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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN GERMANY

-- 2009 --

This report is submitted by Germany to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 27-28 October 2010.

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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN GERMANY

-- July 2009 to June 2010 --

Executive summary

- Legislation

The 8th amendment to the Act against Restraints of Competition (ARC) is currently under preparation; a provision for the divestiture of undertakings which have a dominant position is envisaged.

- Organisation

The new President of the Bundeskartellamt took office and some significant restructuring measures were carried out.

- Agreements / abusive practices by dominant companies

The Bundeskartellamt continued its intensified fight against cartel agreements. It imposed, inter alia, high fines against coffee roasters and companies in the mortar sector.

The gas sector was a major area of focus in abuse control in the period under review.

- Merger control

Among the more significant cases of merger control were proceedings relating to the development and manufacture of convertible car roof systems and the gas market.

Among the mergers prohibited by the Bundeskartellamt was the acquisition of Karmann by the Canadian Magna International Inc. affecting markets of convertible car roof systems.

- Sector inquiries

In February 2009 the Bundeskartellamt launched a sector inquiry into the capacity situation in German gas transmission networks. In December 2009 the final report was published. The Bundeskartellamt further pursued its sector inquiry into the dairy market. First results were published in an interim report in January 2010.

1. Changes to competition law and policy, proposed or adopted

1.1 *Government proposals for new legislation*

1. The institutional framework that guides German economic policy is fundamentally geared toward fostering open markets and dynamic competition. This is manifested, among other things, in the ARC,

which is considered the basic legal foundation and market-oriented principle for regulating the German economy. As a move to further improve the policy framework for competition and adapt it to changing conditions, the Federal Government proposes to revise the ARC.

2. An authorisation of the Bundeskartellamt for divesting companies as a measure of last resort shall be added to the ARC. Furthermore, the Federal Government proposes to refine the ARC to further emphasise the objective and guiding principle of modern, dynamic competition law and to provide an efficient framework for enforcing legislation. Additional elements of EU merger control provisions will also be incorporated into the ARC. In particular, the government will examine whether the ARC's criteria for prohibiting merger-related market domination should be amended to include the criterion of "significant impediment to effective competition" (SIEC test). In addition, anti-trust law regarding the press will also be reviewed to ascertain whether it should be modified to allow publishing houses better opportunities to compete with other media. As legislative proposals often have effects on the overall conditions for competition, it is important to identify and analyse these implications. For this reason, the Bundeskartellamt shall be entitled to conduct competition impact assessments during the legislative process.

1.2 Organisation of the Bundeskartellamt

3. In December 2009, Andreas Mundt took office as the President of the Bundeskartellamt. The Bundeskartellamt restructured the General Policy Division and the Litigation Division. As part of these measures for instance the Special Unit for Combating Cartels was regrouped and is now part of the Litigation Division. This step recognises the highly forensic nature of the Special Unit's work. Furthermore, the Public Relations Section of the Bundeskartellamt was consolidated with the Press Office, forming a central information point for the public.

2. Enforcement of competition law and policy

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

2.1.1 Statistics and summary of activities

4. With regard to cartel detection, from July 2009 to June 2010 the Bundeskartellamt received 51 leniency applications. It conducted 14 dawn raids relating to its own proceedings and cooperated in three inspections on behalf of the European Commission.

5. In the period covered by the report, the Bundeskartellamt imposed several fines for anti-competitive behaviour, among them EUR 160 million against coffee roasters and EUR 115 million against manufacturers of ophthalmic lenses.

2.1.2 Description of significant cases

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

2.1.2.1 Agreements

7. The Bundeskartellamt imposed fines totalling EUR 1.2 million against the Federal Union of German Associations of Pharmacists (Bundesvereinigung Deutscher Apothekerverbände, ABDA), the Pharmacists Association of Baden-Württemberg (Landesapothekerverband Baden-Württemberg e.V.), the

Berlin Pharmacists Association (Berliner Apotheker Verein e.V.), the Thuringian Pharmacists Association (Thüringer Apothekerverband e.V.) and several natural persons.

8. According to the Bundeskartellamt's findings, the pharmacists associations concerned repeatedly called on their members, the pharmacists, not to purchase any more products from the pharmaceutical wholesaler Gehe after Gehe's parent company Celesio had taken over the DocMorris pharmacy company in April 2007. Such a call to boycott purchases violates competition law if it is made with the purpose of hindering another company unfairly. In the Bundeskartellamt's view this was the case here as the boycott was meant to cause disadvantages for Celesio/Gehe in order to ultimately protect the incumbent pharmacists from emerging competition.

9. DocMorris operates a mail-order pharmacy and offers independent pharmacists a franchise-like brand partnership. Furthermore, until recently DocMorris operated a physical pharmacy outlet in Saarbrücken on the basis of a permit issued by the competent ministry in the federal state (*Land*) of Saarland. This permit has meanwhile been revoked following an European Court of Justice ruling on a violation against the ban on third-party ownership of pharmacies under which only natural persons may operate pharmacies.

10. Many pharmacists see DocMorris as an unwelcome competitor. In particular, many pharmacists are concerned about stronger competition if Celesio/DocMorris (and thus other companies as well) were ultimately allowed to operate a pharmacy chain. After Celesio had taken over DocMorris many pharmacists turned away from the pharmaceutical wholesaler Gehe which belongs to Celesio. The penalized conduct was at least part of the reason for this reaction. The pharmacists associations concerned, or their presidents or other officials, as well as an editor, had called on pharmacists to stop purchasing from Gehe, e.g. in the pharmaceutical newspaper "Pharmazeutische Zeitung" published by ABDA or in speeches.

11. The sanctions imposed applied firstly to statements by officials of the associations and secondly, where anticompetitive calls for boycott were published in the "Pharmazeutische Zeitung", to the publisher's breach of duty of supervision. The decision does not restrict the freedom of press or association. The associations are free to express their critical views on policy issues affecting their profession in their associations' publications. However, calls for boycott which violate competition law exceed the limits of freedom of expression and freedom of association. An appeal was lodged against the decision.

12. The Bundeskartellamt imposed fines totalling EUR 40 million against several companies in the mortar sector. Nine companies and as many senior executives were accused of having participated in anti-competitive agreements on set-up fees for dry mortar silos.

13. In May 2006 and January 2007 the Bundeskartellamt conducted searches at the companies during which it seized substantial evidence. According to the Bundeskartellamt's findings, in 2004 and 2005, following a number of coordination activities, agreement was reached in almost the entire mortar sector to charge as of 2006 a set-up fee for erecting dry mortar silos in addition to the costs for the mortar.

