative consequences which will mainly be felt by consumers. This is why we will introduce the 11th amendment to the German Competition Act (GWB) before the end of this year in order to expand the Bundeskartellamt's scope for action. Sector inquiries are to become even more effective, and we will create a possibility for unbundling irrespective of the finding of abuse in order to bring competition to highly consolidated markets. We will also reduce obstacles to the disgorgement of benefits under competition law and thus increase the overall effectiveness of competition law enforcement.

As in recent years, competition policy will continue to focus on the digital markets in the years to come. Here we have to deal with complex business models and technologies which are in permanent flux. There are manifold possibilities for market abuse and distortions of competition. With the Digital Markets Act (DMA) we have found an effective response at the European level which will enable us to tackle future challenges more effectively. After the DMA has entered into force, the Bundeskartellamt is to remain capable of addressing abusive behaviour by companies of paramount significance for competition across markets. Moreover, with the Regulation on foreign subsidies distorting the internal market we will strengthen fairness in global competition.

Beyond the scope of the 11th amendment to the GWB, we will also strengthen competition policy by introducing further changes to the GWB in this legislature. One element in this process is to improve the Bundeskartellamt's competences in the area of consumer protection in order to put the authority in a position to investigate and terminate significant, persistent and repeated infringements of protected economic consumer rights. Since October 2017 the Bundeskartellamt has conducted a number of sector inquiries into consumer law issues and addressed the problems that were found.

We also intend to increase legal certainty for sustainability in competition law. Here we need to develop a legal framework which promotes sustainable economic practices to support the green transformation. Public procurement is to act as a driver of transformation towards a socio-ecological market economy. The Competition Register for Public Procurement launched by the Bundeskartellamt in December 2021 represents an important milestone for fair competition and sends a strong signal against corruption.

As a competition authority the Bundeskartellamt plays an important role in enforcing the regulatory competition law framework. This report reflects the valuable work done by the Bundeskartellamt and its great importance for economic policy. If we take ordo-liberal policy seriously, we must strengthen those who ensure that market participants play by the rules in order to enforce fair competition.

I thank all staff members of the Bundeskartellamt for their excellent work in the last year and wish you continued success in your efforts to ensure fair competition.

Rost Hass



Foreword - Andreas Mundt

President of the Bundeskartellamt

Competition is not just another buzzword, it is the basic law of the social market economy, as Ludwig Erhard once said. In these times of turmoil, we as the guardians of competition have a particular responsibility to act upon our mission.

Russia's terrible war against Ukraine and its devastating consequences bring along market uncertainty, scarce resources and price increases in many industries. Since early 2022, inflation has been putting high pressure on consumers. When, after the outbreak of the war, prices at petrol stations, crude oil prices and refinery prices started to diverge, we launched an ad hoc sector inquiry to shed some light on this development. Oil companies have been under close scrutiny by the Bundeskartellamt, also when it comes to passing on reductions in the tax burden on fuel prices introduced by the Federal Government to consumers. Companies must not use the crisis to generate excessive profits. We are therefore taking a close look: Illegal agreements or abuse of market power will not be tolerated.

These are some examples from the past year showing the effectiveness of our instruments: In the area of cartel prosecution we imposed fines amounting to more than 100 million euros on companies in industries like stainless steel, musical instruments or school bags. In the area of merger control, we reviewed more than 1,000 merger projects, among them ten in complex second phase proceedings, for example in the food retail, petrol station or newspaper sector. In more than two years of living through a pandemic, we have clearly seen how important it is to keep markets open and make sure that no single party obtains excessive market power. The major digital corporations have become even larger, because many aspects of our lives have been transferred to the digital space. For this reason, the digital economy has been our key focus for years. We have conducted many proceedings and achieved important successes. In early 2021 the German legislator equipped us with a new tool. Extended abuse control of major digital corporations allows us to intervene quicker and more effectively against anti-competitive practices. We are pioneering at the international level in this regard and immediately initiated several proceedings. We have achieved first results and we expect to see more in the near future. Our effectiveness has increased significantly as a result of the new tool.

However, we also consider ourselves a partner for businesses rather than exclusively a sanctioning or prohibiting authority. During the pandemic, we provided unbureaucratic assistance to companies that had to work together as a consequence of the crisis. We continue to provide such assistance in view of the current energy market crisis. Our case practice in reviewing sustainability cooperation projects is growing. We are advocates of initiatives actually promoting sustainability without eliminating competition. Competition and sustainability thus truly go hand in hand. It is not a coincidence that topics like sustainability or of course the digital economy have become part of our everyday work. In the course of our history, we have again and again successfully assumed new tasks. Examples of this include digital consumer protection or the digital Competition Register for Public Procurement, which was launched last year and has already become an effective deterrent against white-collar crime. While fulfilling these new tasks we always remain the guardians of competition, which is part of our core DNA.

The Federal Government is currently pursuing an ambitious competition policy agenda. It is promising to see that our role is to be strengthened, both in terms of competition protection and consumer protection. The Federal Minister for Economic Affairs and Climate Action recently announced the 11th amendment to the German Competition Act (Gesetz gegen Wettbewerbsbeschränkungen — GWB). The proposals include important adjustments to existing tools: Sector inquiries are to be strengthened and existing obstacles to the disgorgement of benefits are to be reduced. Giving the Bundeskartellamt the ability to divest companies outside the scope of remedies for abusive conduct could be an effective last resort on highly consolidated markets. We expressly welcome the strengthening of competition law and are actively involved in the process in order to become even more effective in the future.

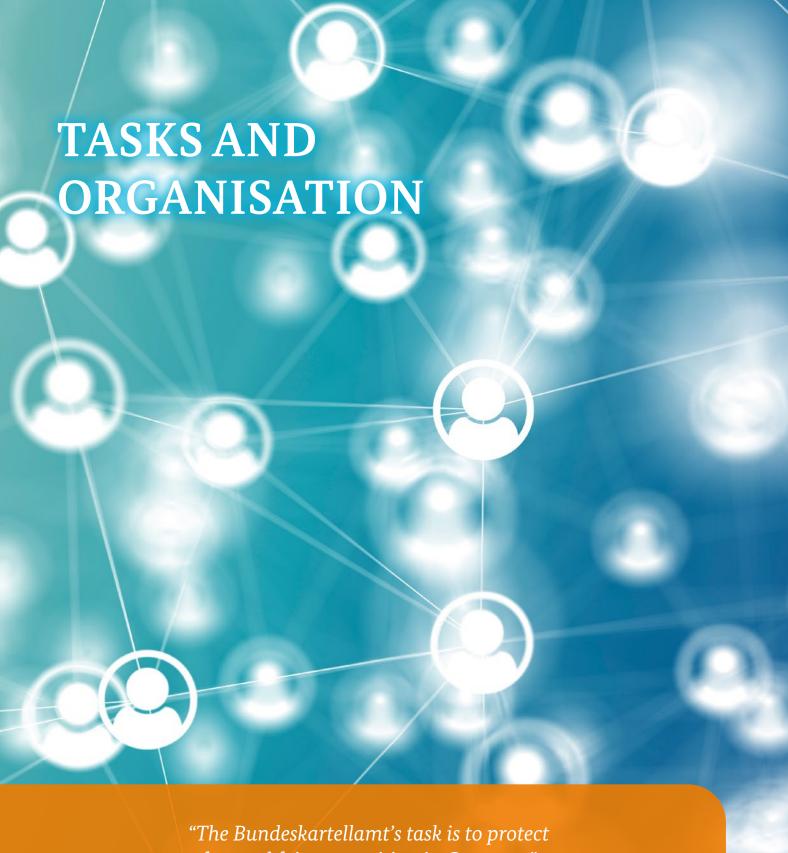
Just how much it pays off to protect competition can be seen everywhere in the world. In May 2022 we organised the Annual Conference of the International Competition Network in Berlin and welcomed more than 450 participants from over 80 countries. The conference provided a platform to exchange experiences and learn from each other. It also facilitated fresh impetus from other areas like the economy, research and politics. Competition thrives on diversity and competition law is always in motion.

Our annual report provides an overall view of all the areas of our work.

I hope you will enjoy reading the report.



Andreas Mundt



free and fair competition in Germany."

Andreas Mundt,

The Bundeskartellamt is the most important competition authority in Germany. It is an independent higher federal authority assigned to the Federal Ministry for Economic Affairs and Climate Action. The legal framework for the Bundeskartellamt's work is the German Competition Act (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 merger threatens to significantly impede competition, it has to be prohibited or may only be cleared subject to conditions.

Control of abusive practices

Companies holding a dominant position are exposed to little, if any, competitive pressure. Companies may have relative or superior market power even if they do not hold a dominant position. As a result they enjoy a large scope of action vis-à-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 regulatory tool in the absence of competition.

With an amendment to the law in 2021, a new instrument was added to the authority's toolbox for dealing with abusive practices. The new provision set forth in Section 19a of the German Competition Act (GWB) is targeted in particular at large digital platforms and enables the Bundeskartellamt to act earlier and more effectively against abusive practices.

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 nondiscriminatory procedures in line with the criterion of the most economically favourable offer. The Public Procurement Tribunals at the Bundeskartellamt are responsible for reviewing tender procedures which are carried out by the Federation or public contracting entities attributable to the Federation.

Consumer protection

The Bundeskartellamt can conduct sector inquiries into consumer protection issues especially those raised by the digital economy if there are any indications that consumer law provisions have been violated. As a socalled "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.

Competition Register for Public Procurement

Companies which have committed serious economic offences are entered in the electronic Competition Register. Under public procurement law such companies should not be able to benefit from public contracts and concessions. The Competition Register allows contracting authorities to check in a single nationwide electronic search whether a company is entered in the Competition Register and whether it is to be excluded from an award procedure. In this way, the register plays an important role in combating economic crime.

Key Facts

- President: Andreas Mundt
- Vice President: Prof. Dr Konrad Ost
- Budget 2021: 43.5 million euros
- 408 staff
- of which 162 are legal experts and economists
- five trainees
- 207 female staff/201 male staff

Ban on cartels



Fines amounting to 105 million euros imposed on 11 companies/ associations and 8 natural persons

Merger control



- Approximately 1,000 notifications
- 10 second phase proceedings during which 1 concentration was prohibited, 5 notifications were withdrawn, 1 merger was cleared subject to conditions and 3 mergers were cleared

Control of abusive practices



5 proceedings concluded and 18 proceedings initiated

Public Procurement Tribunals



- 139 applications for review
- 12 applications granted, 36 rejected, 43 withdrawn and 40 became moot

Sector inquiries



- Concluded: Mobile apps (July), hospitals (September) and waste disposal (December)
- Ongoing sector inquiries: Charging infrastructure for electric vehicles, online advertising, scoring in the online retail sector, oil sector (focus on refineries and wholesalers)

Internal organisation

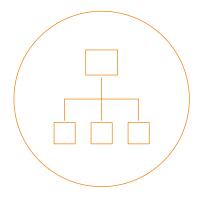
The Bundeskartellamt is headed by President Andreas Mundt and Vice President Prof. Dr Konrad Ost. They are responsible for organising the internal processes and representing the authority to the public.

Decisions on cartels, mergers and abusive practices are taken by the Bundeskartellamt's 13 Decision **Divisions**. Nine Decision Divisions are responsible for specific economic sectors. The 10th, 11th and 12th Decision Divisions deal exclusively with the cross-sector prosecution of cartels. Another Decision Division for **Competition Protection and Consumer** Protection primarily carries out sector inquiries. An overview of the Decision Divisions, their remits and respective chairs can be found 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 larger public contracts falling within the Federal Government's area of responsibility.

The Competition Register for Public **Procurement** has been in full operation since 1 June 2022. It lists companies which have committed relevant violations of law. Contracting authorities can or must consult the register to check whether a company must or can be excluded from an award procedure for having committed economic offences. Companies listed in the register due to certain economic offences can apply for "self-cleaning" to have their entry deleted prematurely from the register. For this, companies have to review their previous misconduct and establish preventive compliance measures for the future.

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 at the national level and 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 public relations work and assists the authority's president. The ongoing digital transformation and the legal and economic issues it raises are another important focus area of the General Policy Division's work.



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. The crossfunctional services include Budget and Procurement, Internal Services, Building Management, IT including IT Forensics and IT Security, HR and HR Development, Organisation including Risk Management and General Legal Matters

The IT unit assists the Decision Divisions e.g. in digitalising their work processes, developing IT-based processes such as the Competition Register, and in seizing and evaluating IT data in cartel proceedings.

A key area of focus of the Central Division in 2021 remained the recruitment of highly qualified staff. The berufundfamilie® audit successfully undergone for the second time confirms the Bundeskartellamt's self-conception as a family-oriented employer offering diverse and challenging tasks. The Central Division plays a key role in ensuring that these tasks are performed within a flexible and reliable framework and that employees and senior officers can continue to develop both professionally and personally. The authority offers a large number of placements for practical training and internships for prospective lawyers and economists.

In the digitalisation of public administration even the formal procedures for signing and file management are increasingly carried out electronically. Since the end of 2020 the authority has gradually installed an electronic file management system. Funds successfully applied for as part of the Recovery Package 10 helped to drive forward and implement digitalisation measures.

The Bundeskartellamt as a familyfriendly employer

Since 2015 the Bundeskartellamt has been awarded the "audit berufundfamilie" certificate for its strategically developed family and life-phase oriented human resources policy. The authority continually develops its offers and working conditions for its staff.



Career opportunities at the Bundeskartellamt

In our quest to protect competition we regularly recruit new staff. At the Bundeskartellamt you will play an active part in shaping the future of the German, European and international economy. We will also offer you a whole range of interesting and varied tasks with many opportunities for creative organisation. Our strength lies not only in our expertise in many different areas of specialisation but also in our highly motivated teams of experienced colleagues and new junior staff.

