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1. Executive Summary

1.1. Digital economy

1. The digital economy is becoming increasingly important for the Bundeskartellamt's work as the authority has to deal with new markets, new players and new business models. Due to the internal growth of digital players, the control of abusive practices gains significance. Moreover, as access to data has become one of the key factors for a company's competitive position in digital markets, the handling of user data and its accordance with legal provisions has to be considered. For example, the Bundeskartellamt is conducting a proceeding against Facebook, considering whether the company's collection and use of data from third-party sources constitutes an abuse of dominant position. In doing so, the Bundeskartellamt is exploring in depth the connection between free services on the internet, personal data and market power for the first time. Furthermore, the Bundeskartellamt concluded proceedings against the online ticket retailer CTS Eventim. Beyond that, it had no objections to the launch of two digital trading platforms, namely ECEMENT and XOM Metals.

2. Since the 9th amendment to the German Competition Act in June 2017, the Bundeskartellamt is now able to consider internet-specific criteria like network effects or access to data for assessing market power. Moreover, it is now allowed to examine acquisitions which only achieve marginal turnover but for which a high purchase price was paid. The Bundeskartellamt and the Austrian Bundeswettbewerbsbehörde published a joint guidance paper on the application of this new transaction value threshold in 2018. In another binational project, the Bundeskartellamt and the French Autorité de la concurrence are analysing the impact of algorithms on competition and are identifying conceptual approaches to meet these new challenges. On the national level, the Bundeskartellamt started to publish a new series on the topic "Competition and Consumer Protection in the Digital Economy" that has already been dealing with Big Data and Competition, Innovation Competition and Online Advertising. It also launched sector inquiries on online price comparison websites and smart TVs as well as a sector inquiry into market conditions in the online advertising sector.

1.2. Action against anticompetitive practices

3. Cartel prosecution remains a key area of the Bundeskartellamt's work. In the period covered by this report, the Bundeskartellamt imposed several fines totalling approximately EUR 75 million. The proceedings concerned various sectors, such as e.g. harbour towage service providers, the sanitary, heating and air conditioning sector, potato and onion packaging companies, and automotive parts manufacturers, as well as vertical price-fixing agreements in the clothing industry.

1.3. Merger control

4. Around 1,300 merger projects were notified to the Bundeskartellamt in 2017.¹ Ten cases were closely examined in second phase proceedings. In four of these cases, the merging parties withdrew their notification in 2017 after the Bundeskartellamt had

¹ Merger control statistics are only available for the calendar year and not for the period covered by the report (July 2017-June 2018).

expressed considerable concern about the planned mergers. Three cases were cleared without conditions and obligations. However, the most significant case was the prohibition of plans by CTS Eventim AG & Co. KGaA to acquire the majority of shares in the companies belonging to Konzert- und Veranstaltungsagentur Four Artists. The two remaining in-depth investigations were concluded in early 2018. The two cases concerned were a clearance decision subject to conditions of the merger between CIT Holdings (Europe) S.A.S. and VTG Rail Assets GmbH and a withdrawal of the planned merger between Raiffeisen Waren-Zentrale Rhein-Main eG and Landgard Blumen & Pflanzen GmbH.

2. Changes to competition laws and policies

2.1. Government proposals for new legislation

5. After the 9th amendment to the German Competition Act the Federal Ministry for Economic Affairs and Energy entered into the preparatory phase for a proposal for a further amendment of the German Competition Act. Due to upcoming EU secondary legislation with regard to the procedural regime for leniency a reform of the national completion law regime will most likely be necessary. The Federal Ministry for Economic Affairs and Energy is currently assessing whether the digital economy calls for a further refinement of the legal antitrust toolbox.

6. Against that background, the Federal Ministry for Economic Affairs and Energy requested an external report by a group of renowned competition law experts on the topic of a possible modernisation of the law on abuse of market power.² The study seeks to evaluate whether market dominance as a general threshold for intervention in abuse scenarios is still appropriate and whether particular risks for the functioning of effective competition arise from novel strategies of powerful digital platforms and if they can be countered under the existing legal framework.

7. The study was finalised after the reference period of this annual report and presented to Peter Altmaier, Federal Minister for Economic Affairs and Energy in Germany, on 4 September 2018 in Berlin.

2.2. New tasks

8. Because of the 9th amendment to the German Competition Act the Bundeskartellamt has gained new competences. These do not only include the consideration of internet-specific criteria and a transaction value threshold, but also the area of consumer protection. Under Section 32e(5) of the German Competition Act the authority is now authorised to conduct sector inquiries if it suspects certain infringements of consumer law which are likely to harm a large number of consumers. In the period covered by this report, the Bundeskartellamt set up a division dedicated to this new task and started two inquiries on price comparison websites as well as smart TVs.

