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CO-OPERATION AND DEVELOPMENT**

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**ANNUAL REPORT ON DEVELOPMENTS IN GERMANY**

**(1 July 1993 - 30 June 1994)**

**This report is submitted by the Delegate for Germany to the meeting of the  
Committee on Competition Law and Policy to be held on 20th and 21st October 1994.**

**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.
2. However, there are plans to revise the UCA with a view to eliminating a number of restrictions on the freedom of entrepreneurial action that are no longer justified. The question of further adjusting the ARC to European competition law during the next legislative period without betraying the proven principles of the German law has also been given attention.

## **Enforcement of competition laws and policies**

### *1) Action against anti-competitive practices*

#### *Violation of the ban on cartels*

3. Although the growing internationalisation of many markets has made cartelisation more difficult, a number of national markets - as well local and regional ones - are still unexposed to foreign competition for various reasons. Therefore detecting and punishing illegal cartels continues to be an important task even for a country like the Federal Republic of Germany, a member state of the European Union.
4. While no significant fines were imposed during the reporting period for violations of the ban on cartels, a number of proceedings were pending.
5. In the prohibition proceeding against the German Football Federation (DFB) the Federal Cartel Office (FCO) has stated its intention to prohibit the central sale of the rights to telecast European Cup matches of German soccer clubs.

In the FCO's view the central granting of TV rights violates the ban on cartels. The sale of TV rights to a limited number of large private TV stations and the several years' terms of the contracts have seriously obstructed access to broadcasting rights for all other TV stations. Moreover, the central sale has raised prices of broadcasting rights. Since the granting of TV rights is a business activity the FCO considers that the individual soccer clubs themselves should handle the marketing of their own games - which they had done up until 1989 and which is still prevailing in Europe.

6. That the ban on cartels is not tantamount to a ban on co-operation and even powerful large firms may co-operate closely is illustrated by the decision of the FCO not to prohibit the formation of a joint venture by the three large German firms Daimler Benz, Siemens and Bosch to establish and operate an electronic route guidance system for drivers to be used as in-car information system.

#### *Statistics of different types of legalised cartels*

7. 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 1993		Total number since 1958	Still effective as at December 1993
	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	--	--	2	--
Standardisation cartels Section 5 (1)	2	--	16	6
Rationalisation cartels Section 5 (2)	--	--	23	2
Rationalisation cartels Section 5 (2) and (3)	4	--	38	8
Specialisation cartels Section 5 a (1) Sentence 1	--	1	65	15
Specialisation cartels Section 5 a (1) Sentence 2	1	--	57	18
Co-operation cartels Section 5 b	5	--	118	96
Purchasing co-operations Section 5 c	1	--	1	1
Export cartels Section 6 (1)	2	2	113	40
Export cartels Section 6 (2)	--	--	14	2
Import cartels Section 7	--	--	2	--
Emergency cartels Section 8	--	--	4	2
<b>TOTAL</b>	<b>15</b>	<b>3</b>	<b>567</b>	<b>239</b>

8. The reporting period saw the first significant increase in years (from 227 to 239 against an increase from 224 to 227 in the 1991-1992 period) in the number of cartels legalised by the FCO; the increase by 12 is not due to any change in the FCO's legalisation practice, but pure chance. Co-operation among small and medium-sized firms accounted for as many as five of the new cartels - a type of co-operation consistently encouraged by the FCO, because as a rule it is aimed primarily at improving the market opportunities available to small and medium-sized firms in competition with powerful large firms.

#### *Vertical restraints*

9. Resale price maintenance is prohibited under German law. For cultural policy reasons, publications are exempted, though. All other vertical restraints are subject to the rule of reason. For many years now violations of the ban on rpm have been very rare indeed.

10. In the period under review, the FCO decided on an interesting case, though. In a pilot proceeding, the FCO prohibited the large German publishing house C.H. Beck from binding the resale prices of its CD-Rom products with legal databases. In the FCO's view, C.H. Beck cannot invoke the exemption for publications, because CD-Rom products offer far more applications than reading (search and sorting routines, printouts, transfer to other data storage media) and therefore by nature constitute other products than conventional publications (e.g. books, magazines, newspapers). Moreover, a considerable part of those databases are not sold by bookshops and magazine sellers but by computer shops. The prohibition decision has not yet become unappealable.

