



Bundeskartellamt



open markets | fair competition

Bundeskartellamt

Annual Report 2022/23



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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Message of greeting – Dr Robert Habeck

Federal Minister for Economic Affairs and Climate Action

As our economy undergoes digital and ecological transformation, it is more important than ever to have well-functioning competition. And more than ever this requires a competition policy that is reliable and effective. Competition policy serves to protect competition for the most innovative and efficient solutions. A regulatory framework that is fit for the future can integrate and connect economic, social and ecological issues. This will allow us to have an optimistic outlook on what lies ahead despite the challenges we are experiencing today.

Our citizens' everyday lives are currently affected by increased consumer prices. It is thus all the more important to protect competition, the key element of our socio-ecological market economy, and to make even greater use of the benefits it offers. Well-functioning competition also benefits consumers as it results in lower prices, broad choice options, high quality and innovation. Businesses must not be allowed to use the uncertainties involved in crises to their own advantage. In its role as guardian of competition the Bundeskartellamt therefore decisively contributes to consumer protection, for example by taking firm and consistent action against cartels and abuse of market power. The Bundeskartellamt is carrying out a sector inquiry into refineries and fuel wholesale to gain a deeper insight into the mechanisms of price formation in this sector. Within the framework of the energy price relief measures the authority examines whether suppliers raise the unit rates they charge for gas, heat or electricity without any objective justification in an attempt to receive higher government compensation. These tasks are of particular importance during the energy crisis. We await the results of these reviews with great interest.

As the current situation calls for more, not less, competition, we have introduced the draft bill for the 11th amendment to the Act against Restraints of Competition (GWB), which was passed by the Federal Cabinet on 5 April 2023. The draft bill provides for a further development of competition law and expands the Bundeskartellamt's competences. The aim of the amendment is to ensure that in the interest of the economy as a whole a malfunctioning of competition can be stopped swiftly and effectively. This is to be achieved in particular by enabling the Bundeskartellamt to order

that measures be taken to this effect after the authority has conducted a sector inquiry.

The Bundeskartellamt's task is not only to enforce competition law. It also conducts sector inquiries, most recently into messenger services, to shed light on potential violations of consumer protection law. Consumer protection and the protection of competition are closely interconnected. The 12th amendment to the GWB will therefore expand the Bundeskartellamt's competences in the area of consumer protection in order to ensure more effective enforcement of economic consumer law.

How to deal with digital markets will remain a key issue in the competition policy debate. In October 2022 the Federal Ministry for Economic Affairs and Climate Action and the Bundeskartellamt jointly hosted the G7 competition summit. In view of the cross-border nature of the digital economy, cooperation both at the European level and with our G7 partners is indispensable. In November 2022 the Digital Markets Act (DMA) entered into force, reflecting the ambitious nature of European competition policy. To make the Bundeskartellamt's expertise and capacities available for the enforcement of this powerful instrument, the 11th amendment to the GWB will provide the authority with the necessary investigative powers. Supporting the European Commission in its efforts to enforce the DMA will complement the Bundeskartellamt's competences at the national level pursuant to Section 19a GWB. Last year the Bundeskartellamt already made effective use of the national rules to ensure that competition works well in digital markets, and is thus playing a pioneering role. We are confident that the Bundeskartellamt will continue to make energetic use of its competences where this is necessary and will also contribute to the effective enforcement of the DMA.

Procurement is a further sector in which the Bundeskartellamt successfully enforced competition in 2022. I am pleased to note that since June the national Competition Register for Public Procurement has been in full operation at the Bundeskartellamt. The Register effectively helps to exclude businesses that engage in unfair practices from the award of public contracts. The Bundeskartellamt also assumes a very important role with regard to the so-called self-cleaning process,

which enables businesses to prove that they have adopted appropriate measures to be considered reliable again. The Competition Register and its procedures are already fully digital.

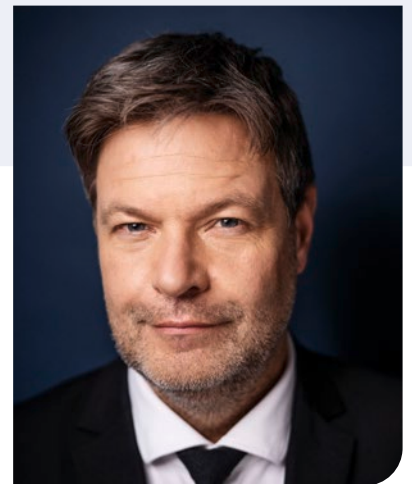
The procurement transformation measures envisaged in 2023 are to give additional strong impetus to the digitalisation of the review proceedings conducted by the Federal Public Procurement Tribunals at the Bundeskartellamt. The Public Procurement Tribunals fulfil the important role of a guardian of competition, also, and especially, in cases where goods or services are urgently required. In 2022 the tribunals were faced with special, crisis-related legal requirements. Specifically with regard to LNG and the Bundeswehr, areas which have become particularly urgent due to Russia's war of aggression, requirements for faster decisions and new options for decisions have emerged.

I am convinced that competition and sustainability are not contradictory concepts. Quite the contrary: We must continue to use the innovative force of competition to promote sustainability initiatives. Already in February 2022 the Federal Ministry for Economic Affairs and Climate Action published its agenda and basic policy philosophy including 10 points for sustainable competition as a pillar of the socio-ecological market economy. We must ensure a reliable legal framework for sustainability cooperation. In this context, the European Commission's drafts for revised horizontal guidelines and guidelines on Article 210a CMO (Regulation establishing a common organisation of the markets in agricultural products) are an important step in a process which the Federal Ministry for Economic Affairs and Climate Action will continue to monitor closely. A modern regulatory policy framework means we are supporting ambitious businesses while at the same time putting a stop to greenwashing and other restraints of competition.

Sustainability in competition law is only one of the issues we are going to address in this legislative term with the 12th amendment to the GWB in order to implement the projects we set forth in the Coalition Agreement and in the competition policy agenda of the Federal Ministry for Economic Affairs and Climate Action.

This annual report shows that the protection of competition is in good hands with the Bundeskartellamt. I thank all the staff members of the Bundeskartellamt for their untiring efforts to protect effective competition, a task which particularly last year came with many challenges.

I wish you continued success as you carry out this important work.



Foreword – Andreas Mundt

President of the Bundeskartellamt

Competition is the cornerstone of our social market economy. A driver of innovation and a stimulus for the economy, competition motivates companies to do better and make an effort to win over customers. This brings direct benefits to consumers, such as lower prices, higher quality and an ever-improving range of offers. Free competition is also the most effective tool we have to limit the power of companies. But the ingenious principles of competition are fragile and in need of protection. There are always companies looking for ways to eliminate or avoid competition. In 1958 the German Competition Act (*Gesetz gegen Wettbewerbsbeschränkungen* – GWB) came into force. The Bundeskartellamt enforces the GWB's rules, acting as the referee for the economy.

Today's economy and competition are marked by crises. Since Russia's attack on Ukraine on 24 February 2022, many economic sectors have been hit by inflation. In the mineral oil sector we are pushing ahead with our sector inquiry focusing on refineries and wholesalers. Our Market Transparency Unit closely monitors fuel prices in Germany and provides consumers with the greatest possible transparency. We also have an ongoing investigation into charging stations for electric vehicles. Early this year the Bundeskartellamt was assigned a new task: to enforce abuse control relating to the energy price relief measures. In this context, we take action if electricity, gas and heat suppliers abusively claim relief payments made available by the state. Given that there are thousands of providers offering a wide range of rates and individual contracts, this is a challenging task. But we have profound sector knowledge to draw on. We converted an existing Cartel Division into a new unit for enforcing the prohibition rules and took up work immediately. Most recently we initiated a double-digit number of proceedings against electricity, gas and district heating suppliers. In addition, we conduct regular and systematic screenings of all data provided in applications for reimbursement to identify suspicious suppliers.

Besides applying our new enforcement powers, we have also been dealing with enquiries by companies looking to cooperate without violating competition law. Our assessments of crisis-related cooperation projects in the car and sugar industries or with respect to LNG terminals have provided companies with the

orientation they need, for example to prevent shortages. We also engage in a constructive dialogue on forward-looking projects such as hydrogen cooperation. Moreover, we have increasingly addressed issues relating to the ecological transformation of the economy. Our case practice regarding sustainability cooperation projects is growing. As we advocate initiatives that promote sustainability effectively and without eliminating competition, we help increase legal certainty.

In addition to highlighting the challenges of our time, the past year once again demonstrated that the Bundeskartellamt's traditional tasks will always remain significant. As a result of our cartel prosecution efforts, we imposed fines amounting to around 24 million euros, and despite a downward trend in leniency applications, we saw the largest number of dawn raids in years. No cartel can consider itself safe. Merger control is the key instrument to take preventive action to protect competitive market structures. In 2022 we examined more than 800 merger projects, among them eight in complex second phase proceedings. In the area of consumer protection, which is closely related to the protection of competition, we most recently concluded our sector inquiry into messenger and video services. An investigation into scoring in the online retail sector is ongoing.

As to the award of public contracts, our Public Procurement Tribunals processed around 120 applications for review in the past year. The Competition Register for Public Procurement has been in full operation since last summer. In the course of a public procurement procedure, public contracting entities can consult the Competition Register to check whether a company has committed relevant offences. Those companies should not benefit from public contracts and concessions. One of the first of its kind, the Competition Register is completely digital. In 2022 alone, around 4,000 economic offences were entered in the Competition Register; it was consulted over 120,000 times in total and most recently 1,000 times per day.

For many years the digital economy has been another key priority in our work. The Bundeskartellamt has already conducted a good many landmark proceedings against digital companies, based on a national competition law that ranks among the most advanced

in the world. Thanks to a new provision relating to extended abuse control we are now able to take far more effective action against anti-competitive practices by large digital companies. Last year we concluded proceedings on the basis of this provision against Meta (formerly Facebook), Google, Amazon and Apple, and we have already achieved first tangible improvements for competition and consumers. Further proceedings are ongoing and new ones have been initiated, including against Microsoft.

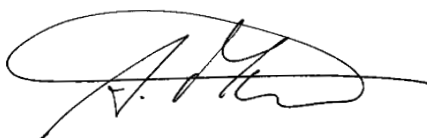
At the European level, the Digital Markets Act came into force last year. The Digital Markets Act is to subject powerful online platforms, so-called gatekeepers, to certain obligations. It is enforced by the European Commission. However, the Bundeskartellamt is to have the necessary powers to investigate violations of the Act. The new rules largely build on actual cases handled by competition authorities and will be a useful addition to the existing competition law regime.

Germany's competition law is evolving. The Federal Government passed the 11th amendment to the German Competition Act. The amendment is to give new powers to the Bundeskartellamt, making the disgorgement of benefits more effective and improving the possibility of imposing an obligation to notify mergers below the merger control thresholds, among other things. It is also to give us new powers of intervention after having concluded sector inquiries. To put an end to a significant malfunctioning of competition, the Bundeskartellamt will be able to impose behavioural and structural remedies and, as a last resort, even divest companies outside the scope of remedies for abusive conduct. The new possibilities for intervention will have very strict requirements of proof, but they can help restore competition in specific cases and put back into practice Friedrich August von Hayek's well-known notion of competition as a "discovery process". Amid this legislative momentum, we are getting actively involved to achieve an even more effective protection of competition.

Over the course of our history, we have regularly taken on new tasks and always fulfilled them successfully. It is not a coincidence that dealing with issues such as energy price relief-related abuse control, sustainability and naturally the digital economy has come to be part of our day-to-day work. When carrying out new tasks we always remain the guardians of competition – this is part of our core DNA.

Our annual report provides you with an overall view of all the areas of our work. I hope you will enjoy reading it.

Andreas Mundt



A network of white person icons connected by thin white lines on a blue background. The icons are arranged in a complex, interconnected pattern, suggesting a global or organizational network.

TASKS AND ORGANISATION

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

*Andreas Mundt,
President of the Bundeskartellamt*

The Bundeskartellamt is the most important competition authority in Germany. It is an independent higher federal authority 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 Bundeskartellamt's tasks in detail:

Enforcing the ban on cartels

Agreements between companies which prevent, restrict or distort competition are generally prohibited. These include 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. When 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.

Abuse control

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 suppliers, customers or competitors. Having a position of economic power is not prohibited per se, but abusing this market power is forbidden. The Bundeskartellamt's control of abusive practices therefore acts as a regulatory tool in the absence of competition. The amendment to the law in 2021 added a new instrument to the authority's toolbox for dealing with abusive practices. The new provision set forth in Section 19a GWB is targeted in particular at large digital platforms and enables the Bundeskartellamt to take earlier and more effective action against abusive practices.

Reviewing procedures for the award of public contracts by the Federation

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

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 so-called "amicus curiae" it can also make statements in court in civil consumer protection actions.

Sector inquiries

If there are indications that competition is restricted or distorted in certain sectors, the Bundeskartellamt can conduct sector inquiries in order to gain a better insight into the competition situation. 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

2022



- President: **Andreas Mundt**
- Vice President: **Prof. Dr Konrad Ost**
- Budget 2022: **35 million euros**
- **410 employees**



Ban on cartels

- Fines amounting to 24 million euros imposed on 20 companies/associations and 7 natural persons



Merger control

- Approximately 830 notifications
- 5 second-phase proceedings during which 1 concentration was prohibited, 2 notifications were withdrawn and 2 mergers were cleared subject to conditions



Abuse control

- 5 proceedings concluded and 17 proceedings initiated

Public Procurement Tribunals



- 116 applications for review
- 14 applications granted, 32 rejected, 43 withdrawn and 25 became moot
- 6,000 registered contracting entities and around 140 authorities communicating data
- Around 140,000 enquiries/searches

Sector inquiries



- Charging infrastructure for electric vehicles
- Online non-search advertising
- Oil sector (focusing on refineries and wholesalers)
- Scoring in the online retail sector (consumer protection)
- Domestic waste collection & hollow glass processing (inquiry pursuant to Section 39a GWB)

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.

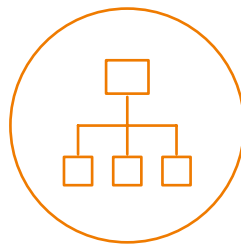
Decisions on cartels, mergers and abusive practices are taken by the Bundeskartellamt's 13 Decision Divisions. Nine **Decision Divisions** are responsible for specific economic sectors. The 10th and 12th Decision Divisions deal exclusively with the cross-sector prosecution of cartels. In January 2023 the 11th Decision Division took on new tasks relating to the energy price relief measures. Another Decision Division deals with protecting competition and consumers. 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** 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 for having committed certain economic offences can apply for "self-cleaning" to have their entry deleted prematurely. To achieve 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 legal reforms relevant to competition, both at the national 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 PR work and assists the authority's president. The ongoing digital transformation and the legal and economic issues associated with this are another key aspect in 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 preparing, executing and evaluating dawn raids in cartel proceedings. It is also the contact point for companies wishing to apply for leniency in cartel proceedings.

The **Central Division**'s task is to provide cross-functional services to ensure the authority's operability and assist the various organisational units in discharging their tasks. The Division includes 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 authority's IT unit assists the Decision Divisions, for example in digitalising their work processes, developing IT-based processes, such as the Competition Register, and in seizing and evaluating IT data in cartel proceedings. In 2022 there was a strong focus on IT security.

The authority also concentrated on recruiting highly qualified staff and on helping employees and senior officers enhance their professional and personal skills. To offer employees more flexibility in fulfilling their tasks, the Bundeskartellamt updated its internal regulations on working from home and teleworking. The authority also offers prospective lawyers and economists a large number of placements for internships and practical training.

In line with digitalising public administration, files are increasingly managed electronically, which is an integral part of the authority's digitalisation strategy. It is also a key element in the authority's strategy to achieve organisational resilience, the aim of which is to ensure that in the event of possible disruptions and emergencies the Bundeskartellamt can respond systematically and remains able to carry out its tasks.

New tasks connected with the energy price relief measures

In late December 2022 the German Federal Government passed a law to ease the financial burden on private households and companies in response to soaring energy prices and introduced the so-called price caps for electricity, gas

and heat. In this context, the Bundeskartellamt was tasked with examining whether any energy suppliers have unjustly claimed relief payments made available by the state.

11th Amendment to the German Competition Act



On 5 April 2023 the Federal Government passed the 11th amendment to the German Competition Act (GWB) – the so-called Competition Enforcement Act (*Wettbewerbsdurchsetzungsgesetz*). The bill is currently debated in parliament. The government bill will develop competition law and expand the Bundeskartellamt’s competences, for example by giving it new powers of intervention following sector inquiries. After having determined a significant malfunctioning of competition, the authority will then be able to impose concrete measures to put an end to this malfunctioning, both with regard to the market structure and the practices of individual companies.

This also includes, as a last resort, the possibility to divest dominant companies or companies of paramount significance for competition across markets outside the scope of remedies for abusive conduct. Moreover, existing obstacles to the disgorge-

ment of benefits are to be reduced significantly. In terms of merger control, it is to become easier to oblige companies to also notify merger projects involving companies which do not reach the turnover thresholds usually applicable.

The government bill also provides for new investigative powers to be granted to the Bundeskartellamt to examine possible violations of the EU’s Digital Markets Act (DMA). The DMA is an EU regulation enforced by the European Commission that imposes prohibitions and requirements on certain online platforms or online services provided by so-called gatekeepers (see p. 41).

The 12th amendment to the GWB, which is planned for the current legislative term, is expected to focus on consumer protection.

“The draft of the 11th amendment to the German Competition Act provides that the Bundeskartellamt may also address a malfunctioning of competition without first having to demonstrate a violation of law. This would be a useful addition to our existing toolkit. There are strict requirements for imposing the individual measures provided for in the draft. Proceedings will be complex, especially when it comes to divesting companies as a last resort.”



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

The Bundeskartellamt as an employer

Balancing work and family life

Since 2015 the Bundeskartellamt has been awarded the “audit berufundfamilie” certificate for its strategically developed family and life-phase oriented human resources policy, which is re-audited on a regular basis. In addition, the authority continually develops its offers and working conditions for its staff. This includes providing the framework for flexible working arrangements and offering information and referral services regarding child-care and caregiving.



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 in our expertise in many different areas of specialisation as well as in our highly motivated teams of experienced colleagues and new junior staff.

Further information is available at www.bundeskartellamt.de/EN/AboutUs/Career/career_artikel.

On-site and virtual group visits

The Bundeskartellamt offers interested groups the possibility to visit the authority in Bonn or 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.

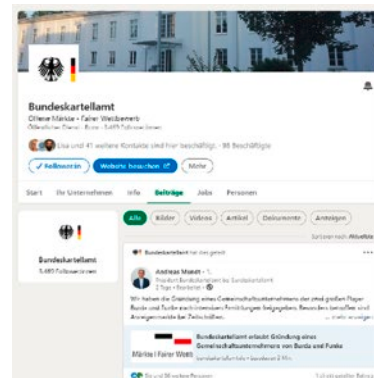
In the course of the pandemic the Bundeskartellamt expanded its offer to include not only on-site but also virtual visitor talks. From January 2022 until the end of April 2023 the Bundeskartellamt received approximately 20 visitor groups on its premises. Another 18 groups participated in virtual visitor talks.

The Bundeskartellamt also offers training courses for teachers. The courses introduce the Bundeskartellamt’s tasks, organisational structure and activities before discussing practical examples of cases, which can also be used in class. It is also possible to focus on individual topics according to the teachers’ needs. This way the Bundeskartellamt has been able to implement a large number of training courses.