Further information available at

https://www.bundeskartellamt.de/EN/AboutUs/Career/career_artikel.html



Virtual group visits to the Bundeskartellamt



The Bundeskartellamt offers interested groups the possibility to visit the authority in Bonn or to learn in a virtual tour about its role, tasks and current cases. This service is open to school children, students, businesses, organisations and all those interested in the Bundeskartellamt's work.

Although the Press and Public Relations Unit was not able to welcome visitor groups at the Bundeskartellamt's premises due to the pandemic, the authority's virtual information events were met with great interest. Overall, approximately 35 groups participated in the Bundeskartellamt's virtual visitor tours from early 2021 to early 2022.

The Bundeskartellamt also offers training courses for teachers. After introducing the Bundeskartellamt's tasks, organisational structure and activities, practical examples of cases are discussed, which can also be used in class. It is also possible to focus on individual topics according to the teachers' needs. In the past year, the Bundeskartellamt was able to carry out a number of training courses - both off and online.

Exchange with the Monopolies Commission



The Bundeskartellamt is in regular exchange with the Monopolies Commission, an independent advisory body to the Federal Government. In 2021 discussions took place mainly in connection with the preparation of the four sector reports on the railway, energy, post and telecommunications sectors, in which the Monopolies Commission examines the development of competition in each of these sectors. The exchange focuses particularly on specific cases handled by the Bundeskartellamt in each sector and their findings.

The next sector report in which the Monopolies Commission reviews the Bundeskartellamt's current case practice in line with its legal responsibility is due in 2022.



Exchange with academic experts

The Bundeskartellamt organises annual meetings of the Working Group on Competition Law (AKK) and the Working Group on Competition Economics (AKW). These formats offer legal and economic experts an opportunity to discuss current topics in the context of competition law and politics. Both events took place in a virtual format because of the ongoing COVID-19 pandemic.

In the 2021 meeting of the Working Group on Competition Law the participants talked about the Digital Markets Act (DMA), a European law on digital markets. In this context, the various DMA drafts were discussed from various perspectives in (inter)national competition law. In addition to discussing the DMA drafts' rationalities and provisions under legal and economic-technical aspects, the DMA was compared with the latest legislative proposals in the USA.

The European legislators' perspectives on be DMA were also discussed just like the future relationship between the DMA and European and national competition law and the question of a complementary role played by national competition authorities in effective enforcement.

"Legislators worldwide are working to find solutions to tackle the economic power of internet giants. The Digital Markets Act will now follow a European path between competition law and regulation.

The 10th amendment to the German Competition Act (GWB) also provided German competition law with suitable tools. Together, we will continue to develop guiding principles for the digital economy."

> Prof. Dr Konrad Ost, Vice President of the Bundeskartellamt



In the 2021 meeting of the Working Group on Competition Economics, participants discussed under what conditions a company producing electricity is indispensable for meeting the demand for electricity in Germany and when it can be assumed to be dominant on the market.

Another area of focus at the conference was the analysis of heterogeneous market conditions, taking furniture retail as an example. Due to the very diverse supplier structure in this market, ranging from specialised kitchen retailers and design furniture shops to large discount retailers, possible approaches on how adequate account can be taken of such differences in a competitive assessment were discussed.

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 specialist information which the journal derives from its own surveys and analyses.

Again in 2021 the Bundeskartellamt ranked in the 5 star "elite" category together with the French competition authority Autorité de la concurrence, the European Commission's Directorate General for Competition and the US Federal Trade Commission.



The Bundeskartellamt works closely together 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 and the European Commission work very closely together. Areas of cooperation include cartel prosecution, the control of abusive practices and merger control. In order to combat crossborder 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 are involved in the evaluation and review of guidelines and block exemption regulations, for example on vertical and horizontal restraints of competition.

OECD/UNCTAD

In 2021 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).

The President of the Bundeskartellamt, 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. Due to the COVID-19 pandemic the conferences again took place in a virtual format in 2021. Important topics last year included "Trade, Development and Competition", "Economic Analysis and Evidence in Abuse Cases", "Competitive Neutrality by Competition Authorities", "Competition Compliance Programmes", "Ex ante Regulation in Digital Markets" and "Competition Issues in News Media and Digital Platforms".

The UNCTAD Intergovernmental Group of Experts on Competition Law and Policy (IGE) convenes every year in Geneva. Due to the COVID-19 pandemic the conference took place in a hybrid format in 2021. Topics such as competition law in the digital era during and after the COVID-19 crisis were discussed.

ICN

At the international level the national competition authorities work together within the International Competition Network (ICN). With 140 competition authorities the ICN is the most important association of competition authorities worldwide. Since September 2013, Andreas Mundt, the President of the Bundeskartellamt, has been the Chair of the ICN's Steering Group.

The 20th ICN Annual Conference was hosted by the Hungarian Competition Authority from 13 to 15 October 2021. Due to the COVID-19 pandemic the event was again held in a virtual format. The large trends digitalisation, sustainability and the relationship between competition law and other fields of law were reflected in the anniversary conference. Panel discussions focussed on sustainability and competition, compliance, the challenges competition authorities face after the COVID-19 crisis, the prosecution of cross-border cartels, merger control in the ICN's third decade, theories of harm and remedies in abuse of dominance cases in the digital sector, the intersection of competition, consumer protection and data protection, international cooperation and the implementation of ICN work products. In addition, first results of the ICN Third Decade Initiative were presented, which based on a survey conducted throughout the ICN examines the network's organisation, instruments and content-related priorities to ensure that the network is well positioned for its third decade.



From 4 to 6 May the Bundeskartellamt hosted the 21st ICN Annual Conference in Berlin in a hybrid format. More than 350 representatives from over 80 countries attended the event while over 1,600 participants followed the conference online. The conference focused on cartel enforcement in the next decade, regulatory and competition law tools in digital markets, merger control and effective remedies, sustainability, the impact of the COVID-19 pandemic on agencies' investigative processes, and international enforcement cooperation, among other topics. Recordings of the individual speeches and plenary sessions are available here:

The 22nd ICN Annual Conference will be hosted by the Spanish CNMC and will take place in Barcelona in October 2023.



20th and 21st International Conference on Competition (IKK)

For 40 years the Bundeskartellamt has organised every two years one of the most renowned international conferences dealing with competition issues.

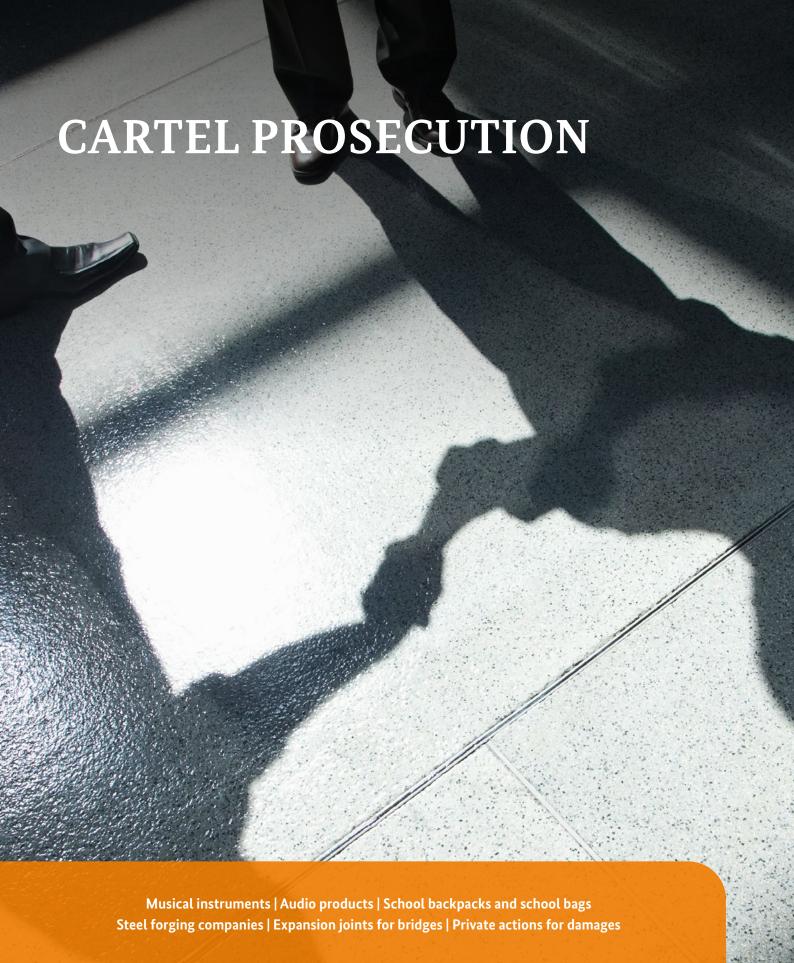
Due to the pandemic the 20th International Conference on Competition was held in a virtual and also more compact format on 4 March 2021. With around 1,000 participants from more than 60 countries the event once again confirmed its international appeal even in its virtual form. Peter Altmaier, the German Federal Minister for Economic Affairs and Energy, and Margrethe Vestager, Executive Vice-President and European Commissioner for Competition, discussed the role of government and business in shaping the economy. Christian Klein, CEO of SAP SE, shared the business perspective on current competition issues. The virtual event focussed on the role of competition policy in dealing with Big Tech and on public interest objectives as a challenge for competition law practice.

One year later, on 4 May 2022, the 21st International Conference on Competition took place off-schedule in Berlin in a hybrid format. Overall, more than 350 representatives from over 70 countries and more than 1,600 online participants attended the event.

The conference opened with a welcome address by Robert Habeck, Federal Minister for Economic Affairs and Climate Action, followed by speeches by Sven Giegold, State Secretary,

and André Schwämmlein, CEO of Flix. The panel discussion dealt with the increasing demands placed on competition law by politics and the interrelations between competition law and other areas of law such as consumer protection and data protection. Some video clips of the conference are available here:





In 2021, the Bundeskartellamt imposed fines of around 105 million euros on a total of 11 companies or trade associations and eight natural persons. Fines were imposed on special steel producers and steel forging companies and for vertical price-fixing agreements for musical instruments, school bags and consumer electronics. In early 2022, fines were imposed on manufacturers of expansion joints for bridges.

Fines imposed on manufacturers and retailers of musical instruments

In August 2021, the Bundeskartellamt imposed fines totalling approx. 21 million euros on three manufacturers and two retailers of musical instruments and on staff responsible.

The manufacturers involved are Yamaha Music Europe GmbH, Roland Germany GmbH and Fender Musical Instruments GmbH. The retailers are Thomann GmbH and MUSIC STORE professional GmbH.

In setting the fine the Bundeskartellamt took into account that the companies had cooperated extensively with the authority in uncovering the agreements (MUSIC STORE only in the proceeding concerning vertical price fixing) and that a settlement could be reached.



Settlement

- Administrative fine proceedings can be concluded in the form of a negotiated agreement (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 a settlement is a confession and a settlement declaration in which the company or individual involved acknowledges the facts of the infringement with which the company or individual is charged and accepts the fine up to the amount
- In the case of cartel agreements a settlement declaration can lead to a maximum of 10 per cent reduction in fines.

Fine imposed on audio equipment manufacturer Bose

In December 2021, the Bundeskartellamt imposed a fine totalling around seven million euros on Bose GmbH on account of resale price maintenance.

Bose manufactures and distributes high-end consumer electronics. The company's activities in this area mainly focus on speakers and headphones. The proceeding was initiated within the context of a request for official assistance by the Austrian competition authority and a dawn raid.

For many years Bose hampered the free formation of prices in the distribution of their audio products through the authorised dealers involved. The company tried to make sure that the prices for headphones or speakers, for example, did not significantly undercut the recommended retail

price (RRP). This was monitored by Bose employees and the dealers stopped the conduct objected to in a number of cases. Authorised dealers supported this practice by complaining to Bose about the (too) low sales prices offered by other authorised dealers.

In setting the fine the authority took into account that Bose had cooperated extensively with the Bundeskartellamt and that a settlement could be reached. The order imposing the fine is final.



"The Bose case is one of several other cases in which we recently imposed fines on manufacturers of musical instruments or school bags. The message is clear: Resale price maintenance is not tolerated and will be pursued resolutely."

> Andreas Mundt, President of the Bundeskartellamt

Resale price maintenance for school backpacks and school bags



In August 2021, the Bundeskartellamt imposed a fine totalling approx. two million euros on company based in Cologne, on account of vertical price fixing. Fond Of mainly distributes school backpacks and school bags under the brand names "ergobag" and "Satch".

The company was accused of having set minimum prices for its school backpacks and school bags for several years and of seeing to it that the retailers involved would not undercut these prices. Fond Of systematically monitored their price setting and also imposed sanctions on retailers to enforce compliance with the minimum sales prices.

In setting the fine in this case the authority again took into account that the company had cooperated extensively with the Bundeskartellamt and that a settlement could be reached. The order imposing the fine is final.



In February 2021, the Bundeskartellamt imposed fines totalling approx. 35 million euros on three steel forging companies and two senior staff members for their regular involvement in an anti-competitive exchange of information between October 2002 and December 2016.

The companies concerned are CDP Bharat Forge GmbH (now: Bharat Forge Global Holding GmbH) and Bharat Forge CDP GmbH, both part of the Indian Bharat Forge Group, and the former Johann Hay GmbH & Co. KG Automobiltechnik (now: Musashi Bockenau GmbH & Co. KG).

At meetings of a working group of the European forging industry association Euroforge, which took place up to three times a year, senior staff of leading German forging companies exchanged competition-sensitive information with forging companies from other European countries. This included information in particular about the respective cost situation of the companies, their pricing strategies and concrete negotiations with suppliers and customers. The aim of the participating companies was to pass on cost increases to the fullest extent possible to their customers without having to fear being undercut by their competitors. Large automobile manufacturers and their suppliers are among the major customers of the forging companies.

