

**ORGANISATION FOR ECONOMIC
CO-OPERATION AND DEVELOPMENT**

**DIRECTORATE FOR ECONOMIC, FISCAL
AND ENTERPRISE AFFAIRS**

**COMMITTEE ON COMPETITION LAW AND
POLICY**

RESTRICTED

Paris, drafted : 15-NOV-1993

OLIS : 16-Nov-93

dist. :

DAFFE/CLP(93)17/01

Or. Eng.

**ANNUAL REPORT ON DEVELOPMENTS IN GERMANY
(JULY 1992 - JUNE 1993)**

**This report is submitted by the Delegate for Germany to the meeting of
the Committee on Competition Law and Policy to be held on 9th and
10th December 1993.**

COMPLETE DOCUMENT AVAILABLE ON OLIS IN ITS ORIGINAL FORMAT

Changes to competition laws and policies adopted or envisaged

1. Neither the German Act against Restraints of Competition (ARC) nor the Unfair Competition Act (UCA) was amended in the period under review. At present, there are no revision plans.

Regarding the economic and competition policy situation

2. More than three years after German unification it is obvious that the transformation of the new Federal Länder (the former GDR) into a free-market economy takes far more time than had initially been assumed. Essential prerequisites such as an established private property system and a large group of entrepreneurs are still partly lacking in the new Federal Länder. Furthermore, the economic upswing is hampered above all by the collapse of trade with the central and east European states and the gap between the comparatively low level of productivity and the by now relatively high wages to be paid by east German firms, which is also a serious disadvantage in competition with the east European countries in transition.

3. Many industries in the new Federal Länder, e.g. parts of the mechanical engineering and the chemical industries as well as the electronics, steel and textile industries, are threatened by wide-spread closures because obsolete plants cannot be immediately replaced by new capacity. Economic policy-makers are therefore tempted to keep uncompetitive firms and lines of business artificially alive, contrary to free-market principles. But experience teaches that funds that are spent on maintenance subsidies are lacking when they are needed to create competitive market structures.

4. While maintenance subsidies are understandable from the point of view of social policy, they will not bring about sustainable growth, nor will they create secure jobs. Instead, companies in the new Federal Länder which are not yet privatised but basically seem viable should be enabled to compete successfully in the marketplace. The granting of selective financial aid, limited in time, in order to compensate for structural disadvantages is fully compatible with the principles of a market economy, if this is the only way to create a level playing field for east German companies and their western competitors. The large number of privatised companies in particular in the building industry, the food sector as well as in the trade and many service sectors proves that it is possible to make a successful new beginning under free-market conditions.

5. At any rate it is necessary for competition policy to continue pushing ahead with the process of privatising the formerly state-owned firms in the new Federal Länder so that the approximately 1,500 firms that remain of an original total of more than 12,000 will eventually pass into private ownership. It goes without saying that in this adjustment process equal importance is being attached to the other tasks of competition policy, e.g. promoting competitive structures, preventing illegal horizontal agreements as well as anti-competitive concentration of market power and improving the conditions for market entry by the removal of regulations and other barriers to entry.

6. In the period under review, structural and cyclical factors have contributed to a greater need to adjust in west Germany, too, with a view to retaining international competitiveness. The growing integration of the European single market, the internationalisation of many product markets, growing foreign competition in labour-intensive products and products with a low know-how content, from the east European countries in transition in particular, together with the recent economic downturn have revealed