²Schweitzer/Haucap/Kerber/Welker, Modernisierung der Missbrauchsaufsicht für marktmächtige Unternehmen, executive summary in English available at: https://www.bmwi.de/Redaktion/DE/Downloads/Studien/modernisierung-der-missbrauchsaufsicht-fuer-marktmaechtige-unternehmen-zusammenfassung-englisch.pdf?__blob=publicationFile&v=3

9. On 29 July 2017, the Act on the Establishment of a Competition Register for Public Procurement at the Bundeskartellamt entered into force. In October 2017, the Bundeskartellamt launched an establishment team to set up the new division. In future, the Competition Register will enable public contracting authorities to check in a single nationwide electronic search whether a company has committed serious violations of law to ensure that companies which commit serious economic offences do not benefit from public contracts. The Act provides for the electronic register to be operational by 2020.

2.3. Working Papers and Reports

2.3.1. Guidance note on the prohibition of vertical price fixing in the food retail sector

10. In July 2017, the Bundeskartellamt published the final version of a guidance note on the prohibition of vertical price fixing in the brick-and-mortar food retail sector. The aim of the guidance note is to explain to companies in the sector, also with the help of practical examples, the background, purpose and scope of the prohibition of vertical price fixing. The information is intended for small and medium-sized undertakings, in particular, which do not have easy access to antitrust advice. The Bundeskartellamt's guidance note complements the European Commission's guidelines on vertical restraints by adding specific advice with regard to practices used in the brick-and-mortar food retail sector.

2.3.2. New series of papers on “Competition and Consumer Protection in Digital Economy“

11. Since October 2017, the Bundeskartellamt has published a new series on the topic “Competition and Consumer Protection in the Digital Economy”. It aims at giving new impetus to the debate about the interfaces between the digital transformation, competition and consumer protection. Topics already dealt with are Big Data and Competition, Innovation and Online Advertising.

2.3.3. Energy Monitoring Report 2017

12. In November 2017, the Bundesnetzagentur and the Bundeskartellamt published their joint annual monitoring report on developments in the German electricity and gas market. It informs about an increase of installed generating capacity and shows how a lower market concentration, renewable energy sources and the closure of nuclear power plants lead to a downward trend in market power. The report also reveals the positive development of competition in the retail markets and its favourable effect on consumer prices.

2.3.4. Annual Report of Market Transparency Units for Fuels

13. In March 2018, the Bundeskartellamt published its fourth annual report on the work of the Market Transparency Unit for Fuels. In its report, the authority evaluated fuel prices (E5, E10 and diesel) throughout Germany for the period from 1 June 2017 to 30 November 2017. For some analyses, the whole year was taken as a basis and price data from the beginning of 2018 was also used. The report provides more detailed price analyses for the cities of Berlin, Dresden, Frankfurt am Main, Hamburg, Cologne, Leipzig, Munich and Stuttgart.

2.3.5. Publication: 60th Anniversary of the Bundeskartellamt

14. On its 60th anniversary, the Bundeskartellamt published a paper looking back at the authority's history and the main historical developments. It also includes contributions by Margrethe Vestager, European Commissioner for Competition, Brigitte Zypries, former Federal Minister for Economic Affairs and Energy and Andreas Mundt, President of the Bundeskartellamt.

2.3.6. Joint guidance on new transaction value threshold in German and Austrian merger control submitted for public consultation

15. In May 2018, The Bundeskartellamt and the Austrian Bundeswettbewerbsbehörde submitted for public consultation a joint guidance paper on the application of the new transaction value threshold in merger control. Merger control thresholds in both Germany and Austria have been supplemented with a threshold that is based on the purchase price (in Germany more than EUR 400 million – in Austria more than EUR 200 million). The guidance paper is intended to provide companies and legal experts with some assistance on how to interpret these new legal provisions.

16. In October 2017, the Federal Ministry for Economic Affairs and Energy published Guidelines for the administrative procedure of granting a ministerial authorization on public benefits grounds for mergers that the Bundeskartellamt had initially prohibited. The Guidelines seek to promote a swift and efficient procedure.

17. At the end of July 2018, the Federal Ministry for Economic Affairs and Energy submitted a report concerning the results of the achievements and experience of the market transparency unit for fuel to the German parliament. The report concludes that the market transparency unit for fuel substantially increased the transparency for consumers and recommends the unit to proceed with its tasks and is subject to further evaluation after a five-year period.

3. Enforcement of competition laws and policies

3.1. Action against anticompetitive practices, including agreements and abuses of a dominant position

3.1.1. Statistics and summary of activities

18. With regard to cartel detection, the Bundeskartellamt received 28 leniency applications in the period covered by this report. It conducted 12 dawn raids related to its own proceedings and two inspections on behalf of the European Commission. In the period covered by the report, the Bundeskartellamt imposed several fines totalling approximately EUR 75 million.

3.1.2. Description of significant cases

19. Some of the cases described below are still pending and some decisions have not yet become final.

Agreements

Hardcore restrictions

- Division of orders and turnovers between harbour towage service providers

20. In December 2017 and in February 2018 the Bundeskartellamt imposed fines of approx. EUR 17.5 million on four harbour towage service providers. No fine was imposed on Unterweser Reederei GmbH and its subsidiary in accordance with the Bundeskartellamt's leniency programme. For discretionary reasons no fine was imposed on another company, which had since exited the market. Between 2002 and 2013 the companies had split orders and turnover earned from several German harbours among themselves. The companies set quotas based on turnover which they used to allocate orders between them. All the major towage companies in the respective harbours had participated in the quota allocation. As Dutch companies were also involved in the cartel, the Bundeskartellamt cooperated closely with the Netherlands Authority for Consumers and Markets in this case. The customers of these services are the shipping companies that use the respective harbours, in particular the liner shipping companies.