The investigations were triggered by a leniency application filed by Hirschvogel Umformtechnik GmbH, a forging company on which no administrative fine was imposed in accordance with the Bundeskartellamt's leniency programme. All the companies cooperated with the Bundeskartellamt during the entire proceeding. Furthermore, settlement agreements were reached with the companies. Both these factors helped to reduce the level of the companies' fines.

The leniency programme in brief

- The first participant in a cartel agreement to uncover a cartel of which the Bundeskartelalmt has no previous knowledge receives immunity from a fine ("first come, first serve" principle). Immunity from fines can also be considered at a later date if the Bundeskartellamt is provided with decisive evidence without which the existence of a cartel could not have been proved. 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 per cent, provided they cooperate with the Bundeskartellamt and produce decisive evidence to prove the offence.
- The requirement for immunity from and a reduction in the level of fine is the continuous and unlimited cooperation of the leniency applicant with the Bundeskartellamt throughout the entire proceedings.
- The leniency programme has been enshrined into law since the 10th amendment to the German Competition Act (GWB) entered into force in 2021.

Manufacturers of expansion joints for bridges involved in a quota cartel

In February 2022, the Bundeskartellamt imposed fines totalling around 7.3 million euros on two manufacturers of modular expansion joints (expansion joint systems for road bridges) for engaging in an illegal quota cartel. The companies concerned are Maurer SE and Mageba GmbH.

The two only manufacturers in the market for modular expansion joints for bridges were accused of having agreed on a system of fixed market shares in the form of quotas to carve up the market between them. Compliance with the quotas was monitored and, in the case of substantial deviation from the agreed quotas, compensatory measures were taken. Furthermore, a uniform price calculation formula was agreed in order to implement the cartel.

The cartel covered the whole German market volume for the supply of modular expansion joint systems with only a few exceptions.

The Braunschweig public prosecution office is conducting an investigation proceeding against the companies' representatives on account of suspected bid-rigging agreements. The Bundeskartellamt and the Braunschweig public prosecution office, which closely cooperated throughout the proceeding, followed up tip-offs from market participants and jointly carried out dawn raids at several companies and private homes in January 2019.

In setting the fine the authority took into account that the companies had cooperated extensively with the Bundeskartellamt and that a settlement could be reached.

Calculation of fines

Fines are calculated according to the gravity and duration of the infringement. Under the German Competition Act (Gesetz gegen Wettbewerbsbeschränkungen -GWB), the maximum fine is limited to 10 per cent of a company's total annual turnover.

Another significant aspect in the Bundeskartellamt's calculation of fines is the cartelrelated turnover, i.e. the turnover achieved with the products that were the subject of the cartel agreement.

Selected maximum fines*

Year	Cartel proceeding	Total fines imposed in euros	Highest single fine against a company
2020	Aluminium forging	174,841,500	145,000,000
2020	Plant protection products	157,817,170	68,600,000
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
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.

"We invest many resources in cartel prosecution. It remains a key focus of the Bundeskartellamt's work. Cartels harm the economy and consumers due to artificially inflated prices, inferior quality and restrained innovation."

> Andreas Mundt, President of the Bundeskartellamt

Private actions for damages on account of competition law infringements: The second pillar of cartel prosecution

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. In recent years these actions, generally following upon proceedings concluded by the Bundeskartellamt or the European Commission, related to a variety of product areas such as sugar, trucks, rails, car batteries, heat exchangers, bathroom fittings, electronic cash, chipboard panels, detergents, television tubes, packaging, cement, steel abrasives, wallpapers, gas-insulated switchgears, drugstore products, flour, confectionery, sausage, beer or spark plugs.

The truck cartel is a good example of the significance of follow-on actions. In 2016/2017, the EU Commission imposed fines on several truck manufacturers for agreeing on their sales prices for freight vehicles over a number of years. In Germany alone almost 480 actions were filed in connection with the case. The actions for damages relating to the truck cartel vary greatly in terms of the amount of damages claimed and the value in dispute. The claimants are mainly active in the construction, transport, carrier and logistic services sectors but also in other sectors, such as the food industry. They included many small companies. A large proportion of all actions were brought by the public sector (cities and municipalities, municipal undertakings, federal states, etc.). In some cases the claimants are even based abroad.



The claims for damages are usually settled out of court. Compensation payments can also be made e.g. by offsetting the claims against future deliveries. It is therefore not possible to quantify the amount of compensation actually paid.

Conditions for damages actions were further improved by the last amendments to the GWB. Furthermore, the Federal Court of Justice has meanwhile defined the requirements for determining damages in several landmark decisions in the rail and truck cartels, creating a greater amount of legal certainty for the claimants. In 2021, the Court clarified for example that the agreement of consolidated damages in general terms and conditions is generally admissible. It is likely that damages actions will continue to play a significant role in antitrust law in future.

Positive effects of cartel prosecution

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, inferior product quality and less innovation. Scientific studies indicate that cartels result in average price increases of around 15 per cent. Uncovering a cartel often directly leads to lower prices. The companies need to make an effort to win customers again.



Under certain conditions mergers between companies are subject to merger control by the Bundeskartellamt. In such cases, 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 subject to certain conditions.

Cooperation between companies can also restrict competition. However, meaningful and necessary cooperations are explicitly allowed, provided that the boundaries of competition law are observed. The Bundeskartellamt also often assesses planned cooperations between companies under competition law. This provides companies with guidance on how to structure their project.

Merger in the driver assistance systems sector

In March 2022 the Bundeskartellamt cleared plans by the US chip manufacturer Qualcomm Incorporated to take over the software division of the Swedish automotive supplier Veoneer Inc. in the first phase of merger control.

In early 2021 Qualcomm and Veoneer had already agreed to cooperate with the aim of offering an integrated driver assistance system under the Arriver brand, which was based, among other things, on a chip system from Qualcomm (Snapdragon Ride) and software from Veoneer.

In the context of its investigations the Bundeskartellamt surveyed approximately 30 automobile manufacturers as well as producers of chips and software for driver assistance systems worldwide. The assessment also focused on the question as to whether competitors that rely on purchasing chips or software from third parties could be squeezed out of the market following Qualcomm's acquisition of the Arriver business. The results of the examination showed that the merger did not raise any competition concerns. It was also taken into account that in addition to the market leader Mobileve. a subsidiary of the chip manufacturer Intel and currently the largest provider of driver assistance systems, an alternative provider of integrated solutions would enter the market in the future.

These types of systems for autonomous driving form a growing market which at present already reaches a volume of approximately 30 billion euros worldwide. In addition, the share of new cars equipped with driver assistance systems is also likely to strongly increase in the coming years while the systems' performance will greatly improve.

Mergers subject to examination under merger control due to transaction value threshold

Since 2017 the German Competition Act (GWB) has stipulated that mergers involving the acquisition of a company whose operations in Germany are substantial are subject to merger control where the value of the consideration (usually the purchase price paid for the acquired company) exceeds 400 million euros.

This provision allows the Bundeskartellamt to also examine mergers which are intended to establish or strengthen the market dominance of large incumbents by acquiring young, innovative companies with a high economic value.

Without this provision, the acquisition of Veoneer's software division by Qualcomm would not have had to be notified to any competition authority in Europe despite the great economic importance of this transaction.

Acquisition in the cyber security software sector

In February 2022 the Bundeskartellamt cleared plans by NortonLifeLock Inc. to acquire the cyber security software provider Avast plc. Both companies offer cyber security software to private users worldwide and hold high market shares in Germany.

The merger was expected to result in the creation of a worldwide leading provider of cyber security software. However, the Bundeskartellamt's market investigations showed that the need of private users to protect their devices against malware is increasingly being met by security solutions that are already integrated in their operating systems and by applications offered by platform providers. In addition, these solutions provide an ever-increasing level of protection and are often made available to users free of charge, thus exerting significant competitive pressure on independent security software providers.



Deutsche Kreditwirtschaft's joint payment system

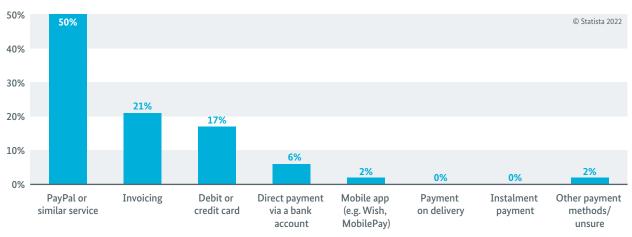
In March 2022 the Bundeskartellamt announced that it had no objections to the further development of the giropay payment system after Deutsche Kreditwirtschaft had expressed its willingness to give up its plans for an exclusivity agreement regarding the joint project, that is a self-imposed commitment undertaken by Deutsche Kreditwirtschaft as a whole, which would have been problematic in terms of competition law. Since this project involves a cooperation between the large majority of banks and savings banks in Germany, it was absolutely necessary for the authority to provide guidance on competition law.

The project aims to set up a uniform payment system for all payment channels, be it in the e-commerce sector or in brick-and-mortar retail. In the project's first implementation stage, the existing services giropay, paydirekt and Kwitt were combined under the joint brand name giropay in 2020. In a second step, the role of the joint venture paydirekt GmbH was reviewed. The company is to take on the role of the central provider of the giropay payment system and is also to obtain approval in the girocard system to make payments via giropay widely available.

The centralised structure of the giropay business model does not raise any competition concerns since giropay competes with powerful online payment services such as PayPal, VISA or MasterCard. By not using an exclusivity clause, the parties were able to dispel the Bundeskartellamt's concerns about a possible impediment to competition in innovation regarding the development of this system.

Most popular methods used to pay for online orders in Germany in 2021





Bidding competition to acquire shares in SCHUFA

In February 2022 the Bundeskartellamt cleared two merger projects dealing with the acquisition of shares in in the context of a bidding competition. SCHUFA is a German credit bureau which collects information on private individuals and businesses and rates their credit worthiness. The shares in SCHUFA are held by various banks and savings banks as well as other businesses (especially retailers).

One of the merger projects involves plans by **EQT All** to acquire up to 100 per cent of the shares in and thus sole control of SCHUFA. As the parent company of several investment funds, EQT AB already invests in businesses across various sectors. With the other merger project to increase its minority interest in SCHUFA. TeamBank is a member of the DZ Bank group and a commercial bank.

Acquisition of Deutsche Wohnen by Vonovia: No grounds for prohibition under competition law

In June 2021, following an in-depth examination, the Bundeskartellamt cleared plans by Vonovia SE to acquire all shares in Deutsche Wohnen AG. Both companies are active on regional housing markets across Germany. The assessment showed that the companies' joint market shares did not justify a prohibition under competition law.

The Bundeskartellamt conducted particularly in-depth investigations in the housing markets in Berlin, Dresden, Mainz, Wiesbaden, Puchheim and the Wustermark municipality. Only here could the joint market shares of Vonovia and Deutsche Wohnen have been considered to exceed 10 per cent on the different rental housing markets. Particular attention was paid to 2-3 room apartments with standard fittings and a basic net rent excluding ancillary costs of up to seven euros per square metre. Both companies have a relatively large number of apartments in this segment in their portfolios.

Their joint market share in this segment was clearly less than 20 per cent in Berlin and slightly more than 20 per cent in Dresden. In other cities and other market segments their joint market shares were consistently lower.

Although the housing situation in Berlin and many other cities is strained, a large number of private landlords,

municipal housing companies, housing cooperatives and other commercial providers are also well represented in the relevant markets, which continues to limit Vonovia's scope of action. Under competition law, prohibiting the merger would have been possible only if it were expected to significantly impede competition. This was ruled out in the present case, however.



A merger can be notified as soon as the merger plans are sufficiently specific. It is therefore possible, like in the present case, that two competing merger projects have to be assessed in parallel. The authority's decision under competition law is not decisive in the ongoing bidding competition, but merely a necessary intermediate step.

The main focus of merger control

- In its merger control proceedings the Bundeskartellamt only examines the effects of notified mergers on competition.
- Political considerations, such as geopolitical situations, the security of jobs and sites, data security, etc., must not be taken into consideration.
- These considerations may be assessed by the Federal Ministry for Economic Affairs, e.g. in the context of a ministerial authorisation or an investment screening under foreign trade and payments law.

Merger between ready-mixed concrete manufacturers

The Bundeskartellamt cleared the acquisition of Ganser Baustoffe GmbH & Co. KG by Portland-Zementwerk Gebr. Wiesböck & Co. GmbH based in Rohrdorf in southern Germany (Rohrdorfer) in second phase proceedings. Both companies produce ready-mixed concrete and maintain a significant market presence. Rohrdorfer is also active in the upstream cement market.

A main focus of the assessment was the question whether the remaining readymixed concrete manufacturers would still be exposed to enough competitive pressure even after the merger. To answer this question, it was examined whether the merger was expected to reduce the intensity of competition

between the remaining competitors in both regional markets surrounding the Ganser plants in Aubing and Kirchstockach, or even in the Greater Munich area. For this purpose, the structural factors relating to the readymixed concrete markets concerned were examined and extensive market enquiries were carried out among customers and competitors. As a result, it could be assumed that sufficient competition would still exist between the manufacturers even after the acquisition of Ganser.



Bundeskartellamt prohibits merger in the surface drainage sector

In January 2022, following an in-depth investigation, the Bundeskartellamt prohibited plans by ACO Ahlmann SE & Co. KG to take over BIRCO GmbH. Both companies are particularly active in the line drainage sector, which includes the drainage of surfaces such as roads, public squares or private and commercial properties where drainage channels collect surface water and conduct it to the sewage system.

In the course of its investigations, the Bundeskartellamt surveyed more than 200 competitors, contracting entities and building material dealers. In this context, the authority found that buyers specifically search for line drainage systems for their construction projects and do not consider other surface drainage systems suitable to meet their needs for technical reasons.