14. In the proceedings, the Bundeskartellamt's guidelines on the setting of fines of 15 September 2006 were applied. These had been issued following the reform of the statutory rules for determining fines. Consequently, the calculation of the fines was based on the companies' turnover achieved with mortar, as well as their revenue from the set-up fee, in order to take sufficient account of the economic significance of the agreements. In the case of two companies belonging to corporate groups with an annual turnover of more than EUR one billion, the fines were significantly raised to enhance the deterrent effect of the Bundeskartellamt's decision. Some of the parties have lodged an appeal against the decision.

15. In a further case in this market the Bundeskartellamt imposed fines totalling EUR 13 million on the building materials trade cooperations Hagebau and Eurobaustoff as well as on two specialised trade associations, Verband Norddeutscher Baustoffhändler and Baustoff-Fachhandel Landsberg, and on four persons for their involvement in anticompetitive agreements to charge set-up fees for dry mortar silos.
16. Also in these proceedings the guidelines on the setting of fines issued by the Bundeskartellamt on 15 September 2006 were applied. An appeal was lodged against the decision.
17. The Bundeskartellamt imposed fines totalling EUR 1.5 million on five manufacturers of ready-mixed concrete in the greater area of Freiburg im Breisgau and on three directors. The companies were accused of having implemented illegal quota agreements over a longer period.
18. According to the Bundeskartellamt's knowledge, at least during the period 1990 to the end of 2004, the companies had agreed on the volume of ready-mixed concrete each company was allowed to bring onto the market in comparison with the others. On a monthly basis the actual quantities delivered were notified to one of the directors who then calculated the respective excess and shortfall quantities, which were subsequently balanced out. Quota agreements of this kind are hardcore cartels which significantly affect competition.
19. The fine imposed for the quota agreement was calculated on the basis of the statutory rules in place up to the beginning of 2005. As it could not be established whether the companies had obtained so-called "additional proceeds" as a result of their involvement in the cartel, regular fines of max. EUR 500,000 were imposed on the individual companies. The fines have become final.
20. The Bundeskartellamt imposed a fine of EUR 11.5 million on CIBA Vision Vertriebs GmbH ("CIBA Vision"). The company is the market leader in the contact lenses business in Germany. It was accused of having illegally restricted the internet trade in contact lenses of its own brand and of having influenced the resale prices of internet traders in an anticompetitive manner.
21. CIBA Vision disputed the accusation from a factual and legal point of view, but announced that it would abstain from lodging a legal appeal against the decision. The offences included, apart from inadmissible and anticompetitive agreements on the exclusion of internet trading and the prevention in particular of the eBay trade in certain contact lenses, so-called "price management" measures.
22. CIBA Vision operated a surveillance and intervention system; several persons were in charge of monitoring and controlling the traders' sales prices in the internet. If the resale prices of individual traders were at a certain level below the non-binding recommended retail price ("RRP"), CIBA Vision staff would contact those internet traders and try – in many cases successfully – to induce them to increase their sales prices.
23. The unilateral issuing of RRP is generally permissible. However, enforcing RRP using pressure is prohibited under the ARC. In the Bundeskartellamt's view, a supplier's addressing RRP beyond the mere communication of the RRP, especially emphasising the subject by repeatedly addressing it – in particular with regard to the trader's current pricing behaviour – calls the RRP's non-binding character into question and is to be regarded as an exertion of pressure.
24. A contact between supplier and trader regarding the resale price will be deemed a prohibited agreement or concerted practice in the vertical relationship within the meaning of section 1 ARC if an arrangement materializes in which the supplier specifically seeks to coordinate the trader's pricing policy and trader and supplier thus agree on the trader's future pricing.

25. This may at the same time lead to illegal, concerted practices in the horizontal relationship between the traders without their actually having to contact each other; this will certainly be the case if the companies observe the recommendation with the confidence that the other companies are acting in the same way. The fines have become final.

26. The Bundeskartellamt imposed a fine of EUR 4.2 million on Phonak GmbH, one of the leading manufacturers of hearing aids in Germany. The company is a subsidiary of Swiss-based Sonova Holding AG. Phonak GmbH was accused of having influenced in an anticompetitive manner the resale prices of its products.

27. In Germany, hearing aids are usually sold to end consumers via hearing aid retailers. In the Bundeskartellamt's view the sale of hearing aids was characterised by a lack of price competition, both at the production level and the retail level. This lack of competition resulted not least from the fact that there is insufficient product and price transparency for end consumers wishing to buy a hearing aid.

28. In this case, a hearing aid retailer had published its prices for hearing aids from all manufacturers on the Internet. The retailer's prices for Phonak hearing aids were in some cases below the lowest price applied in the market until then. As a result other hearing aid retailers from across Germany complained to Phonak GmbH about the lower-price offers. Phonak GmbH reacted by refusing to sell to the respective hearing aid retailer in order to induce him to raise his resale prices.

29. Providing unilateral non-binding price recommendations is in principle allowed. However, anyone who threatens or causes disadvantages to others or promises or grants them advantages in order to enforce such price recommendations, commits an administrative offence. A refusal to sell constitutes such a disadvantage. In the Bundeskartellamt's view, the action taken by Phonak had a competitive relevance beyond this individual case. Eliminating the only price-active internet-based provider of hearing aids was a means to maintain or re-establish the predominant price level on the German market for the trade in hearing aids. Moreover, where price competition is already limited at the retail level, any further prevention of competition advances is all the more severe. The fines have become final.

30. The Bundeskartellamt imposed fines totalling EUR 160 million on three coffee roaster companies and six employees responsible on the grounds of price fixing. According to the Bundeskartellamt's information, a "discussion group" made up of the directors and sales managers of the coffee roasters existed from at least early 2000 until the companies were searched in July 2008. The aim of the discussion group was to maintain the "price architecture" of the companies' final sales prices and special offer prices for their major roasted coffee products. To achieve this aim the coffee roasters agreed among themselves on the level, extent, date of announcement and implementation of the planned price increases; this applied particularly in the case of five price rises between 2003 and 2008. With the exception of the last increase in March/April 2008, all the agreed price increases were implemented.

31. The agreements proved directly detrimental to the end consumer because the food retail sector generally passed on the price increases. The two price increases announced in December 2004 and April 2005 alone resulted in an average increase in the final sales and special offer prices for roasted coffee of more than EUR 1 per 500g pack. All but one party appealed the decision.