#### *Control of abusive practices by dominating firms*

11. As in previous reporting periods, the supervision over market-dominating enterprises for abuses played an insignificant role within the framework of German competition law enforcement. Open markets and, consequently, actual and potential competition from foreign-based firms often ensure that even powerful domestic firms are disciplined by competition and cannot easily apply abusive practices. The FCO's activities in the area of abuse control have been and will be by and large confined to the small number of so-called regulated sectors or industries, although for well-known reasons the enforcement of competition law in regulated sectors is very difficult, and at least Germany's enforcement record is therefore rather poor.

12. Towards the end of the period under review the FCO issued warnings with regard to the exclusivity clauses used by the large German tour operators Touristik Union International (TUI), of Hanover, NUR Touristic, of Düsseldorf, LTT Transair Flugreisen, of Düsseldorf, and Allkauf Reisen (Tjaereborg), of Mönchengladbach, in agreements with Spanish hotel owners covering the purchase of accommodation capacities. In the context of room quota purchases via so-called allotment agreements in respect of the Balearic and Canary Islands, the above-mentioned tour operators have contractually bound the hotel owners concerned to admit only a limited group of German tour operators to their respective hotels and, in particular, not to sell room quotas to their smaller German competitor Alltours Flugreisen, of Kleve. When operated by powerful firms and aimed at specific competitors such exclusivity clauses constitute an abuse and are prohibited. The FCO intends to base its decision *inter alia* on Article 85 (1) of the EEC Treaty.

13. In the abuse proceedings (see Report 92/93, paras 18 and 19) against the leading German pharmaceutical wholesalers for hindering a German importer of drugs and against a gas pipeline operator for refusing third-party access to its network the FCO appealed on points of law to the Federal Supreme Court after its decisions had been reversed by the Berlin Court of Appeals.

## 2) *Mergers and acquisitions*

### *Statistics and summary data on mergers within control provisions*

14. In the reporting period, the number of mergers notified to the FCO decreased to 1,514 mergers (from 1,743 in 1992 and 2,007 in 1991) (see tables 2 and 3).

15. Since 1990 the number of mergers notified has been affected by the privatisation of formerly state-owned firms in the former GDR. The 1,514 mergers notified include 334 notifiable acquisitions of east German firms. If the privatisation cases that are due to unification are deducted from the total number of notified mergers, there remains a largely stable number of some 1,200 mergers for each of the years from 1991 to 1993. Since Treuhandanstalt, the German trust agency in charge of privatisation, has almost completed its operative business (see also paras 36 ff.), with the remaining business to be completed by the end of 1994, the number of notifiable mergers can be expected to be roughly back to pre-1990 levels already in 1994.

16. A further breakdown of notified mergers shows that the trend of previous reporting periods 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 on the increase and reached 81 per cent in the period under review. Moreover, the trend of large firms acquiring predominantly small and medium-sized firms (with sales under DM 50 million) has also continued.

17. Of the 1,514 mergers in 1993

1,050	(1,180 in 1992)	were mergers notified in the course of compulsory or voluntary notification prior to completion;
310	(409 in 1992)	mergers were notified after completion and found to be subject to control;
154	(154 in 1992)	mergers were not subject to control because they fell short of the turnover thresholds of Section 24(8) of the ARC.

18. Much the same as in previous reporting periods some 70 per cent of the mergers fell into the category of mergers notified and scrutinised prior to completion, whereas the percentage of mergers not subject to control increased slightly.

19. From the beginning of merger control in 1973 to the end of 1993, a total of 17,660 mergers were notified and completed (see table 4).

**Table 2**  
**Mergers Notified Pursuant to Section 23 of the ARC**

<b>Year</b>	<b>Mergers</b>
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
1993	1,514
1 January - 30 June 1994	600

**Table 3**  
**Number of Mergers Notified under Section 23 of the ARC in 1993 by:**

<b>(a) Form of the Merger</b>		<b>(b) Type of the Merger (1)</b>	
<b>Total</b>	<b>1,514</b>	<b>Total</b>	<b>1,514</b>
Acquisition of assets	290	Horizontal of which	1,298
Acquisition of shares	672		
Joint ventures (incl. new establishments)	507	(a) without product extension	1,055
Contractual links	23	(b) with product extension	243
Interlocking directorates Section 23 (2) No. 4	--	Vertical Conglomerate	42 174
Other links	19		
Competitively significant influence	3		

(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).