The Bundeskartellamt on social media

Since December 2022 the Bundeskartellamt has also been active on LinkedIn. It regularly updates users on ongoing proceedings, provides background information and posts job vacancies with the Bundeskartellamt.

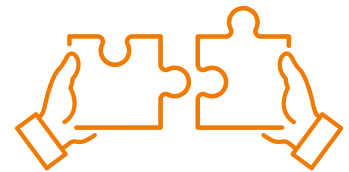
Since January 2023 users can also follow the President of the Bundeskartellamt, Andreas Mundt, on LinkedIn and Twitter.



Exchange with the Monopolies Commission

In competition policy matters the Bundeskartellamt is in regular exchange with the Monopolies Commission, an independent advisory body to the Federal Government. In 2022 discussions took place mainly in the context of preparing the XXIVth Biennial Report, in which the Monopolies Commission addresses the application of merger control provisions and comments on other topical issues of competition policy. The XXIVth Biennial Report was published on 5 July 2022. The Monopolies Commission prepares its Biennial Reports every two years, alternating with Sector Reports. In 2023 it will again

prepare the four Sector Reports on the railway, energy, post and telecommunications sectors, in which the Monopolies Commission examines how competition has developed in each of these sectors.



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.

In the 2022 meeting of the Working Group on Competition Law, participants talked about merger control in the digital age and discussed the challenges and development perspectives associated with it. They mainly addressed two sets of problems for effective merger control within the context of takeovers by large digital companies. One was the issue of so-called killer acquisitions, where large companies acquire smaller (potential) competitors in order to stop their innova-

tion activities or remove already existing products from the market. The other issue was the risk of large digital companies using mergers as a means to further expand or consolidate their positions of power. During the meeting the participants also explored possible approaches to tackling these issues, such as introducing stricter merger control rules for companies of paramount significance across markets.

In the meeting of the Working Group on Competition Economics in November 2022 participants discussed the competitive situation in petrol station and waste disposal markets. Another topic were the experiences gathered so far in applying the stricter abuse control rules regarding large digital companies.

Comparing the Bundeskartellamt internationally



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. In 2021 the Bundeskartellamt once again 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.

International cooperation



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

ECN

The national competition authorities in the EU 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 cross-border restrictions of competition, the national competition authorities have formed the European Competition Network (ECN). They assist one another, for example in carrying out dawn raids or other investigative measures, and can cooperate in case work, for example by exchanging confidential information. In the ECN, competition authorities also share their experiences gathered in different cases 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 2022 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. In 2022 the conferences were again held as in-person events. Important topics discussed last year included “The Evolving Concept of Market Power in the Digital Economy”, “Purchasing Power and Buyers Cartels”, “Behavioural Insights in Competition Enforcement”, “Directors Disqualification and Bidder Exclusion”, “Competition and Inflation” and “Remedies and Commitments in Abuse Cases”.

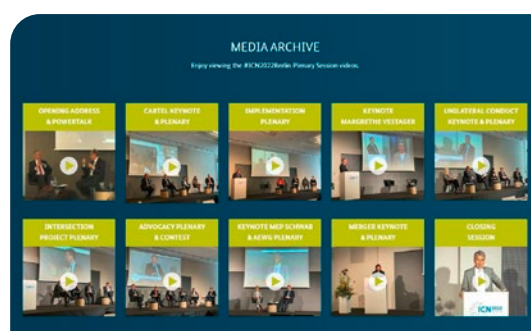
The UNCTAD Intergovernmental Group of Experts on Competition Law and Policy (IGE) convenes every year in Geneva to discuss topics such as competition law in the digital era and cross-border cartels.

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.

From 4 to 6 May 2022 the Bundeskartellamt hosted the 21st ICN Annual Conference in Berlin in a hybrid format. Overall, 450 representatives from over 80 countries attended the event while 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.

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



Revisit
ICN 2022:



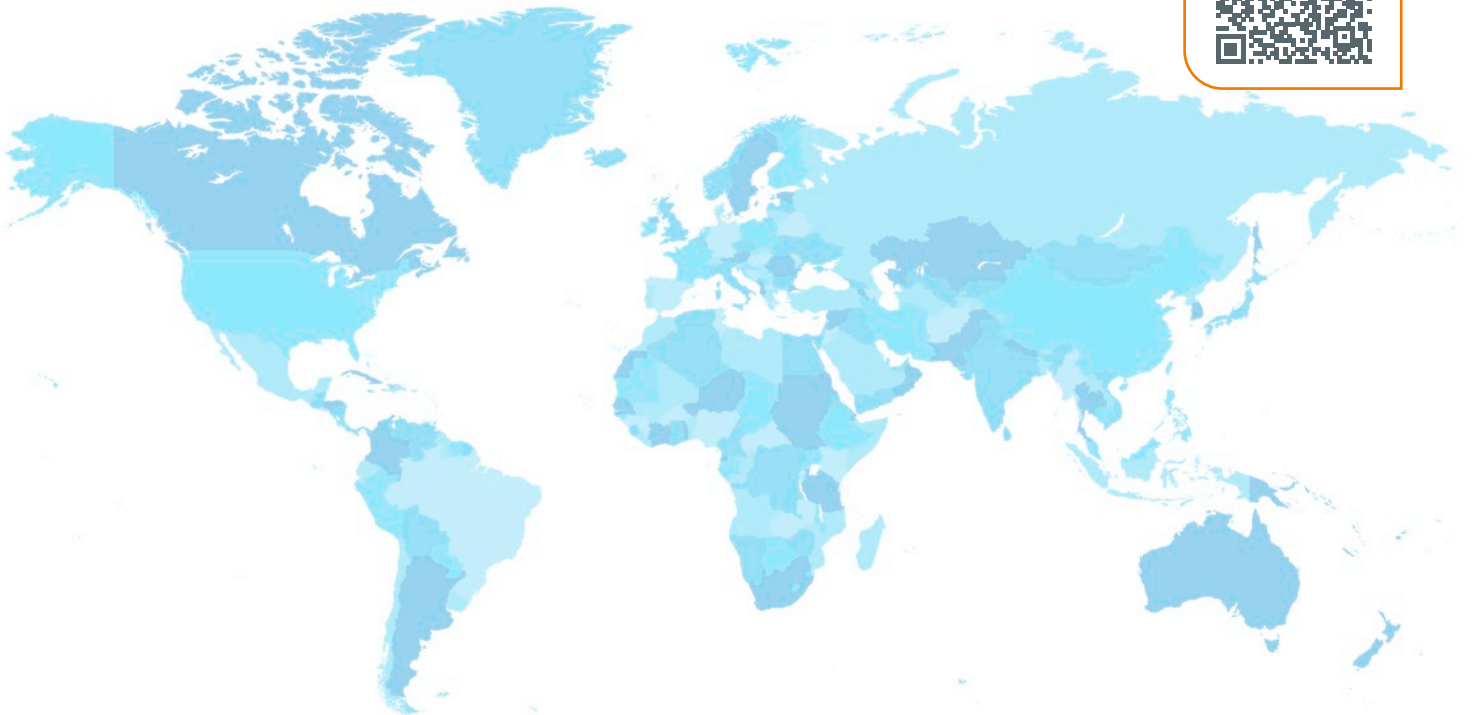
21st International Conference on Competition (IKK)

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

For the first time after the pandemic, the 21st International Conference on Competition took place off-schedule in Berlin in a hybrid format on 4 May 2022. Overall, 350 representatives from over 70 countries and numerous online participants attended the hybrid 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 policy makers place on competition law and the interrelations between competition law and other areas of law, such as consumer protection and data protection.

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IKK Playlist:



G7 presidency

In October 2022 the Federal Ministry for Economic Affairs and Climate Action and the Bundeskartellamt hosted the “G7 Joint Competition Policy Makers & Enforcers Summit”, a forum for policy makers and competition watchdogs to discuss digital markets. Representatives of the G7 member states (Canada, France, Germany, Italy, Japan, UK, USA) and the European Commission came together to debate the status quo of legal reforms worldwide, competition law enforcement in the digital sector as well as overlaps between

competition law and other areas of law and policymaking. During the summit two documents were presented. The “Policy Makers Inventory” was drafted with the assistance of the OECD and provides a comprehensive overview of legislative approaches within the G7 to competition in digital markets, aimed at improving mutual understanding and promoting cooperation to strengthen competition in digital markets. The “Compendium” highlights the key aspects of the individual G7 competition authorities’ work in the digital sector.



CARTEL PROSECUTION

Expansion Joints for Bridges | Collusive Tendering |
Whistleblower Protection Act | Claims for Damages

In 2022 the Bundeskartellamt imposed fines amounting to around 24 million euros on a total of 20 companies or trade associations and seven natural persons. The sectors concerned included expansion joints for bridges and industrial construction. In early 2023 the authority imposed fines on several Dortmund-based construction companies for collusive tendering.

Manufacturers of expansion joints for bridges involved in quota cartel

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

The two manufacturers – the only ones in the market for modular expansion joints for bridges – had been accused of having fixed their market shares in the form of quotas to carve up the market between them. They monitored compliance with the quotas and took measures to correct any significant deviations. Furthermore, they agreed on a uniform price calculation formula to implement the cartel.

With only few exceptions, the cartel covered the entire German market volume for the supply of modular expansion joint systems.

In addition, 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 on 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.



Settlements



- Administrative fine proceedings can be concluded in the form of a negotiated agreement (settlement) between the Bundeskartellamt and the parties concerned.
- A settlement generally expedites and shortens resource-intensive cartel 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 it or the individual is charged and accepts the fine up to the amount announced.
- In the case of cartel agreements a settlement declaration can lead to a reduction in fines of up to 10 per cent.

“The years of the pandemic made it difficult to prosecute cartels. Things are now returning to normal. Despite a downward trend in leniency applications, we have seen the highest number of dawn raids in years. This sends out a clear signal: no cartel can consider itself safe. Our uncovering activities remain effective.”

*Andreas Mundt,
President of the Bundeskartellamt*

Collusive tendering

...in the industrial construction sector

The Bundeskartellamt imposed fines totalling approximately 12.5 million euros on Aktiengesellschaft der **Dillinger Hüttenwerke** and **Hochtief Solutions AG** for collusive behaviour in award procedures. A representative of a Saarland-based industrial construction company, which has meanwhile been liquidated, had concluded an agreement with representatives of Dillinger Hütte, the potential contracting party, while at the same time also reaching an agreement with representatives of Hochtief, the construction company's main competitor in the award procedure for the contracts in question.

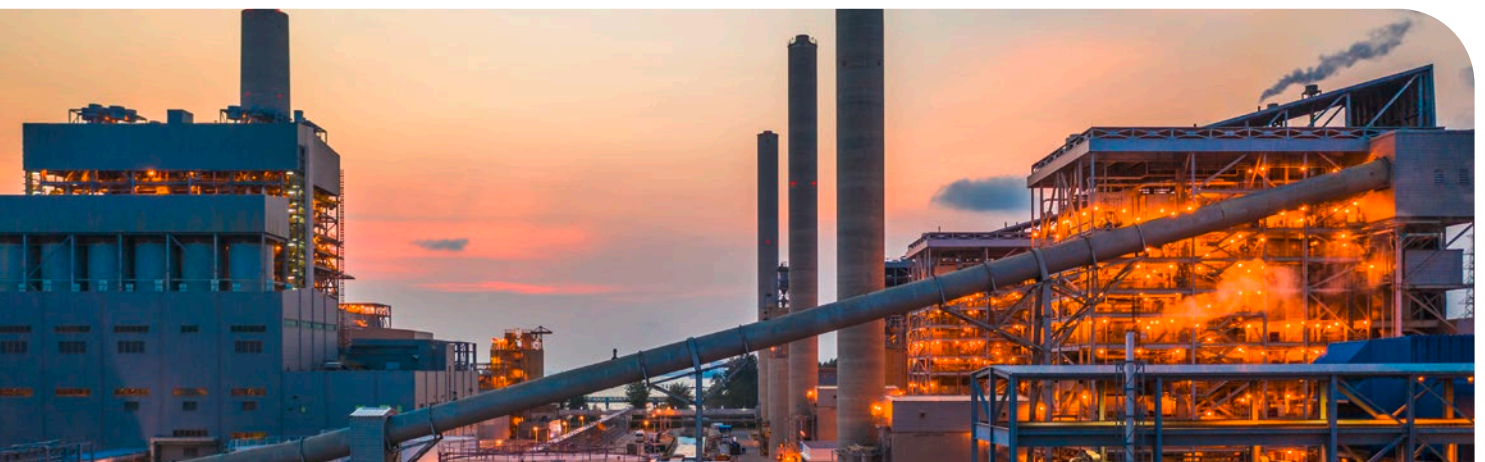
Such collusive behaviour regarding the award of contracts is also known as vertical and horizontal bid rigging (the term vertical refers to the relationship between the bidder and the contracting party, the term horizontal to the relationship between bidders).

The representatives of Dillinger Hütte's division for new construction work implemented the vertical agreement by, for example, inviting fewer companies to submit a tender than provided for by the company's internal procurement rules, or by only inviting companies – besides the Saarland-based industrial construction company and Hochtief – that were clearly not likely to submit competitive tenders.

At the same time, the representative of the Saarland-based industrial construction company concluded a horizontal bid rigging agreement with representatives of his competitor Hochtief. They provided him with information about Hochtief's pricing behaviour, which allowed him to adjust his company's bids to be above or below Hochtief's bids in tender procedures conducted by Dillinger Hütte – depending on whether or not he wished to obtain the contract for his company.

“The case shows that not only agreements between bidders but also agreements involving contracting parties will be punished by hefty fines. If those responsible undermine the principle of economical and efficient procurement, they harm not only other bidders but also their own company.”

Andreas Mundt,
President of the Bundeskartellamt



...between several Dortmund-based construction companies

In February 2023 the Bundeskartellamt also imposed fines amounting to a total of almost one million euros on **four Dortmund-based construction companies**. The companies had agreed on prices in their bids for roadwork tenders. The collusion affected several hundreds of such tender procedures by the City of Dortmund with a total contract volume of approximately 18 million euros.

Representatives of the companies involved regularly came together for an in-person “meeting in Africa”, a cover name inspired by one cartel member’s passion for travel. The cartel members went through the current invitations to tender issued by the City of Dortmund and in a first step discussed who had received which invitation and would be interested in which contract.

They then decided who would submit the best offer in the respective tender procedure. During their in-person meetings, the representatives determined the price or the surcharges and reductions on the budget specified by the City of Dortmund for the bid that was to be the best. All other cartel members submitted bids that were higher than the agreed best bid.

The proceeding was based on a leniency application made by another company involved in the collusion, which in accordance with statutory provisions was granted immunity from fines. The other four companies also cooperated with the Bundeskartellamt in clarifying the matter. A settlement agreement was reached with all companies.

The Leniency Programme in brief



- The first participant in an anti-competitive agreement to disclose a cartel of which the Bundeskartellamt was previously unaware receives immunity from fines (“first come, first served” principle). Immunity from fines can also be considered at a later stage if the Bundeskartellamt receives decisive evidence without which the existence of the cartel could not have been proven. Members of a cartel who have coerced others to participate in the cartel are excluded from immunity.
- All other and subsequent leniency applicants can have their fines reduced by a maximum of 50 per cent, provided they cooperate with the Bundeskartellamt and provide decisive evidence to prove the offence.
- The immunity from and reduction of fines is conditional on the leniency applicant’s continuous and full cooperation with the Bundeskartellamt throughout the proceedings.
- When the 10th amendment to the German Competition Act (*Gesetz gegen Wettbewerbsbeschränkungen – GWB*) entered into force in 2021, the Leniency Programme was also enshrined in law.

Selected maximum fines*

Year	Cartel proceedings	Total fines imposed in euros	Highest single fine imposed on 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 petroleum 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.

Whistleblower Protection Act

The new Whistleblower Protection Act (*Hinweisgeberschutzgesetz – HinSchG*) was definitely adopted on 12 May 2023 and will enter into force one month after its promulgation in the Federal Law Gazette. The law seeks to provide even better protection against reprisals for anyone who reports or discloses information on unlawful behaviour (such as competition law violations, fraud or corruption) of which they have gained knowledge in the context of their work at companies or authorities.

The Act stipulates that such information can be reported to internal or designated external reporting units. The Bundeskartellamt acts as the competent external reporting unit for information on violations of competition law (including violations of the Digital Markets Act – DMA). Two other

external reporting units have been established at the Federal Office of Justice (BfJ) and the Financial Supervisory Authority (BaFin).

The Whistleblower Protection Act protects anyone who has obtained information on violations of the law in the context of their work-related activities or prior to taking up a professional activity. This includes, for example, employed and self-employed workers, civil servants, interns, volunteers and board members, and covers the time prior to, during and after their professional activities. Information from consumers and citizens, however, is not covered by the law.

Claim for damages dismissed

In June 2022 the Federal Court of Justice finally dismissed in a last instance proceeding a **claim by BayWa AG** for payment of around 73 million euros in damages due to an alleged breach of duty by the Bundeskartellamt. BayWa's claim had also been rejected by the Regional Court in Bonn and the court of next instance, the Higher Regional Court in Cologne.

The action was preceded by a cartel proceeding in which the Bundeskartellamt had imposed fines totalling around 157 million euros on eight wholesalers of plant protection products and their representatives – including BayWa. In its claim BayWa had accused the authority of having violated the principle of equality by contacting three other members of the cartel at the beginning of the investigations following an anonymous tip-off and suggesting that the matter be resolved internally and that a leniency application be filed with the authority, if possible. The Bundeskartellamt had already thoroughly investigated and dismissed BayWa's accusations as incorrect in the proceeding. In the previous

anonymous tip-off about the cartel, BayWa had been presented as the main driver and had been the only company mentioned by name. It was therefore not pragmatic for tactical reasons to inform the potential main offender BayWa of the tip-off. In addition, BayWa – as any other company involved in a cartel – could have proactively applied to the competition authority for leniency and distanced itself from its unlawful actions at any time.



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

Companies which violate the prohibition of anti-competitive agreements not only have to expect to be fined by competition authorities but may also face claims for damages from customers or suppliers harmed by the anti-competitive agreement. In recent years these actions, which are generally brought after the proceedings by the Bundeskartellamt or the European Commission have been concluded, 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 had fined several truck manufacturers for agreeing on their sales prices for freight vehicles over many 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 logistics 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 companies, 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 by offsetting the claims against future deliveries, for example. It is therefore not possible to quantify the amount of compensation actually paid.

The conditions for claiming damages have been further improved by the latest amendments to the GWB. Furthermore, the Federal Court of Justice has meanwhile defined the requirements for ascertaining the damage in several landmark decisions in the rail and truck cartels, providing greater legal certainty for claimants. In 2021, for example, the Court clarified that agreeing consolidated damages in general terms and conditions is generally permissible. It is likely that actions for damages will continue to play a significant role in competition law in future.



Positive effects of cartel prosecution

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The prosecution of illegal cartels has immediate positive effects on the economy and consumers. Cartels cause great harm to the overall economy because they lead to higher prices, inferior product quality and less innovation. Scientific studies indicate that cartels result in average price increases of up to around 15 per cent. Uncovering a cartel often immediately brings prices down. Companies have to “go the extra mile” again in order to win over customers.



AVOID CONCENTRATIONS – PRESERVE DIVERSITY OF COMPETITION

ACO/BIRCO | Wienerberger/Terreal | KHG/Begros | XXXLutz/Braun Möbel-Center | Qualcomm/
Veoneer | Share Now/Stellantis | VW/Bosch | Lufthansa/Condor | Rethmann-Gruppe/Remondis | MCI/
CIMC | Tierklinik Hofheim/Evidensia | Hospital Sector | Grifols/Biotest | Eye and Eye Laser Clinics

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 must be prohibited or can only be cleared subject to certain conditions.