32. In a further case relating to the coffee market, the Bundeskartellamt imposed fines totalling EUR 30 million on eight coffee roasters and the German Coffee Association, (Deutscher Kaffeeverband e.V., DKV) as well as ten employees responsible on grounds of price fixing in the so-called out-of-house market (supply of bulk customers).

33. The proceedings were triggered by a leniency application; consequently, the applicant company was not fined. Two other companies were granted a reduction of their fines for their cooperation in the proceedings in clarifying the accusations.

34. To the Bundeskartellamt's knowledge a working group of directors and sales managers of the coffee roasters existed within the DKV from at least 1997 to mid-2008. The group coordinated price increases and to some extent price cuts for roasted coffee in the so-called out-of-house market (supply of gastronomy sector, hotels, vending machine operators and other bulk customers). The group of companies concerned therefore differs partly from the cartel of coffee roasters fined in December which supplied coffee to the food retail sector. According to the Bundeskartellamt's knowledge, in this case the two price increases from early 2005 (increase of up to EUR 1.40/kg) and early 2008 (increase of up to EUR 0.90/kg), for example, were coordinated by the group.

35. With DKV, an association was also directly involved because, at the request of the cartel members, it had announced and supported the price increase of early 2005 in its own press release. DKV admitted to and expressed regret for the infringement in a separate press release.

36. The Bundeskartellamt imposed fines totalling EUR 115 million on five leading manufacturers of ophthalmic lenses in Germany, seven employees responsible and the relevant trade association, the Central Association of Optometrists (ZVA), for their involvement in cartel agreements.

37. Since mid-2000 the five manufacturers of ophthalmic lenses had met on a regular basis to coordinate their market behaviour. The so-called HERRZ group (the acronym corresponds to the first letters of the participating companies' names) was founded on a mutual wish to maintain, as far as possible, existing market structures. In their meetings, the representatives of the companies agreed on price surcharges, as well as conditions, bonuses and discounts granted to opticians. In addition, they regularly informed one another of specific competitive measures, such as upcoming price increases.

38. In another grouping, the ZVA "pricing structure working group", the five manufacturers of ophthalmic lenses agreed on non-binding price recommendations for opticians. The majority of the opticians set their sales prices for ophthalmic lenses on the basis of these non-binding price recommendations. The sales prices also covered the craftsmanship services rendered by the optician and were determined on the basis of calculation formulas provided by the lens manufacturers. At least during the meetings in 2005, the respective formulas for the calculation of the non-binding price recommendations were communicated among the lens manufacturers and amendments for the subsequent three years agreed.

39. The proceedings started with searches of the premises of the companies concerned and the ZVA in mid-2008, during which substantial evidence was seized. The initial suspicion was not based on information from a leniency applicant. One company was granted a considerable reduction of its fine for its cooperation during the proceedings in clarifying the accusations. This reduction was granted under the Bundeskartellamt's Leniency Programme. The fines of two other companies and the ZVA were also reduced on account of their cooperation in the proceedings. The decision has not yet become final.

40. The Bundeskartellamt imposed fines totalling EUR 400,000 on a manufacturer of cable bedding compounds and two employees responsible.

41. According to the Bundeskartellamt's findings, between 2005 and 2008 representatives of the companies Condor Compounds GmbH and Melos GmbH coordinated their price increases for so-called standard cable bedding compounds. The proceedings were initiated on the basis of a leniency application filed by Melos GmbH; consequently, this company was not fined.

42. Standard cable bedding compounds consist essentially of a rubber compound and are used in low-voltage installation cables to protect a cable loom from damage. The agreement began with a meeting in September 2004, at which representatives of the two companies decided to coordinate their prices increases for standard cable bedding compounds with effect from the beginning of 2005. This was followed by regular talks between representatives of the companies named. The cartel agreement was ended in November 2008. In calculating the fines, the Bundeskartellamt took account of the fact that only a comparatively low volume of turnover was affected by the price agreement.

2.1.2.2 *Abuse of a dominant position*

43. In a test case the Bundeskartellamt prohibited a local gas supplier, GAG Ahrensburg in the *Land* Schleswig-Holstein, from charging abusively excessive concession fees and ordered their reimbursement.

44. The Ordinance on Concession Fees for Electricity and Gas (Konzessionsabgabenverordnung, KAV) sets municipalities limits for the levy of concession fees. The ordinance differentiates between tariff and special-contract customers. The concession fee for tariff customers is many times higher than the fee charged to special-contract customers and generally exceeds the profit margins achieved from gas distribution.

45. As a number of concession fee contracts for electricity and gas networks which were concluded for a twenty-year period were nearing expiry, attempts were made by several municipalities to award new concessions to public utility companies. This intensified engagement in the energy sector by the municipalities generally stimulates competition in the sector. However, in as much as the municipalities and local suppliers are abusing their monopoly position with a view to charging abusively high concession fees in the gas sector, this harms their own citizens and hinders competition.

46. In 2006 the municipality of Ahrensburg took over the local gas distribution network via GAG Gasversorgung Ahrensburg GmbH (GAG) on the expiry of a former concession contract. From that point all previous special-contract customers were categorized as tariff customers. This measure increased revenue from concession fees six-fold. At the same time GAG charged new competitors the higher concession fee for tariff customers although these only had special-contract customers. In the Bundeskartellamt's view this practice infringed the Ordinance on Concession Fees for Electricity and Gas and in this respect alone was abusive. Although its own distribution company also paid the high concession fee, the municipality could forgo the local supplier's profit margin because the increase in the concession fee compensated for this. Rescheduling the profit margin into the concession fee was even more tax effective for the municipality. However, the increasing costs had a significantly negative impact on new competitors.

47. The Bundeskartellamt established that in areas in which municipal grid operators charge the excessive concession fee, the number of customers switching to another supplier is lower and the municipal utility is exposed to less competitive pressure.

48. The Bundeskartellamt required Scandlines Deutschland GmbH, the owner of Puttgarden ferry port and sole provider of ferry services on the Puttgarden-Rødby route, to provide other ferry companies with the opportunity to establish an additional ferry service on this route. Competitors will have to be granted access to the essential facilities against adequate remuneration.

49. The Norwegian shipping companies Bastø Fosen and Eidsiva had submitted a request to this effect to Scandlines Deutschland GmbH which was refused. The shipping companies subsequently filed a formal complaint with the Bundeskartellamt.