As a result of the merger, ACO and BIRCO would have achieved joint market shares of 45-50 per cent, thus making them dominant. Buyers, such as private house builders, but also commercial and industrial owners and the public sector, would have lost an important alternative supplier. The authority's decision to prohibit the merger can be expected to ensure that ACO's and BIRCO's scope of action will continue to be curbed by competition.

Lufthansa impedes Condor in competition for long-haul flights

Since early 2021 the Bundeskartellamt has closely examined a complaint by the air carrier Condor against its competitor

In November 2020 Lufthansa terminated its Special Prorate Agreement (SPA) with Condor with effect from June 2021. Under this agreement Lufthansa had previously provided feeder flights for Condor's long-haul flights. Condor complained to the Bundeskartellamt about the termination of the agreement because in its opinion Lufthansa was abusing its leading market position in the provision of feeder flights in order to impede Condor on the markets for long-haul flights. In January 2021 the Bundeskartellamt initiated a summary proceeding and a main proceeding in the matter.

In February 2022, following a preliminary assessment in the main proceeding, the Bundeskartellamt concluded that Condor was entitled under competition law to access Lufthansa's feeder flights for its long-haul passengers. In addition, the Bundeskartellamt also found further impediments to competition in the existing agreements between the companies, which the authority views critically in terms of competition law. In the ongoing proceeding, Lufthansa and Condor will have the possibility to comment on the results of the preliminary assessment.

In the summary proceeding in 2021, the Bundeskartellamt had already expressed its competition concerns about the termination. The authority subsequently suspended the summary proceeding temporarily and continued to examine the matter in the main proceeding after Condor and Lufthansa had agreed in close cooperation with the Bundeskartellamt to suspend the termination of the SPA until the middle of May 2022 and to ensure Condor's actual possibilities to book feeder flights in the remaining contractual term. In the main proceeding, Condor and Lufthansa extended this agreement until the end of October 2022. This therefore allows Condor, for the time being, to continue to offer feeder flights to long-haul tourist flights for tour operators and individual travellers as a competitor to Lufthansa.



Competition between hospitals for the benefit of patients

Irrespective of their operators (municipal authorities, churches, private operators) hospitals are independently active as entrepreneurs and compete with one another. However, due to strict legal provisions there is almost no price competition in this sector. It is therefore the main objective of merger control to maintain quality competition in 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. The market for acute care hospitals, for instance, is defined as a separate market from the market for rehabilitation centres or senior citizens homes and nursing homes.

As for the geographic market definition, only those hospitals are examined which patients can actually choose as an alternative.

In merger projects between public service operators, in particular, the Bundeskartellamt 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 can be sought.

In 2021 and up to April 2022 the authority received 20 merger notifications from the hospital sector, all of which could be cleared.

Merger control in the hospital sector



In recent years the number of notified merger control projects has increased.

- From 2003 to December 2021 the Bundeskartellamt examined a total of 352 notified hospital
- 301 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 plans were abandoned by the parties or changed and notified anew.

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 concerns.



Sector inquiry in the hospital sector

The sector inquiry concluded last year has shown how important competition is in the hospital sector. In spite of all the state regulation, there is competition between the hospitals, which has positive effects on the healthcare of the population. Patients themselves choose

a hospital, mostly on the recommendation of their physicians.

The decisive selection criterion for patients and physicians is the quality of treatment. Since the hospital's revenue is based on fixed diagnosis-related group (DRG) rates set according to the quantity of treatments provided, this gives hospitals a strong incentive to win large numbers of patients. For this purpose, hospitals have to become more attractive by, for example, offering better quality than neighbouring hospitals.

Green light for "Emergency Platform for Vaccination Equipment"



In March 2021 the Bundeskartellamt gave the green light for the participation of pharmaceutical wholesalers in the "VCI Emergency Platform for Vaccination Equipment". The platform was launched with the Bundeskartellamt's approval in February 2021 to better coordinate the supply of vaccination equipment, such as syringes, cannulas, and NaCI solution, in the COVID-19 crisis. Temporary bottlenecks could thus be quickly eliminated or avoided. The platform did not give any details on prices and quantities but swiftly provided a transparent overview of suppliers and buyers of vaccination equipment. The platform's duration was to be limited to the emergency situation in the COVID-19 pandemic.

Via the B2B platform the federal Länder and vaccination equipment manufacturers provided information on their current supply situation and their capability to deliver. The emergency platform has fulfilled its task and could be discontinued as the state vaccination centres were closed. According to VCI, it is possible to reactivate the platform at short notice, if necessary. However, vaccinations are now usually administered by physicians in private practice. The pharmaceutical wholesale industry along with the pharmacies is responsible for supplying the COVID-19 vaccine to practitioners. This also involves the provision of complete sets of vaccine and the necessary vaccination equipment. Since February 2022 COVID-19 vaccinations can now also be administered directly in pharmacies, provided they have received appropriate training.

Cooperations in the COVID-19 crisis

During the COVID-19 crisis companies in many sectors had to cooperate with one another to react to bottlenecks in the production, storage and logistics of goods caused by the pandemic. A coordinated approach to overcoming such problems can be justified. Competition law is sufficiently flexible to facilitate useful and necessary cooperations. However, such measures must comply with competition law requirements and be explicitly limited to a certain period of time.

Proceedings against medical aids associations

In March 2022 the Bundeskartellamt initiated cartel administrative proceedings against several associations of medical aids suppliers. Under the "ARGE" umbrella, they represent health care supply stores and orthopaedic workshops in particular. The associations are accused of having demanded coordinated price increases in the rehabilitation and care segments from the statutory health insurance companies, which they were able to achieve in some cases.

Since ARGE represents the largest part of all medical aids suppliers in the rehabilitation and care sector on which patients in Germany rely, it is also examined whether an abuse of market power is shown to exist.

The associations of suppliers under the ARGE umbrella demanded coordinated price increases from several health insurance companies to compensate for increased freight, delivery and commodity costs due to the COVID-19 pandemic. At the same time, they threatened to terminate their contracts with health insurance companies, which they actually did in some cases. Several health insurance companies agreed to the price increases in an attempt to ensure that their clients are supplied as before.



Joint venture between K+S and **REMEX: Extensive offsetting** measures

In December 2021 the Bundeskartellamt cleared the formation of the joint venture REKS GmbH & Co. KG by Kali und Salz Minerals and Agriculture GmbH and REMEX GmbH, a member of the Remondis Group (Rethmann Group), after the companies had implemented extensive offsetting measures. In the future the joint venture REKS will distribute hazardous waste for underground disposal and backfilling at Kali und Salz's mining sites.

The Bundeskartellamt had expressed competition concerns since there are only limited capacities for the underground disposal of hazardous waste while the demand for underground disposal remains high or will even increase in the future. On this market Kali und Salz is the clear market leader in Germany and establishing the joint venture would expand this position. The strong market position held by Remondis on the upstream markets also raised competition concerns.

As an offsetting measure, REMEX sold its share in the company Minex, which operates an underground backfill facility in Staßfurt. The parties are therefore no longer competitors on the relevant market for underground backfilling with hazardous fly ashes. The merger was first examined by the European Commission and then referred to the Bundeskartellamt upon request by the Federal Republic of Germany.

Section 39a of the German Competition Act (GWB)

The new provision under Section 39a GWB

- In force since early 2021 (10th amendment to the GWB)
- The Bundeskartellamt can oblige companies to also notify takeovers of smaller companies, i.e. companies which do not reach the normal turnover thresholds, in certain economic sectors

Prerequisite for the application of the new provision:

- Acquirer's share of sales in the economic sector concerned is more than 15 per cent
- Target company achieved revenues of at least two million euros in the last business year and at least two thirds of its total turnover was generated in Germany
- There are objectively verifiable indications that future concentrations could substantially impede effective competition in Germany
- The Bundeskartellamt first has to carry out a sector inquiry in the economic sector concerned

Sector inquiry into household waste collection

The sector inquiry dealt with the collection and transport of packaging waste from private households (waste glass and lightweight packaging materials) and of municipal waste, especially residual waste, organic waste, used paper and bulky waste. The inquiry closely analysed the markets' development from 2006 to 2018. Key finding: Overall competition in the collection and transport of waste has decreased in all areas over the past years.



Rethmann Group/Remondis: Extended obligation to notify future takeovers?

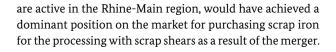
In January 2022 the Bundeskartellamt initiated another sector inquiry in the waste management sector. The authority intends to examine whether the Rethmann Group can be obliged to also notify takeovers of smaller companies in the future.

In principle, merger control only applies if the participating undertakings achieve certain minimum turnovers

and thus have a certain economic significance. However, the new provision under Section 39a GWB, which entered into force in 2021, allows the Bundeskartellamt to oblige companies to also notify takeovers of smaller companies, i.e. companies which do not reach the usually applicable turnover thresholds, in certain economic sectors. One precondition for this is a special sector inquiry, which was initiated with a view to waste management and the specific market position of the Rethmann Group. The sector inquiry is intended to update the authority's findings from investigations carried out in the context of various merger projects in recent years and from the sector inquiry into household waste collection published in December 2021, and to specify these findings in terms of the prerequisites set out under Section 39a GWB.

Withdrawal of a merger notification in the scrap recycling sector

In December 2021 the companies TSR Recycling GmbH & Co. KG and Rhein-Main Rohstoffe GmbH withdrew their notification of the formation of a joint venture after the Bundeskartellamt had expressed competition law concerns. The investigations had suggested that the companies, which



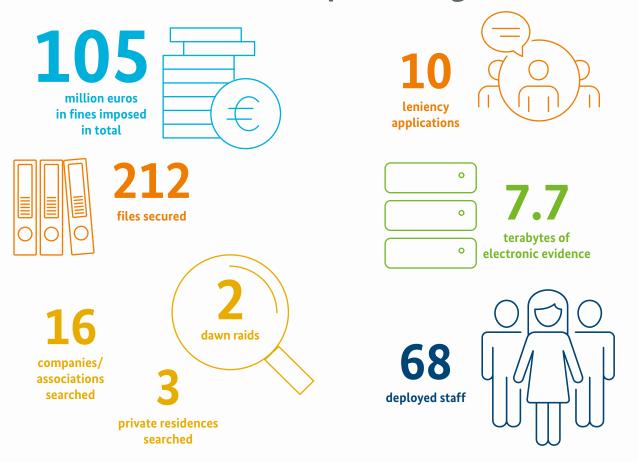




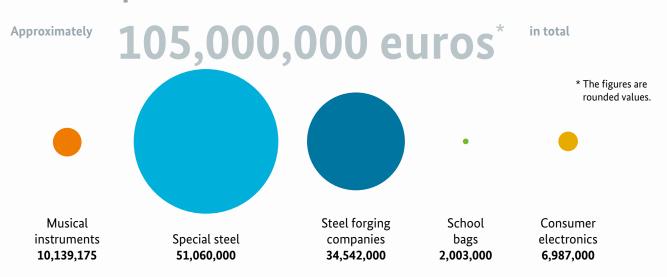
companies active on this market were also analysed in detail. The results showed that scrap iron which is to be processed with scrap shears is traded regionally, especially since the high costs involved in transportation make it economically unviable to trade it over longer distances. TSR and Rhein-Main Rohstoffe would have merged on the regional market around Frankfurt where both companies operate large shears and are the leading providers of such services on the market.

FACTS AND FIGURES

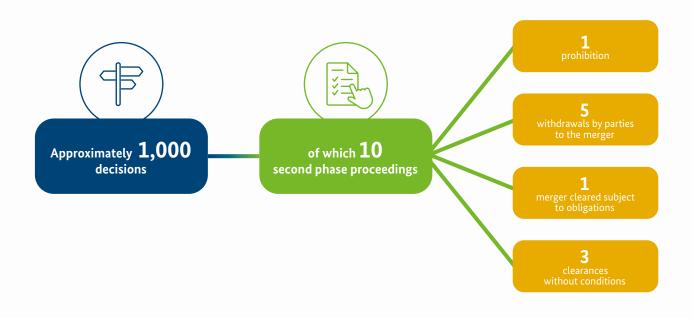
Prohibition of anti-competitive agreements 2021



Fines imposed in 2021 in euros



Bundeskartellamt merger control in 2021





Abuse control figures 2021







Section 19a GWB | Alphabet/Google | Meta/Facebook | Google News Showcase Amazon | Apple | DMA | Deutsche Bahn

Last year the digital economy was once again one of the most important areas of the Bundeskartellamt's work. Since the entry into force of the 10th amendment to the GWB in early 2021, new rules, especially Section 19a GWB, regarding abuse control have been in place enabling the Bundeskartellamt to intervene earlier and more effectively against large digital corporations. Since then, the authority has initiated new proceedings against Google, Amazon, Meta (formerly Facebook) and Apple, and first decisions have already been rendered. However, the digital transformation is of paramount importance for the entire economy. The Bundeskartellamt has, for example, continued its proceeding against Deutsche Bahn, which deals with access to important data, among other things. The sector inquiry into online advertising is in the home stretch with the results expected to be published later this year.

Proceedings against large digital corporations



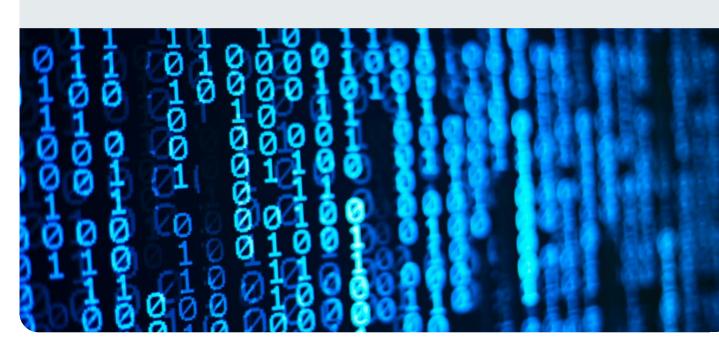
Immediately after the 10th amendment to the German Competition Act (GWB) entered into force in early 2021, the Bundeskartellamt initiated several new proceedings against Alphabet/Google, Amazon, Meta/Facebook and Apple on the basis of the newly introduced Section 19a GWB.