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

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 primarily 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 takeover, 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 assumed to ensure that ACO's and BIRCO's scope of action will continue to be curbed by competition.

Merger between roof tile manufacturers

In January 2023 the Bundeskartellamt cleared plans by **Wienerberger AG** to acquire all shares in **Terreal Holding S.A.S.** Both companies are international manufacturers of construction materials. Their activities in Germany overlap in particular in the sector for so-called small-scale roofing materials.

While Wienerberger offers only clay roof tiles under the "Koramic" brand, Terreal distributes both clay and concrete roof tiles through **Creaton GmbH**. Acquiring Terreal/Creaton will make Wienerberger the leading provider of clay roof tiles and the second-largest provider of small-scale roofing materials in the German market.

The Bundeskartellamt therefore scrutinised the project and, among other things, examined the question of whether the merger and thus the reduced number of market participants would create possibilities or incentives for the market participants to restrict the competitive pressure among them. However, various structural characteristics of the market – such as the great variety of product models, only limited price transparency, the strong customer side (building materials trading companies) and the companies' actual competitive behaviour in the past years – suggested otherwise.



Furniture purchasing cooperation

In January 2022 the Bundeskartellamt announced that **KHG GmbH & Co. KG** (Krieger/Höffner-Gruppe) was cleared to join **Möbel Einkaufskooperation Begros (Bedarfsgüter Großhandelsgesellschaft für Wohnung GmbH)**, the leading furniture purchasing association in Germany. Begros's 16 member companies operate large furniture stores throughout Germany and to some extent in neighbouring countries, as well as discount stores and online shops. KHG, on the other hand, has until now not been a member of a purchasing association. However, it is one of the leading furniture retailers in Germany, operating over 30 large furniture stores and over 20 discount stores as well as several online shops.

As the market was already highly concentrated before the cooperation project was notified, the Bundeskartellamt had to make sure that any further concentration would not have adverse effects on suppliers and consumers. According to the relevant EU guidelines on horizontal cooperation agreements, purchasing associations can have anticompetitive effects if their market shares on the procurement or sales side of the market exceed 15 per cent. In the present case the focus lay on the sales markets and not the supply side. However, based on the companies' original plans, the threshold would have been exceeded in some regions in eastern Germany. Both Begros member Porta (including its discount subsidiary SB-Möbel Boss) and KHG with its furniture stores

Höffner, Kraft and Mahler as well as its discount line Sconto have significant market positions in these regions. Restricting competition between the two retailers would result in less choice for customers.

To dispel the Bundeskartellamt's competition concerns, the parties modified their plans by splitting Begros's own brands between Porta and KHG (so-called two brand families model). Accordingly, certain Begros brands will for several years only be sold by Porta and certain others only by KHG. Exclusive models may also only be sold under either the one or the other brand family. The other Begros members are allowed to use all of Begros's own brands.

The two brand families model will significantly reduce the alignment of costs and product range resulting from KHG's membership of the cooperation. Own-brand products account for a substantial share of the Begros members' product ranges and turnover. In addition, after joining the cooperation KHG will not make its previous purchasing conditions known to Begros and its members. Based on these changes, the Bundeskartellamt decided not to continue the proceeding but will observe how the furniture retail sector in Germany develops in the future. Should circumstances change significantly, the authority reserves the right to initiate a new proceeding.

XXXLutz's acquisition of shares in Braun Möbel-Center GmbH & Co. KG

In December 2022 the Bundeskartellamt cleared the planned acquisition of 50 per cent of the shares in **Braun Möbel-Center GmbH & Co. KG** by **ABRD Möbelhandels- und Beteiligungs GmbH** (a member of the Austrian XXXLutz Group).

The XXXLutz Group operates over 350 stores in Germany, in some cases as a shareholder. They include furniture stores and an online shop under the XXXLutz umbrella brand as well as dis-

count stores and online shops under the POCO, Roller and Mömax brands. The XXXLutz Group also operates furniture stores and online shops in other European countries (including Switzerland). Braun Möbel-Center GmbH & Co. KG is a regionally significant operator of furniture stores in south-west Germany. Braun Möbel-Center's stores close to the borders of France and Switzerland are also frequented by customers from these countries.

The Bundeskartellamt carried out investigations to examine in more detail the competitive conditions in the different regional furniture sales markets affected by the merger as well as in the furniture store segment. It concluded that although XXXLutz will strengthen its market position through the merger, the parties will remain in competition with a number of other furniture stores in all the regions affected, leaving customers with sufficient other alternatives.

Merger relating to driver assistance systems

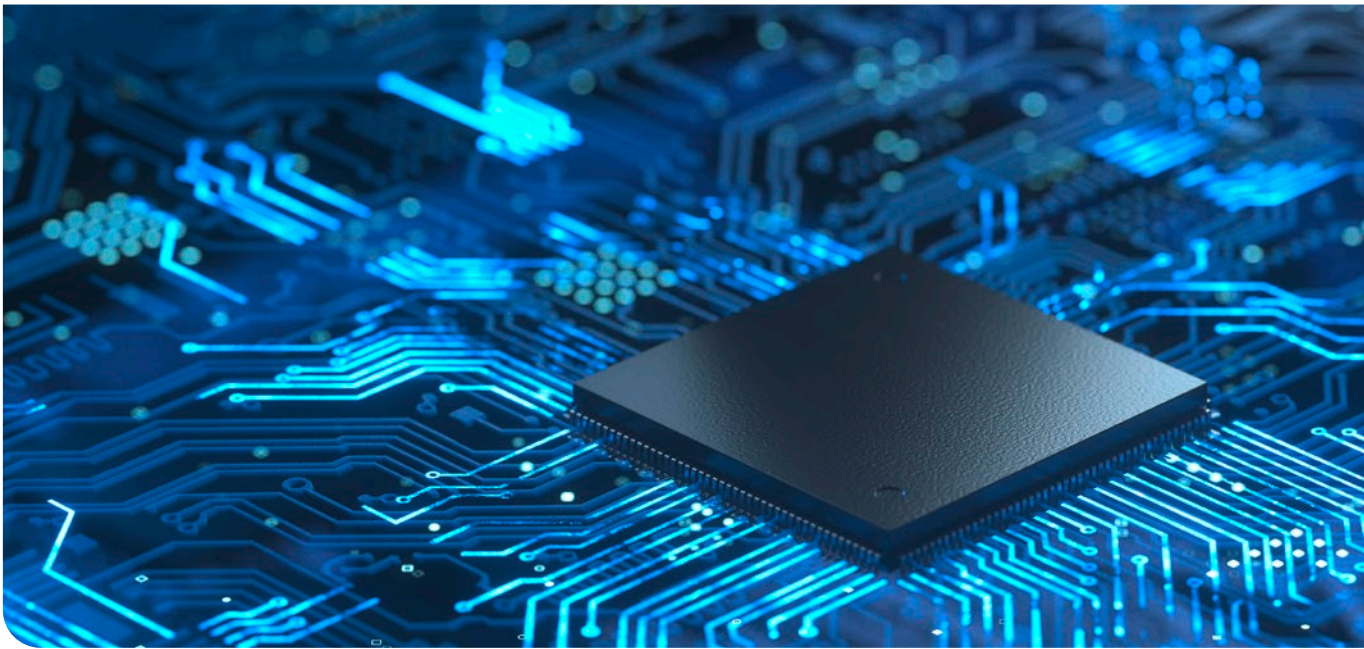
In March 2022 the Bundeskartellamt cleared plans by US chip manufacturer **Qualcomm Incorporated** to take over the software division of Swedish automotive supplier **Veoneer Inc.** in the first phase of merger control.

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 on a chip system from Qualcomm (Snapdragon Ride) and software from Veoneer, among other things.

In the context of its investigations the Bundeskartellamt surveyed approximately 30 car 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 Mobileye – a sub-

subsidiary of chip manufacturer Intel and currently the largest provider of driver assistance systems – an alternative provider of integrated solutions will enter the market in 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 (*Gesetz gegen Wettbewerbsbeschränkungen* – GWB) has stipulated that mergers involving the acquisition of a company with substantial operations in Germany 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 serve large incumbents to strengthen their

market position 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.

Stellantis acquires Share Now

In June 2022 the Bundeskartellamt cleared the acquisition of **Share Now GmbH** by **Stellantis N.V.** Share Now offers car-sharing services in several German cities. Stellantis is a holding company of the Stellantis Group and was established through a merger between car manufacturers Peugeot S.A. and Fiat Chrysler Automobiles N.V. in 2020. Stellantis subsidiary **Free2Move** also offers mobility services.

The Bundeskartellamt's investigations showed that customers consider different mobility solutions to get around the city, depending on the distance they have to cover. Mobility service providers have therefore increasingly started to also integrate their services into third-party platforms which enable end customers to use a variety of mobility services (such as e-scooters, taxis and carsharing). Carsharing services are provided based on different models, such as station-based or free-floating carsharing; the free-floating model allows customers to pick up and drop off vehicles at approved parking spaces within a defined area in the city. Share Now has high market shares in the regional markets of Frankfurt,



Stuttgart, Cologne, Düsseldorf and Munich, but as Stellantis has so far not offered carsharing services in Germany, the merger will not result in any market share additions. The merger project did not raise any competition concerns with regard to potential foreclosure effects to the detriment of competing carsharing providers or operators of multimodal mobility platforms either. In particular, the in-depth investigations showed that there would be no economic incentives for Stellantis to deny those platform operators access to Share Now's application programming interface.

Development cooperation between VW and Bosch

In July 2022 the Bundeskartellamt gave **Robert Bosch GmbH** and **Volkswagen AG** the green light to start working together on advancing their automated driving.

Bosch, an automotive supplier, will contribute its previously gained expertise in developing automated driving systems to the project. VW has a large fleet of vehicles via which mass data necessary to develop the planned software can be gathered continuously and in real time.

The companies are planning to work together to develop a so-called 360° video perception software which centrally combines the signals and data from numerous cameras, radars and sensors and processes them using artificial intelligence. The software is to be used primarily in Volkswagen's vehicles but will also be available to other car manufacturers.



European Block Exemption Regulation

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European block exemption regulations stipulate that under certain conditions some types of agreements are exempted from the general prohibition of restrictive agreements or practices. The cooperation between Bosch and VW was established for research and development (R&D) purposes and

therefore had to be examined under the European R&D Block Exemption Regulation. Decisive factors in the examination were the stage of the research, the extent to which competing R&D poles of other competitors still exist, and the market position of the cooperation partners.

Lufthansa impedes Condor in competition for long-haul flights

In August 2022 the Bundeskartellamt prohibited **Lufthansa** from terminating its long-standing cooperation agreements (Special Prorate Agreements, SPAs) with **Condor**, securing Condor's access to Lufthansa's feeder flights. At the same time, the authority ordered Lufthansa to end several other restraints of competition found in the existing agreements between the airlines. Lufthansa has appealed the Bundeskartellamt's decision to the Düsseldorf Higher Regional Court and has filed for a preliminary injunction. The summary proceeding is still pending.

Lufthansa is the only airline that can offer an extensive network of feeder flights from Europe to the major German hubs in Frankfurt, Munich and Düsseldorf. No other airline has a similarly dense feeder flight network. Even if operating a feeder flight net-

work of its own were economically viable for a comparably small airline, it is currently not foreseeable that such a network could be set up in view of the fact that most of the airport slots at the German hubs have been allocated to Lufthansa. Due to its dominant position in offering feeder flights Lufthansa is subject to abuse control under competition law and thus has to fulfil special obligations towards other market participants. Since indirect long-haul routes are already highly concentrated, a sufficient level of competition on the merits and price competition would only be possible if Condor were able to access Lufthansa's upstream services against payment based on SPAs. Otherwise, unlike its competitors, Condor would not be able to offer seamless long-haul connections from origin to destination with through-checked baggage and full travel protection in the event of

delays or flight cancellations. In the authority's view, the loss of customers wishing to use a feeder flight would have severe economic consequences both for Condor and for competition. The Bundeskartellamt's investigations showed that depending on the season, up to 30-40 per cent of all long-haul passengers use feeder flights. A mere continuation of the agreements used thus far was, however, not sufficient to effectively ensure Condor's entitlement to access feeder flights. In future Condor will have access to more booking classes than before and be able to book seats whenever feeder flights still have considerable free capacities. Moreover, Lufthansa is not permitted under competition law to set rules for the booking classes Condor can offer its long-haul passengers and to thus restrict Condor's booking and price control.



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 intended to examine whether the **Rethmann Group** can be obliged to also notify takeovers of smaller companies in future.

In principle, merger control only applies if the companies involved achieve a certain minimum turnover and thus have a certain level of 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 in certain economic sectors of smaller companies, that is companies which do not reach the usually applicable turnover thresholds. One precondition for this is that the Bundeskartellamt carries out a special sector inquiry; such an inquiry was initiated to examine the waste management sector 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.

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 in certain economic sectors of smaller companies, that is companies which do not reach the turnover thresholds usually applicable

Prerequisites for the application of the new provision:

- Acquirer's share of sales in the economic sector concerned is more than 15 per cent in Germany
- Target company achieved a turnover 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

Merger between veterinary clinics



In June 2022 the Bundeskartellamt cleared the acquisition of **Tierklinik Hofheim** by the internationally active veterinary clinic chain **Evidensia**.

Tierklinik Hofheim is a so-called referral clinic with a supra-regional catchment area. It employs approximately 90 veterinarians. Evidensia is part of the **IVC group**, which according to its own statements is active in 19 countries and owns a network of over 2,300 veterinary

clinics. It is represented in Germany with 60 veterinary practices and clinics.

After interviewing more than 50 competitors and talking to professional chambers and professional associations, the Bundeskartellamt could not determine any significant impediment to competition. Consequently, it was possible to clear the acquisition in the first phase.

Withdrawal of a merger notification submitted by container manufacturers

In August 2022 the Bundeskartellamt expressed considerable competition law concerns about the proposed merger between **Maersk Container Industry (MCI)** and **China International Marine Containers (Group) Co. Ltd. (CIMC)**, which led the two companies to withdraw their merger notification.

The target companies belong to the container shipping company Maersk and specialise in the manufacture of reefer containers, reefer boxes and reefer units. They sell their products worldwide under the “Star Cool” brand. MCI’s research and development facilities are based in Denmark, while its production is based in China. CIMC also produces and sells reefer boxes worldwide, in addition to other types of containers (dry cargo, tank and special containers). Combined with reefer units offered by other manufacturers, reefer boxes can be used as reefers.

The authority’s in-depth investigations carried out worldwide showed that the merger parties are active in a very narrowly defined market environment. Both reefer boxes and reefer units are manufactured by only four companies worldwide. For years CIMC has been by far the leading supplier of reefer boxes in this market worth billions. By taking over MCI, CIMC would have expanded its already strong position to a worldwide market share of 60 to 70 per cent and it would have added reefer units for reefer boxes to its portfolio. After the merger their customers, such as container ship operators, would not have had sufficient alternatives to choose from since the takeover of MCI would have removed an important alternative supplier from the market.

In the course of the proceedings the parties proposed several structural changes to the merger project in an effort to obtain clearance subject to remedies. However, the commitments were not sufficient to eliminate the competition concerns.



Cooperation with other competition authorities

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The Bundeskartellamt examined the project in cooperation with the US Department of Justice, to which the project had also been notified for examination under merger control. The notification was also withdrawn in the US due to competition concerns.

Competition between hospitals

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 health-care 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. A distinction is made, for example, between the market for acute care hos-

pitals and 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 taken into account at an early stage in the political decision-making process of the individual local authority bodies, and, if necessary, alternative solutions can be sought.

In 2022 and up to March 2023 the authority received 22 merger notifications from the hospital sector, all of which could be cleared in the first phase of merger control.

Merger control in the hospital sector

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In recent years the number of notified merger projects has continued to increase.

- From 2003 to December 2022 the Bundeskartellamt examined a total of 367 notified hospital mergers.
- 314 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 or the plans were abandoned by the parties or changed and notified anew.

In many cases the Bundeskartellamt carried out an informal preliminary assessment before the mergers were formally notified. Since 2011 there have been nine cases in which the merger project was abandoned after the authority had expressed its preliminary competition concerns.



Vital medication based on blood plasma

In March 2022 the Bundeskartellamt permitted the international plasma and pharmaceutical company Grifols AS to acquire Biotest AG. Both companies use human blood plasma to produce liquid pharmaceuticals, so-called plasma derivatives. They are used in cancer therapy and intensive care and to treat immune system deficiencies, coagulation disorders and other chronic diseases. Plasma-based drugs can be replaced by biotechnologically produced pharmaceuticals in a

few cases only. Due to the complexity of the manufacturing process – including the extraction of human plasma as the starting material – there are only few suppliers in these markets. While Grifols's acquisition of Biotest will further reduce the number of providers, the authority did not have any serious competition concerns since there will still be sufficient alternatives for hospitals and pharmaceutical wholesalers to choose from after the merger.

Financial investors take over eye and eye laser clinics

In late June 2022 the Bundeskartellamt permitted the eye clinic chain “SmileEyes”, which is owned by financial investor **Trilantic**, to acquire **MVZ Augen- und Laserzentren Mitteldeutschland GmbH**, **Augen- und Laserzentren Berlin MVZ GmbH** and **Augen- und Laserzentren Hamburg MVZ GmbH**, all headquartered in Leipzig.

The SmileEyes group operates eye clinics in Munich, Trier, Luxembourg and Berlin. It also operates a number of conventional ophthalmic practices, mainly in Bavaria. In addition, the group licenses the “Smile Eyes” brand to further practices, among them the Leipzig-based eye clinic group it can now acquire. This group operates eye and eye laser clinics primarily located in eastern Germany and various ophthalmic practices in greater Leipzig.

Seeing that the individual companies are active in different regions and the merger does not affect the choice available to patients, the takeover ultimately did not raise any serious competition concerns.