**Table 4**  
**Number of Mergers Notified under Section 23 of the ARC from 1973 to 1993 by:**

<b>(a) Form of the Merger</b>		<b>(b) Type of the Merger (1)</b>	
<b>Total</b>		17,660	17,660
Acquisition of assets		3,961	12,985
Acquisition of shares		8,584	
Joint ventures (incl. new establishments)		4,583	(a) without product extension 10,086
Contractual links		318	(b) with product extension 2,899
Interlocking directorates Section 23(2) No. 4		12	Vertical Conglomerate
Other links		192	
Competitively significant influence		10	1,858
			2,817

(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).

20. Since the 1973 adoption of merger control, the FCO has prohibited 106 mergers by formal decisions. Of a total of 106 prohibition decisions 57 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 were unsuccessful. The balance of 5 prohibitions has not yet become unappealable.

21. Apart from the four mergers prohibited in formal proceedings (see paras 27 - 31), during the reporting period 2 merger proposals were abandoned by the firms after informal talks (prior to notification) with the FCO. Since the 1973 introduction of merger control in Germany, there have been more than 200 such cases.

22. In another 8 cases, merger projects notified during the reporting period were withdrawn after the FCO had informed the firms of its intention to prohibit the project.

23. The following case may serve as an example:

The German Federal Railways and Raab Karcher Sicherheit GmbH, which belongs to the large German conglomerate Veba, gave up the proposed creation of a joint venture, BSG Bahnschutz GmbH, after the FCO voiced competitive concern. BSG was to provide security services in the railway area and in adjacent fields.

The proposed merger would have further strengthened Raab Karcher Sicherheit GmbH's leading position on the market for security services, which is mainly made up of small and medium-sized firms. There was also concern that concerted action by the participating firms might infringe the ban on cartels.

24. To avoid a prohibition decision, four firms gave undertakings to the FCO or modified their proposed transactions in order to resolve 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.

25. The following case is an example of this kind of procedure. The FCO has entered into a contract with the two large German department store groups Karstadt AG, of Essen, and Hertie Waren- und Kaufhaus GmbH, of Frankfurt/Main, relating to certain undertakings, which were given to avert prohibition of the proposed merger.

An analysis of the geographic spread and the top selling items of Karstadt's and Hertie's stores has shown that the project causes competition concerns in five local markets/regions of the Federal Republic of Germany: Berlin, Hamburg, Frankfurt/Main, Munich, Schleswig-Holstein. Thorough inquiries in those regions, including surveys of competitors and suppliers, have given a clear picture of the retail markets for the product lines typically offered by department stores.

The examination has shown that Karstadt and Hertie together will have a paramount market position in Berlin and - as far as prerecorded music is concerned - also in Hamburg, Munich and Schleswig-Holstein. In Berlin, the paramount market positions cover household textiles, toys and perfumes/cosmetics, in addition to prerecorded music. For all the other product lines found in department stores, the creation of a dominant position of the parties to the merger or collective market domination of

the latter and other retailers could be ruled out in view of the market shares and turnover rankings of the competitors.

The paramount position of Karstadt and Hertie in the market for prerecorded music - in Berlin as well as in Hamburg, Munich and Schleswig-Holstein - is mainly due to the pooling of Karstadt's activities with those of the Hertie subsidiaries WOM World of Music and Schaulandt. The market shares of other suppliers are largely fragmented. The marketing policy of the music industry is decisively influenced by the availability of display space of the Karstadt/Hertie/WOM/Schaulandt stores so that the group has a paramount position in the supply markets.

In their contract with the FCO, the firms have committed themselves to reducing their emergent paramount market positions to an unobjectionable level by selling off to their competitors four record shops and an adequate number of their 16 Berlin department stores. The market share reduction has to take place for the product lines that have given cause for competition concerns.

26. The following case is an example of how the acceptance of undertakings to avert prohibition of a merger may raise problems: The FCO has ordered that the large German steel group Krupp/Hoesch sell off the suspension springs division of the German firm Krupp Brüninghaus GmbH. If Krupp/Hoesch fails to comply with the order, the FCO will appoint a trustee for Krupp Brüninghaus as a first step in enforcing the order to divest.