- Price-fixing agreements in the sanitary sector

21. In February 2018, the Bundeskartellamt concluded its last pending proceeding concerning price-fixing agreements in the sanitary, heating and air conditioning sector. Consequently, the total amount of fines imposed on ten wholesalers rose to EUR 23 million.

- Price-fixing agreements between potato and onion packaging companies

22. In May 2018, the Bundeskartellamt imposed fines totalling EUR 13.2 million on the potato and onion packaging companies Hans-Willi Böhmer Verpackung und Vertrieb GmbH & Co. KG and Kartoffel-Kuhn GmbH. The proceeding had been initiated in May 2013 with a sector-wide dawn raid following a leniency application. The Bundeskartellamt concluded that the companies had aligned their purchase prices in their supply to the Metro group and had thus virtually eliminated any price competition between them.

- Fines on automotive part manufacturers

23. In June 2018, the Bundeskartellamt imposed fines amounting to EUR 9.6 million on three manufacturers of heat shields. The companies Elring Klinger Abschirmtechnik (Schweiz) AG, Sevelen (Switzerland), Estamp S.A.U., Terrassa (Spain) and Lydall Gerhardi GmbH & Co. KG, Meinerzhagen (Germany) are accused of agreeing to pass on increased material costs to their customer VW in 2011.

Non-hardcore horizontal restrictions

- No objections to the establishment of a consortium for the construction of corvettes

24. In July 2017, the Bundeskartellamt decided not to initiate a proceeding to examine whether the planned participation of German Naval Yards Kiel GmbH in the consortium ARGE K130 violates the German and European prohibition of cartels. ARGE K130 is a consortium of the companies Thyssen Krupp Marine Systems GmbH and Fr. Lürssen Werft GmbH & Co. KG. The Bundeskartellamt concluded that the planned participation in the consortium, as far as it was subject to the prohibition of cartels, could

meet the legal requirements for an exemption from the prohibition. Ultimately, there had been no indications of a serious violation of the ban on cartels.

- ATM withdrawal fees for customers of other banks

25. In September 2017, the Bundeskartellamt concluded an extensive investigation into fees charged by German banks for withdrawals from their ATMs by customers of other banks. In the Bundeskartellamt's view, an intervention by the state to regulate withdrawal fees would not be expedient at this stage. Most consumers could avoid paying high withdrawal fees by choosing lower cost alternatives. If the ceiling for withdrawal fees was set too low, there was a risk that the financial institutions would no longer be willing to maintain ATMs in certain locations.

- Bundeskartellamt calls for more consumer transparency in animal welfare initiative

26. In September 2017, the Bundeskartellamt declared not to have any objections to plans of the Animal Welfare Initiative "Tierwohl" for the poultry meat sector. The Animal Welfare Initiative "Tierwohl" is a project based on an agreement between the agricultural meat production and food retail sectors. Since 2015, the retailers have paid several cents per kilogram of pig and poultry meat sold into the initiative, in order to reward livestock producers for implementing animal welfare measures. From 2018 on, consumer transparency is to be created in the poultry meat sector with the introduction of identity checks that enable the consumer to tell from a label whether a piece of meat was produced subject to animal welfare criteria. However, the Bundeskartellamt calls for the introduction of such an identification system in the pig meat sector for the benefit of consumers. The Animal Welfare Initiative will have to present a concept if possible by the end of 2018 for the introduction of more consumer transparency from 2021 onwards.

- No objections to launch of cement trading platform

27. In December 2017, the Bundeskartellamt examined plans for the launch of the digital cement trading platform ECEMENT and found the project to be unproblematic under competition law. The platform is available to all suppliers and purchasers of cement and can be used to select a supply plant and place an anonymous request for cement deliveries. For the Bundeskartellamt, it was important that the operator could not use the platform to report on prices achieved in a particular region. However, in the current form the platform did not raise any competition concerns and was even expected to stimulate competition.

- No objections to launch a digital platform for steel products

28. The Bundeskartellamt also had no objections to plans by Klöckner & Co SE, Duisburg to set up the business-to-business online trading platform XOM Metals for the sale of steel products. Both steel manufacturers and traders are to operate as suppliers on this platform, which is intended to simplify order transactions and order management for existing and new customers. Klöckner had modified its original plans so that the project no longer raised any competition concerns. In accordance with indications given by the Bundeskartellamt, Klöckner has designed the platform in such a way that no anti-competitive exchange of information on prices or product availability will take place on the platform.

Vertical restraints

- Bundeskartellamt imposes fines on account of vertical price fixing in the clothing industry

29. In July 2017, the Bundeskartellamt imposed fines totalling around EUR 10.9 million on two companies in the clothing industry on account of vertical price fixing committed between 2008 and 2013. The companies involved are the clothing manufacturer Wellensteyn International GmbH & Co. KG and the retailer Peek & Cloppenburg KG, Düsseldorf. The proceedings were initiated with a dawn raid in 2013. The Bundeskartellamt concluded that Wellensteyn had set its retailers minimum sales prices and prohibited them from reducing prices and selling goods online. P&C Düsseldorf had accepted these conditions and even asked Wellensteyn to take measures against price undercutting by other retailers.