The situation was different for another merger in the ophthalmic sector. In March **Sanoptis GmbH** notified the Bundeskartellamt of its plans to acquire all shares in **Augenlinik**

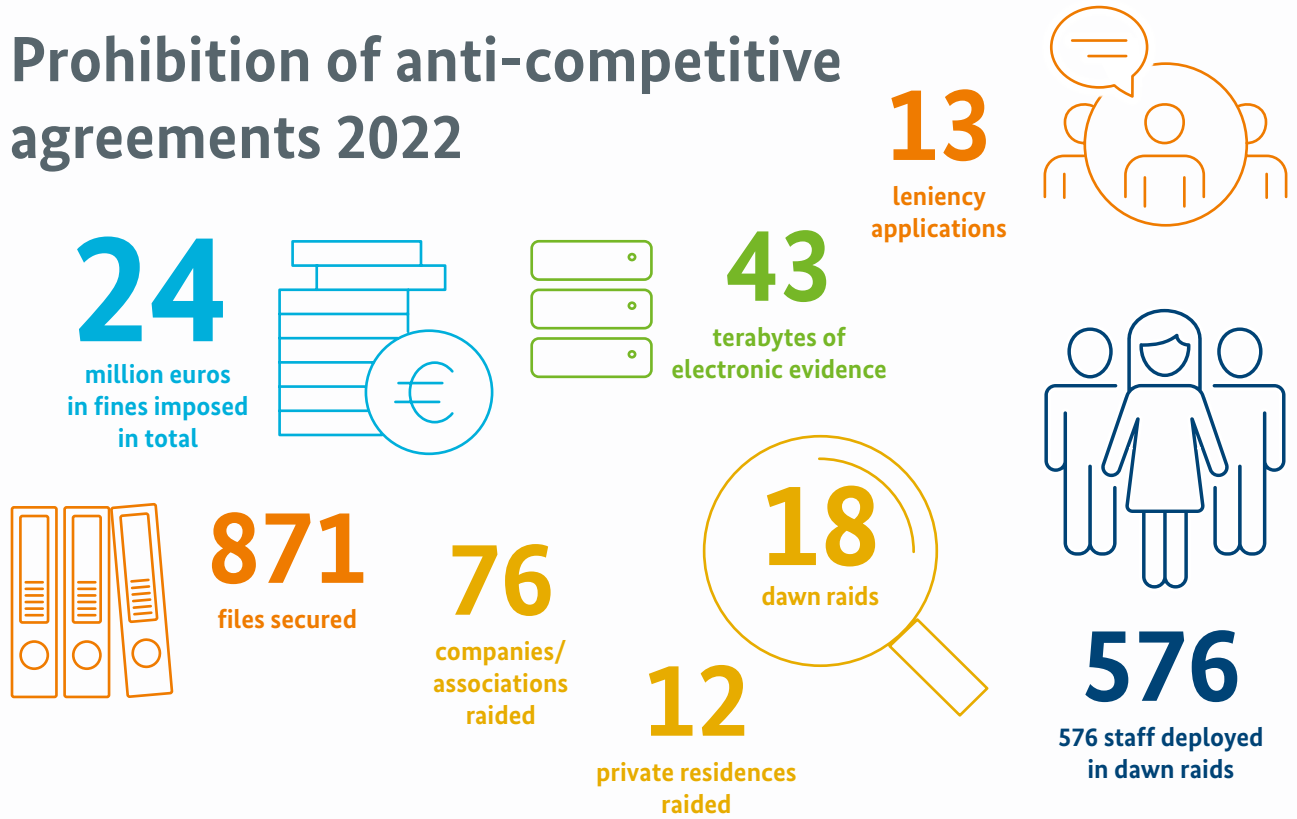
Rendsburg GmbH and the majority of shares in **Augenlinik Rendsburg MVZ GmbH**. At the time of notification, the Sanoptis group operated three eye clinics, approximately 60 eye surgery centres and approximately 140 non-surgical ophthalmic practices in the form of medical care centres in Germany and Switzerland, many of the latter in Schleswig-Holstein. The target companies were an eye clinic located in Rendsburg (Schleswig-Holstein) and the affiliated medical care centre, which also has 18 practices in Schleswig-Holstein. The Bundeskartellamt’s initial investigations already suggested that the merger parties had a large joint market share in outpatient ophthalmic care in the region of Kiel, which made an in-depth second-phase review necessary. However, the merger parties withdrew their notification.

While the Bundeskartellamt can examine acquisitions of larger medical care centre chains, it cannot examine the acquisition of individual practices, as such mergers usually do not meet the merger control thresholds. However, by taking over numerous practices in a region the operator of the acquiring medical care centre can gain significant market power. This threat is to be addressed in the current government bill introducing the 11th amendment to the GWB.



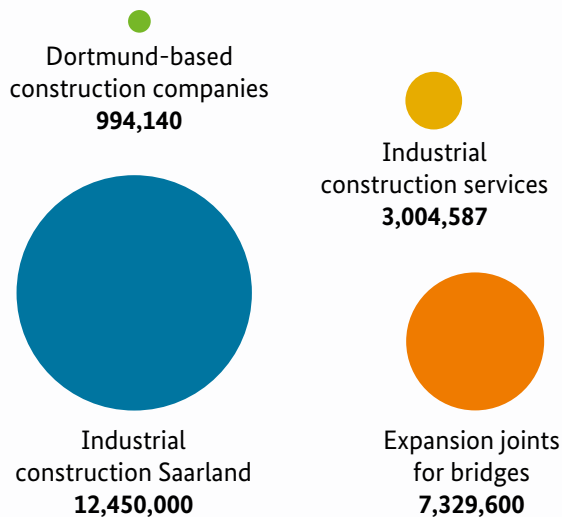
FACTS AND FIGURES

Prohibition of anti-competitive agreements 2022



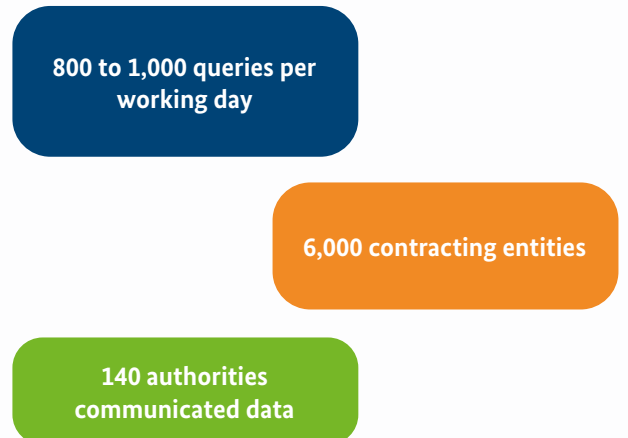
Total fines imposed in 2022 in euros

around 24,000,000 euros*



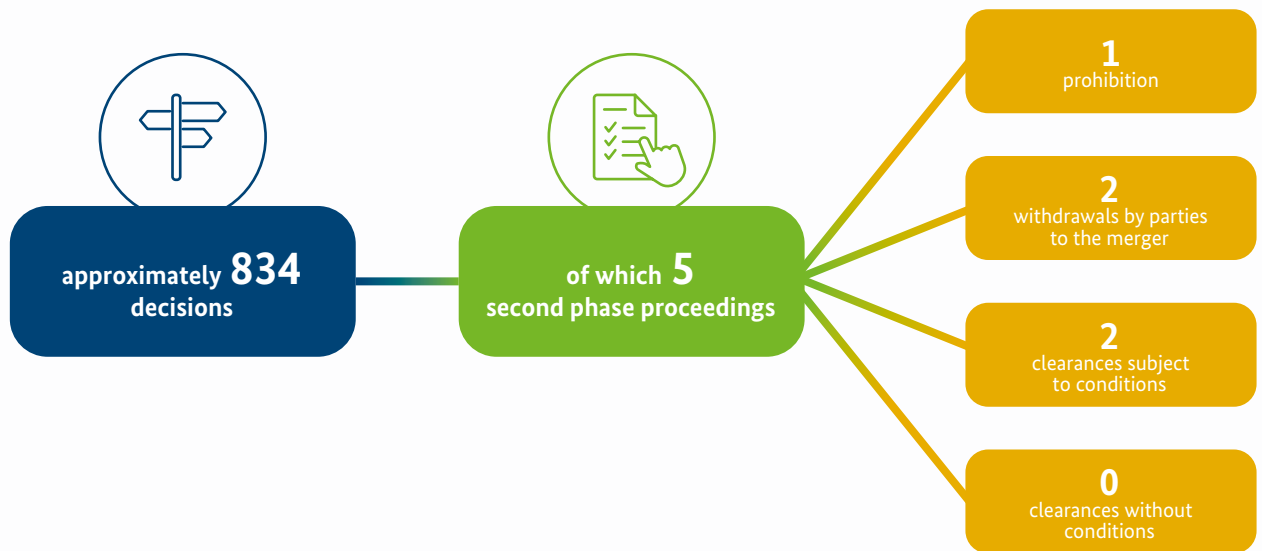
Competition Register 2022

around 140,000 queries in total



* The figures are rounded values.

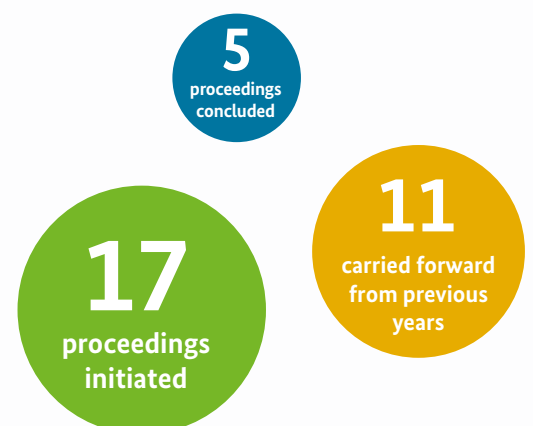
Bundeskartellamt merger control in 2022



Federal Public Procurement Tribunals 2022 in figures



Abuse control 2022 in figures



DIGITAL ECONOMY

Section 19a GWB | Google News Showcase | Google Data | Facebook | Meta VR Headsets |
Sector Inquiry into Online Advertising | PayPal | DMA | Policy Work | Deutsche Bahn | Catena-X |
Mergers in the Digital Sector

In the past year the digital economy was again a key area of the Bundeskartellamt's work. The authority concluded, initiated or proceeded with various proceedings relating to the extended abuse control rules under Section 19a of the German Competition Act (*Gesetz gegen Wettbewerbsbeschränkungen* – GWB) applicable to large digital companies. Federal lawmakers had introduced the new provision in 2021. It allows the Bundeskartellamt to intervene quicker and more effectively against anti-competitive practices by large digital companies. The companies to which it applies hold positions of power that extend across several markets and are often referred to as digital ecosystems. The Bundeskartellamt is also conducting proceedings relating to digital business models in other sectors, including proceedings against PayPal and Deutsche Bahn and an in-depth examination of the online advertising sector.

Companies of significance across markets



The Bundeskartellamt uses the tools at its disposal to limit the **power of large digital companies**. Since the beginning of 2021 the newly introduced **Section 19a** of the German Competition Act (GWB) has played a key role in this context by providing a fundamentally new tool for **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 **self-preferencing of a company's own services** or the **"penetration" of markets** by way of means that are not based on fair competition.

Last year the Bundeskartellamt concluded its proceedings against **Amazon** and **Apple**, determining their paramount significance for competition across markets. In March 2023 another

examination proceeding was initiated in relation to **Microsoft**.

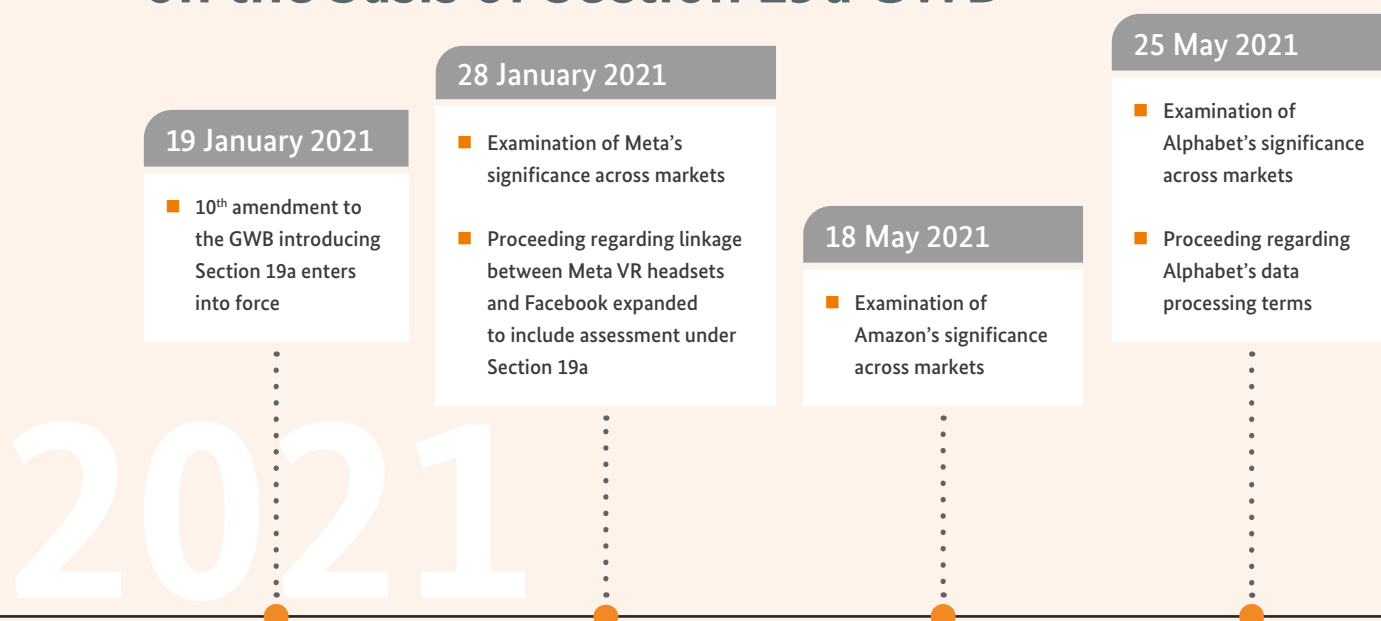
Amazon is the key player in the e-commerce sector. Acting as a seller, marketplace and provider of streaming and cloud services, among other things, the company has combined its services to form a digital ecosystem. The Bundeskartellamt estimates that more than half of the money spent in the German online retail business is spent on Amazon's trading platform (amazon.de). Based on its mobile end devices such as the iPhone, **Apple** operates a wide-ranging digital ecosystem which is of great importance to competition not only in Germany but also throughout Europe and the world.

With its proprietary products iOS and the App Store, Apple holds a key position for competition as well as for gaining access to its ecosystem and to

Apple customers. Both Apple and Amazon are among the largest companies in the world in terms of sales. With Windows and its Office suite, **Microsoft** has always held a very strong position with regard to operating systems and office applications. Based on this it has continuously expanded its product range, both for business customers and private users, by including cloud services, office communications software, the Xbox gaming platform, the LinkedIn professional network, the Bing internet search engine or, most recently, AI integrations.

Prior to these proceedings the Bundeskartellamt had already determined the paramount significance across markets of **Alphabet/Google** and **Meta/Facebook**. The decisions against Alphabet and Meta are final. Amazon, however, has filed a complaint with the Federal Court of Justice.

Proceedings against large digital companies on the basis of Section 19a GWB



New tools – Greater impact on markets

On the basis of Section 19a GWB the Bundeskartellamt has also initiated, and in some cases concluded, proceedings regarding specific practices. In the case of the Google News Showcase service it has achieved important improvements for publishers. Following the Bundeskartellamt’s proceeding against Meta, users can now use the Meta Quest VR headsets without a Facebook account. In connection with a proceeding regarding Google’s data processing terms the Bundeskartellamt issued a statement of objections in late 2022 and is working to achieve improvements.

Further proceedings are ongoing or have been initiated. The Google Maps Platform, for instance, has been under review since February 2022 due to possible anti-competitive restrictions imposed by Google to the detriment of providers of alternative map services. In relation to Amazon, the ongoing

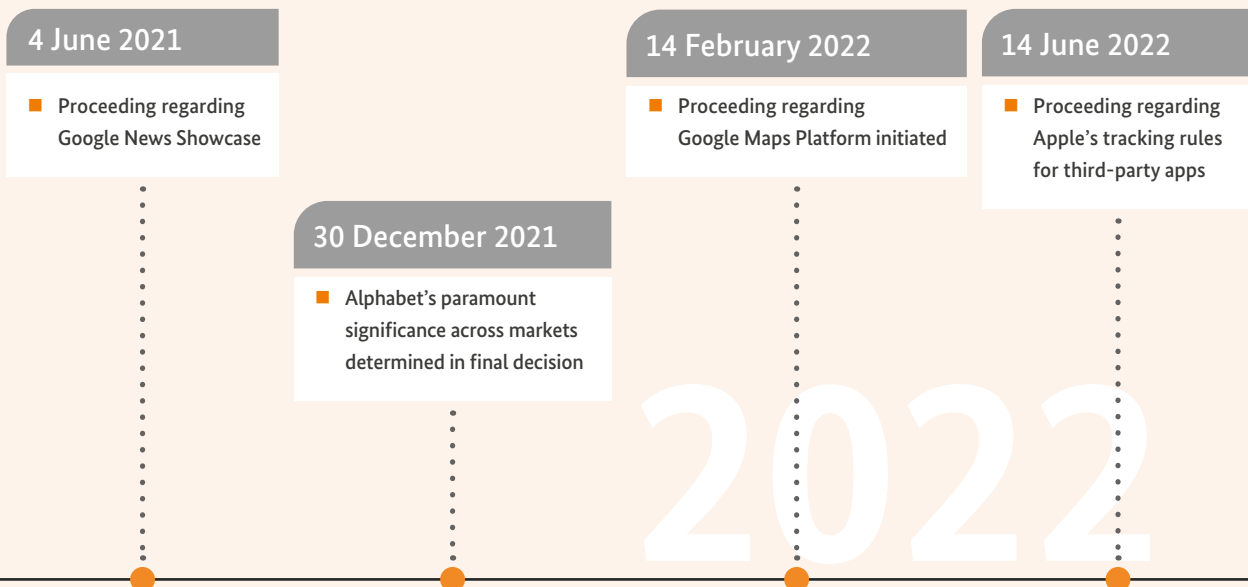
proceedings on brand gating and possible price control by Amazon were expanded in November 2022 to include an assessment under Section 19a GWB. The brand gating proceeding examines whether Amazon puts marketplace sellers at a disadvantage by using certain instruments such as agreements between Amazon and (brand) manufacturers that may exclude third-party sellers from selling (brand) products on Amazon Marketplace. The price control proceeding examines whether Amazon possibly employs mechanisms to control the pricing of Amazon Marketplace sellers. In June 2022 the Bundeskartellamt initiated a proceeding to examine Apple’s tracking rules for third-party apps and its App Tracking Transparency Framework (ATTF). In particular, the authority is looking into the initial suspicion that these rules could favour Apple’s own offers and/or impede other companies.

Digital ecosystems

The newly introduced Section 19a GWB addresses cross-market positions of power that may particularly arise in so-called “digital ecosystems” controlled by single companies.

Such companies typically link the various services they provide across markets. For users of the services provided within such “digital ecosystems” it is often difficult to switch to services provided by competitors (lock-in effects). At the same time, the

providers in question may enjoy supply-side advantages, for example in relation to resources that can be used across all services. When companies expand and strengthen their “digital ecosystems” by integrating new offers, this may benefit both the newly integrated offers and the established ecosystems. Users can be tied more closely to those companies and the barriers for competitors to enter the market can be raised.



“Extended abuse control pursuant to Section 19a of the German Competition Act has proven an effective tool for curbing the power of large digital companies. We have initiated numerous proceedings, some of which have already been concluded. It allows us to systematically address competition issues in digital markets.”