To avert prohibition of the Krupp/Hoesch merger project notified in 1992, the firms had committed themselves in a public law contract with the FCO to the sale by 31 December 1993 of part of the automotive suspension springs division, which had caused competition concerns. At the end of 1993 Krupp/Hoesch terminated the contract on the grounds that market conditions had since undergone profound change and that the anti-competitive effects then found to exist by the FCO were no longer present. In the FCO's view the merger still creates a paramount position in the market for automotive suspension springs.

The decision has not yet become unappealable.

#### *Merger prohibitions*

27. In the period under review, the FCO prohibited 4 mergers (as against 2 in the previous reporting period). The 4 mergers concerned are the following (in chronological order):

28. The FCO prohibited the acquisition of the German pharmaceuticals company Schiwa GmbH, Glandorf, by Fresenius AG, Oberursel, a German firm also engaged in the pharmaceutical industry. The seller was Knoll AG, Ludwigshafen, a subsidiary of the large German chemicals group BASF.

The FCO believed that the merger would have created or strengthened dominant positions in a number of German markets for infusion and dialysis solutions. Thus, the existing market-dominating position held by Fresenius on the market for blood volume replacement solutions used to dilute and replace blood in patients suffering from burns or haemorrhagic shock would be strengthened. On the market for solutions to compensate for electrolyte loss, the existing market-dominating position of an oligopoly which includes Fresenius would be further strengthened. On the market for haemodialysis and haemofiltration

solutions (for purifying the blood of persons with renal insufficiency) Fresenius would obtain a predominant and/or monopolistic market position as a result of the merger.

The prohibition has not yet become unappealable.

29. The FCO prohibited the proposed merger between the German central co-operatives Raiffeisen Hauptgenossenschaft Nord AG, Kiel (HaGe Kiel), and Raiffeisen Haupt-Genossenschaft eG, Hanover (RHG Hannover).

HaGe Kiel and RHG Hannover act as central wholesalers for their members, the local co-operatives, and as central buying and selling agencies for agricultural products and farm equipment, respectively. Where there are no local co-operatives, they also function as retailers, buying agricultural products from the agricultural undertakings and supplying them with farm equipment. HaGe Kiel is active in Schleswig-Holstein and, since mid-1990, in Mecklenburg-Western Pomerania. RHG Hannover's geographical market comprises the districts of Hanover, Lüneburg and Brunswick as well as, since 1990, the main parts of Saxony-Anhalt and Brandenburg.

The merger would further strengthen the market-dominating position of HaGe Kiel and its member co-operatives as central buyer of grain and oilseed in Schleswig-Holstein and Mecklenburg-Western Pomerania.

The prohibition decision has not yet become unappealable.

30. The FCO prohibited a regional newspaper publisher from acquiring a competing subscription daily with a market share of about 60 per cent in its circulation area. In the FCO's view, the dominant position of the acquired firm would be further strengthened as a result of the acquisition. The prohibition decision has not yet become unappealable.

31. The FCO prohibited the proposed co-operation arrangement by

- the German ATG Automobiltransportlogistik Gesellschaft mbH, of Eschborn,
- the German Menke Holding GmbH & Co. KG, of Beckum, and
- the British Silcock and Colling Ltd., of Barking/Essex.

The co-operation of the three firms would have taken the form of a joint venture in which each of the participants would have held a third of the interests and which was designed to combine certain activities of the three firms in the market for the transportation of new cars. The object of the joint venture would have been joint cross-border transports from the car manufacturers' plants to the dealer networks.

ATG, in which the large German enterprises

- Deutsche Bundesbahn Holding GmbH,
- Transwaggon GmbH,
- VTG Vereinigte Tanklager und Transportmittel GmbH, and
- IVG Industrie Verwaltungsgesellschaft AG

each hold 25 per cent of the share capital, offers new car transports by rail via Deutsche Bahn AG. Menke Holding has majority interests in five carriers which transport cars by road. Silcock and Colling, a subsidiary of the British firm Tibbet and Britten Group plc, provides similar transport services mainly in Great Britain.

The co-operative agreement was prohibited by the FCO on the grounds that it would have reduced competition between ATG and Menke perceptibly, thus strengthening ATG's existing paramount market position in respect of new car transports "ex-German car manufacturers' plants".