50. Scandlines had so far been the sole supplier of ferry services on the Puttgarden-Rødby route. It had a dominant position on the relevant market. The Bundeskartellamt's decision clarifies that the refusal to grant third parties the opportunity to set up an additional ferry service violates the ARC (specifically Section 19 (4) no. 4). A dominant company must allow another company access to its infrastructure facilities against adequate remuneration if the other company is unable for legal or factual reasons to become active on the downstream market as a competitor of the dominant company.

51. The decision required Scandlines to enter into negotiations with the Norwegian shipping companies within a certain period of time and to agree on terms and conditions enabling the companies to set up an additional ferry service from the port of Puttgarden in order to be able to compete against Scandlines on the Puttgarden-Rødby route. The parties have challenged the Bundeskartellamt's decision in summary proceedings before the Düsseldorf Higher Regional Court (see below, 2.1.3. Activities of the courts).

52. The Bundeskartellamt concluded the abuse proceedings that were initiated against gas suppliers in March 2008. In 2008 the Bundeskartellamt had initiated proceedings against a number of gas suppliers on the suspicion of their charging abusively excessive prices. The authority agreed with the companies on far-reaching commitments in order to bring the proceedings to a close. The results achieved by this course of action were of direct benefit to consumers.

53. The commitments offered by the gas companies envisaged that customers be reimbursed with a total of EUR 130 million for 2007 and 2008 and that these reimbursements should not be subsequently compensated for in 2009 in the form of price increases (so-called "no repeated game" clause). The Bundeskartellamt's evaluation has now shown that all the companies have abided by their no repeated game clause. In 2008 and 2009 the companies did not pass on to consumers increased costs totalling EUR 314 million (in particular, higher network use fees and gas procurement costs) or implemented price reductions which even exceeded savings from lower gas procurement costs in 2009. The gas price proceedings have spared consumers costs in the range of EUR 444 million both directly in the form of reimbursements and indirectly through the non-implementation of price increases.

54. Fears that a blanket action by the Bundeskartellamt could deter newcomers from entering the market have proved unfounded. In fact, competition for gas customers gained significant momentum in 2009. An assessment of the market has revealed that a number of new companies have entered the market. Consumers are making increasing use of existing possibilities to switch to another supplier because of the greater product diversity and savings potential.

2.1.3 Activities of the courts

55. In a decision on call termination in mobile telephone networks (GSM converters) the Federal Court of Justice made some general statements concerning the application of Art. 102 TFEU (ex Art. 82 EC) in regulated areas. The proceedings were initiated when it was discovered that the respective network operator had a dominant position in the market for the termination of calls into its own network. The subject matter of the proceedings was the refusal of such network operators to supply the necessary SIM cards to the operators of so-called GSM converters, which offer an alternative form of termination outside the usual and regulated points of interconnection. The Federal Court of Justice examined the case for elements of refusal to supply. It determined that the obligation to provide call termination services according to regulatory order does not principally stand in conflict with Art. 102 TFEU, and in particular does not eliminate every scope of action of the companies. In the Court's opinion, the degree of regulatory control is a major factor in the necessary consideration of all interests involved. If a company is obliged by a regulatory order to grant under certain conditions access to the market it dominates, it can usually be assumed that the risk of abusive refusal to access is sufficiently avoided. It is generally not reasonable to

expect the operator to grant third parties alternative access. In this particular proceeding the Federal Court of Justice did not recognize any exceptional circumstances which would justify a different ruling, in particular any shortcomings of the regulatory order.

56. In another decision, "Wetzlar Water Prices", the Federal Court of Justice clarified the provisions applicable to abuse control in the area of water supply and largely confirmed the appealed decision of a *Land* competition authority, by which the water supplier was prohibited from exceeding certain price limits. A special abuse provision applies if a supplier demands prices or business terms less favourable than those charged by comparable supply companies, unless it can prove that the price difference is caused by circumstances which are not attributable to it. In its ruling the Federal Court of Justice also ascertained that no unreasonable requirements should be set in the initial examination of similarity and that the respective comparable supply companies should only be subjected to a cursory survey. As regards the proof of non-attributability to be provided by the supplier, the latter may only quote such cost factors which any other company in its situation would be faced with and be unable to influence. Any individual circumstances based on a company decision or the structure of the supply company concerned, are to be left out of consideration.

57. Formal decisions by the Bundeskartellamt requesting information which it served on several statutory health insurance funds because of their joint declaration to impose an increase in contribution have led to several court proceedings. The key issue of the dispute is whether the statutory health insurance funds constitute undertakings. The decisions taken to-date concern solely the preceding question of due process of law, because, apart from the Düsseldorf Higher Regional Court which is the competent appeals court for decisions of the competition authority, courts specialized in social jurisdiction were also summoned, some of which have claimed competence for some of the proceedings. A final decision of the Federal Social Court is still pending.

58. In the case concerning access to the ferry port of Puttgarden the Bundeskartellamt's decision was challenged in summary proceedings before the Düsseldorf Higher Regional Court. In these proceedings the Düsseldorf Higher Regional Court suspended the execution of a Bundeskartellamt decision, by which the owner of Puttgarden ferry port was requested to start negotiations with parties interested in access to the port. The court deemed the refusal of access which was examined under the "essential facility" principle as not abusive. It argued that according to the relevant provision of the ARC access cannot be demanded "if the dominant undertaking demonstrates that for operational or other reasons such concurrent use is impossible or cannot reasonably be expected". The court determined that reasons for this could also be found in the sphere of the petitioner for access. According to the Court, in this specific case joint use is impossible for legal reasons because it cannot be assumed that the petitioner can obtain the necessary approval to use the railway facilities for its project, which do not belong to the port owner. Furthermore, the court thought the joint use of the port was effectively impossible because the ferry service planned by the petitioner could not be operated economically. It referred to the planned bridge crossing over the Fehmarn Belt which would mean that the necessary operating time would not be attained in order to amortize the investment. With reference to Art. 102 TFEU, the Court stated that the issue was a matter for examination under German law.