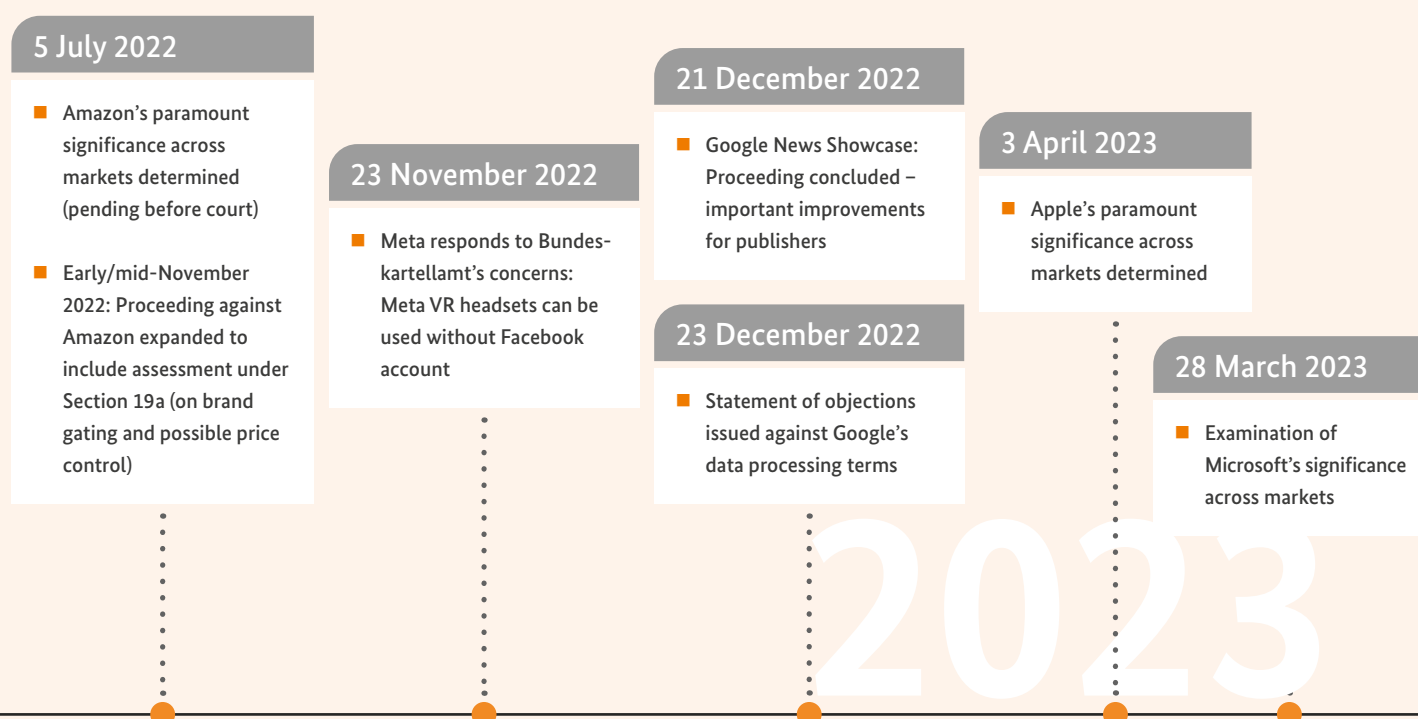
Andreas Mundt,
President of the Bundeskartellamt



Google News Showcase: Improvements for publishers

Google News Showcase is a news service provided by Google which offers publishers options to present their content within a specific framework set by Google. The Bundeskartellamt was concerned that similar services offered by other providers could be squeezed out of the market and that participating **publishers** could be unfairly disadvantaged by Google. Due to the Bundeskartellamt's proceeding Google responded to the concerns and made important adjustments to the benefit of publishers.

In particular, Google abandoned its plans to integrate Showcase into the general **Google search service**. Whether or not a publisher participates in Showcase will continue to be irrelevant for the **ranking of search results**. Google has adjusted its contractual practice to the effect that publishers will not face difficulties in asserting their general **ancillary copyright**. It has also been ensured that further publishers will be able to participate in Google News Showcase in future.



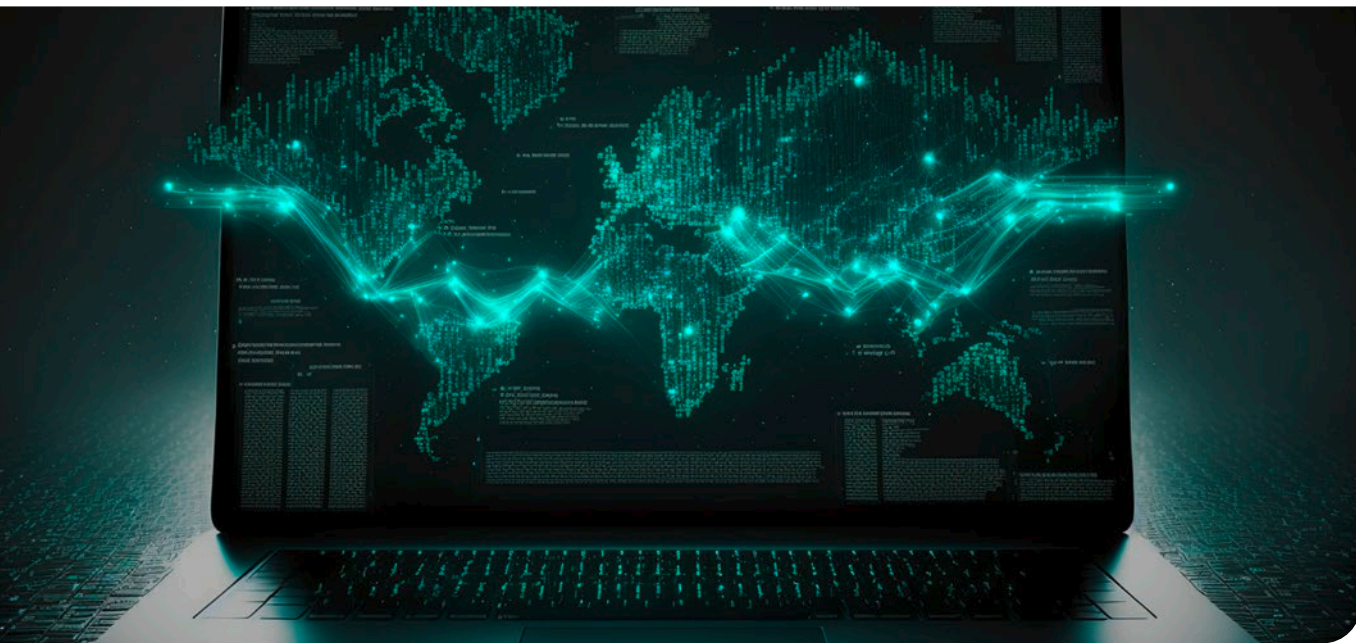
Statement of objections issued against Google's data processing terms

In late 2022 the Bundeskartellamt issued a statement of objections against Google's data processing terms. The authority had already initiated a proceeding against Google in May 2021 on the basis of **Section 19a GWB** to examine the company's **data processing terms**. A key question in this context is whether consumers wishing to use Google's services have **sufficient choice** as to how Google will use their data.

Based on its existing terms, Google can combine a variety of data from various services and use them, for example, to create very detailed user **profiles** which the company can exploit for advertising and other purposes, or to train

functions provided by services. The Bundeskartellamt has reached the **preliminary conclusion** that based on the existing terms users are not given **sufficient choice** as to whether and to what extent they agree to this far-reaching processing of their data across services. In particular, the choices offered so far, if any, are not sufficiently transparent and too general.

This **preliminary legal assessment** is an intermediate step in the administrative proceeding. The Bundeskartellamt and Google are still in communication with each other. The authority is also in close contact with the European Commission, as certain Google services are likely to be subject to the Digital Markets Act (DMA) in future.



Data as a key factor of power in the digital economy

Collecting data is the central building block of many digital business models (big data). Companies process large data volumes, for example in order to offer and develop digital services or in the context of presenting adverts. Having access to data relevant for competition is thus often a major power factor: the companies that have access to large volumes of data can provide better services and often enjoy a competitive advantage. The power a company has based on data may depend, for example, on the type and amount of data relevant for competition it has access to, how well it can process the data and what conclusions it can draw from these data.

Previous proceeding against Facebook

The proceeding regarding **Facebook's data processing terms** (combining user data from different sources without the users' voluntary consent), which the Bundeskartellamt already concluded in 2019, is still pending before the courts.

In March 2021 the Düsseldorf Higher Regional Court decided to refer certain data protection issues to the Court of Justice of the European Union (CJEU) for clarification. The Bundeskartellamt's decision had already been largely confirmed by the Federal Court of Justice in a summary proceeding. In May 2022 a hearing took place at the CJEU. In September

2022 the Advocate General at the CJEU confirmed key points of the Bundeskartellamt's decision in their opinion.

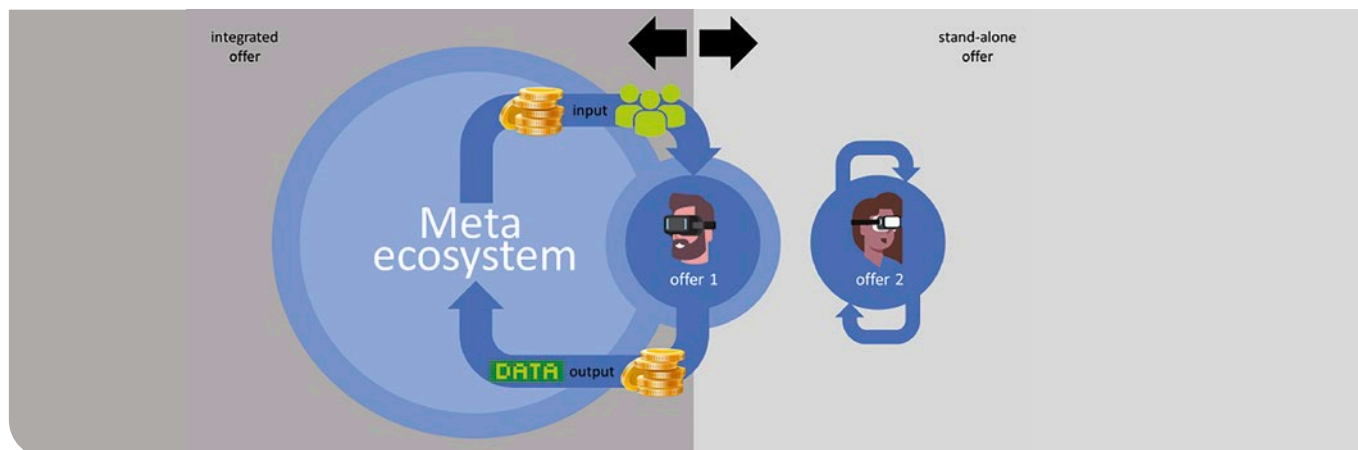
According to the opinion, data protection law can also play an important role for assessments under competition law. In amending the German Competition Act (GWB) to adapt the legal framework to the challenges posed by the digital transformation, German lawmakers made it clear that they also shared this view. It remains to be seen how the CJEU will deal with this issue.

No Facebook account required for Meta Quest VR headsets

In late 2020 the Bundeskartellamt initiated a proceeding against Meta for linking the use of **Meta Quest 2 virtual reality headsets** (formerly Oculus) to a Facebook account. In early 2021, immediately after the introduction of Section 19a GWB, the authority expanded the proceeding to include the new provision.

Last year Meta responded to the authority's concerns: VR headsets (including the new Meta Quest Pro headset) can now also be used without a Facebook account. With its **digital ecosystem**, Meta is not only the key player when it comes to social media but also holds a significant position

in the growing **VR market**. Competition in these two sectors could be severely impeded if only Facebook or Instagram members were able to use the VR headsets. In response to the Bundeskartellamt's proceeding Meta offered a solution where Quest headset users are given the option to create a separate Meta account. The proceeding is not yet concluded, however. In addition to the specific details of the options given to users, the authority also examines in this proceeding whether and how data processed in the context of different Meta services are combined. The extent to which such data processing is permissible is still being discussed with Meta.





Sector inquiry into online advertising

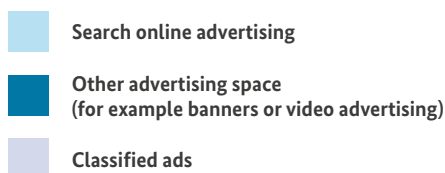
Starting out with simple advertising banners in the early nineties, **online advertising** has grown into an industry worth billions, generating a turnover of 10 to 11 billion euros in Germany alone. It is not least this form of advertising which co-finances a large number of media offers and services beyond the offers provided by large digital companies. Online advertising is not a uniform product. A distinction is made between advertisements which are displayed in response to search terms entered in a search engine (search online advertising) and other advertising space, such as advertising banners of any kind and video advertising (non-search online advertising).

In August 2022 the Bundeskartellamt published a discussion report in the context of its **sector inquiry into non-search**

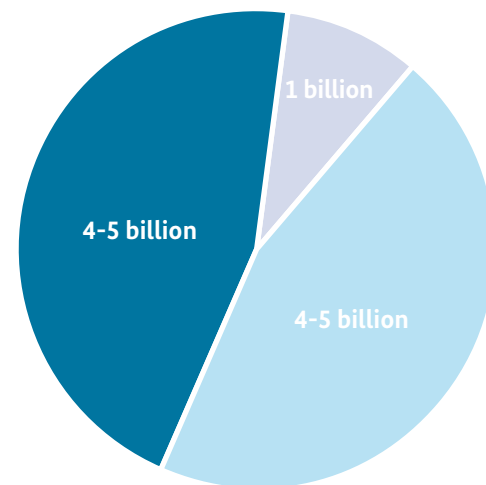
online advertising. The sector inquiry focused in particular on the various technical services operating in the background (so-called **ad tech**) that are essential for non-search online advertising. There is a highly complex system of automated trading in online advertising space, which is quite opaque for many and which makes the subsequent, equally automated display and verification of adverts possible in the first place. At the core of this system is a network of various services offered to buyers and sellers and grouped around digital marketplaces for advertising space (**ad exchanges**).

This technical subsegment of online advertising is another area in which Google holds a strong market position on almost all levels of the value chain.

Total volume of online advertising in Germany in euros



Figures as at August 2022



Proceeding against PayPal

In January 2023 the Bundeskartellamt initiated a proceeding against **PayPal** on account of practices possibly hindering competitors and restricting price competition. The proceeding deals with PayPal's "Rules about surcharging" and the "Presentation of PayPal" set out in its **user agreement** applicable in Germany.

Under these terms and conditions sellers are not allowed to offer their goods and services at lower prices if customers

choose to use a **payment method** that is cheaper than PayPal. In addition, sellers are not allowed to express a preference for payment methods other than PayPal or, for example, make their use more convenient for customers. These **clauses** might restrict competition and violate the prohibition of abuse of a dominant position. In this context, the Bundeskartellamt is assessing the extent of PayPal's **market power** and in how far online sellers depend on offering PayPal as a payment method.



The European Digital Markets Act

In November 2022 the Regulation of the European Parliament and of the Council on contestable and fair markets in the digital sector (**Digital Markets Act – DMA**) entered into force. The Regulation allows the European Commission to designate companies as so-called **gatekeepers** and subject them to certain **obligations**. This requires, among other things, that the company operates at least one of the so-called core platform services mentioned in the Regulation’s exhaustive list.

Such services include online intermediary services, search engines or social networking services. Another requirement is that the concrete core platform service acts as a gateway between business users and end users. Once a company has been designated as a gatekeeper, it is subject to directly applicable obligations under the Regulation. The first designation decisions are expected to be handed down in September 2023. Gatekeepers must comply with the relevant obligations

within six months after having been designated. The DMA is centrally enforced by the European Commission. Nevertheless, Member States can grant their competition authorities powers to investigate violations of the DMA.

The draft bill for the 11th amendment to the German Competition Act passed by the Federal Government includes such powers for the Bundeskartellamt. It also seeks to declare applicable provisions to facilitate private enforcement in relation to the DMA. **The DMA complements German and European competition law**. In Germany the rules governing the control of abusive practices by digital companies (Section 19a GWB, in particular) remain applicable, at least to the extent that they are applied to companies which have so far not been designated as gatekeepers by the European Union or, with respect to companies already designated as gatekeepers, that they impose additional obligations on them.

Policy work relating to the digital economy

The digital transformation of the economy continuously poses new challenges for competition and the Bundeskartellamt’s work, which are reflected in the authority’s policy work. Last year, as in previous years, the Bundeskartellamt published various articles relating to this issue, including an article on **“The evolving concept of market power in the digital economy”** within the OECD context, on **“Merger control in the digital age – Challenges and development perspectives”** in the context of the Meeting of the Work-

ing Group on Competition Law hosted every year by the Bundeskartellamt, and an international **“Compendium of approaches to improving competition in digital markets”** in connection with the German G7 presidency. In the context of its policy work, the Bundeskartellamt also regularly communicates with other stakeholders, in particular other competition authorities, other authorities acting at the interface between competition, data protection and consumer protection, and academic experts.

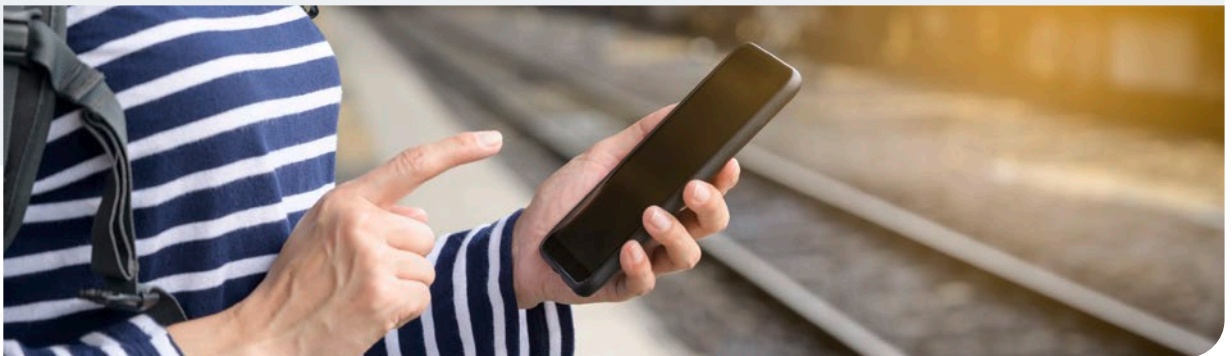
Proceeding against Deutsche Bahn

In April 2022 the Bundeskartellamt issued a statement of objections as part of its abuse proceeding against **Deutsche Bahn (DB)** due to the possible hindrance of mobility platforms. Based on the Bundeskartellamt'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 mobility service providers.

The authority's preliminary view is that those providers are entitled to access Deutsche Bahn's traffic data, such as information on delays, the progress of a journey, cancellations or platform changes, as this is essential for their business models to 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 otherwise. 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), 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 the mobility platforms admitted to the proceeding commented on the Bundeskartellamt's preliminary findings.

After several months of negotiations, DB offered commitments to eliminate the contested restraints of competition. The Bundeskartellamt is currently assessing the suitability of these commitments in a market test. If the parties reach an agreement, the proceeding could be concluded with a consensual commitment decision pursuant to Section 32b GWB.



Green light for Catena-X

The Bundeskartellamt had no objections last year to the start of the **"Catena-X"** cooperation, which aims to create a data network for collaboration in the automotive industry. Catena-X is intended to promote the development of uniform standards for data transfer. Data that have so far existed separately at companies (stand-alone solutions) are to be linked so that they can be used as effectively as possible in the value chain. The cooperation also includes joint research and development activities aimed at using specific applications based on the new data network. More than 80 companies mainly active in Germany's automotive and IT industry wish to collaborate in this project.

The project is a first major component of the Gaia-X initiative to create a competitive data infrastructure in Europe. Competition law does not stand in the way of such projects. However, the Bundeskartellamt ensures that certain compe-

tion principles are observed. A research and development cooperation which is not aimed at jointly using the results usually only has anti-competitive effects if competition in innovation is appreciably reduced. However, as things currently stand, there are no indications that this would be the case, especially since the standards that are to be developed are to be interoperable so that companies active in the automotive industry can still use and develop their own cloud and software solutions.

Moreover, when assessing the cooperation, it was particularly important that the exchange of competitively sensitive information is limited to what is absolutely necessary, the standards are developed in a transparent and non-discriminatory manner in an open procedure, and the cooperation does not lead to market foreclosure or other distortions of competition.