structural shortcomings also in the west German economy which so far had been obscured by the prolonged economic growth of the eighties. The Federal Government has issued a paper which analyses the present situation of the German economy and society and illustrates the most urgent measures to be taken in order to maintain the position of Germany as an attractive place for investments. According to this paper it is of paramount importance to reduce the role of the state to its core functions. The state can no longer be expected to provide social benefits indiscriminately. Instead, public spending has to be concentrated on the most important objectives. Subsidies have to be shifted from non-competitive industries to research and development. Lengthy bureaucratic procedures which hamper investments must be shortened. In times of structural difficulties and economic adjustment problems it is crucial to improve the functioning of competition. The Federal Government intends to take appropriate measures in this respect. It will support the creation of an international antitrust order and reject self-restraint agreements which infringe competition law. It envisages the adaptation of the Act against Restraints of Competition to the EEC competition law, which does not provide for legal exemptions for cartels. With regard to procedural issues, it favours a transparent and predictable application of EEC competition law, backed by appropriate institutional safeguards, on the EEC level as well as a decentralisation of its administration with more competences for national competition authorities. In the financial services sector, the implementation of the EEC directives will promote the creation of equal competitive conditions in the internal market for companies dealing with bonds and securities, in particular through the introduction of strict insider rules. Furthermore, the protection of product brands will be reinforced. Competition policy-makers have to keep a close eye on the necessary adjustment to changed conditions of supply and demand in all branches of the economy.

Enforcement of competition laws and policies

1) Action against anti-competitive practices

Violation of the ban on cartels

7. The ban on cartels, a central rule of German competition law, secures the freedom of action of independent market participants in competition and protects the market against restrictive contracts and agreements. Although economic and technological change and the creation of larger economic areas have intensified international competition in many markets and rendered cartelisation more difficult, there are also numerous markets which have largely retained their national character. This applies to those sectors which due to economic, technological or institutional conditions are not or not fully exposed to competition from foreign suppliers (e.g. retail trade, construction industry, many building materials markets as well as energy).

8. But on the other hand, the sharpening of international competition resulting from economic and technological change causes companies to seek to avoid the competitive pressure by means of co-operative cross-border market strategies. The protection of competition from restrictive horizontal agreements therefore remains a major task of German competition law.

9. During the period under review the Federal Cartel Office (FCO) concluded its proceeding against German glass wholesalers which was already mentioned in para 10 of our last year's report.

The FCO imposed administrative fines totalling approximately DM 3.3 million on 16 German flat glass wholesalers and insulation glass producers in northern Germany as well as on their responsible manag-

ers for entering into restrictive price and rebate agreements. From 1986 and continuing through 1990, the firms concerned agreed on prices, rebates and other conditions and co-ordinated their market behaviour accordingly. Besides a number of small and medium-sized firms, subsidiaries of the two leading flat glass producers in the Federal Republic of Germany, namely of VEGLA, of Aachen (St. Gobain group of France) and of Flachglas AG, of Gelsenkirchen (Pilkington group of the United Kingdom) took part in the agreements. The decisions have become unappealable.

10. In another proceeding, the FCO imposed fines totalling some DM 3.8 million on five leading German manufacturers of fire engine superstructures and their executive staff for making anti-competitive price and rebate agreements.

The firms concerned operated price agreements from 1988 to 1992. Since September 1991 they also agreed on a maximum rebate and co-ordinated their market behaviour accordingly. Two of the firms participated in the price agreements only, which they joined at a later date. Most fire fighting vehicles are purchased by municipal authorities. The decisions imposing the fines have not yet become unappealable.

11. Furthermore, the FCO fined the German salt manufacturers Kali + Salz AG (K + S), of Kassel, an affiliate of BASF AG, and Südwestdeutsche Salzwerke AG (SWS), of Heilbronn, as well as their responsible officers DM 20.7 million for operating restrictive agreements.

From 1982 to 1990, the above companies restricted competition on the south German market for road salt by means of agreements under which SWS, which had obtained exclusive distribution rights for cheap road salt imported from the former German Democratic Republic, sold the imported road salt as lower-grade and lower-priced industrial salt so as to prevent domestic road salt prices coming under pressure. K + S, in turn, made compensatory payments to SWS amounting to several million DM to make up for the loss in revenue. The decisions imposing the fines have not yet become unappealable.