The FCO's prohibition decision is based on the German provisions governing merger control and the ban on cartels as well as on Article 85 of the EEC Treaty.

The prohibition decision has not yet become unappealable.

#### *Number and extent of international mergers*

32. In the period under review the FCO again examined a number of mergers involving either directly or indirectly foreign parties as acquirers or acquired firms. There was a slight increase in the number of cases that had an effect on the Federal Republic of Germany, although no German firms were involved. Of the 1,514 mergers notified in 1993, 1,330 (88 per cent) were completed on the national territory, and 184 (12 per cent) abroad (see table 45).

33. Since the share of German/German mergers resulting from unification again diminished in the reporting period (see para 15), the share of foreign mergers increased - slightly - in comparison with that of the previous reporting period and is expected to regain its former level of about 14 per cent in the years to come.

34. An analysis of international mergers shows that U.S.-based firms, followed by U.K. and French firms, were the foreign parties most frequently involved both as acquirers of German firms or as targets for German acquirers.

35. In the reporting period the FCO again submitted comments to the EC Commission in Brussels, where appropriate from a competition or procedural point of view, on merger projects that were notified under the EC Merger Regulation and had an effect on the territory of the Federal Republic of Germany.

### **Privatisation and deregulation**

#### *The winding-up of the Treuhandanstalt*

36. The Treuhandanstalt, the German trust agency in charge of privatising the formerly state-owned firms in the new Federal Laender, has completed most of its operative business. After four years in action, the Treuhandanstalt has established the following "track record":

37. At the end of May 1994, 187 enterprises out of originally 13,500 units held by the Treuhandanstalt remained for sale. The proceeds from the sales of enterprises amounted to approximately DM 48.5 billion

**Table 5**  
**Statistical coverage of mergers involving foreign parties**  
**A breakdown of mergers notified in 1992 and 1993 as follows:**

	1991		1992	
1. Completed on the national territory (domestic mergers) of which:		1,330 (88%)		1,542 (89%)
(a) with direct involvement foreign party/parties	113 (7%)		137 (8%)	
(b) with indirect involvement of foreign party/parties	325 (22%)		329 (19%)	
(c) without any foreign involvement	892 (59%)		1,076 (62%)	
2. Completed abroad (foreign mergers) of which:		184 (12%)		201 (11%)
(a) with direct involvement of domestic party/parties	76 (5%)		78 (4%)	
(b) with indirect involvement of domestic party/parties	15 (1%)		25 (1%)	
(c) without any domestic involvement	93 (6%)		98 (6%)	
<b>TOTAL</b>		<b>1,514</b>		<b>1,743</b>

**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.

at the end of January 1994. Fewer than 100,000 people work in the remaining enterprises, which is less than 2 per cent of the total workforce in Eastern Germany (6.1 million employees). More than 1.5 million job guarantees and investment pledges of more than DM 184 billion were obtained from private investors.

38. Viable entrepreneurial solutions were found for 73 per cent of all enterprises. The essential assets of a further 7 per cent were sold before their shares were liquidated. The remaining 20 per cent of the enterprises had to be wound up because, according to experts and the Treuhandanstalt, they could not be made viable. However, in the course of the winding-up of these enterprises 30 per cent of the jobs were saved through partial privatisation. The fulfilment of the contractual rights and obligations of the Treuhandanstalt in the context of the sale of enterprises has become one of its central activities. A check on the guarantees made by private investors for 1991 and 1992 has revealed that in general guarantees are kept. In some cases the actual figures are even higher than those which had been agreed upon.

39. The end of the restructuring activities of the Treuhandanstalt requires an organisational concept for the remaining tasks. The Bundestag (the lower house of the Federal parliament) passed a bill concerning the future structure of the Treuhandanstalt in April and has furthermore approved the basic concept for the implementation of measures aiming at the decentralisation of activities which have been carried out by the Treuhandanstalt so far.