How does the new Section 19a GWB work?

Section 19a GWB was introduced with the 10th amendment to the GWB in January 2021. The new provision adds a fundamentally new tool to the authority's toolbox for enforcing abuse control. In a first step the Bundeskartellamt examines whether a company is of paramount significance for competition across markets. In a second step the authority can prohibit anti-competitive practices, such as the selfpreferencing of a group's own services or the "penetration" of markets using means which are not in line with productive competition.

Section 19a GWB allows the Bundeskartellamt to intervene earlier and more effectively against large digital corporations than this used to be the case previously. In contrast to traditional abuse control, it is no longer necessary for a number of markets to establish a company's market dominance before intervening, which is often very time consuming. Instead, the authority's

actions are based on a paramount significance across markets, which, for example, can occur in digital ecosystems that extend across several markets. It may be difficult for competitors to challenge such positions of power. This may be due to the fact that the services offered by a company are closely intertwined, making it difficult for users to switch to other providers, for example, or that the company has access to data relevant for competition which can be used across services. The newly introduced Section 19a GWB can cover precisely these constellations and sets out stricter rules for especially strong positions of power, making it possible to oblige the company, for example, not to hinder competitors and to give users more control over their data. In addition to alleviating the burden of demonstration and proof, Section 19a GWB provides for a shortening of the legal process: The competent court of first instance is the Federal Court of Justice instead of the Higher Regional Court, as is usually the case.



First cases making use of extended abuse control

In a decision which became final in late 2021 the Bundeskartellamt already determined Alphabet/Google's paramount significance across markets. Meta/Facebook was also found to be of paramount significance across markets in early May 2022. The proceedings against Amazon and Apple are in an advanced review stage.

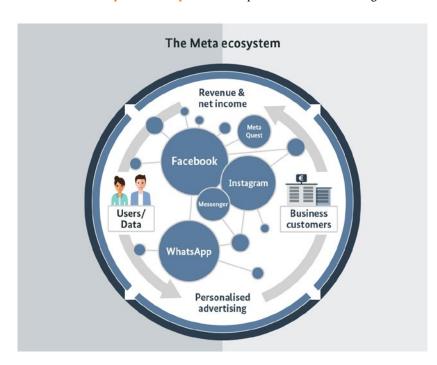
For the assessment it is relevant to determine, among other things, whether the relevant corporation has an economic position of power across several markets which is not sufficiently controlled by competition and gives rise to a scope of action across markets - in the form of a digital ecosystem, for example. Other market players may depend on access to such an ecosystem, especially since this may have an influence on their business activities.

Google, for example, operates not only its search engine - whose market share in Germany amounts to more than 80 per cent - but also a range of other



services reaching a large number of users, such as Google Maps, YouTube, the Chrome browser, the Android operating system, the Play Store and Gmail. At the same time, Google is a key provider of search-based advertising and offers wide-reaching advertising services covering the entire value chain. In its ecosystem Google significantly influences other companies' access to its users and advertising customers.

The Meta corporation operates not only its social network Facebook, but in particular also its services Instagram and WhatsApp. Meta's services are used by more than 3.5 billion people worldwide, including large parts of Germany's population. As major project for the future, Meta also invests in hardware and software for a "metaverse", an extensive VR world. Meta's efforts in this regard include its acquisition of Oculus (now: Meta Quest), a manufacturer of VR headsets and technology. Owing to its large user base, Meta has access to a high volume of data, which is why the company is also the leading provider of social media advertising. Social media advertising is the company's almost exclusive source of revenue.



"The digital ecosystem created by Meta with a very large user base makes the company the key player in social media. Our investigations have shown that Meta is of paramount significance for competition across markets, also within the meaning of competition law."

Remedying potential violations of competition law more efficiently

Determining that a company is of paramount significance for competition across markets based on the newly introduced Section 19a GWB allows the Bundeskartellamt to intervene more efficiently than used to be the case with the previously available tools.

In May 2021 the authority already initiated an examination of Google's data processing terms on this basis. In this case, the Bundeskartellamt examines whether users of Google's services have sufficient choice as to how Google processes their data. Since June 2021 the authority has also been conducting an examination of "Google News Showcase", a Google service which makes it possible to present publishers' news content in a more prominent and detailed manner. The examination deals with potential discrimination against individual publishers and Google's potential self-preferencing of its own services. In early 2022 Google presented remedies to dispel the authorities competition concerns. These suggestions are currently under review.

In the case of Meta, the authority examines the links between the Oculus virtual reality products and the Facebook platform. This proceeding had already been initiated shortly before the 10th amendment to the GWB entered into force, based on the then applicable abuse control rules. At the end of January 2021 the scope of the examination was extended in view of the new Section 19a.

Earlier proceeding against Facebook regarding use of data

Already in 2019, the Bundeskartellamt had designated Facebook as a dominant company and in particular prohibited the company in an abuse control proceeding from combining its users' data from different sources without the users' voluntary consent. The main proceeding is still pending before the Düsseldorf Higher Regional Court which in March 2021 had decided to refer certain issues relating to data protection law to the European Court of Justice (ECJ) for clarification. The decision of the Bundeskartellamt had already been confirmed to a large extent by the Federal Court of Justice in a summary proceeding. In May 2022, a hearing took place at the ECJ.

Amazon proceeding

In a proceeding initiated in May 2021 against Amazon the Bundeskartellamt examines pursuant to Section 19a GWB whether the company is of paramount significance for competition across markets.

In two further proceedings based on the traditional rules of abuse control the authority examines to what extent Amazon uses price control mechanisms to influence the prices set by independent sellers on Amazon Marketplace and whether Amazon has concluded agreements with brand manufacturers such as Apple by which independent sellers are impeded in their sale of brand products.

The Bundeskartellamt had already closely examined Amazon before: In 2013, the authority conducted a proceeding resulting in the abandonment of the price parity clause on the Amazon Marketplace which had prohibited retailers from offering their products cheaper on other online sales platforms. In 2019, an abuse control proceeding achieved important improvements for sellers on the Amazon Marketplace. For example, sellers can now take legal action against Amazon before German courts (until then Luxembourg had been the only place of jurisdiction), there are now fairer rules on returns and reimbursements and reasons must be provided for blocking seller accounts.

Examination of Apple

The Bundeskartellamt is also examining whether Apple fulfils the requirements of the new Section 19a GWB. Already at the time when the proceeding was initiated in mid-2021, the authority had received complaints regarding potentially anticompetitive practices used by Apple. These include, among others, an association

complaint from the advertising and media industries against Apple restricting user tracking with the introduction of its iOS 14.5 operating system, and a complaint against the exclusive pre-installation of the company's own applications. App developers also criticise the mandatory use of Apple's own inapp purchase system (IAP) and the 30 per cent commission rate associated with this. Marketing restrictions in Apple's App Store are also addressed. The Bundeskartellamt has established contact with other competition authorities regarding these issues, just as in the proceedings based on Section 19a against other companies.



With the passing into law of the Digital Markets Act (DMA), a far-reaching decision has been taken at the European level. The DMA aims to ensure fair and contestable digital markets and sets out a list of obligations for certain particularly large online platforms offering key platform services which serve business customers as a gateway to end customers (so-called gatekeepers). This results in clear rules e.g. for personalised advertising, the preinstallation of services, certain types of interoperability and data portability. Furthermore, gatekeepers must e.g. grant access to certain information and data they generated while the gatekeeper platform was used. They may not prevent users from switching to another platform or give preference to their own services in a ranking.

In late March 2022 the European Commission, the European Parliament and the Council reached a political agreement on a version of the DMA. Once the Act has come into force it will be applicable in all European Member States after a six-month transition



DMA and Section 19a GWB: How do they fit together?

There are some similarities between the DMA at the Europan level and Section 19a GWB in Germany, but also important differences. Both rules are applicable to large digital corporations. There are, however, differences in the detailed definition of the corporations that are addressed by the respective provisions. The DMA uses presumption rules based on turnover, user numbers and market capitalisation and generally focuses on individual, central platform services. Section 19a GWB is more strongly based on a cross-service and cross-market perspective.

There are overlaps with regard to types of conduct. Selfpreferencing of a group's own services, for example, can be covered by both provisions if certain requirements are fulfilled. Section 19a GWB as a part of German competition law, however, can be applied more flexibly because it can in principle also cover more or new practices that potentially give rise to competition problems in the future, whereas the DMA includes a more specific set of rules and prohibitions. While Section 19a GWB provides for a case-by-case assessment of practices including the possibility for companies to objectively justify their conduct (with the burden of proof lying with the company in question), the rules and prohibitions under the DMA apply immediately and directly to gatekeepers.

Apart from the DMA which is only to be enforced by the European Commission, not only European but also national competition law, in particular Section 19a GWB in Germany, will remain applicable and will complement the DMA. The well-established cooperation between the national competition authorities within the European Union will also be continued with regard to the DMA.

Data access and restrictions imposed on mobility platforms: Statement of objections against Deutsche Bahn

In April 2022 the Bundeskartellamt issued a statement of objections against Deutsche Bahn (DB) due to possible hindrance of mobility platforms.

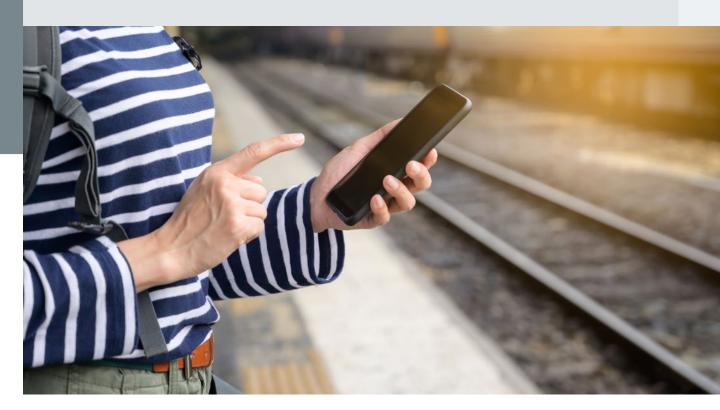
Mobility platforms mainly offer online solutions for integrated route planning for which rail transport plays an important role. For example, mobility platforms allow passengers to combine train tickets with flights, carsharing, long-distance coach services or rental bikes. The offer of such comprehensive mobility concepts which include the use of different modes of transport represents an important and innovative future-oriented market.

The Bundeskartellamt initiated abuse control proceedings against Deutsche

Bahn at the end of 2019. Based on the authority's preliminary assessment, Deutsche Bahn, which is vertically integrated from network operation to ticket distribution, is the dominant rail transport company in Germany and thus has to fulfil special obligations towards third parties, such as mobility service providers.

The authority's preliminary view is that mobility platforms are entitled to access train traffic data, such as information on delays, the progress of a journey, cancellations or platform changes, because otherwise their business models cannot work. At present, DB reserves these data for itself and for a few selected mobility service providers such as Google. These data cannot be obtained anywhere else. The authority is also concerned about a number of contractual restrictions imposed on mobility service providers using rail services in their offers. These include clauses in which, for instance, DB prohibits its contractual partners from using terms that are specific to DB in advertising (in search engines, app stores and social networks), vertical price specifications for passenger tickets, far-reaching bans on discounts and possible discrimination against some mobility platforms with regard to the commission rate paid for ticket sales.

DB and mobility platforms admitted to the proceeding have now been given the possibility to comment on the Bundeskartellamt's preliminary findings.







Sector inquiry into refineries and the wholesale level
Annual Report of the Market Transparency Unit for Fuels
OMV/EG Group | New model for the award of Tank und Rast licences

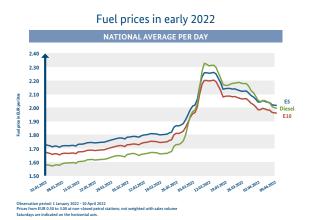
The Bundeskartellamt focuses on the mineral oil industry and the development of fuel and mineral oil prices, especially in view of the developments to be observed in the fuel market since the start of the crisis in Ukraine in early 2022. The war in Ukraine and its consequences have led to a large number of upheavals in the fuel sector, including extremely high price increases. Crude oil prices, sales prices of refineries and prices charged at petrol stations have diverged significantly. Against this backdrop, the Bundeskartellamt has launched an ad-hoc sector inquiry focusing on the refinery and wholesale level.

In 2013, the Market Transparency Unit for Fuels (MTS-K) was established at the Bundeskartellamt to monitor in particular the market developments in the mineral oil sector and the trade in fuels. The data collected enable consumers to obtain immediate information about current fuel prices via different channels and a number of information services. By using this information consumers can benefit from lower petrol prices and create competitive impulses with their decision on where to buy petrol.

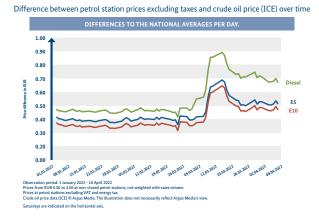


The war in Ukraine and its consequences resulted in upheavals in the fuel market in spring 2022 with prices sometimes sharply rising across the country.

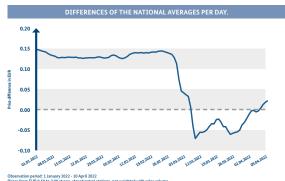
Crude oil prices, sales prices of refineries and prices charged at petrol stations diverged significantly.



The price of diesel, in particular, rose strongly in early 2022 and often exceeded the price of E5.