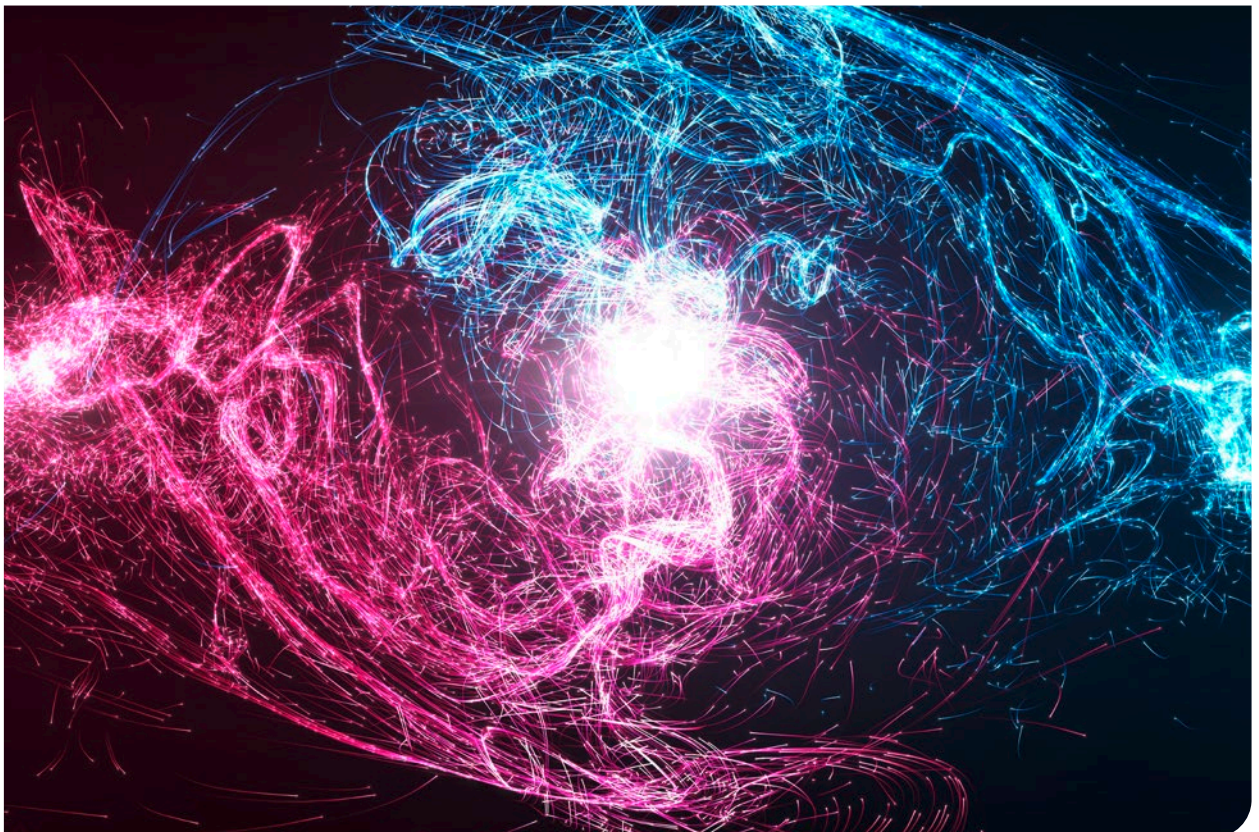
Mergers in the digital sector

The digital economy also plays a major part in merger control. Last year the Bundeskartellamt examined the takeovers of Kustomer by Meta, Xandr by Microsoft and Avast by NortonLifeLock. The merger between NortonLifeLock and Avast created a worldwide leading provider of cyber security software for private users, which achieves very high market shares also in Germany. It was nevertheless possible to clear the planned concentration since a sufficient level of competition still remains after the merger, for example due to security solutions that are already integrated in operating systems or applications offered by platform providers. The authority also cleared the merger between Meta and Kustomer. Kustomer offers a cloud-based customer relationship management platform for business customers.

The takeover had to be assessed in the wider context of Meta's ecosystem operated in the social media area, which includes the widely used services Facebook, Instagram and WhatsApp and is mainly monetised through online advertising. It seemed quite possible that the merger would have an indirect effect on competition in markets in which Meta already has a strong position. However, it was not possible to establish with the necessary level of probability that the services and capabilities associated with Kustomer were of sufficient significance for the ecosystem to develop in such

a way to warrant initiating an in-depth investigation with the ensuing possibility to prohibit the merger. In a separate proceeding, the Bundeskartellamt had previously established that the takeover had to be notified based on the transaction value threshold applicable under German merger control rules. According to these rules, mergers involving companies which do not reach all the relevant turnover thresholds nevertheless have to be notified to the Bundeskartellamt if the consideration for the acquisition exceeds 400 million euros. The parties appealed the declaratory decision and the decision on costs in both proceedings. The decision on costs was annulled by the Düsseldorf Higher Regional Court.

The main reason for this was that in the court's view the conditions for having to notify the merger based on the transaction value threshold were not met as the target company's operations in Germany were not substantial. The Bundeskartellamt has appealed this decision to the Federal Court of Justice on points of law. In early 2022 the Bundeskartellamt also looked into the transaction value threshold in the Microsoft/Xandr case after the parties had notified their merger project on precautionary grounds. The authority ultimately found that the merger did not have to be notified as Xandr's operations in Germany were not deemed substantial.



MINERAL OIL SECTOR



OMV Retail Deutschland/EG Group Limited | Liwathon Group/PCK Raffinerie |
Sector Inquiry into Refineries and Wholesalers | Market Transparency Unit for Fuels | Tax Cut on Fuels

The Bundeskartellamt always keeps a close eye on the mineral oil industry, especially on how fuel and mineral oil prices develop – and it does so even more vigorously in view of the major market upheavals associated with the start of the Ukraine crisis in early 2022. In the wake of these upheavals, the fuel market experienced at times dramatic price increases. In addition, crude oil prices, refinery sales prices and prices charged by petrol stations diverged significantly. In April 2022 the Bundeskartellamt therefore launched an ad hoc sector inquiry focusing on the refinery and wholesale levels, and in November 2022 it was already able to present initial results in an interim report.

The Market Transparency Unit for Fuels (MTS-K) was established at the Bundeskartellamt as early as 2013 in order to continuously monitor the trade in fuels. Since then the Unit's remit has been expanded to also include fuel production and thus the refinery level. The data collected by the MTS-K provide consumers with immediate information about current fuel prices accessible via different channels and numerous information services. Consumers can use this information to find cheaper petrol stations, thus helping to stimulate competition when choosing where to buy petrol.

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

In February 2022 the Bundeskartellamt examined in second-phase proceedings 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 cleared the merger subject to the condition precedent that 48 OMV petrol stations in southern Germany 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 located 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 regions in southern Germany. The merger would have entailed the risk of creating or strengthening a joint dominant position of the leading fuel companies BP/Aral, Shell and EG Group in these regions. These concerns could be dispelled by the parties committing to divest 48 service stations (24 belonging to EG Group and 24 to OMV) to independent third parties. In contrast, the remaining regions in which OMV service stations are located are also serviced by a significant number of other competitors, some of whom have considerable market shares.

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

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- 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 the present case, the planned acquisition of the OMV petrol station network by EG Group had initially been notified to the European Commission, which referred the project to the Bundeskartellamt for examination at the authority’s request.

Liwathon Group’s participation in PCK Raffinerie GmbH

In July 2022 the Bundeskartellamt cleared plans by Alcmene GmbH, a member of **Liwathon Group**, to acquire 37.5 per cent of the shares in **PCK Raffinerie GmbH** (PCK). Since Liwathon Group had previously not been active either in the refinery sector or in the upstream or downstream mineral oil business,

the project did not raise any competition concerns. The examination of the project was limited exclusively to the possible effects Liwathon Group’s acquisition of these shares may have on competition.

The main focus of merger control

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

Sector inquiry focusing on refineries and wholesalers



In spring 2022 the fuel market experienced upheavals resulting from Russia's war of aggression against Ukraine and its implications, with at times nationwide price spikes. The price of diesel, in particular, rose sharply in early 2022, frequently exceeding the price of E5, with a significant divergence between crude oil prices, refinery sales prices and prices charged at petrol stations.

In April 2022 the Bundeskartellamt launched a sector inquiry focusing on the refinery and wholesale levels, and in November 2022 it was already able to publish an interim report providing an initial assessment of the possible reasons for the price developments in the preceding months.

In this context the Bundeskartellamt had surveyed all companies active in the area of fuel production in refineries in Germany. The companies were asked about their production, logistics, sales and customer structures as well as their pricing mechanisms and contractual agreements. They were also requested to provide internal documents, particularly on their cost and revenue situation and on the profitability of their refinery business.

Investigations so far have shown that the price development cannot be attributed to cost increases alone, especially as most mineral oil companies made considerable profits from their refineries during this time. However, there have until now been no indications of mineral oil companies colluding on prices. Abuse of dominance would only apply if the companies were actually dominant, that is not exposed to a significant level of competition. However, there are many different players at the refinery and wholesale levels. Whether the situation

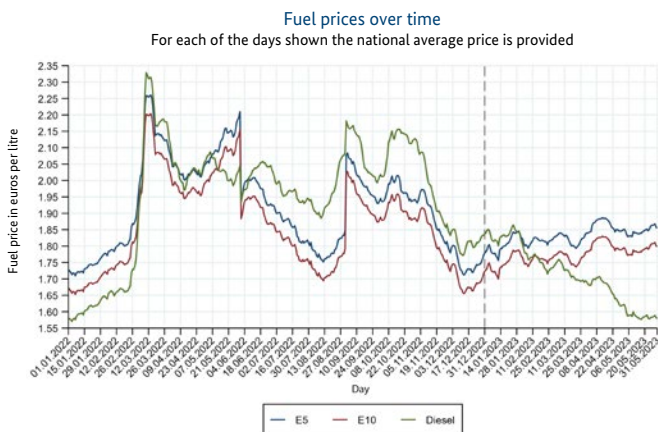
at the refinery level could be a case of joint market dominance is still being investigated.

A major factor in how prices have developed in recent months could be the supply shortages resulting from the market upheavals caused by war and crisis. An increase in the demand for refined fuels also leads to an increase in prices. Interdependencies with markets for other mineral oil products must also be taken into account. Heating oil and diesel, for instance, are essentially chemically identical fuels, which is why an exceptionally high demand for heating oil can lead to diesel price increases. A final assessment on this matter could not yet be provided at the time the interim report was published. In a next step, the authority will extend its investigations to include, in particular, the competitive situation at the wholesale level.

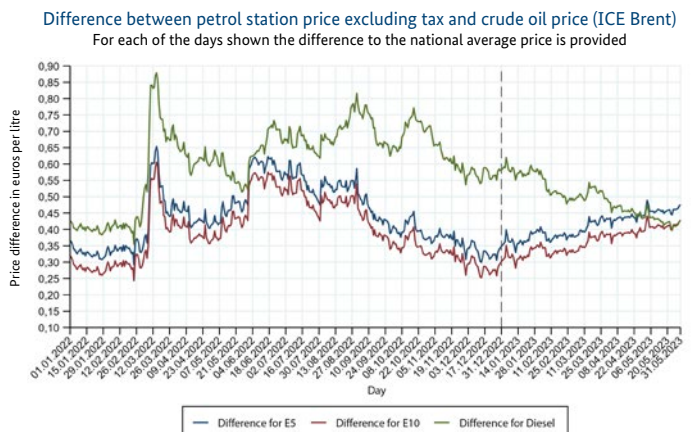
Highest fuel prices charged in 2022



- 2.33 euros per litre for diesel (10 March 2022)
- 2.26 euros per litre for E5 (14 March 2022)



Observation period: 1 January 2022 to 31 May 2023
Prices between 0.50 and 3.00 euros at unclosed petrol stations; not weighted by sales volumes.



Observation period: 1 January 2022 to 31 May 2023
Prices between 0.50 and 3.00 euros at unclosed petrol stations; not weighted by sales volumes.
Data on crude oil prices and refinery sales prices © Argus Media. The illustration does not necessarily reflect Argus Media's view.

The work of the Market Transparency Unit for Fuels (MTS-K)

The Market Transparency Unit for Fuels continuously monitors the trade in fuels, collects information on fuel prices from approximately 15,000 petrol stations (across Germany) and passes it on to so-called consumer information services. Motorists can call up this information from one of the many information service providers, both online and via mobile apps, to help them find the cheapest petrol station. The market upheavals caused by the war in Ukraine have made the MTS-K's work even more important.

In its market monitoring activities the MTS-K also focused on the observation that the prices charged by refineries and wholesalers were decoupled from crude

oil prices, which is also why the sector inquiry focusing on refineries and wholesalers was initiated. The empirical analyses carried out in the context of this sector inquiry also take into account the data collected and the surveys conducted by the MTS-K. This included an analysis of the extent to which the benefits of the temporary tax cut on fuels applicable from the beginning of June until the end of August 2022 were passed on to consumers.

The market upheavals described above have also led to an expansion of the MTS-K's powers and tasks: in future petrol station operators will also have to report the quantities of fuel they sell.

Key facts on fuel prices

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- On average, fuel prices tend to be lowest in the late afternoon and in the evening.
- Prices start to rise again in the late evening and at night.
- Using information services such as fuel finder apps can help motorists find the cheapest petrol station.
- Motorway petrol stations charge much higher prices than off-motorway service areas located near the motorway.

Tax cut on fuels

Between 1 June and 31 August 2022 the Federal Government reduced the energy tax on petrol and diesel to the minimum level allowed under European law to ease the burden on consumers. For these three months, the energy tax was reduced by almost 30 cents per litre for E5 and E10, and by around 14 cents per litre for diesel (excluding VAT).

The question of whether and to what extent this reduction was passed on to consumers has been the subject

of lively debate. Various studies, mostly based on a comparison of price developments in Germany and France, have now shown that the tax relief was largely passed on to consumers.

The Bundeskartellamt's investigation has come to a similar conclusion.

Latest news from the fuel markets

In early 2023 the Market Transparency Unit for Fuels started a monthly newsletter to inform the public about current developments in the fuel markets.

Readers wishing to receive this newsletter can sign up by contacting the Bundeskartellamt's Press Office.



ELECTRICITY AND GAS MARKETS



Especially since energy markets were liberalised in the late 1990s, the Bundeskartellamt has protected competition on markets upstream and downstream of the energy networks, most notably the markets for the generation, trading and supply of energy to end customers.

Every year the Bundeskartellamt publishes a report on the market conditions in the generation of electricity and, in cooperation with the Bundesnetzagentur, a monitoring report on developments in the electricity and gas markets.

In 2022 the gas and electricity markets were characterised by sharply increased prices. This increase is primarily attributed to the market upheaval and the restriction on imports following Russia's war of aggression against Ukraine as well as to the worldwide surge in demand as the global economy recovered after COVID-19 restrictions had been lifted.

To ease the financial burden on private households and companies, the Federal Government introduced price caps on electricity, gas and heat. In this context the Bundeskartellamt was assigned a completely new task: to intervene whenever energy providers increase their prices without having incurred increased costs themselves in an attempt to fraudulently claim relief payments made available by the state.

New task connected with the laws on energy price relief

In response to soaring energy prices the Federal Government introduced price caps for electricity, gas and heat to ease the financial burden on private households and companies. The corresponding laws entered into force in late December 2022 and will remain effective until the end of 2023, with the option of being extended until April 2024.

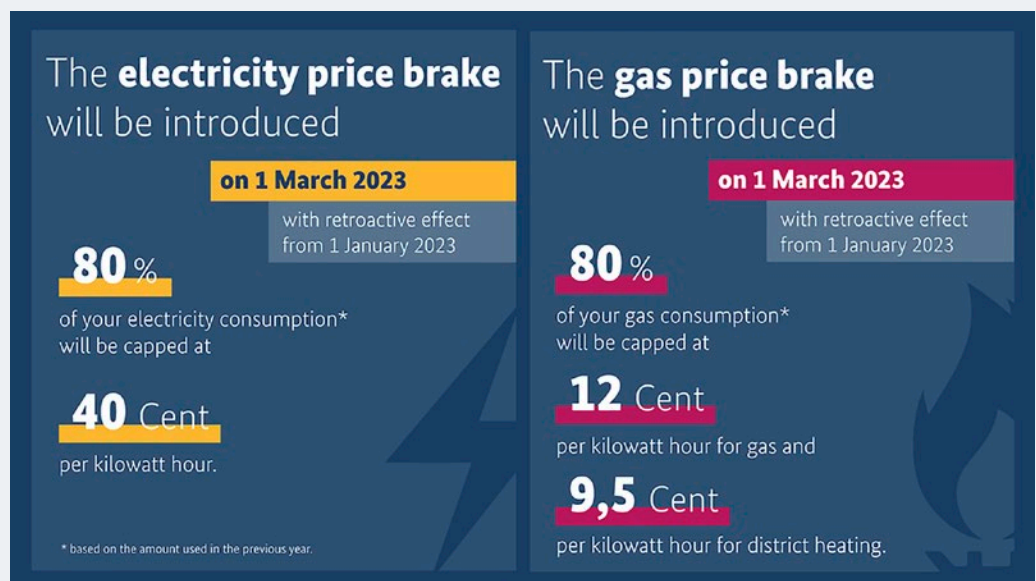
Energy providers must not abuse the relief measures, which are meant to help their customers, by adjusting their pricing in an unjustifiable way. In particular, if they wish to be compensated under the new laws, energy providers are generally only allowed to charge unit rates exceeding the statutory reference prices if they are able to demonstrate that they have incurred higher costs themselves, notably procurement costs and regulatory costs.

Customer prices are capped at the price set by the respective price relief law (for a quota of normally 80 per cent of

the customer's individual energy consumption in the previous year). Upon application, the state will reimburse energy providers for the difference between the capped customer price and the price that reflects the providers' actual costs.

The Bundeskartellamt was made the competent authority for abuse control relating to the new energy price relief measures. If the Bundeskartellamt finds that an energy provider has abused the relief measures, it can order repayment

of the reimbursed amount and impose substantial fines, among other things. In May 2023, based on its new powers, the Bundeskartellamt initiated a first round of proceedings against a double-digit number of gas and district heating suppliers for possibly claiming excessive reimbursement payments under the energy price relief laws.



Source: Federal Government

“To take on this new task we immediately set up a division of experienced colleagues. Identifying the black sheep among thousands of energy providers with a wide range of different rates and tens of thousands of individual contracts with industrial customers is anything but simple. But we are making good progress.”

Andreas Mundt, President
of the Bundeskartellamt



Monitoring Report

In November 2022 the Bundeskartellamt and the Bundesnetzagentur published their joint Monitoring Report on developments in the electricity and gas markets. The report primarily covers the year 2021, but due to the particular circumstances in the energy markets caused by Russia's war of aggression against Ukraine it also describes certain developments of 2022.

Key findings from the report:

- Energy generation from renewable sources dropped around 7.2 per cent in 2021 due to times of comparably little wind and sun.
- Accordingly, after reaching an all-time high of 45 per cent in the previous year, the proportion of renewable electricity generation decreased to 40 per cent of gross electricity consumption.
- In addition, in the period between the start of the war of aggression against Ukraine in February 2022 and the publication of the report, the highly volatile wholesale prices for electricity and gas increased considerably.
- As in previous years, it still has to be assumed that no provider is dominant in the markets that in terms of sales volume are the most significant for the supply of electricity and gas to end customers.
- The major market upheaval and the fact that many companies exited the market had – at least temporarily – a negative impact on the possibilities and willingness of customers to switch providers.