- Bundeskartellamt discontinues its proceeding against DMK dairy

30. In January 2018, the Bundeskartellamt discontinued its proceeding on the conditions of supply for raw milk which was conducted against Germany's largest dairy, Deutsche Milchkontor eG. In its 2017 interim report on its administrative proceeding concerning conditions of supply for raw milk, the authority had criticised the long duration and periods of notice of the supply contracts between milk producers and dairies as well as exclusive supply obligations. Afterwards significantly more farmers switched to another dairy, new types of contracts were discussed and DMK changed its own supply conditions and reduced its period of notice. Consequently, a volume of more than 20% of the quantity of raw milk which is processed by DMK has been cancelled. These developments represent a significant change over the market conditions which the authority established for the years 2013 to 2015 (only 1.0% switching rate in 2015). The Bundeskartellamt decided to observe to what extent these developments will stimulate competition.

- XXXLutz abandons its demand for retroactive adjustment of purchase conditions

31. In January 2018, after the Bundeskartellamt's intervention, the furniture chain XXXLutz abandoned its plans to ask its suppliers to retroactively adjust their purchase conditions, after its recently cleared merger with Möbel Buhl GmbH & Co. KG. The conditions granted to XXXLutz will thus not be applied retrospectively to sales effected by the Möbel Buhl furniture stores.

Abuse of a dominant position

Bundeskartellamt prohibits exclusive contracts between CTS Eventim, event organisers and advance booking offices

32. In December 2017, the Bundeskartellamt prohibited CTS Eventim, the operator of the largest ticketing system in Germany, from using exclusive contracts, which it had concluded with organisers of live entertainment events and advance booking offices. The clauses in question stipulated that the contracting parties were only allowed to sell tickets exclusively or to a considerable extent via CTS's "EVENTIM.NET" ticket sales system. The Bundeskartellamt regarded these contractual agreements as an abuse of market power and ordered CTS Eventim to amend its contracts within four months.

Facebook's collection and use of data from third-party sources

33. In December 2017, the Bundeskartellamt informed the company Facebook in writing of its preliminary legal assessment in the abuse of dominance proceeding which the authority is conducting against it. The authority currently assumes that Facebook is dominant on the German market for social networks and holds the view that Facebook is abusing this dominant position by making the use of its social network conditional on its being allowed to limitlessly amass every kind of data generated by using third-party websites and merge it with the user's Facebook account. Particularly, the Bundeskartellamt is concerned about the collection and processing of data, which takes place when a Facebook user visits other websites, even without pressing a "like button", which many users were likely unaware of, and in view of the company's dominant position, it could not be assumed that they effectively consented to such practice. According to the Bundeskartellamt's preliminary assessment, Facebook's terms of service are at least in this aspect inappropriate and violate data protection provisions to the disadvantage of its users. In this proceeding the Bundeskartellamt focuses on the collection and use of user data from third party sources. The proceeding does not concern the collection and use of data on the Facebook network itself. The Bundeskartellamt leaves explicitly open whether this also constitutes a violation of data protection provisions. With the preliminary assessment notice, the Bundeskartellamt offered the company a chance to comment on the allegations and provide justification for its conduct or offer possible solutions.

DFB eases conditions for purchase of tickets for World Cup 2018

34. In December 2017, the Bundeskartellamt closed its administrative proceeding against the German Football Association (DFB), which it had initiated on the suspicion that the association had abused its dominant position. Before this, DFB had agreed to ease conditions for the application of tickets for matches of the German national team in the World Cup 2018.

Restrictions in sponsoring of athletes during the Olympic Games

35. The Bundeskartellamt is currently conducting an administrative proceeding against the German Olympic Sports Confederation (DOSB) and the International Olympic Committee (IOC). The authority suspects that the advertising restrictions resulting from the application of Rule 40 of the Olympic Charter for athletes and sponsors in Germany hinder competition and that DOSB and IOC abuse their dominant position. In response to these concerns, DOSB and IOC proposed amendments to their rules which offer more scope for action. The Bundeskartellamt considers that further adaptations remain necessary. Nevertheless, the revised rules could be provisionally used in the 2018 Winter Olympics.

Lufthansa's price increase

36. In March 2018, the Bundeskartellamt decided not to open formal proceedings against Lufthansa after receiving numerous complaints about Lufthansa's price increases. In the aftermath of the insolvency of Air Berlin, Lufthansa's tickets on domestic routes were on average 25-30% more expensive than in the previous year, and in some cases even much more expensive than that. The authority observed that following the insolvency, Lufthansa had held a monopoly position on some German domestic routes. However, the application of strict merger control had enabled EasyJet, who had acquired

a large part of Air Berlin, to enter the market quickly. Subsequently prices on the respective routes had immediately fallen again. Furthermore, the strong capacity reduction after Air Berlin's insolvency would have resulted in rising prices even in an intact competition situation, according to the Bundeskartellamt.