59. In an extensive fines proceeding the Düsseldorf Higher Regional Court convicted leading cement manufacturers for participating in various regional cartels with agreements on supply quotas for cement. However, in contrast to the previous decision of the Bundeskartellamt, the fines in the Court decision were reduced from EUR 700 million to EUR 400 million. Decisive for the reduction of these fines were other calculation methods used to evaluate the additional proceeds from a cartel according to previous national law. The additional proceeds are the difference between the actual proceeds earned and the proceeds which would (hypothetically) be earned if competitive market conditions were in place. Determining the hypothetical competitive price, for which the Court commissioned an economic expert, proved particularly

difficult. The Court also expressed its opinion on the constitutionality of the new legal situation which has been harmonized with European law. In view of the appeal on points of law by the companies, the Federal Court of Justice is to review the judgment.

60. In a further extensive cartel fines proceeding in the insurance sector, similar questions about how additional proceeds are calculated emerged and economic experts were also commissioned. However, no judgement was pronounced because the objections to the Bundeskartellamt's decision were withdrawn shortly before the end of the proceedings. Only in one partial proceeding, the unusual feature of which was that this was conducted against the legal successor of the originally acting company, was an acquittal granted. In the view of the Düsseldorf Higher Regional Court, according to German law a legal successor can only be fined if from an economic view the previous and new corporate assets are essentially identical.

61. In a ruling on the fees demanded by Deutsche Bahn AG for the use of its railway tracks the Düsseldorf Higher Regional Court established a violation of the prohibition of unfair hindrance. The matter in dispute was an additional fee for amended orders. In the Court's opinion this constituted a hindrance of the plaintiff which mainly supplies ad-hoc freight services in contrast to Deutsche Bahn's dominant subsidiary Railion which mainly operates long-term freight services. The subsidiary could be taken as a comparable company as there is an explicit obligation under railway law that associated and non-associated companies must be treated equally.

62. The Karlsruhe Higher Regional Court granted a claim for compensation following the European Commission's fines imposed on the cartel for carbonless paper. The Court fundamentally ruled out the so-called passing-on defence. Furthermore, only the party directly harmed is to be entitled to claim damages. An exception applies if the direct customer is a wholly-owned subsidiary of a cartel member.

2.2 Mergers and acquisitions

2.2.1 Statistics on the number, size and type of mergers notified and/or controlled under competition law

63. In the calendar year of 2009, about 1,000 mergers were notified to the Bundeskartellamt. The number of mergers decreased further compared to 2008.¹ This is attributable both to the economic crisis and to the 2nd domestic turnover threshold that was introduced into German merger control law in 2009. Main examination proceedings were initiated in 21 cases.

64. About two-thirds of all notifications were submitted because they fulfilled the criteria of a combined purchase of share and control under merger control law. Other criteria for notification were of subordinate significance.

65. In 2009 the Bundeskartellamt prohibited three mergers and cleared five mergers subject to conditions and obligations.

2.2.2 Summary of significant cases

2.2.2.1 Prohibition of mergers

66. Two of the three prohibition decisions concerned the markets for municipal hospitals and newspapers.

¹ Bundeskartellamt: Activity Report 2007/08, p. 181.

67. In the third decision, the Bundeskartellamt prohibited the automotive component supplier Magna from acquiring Karmann's European convertible car roof systems business.

68. The Canadian automotive supplier Magna International Inc. planned to acquire the convertible roof systems business of Karmann GmbH i.I. (in insolvency) via its German subsidiary Magna Car Top Systems GmbH. After almost four months of examination under merger control, the Bundeskartellamt decided to prohibit the acquisition project. The competition authority's decision was based on extensive analysis of the relevant market in Germany and Europe.

69. After the merger of Edscha AG and Webasto AG (see below, 2.2.2.3. Clearances of mergers), the merger between Magna and Karmann would have left only two major suppliers of convertible roof systems Europe-wide in a market which is already highly concentrated. The high transparency in this market would have encouraged parallel conduct between the remaining suppliers which would have been damaging to competition, especially since new market entries are not expected.

70. With Karmann, Magna and Webasto/Edscha there are only three companies in Europe which produce convertible roof systems. Last year the total volume of the Europe-wide market amounted to EUR 600 million. There are no imports of convertible roof systems from Asia or the USA. Convertible roof systems are purchased by virtually all car manufacturers. Tenders are invited for systems required for certain car model series resulting in some orders running for several years. It is uneconomical for the car manufacturers to develop and manufacture their own convertible roof systems. The entry of newcomers to the market is highly unlikely because this would require great propensity to invest and a minimum company size as well as specialized expertise.

71. In 2009, Edscha and Webasto, at the time the number one and four suppliers of convertible roof systems, merged and the project could only be cleared by the Bundeskartellamt after a very intensive examination. Already then the authority had made it clear that a further concentration of the market would result in competition problems.

72. Not only would a merger between Magna and Karmann have cut the number of competitors down to two. The two remaining competitors would also have similarly strong market positions and a comparable company size. Due to the existing market transparency competitive thrusts by one of the remaining companies would be immediately recognised and directly sanctioned by the other competitor. Internal competition between the almost equally strong companies would thus be unlikely. Some car manufacturers also expected the merger to have anticompetitive effects and expressed their scepticism during the investigations.

73. The Bundeskartellamt intensively examined and weighed up the special aspects raised by Karmann's insolvency proceedings. It took into account that Karmann's convertible roof systems business has market potential and that to the Bundeskartellamt's knowledge, apart from Magna, there have been and still are several serious bidders. The parties have appealed the Bundeskartellamt's decision.

2.2.2.2 Clearances subject to conditions and obligations

74. The five clearances subject to conditions and obligations concerned inter alia the markets for industrial sugar, petrol stations and energy supply.

75. In one of the cases, the Bundeskartellamt cleared plans by Energie Baden Württemberg AG (EnBW) to acquire a 26% share of EWE Aktiengesellschaft (EWE) subject to the condition that the parties to the concentration divest significant company holdings. Alternatively, the decision offered the possibility of a divestiture of the problematic associated companies of the parties to the merger in the gas sector. Following a statement of objections by the Bundeskartellamt EWE and EnBW had undertaken to either sell

the EWE associated company Verbundnetz Gas AG (VNG) or the EnBW associated company GESO Beteiligungs- und Beratungs AG (GESO) to a third party. GESO holds shares in, among others, ENSO Energie Sachsen Ost AG (ENSO) and DREWAG Stadtwerke Dresden GmbH (DREWAG).

