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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN GERMANY

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1. Executive Summary

1. In the period covered by this report the Bundeskartellamt's enforcement activities attracted great public attention. This is due to an increase in cartel prosecution as well as landmark merger control decisions. The Bundeskartellamt also continued to play an important role in the debate on how to deal appropriately with the digital economy.

1.1 *Agreements / abusive practices by dominant companies*

2. Cartel prosecution remained a key area for the Bundeskartellamt. Over the past decade, the Bundeskartellamt has become more effective in cartel prosecution, and this trend has continued. Planned legislation includes a reform of the current provisions dealing with the liability of companies for administrative fines which will further enhance effectiveness. In 2014 the Bundeskartellamt imposed fines amounting to around 1.1 billion euros, more than ever before. Imposing fines is certainly not the primary objective of cartel prosecution, but the amount of fines show the great emphasis the Bundeskartellamt places on cartel prosecution. The Bundeskartellamt uncovers and punishes a cartel primarily to ensure that consumers have the largest possible choice of products and services at fair prices and to strengthen the innovative power of the companies. Several new cartel investigations have been opened in 2015. Nevertheless, the total number of fines in 2015 will probably be significantly lower than in 2014 which was an exceptional year in terms of fines imposed as the Bundeskartellamt concluded a number of major and lengthy investigations.

3. The FCO continued to work on its ongoing cases of abuse of dominance. For example, having already ordered the water supplier Berliner Wasserbetriebe to lower its water prices, the Bundeskartellamt pursued the proceedings against the water suppliers in Wuppertal and Bremen. Furthermore, the Bundeskartellamt investigated abuse practices of municipalities in the award of rights of way for electricity and gas networks leading to a new, non-discriminatory award procedure. In June 2015 the Bundeskartellamt concluded its abuse proceedings against Deutsche Post AG. The Bundeskartellamt accuses the company of having abused its dominant position in the provision of postal services and by doing so having hindered its competitors.¹

1.2 *Digital Economy – Task Force for online platforms*

4. The Bundeskartellamt laid a focus on competition issues concerning e-commerce such as best price clauses and selective distribution systems. The digital economy raises new questions in terms of competition law. At the same time, due to its rapidly increasing importance, the internet economy has long since become a feature of the Bundeskartellamt's daily case work. Last year the contractual framework of hotel booking platforms and the conditions established by brand manufacturers for the sale of their products over the internet played a prominent role in the Bundeskartellamt's work. The Bundeskartellamt conducted a number of proceedings concerning vertical competition restraints dealing with the relations between online and offline sales. In many cases these concerned resale price maintenance agreements or the exertion of pressure by producers on retailers.

¹ Additional information will be provided in the OECD Annual Report July 2015 – June 2016. Also see the Bundeskartellamt's press release:
http://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2015/07_07_2015_Post.htm?nn=3591568

5. In the area of online platforms the FCO has improved its competence to adequately address the multiple and complex issues that it faces in these dynamic two or multi-sided markets. To this end, it has set up a task force to deal with cases relating to online platforms. A prominent example of this work was the assessment of a merger between two important online real estate platforms in Germany.

1.3 Merger control

6. Merger projects are examined to establish whether they are likely to significantly impede effective competition. This involves an in-depth analysis of the markets affected for which a large amount of data and facts has to be obtained from the market participants. Apart from the companies directly involved, the Bundeskartellamt requests information from suppliers, competitors and customers. The data can be analysed by using different economic methods. In the past years the Bundeskartellamt has continued to expand its economic expertise in order to be able to adequately come to terms with the market reality in a rapidly changing business world.

7. In 2015-, the Bundeskartellamt prohibited the planned takeover of around 450 Kaiser's Tengelmann food retail outlets by EDEKA. In the Bundeskartellamt's view the takeover would have greatly limited choice for local consumers and the possibilities for them to switch to another retailer. The elimination of an important competitor would also have given the remaining competitors greater leeway for raising prices in future. The project would have also caused competition problems in the procurement markets. In the EDEKA/Kaiser's Tengelmann case the Bundeskartellamt carried out several data-intensive investigations. Both parties have applied for a ministerial authorisation of the planned merger by the German Minister for Economic Affairs and Energy.