3.1.3. Activities of the courts

Düsseldorf Higher Regional Court confirms and even increases the Bundeskartellamt's fines against wallpaper manufacturers

37. In October 2017, the Düsseldorf Higher Regional Court confirmed the 2014 Bundeskartellamt's decision against wallpaper manufacturers. The fines of EUR 17 million, imposed for price fixing agreements, were even increased to EUR 19 million.

Federal Court of Justice confirms the Bundeskartellamt's decision against the running shoes manufacturer Asics

38. In December 2017, the German Federal Court of Justice rejected an appeal on points of law filed by ASICS after the Düsseldorf Higher Regional Court had confirmed the Bundeskartellamt's decision, according to which the general prohibition of the use of price comparison engines by retailers implemented through a (selective) distribution system violates competition law and is illegal. The court stated that per se prohibitions, which are not tied to quality requirements, amounted to an inadmissible "hardcore restriction" of online sales under EU competition law. It was not ensured that consumers had sufficient access to the online offer of authorised dealers. Therefore, the by-object-infringement of Article 101 (1) TFEU was obvious and the case did not need to be submitted to the European Court of Justice. In its decision, the Federal Court made reference to the "Coty case" in which the European Court of Justice had decided that a luxury goods manufacturer may prohibit its dealers from selling its goods on online marketplaces. However, the Federal Court held that this finding was not applicable in the present case because sports and running shoes were not luxury goods.

Federal Court of Justice confirms key points of Bundeskartellamt's decision concerning unfair trading practices

39. In January 2018, the Federal Court of Justice confirmed the Bundeskartellamt's decision in its abuse proceedings against the retailer EDEKA ("wedding rebates"). In its decision, the Bundeskartellamt had stated that after its takeover of the "Plus" stores in 2008, EDEKA had demanded unjustified benefits from suppliers, and prohibited some of these demands. Concerning three key points ("alignment of conditions", "adjustment of payment terms" and a "partnership reimbursement") the Bundeskartellamt had appealed the decision of the Düsseldorf Higher Regional Court, which had completely reversed the authority's decision. With its decision, the Federal Court of Justice sided with the authority and consequently declared the practice of powerful retailers to shift an excessive amount of their entrepreneurial risk to manufacturers illegal.

Düsseldorf Higher Regional Court confirms and even increases the Bundeskartellamt's fines against drugstore chain Rossmann

40. In March 2018, the Düsseldorf Higher Regional Court imposed a fine of EUR 30 million against Dirk Rossmann GmbH. With its decision the Court significantly raised the

fine of EUR 5.25 million imposed by the Bundeskartellamt in 2015 concerning vertical price-fixing agreements for roasted coffee between Melitta Kaffee GmbH and its retailers.

Federal Court of Justice annuls the Bundeskartellamt's injunction against the State of Baden-Württemberg for formal reasons

41. In June 2018, the Federal Court of Justice annulled an injunction of the Bundeskartellamt in which it had stated that the joint marketing of round timber in Baden-Württemberg had violated competition law provisions. In March 2017, the injunction had been confirmed by the Düsseldorf Higher Regional Court but on the appeal of the state of Baden-Württemberg the Federal Court of Justice annulled the decision for formal reasons. However, the Federal Court of Justice did not state on the violation of competition law, so civil proceedings, e.g. compensation claims, remain possible.

3.2. Mergers and acquisitions

3.2.1. Statistics

42. In 2017, around 1,300 mergers were notified to the Bundeskartellamt. In respect of the second-phase proceedings concluded in 2017, one merger was prohibited, three were cleared by the authority and four cases were withdrawn by the parties themselves.³ At the end of 2017, two in-depth investigations were still ongoing. At the beginning of 2018, one of them was withdrawn and the other was cleared subject to conditions.

3.2.2. Summary of significant cases

Demerger proceedings

43. None

Prohibition of mergers

Bundeskartellamt prohibits vertical merger between CTS Eventim and Four Artists

44. In November 2017, the Bundeskartellamt prohibited the planned acquisition by CTS Eventim AG & Co. KGaA of the majority of shares in the companies belonging to Konzert- und Veranstaltungsagentur Four Artists – Four Artists Booking Agentur GmbH and Four Artists Events GmbH. As the operator of the largest ticketing system in Germany, CTS Eventim holds a dominant position in the market. Concert and tour organisers as well as advance booking offices are dependent on it. The company also has a very powerful market position in the sale of tickets via its own online shop. Four Artists is an important concert artists' agency, representing approximately 300 national and international artists. Thus, by acquiring Four Artists, CTS Eventim would have integrated an important event organiser into its company and would have gained control of additional relevant ticket quotas. According to the Bundeskartellamt's assessment, this

³ In 2017 four mergers were withdrawn after notification: Hytera/Sapura (professional mobile radio), Potters/Sovitec (glass microsphere manufacturers), Bain Capital Investors/Petainer (PET-bottles), Schwenk/Opterra (cement manufacturers)

would have strengthened CTS's dominant position on the two-sided market for ticketing services and thus would have significantly impeded effective competition on the markets affected. Factors which indicated that the company had a dominant position were in particular indirect network effects between the event organisers represented on the platform on the one hand and advance booking offices and end customers using the platform on the other, as well as CTS Eventim's lead over its competitors in its access to data relevant for competition.