Market Power Report

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In its regularly published Market Power Reports the Bundeskartellamt provides a detailed analysis of the market and competition situation in electricity generation. The authority's latest report finds that RWE is indispensable for meeting the demand of electricity in so many hours that the company exceeds the threshold above which market dominance is presumed. In the supply of so-called balancing energy – which is used to balance fluctuations in the grid frequency – it is again a single energy company, EnBW, that has a very prominent market position, according to the Bundeskartellamt's analyses. Analyses also show that Germany in an increasing number of hours relies on electricity imports to be able to meet domestic demand – despite the fact that over a period of one year Germany is a net exporter of electricity.

LNG terminals

In September 2022 the Bundeskartellamt found that the cooperation between the major German gas importers and wholesalers Uniper, RWE and EnBW/VNG in setting up and operating the planned floating LNG terminals in Wilhelmshaven and Brunsbüttel raised no competition concerns. The rapid commissioning of the LNG terminals can create urgently needed and price-reducing import capacities for gas in a relatively short period of time. The associated advantages for consumers outweigh any negative effects on competition. In normal times the cooperation between these very important gas importers and wholesalers and especially the exclusive use of import capacities at the terminals would possibly have to be assessed more critically.

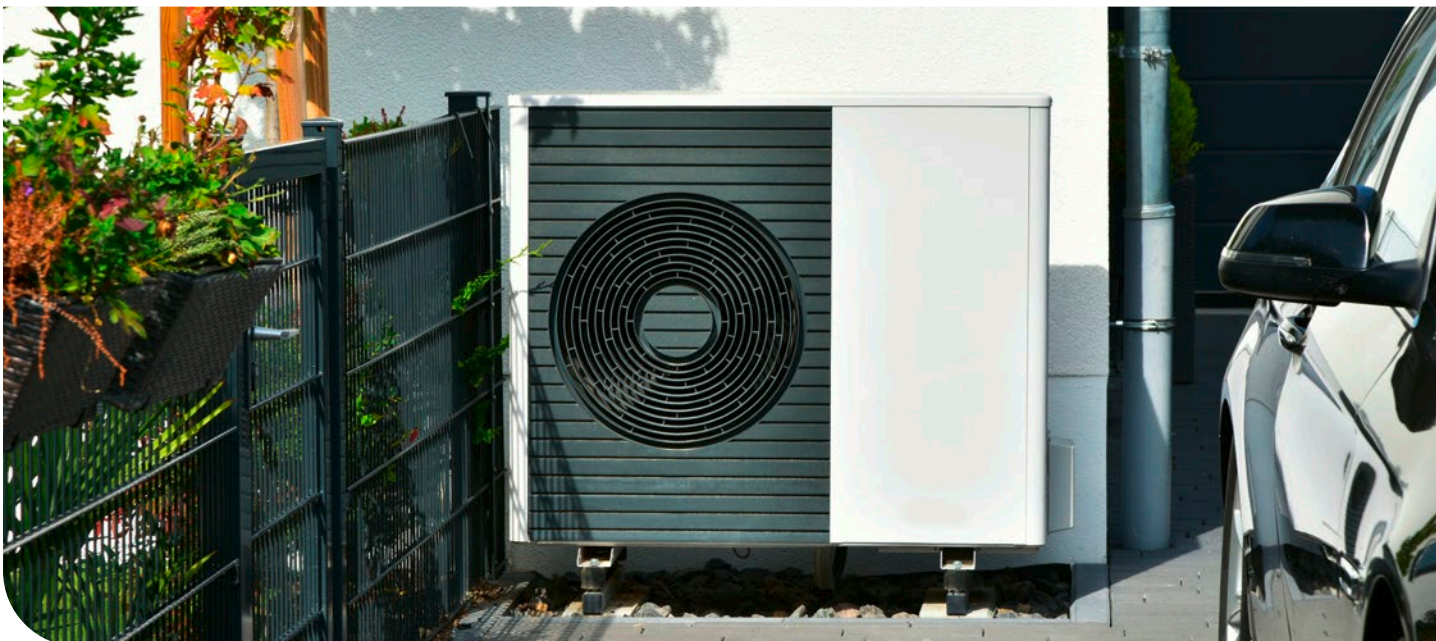
It was also important for the assessment that the planned operator model is initially set up for a limited period to end on 31 March 2024.



Merger between RheinEnergie und Westenergie only cleared subject to conditions

In September 2022, following an in-depth investigation, the Bundeskartellamt only cleared the planned strategic connection between E.ON subsidiary Westenergie and RheinEnergie after changes were made to the merger plans. In the authority's view, the merger would have raised competition concerns particularly with regard to heating electricity supply in the greater Cologne area. The loss of

an essential competitor would have further strengthened RheinEnergie's dominant position. The merger was therefore only allowed to go ahead on the condition that significant parts of RheinEnergie's heating electricity business were transferred to a third party, which created the basis for a new important competitive force.



FOOD PRODUCTION AND RETAIL

A photograph of a shopping cart filled with various groceries, including fresh produce like lettuce, tomatoes, and bread, as well as packaged goods and bottles. The cart is positioned in a supermarket aisle with shelves of products in the background.

**Sale of “real” Stores | Takeovers of Food Producers | Knack&Back/C er lia |
Theo M ller/Royal Friesland Campina Takeover | Joint Purchasing Company Warsteiner & Karlsberg |
“Die Freien Brauer” Cooperation | Crisis-related Cooperation between Sugar Producers**

In the past year the Bundeskartellamt conducted numerous proceedings concerning the food retail sector. At the retail level the Bundeskartellamt takes care to ensure that consumers have an adequate number of local shopping alternatives to choose from. In many cases the authority also focuses on the procurement side, that is retailers’ demand for products supplied by food producers.

Food trade



The German food retail market is highly concentrated. The four big retailers EDEKA, REWE, Aldi and the Schwarz Group (Lidl, Kaufland) account for more than 85 per cent of food sales to consumers (excluding drugstores, specialist retailers and online sales). However, in response to the increasing concentration in the food retail sector, concentration on the manufacturer side has also continued to increase. Due to this high level of concentration, the Bundeskartellamt conducts in-depth merger investigations on a regular basis in order to prevent competition problems.



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 real estate investor **SCP**. SCP then entered into negotiations with food retailers, in which the Bundeskartellamt was involved from 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 will be jointly operated by a team of “real” managers and the **Dr Tischendorf** family business under the “real” brand. In this context the Bundeskartellamt had carried out a preliminary examination of a **purchasing cooperation** between the new owners of the 63 stores and **REWE**. The authority essentially focused on the question of whether a purchasing cooperation with REWE, one of Germany’s largest retailers, was absolutely necessary 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 survival of the stores. The Bundeskartellamt thus saw no reason to intervene.





Takeover of food manufacturers

For quite some time the Bundeskartellamt has seen an increasing number of cases in which food retail companies take over food manufacturers (referred to as **vertical mergers**). When examining such mergers, the Bundeskartellamt takes care to ensure that there is no risk of market foreclosure to the detriment of other producers or retailers.

Last year the Bundeskartellamt cleared the acquisition by ALDI Vertical Value Management II GmbH of MSGB GmbH, Altmühltaler Mineralbrunnen GmbH and Vitaqua GmbH. Altmühltaler and Vitaqua produce and sell mineral water and non-alcoholic beverages as well as packaging materials at their sites in

Treuchtlingen and Breuna. They are among Germany's largest producers of private label mineral water beverages. Under competition aspects the Bundeskartellamt considers ALDI Nord and ALDI Süd to be a de facto coordinated group (*Gleichordnungskonzern* under German law) and an economic entity.

The acquisition of Erfurter Teigwaren GmbH by the Schwarz Group (Lidl and Kaufland, among other companies) was also cleared. Erfurter Teigwaren GmbH is Germany's largest producer of private label pasta.

The Bundeskartellamt held that despite the producers' great market sig-

nificance, sufficient alternatives would be available in the market after the acquisitions. This applies both to other producers of mineral water or pasta, who can turn to other retailers, and to other retailers, who can choose alternative sources of supply, that is other producers of private label products. The acquisition will not lead to an addition of market shares as neither ALDI Nord nor ALDI Süd have been active in the production of mineral water beverages so far. Besides its retailing activities, the Schwarz Group is also active in various areas of food and beverage production; however, it has not produced pasta so far.

Takeover of Knack&Back

In early 2022 the Bundeskartellamt cleared the acquisition of the Knack&Back business of General Mills Inc. by Cérélia Group Holding SAS („Cérélia“), Paris, following extensive investigations in the first phase of merger control.

Knack&Back is mainly known for its canned **part baked bread rolls**. Cérélia's product portfolio includes part baked products such as pizza and breakfast items (rolls and crois-

sants) as well as cake dough and canned part baked rolls, all of which are mainly produced for food retailers to be sold as private label products. The investigations had shown that there were still a sufficient number of competitors with the necessary expertise and capacities in the markets affected for the food retail companies to choose from, and that the concentration was thus not expected to raise competition problems.

Takeover in the dairy products sector

In February 2023 the Bundeskartellamt cleared plans by the **Theo Müller** Group to acquire brands and production sites for numerous dairy products from **Royal Friesland Campina**. In particular, the acquired brands include “**Landliebe**” and “**Tuffi**”. The project was only cleared subject to commitments made by the parties due to competition law concerns regarding parts of the project. Clearance was granted following an in-depth examination.

The Theo Müller Group has a strong market position in the dairy sector due to its comprehensive product range and the popularity of its brands. It clearly dominates the markets for rice pudding, fresh dairy drinks and fresh basic dairy drinks. Theo Müller Group’s already paramount market position

would have become even stronger through the acquisition of parts of Friesland Campina. Within the merger control framework, it is, however, possible for companies to submit commitments that are suitable to dispel competition concerns. In the present case, the commitments were suitable to eliminate all problematic overlaps. The entire “Tuffi” business of Friesland Campina will be sold to an independent third-party dairy. What is more, the Theo Müller Group will grant exclusive, irrevocable and indefinite brand licences for the use of the “Landliebe” brand. These commitments ensure that independent third parties take over Friesland Campina’s market position in these branches and that competition remains intact.



Is there a separate market for rice pudding?

The first important step of the Bundeskartellamt’s investigations in the Theo Müller/Friesland Campina case was to **define the relevant markets** for various pudding products.

In principle, the substitutability of products **from the perspective of the direct buyers**, in this case food retailers, is key for the market definition. In the present case, the Bundeskartellamt also examined substitutability from the consumers’ perspective and included it in the product market definition. If

both the direct buyers and consumers consider a product to be substitutable, it will be included in the same market. The Bundeskartellamt surveyed market players and conducted an empirical analysis (**event analysis**) in order to clarify this important question. In the event analysis, data on price changes and discounts for specific products affected were examined to check how consumers respond to them and to find out whether the products are actually substitutable (will consumers switch products or not). Ultimately, separate

product markets were defined for **rice pudding, fresh dairy drinks** and **basic dairy drinks**.



Cooperation between breweries

At the end of 2022 the Bundeskartellamt cleared under merger control rules the formation of a joint purchasing company by **Warsteiner Brauerei Haus Cramer KG** and **Karlsberg Holding GmbH**.

Cooperation projects must comply with the prohibition of anti-competitive practices and, depending on their structure, they are also subject to merger control – which applied in this case. In the end, the project did not raise serious competition concerns in either the beer sector or the non-alcoholic cold drinks sector. According to the authority's investigations, there are larger competitors in all possible markets and the joint market shares do not reach a problematic level. Neither are there any other apparent competition law problems. However, should other members join the purchasing company, the project would have to be re-examined in terms of the prohibition of anti-competitive practices and possibly also in terms of merger control provisions.



No objections to collective negotiations by Die Freien Brauer



In the past year the Bundeskartellamt examined a cooperation between small breweries organised as **Die Freien Brauer GmbH & Co. KG** ("Die Freien Brauer"). This association is used as a service organisation for the legal assessment of food retailers' general terms and conditions of purchase, also with regard to possible unfair commercial practices.

The breweries remain free to decide whether they accept the terms and conditions negotiated with the retailers. Specific conditions like prices, price components and sales volumes were not covered by the cooperation, which was meant to focus on mitigating disadvantages of size and competitive disadvantages in the assessment of the terms and conditions used by food retailers and large breweries. The Bundeskartellamt did not raise competition law concerns against the project. Die Freien Brauer is an association of 39 small family-owned breweries from the federal states of Baden-Württemberg, Bavaria, Hesse, Mecklenburg-Western Pomerania, North Rhine-Westphalia, Rhineland-Palatinate, Schleswig-Holstein and Thuringia. The breweries are active on regional markets; they do not have their own legal departments and have little market significance. Their Germany-wide market shares are below 5 per cent, although they can be higher on the regional level.

Crisis-related cooperation between sugar companies

Russia's attack on Ukraine has led to a unique and exceptional geopolitical situation and disruptive economic upheaval. Against this backdrop the Bundeskartellamt has allowed a one-time, temporary cooperation between the four sugar-producing companies in Germany, **Nordzucker**, **Süd-**

zucker, **Pfeifer & Langen** and **Cosun Beet**. The agreement provided for the companies to make production capacities available to each other in the event of gas supply cut-offs and ensuing production stoppages at the factories affected in order to ensure the processing of sugar beets grown in Germany.



However, the companies must first use all free production capacities available to them at their own factories in Germany and Europe and try to process the sugar beets at one of their other factories not powered by gas, provided that this is economically feasible due to transport costs. **In the event of a gas supply shortage** the sugar factories, some of which are still powered by natural gas, would have been at risk of production stoppages. As a possible consequence, large parts of the beet harvest would have been likely to rot, leading to excessive peaks in prices for the base product sugar, which would have affected the entire value chain to the detriment of consumers.

“We support crisis management initiatives within the framework of competition law. Among the factors that are central to our assessment under competition law are the requirements that the cooperation must be temporary and that the flow of information between the companies is limited to what is necessary.”



Andreas Mundt,
President of the Bundeskartellamt

Apart from pursuing the aim of **mitigating a unique and exceptional geopolitical situation**, the requirement that the **cooperation must be a one-time, temporary measure** taken in the event of a gas supply shortage regulated by an authority was a key element of the assessment under competition law (the cooperation was limited to the sugar beet campaign which, as usual, covered the period from early September 2022 to the first quarter of 2023, and the subsequent settlement period until June 2023). As a preparatory and implementing measure, the **sugar industry association (Verein der Zuckerindustrie, VdZ)** was to obtain information from the sugar companies about the unused processing capacities available at the individual factories and introduce continuous capacity monitoring to determine which capacities could be made available on a voluntary basis.

The **flow of information** between the companies was limited by accompanying measures to **what was necessary** as the

sugar beet processing was to be billed on the basis of the production costs. These were to be obtained from the sugar companies bilaterally – and **in confidence** – by an independent economic consultant. Neither the specific calculation method nor the data used could be passed on to the sugar companies. In addition, any other traceability of specific production costs was ruled out and the cooperation was not to disclose any secret information on customer relations (**principle of secret competition**).

The authority also took into account that, due to the impending emergency situation in the supply of natural gas, the companies had made considerable efforts to switch from natural gas to other fuels, such as heating oil and coal in particular, to power their sugar factories. In some cases, however, this had not been possible for environmental reasons and due to government requirements.

SUSTAINABILITY – A GENUINE COMPETITIVE FACTOR



Social and ecological aspects are gaining more and more attention in the public and political debate. Sustainable management of available resources has been playing an increasingly important role for consumers, policy makers and businesses.

Many businesses have an incentive to go beyond the applicable legal provisions and steer their entrepreneurial activities towards sustainability 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 this is something a growing number of consumers expect.

However, leading the way on new sustainability goals can be risky and expensive for companies. This is why an increasing number of businesses have established cross-sector initiatives and cooperation projects to achieve agreement on 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.

Sustainability has also played an important role at the international level. When cooperating with competitors, companies must take into account the European Commission's Horizontal Guidelines. A draft for revised guidelines published on 1 March 2022 includes a new chapter on how to deal with sustainability initiatives. Furthermore, Article 210a

of the European Regulation establishing a common organisation of the markets in agricultural products (CMO) entered into effect on 7 December 2021. Under certain conditions the Article provides for a special exemption from competition law for sustainability agreements concluded between producers of agricultural products.

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 implement certain animal welfare criteria to receive an "animal welfare payment" financed by food retail companies.
- Bundeskartellamt calls for clear labelling to achieve transparency for consumers, and for further development of the financing model. A standard premium is a restraint of competition which can only be tolerated for a transitional period.

Agricultural policy project "Agrardialog Milch" – No jointly agreed surcharges without improved sustainability

- Price surcharges in favour of raw milk producers are to be agreed by farmers, dairies and food retailers.
- The 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.

- Cooperation projects between agricultural producers and also along the entire value chain for agricultural products often enjoy the privilege of being exempted from competition law. The Bundeskartellamt encourages and supports such cooperation.

QM+ programme – Increasing animal welfare in milk production

- The Bundeskartellamt has no serious competition law concerns against 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 there is 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.

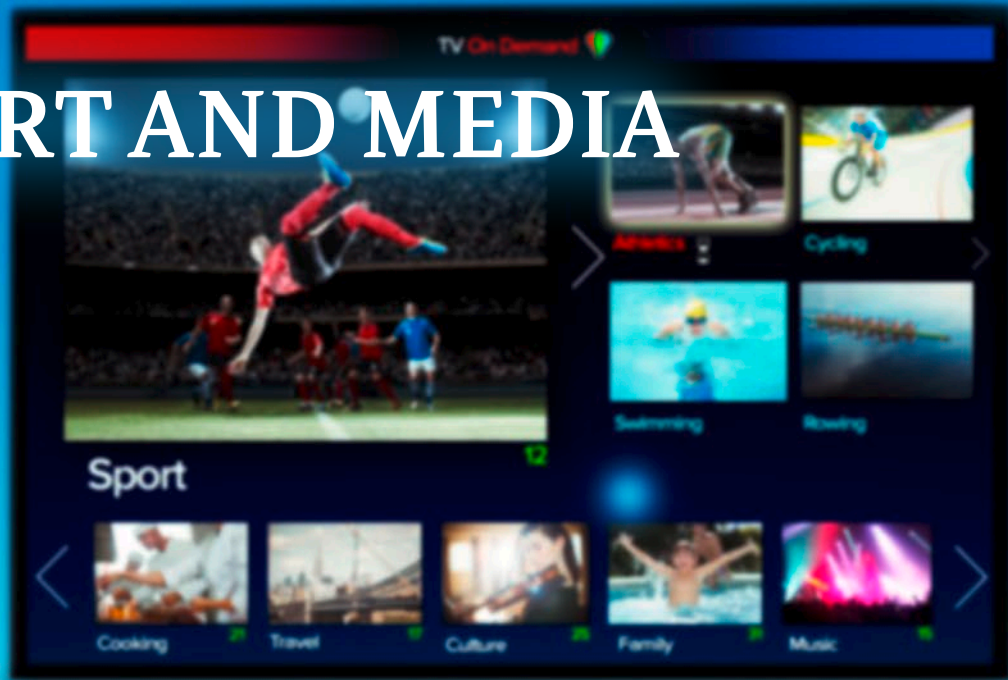
Sustainability initiatives

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

- How great are the restrictions of competition caused, for example, 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")?

SPORT AND MEDIA



DFL's 50+1 Rule | Ready/Cafeyn | Cooperation Between Publishing Houses |
Funke Mediengruppe/BCN Brand Community Network | NOWEDA/Burda Verlag

Professional sport in general, and football in particular, is of great economic value. The way in which different types of sport are organised in associations is therefore also often relevant under competition law. Markets related to professional sport, such as media and advertising, also raise competition issues.