12. Shortly before the end of the reporting period, the FCO prohibited the nationwide waste collecting system Duales System Deutschland GmbH (DSD) from making direct or indirect arrangements for the collection and disposal of transport packaging waste (packages in which goods are shipped) with firms in the industrial sector (including the retail trade). The FCO regards such arrangements as violations of the ban on cartels. DS is the private sector system set up by distributors, packaging companies and package manufacturers to recover and recycle used sales packages (wrappers or containers in which goods are sold to the public). The June 1991 Packaging Ordinance requires distributors to take back all used sales packages from end users free of charge.

The FCO's decision is aimed at preventing DS from entering the market for the collection and disposal of transport packages. In the absence of such prohibition, DS would extend its quasi-monopoly for the collection of sales packages to the neighbouring market for industrial transport packages, thus taking control of the last free market for the disposal of packaging waste. DSD has appealed against the prohibition decision.

Statistics of different types of legalised cartels

13. The number and types of cartels legalised by the FCO and the Federal Minister of Economics can be seen from the table below (see table 1).

Table 1

Types of cartels	Cartels 1992		Total number since 1958	Still effective as at December 1992
	Additions	Deletions		
Condition cartels Section 2	--	--	66	41
Rebate cartels Section 3	--	--	33	5
Combined condition and rebate cartels	--	--	15	3
Crisis cartels Section 4	3	--	2	--
Standardisation cartels Section 5 (1)	3	--	14	4
Rationalisation cartels Section 5 (2)	1	--	23	2
Rationalisation cartels Section 5 (2) and (3)	--	--	34	4
Specialisation cartels Section 5 a (1) Sentence 1	--	2	65	16
Specialisation cartels Section 5 a (1)	1	2	56	17
Co-operation cartels Section 5 b	7	4	113	91
Export cartels Section 6 (1)	--	3	111	40
Export cartels Section 6 (2)	2	--	14	2
Import cartels Section 7	--	--	2	--
Emergency cartels Section 8	--	--	4	2
TOTAL	14	11	552	227

14. As in earlier reporting periods, the number of cartels that have been legalised by the FCO and are still effective has practically remained unchanged at 227 (224 at the end of 1991). As before, the share of co-operation cartels, at 91, is remarkably high and reflects the FCO's endeavour to enable small and medium-sized companies to hold their own in competition with powerful large firms. It should also be mentioned that the number of legalised pure export cartels without domestic effects decreased by 3 to 40 as at the end of 1992.

Control of abusive practices by dominating firms

15. Gratifyingly, the supervision over market-dominating enterprises for abuses still plays a minor role within the framework of German competition law enforcement. The relatively small number of proceedings in this area concerned regional markets where suppliers are protected from national or international competition, or they related to sectors where the dynamism of the market is at least partly eliminated or impaired by specific governmental regulations, e.g. the pharmaceutical, banking and insurance as well as energy supply industries.

16. In a free-market system like that of the FRG the supervision of price abuses, i.e. interference in entrepreneurs' freedom to set prices, must be confined to exceptional cases. Moreover, the conceptual problems of such supervision, the fact that often hypothetical reference values have to be relied on, and the high evidentiary requirements made by the German courts in market domination and abuse cases have all contributed to the FCO's poor record in this area.

17. In spite of the fundamental problems involved and the practical difficulties in supervising price abuses, the FCO will continue to conduct proceedings even in cases of suspected exploitation abuses. In the period under review, the Office, for example, instituted proceedings against leading Berlin area-based credit institutions suspected of abusing their market-dominating positions by paying extremely low interest rates on certain savings deposits.

The abuse proceedings have since been closed without any decision having been made, because the general decline of interest rates in Germany has meanwhile resulted in considerable interest rate cuts for other types of deposits in the greater Berlin area, too, whereas interest rates on the savings deposits concerned have remained unchanged.