Clearance of mergers

45. The list of cases described below does not represent an exhaustive list of mergers cleared by the Bundeskartellamt in the period covered by this report, but rather focuses on cases that were subject to an in-depth investigation (first and second phase).

Merger between Europcar and Buchbinder

46. In July 2017, the Bundeskartellamt cleared the merger between Europcar SA, Paris and the Buchbinder group, Regensburg. Both companies are active in the car rental sector. However, the Bundeskartellamt does not expect the merger to lead to the creation of a dominant position in any of the markets affected. Strong competitors and other factors made it unlikely that effective competition would be significantly impeded.

Acquisition of glass recycling companies by the Rethmann group

47. In August 2017, the Bundeskartellamt cleared plans by the Rethmann group to acquire two glass recycling companies, G.R.I.-Glasrecycling NV (Lummen, Belgium) and VSB Holding NV (Lummen, Belgium), from the Belgian family Vanswartenbrouck. In Germany, the sold companies are active in the recycling of waste glass. Together, the companies reach very high market shares in the region concerned and have had a strong lead over their small and medium-sized competitors. However, the Bundeskartellamt had to clear the acquisition because the market affected was a de-minimis market.

Acquisition of UAM Media Group by Ströer

48. In October 2017, the Bundeskartellamt cleared plans by the Ströer Group to acquire a majority shareholding in UAM Media Group GmbH, Hamburg. Ströer is by far the largest company marketing outdoor advertising in Germany. UAM is also active in advertising throughout Germany. However, the Bundeskartellamt considered that the analogue and digital advertising media of the parties to the merger were not directly interchangeable from a customer perspective. Consequently, the acquisition was not expected to substantially strengthen Ströer's position in the market.

Merger between Airbus and Bombardier

49. In December 2017, the Bundeskartellamt cleared the acquisition of C Series Aircraft Limited Partnership, Canada (CSALP), a subsidiary of Bombardier Inc. Montreal, Canada, by Airbus SE, Leiden, Netherlands. As Airbus manufactured mainly commercial aircraft with a seating capacity of more than 150 seats and CSALP manufactured exclusively smaller aircraft, the Bundeskartellamt considered that the companies were not in close competition with one another. Although CSALP had a strong position on the worldwide market for smaller aircraft, this type of aircraft was of secondary importance for European and German carriers.

EnBW's increase in shareholding in MVV

50. In December 2017, the Bundeskartellamt cleared the acquisition by EnBW AG of 6.28% of the shares of MVV Energie AG, i.e. an increase in EnBW's share to 28.76%. Although EnBW had for the first time acquired a blocking minority, the Bundeskartellamt considered that the acquisition would not significantly impede effective competition in the waste management and energy supply markets concerned.

Takeover of Mediengruppe Frankfurt by the Ippen Group

51. In March 2018, the Bundeskartellamt cleared plans by the Ippen Group to acquire the Mediengruppe Frankfurt media group from the FAZIT foundation. Among the newspapers of Mediengruppe Frankfurt are the "Frankfurter Neue Presse" and "Frankfurter Rundschau". Although the merger affected a large number of regional advertising markets they could not be considered because they constitute so-called minor markets. Overlaps on some regional reader markets did also not prevent the project from being cleared because the improvements on the reader market in the City of Frankfurt were significantly more important than any potential regional disadvantage.

Takeover of the newspaper General-Anzeiger by Rheinische Post

52. In May 2018, the Bundeskartellamt cleared the acquisition of all assets of H. Neusser Besitz- und Verwaltungs-GmbH & Co. KG (Neusser KG) by Rheinisch-Bergische Verlagsgesellschaft mbH (RBVG). The Bundeskartellamt concluded that the distribution areas of the newspapers "Rheinische Post" and "General-Anzeiger" did not overlap. For the same reason the authority did not expect any competition restraints on the advertising und radio broadcasting markets either.

Clearance with remedies

Merger of rail wagon leasing companies

53. In March 2018, the Bundeskartellamt cleared the acquisition of CIT Holdings (Europe) S.A.S. by VTG Rail Assets GmbH subject to a condition precedent. VTG and CIT, which is known under the brand name "Nacco", are active Europe-wide in the lease of rail freight cars. Considering that VTG was already the largest supplier on the markets affected in Europe, it was expected that the complete acquisition of its close competitor Nacco would have created a dominant position for VTG. The Bundeskartellamt cleared the merger subject to the condition that a substantial share of Nacco's business be sold to an independent third company. Consequently, the merging parties have undertaken to hive off the entire business of Nacco's German and Luxemburg subsidiaries and a certain number of freight cars before implementing the merger. A purchaser independent of the parties had to be found.