The press and publishing sector is regularly assessed by competition authorities in their proceedings.



DFL's 50+1 rule

Since 2018 the Bundeskartellamt has dealt with the question of whether the so-called **50+1 ownership rule** in the statutes of **Deutsche Fußball Liga (DFL)** complies with European and German competition law. The authority's examination was triggered by an initiative of DFL.

In 2021 the Bundeskartellamt had already reached the preliminary conclusion that the basic 50+1 rule was potentially unproblematic under competition law due to the sport policy objectives it pursues. However, the authority considered it problematic that the current version of the rule did not ensure its uniform application and enforcement. This assessment primarily concerned the possibility to grant so-called benefactor exemptions from the 50+1 rule.

In March 2023 DFL offered commitments to dispel the Bundeskartellamt's competition law concerns. A central com-

ponent of the commitments is amending DFL's statutes: the basic 50+1 rule is to be maintained while the possibility of granting benefactor exemptions is to be dropped. With regard to the benefactor exemptions previously granted to the football clubs TSG Hoffenheim, Bayer Leverkusen and VfL Wolfsburg, DFL's suggestions will protect the status quo under certain conditions. The conditions include membership participation (in the form of indirect co-decision and veto rights) and the sharing of benefits, that is payments to compensate for structural and financial competitive advantages.

The proceeding at the Bundeskartellamt is still ongoing. The football clubs and investors admitted as third-parties were given the opportunity to comment on DFL's commitments. The Bundeskartellamt is currently evaluating the submitted statements.

The 50+1 rule

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The 50+1 rule was introduced in 1999 to provide Bundesliga and Bundesliga 2 clubs with new funding possibilities while limiting the influence of investors and preserving 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 so-called benefactor exemption allows DFL's executive committee to grant an exemption to the 50+1 rule if an investor has substantially supported the club's football activities for a continuous period of more than 20 years. As the economic activities of associations and clubs are subject to German and European competition law, the 50+1 rule must comply with these rules.

Takeover of "all you can read" service

In January 2023 the Bundeskartellamt cleared the takeover of **Readly's** international business by **Cafeyn Group**. Prior to this, Swedish media group Bonnier News Group AB had acquired all shares in **Readly International AB**.

Bonnier is an international media company which also owns book and magazine publishers. In Germany Readly offers an "all you can read" service. Until now such flat rate models have mainly been used by music and video streaming services. Users pay Readly a monthly fee in exchange for unlimited digital access to a wide range of magazines and newspapers in print format (e-papers). Cafeyn offers a similar service in various European countries.

As Readly has a strong position in the German market, the Bundeskartellamt examined the proposed merger in detail, taking into account the activities of large digital companies

in its assessment under competition law. The project could ultimately be cleared because Cafeyn has so far not been active in this segment in Germany and the parties will continue to compete with other digital distribution channels for journalistic content.





Cooperation between publishing houses

In March 2022 the Bundeskartellamt cleared plans by **SIGNA Medien GmbH** to acquire 40 per cent of the shares in **Rheinisch-Westfälische Verlagsgesellschaft** and thus gain 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 also cleared plans by **Medienholding Klambt GmbH & Co. KG** to acquire all shares in **Delius Klasing Verlag GmbH**. Mediengruppe Klambt is active in the areas of magazines, periodicals, radio and the distribution of print media and provides various digital offers. Delius Klasing mainly publishes magazines, books and new media. While Klambt’s magazines belong to the popular magazines segment, the titles published by Delius Klasing belong to the special-interest magazines segment, in particular concerning water sport and cycling. The takeover does not result in any market share additions and consequently does not impede competition in the reader and advertising markets.

In response to the competition concerns expressed by the Bundeskartellamt, **Neue Pressegesellschaft mbH & Co. KG** withdrew the notification of its acquisition of all shares in **Druck- und Verlagshaus Hermann Daniel GmbH & Co. KG** and its general partner company in January 2023. This cleared the way for another acquirer to take over the companies. In

August 2022 the Bundeskartellamt had already cleared plans by Schwäbischer Verlag GmbH & Co. KG to acquire all shares in Verlagshaus Daniel. After this decision was issued, Neue Pressegesellschaft also notified its plans to acquire the shares, which is why these plans had to be examined as well.

Verlagshaus Daniel distributes the regional daily subscription newspaper “**Zollern-Alb-Kurier**” and an advertising newspaper in the southern German Zollernalbkreis district. Neue Pressegesellschaft also distributes various regional subscription dailies in Baden-Württemberg (in particular “**Südwest-Presse**”) and Brandenburg (in particular “**Lausitzer Rundschau**” and “**Märkische Oderzeitung**”) as well as advertising newspapers.

The Bundeskartellamt’s in-depth market investigations showed that “Zollern-Alb-Kurier” clearly is the leading newspaper in its circulation area, both in terms of the number of copies sold and in terms of reader and advertising revenues gained. In addition, the newspaper merely competes with two other local editions of the newspaper “Schwarzwälder Bote”. Schwarzwälder Bote Mediengruppe belongs to Südwestdeutsche Medienholding GmbH, which is, in turn, linked to Neue Pressegesellschaft under corporate law. The takeover of Verlagshaus Daniel by Neue Pressegesellschaft would therefore have established ties between the only two regional competitors and further strengthened the leading market position of the “Zollern-Alb-Kurier” newspaper.

German Competition Act: Exemption regulation for the press sector

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

Joint venture between Burda and Funke

In March 2023 the Bundeskartellamt cleared the planned participation of **Funke Mediengruppe GmbH & Co. KGaA** in the marketing company **BCN Brand Community Network GmbH** (BCN) following an in-depth examination. BCN is a subsidiary of **Burda Verlag GmbH** and has so far primarily marketed the advertising inventory of Burda and Medienholding **Klambt GmbH & Co. KG**. After the merger BCN is to also market Funke's advertising inventory, particularly magazines and online platforms.

In order to assess the project, the Bundeskartellamt carried out extensive investigations and surveyed numerous magazine publishers, media agencies and advertising customers. In this context, the authority focused on the publishers' current competitive situation, competition with other forms of media, actual alternative options available to advertising customers and the special role of media agencies. Burda's and Funke's magazine titles overlap in particular in the categories of TV programme guides and tabloids. Adverts for OTC pharmaceutical products and nutrition supplements as well as mail order retailing – with the option of placing orders in writing or by phone – account for by far the largest part of advertising revenue generated by these magazine categories. This also applies, with a different focus, to pharmacy magazines and TV supplements.

The merger will result in Burda and Funke becoming the strongest provider in the advertising markets examined, with a joint market share of up to almost 40 per cent. Despite Burda's and Funke's strong market position, the results have shown that the merger does not fulfil the requirements for prohibition under merger control. An important reason for this assessment is that the customers affected stated that they would shift some of their advertising budget to competitors in response to any attempts by the parties to increase prices.

In future Burda and Funke will jointly control BCN; Klambt is only to hold a minority share in BCN.

“Double control” of joint ventures



When a joint venture is established, like in the present case, the Bundeskartellamt's assessment goes beyond merger control: the underlying agreements and contracts of the companies involved must always also be examined in accordance with the principles of the general prohibition of anti-competitive agreements (referred to as double control).

Burda joins “IhreApotheken.de”

In August 2022 the Bundeskartellamt cleared the creation of a joint venture between **NOWEDA Apothekengenossenschaft eG** and **Burda Verlag GmbH**. The project follows the trend of linking health information with a mail order pharmacy platform to develop comprehensive digital health platforms. As such, it competes fiercely with other pharmacy and health platforms.

Noweda, an association of several thousands of pharmacies, is one of the leading pharmaceutical wholesalers in Germany. It operates the platform “IhreApotheke.de”, where pharma-

ceuticals can be ordered online from local pharmacies. Burda is a publisher whose publications include medical information for the wider public (for example mylife.de, netdoctor.de). Moreover, Burda, together with NOWEDA, is already involved in the “Zukunftspakt Apotheke” project, which aims to help brick-and-mortar pharmacies go digital. These activities are now to be pooled under the umbrella of the joint venture.

CONSUMER PROTECTION



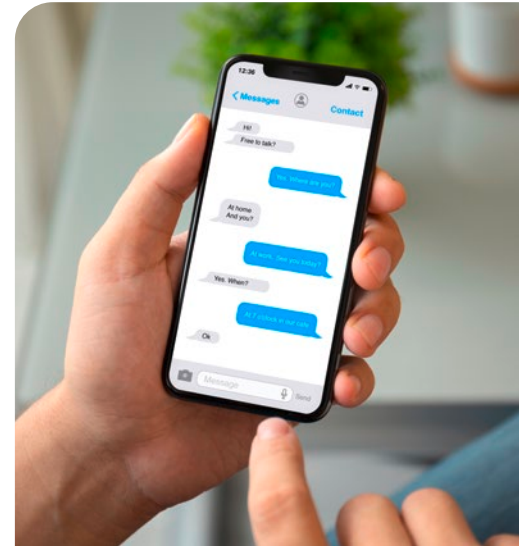
In the 9th amendment to the German Competition Act (*Gesetz gegen Wettbewerbsbeschränkungen* – GWB), which came into force in early June 2017, the Bundeskartellamt was for the first time given competences in the area of economic consumer protection. This covers in particular the rules on unfair competition and the provisions governing general terms and conditions of business. Public consumer protection is to be enhanced in order to address possible shortcomings in the enforcement of consumer rights, especially in the digital economy. The Bundeskartellamt can now conduct sector inquiries into consumer law issues and also act as an *amicus curiae* (“friend of the court”) in civil consumer protection actions. It has not been granted powers to intervene, for example the power to order the termination of infringements. However, the 2021 coalition agreement mandates an analysis of potential legislative adjustments which would grant the Bundeskartellamt such powers.

Messenger and video services

In May 2023 the Bundeskartellamt published its final report on the sector inquiry into messenger and video services, which examined the technical and legal framework conditions of these services. The sector inquiry especially focused on the issues of data protection and data security.

The inquiry found that some services are in violation of consumer law provisions regarding functions which are particularly important to users. This was the case in the following two examples:

- When users synchronise their contact lists, service providers also collect the data of contacts that have so far not registered with the relevant service. In the Bundeskartellamt's view, this practice may violate the GDPR if it is employed on a permanent basis.
- Personal data of German and European consumers may only be transferred to and stored in countries where there is a level of data protection similar to that ensured by the European GDPR. In particular, the transfer of data to and their storage in the USA is currently not permissible.



Sector inquiries dealing with consumer protection



- Comparison websites (April 2019)
- Online user reviews (October 2020)
- Messenger and video services (May 2023)
- Smart TVs (July 2020)
- Mobile apps (July 2021)
- 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 the practices used by retailers and other companies to check consumers' credit standing, that is their ability to pay when shopping online. Credit standing is checked based on so-called score values, especially in the context of the popular "purchase on account" option – something many consumers are not aware of.


The sector inquiry examines whether and how companies provide information on such practices, how the checks are carried out and which criteria the credit checks are actually based on.

Apart from online retailers, the authority also surveys other companies that may be of relevance to scoring, for example credit bureaus which determine score values and thus provide online retailers with an essential factor for their credit checks.

The Bundeskartellamt has already surveyed online retailers from various sectors as well as credit bureaus to analyse their practices in carrying out credit checks when consumers place orders online. As a next step, the authority plans to survey payment service providers.



FEDERAL PUBLIC PROCUREMENT TRIBUNALS



The Federal Public Procurement Tribunals are responsible for reviewing tender procedures 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.

As in previous years, the review proceedings mainly focused on the award of contracts for public supplies and services, followed by the construction sector and, equally frequently, sectoral contract services and the defence and security sector.

No general claim to price adjustment clause on account of the war in Ukraine

In a proceeding conducted in October 2022, the Public Procurement Tribunal decided that the price increases which had occurred since the beginning of the war in Ukraine did not oblige public contracting entities to include a price adjustment clause in framework agreements on the supply of certain consumables.

The applicant had called for a price adjustment clause by referring to the current special economic situation which, according to the applicant, was characterised by substantial price increases for many products (for example gas and crude oil) as well as delays in supply, caused in particular by the war in Ukraine. As a consequence of this, suppliers had raised their prices sig-

nificantly several times during the last few months, the applicant argued. The Public Procurement Tribunal held that bidders could nevertheless be reasonably expected to provide a commercially reasonable calculation.

First, many price increases had already occurred at the date the review proceeding was initiated. The applicant thus did not have to rely on a price adjustment clause to be able to take the situation described into account in its calculation. Second, the applicant was not bound by its tender prices during the entire contract period of up to four years as the contract could without difficulty have been terminated by the end of each calendar year.

The Federal Public Procurement Tribunals in figures

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- In 2022, 116 applications were filed for the initiation of review proceedings.
- 47 decisions were taken, 33 of which in favour of the public contracting entities and 14 in the applicants' favour. In all other cases the review proceedings were terminated without a decision on the merits either because applications were withdrawn (43) or cases were concluded by other means (25). One proceeding is still pending.
- In 14 cases the decisions of the Public Procurement Tribunals were immediately appealed to the Düsseldorf Higher Regional Court.

Public procurement procedure on quick charging infrastructure

In the course of the energy transition, the quick charging infrastructure for electric vehicles is to be expanded across Germany. Sufficient access to this infrastructure is an essential prerequisite for the market success of e-mobility. Three national public procurement procedures were carried out in this context, regarding the charging infrastructure at motorway rest areas with services, the charging infrastructure at motorway rest areas without ser-

vices and the off-motorway charging infrastructure in urban, suburban and rural areas.

Two of these public procurement procedures were carried out by the Federal Government's Autobahn GmbH, a company responsible for motorway infrastructure. The procurement procedure concerning off-motorway infrastructure was managed by the German Ministry for Digital and Transport. In

this context several review proceedings were pending before the Federal Public Procurement Tribunals. Objections were raised, for example, about the requirements established by the relevant public contracting entity regarding the companies' experience gained in similar projects and thus their suitability to participate in the competition for public contracts. These requirements were in some cases considered to be too strict.

Public procurement law

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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 while at the same time protecting fair competition between companies and guaranteeing free market access within the European Single Market.

COMPETITION REGISTER FOR PUBLIC PROCUREMENT

The national digital Competition Register for Public Procurement provides public contracting authorities, sector contracting entities and concession grantors with information helping them to assess whether a company must or can be excluded from a public procurement procedure for having committed economic offences. Contracting entities, which previously had to rely on the information provided by the companies themselves, can consult the Competition Register electronically to assess whether grounds for exclusion exist. With its digital interfaces and tens of thousands of users, the Competition Register is one of the first fully digital registers in German public administration.

Aim and purpose

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 (*Gesetz gegen Wettbewerbsbeschränkungen – GWB*), public procurement law therefore sets out that companies must or can be excluded from the 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.

Operation



Since December 2021 the competent authorities (such as public prosecution offices, customs, tax offices and competition authorities) have been obliged to communicate relevant violations of law to the Competition Register.

Since June 2022 contracting authorities have been obliged to consult the Competition Register in procurement procedures involving an estimated

order value of 30,000 euros (excluding VAT) or more. If the value of the contract is below these thresholds, contracting entities may consult the Competition Register on a voluntary basis. Sector contracting entities and concession grantors are subject to different provisions.

The Register's system processes queries by means of automated data synchronisation; cases which cannot be clearly categorised are reviewed manually. On

average, the Register is consulted 800 to 1,000 times per working day. The queries received cover a wide range of goods and services procured by the public sector and a variety of companies providing these services (ranging from individuals to very large companies). The queries often produce several hits per week, in which case data on misconduct saved in the Register are transmitted.

Self-cleaning

Companies listed in the Register can apply for premature deletion due to self-cleaning. The Bundeskartellamt has published guidelines and a practical guide on this procedure. Already in its first year of effective operation, several companies were deleted from the Register after submitting evidence of the self-cleaning measures they had taken.

Right to information

Upon application, 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 on a voluntary basis if the value of the contract is below these value thresholds.
- Companies listed in the Register can apply for premature deletion due to self-cleaning.

PUBLICATION DETAILS

Published by

Bundeskartellamt
Kaiser-Friedrich-Straße 16
53113 Bonn
www.bundeskartellamt.de

Last updated

End of May 2023

Print

Brandt GmbH, Bonn

Design and production

fischerAppelt AG, Hamburg

Photo credits

Cover: ADDICTIVE STOCK/stock.adobe.com; page 3: Bundeskartellamt; page 5: Bundesministerium für Wirtschaft und Klimaschutz; page 7: Bundeskartellamt; page 8: dem10/iStock; page 11: Bundeskartellamt; page 12: LinkedIn/Bundeskartellamt; page 14 top: sinology/iStock; page 14 bottom: Bundeskartellamt; page 15: bamlou/DigitalVision Vectors; page 16: Mint Images/Mint Images RF; page 17: peteri/stock.adobe.com; page 18: Kalyakan/stock.adobe.com; page 20: top: freshidea/stock.adobe.com page 20: bottom: Canetti/iStock; page 21: Corgarashu/stock.adobe.com; page 22: QC Creations/stock.adobe.com; page 23 top: Александр Беспалый/stock.adobe.com; page 23 bottom: Ingo Bartussek/stock.adobe.com; page 24: Westend61/GettyImages; page 25: Melinda Nagy/stock.adobe.com; page 26 top: Eva March/stock.adobe.com; page 26 bottom: metamorworks/stock.adobe.com; page 27: frank peters/stock.adobe.com; page 28 top: GettyImages/Roc Canals; page 28 bottom: Elnur/stock.adobe.com; page 29: kasto/stock.adobe.com; page 30: GettyImages/ipopba; page 31: Stasique/stock.adobe.com; page 34: suebsiri/stock.adobe.com; page 37: Bundeskartellamt; page 38: uladzimirzuyeu/stock.adobe.com; page 39: Bundeskartellamt; page 41: Have a nice day/stock.adobe.com; page 42: GettyImages/Hero_Images; page 43: kmls/stock.adobe.com; page 44: Taechit/stock.adobe.com page 46 top: 一飞黄/stock.adobe.com; page 46 bottom: Bundeskartellamt; page 47: Kraftstoff-News/Bundeskartellamt; page 48: zhongguo/E+; page 49: © Bundesregierung; page 50 top: conceptcafe/stock.adobe.com; page 50 bottom: Michael von Aichberger/Shutterstock; page 51 top: NPershaj/stock.adobe.com; page 51 bottom: Hermann/stock.adobe.com; page 52: Gina Sanders/stock.adobe.com; page 53: Lizardflms/Shutterstock; page 54: agnormark/Alfazet Chronicles/stock.adobe.com; page 55 top: beats_/stock.adobe.com; page 55 bottom: chandlervid85/stock.adobe.com; page 56 top: Parilov/stock.adobe.com; page 56 bottom: NicolaiSorokin/stock.adobe.com; page 57 top: Guntar Feldmann/stock.adobe.com; page 57 bottom: Bundeskartellamt; page 58: Emil/stock.adobe.com; page 60: Robert Daly/KOTO/stock.adobe.com; page 61 top: steevy84/stock.adobe.com; page 61 bottom: oatawa/stock.adobe.com; page 62: Fedor Kozyr/iStock; page 64: Towfiq Barbhuiya / EyeEm/EyeEm; page 65 top: Adobe/Denys Prykhodov; page 65 bottom: joyfotoliakid/stock.adobe.com; page 66: Koron/Moment; page 68: 3alex/E+

Text

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