18. Open markets can make a very significant contribution to the safeguarding of competition in the home market. The FCO therefore issued an abuse decision against three leading German pharmaceutical wholesalers for hindering a German importer of drugs. The importer concerned was the most important German supplier of reimported German proprietary drugs, who took advantage of the price differential between individual EC countries and offered reimported drugs in the German market at prices about 10 to 15 percent lower than those charged by domestic manufacturers. As a result of the uniform obstructive attitude of the three leading German pharmaceutical wholesalers and their continued refusal to include the reimported products of that supplier in their product range, the latter was practically denied access to public pharmacies in Germany. At the same time the drug wholesalers' anti-competitive practices sealed off the German drug market from lower-priced reimports. The decision has not yet become unappealable.

19. The FCO's decision against Verbundnetz Gas AG, the only supplier of long-distance gas operating in the new Federal Länder and the only gas pipeline operator, which had refused to let another gas supply

and distribution company feed natural gas to be purchased from Russia into its supply network, has been reversed by the Berlin Court of Appeals. Since the written opinion of the Court was not available at the end of the reporting period, the FCO has not yet been able to decide whether to lodge an appeal on points of law with the Federal Supreme Court.

2) Mergers and acquisitions

Statistics and summary data on mergers within control provisions

20. In spite of the fact that since 1990 EC-wide mergers have, as a rule, been subject to the European Merger Regulation, national control of mergers by the FCO, aimed at safeguarding competitive market structures, continues to be of great importance.

21. The total number of mergers notified to the FCO decreased from 2,007 in 1991 to 1,743 in 1992 (see tables 2 and 3). This development is largely due to the fact that the number of notifiable acquisitions of east German firms dropped from 784 in 1991 to 521 in 1992.

22. Since the Treuhandanstalt will soon have largely finished its job of privatising the east German companies (see also para 5), the FCO's merger statistics will, from 1994, no longer reflect the special trends resulting from German unification. The 634 mergers notified until the end of June 1993 comprise only just over 100 acquisitions of east German companies. On the whole, the number of mergers can be expected to regain by 1993, and certainly by 1994, the level of the years 1988 and 1989, i.e. 1,200 to 1,400 a year, unless further new developments occur.

23. A further breakdown of notified mergers shows that the trend of the preceding years has continued, i.e. the share of large firms (with a turnover in excess of DM 2 billion) in the number of notified mergers is steadily increasing. It reached a level of nearly 80 per cent in the reporting period. The trend of large firms acquiring mainly small and medium-sized businesses (with sales under DM 50 million) has also continued. In the reporting period, about 55 per cent of mergers came under that category.

24. Of the 1,743 mergers in 1992

1,180	(1,459 in 1991)	were mergers notified in the course of compulsory or voluntary notification prior to completion;
409	(351 in 1991)	mergers were notified after completion and found to be subject to control;
154	(197 in 1991)	mergers were not subject to control because they fell short of the turnover thresholds of Section 24 (8) of the ARC

25. As in previous reporting periods, about 70 per cent of mergers fell under the category of mergers notified and scrutinised prior to completion, whereas the percentage of mergers not subject to control decreased slightly.²⁶ From the beginning of merger control in 1973 to the end of 1992, a total of 16,146 mergers were notified and completed (see table 4).

Table 2
Mergers Notified Pursuant to Section 23 of the ARC

Year	Mergers
1973	34
1974	294
1975	445
1976	453
1977	554
1978	558
1979	602
1980	635
1981	618
1982	603
1983	506
1984	575
1985	709
1986	802
1987	887
1988	1,159
1989	1,414
1990	1,548
1991	2,007
1992	1,743
1 January - 30 June 1993	634

Table 3
Number of Mergers Notified under Section 23 of the ARC in 1992 by:

(a) Form of the Merger		(b) Type of the Merger (1)	
Total	1,743	Total	1,743
Acquisition of assets	320	Horizontal	1,463
Acquisition of shares	815	of which	
Joint ventures (incl. new establishments)	560	(a) without product extension	1,189
Contractual links	21	(b) with product extension	274
Interlocking directorates	--	Vertical	70
Section 23 (2) No. 4	22	Conglomerate	210
Other links	5		
Competitively significant influence			

(1) Horizontal merger without product extension = acquired enterprise operates on the same markets as the enterprise acquiring it (e.g. brewery acquires brewery).