76. The first-mentioned concentration, which was cleared by the Bundeskartellamt, concerned the electricity and gas sectors. With regard to the electricity market, there was no evidence which would indicate that EnBW was a member of a dominant oligopoly in the domestic markets for the first-time sale of electricity and its supply to industrial customers. EnBW did not satisfy the relevant criteria recently confirmed by the Federal Court of Justice in its “Stadtwerke Eschwege” decision. In the gas market, on the other hand, the concentration would have led to a strengthening of dominant positions held by associated companies of EnBW and EWE in eastern Germany. In particular, it was likely that the sales of the dominant grid gas company VNG would have been further secured in that the management boards of ENSO and DREWAG would have taken account of VNG’s interests in their gas procurement strategies. In addition, without the obligation to divest ENSO’s and DREWAG’s dominant positions in their regional or local gas markets for the supply of distributors and household and industrial customers would have been strengthened, since they would no longer have had to fear any competition from VNG in these markets.

77. In order to prevent a prohibition of the concentration, EWE and EnBW had agreed in the course of the proceedings to alternatively divest EWE’s participation in VNG or EnBW’s associated company GESO within a certain period of time. Both alternatives, each taken on their own, dispelled the competitive concerns raised by the planned concentration.

2.2.2.3 *Clearances of mergers*

78. In second phase proceedings the Bundeskartellamt cleared the acquisition of the subscription daily “Elmshorner Nachrichten“ and the advertising newspaper “Die Woche im Blickpunkt” by the publishing house Schleswig-Holsteiner Zeitungsverlag sh:z, a subsidiary of medien holding:nord.

79. Before the merger, the two publications were owned by the Axel Springer AG group. The merger was cleared by applying the so-called balancing clause contained in the German merger control provisions. The distribution area of “Elmshorner Nachrichten” was dominated, pre-merger, by Axel Springer AG. With the acquisition of Elmshorner Nachrichten by Schleswig-Holsteiner Zeitungsverlag sh:z, Alex Springer AG’s market position would pass over to medien holding:nord. This weakened Axel Springer AG’s previously dominant position in the region. The major and secondary newspapers in the area would in future be published by two different financially strong publishers and would no longer remain in one hand.

80. In applying the “balancing clause”, whereby the authority carries out an overall appraisal of the pro-competitive and anti-competitive effects, the Bundeskartellamt found that the significant improvements to competition in the reader market in “Elmshorner Nachrichten”’s circulation area (improved market) outweighed any possible negative impact on competition in the reader and advertising markets in Norddeutsche Rundschau’s circulation area (impaired markets).

81. The Bundeskartellamt cleared the takeover by Air Berlin of TUIfly’s city-carrier business. Air Berlin could thus take over TUIfly’s city-carrier route portfolio, including the aircraft capacity and staff. The portfolio consisted of 117 routes to Austria, Egypt, Spain, France, United Kingdom, Greece, Croatia, Israel, Italy, Morocco, Portugal, Sweden, Tunisia and Turkey and seven routes within Germany. The destination focus was clearly Italy with 55 routes.

82. The investigations conducted by the Bundeskartellamt revealed that there were only a few route overlaps between Air Berlin and TUIfly and that Air Berlin transported only a low number of passengers to

some of these destinations (e.g. Italy). In addition, there were sufficient competitors on the relevant routes or flying to the relevant destinations.

83. Originally reciprocal participations of 19.9 % respectively by Air Berlin in TUIfly and TUI in Air Berlin were planned, to which further rights were attached. The participating companies abandoned these plans. The participations were reduced to 9.9% on each side and the parties decided to forgo the rights attached to the acquisitions. The reciprocal participations in the form notified thus no longer fulfilled the elements of concentration.

84. The parties also stated that Air Berlin would not acquire a stake in TUIfly and that TUI's 9.9 % participation in Air Berlin would only be effected after clarification of any remaining competition law concerns with the Bundeskartellamt.

85. The Bundeskartellamt cleared plans by several municipal utilities to acquire all the shares in Thüga Aktiengesellschaft from the E.ON group via their holding Integra Energie GmbH & Co. KGaA which was set up especially for this purpose. Consolidated in Thüga, which is located in Munich and has an annual turnover of approx. EUR 860 million, are mainly minority interests in approx. 90 municipal utilities and regional providers. In addition, Thüga provides energy services and in some parts of Baden-Württemberg and Bavaria also directly supplies households with energy and drinking water. With their supply of gas and electricity alone, Thüga and its affiliates and associates have so far served around 2.9 to 3.5 million customers in Germany.

86. In the past, Thüga was controlled by Germany's largest grid gas company, E.ON Ruhrgas. In the Bundeskartellamt's view this link between the dominant upstream gas supplier E.ON and the re-distributor customers combined in Thüga for a long time contributed to the foreclosure, above all of the gas markets, to alternative domestic and foreign gas suppliers. The announcement of the voluntary divestment of Thüga from the E.ON group was therefore welcomed by the Bundeskartellamt as highly conducive to creating competitive structures in the energy sector.

87. The shareholders of the acquiring consortium, Integra, are all holdings of Thüga itself, namely N-ERGIE in Nuremberg, Mainova in Frankfurt am Main, Hannover municipal utility (Stadtwerke Hannover) and 47 other local providers involved in the Freiburg consortium Kom9.

88. The concentration did not create or strengthen dominant positions in any of the gas and electricity markets concerned. On the contrary, the project reduced the extent of vertical integration of the E.ON group. Against this background it could be assumed that the concentration would have a positive effect on the markets concerned.

89. The Bundeskartellamt cleared the acquisition of the convertible roof systems business of Edscha AG by Webasto AG in the main examination phase of its merger control proceedings. This merger preceded the notified merger project of Magna and Karmann (see above, 2.2.2.1. Prohibition of mergers).

90. The investigation of the Bundeskartellamt did not reveal any indication of concerted practices among the then four companies in the market. The investigation showed that this could be expected to also hold true in case the market is narrowed down to three suppliers. Also, usually only three out of the four companies participate in a specific call for tender. On this basis, this four-to-three merger could be cleared. The evidence available indicated, however, that a further narrowing of the oligopoly as a result of another concentration would raise competition concerns.

91. In second phase proceedings the Bundeskartellamt cleared the acquisition of control over Presse Vertrieb Pfalz GmbH & Co. KG (PV Pfalz) by Roth+Horsch Pressevertrieb GmbH & Co. KG (Roth+Horsch). Both companies are active in the press wholesale sector. Roth+Horsch is a press

wholesaler which had been independent from publishing companies. A total of ten publishing houses jointly held an 80% interest in PV Pfalz, among them the publishers Axel Springer, Bauer, Gruner + Jahr, Burda and WAZ. In the new company to be created, Frankenthaler Pressevertrieb, the ten publishers would only hold a joint minority interest.