Price difference between E5 and diesel in early 2022



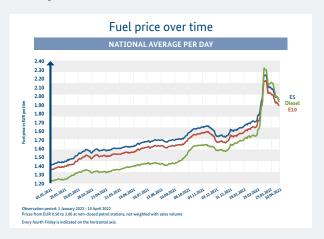
In order to assess this situation the Bundeskartellamt launched a sector inquiry in April 2022 which focuses on the refineries and wholesale level and examines the reasons for the price developments at the refinery and wholesale level and their potential impact on the level of prices charged at petrol stations. The sector inquiry is also meant to provide a basis for expanding the tasks of the MTS-K as intended by the legislator. There are plans to expand the MTS-K's powers and its task to monitor the market in order to gain a clearer picture of all levels of the supply chain, especially in the refinery sector. In the future, the Market Transparency Unit is to collect data on the quantities of fuels supplied by the petrol stations, in addition to price data.

2021 Annual Report of the Market Transparency Unit for Fuels (MTS-K)

Each year the Bundeskartellamt publishes a report on the MTS-K's activities. These reports provide consumers with comprehensive information on pricing at the petrol stations, which can help them in their choice of where to refuel.

The current annual report was published in April 2022. The report mainly focuses on the observations made in 2021, but the price increases that occurred in early 2022 are also included. Key findings include:

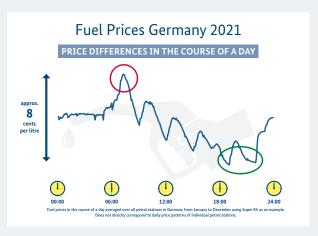
Fuel prices have risen sharply. Whereas e.g. the price of E5 was still below 1.40 euros/litre in early 2021, it amounted to 2.26 euros/litre shortly after the attack on Ukraine. In mid-April, the prices were again at a lower level. The price of diesel, in particular, rose strongly and often exceeded the price of E5.



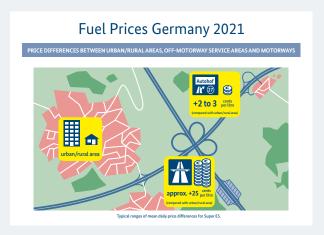
- The difference between crude oil prices and petrol station prices sharply increased at the start of the crisis in Ukraine. This in turn was caused in particular by the increasing difference between the refineries' sales prices and the crude oil prices.
- At one and the same petrol station, average price differences of 8-13 cents/litre can be observed in a day. A comparison of all petrol stations in one town shows that in most cases there are even price differences of up to 18-24 cents/litre in a day.



Fuel prices are in most cases at their highest in the mornings (approx. 5 to 8 a.m.) and at their lowest in the evenings (approx. 6 to 10 p.m.), although there are small price increases in the evenings. In between these periods prices often vary significantly. Towards the night time and during the night, especially those petrol stations which are already more expensive raise their prices again.



There are only relatively minor price differences between the different German regions. Although prices at offmotorway service areas located near the motorway are often somewhat higher (+2-3 cents/litre), prices are often even higher at motorway petrol stations, mostly around 25 cents/litre compared to off-motorway petrol stations.



Acquisition of OMV petrol station network by EG Group (Esso) only subject to conditions

In February 2022, the Bundeskartellamt carried out a secondphase examination of the acquisition of the petrol station network of OMV Retail Deutschland GmbH by EG Group Limited, which operates the ESSO service station network in Germany. The Bundeskartellamt only cleared the merger subject to the condition that 48 OMV petrol stations be sold to third companies.

EG Group operates 959 service stations in Germany under the "Esso" brand and, along with BP ("Aral" brand), Shell and Total, is one of the leading petrol station operators in Germany. OMV's service station network covers 285 petrol stations exclusively in southern Germany, mostly in Bavaria and Baden-Württemberg.

The group had originally planned to acquire OMV's entire service station network. However, the Bundeskartellamt's extensive investigations showed that this would have substantially increased market concentration in some southern German regions. There would have been the risk of the merger creating or strengthening a joint dominant position of the leading fuel companies BP/Aral, Shell and EG Group in these regions. In the remaining regions with OMV service stations, however, a significant number of other competitors are currently active with in some cases substantial market shares.

The Bundeskartellamt cleared the merger under the condition precedent that first 24 petrol stations of EG Group and 24 OMV petrol stations in the problematic market areas be sold to third companies. The Bundeskartellamt has meanwhile agreed to the proposed acquirers of these stations.

Merger control: Which cases are within the European Commission's competence?



- 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.
- In this case, the planned acquisition of the OMV petrol station network by the EG Group had initially been notified to the European Commission. In July 2021 the Commission referred the project to the Bundeskartellamt for examination at the latter's request.



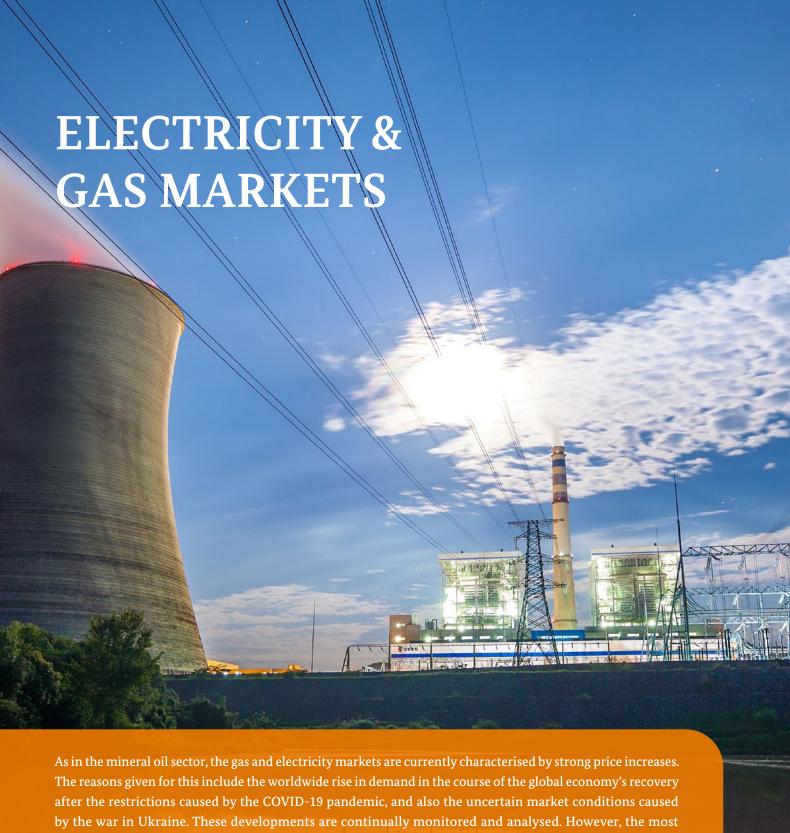
Tank & Rast model for awarding licences

The Bundeskartellamt has no serious competition concerns about plans by Tank & Rast GmbH regarding the award of fuel supply and distribution licences for motorway petrol stations for the coming five years (so-called "2023 award model").

In the 1990s, Tank & Rast took over the management of most of the German

motorway petrol stations based on long-term concessions awarded by the government. Tank & Rast awards approx. 90 per cent of the licences for the supply and distribution of fuel to these petrol stations to oil companies.

The company asked the Bundeskartellamt to assess whether the award model planned for the coming five years was compatible with competition law. However, there were no indications that the model violates competition law. In the Bundeskartellamt's view, the modifications made to the award model even provide the oil companies with a certain incentive to increase sales by lowering their prices.



As in the mineral oil sector, the gas and electricity markets are currently characterised by strong price increases. The reasons given for this include the worldwide rise in demand in the course of the global economy's recovery after the restrictions caused by the COVID-19 pandemic, and also the uncertain market conditions caused by the war in Ukraine. These developments are continually monitored and analysed. However, the most important end customer markets currently do not show any structural competition problems, which is why the Bundeskartellamt has so far not initiated any formal abuse control proceedings. In the area of electricity generation and wholesale the authority can use, among other sources, the market power reports that are published at regular intervals to enable it to effectively examine the conduct of dominant suppliers at short notice if there are sufficient initial grounds to suspect a violation of competition law.

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. Consumers 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.

Sector Inquiry into charging stations for electric vehicles



In October 2021 the Bundeskartellamt published a progress report on its ongoing sector inquiry into publicly accessible charging infrastructure for electric vehicles, summarising the authority's preliminary findings. The authority considers that there are a number of approaches which could ensure more competition in the provision of charging electricity. Especially in the current phase of infrastructure development, market access should be open and non-discriminatory.

The preliminary findings include:

- Little use has yet been made of public tender procedures for public areas, particularly at municipal level. A legal requirement for the non-discriminatory award of these areas could help to improve conditions for the emergence of competitive market structures in the area of public charging infrastructure for electric vehicles. The same applies to the non-discriminatory allocation of state funds for all providers.
- While the investigations have so far not produced any evidence that the EV charging electricity prices in Germany are systematically and generally excessive, there is currently a high level of concentration in the individual regions. Open market access could ensure that in the course of the development of the infrastructure and more intensive competition prices could decrease as well.
- Transparency on prices and the user friendliness of the charging stations leave room for improvement.

Report on market power in the electricity generation sector

The development of market conditions in the generation of electricity is the subject matter of the third separate market power report presented by the Bundeskartellamt in February 2022. The report analyses the generation and first-time sale of electricity in the period from 1 October 2020 up to and including 30 September 2021. For the first time, the report also provides indicators of the market situation in certain areas of balancing services in greater detail.

Key findings:

- Due to the market developments in the course of the energy transition, RWE as the largest power generating company has meanwhile exceeded the threshold for the presumption of market dominance applied by the Bundeskartellamt.
- Power plant capacities outside Germany have become more important for the market for the first-time sale of electricity in Germany.
- In the area of balancing services, which are required to balance out frequency fluctuations in the grid, the data point to a very high level of concentration in certain areas, which applies in particular to positive secondary control power. Pump storage plants are particularly important in this regard, and EnBW is the leading supplier. The question as to whether its position is dominant still has to be examined in greater detail, taking into account more factors.

2021 Monitoring Report

In December 2021 the Bundesnetzagentur and the Bundeskartellamt published their joint 2021 Monitoring Report on developments in the electricity and gas markets. The report primarily covers the year 2020, but also describes the first quarter of 2021.

Key findings from the report are:

- Due to the energy transition, the generation from nonrenewable energy sources decreased significantly by 11.6 per cent in 2020.
- As in previous years, it still has to be assumed that no provider holds a dominant position on the end customer markets.
- As at 1 April 2021, average electricity prices for household customers rose by approx. two per cent in comparison to the previous year. Gas prices for household customers rose by approx. six per cent as at 1 April 2021.
- With approx. 5.4 million household customers switching suppliers in 2020 a new record level has been reached in the electricity sector. The number of customers switching gas suppliers also surged to a new record high of 1.6 million.



Food retail



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 per cent of food sales to consumers (excluding drugstores, specialist retailers and online sales).



Sale of "real" stores

Over the past years the Bundeskartellamt has examined the sale of "real" stores in several extensive proceedings. The Metro Group had sold more than 270 "real" stores to the real estate investor SCP, which then took up negotiations with food retailers and involved the Bundeskartellamt at an early stage. Following several merger projects by EDEKA, Kaufland, Globus and other companies with the aim to acquire "real" stores, the Bundeskartellamt cleared the acquisition of 63 further "real" stores by SCP's real Beteiligungs- und Service GmbH in a proceeding conducted in March 2022. The stores are acquired as a management buyout involving the financial investor Dr Tischendorf. The stores will be jointly operated by a team of "real" managers and the family business Dr Tischendorf under the "real" brand.



Within the context of this merger the authority also examined a planned purchasing cooperation between the acquirers and REWE, but ultimately decided not to initiate a proceeding under competition law. The examination focused on the question of whether it was absolutely necessary to start a purchasing cooperation with REWE as one of the largest retailers to ensure the further operation of the 63 "real" stores rather than consider small and medium-sized partners. Ultimately, no other model appeared to be sufficiently viable to ensure the future operation of the stores.

When Kaufland and EDEKA planned to acquire a number of "real" stores the Bundeskartellamt had already taken potential disadvantages for mediumsized retailers into consideration. The authority made the acquisition of stores by Edeka and Kaufland conditional on the further sale of stores with a purchase volume of at least 200 million euros to medium-sized competitors.

Suspected violation of the prohibition to demand unjustified benefits from suppliers

In 2021, the Bundeskartellamt conducted investigations against Kaufland based on the suspicion that the company had violated the prohibition to demand unjustified benefits from suppliers ("Anzapfverbot"). The investigations were terminated after Kaufland had modified and specified more precisely the special demands it had placed on suppliers in the context of its acquisition of "real" stores. Demands for special benefits can constitute a prohibited abuse of market power if a powerful company uses its market power to demand benefits from its suppliers without any objective justification. The modifications made by Kaufland enable its suppliers to better calculate to what extent they benefit from the service provided by Kaufland in return. For example, Kaufland will receive remuneration if a supplier wishes to be listed in a new Kaufland store and actually achieves higher sales as a result. Kaufland will forgo remuneration if a supplier's sales fall clearly behind expectations.

A remuneration will also be payable if Kaufland performs specific advertising measures for its suppliers. In assessing the special demands the Bundeskartellamt also took into account that these will only be imposed by Kaufland for a limited time.

In a further proceeding the Bundeskartellamt also conducted investigations against **EDEKA**. After the suspicion against EDEKA could not be confirmed, this proceeding was terminated.