3.2.3. Activities of the court

Düsseldorf Higher Regional Court confirms prohibition of EDEKA/Kaiser's Tengelmann merger

54. In August 2017, the Düsseldorf Higher Regional Court rejected appeals filed by EDEKA and Kaiser's Tengelmann against the Bundeskartellamt's prohibition of merger between the supermarket chains. The Bundeskartellamt had for the first time based a

prohibition on the criterion of a significant impediment to effective competition (SIEC test), which was introduced in 2013. In the following appeal proceedings, the Düsseldorf Higher Regional Court confirmed the Bundeskartellamt's decision in applying the classical market dominance test. The Bundeskartellamt's prohibition had become obsolete after the Economics Minister allowed the merger, subject to conditions, on the public interest grounds of "job preservation and job security" as well as "maintenance of workers' rights". However, both EDEKA and Kaiser's Tengelmann had maintained their appeals in order to have the authority's prohibition decision declared illegal. After the decision of the Düsseldorf Higher Regional Court and on the motion of EDEKA, the Federal Court of Justice now has to decide whether to grant appeal.

3.3. Sector inquiries

55. In October 2017, the Bundeskartellamt launched a sector inquiry into "online price comparison websites". With this inquiry, the Bundeskartellamt will apply its newly gained investigative powers in the area of consumer protection in a first specific proceeding. The inquiry will focus on comparison websites active in the area of travel, insurance, financial services, telecommunications and energy. It is intended to uncover and specify possible violations of consumer law provisions.

56. On the same legal basis, the Bundeskartellamt launched a sector inquiry into smart TVs in December 2017 in order to shed some light on how producers of smart TVs collect, pass and commercially use personal data, and whether the persons concerned are being appropriately informed of this. In so doing, the Bundeskartellamt will take a particularly close look at the terms of contract used by manufacturers.

57. In December 2017, the Bundeskartellamt also published the final report on its sector inquiry into the cement and ready-mix concrete sector. The sector inquiry shows that the structural conditions in the cement and ready-mix concrete industry have a damping effect on competition. These structural features include many highly concentrated markets with few suppliers, diverse links between the suppliers and a high degree of market transparency. Furthermore, the markets concerned are stable markets for homogeneous bulk goods where competitive moves by other suppliers offering innovative products are hardly possible. As a consequence of the sector inquiry, numerous corporate interlocks that raised competition concerns have been dissolved by the companies themselves and anticompetitive practices used by the companies, e.g. sending out generic price increase letters or setting up market information systems, have been discontinued.

58. In February 2018, the Bundeskartellamt launched a sector inquiry into market conditions in the online advertising sector. It will examine whether, as some market players claim, large providers like Google or Facebook have set up closed systems, so-called "walled gardens". Furthermore, the authority will focus on the effects of technical developments on the market structure and the market opportunities of the various players.

4. Cooperation in international fora

4.1. International Competition Network (ICN)

59. The ICN is the most important network of competition authorities worldwide. It comprises more than 130 competition agencies from approx. 120 jurisdictions. Andreas

Mundt, President of the Bundeskartellamt, has been the ICN Steering Group Chair since September 2013 and was re-elected by the Steering Group for a third term in May 2017.

60. The Bundeskartellamt played an active role in all ICN Working Groups in 2017 – 2018 and took part in several workshops, e.g. the Cartel Workshop in Ottawa, Canada, from 4-6 October 2017, the Unilateral Conduct Workshop in Rome, Italy, from 30 November to 1 December 2017, and the Chief Economist Workshop in Seoul, Korea from 2 May to 4 May 2018. Furthermore, the Bundeskartellamt actively participated in the 17th Annual ICN Conference that was held in New Delhi, India, from 21 March to 23 March 2018. Nearly 500 participants from more than 70 jurisdictions, including representatives and stakeholders such as the business community, legal and economic professionals, international organisations and academics attended this year's conference. At the Annual Conference, last year's work products were approved, including guiding principles on procedural fairness and a new annotated guidance document on investigative process, updated and expanded recommended practices on cooperation in merger control, timing of notifications and review periods and an interim report on key elements for efficient and effective leniency programmes. The ICN work also covered vertical mergers, market studies and advocacy strategies.

4.2. ECN/ECA

61. In 2017, the competition authorities of the EU continued their successful cooperation within the European Competition Network (ECN).

62. By mid-October 2018 a total of 2487 cases were posted on the competition authorities' joint intranet; 229 of these were Bundeskartellamt cases. The competition authorities also made use of the opportunities for information exchange and assistance in investigations within the ECN. In several cases, the Bundeskartellamt exchanged confidential information with other competition authorities in accordance with Article 12 of Regulation 1/2003. Within the framework of official assistance under Article 22 of Regulation 1/2003, the Bundeskartellamt assisted other competition authorities with investigatory measures. For example, the Bundeskartellamt assisted the Austrian Bundeswettbewerbsbehörde in executing a dawn raid in the electronics sector and in transmitting the secured evidence. In the period from July 2017 to June 2018, the European Commission was informed about 135 new proceedings initiated by the national competition authorities (NCAs) under Article 11(3) of Regulation 1/2003, 6 of which were Bundeskartellamt cases.