92. The merger project involved the press wholesale markets in southern Hesse with the cities of Darmstadt and Offenbach, the Palatinate region with the cities of Kaiserslautern and Worms, and northern Baden-Württemberg with the city of Mannheim.

93. Press wholesalers purchase newspapers and magazines from the publishing companies to supply the retail sector. As a rule, press wholesalers hold exclusive distribution rights for the media products of individual publishing houses in their distribution area. The territory of Germany is therefore covered by a number of regional wholesale monopolies. The German wholesale system is based on the neutrality of the press wholesale sector vis-à-vis all publishing houses and all media products. In 2004, the Association of German Magazine Publishers (Verband Deutscher Zeitschriftenverleger), VDZ, the Federal Association of German Newspaper Publishers (Bundesverband Deutscher Zeitungsverleger), BDZV, and the Association of German Book, Newspaper & Magazine Wholesalers (Bundesverband Presse-Grosso) agreed on a "Joint Declaration" in the sense of a self-commitment. The associations' objective is to maintain an efficient press wholesale sector which is to continue to ensure neutrality in the distribution sector, market access for all newspapers and magazines, and thus press diversity in the retail sector.

94. The merger between a wholesaler in which no publishers hold an interest (Roth+Horsch) and a wholesaler where this is the case (PV Pfalz), with the aim to create a wholesale company in which the publishing houses will participate, raised concerns by Bundesverband Presse-Grosso that the neutrality of the wholesale system might be jeopardised. The Bundeskartellamt's investigations did not reveal any reasons to prohibit the proposed concentration. The creation or strengthening of a dominant position was not to be expected either in the press wholesale markets concerned or in the newspaper and magazine markets. Although, due to the importance of their media products, the large publishing houses, in particular Axel Springer and Bauer, have a strong market position both vis-à-vis the press wholesale sector and individual wholesalers, the merger of Roth+Horsch and PV Pfalz would not cause any change in this market position. The merged company, Frankenthaler Pressevertrieb, would also be committed to maintaining neutrality vis-à-vis all publishing companies.

2.2.3 Activities of the courts

95. In the "Phonak/GN Store" merger control proceedings, which had led to a prohibition decision by the Bundeskartellamt in 2008, the Federal Court of Justice had to rule on a prohibition decision based on the creation or strengthening of a joint dominant position in the hearing aid market. In contrast to the court of lower instance the Federal Court of Justice held that the Bundeskartellamt's decision was unlawful. In its ruling the Court developed further the principles of an overall appraisal in examining oligopolies as established in the decision on "E.ON/Eschwege". In the case in question the competitive conduct and the market processes observed played a decisive role. In its statement of reasons the Federal Court of Justice established in particular that market shares of similar size did not indicate per se that a collective reaction of powerful companies existed which excluded internal competition. However, within the framework of the overall appraisal required, market shares which remain unchanged over a long period of time can be considered as a factor indicating the existence of a dominant oligopoly. The Federal Court of Justice also clarified that if, in spite of unfavourable structural conditions, competition actually exists among the companies which could be considered as members of an oligopoly, this competition may not be qualified as insignificant for the sole reason that a high market transparency allows each of the companies to react quickly to competitive thrusts by the others.

96. In several rulings the Düsseldorf Higher Regional Court had to deal with a clearance decision of the Bundeskartellamt in the DIY stores sector. Clearance had been granted under the dissolving condition that some DIY stores be sold. The participating parties put the merger into effect, filed an appeal against the decision and did not fulfil the condition within the specified period. Ultimately the Düsseldorf Higher Regional Court confirmed the decision on the merits with a slightly diverging market definition. The Court also held that the choice of remedy did not constitute an abuse of discretion as an obligation would not have been an equally suitable remedy. The Higher Regional Court also confirmed a safeguard order which, according to the Court, fulfilled the principles of certainty and proportionality. The order had obliged the parties to maintain the efficiency and competitiveness of the DIY stores taken over after the expiry of the period specified for fulfilment of the condition.

2.3 Sector inquiries

97. In February 2009 the Bundeskartellamt launched a sector inquiry into the capacity situation in German gas transmission networks. In December 2009 the final report was published. In the inquiry the Bundeskartellamt questioned 50 companies and analysed several thousand capacity and supply contracts. The inquiry followed up the authority's activities in reducing the duration of long-term gas supply contracts.

98. The Bundeskartellamt criticized the market-foreclosing effect of long-term capacity bookings and calls for more improvements in the transport of gas. Gas transmission networks make it possible to transport natural gas over very long distances and so are of key significance for the import of gas and its onward distribution within Germany. The inquiry was triggered by signs of existing restraints of competition in the German markets for the distribution of natural gas where many transport routes and points are being contractually used at full capacity. Demand for capacity is often given the red light.

99. The main findings of the inquiry are: Many cross-border interconnection points are operating in the long term (i.e. with contract durations of more than two years) at full capacity and are being used mainly by affiliated distributors. This makes market foreclosure likely on the downstream gas supply markets. Demand for capacity, especially from new suppliers, often cannot be satisfied. In the authority's view such long-term bookings can only be justified on grounds of security of supply if they do not exceed the minimum take obligation in the gas supply contracts.

100. The Bundeskartellamt's findings on market foreclosure would in principle suggest that abuse proceedings should be initiated. However, further developments in the legislative process are to be awaited first. A Federal Government discussion paper includes plans to reduce the running periods of capacity bookings, even for existing contracts, in the forthcoming amendment to the Gas Network Access Ordinance. The Bundeskartellamt strongly supports this measure. This would make the initiation of abuse proceedings unnecessary.

101. In addition the Bundeskartellamt examined the resale bans contained in a number of gas supply contracts. Resale bans are particularly critical if they also apply to volumes of gas which the customer has to pay for in any case under his obligation to purchase (so-called take or pay clauses). These clauses are currently of great significance because the demand for gas and electricity, especially of industrial customers, has dramatically slumped as a result of the current economic crisis. The Bundeskartellamt has launched initial proceedings to examine such clauses and, if applicable, will extend its activities to the electricity sector as well.

102. In its sector inquiry the authority also began to evaluate its decisions on limiting the duration of gas supply contracts. In a test case in 2006 the Bundeskartellamt had prohibited the long-term gas supply contracts of E.ON Ruhrgas AG. As a consequence further gas transmission companies undertook to adjust

their contracts. The authority's decision-making practice has since been confirmed by the courts. The decisions expire on 30 September 2010. There are first signs of a stimulation of competition in the gas supply markets.