Statutory boundaries for demands for special rebates



- Demanding special rebates from suppliers is a frequent phenomenon in the trading sector.
- Especially after a takeover has been completed, trading companies are often tempted to compensate for some of the costs they incurred by demanding rebates.
- Such demands can raise competition concerns if they are imposed by a company that has a powerful or even dominant
- In most of these cases it is difficult for suppliers to refuse to comply with the demands as they depend on the retailers and could possibly have to expect that their products will be
- In assessing the demands made in such cases it is important to examine whether an objectively verifiable service is agreed

- in return (e.g. additional exhibition space or guaranteed
- If this is not the case, the demands could be covered by the so-called "Anzapfverbot", i.e. the prohibition to demand unjustified benefits.
- After its takeover of the "Plus" stores in 2008, EDEKA imposed unilateral demands on suppliers, including general and unjustified demands for substantial special payments.
- The Bundeskartellamt had selected the demands on sparkling wine manufacturers as an example and prohibited them in 2014 based on the "Anzapfverbot" prohibition.
- In 2018, the Federal Court of Justice confirmed the Bundeskartellamt's decision of principle, sending an important signal to the food retail sector.

Terms and conditions in online trade

Based on its proceeding following complaints from market participants, the Bundeskartellamt instructed not to use certain clauses in its terms and conditions. In the authority's view, these clauses could have led to disadvantages for online retailers.

In Germany Liebherr sells its household appliances through Liebherr-Hausgeräte Vertriebs- und Service GmbH. The company has a particularly important market position in the sector of freezers and refrigerated wine cabinets.

Most products are sold through authorised retailers in a so-called selective distribution system. Brand manufacturers such as Liebherr can define quality requirements to be met by retailers selling their products. However, Liebherr set considerably stricter requirements for retailers to qualify for rebates in online sales compared to offline sales.

Retailers who used both distribution channels risked losing the rebate for brick-and-mortar sales as well if they did not meet the strict online requirements. For instance, online shops had to ensure that staff could

Consolidation in the agricultural trade sector

In 2021 and 2022, the Bundeskartellamt examined several takeovers in the agricultural trade sector. In April 2021, the acquisition of 19 locations of Raiffeisen Waren-Zentrale Rhein-Main eG (RWZ) by Raiffeisen Waren GmbH (RaiWa) was cleared. The companies had originally planned to operate several joint ventures and amended their plans because of the Bundeskartellamt's competition concerns. The launch of a joint venture which is to market agricultural products at wholesale level was also cleared.

RaiWa operates 62 locations, mainly in Hesse, Thuringia and Saxony. RWZ operates approx. 150 locations in large parts of North Rhine-Westphalia, Hesse, Thuringia, Saxony, Rhineland-Palatinate and Saarland. The main customers of both companies are farmers.

In January 2021, the Bundeskartellamt also cleared the proposed merger between Beiselen and ATR. The merger affects the markets for the purchase of grain and oil seeds and the sale of seeds, plant protection products and fertilisers to farmers.

ATR is primarily active in the agricultural retail trade in Schleswig-Holstein, Mecklenburg and Brandenburg whereas Beiselen is active throughout Germany as an agricultural wholesaler and operates a network of locations in Western Pomerania, Thuringia, Saxony and Saxony-Anhalt for the retail trade.



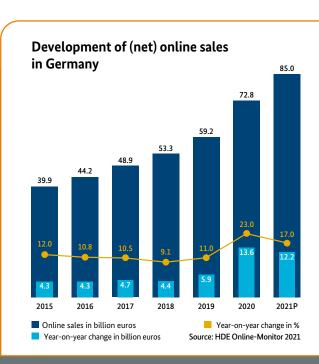
In terms of the geographic market affected, the activities of the two companies overlap in Mecklenburg-Western Pomerania, which was the focus of the competitive assessment. Apart from the parties, other comparably strong competitors are active in the market, which is why the Bundeskartellamt does not expect the merger to restrict the intensive competition on this market.

The merger of the two companies created the BAT Agrar GmbH group of companies. In March 2022, the Bundeskartellamt cleared the increase in the number of shares held by BAT in Rudolf Peters Landhandel GmbH & Co. KG and thus BAT's acquisition of joint control. The company is a private agricultural trading company which is active almost exclusively at the retail level with farmers at 21 business locations in Lower Saxony, Brandenburg, Mecklenburg-Western Pomerania and Schleswig-Holstein.

This case also did not give rise to any serious competition concerns as the parties' strong market position is sufficiently constrained by strong competitors.

be contacted on Sundays and holidays or offer certain modes of payment. Such clauses can substantially impair the attractiveness of online sales and even cause some retailers to cease their online activities altogether.

Liebherr undertook towards the Bundeskartellamt to adjust the criteria in question to those applicable to brick-and-mortar sales outlets and to make them more flexible. This dispelled the authority's competition



SUSTAINABILITY & COMPETITION



Social and ecological aspects are gaining more and more attention in the public and political debate. The sustainable management of available resources is becoming increasingly important to consumers, policy makers and businesses.

Many businesses have an incentive to go beyond the applicable legal provisions and steer their entrepreneurial activities towards sustainable development or public interest objectives. Sustainability is increasingly developing into a competition parameter.

There is no general contradiction between public interest objectives and the objective to protect competition. On the contrary, safeguarding competition will usually also lead to public interest goals being achieved, especially since more and more customers expect such goals to be achieved.

However, leading the way on new sustainability goals can be expensive and risky for companies. This is why an increasing number of businesses have established sector-wide initiatives and cooperations to agree on common standards, criteria, approaches, etc. with the aim of achieving sustainability goals.

Against this background the Bundeskartellamt frequently receives requests from companies regarding the competition law criteria that have to be observed when cooperating with others. Examples from the past few years include animal welfare and fair-trade initiatives as well as the Grüner Knopf ("Green Button") initiative for sustainable textiles.

"Competition law does not stand in the way of cooperations for achieving sustainability objectives – on the contrary. Effective competition is part of the solution since sustainability requires innovation, which in turn only emerges in a competitive environment."

> Andreas Mundt. President of the Bundeskartellamt

Proceedings conducted in the reporting period

Living wages in the banana sector

- No competition concerns about the food retail sector's voluntary commitment to set common standards for fair wages in the banana sector.
- Common goals and standards along the supply chain for responsible procurement practices and monitoring procedures ensuring transparent wages.
- No exchange of information on purchasing prices, costs, production volumes or margins. No minimum prices or surcharges.

Expanding the animal welfare initiative "Initiative Tierwohl" to include cattle fattening

- Livestock farmers who meet certain animal welfare criteria receive an "animal welfare payment" financed by food retail companies.
- Bundeskartellamt calls for clear labelling to achieve transparency for consumers, and for the further development of the financing model, which is tolerated by the authority for a transitional period.

Agricultural policy project "Agrardialog Milch" - no jointly agreed surcharges without improved sustainability

- Surcharges in favour of raw milk producers to be agreed by farmers, dairies and food retailers.
- Bundeskartellamt clarifies that an economic interest in a higher level of income per se cannot justify an exemption from the prohibition of price-fixing agreements. In this case, sustainability goals were not the subject matter of the project.
- Cooperations between agricultural producers and also along the entire value chain for agricultural products often enjoy the privilege of being exempted from prohibitions under competition law. The Bundeskartellamt encourages and supports such cooperations.

QM+ programme - increasing animal welfare in milk production

- The Bundeskartellamt has no serious competition law concerns about the "industry agreement milk" (Branchenvereinbarung Milch) presented by QM-Milch e.V. to improve animal welfare in milk production.
- Key elements of the programme are the introduction of a label for products which fulfil the animal welfare criteria set by the QM+ programme, and the financing of the additional costs incurred through a so-called animal welfare surcharge payable to farmers.
- There are many different competing labels and vigorous competition between the different brands. After the first phase, it will have to be reassessed to what extent additional competition elements can be introduced.

Sustainability initiatives

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

- How great are the restrictions of competition caused e.g. by aligning 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")?



The DFL's 50+1 rule | RTL/SuperRTL | Klambt/MVZ

VWV/Mittelhessische Druck- und Verlagshaus GmbH & Co. KG

Verlagsgesellschaft Passau/Mittelbayerische Medien Holding

SIGNA Medien/Rheinisch-Westfälische Verlagsgesellschaft | Ostruhr Anzeigenblattgesellschaft

Ostthüringer Zeitung/Funke

Professional sport in general and football in particular, are of great economic value. The organisation of various types of sport by associations is therefore also always relevant under competition law. Markets closely related to professional sport, e.g. the media sector and the advertising industry, also raise competition issues.

The press and publishing sector is in the focus of competition authority proceedings on a regular basis.

The DFL's 50+1 rule



The Bundeskartellamt is currently examining whether the so-called 50+1 ownership rule in the statutes of the Deutsche Fußball Liga (DFL) complies with European and German competition law. The appraisal of the 50+1 rule goes back to an initiative of the DFL. The 50+1 rule was introduced in 1999 on the one hand to provide the clubs of the Bundesliga and Bundesliga 2 with new funding possibilities and on the other to limit the influence of investors and retain the club character of the sport. It consists of a basic rule stating that the parent club has to retain the majority of voting rights if the professional football division is outsourced. However, the socalled benefactor exemption stipulates that the executive committee of the DFL can grant an exemption to the 50+1 rule if an investor party has substantially

supported the club's football activities for a continuous period of more than

As the economic activities of associations and clubs are subject to German and European competition law, the 50+1 rule must comply with these laws.

In principle, restricting the options for clubs to participate in league matches to not-for-profit membership clubs constitutes a restriction of free economic competition. However, restrictions of competition can in certain cases escape the prohibition of anti-competitive agreements. With the 50+1 rule the DFL intends to maintain the club character of the sport and ensure a certain even balance in sports competition. These sport policy objectives can also be recognised under competition law. In its basic form the 50+1 rule seems appropriate and proportionate for achieving such goals. However, there are doubts about its combination with the current benefactor exemption. Uniform application and enforcement do not seem to be ensured, but would be a necessary requirement for compliance with competition law.

At the end of May 2021 the Bundeskartellamt informed the DFL and other parties to the proceeding of this preliminary assessment. Following the evaluation of the comments by the DFL and the admitted clubs on the preliminary assessment, the next steps of the proceeding are currently being discussed with the parties.

Merger between RTL and SuperRTL

In June 2021 the Bundeskartellamt cleared the merger between Bertelsmann SE & Co. KGaA (RTL Group) and RTL Disney Fernsehen GmbH & Co. KG (Super RTL). RTL had previously already held 50 per cent of the shares in the children's TV channel and thus acquired the remaining 50 per cent from the former co-shareholder Disney.

Despite the very strong market position of RTL and ProSiebenSat.1 in TV advertising, the acquisition does not significantly impair the conditions of competition for various reasons. One of the decisive factors was the fact that RTL had been able to benefit from SuperRTL's advertising activities prior to its acquisition because of the shares it already held in this channel.

In its investigations the Bundeskartellamt again examined what connections and overlaps exist between TV advertising and online video advertising. Interviews with a large number of media agencies and advertising customers and some broadcasting stations showed that there is still no wide substitutability between TV advertising and online

video advertising. The market players surveyed said this was especially due to the existing reach of linear TV, the possibility to quickly expand reach with TV advertising and the high degree of target group penetration. However, the Bundeskartellamt took into account that online video advertising exerts competitive pressure on TV advertising.





In September the Bundeskartellamt cleared plans by the magazine publisher Klambt to participate in the joint venture MZV Moderner Zeitschriften-Vertrieb previously controlled by FUNKE Mediengruppe and Burda. Both companies are active in the Germany-wide distribution of press products for magazine and newspaper publishers and offer several services in connection with these activities. Since Klambt has previously only distributed its own newspapers and magazines and has not provided any third-party services on the relevant market, the merger could be cleared without in-depth investigations.

The Bundeskartellamt also cleared the proposed acquisition of all the shares in the publishing company Verlag Wetterau und Vogelsberg GmbH (VWV) by Mittelhessische Druckund Verlagshaus GmbH & Co. KG, which is part of Ippen-Mediengruppe. Until now VWV belonged to VRM-Mediengruppe and publishes the regional subscription daily newspaper "Kreis-Anzeiger" and the advertising newspaper "Sonntag-Anzeiger". Along with the advertising newspaper "Neue Wochenpost für Oberhessen" which belongs to the Ippen group, these newspapers are mainly published in the eastern part of the Wetterau district.

Although the merger did not result in market share additions which are critical to competition in the newspaper supplement and advertising markets in the region, it was not possible to prohibit it based on its actual effects on competition as the affected market volume in this case was below the minor market threshold.

In October 2021 the Bundeskartellamt cleared plans by the publishing house Verlagsgesellschaft Passau GmbH to acquire all the shares in Mittelbayerische Medien Holding KG. The latter publishes in particular the regional subscription daily "Mittelbayerische Zeitung" in the greater Regensburg area. Verlagsgesellschaft Passau mainly publishes the regional subscription dailies "Passauer Neue Presse" in the greater

Passau area and "Donaukurier" in the greater Ingolstadt area. In addition, both companies are also active in other business sectors, e.g. the publication of advertising newspapers.

The acquisition did not raise any competition concerns as the circulation areas of the newspapers only have marginal overlaps. An overlap that had previously existed in print advertising was eliminated as the Regensburg edition of "Wochenblatt", an affiliate of Verlagsgesellschaft Passau, was discontinued.

In March 2022 the Austrian SIGNA Medien GmbH acquired 40 per cent of the shares of Rheinisch-Westfälische Verlagsgesellschaft and thus joint control of the publishers of "Ostthüringer Zeitung". The remaining 60 per cent of the shares in "Ostthüringer Zeitung" will continue to be held by a company belonging to Funke Mediengruppe. There were no competition concerns as SIGNA Medien had not yet been active on the affected press markets in Thuringia. The Bundeskartellamt had prohibited the acquisition of "Ostthüringer Zeitung" by Funke Mediengruppe in September 2021 (see page 53).