Horizontal merger with product extension = acquired and acquiring enterprises operate on neighbouring markets of the same economic sector (e.g. brewery acquires fruit juice manufacturer).

Vertical merger = in relation to the acquiring enterprise, the acquired enterprise operates at previous or subsequent stages of production (e.g. brewery acquires drinks wholesaler).

27. Since the 1973 adoption of merger control, the FCO has prohibited 102 mergers by formal decisions. Of a total of 102 prohibition decisions, 56 have meanwhile become unappealable. 22 decisions were reversed by the courts. 16 prohibition decisions were withdrawn or otherwise settled by the FCO. In 6 cases, the Federal Minister of Economics fully or partially authorised mergers that the FCO had prohibited, while in 9 cases the applications for ministerial authorisation have not been successful. The balance of 2 prohibitions has not yet become unappealable.

28. Apart from the mergers prohibited in formal proceedings, 4 merger proposals were abandoned by the firms during the reporting period after informal talks with the FCO.

29. In another 2 cases, merger projects notified during the reporting period were withdrawn after the FCO had informed the firms of its intention to prohibit the project.

30. In order to avoid a prohibition decision, several firms gave undertakings to the FCO resolving the Office's competitive concerns. In their undertakings, the acquiring and/or acquired firms agreed to restructure the merger by selling part of their operations.

31. The following case is an example of this kind of procedure.

The FCO did not prohibit the proposed acquisition of a majority shareholding in **ASKO** Deutsche Kaufhaus AG by the Swiss/German **METRO** group after the companies involved agreed in a contract under public law to sell a number of sales outlets.

According to the FCO's findings, the merger would have led to market-dominating positions in several regional markets in the food retail trade, the furniture retail trade, and the do-it-yourself business.

ASKO has a total turnover of approximately DM 20 billion. As a result of the sale of outlets with turnovers totalling about DM 1.3 billion, the market shares of the leading suppliers including those involved in the merger will, in all regional markets concerned, be markedly lower than the statutory thresholds of German Law above which market domination is presumed to exist.

In the food retail area, the merger participants have agreed to sell outlets with a sales volume of more than DM 800 million in four German regions, which comprise twelve relevant local geographical markets. In the do-it-yourself area, 20 sales outlets in 14 regional markets with a sales volume of more than DM 400 million must be divested, whereas in the furniture retail trade, three outlets with a combined turnover of more than DM 60 million in two regional markets must be sold.

Merger prohibitions

32. In the period under review, the FCO prohibited 2 mergers (as against 3 in the previous reporting period).

33. After the FCO had already indicated its competitive worries about the **Gillette/Eemland** merger at an early stage in the proceeding, it finally decided in mid-Juli 1992, after lengthy negotiations, to prohibit British Gillette UK, of Isleworth, which belongs to the U.S. Gillette Company, of Boston, from acquiring

a stake in the Dutch Eemland Holdings N.V., of Amsterdam. Eemland is the sole shareholder of Wilkinson Sword Europe.

Gillette and Wilkinson are by far the largest global manufacturers of wet-shaving products. In Germany (and in most West European countries as well), Gillette and Wilkinson account for a market share of approx. 90 per cent. As a result of the Gillette/Eemland merger and the resultant indirect influence on Wilkinson, the companies jointly would obtain an almost monopolistic market position.

In the spring of 1990, Gillette acquired 100 per cent of the worldwide business of Wilkinson Sword - with the exception of the EC- and U.S.-based business activities. Because of the current merger control provisions in the EC and the U.S. Gillette had to content itself with a 22.9 per cent non-voting capital share acquisition in Eemland but through additional agreements it secured a competitively significant influence on Eemland and hence indirectly on Wilkinson, too. The ancillary agreements included pre-emption rights, allocation of sales territories and exclusive dealing agreements, control of production and sales quantities as well as the financial resources and the debt structures at Wilkinson.