63. The Bundeskartellamt participates regularly and actively in the Advisory Committees on competition law proceedings and merger control cases of the European Commission in Brussels. An essential part of the ECN's joint work takes place in the various ECN Working Groups (Cooperation Issues, Cartels, Vertical Issues, Horizontals and Abuse, Competition Chief Economists, Forensic IT, and Merger Working Group). The Working Group on Vertical Issues has been discussing the implications of the recent case law of the European Court of Justice and the German Federal Supreme Court (i.e. Coty, Asics) in vertical issues and more specifically regarding selective distribution systems. This jurisprudence is of particular relevance for the future approach by the European Commission and the NCAs regarding vertical restrictions such as platform bans. The Bundeskartellamt also was involved in setting up a workshop within the new ECN Working Group Digital Issues in order to discuss specific issues in a more informal setting.

64. Furthermore, the Bundeskartellamt plays an active role in all ECN sectoral subgroups, where an exchange of practical experience takes place. Between July 2017 and June 2018, Bundeskartellamt representatives attended meetings of the subgroups Sports, Food, Transport, Financial Services, Banking & Payments, Energy, Telecom and Pharma & Health Services. A particular focus has been on the work of the subgroup Telecom, where the Commission and the NCAs have had intensive discussions about the competitive assessment of cooperation models for network expansion and MVNOs' (mobile virtual network operators) access to existing infrastructure.

65. The Bundeskartellamt continued to contribute to the ECN Brief, the official ECN newsfeed published since 2010, informing the interested public (e.g. lawyers and companies) about the ECN's activities and decisions adopted by the NCAs.

66. This year, the Annual Directors General meeting of the ECA forum (European Competition Authorities) took place in Copenhagen, Denmark. The issues discussed at the meeting included rebate schemes, competition issues in the pharmaceutical sector and the challenges of digitalisation for the enforcement of competition rules.

4.2.1. Annual Meeting of the Working Group on Competition Law

67. On 5 October 2017, the Working Group on Competition Law met in Bonn at the invitation of the Bundeskartellamt. At the conference, more than 120 competition law experts discussed and exchanged views on the topic "Innovations – challenges for competition law practice". The conference was chaired by the Bundeskartellamt's Vice President, Professor Dr Konrad Ost. The meeting featured introductory statements and a panel discussion with Thomas Deisenhofer, Directorate-General for Competition at the European Commission, Professor Dr Josef Drexler, Max-Planck-Institute for Intellectual Property and Competition Law, Munich, Professor Dr Wolfgang Kerber, Philipps-University Marburg, Professor Dr Frank Maier-Rigaud, NERA Economic Consulting and Ms Birgit Krueger, Head of the General Policy Division of the Bundeskartellamt. One of the topics discussed was how insights gained from industrial economics can be best applied in decision-making practice. The participants agreed that the various roles which innovations can play in the assessment practice should be taken into account, e.g. in the context of theories of harm, as a counterbalance to market power, or in the assessment of the efficiencies of a merger or cooperation. Beyond that, the group agreed that in many cases protecting innovation competition and thereby ensuring production diversity in the long term were at least as important as protecting short-term price competition.

4.2.2. Working Group on Competition Economics

68. In October 2017, with the launch of the Working Group on Competition Economics the Bundeskartellamt initiated a new series of events. The objective is to discuss future concepts and methods used in the authority's case practice as well as cross-case with academics specialising in industrial economics and competition policy. The agenda of the second meeting in May 2018 included the planned guidance paper by the Bundeskartellamt and the Bundesnetzagentur on the control of the abuse of a dominant position in electricity generation, data-driven market definition as demonstrated in the example of cement markets and exclusivity agreements in the ticketing platforms sector.

4.2.3. 60th Anniversary of the Bundeskartellamt

69. In February 2018, the Bundeskartellamt celebrated its 60th Anniversary with a festive ceremony held in Bonn. On 1 January 1958, the German Act against Restraints of

Competition (GWB) came into force and the Bundeskartellamt took up the prosecution of cartels and abuse of market power. Around 500 guests, among them representatives from politics, international competition authorities, courts, business sector and academia, participated in the ceremony. The speakers at the event were Brigitte Zypries, then Federal Minister for Economic Affairs and Energy, Bettina Limperg, President of the German Federal Court of Justice, and Professor Dieter Kempf, President of the Federation of German Industries (BDI). In a double interview with the Director-General for Competition of the European Commission, Johannes Laitenberger, and the President of the Bundeskartellamt, Andreas Mundt, and the publisher of the German daily FAZ, Holger Steltzner, discussed the topic: “Competition, consumers, jobs – Who or what do competition authorities protect?” This was followed by a panel discussion moderated by the Vice President of the Bundeskartellamt, Prof. Dr. Konrad Ost, on the topic: “Competition policy in a globalized and digitalized world – Challenges of today and tomorrow”.

5. Resources of the Bundeskartellamt

5.1. Annual budget

Table 1.

Budget 2018	Change over 2017
EUR 33.1 million	+ 0.2 million
USD ⁴ 38.8 million	+ 0.2 million

5.2. Number of employees

Table 2.

	2018*	Change over 2017
Economists	48	-1
Lawyers	87	0
Other experts	14	0
Support staff	166	+6
Total	315	+5

Note: Updated: 02 August 2018.

* Full-time equivalent, actually active, i.e. excluding seconded employees, unfilled vacancies etc

⁴ European Central Bank: Exchange rate as of 31 July 2018: 1 EUR = 1.736 USD
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