The planned splitting of activities in the area of advertising newspapers by Ostruhr Anzeigenblättergesellschaft (ORA) was cleared in September. ORA was previously jointly controlled by Lensing Media and Funke Mediengruppe and published advertising newspapers in the eastern Ruhr area. After the split, Lensing is to be the sole publisher of ORA's advertising newspapers in Dortmund, Lünen, Schwerte, Castrop-Rauxel, Dorsten and Haltern, and in return Funke is to publish ORA's advertising newspapers in Bochum/Wattenscheid, Witten, Gladbeck and Bottrop. The Bundeskartellamt does not consider the split a deterioration of the competition situation on the local advertising and reader markets as the jointly controlling parent companies Lensing Media and Funke Mediengruppe with their regional dailies are already today the only active publishers on these markets.

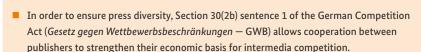
Acquisition of "Ostthüringer Zeitung" by Funke Mediengruppe prohibited

In September 2021 the Bundeskartellamt prohibited a company belonging to Funke Mediengruppe from acquiring sole control of the publishing companies of the daily newspaper "Ostthüringer Zeitung". Funke already publishes the "Thüringische Landeszeitung", whose circulation area to some extent overlaps with that of the "Ostthüringer Zeitung". The acquisition would have eliminated the remaining competition between regional dailies in these regions.

In their statement to the Bundeskartellamt the publishers argued that the merger would not significantly worsen the conditions of competition because, among other factors, the newspapers were already closely linked in a number of cooperation projects. A cooperation regarding publishing activities can actually qualify for an exemption under competition law. However, this does not apply to the editorial cooperation between newspapers. The Bundeskartellamt considered in this case that the cooperation regarding publishing activities could not be taken into account.

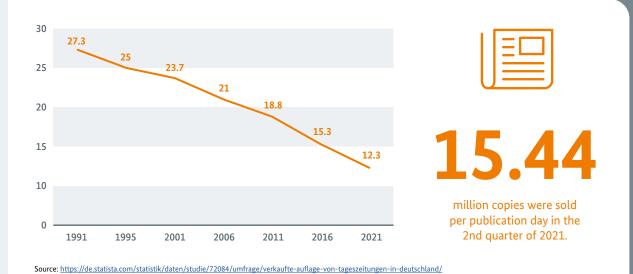
One particular aspect considered in the examination of the merger project was that Funke Mediengruppe already holds 60 per cent of the shares in the publishing companies of the "Ostthüringer Zeitung". With the remainder of the shares being held by Rheinisch-Westfälische Verlagsgesellschaft, Funke is only able to implement its decisions regarding "Ostthüringer Zeitung" to a limited extent. The acquisition would thus completely eliminate the remaining competition between the regional dailies in the Jena and Gera regions.

GWB Exemption regulation for the press sector



- 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 anti-competitive agreements.
- This exception is only applicable under German competition law. If the cooperation also appreciably affects trade between the Member States of the EU, Article 101 TFEU

Development of the number of sold copies of dailies in Germany in million copies





curiae ("friend of the court") in civil consumer protection actions. The authority has not yet been granted powers to intervene in such civil consumer protection issues, e.g. the power to order the termination of the infringement. The 2021 coalition agreement, however, requires an analysis of potential legislative adjustments which would grant the Bundeskartellamt such power.

Messenger and video services

In November 2021 the Bundeskartellamt published an interim report on the sector inquiry in the area of messenger and video services, which is also available on the authority's website. The inquiry is to provide clarification on issues relevant to consumer protection and data security, e.g. whether users are obliged to upload their contact lists when registering or whether a promised end-to-end encryption really deserves this name. Furthermore, the inquiry is to provide an opportunity to shed some light on the interoperability of messenger services, which is often called for in political circles, and its possible effects on the use of more privacy-friendly services.

The Bundeskartellamt's interim report offers a first overview of the conditions in the sector and the various groups of providers, functions and business models. The report also outlines the results of a survey in which more than 40 different service providers participated and gave their views on interoperability, and provides a first legal, technical and scientific assessment of the information collected.



Sector inquiries in the area of consumer protection

- Comparison websites (April 2019)
- Smart TVs (July 2020)
- Online user reviews (October 2020)
- Mobile apps (July 2021)
- Messenger and video services (ongoing)
- Scoring in the online retail sector (ongoing)

Scoring in the online retail sector

In March 2022 the Bundeskartellamt launched a sector inquiry under consumer protection law into scoring practices used in the online retail sector. The inquiry deals with retailers' practices to check consumers' credit standing, i.e. their ability to pay when shopping online.

Many consumers are not aware that when shopping online their credit standing is checked based on socalled score values, especially when buying products on account. In the sector inquiry, the Bundeskartellamt will examine whether and how online retailers provide information on such practices, how the checks are carried out and on which criteria the credit checks are based. For this purpose, the authority will involve companies that may be of relevance to scoring, e.g. credit bureaus which provide online retailers with an essential factor for their credit checks by assigning scores.

The Bundeskartellamt will survey online retailers from various sectors and credit bureaus to analyse their practices in carrying out credit checks when consumers place orders online.





The Federal Public Procurement Tribunals are responsible for reviewing tender procedures which are carried out by the Federation or its 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 a tender procedure has found indications of a violation of public procurement law and applies to the public procurement tribunals for a review of the award procedure.

The review proceedings mainly focused on the award of contracts for public supplies and services, works contracts and sectoral contract services and the defence and security services sectors.

Procurement of military products: Supply of heavy transport helicopters

A negotiated procedure initiated by the German armed forces, the Bundeswehr, in which only the two US companies Lockheed-Martin and Boeing participated as bidders, was cancelled after more than one year because the bidders' offer prices lay well above the procurement costs provided for in the federal budget. Lockheed-Martin then contacted the Public Procurement Tribunal and requested it to oblige the Bundeswehr to continue the award procedure or, alternatively, at least to state that the cancellation of the procedure was unlawful.

In its decision the Public Procurement Tribunal confirmed the validity of the decision to cancel the procedure and rejected the request to have the award procedure continued. It is only possible in very limited exceptions - and this case was not one of them - to oblige public

contracting authorities to continue an award procedure that has been cancelled.

However, at the same time the Public Procurement Tribunal's decision established that the decision to cancel the procedure was unlawful. The reason was that the estimation of the procurement costs for the helicopters conducted by the Bundeswehr, on which the application for budgetary resources was based, was not documented in a transparent manner.

This decision has been confirmed by the award division of the Düsseldorf Higher Regional Court. The court also held that the estimation of the procurement costs was not documented in a transparent manner. In the court's view the estimation of costs was too low, in particular in view of the requested equipment for the helicopters.

The Federal Public **Procurement Tribunals** in figures



- In 2021, 139 applications were filed for the initiation of review proceedings.
- 48 decisions were taken, 36 of which in favour of the public contracting authorities and 12 in the applicants' favour. In all other cases the review proceedings were terminated without a decision on the merits either because applications were withdrawn (43) or cases were concluded by other means (40).
- In 23 cases the decisions of the public procurement tribunals were immediately appealed to the Düsseldorf Higher Regional Court.

Intellectual property rights and procurement law

In 2021 the Public Procurement Tribunals had to deal with the effects of intellectual property rights on the competition for public contracts in a number of review procedures.

The award of public contracts in competitive procedures represents a statutory principle the specific details of which are provided for in a number of rules under procurement law. For example, the requirements placed on companies bidding for public contracts must not be disproportionately high so as to allow as many companies as possible to participate in the competition.

On the other hand, the protection of intellectual property, in particular copyrights and patent rights, is guaranteed by the legal system. This creates a conflict if e.g. a company bidding for a contract claims that none of its competitors could carry out the order because of an existing copyright. In such cases the Public Procurement Tribunal has to decide on the basis of difficult technical issues whether a competition would be possible at all or whether, on the basis of an exemption, the public contract could be directly awarded to a company which actually owns the copyright and which is therefore the only bidder to be considered for rendering the service in question. These questions are particularly relevant when it comes to the procurement of custom software.

Public procurement law

Public procurement law defines the rules which have to be observed by public contracting authorities in procurement procedures and the possibilities suppliers have to defend themselves against any violations of public procurement law. The aim of public 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.



Aims and objectives of the **Competition Register**

A company whose senior staff have committed serious economic offences should not be able to benefit from public contracts and concessions. In Sections 123 and 124 of the German Competition Act (GWB) public procurement law therefore sets out that companies must or can be excluded from a procurement procedure if their senior staff have committed certain crimes or administrative offences. The data stored in the Competition Register are intended to quickly provide contracting authorities with the necessary information to reliably examine the grounds for exclusion. The purpose of the Competition Register is therefore to help fight economic crime.

The Competition Register is not a public register. It can only be consulted by public contracting authorities in the context of procurement procedures. The decision to exclude a listed company from a procurement procedure still remains with the contracting authority. An entry in the Competition Register does not automatically bar a company from receiving a contract.

The Competition Register for Public Procurement in operation



Competition Register is maintained as an electronic database.

Since December 2021 the competent authorities have been obliged to communicate relevant violations of law to the registry authority. Since then, it has also been possible for the registered contracting authorities to consult the Competition Register in procurement procedures.

Initial feedback from users has been positive. The electronic communication channels between the authorities communicating data and the registered contracting authorities are working; searches are carried out via a web portal and the results are immediately displayed electronically. This supports the efficient execution of the contracting authorities' procurement procedures.

Mandatory consultation and right to information applicable from June 2022

From June 2022 contracting authorities are obliged to consult the Competition Register in procurement procedures involving an estimated order value of 30,000 euros (excluding VAT) or more. Sector contracting entities and concession grantors have to consult the register if the threshold values which are also decisive for the applicability of the procedural rules under the GWB are reached. If the value of the contract is below these thresholds, contracting entities may consult the Competition Register on a voluntary basis.

From June 2022 companies and natural persons can obtain information on the content of the Competition Register relating to them. Requests can be submitted both in writing and electronically and are subject to fees.

Competition Register key facts

- Contracting authorities are obliged to electronically consult the Competition Register before awarding a contract with a certain minimum order value.
- They also have the possibility to consult the register if the value of the contract is below these value thresholds.
- 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.

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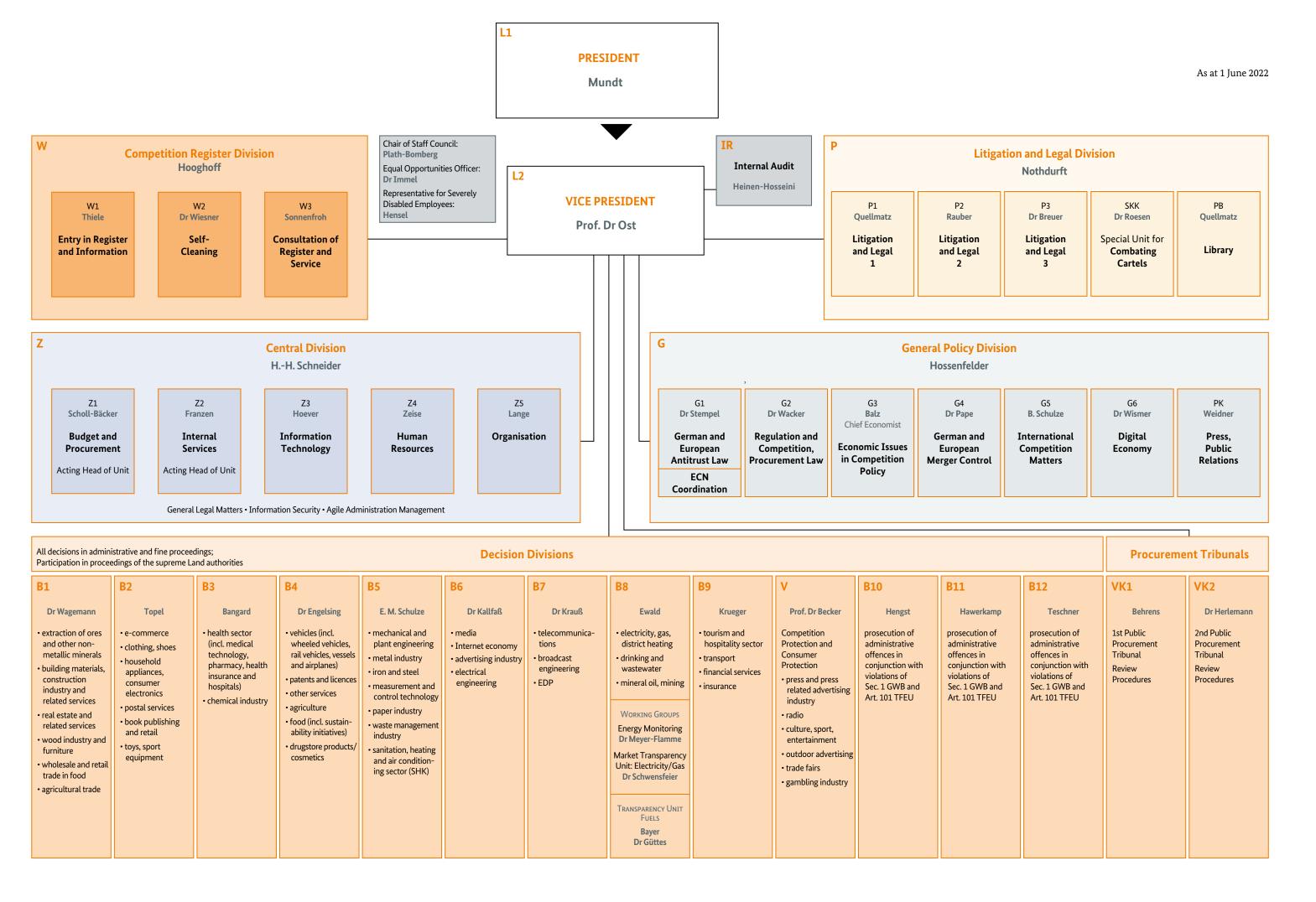
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