The FCO challenged this share acquisition under a new provision introduced by the 5th revision of the German ARC of 1990 under which share acquisitions even below the 25 per cent threshold may be prohibited if the acquiring company is able to exert a competitively significant influence on the target company.

34. The FCO prohibited the German **Zahnradfabrik Friedrichshafen** (ZF) from acquiring **Allison** Transmission Division, which belongs to the U.S. General Motors Corp.

ZF is the leading worldwide supplier of vehicle transmissions, steering equipment and suspension parts, recording group sales of almost DM 6 billion. By the acquisition of Allison, ZF would strengthen its paramount market position in Germany for automatic heavy-duty transmissions for trucks and busses in excess of 6 t. and for power shift transmissions for construction vehicles. At market shares of over 50 per cent for automatic commercial vehicle transmissions, ZF also is the clear European market leader. In this market, Allison is the second-largest supplier in Germany and Europe. Besides ZF and Allison, the only further supplier of some importance worldwide is the Heidenheim-based German company Voith, which follows behind by a wide margin, though. As far as power shift transmissions for construction vehicles are concerned, ZF's market position is even stronger on both the German and the European markets. Also in that sector, there is only one further supplier of some weight, i.e. the U.S. company Clark.

Allison's turnover in Germany only accounts for one per cent of its total sales in excess of U.S. \$ 800 million. In view of ZF's strong market position and the high level of concentration prevailing in Germany, any further reinforcement as a result of a merger would mean a considerable worsening of the conditions of competition.

Worldwide, too, a market leader by a wide margin would be created as a result of the merger with regard to the variety of the range of products and technological competence as well as a worldwide service and distribution network. The resulting world-wide complementary and synergy effects would have an impact on the German market conditions as well, because the buyer of a particular vehicle decides on which transmission to use. Since the German commercial vehicle and construction vehicle industry is heavily export-oriented, such worldwide synergies also influence demand on the German transmission markets.

Protection of domestic competition called for by German competition law could therefore only be ensured by a prohibition of the proposed merger.

ZF has filed an appeal against the decision with the Berlin Court of Appeals.

Number and extent of mergers with international dimension

35. Of the 1,734 mergers notified in 1992, 1 542 (89 per cent) were completed on the national territory, and 201 (11 per cent) abroad (see table 5). Thus, there have been no significant changes over the previous reporting period. The share of foreign mergers, at 11 per cent, is still below the average of earlier years, but this is due to the continuing high share of German/German mergers resulting from German unification.

36. In the period under review, the FCO continued its practice of submitting an appraisal under competition aspects of all merger proposals that are notified in Brussels pursuant to the EC Merger Regulation and also affect the Federal Republic. This was done in about 40 cases. In addition, the FCO commented on a number of merger control proceedings pending in Brussels which had no effects within the Federal Republic but, from the German point of view, raised questions of law or interpretation.

Privatisation and deregulation

37. In the period under review, the Federal government continued to consistently proceed with its policy of removing legislative obstacles to entrepreneurial initiative and allowing the competitive forces more leeway in the economy through privatisation (not only in the new east German Federal Länder) and deregulation.

The majority of the privatisation projects mentioned in the last Annual Report were realised in the reporting period in particular in the service sectors of banking and transport, which contributed to further reducing the state holdings considerably. Privatisation of the last big government-owned industrial enterprise Industrie-Verwaltungsgesellschaft, which own industrial holdings, real property and transport companies, is envisaged by the end of 1993.

38. In 1993 and the following years, the German government intends to realise further privatisation plans concerning, e.g., Telekom, the Federal railways and the Federal motorways. For this purpose a majority for a constitutional amendment in both the German Bundestag and the Bundesrat is required, though. Further topics are the identification of privatisation potentials in other areas of public infrastructure, the reduction of remaining Federal stakes in enterprises (e.g. Lufthansa, small enterprises), the sale of Federal real estate, and the shaping of a concept to phase out the Treuhandanstalt after the end of its operative business in 1994.