40. The main features of the concept are as follows:

- Viable enterprises which will not yet have been privatised by the end of 1994 - in all likelihood these will be far less than 100 enterprises in so-called Management KGs (enterprises which the Treuhandanstalt will pass on to west German managers for restructuring and preparation for privatisation) and probably large-scale enterprises - are to be transferred from the Treuhandanstalt to the Federal government in view of the traditional competence of the Federal Ministry of Finance for industrial holdings.
- The wide-ranging tasks of contract management concerning some 50,000 privatisation contracts and the remaining reprivatisation tasks are to be fulfilled by private enterprises on the basis of service contracts. It is being examined to what extent these tasks can be carried out in decentralised structures, involving auditing companies and taking account of regional economic conditions.
- The administration and sale of real estate and assets in agriculture and forestry will be carried out by the already existing Bodenverwertungs- und -verwaltungs GmbH (BVVG), a limited liability company (charged with administering the Treuhandanstalt's portfolio of agricultural land and woods). The greater part of the agricultural areas will be leased on a long-term basis. Privatisation will only be possible afterwards.

41. Even after the completion of its core tasks the Treuhandanstalt will continue to exist as a legal entity, even if named otherwise (Federal Authority for Special Assets resulting from Unification), as a party to many contractual and legal relations which in individual cases can last much longer than until the end of 1994.

### ***Privatisation***

42. The Federal government explained its main privatisation projects in some detail in its 1993 Annual Economic Report and its report on safeguarding the future of Germany as an industrial base. It will

continue to consistently implement its privatisation policy along those lines. In doing so, the Federal government reaffirms its long-standing commitment to curtailing the state's economic activity and promoting competition with a view to increasing the efficiency of the national economy and releasing the forces of economic growth.

### *Privatisation of Deutsche Lufthansa AG*

43. Following its withdrawal from the big government-owned enterprises and the service sectors, the Federal government has decided to reduce its stake in the national carrier Deutsche Lufthansa AG to a level below 50 per cent by abstaining from participating in a capital increase. It is envisaged to sell all the shares which are held by the Federal government. The success of the revitalisation of Lufthansa, the US-German agreement on air traffic and the co-operation with a major US carrier created favourable conditions for the initiation of the privatisation process.

### *Private construction of highways*

44. In its "Immediate Action Programme for More Growth and Employment" the Federal government has declared its intention to create the prerequisites for the financing, construction and operation of newly built parts of Federal highways by private investors on the basis of tolls to be levied for the financing and to start concrete projects by the autumn of 1994. Accordingly a bill was passed which provides for the possibility of transferring the building, maintenance, operation and financing of Federal highways to private investors.

45. The private investors will be granted licences to carry out the projects. They will be allowed to levy tolls and use the revenue derived therefrom to refinance the projects. For reasons of compatibility with EU rules on the taxation of haulage vehicles and the levying of tolls on public roads by member states, tolls can only be levied for the use of newly built bridges, tunnels and mountain passes on highways and Federal roads and newly built Federal roads with several lanes in each direction. However, the Federal government will explore the feasibility of extending private investment in highways beyond the scope of the present bill and intends to draft a new bill with increased possibilities for private-sector investments in the next parliamentary term.

### *Deregulation*

46. In the context of its recent initiative to safeguard the future of Germany as an industrial location, the German Federal government has taken further significant steps to remove lengthy bureaucratic planning and licensing procedures. As a result of the amendment of the Genetic Engineering Act the deadlines for filing applications and granting licences for genetic engineering facilities have been shortened and national and international exchanges of genetically engineered organisms for research purposes considerably simplified.

47. Through the introduction of simplified procedures in future-oriented innovation areas the forthcoming amendment of the Chemicals Act is also intended to considerably speed up the making of

discoveries and translating them into saleable products, thereby enabling the Federal Republic of Germany to keep up with international competition.

48. Other important measures are designed to simplify planning and licensing procedures in the construction and transport industries. By further simplifying planning, licensing and other administrative procedures the Federal government intends to create the conditions for streamlining public administration.

49. During the reporting period further steps were taken to implement the deregulation programme adopted in mid-1992 by the Federal government. A revision of the Handicrafts Regulation Act will ease entry to and practice of a skilled trade. Regulations governing the professions of lawyer, patent lawyer, tax lawyer and tax agent as well as auditor and certified accountant will be amended with a view to promoting competition in those professions. The Professional Partnership Act will introduce a new form of organisation facilitating future co-operation among members of different professions. The area of compulsory inspections of vehicles will be further opened to independent vehicle experts, who will be authorised to issue pass certificates for car retrofits.