103. In its ongoing sector inquiry in the dairy sector the Bundeskartellamt is currently analyzing the data collected. The inquiry encompasses the market levels of the milk producers, the dairies and the food retail sector. The interim report, published and presented in January 2010, examines structures and market power distribution in the relationship between the milk producers and the dairies and in the relationship between the dairies and retailers ("from the producer through to the shop counter") and presents an in-depth analysis of the German milk sector.

104. The Bundeskartellamt questioned 36 dairies, which together account for about 75% of the total milk production in Germany, and virtually all food retail companies in Germany. In addition, the Bundeskartellamt held talks with companies and interest groups at all the market levels concerned. The interim report is also based on findings from merger control proceedings and from working group sessions at the European Commission focusing on the food retail sector.

105. The main findings are: Although many producers are integrated in cooperative dairies, an imbalance of power can be observed which is to the detriment of the producers. Some of the cooperative dairies are faced with a distinct dilemma between their duties of loyalty within the cooperative and the challenges of a liberalised market, especially so since the phasing-out of the European milk quota scheme. The exemption provisions under competition law which have been created by the legislator to facilitate the establishment of regional milk producers associations can strengthen the producers' negotiating position with the dairies. However, the producers have so far made rare use of their scope for action. Due to the current practice of long-term milk supply contracts and the high level of transparency of milk prices and milk quantities, there has been little competition for raw milk among the dairies. This extensive exchange of information can be problematic not only from a competition law perspective; current findings show that not the milk producers but above all those market participants which already have a stronger market position have benefited from this. Calls from various market participants for nationwide price and quantity agreements as well as for cartels across all market levels with the aim to bypass the European Union's liberalisation course for the milk markets are viewed with criticism. These initiatives are neither compatible with German nor with European competition law. Moreover, as the market investigations also show, neither are they enforceable in the market place. In its business relations with the dairies the retail sector is strategically considerably better positioned because the dairies have few alternatives to sell their products. However, there are distinct differences between the individual negotiating positions, which depend among other factors on the general market situation (relation between supply and demand) and the product portfolio of the individual dairy. The high market transparency already makes it easier for the retail trade to take advantage of its negotiating position with the dairies. On the other hand, there has been no concrete evidence so far of anticompetitive conduct by the retail trade: For example, there are no substantiated indications that the retail companies have not passed on to the consumer the price advantages achieved in their negotiations with the dairies.

3. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies

3.1 ICN

106. The Bundeskartellamt continued to actively participate in the working groups and conferences of the International Competition Network (ICN). The Bundeskartellamt co-chairs the ICN Unilateral Conduct Working Group together with the US Federal Trade Commission. At the 9th ICN Annual Conference in Istanbul, Turkey, the Working Group presented reports on refusal to deal with rivals, including margin

squeeze and refusal to provide access to essential facilities. The Working Group also held two teleseminars in November 2009 and March 2010 on the topics of “excessive pricing” and “remedies” in unilateral conduct. The teleseminars were well received with more than 150 participants dialing in.

3.2 ECN/ECA

107. In April 2009 the European Commission issued a report and an accompanying Staff Working paper on the functioning of Regulation 1/2003. The success of the European Competition Network (ECN) as a forum to enforce the EU’s competition rules, whilst ensuring their consistent and coherent application through a system of mutual information and exchange of data, is described in the report. By the end of June 2010 a total of 1150 cases had been posted on the joint intranet of the competition authorities. The Bundeskartellamt itself notified 127 of its own cases. Use has also been made of the competences on the exchange of information and official assistance. Since the entering into force of Regulation 1/2003 on 1 May 2004, the Bundeskartellamt has exchanged confidential information with other competition authorities in the ECN on the basis of Article 12 of Regulation 1/2003 on nearly 100 occasions and has been involved in 26 proceedings conducted under Art. 22 of Regulation 1/2003.

108. The Bundeskartellamt actively participated in almost all of the Advisory Committees dealing with the Commission’s antitrust cases. It also attended several ECN Working Groups (Cooperation Issues, Cartels and Sanctions, Competition Chief Economists, Vertical Restraints and Horizontal Agreements). The Working Group on Cooperation Issues and Due Process, being the most comprehensive regarding the interface of European and national competition law, has been chaired by Germany since 2004. The revision of the Vertical Block Exemptions together with the respective Guidelines have been on the forefront of the political agenda. Also revised regulations and guidelines for block exemptions in the motor vehicle and insurance sector have been introduced. Other major topics have been the Commission’s Report on the State of Convergence of the ECN Model Leniency Programme and the introduction of the ECN Brief as the official newsletter.

109. Within the forum of the European Competition Authorities (ECA), which was established in April 2001 and comprises the competition authorities of the states of the European Economic Area, the European Commission and the EFTA supervisory authority, the annual meeting of the heads of the authorities took place in June 2010 in Vienna. This meeting dealt, inter alia, with the issue of the role of competition advocacy in the daily work of competition authorities as well as with the special treatment of sectoral industries in competition law and the need for cooperation between competition authorities of EU Member States and non-EU competition authorities. The main topics and goals of the ECA’s future work were discussed.

3.3 Annual Meeting of the Working Group on Competition Law

110. On 24 September 2009, at the invitation of the Bundeskartellamt, the Working Group on Competition Law met in Bonn to discuss the topic Market Dominance and Merger Control. The Working Group meets once a year to discuss fundamental issues of competition policy. Among the participants are, primarily, university professors from economic and legal faculties as well as judges from the competition law chambers of the Düsseldorf Higher Regional Court and the German Federal Court of Justice.

111. One area of focus of the conference was to appraise practice in merger control based on the dominance test as provided for in the ARC and the so-called SIEC test (significant impediment of effective competition) under the European Merger Control Regulation. At the same time the consequential effects of a system change were critically analysed.

4. Resources of Competition Authorities

Annual budget (in EUR and USD)

Budget 2010	Change over 2009
EUR 24.4 million	+ 2.7 million
USD ² 29.9 million	+ 3.3 million

Number of employees

	number 2010*	Change over 2009
Economists	44	- 2
Lawyers	78	+ 5
Other experts	7	+ / - 0
Support staff	158	+ 7
Total	287	+10

Updated: 30 June 2010

*Full-time equivalent.

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² European Central Bank: Exchange rate as of 30 June 2010: 1 EUR = 1.2271 USD
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