39. In the period under review, the Federal Länder have also begun to consider privatisation of part of their shareholdings. Thus, the repeated appeals by the Federal government to the Länder now seem to produce an effect.

Table 5
Statistical coverage of mergers involving foreign parties
A breakdown of mergers notified in 1991 and 1992 as follows:

	1991		1992	
1. Completed on the national territory (domestic mergers) of which:		1,804 (89,9%)		1,542 (89%)
(a) with direct involvement foreign party/parties	142 (7,1%)		137 (8%)	
(b) with indirect involvement of foreign party/parties	384 (19,1%)		329 (19%)	
(c) without any foreign involvement	1,278 (63,7%)		1,076 (62%)	
2. Completed abroad (foreign mergers) of which:		203 (10,1%)		201 (11%)
(a) with direct involvement of domestic party/parties	77 (3,8%)		78 (4%)	
(b) with indirect involvement of domestic party/parties	27 (1,4%)		25 (1%)	
(c) without any domestic involvement	99 (4,9%)		98 (6%)	
TOTAL		2,007		1,743

Definitions:

Place of merger is the registered office of the enterprise whose shares or assets are acquired.

A foreign enterprise is involved in a domestic merger provided at least one direct participant is a foreign enterprise (direct) or an enterprise linked with a foreign controlling enterprise (indirect).

This applies to foreign mergers accordingly.

40. After having removed a large number of restrictions on road transport of goods in the period under review, the Federal government has now adopted the proposals made by the "Deregulation Commission" in early 1992 and started, inter alia, to liberalise technical control, supervision and expert services, legal and business consulting as well as the conditions for access to the trades and crafts. The Federal government hopes to thus promote the development of efficient medium-sized enterprises in the new east German Federal Länder, too.

The role of competition authorities in the formulation and implementation of other policies

41. As in earlier reporting periods, the FCO followed requests by the Federal Ministry of Economics to comment, from the competition point of view, on a number of existing regulations as well as on proposed laws and regulations. In addition, the FCO submitted, on its own initiative, opinions on questions of trade, industrial and structural policy to the Federal Ministry of Economics.

42. To implement the EC Council Directives on public procurement contracts, a surveillance committee for all public procurement orders will be set up within the FCO.

The surveillance committee will review the decisions of the public procurement control authorities which will decide in the first instance.

43. In the context of privatisation of the German Federal Railway, which provides, among other things, for a separation of railway operation and the railway network, it is being considered establishing an arbitration board within the FCO to secure non-discriminatory access to the railway network.

New studies relevant to competition policy

1. Wettbewerbspolitik oder Industriepolitik?
9. Hauptgutachten der Monopolkommission, Köln 1992
(Ninth Biennial Report by the Monopolies Commission)
(Like the previous ones, this report includes the most comprehensive and up-to-date German compilation of data relevant to competition, in particular concentration ratios. An English summary of the main conclusions of the Report is available from the FCO on request.
2. Gerstenberger, W.
Die Bedeutung einer nationalen/europäischen Halbleiterindustrie für die Wettbewerbsfähigkeit der Industrie
(The importance of a national/European semiconductor industry to the competitiveness of the industry).
IFO-Studien zur Strukturförderung; München 1992
3. Harms, Wolfgang
Zwischen Privatisierung, Wettbewerb und Kommunalisierung. Zur Umgestaltung des Energiesektors in den neuen Bundesländern; Köln 1992
(Between privatisation, competition and communalisation. On the reorganisation of the energy sector in the new Federal Länder).

4. Pieper, Frank
Postdienste im Wettbewerb - ökonomische Charakteristika und Struktur der Märkte; Bad Honnef 1992
(Postal services in competition - economic characteristics and market structures).
5. Schmoch, V./Schnöring, T.
Wie steht es um die Wettbewerbsposition der Telekommunikationsgeräteindustrie in Europa?
Bad Honnef 1993
(What is the current competitive position of the telecommunications equipment industry in Europe?).