50. The cabinet passed the draft of the third act to implement the European Union Council insurance directives which will abolish such prior examination of rates and approval of insurance companies as may still be in force. Moreover insurance companies headquartered in other member states will no longer have to seek a licence from the German supervisory authority in future. As a result, competition in the German insurance market will intensify and consumers will be able to choose from a wider range of insurance products.

#### ***Reform of the postal and telecommunications sector***

51. In the telecommunications sector Germany will abolish the monopoly of the German Telekom for telephone services (voice services) at the beginning of 1998 in accordance with the corresponding EC directive. In the course of the ongoing political negotiations about the "Post Reform II", which essentially consists in the conversion of the three postal enterprises Telecom, mail service and postbank to stock corporations and ensuing privatisation, the abolition of Telekom's network monopoly had been envisaged. The draft of a telecommunications statute, besides defining compulsory services, provides for open access to the network for suppliers of telecommunications services and for a special control of abusive practices for suppliers with dominant positions in the relevant market. Such suppliers would have their tariffs authorised in order to avoid abuse of market power and price discrimination.

#### ***Railway reform***

52. The reform of the German railway system, which came into effect at the beginning of 1994, has brought about the creation of three separate enterprises for the railroad network, passenger traffic and the transport of goods. It provides for free access to the railroad network. A new institution, the Federal Railway Authority, decides on the granting of access in a non-discriminatory way in case of conflicting interests. The principles on which its decisions will be based will be set out in a government regulation. Otherwise competition law remains fully applicable.

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

53. As in earlier reporting periods, the FCO followed requests by the Federal Ministry of Economics and other Federal Ministries and institutions 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.

54. In the period under review, the FCO rendered an opinion on

- the Land media laws
- the inter-state broadcasting treaty
- the packaging ordinance
- the used car recycling ordinance
- the shop hours act
- the discounts and rebates act
- the privatisation of the German Federal Postal Administration

55. In compliance with obligations on the Federal Republic of Germany arising under EC public procurement directives, the government's committee to monitor the awarding of contracts was set up at the FCO in June 1994 (see Report 92/93, para. 42). The committee is to review, upon application, the legality of decisions made by bodies that supervise the awarding of contracts by government agencies. The committee is an independent body and not accountable to other authorities. It is chaired by the head of the FCO's 6th Decision Division, its members being two further FCO officials as well as five members and five deputy members of the business community who act in an honorary capacity.

### **New studies relevant to competition policy**

1. Mehr Wettbewerb auf allen Märkten  
10. Hauptgutachten der Monopolkommission 1992/1993, Köln 1994 (Tenth Biennial Report by the Monopolies Commission)
2. Barthing, Hartwig  
Schlußfolgerungen aus Entwicklungstendenzen der Wettbewerbstheorie für die Wettbewerbspolitik, Wirtschaft und Wettbewerb, H. 1. 1993  
(Conclusions from competition theory trends as they relate to competition policy)
3. Hoffmann, Lutz  
Wirtschaftsstandort Deutschland. Wettbewerbsfähigkeitsindikatoren und Standortfaktoren im internationalen Vergleich, Energiewirtschaftliche Tagesfragen, H. 6. 1993  
(Germany as an industrial location. An international comparison of indicators of competitiveness and locational factors)

4. Kurz, Rudi  
Herausforderungen der Wettbewerbspolitik durch Mergers & Acquisitions und Strategische Allianzen, Tübingen 1993  
Probleme der unvollkommenen Konkurrenz  
(Mergers & acquisitions and strategic alliances - A challenge to competition policy)
5. Parlasca, Susanne  
Kartelle im Profisport. Die wettbewerbspolitische Problematik der Mannschaftssportligen: Major League Baseball, National Football League und Fußball-Bundesliga, Verlag Wissenschaft & Praxis, Ludwigsburg 1993 (Schriftenreihe Wirtschaft- und Sozialwissenschaften, Band 20)  
(Cartels in professional sports. Competition policy problems surrounding team sports leagues)
6. Schnabel, Knut  
Der deutsche Elektrizitätsmarkt im Wandel. Reformbestrebungen zwischen Wettbewerb und Dezentralisierung. Bayreuth 1993  
(Thesis: The changing German electricity market - Attempts at reform between competition and decentralisation)