8. The prohibition decision was made under the SIEC test which was introduced into the German Act against Restraints of Competition (German Competition Act, GWB) in 2013. The merger control proceeding was conducted with a very sharp focus of investigations on economic concepts and findings. It was advantageous in this case that the FCO had recently set up a second economic unit which is specialised in empirical analysis and complex processes of data collection and the application of quantitative tools and methods.

1.4 Sector inquiries

9. The Bundeskartellamt may conduct sector inquiries in order to gain a better insight into the competition situation in certain sectors if there are indications that competition in these markets is restricted or distorted. The aim of the inquiries is to gain extensive information about the markets concerned.

10. In 2014 the Bundeskartellamt concluded the sector inquiry "Buyer power in the food retail sector". The inquiry focused on the conditions of competition between the food retail companies on the one hand and their suppliers on the other. The results of the sector inquiry strongly indicate that the highly concentrated market structure of the food retail sector is likely to deteriorate even further. The large retail companies can make use of their structural advantages in their negotiations with brand manufacturers.² The Bundeskartellamt was able to make use of the results of this sector inquiry for its assessment of the EDEKA/Kaiser's Tengelmann merger.

² The report on the sector inquiry (German) and a summary (English) are available on the Bundeskartellamt's website:
http://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Sector%20Inquiries/Summary_Sector_Inquiry_food_retail_sector.html?nn=4143316.

11. In July 2015 the Bundeskartellamt launched a sector inquiry into submetering services. Submetering services cover the consumption-based metering and billing of heating and water costs in buildings as well as the provision of the necessary metering equipment such as heating cost distributors or water and heat meters. The aim of the sector inquiry is to obtain a profound picture of the current market situation and intensity of competition and to reveal any competition problems.

2. Changes to competition laws and policies

2.1 New guidelines

Guidance on Domestic Effects in Merger Control

12. In September 2014 the Bundeskartellamt published a new Guidance on Domestic Effects in Merger Control.³ The guidance document is designed to help companies and their advisers to assess whether the effects of a concentration in Germany are sufficient to fulfil the requirements of the domestic effects clause in Section 130 (2) GWB and trigger the obligation to notify the concentration. The Bundeskartellamt conducted a public consultation and received largely positive feedback.

Joint Guidelines on the Award of Electricity and Gas Concessions and Change of Concession Holder

13. In May 2015 the Bundesnetzagentur (Federal Network Agency) and the Bundeskartellamt published a second edition of their joint guidelines on the award of electricity and gas concessions and the change of concession holder.⁴ It takes into account amendments to the law and developments in case-law since the first edition of the guidelines five years ago. The guidelines serve as a guide to municipalities on the legally compliant implementation of competition for networks. Since the first publication of the guidelines important issues and problems which arose in practice were dealt with and clarified by the amendment of the Energy Industry Act in 2011 and case-law. The positions adopted by the Bundeskartellamt and Bundesnetzagentur in the first edition of the guidelines and in their administrative practice have been confirmed to a large extent by the Federal Court of Justice.

2.2 Organisation of the Bundeskartellamt

Market Transparency Units

14. One year after the launch of the Market Transparency Unit for Fuels on 1 December 2013 the Bundeskartellamt took positive stock of this new development. The Market Transparency Unit for Fuels reports the "real time" prices of fuel at around 14,500 petrol stations in Germany. It does not itself offer price information to interested citizens but forwards information on price changes to consumer information services. Motorists can call up the information from a number of information service providers, both online and via a mobile app.

³ The leaflet on the Guidance on Domestic Effects in Merger Control in English can be found on the website of the Bundeskartellamt: http://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Merkblaetter/Leaflet%20-%20Guidance%20document%20domestic%20effects%202014.pdf?__blob=publicationFile&v=2 .

⁴ The Joint Guidelines on the Award of Electricity and Gas Concessions and change of Concession Holder in German can be found on the website of the Bundeskartellamt: <http://www.bundeskartellamt.de/SharedDocs/Publikation/DE/Leitfaden/Leitfaden%20-%20Vergabe%20von%20Strom-%20und%20Gaskonzessionen.html?nn=3591568>.

15. The Bundeskartellamt conducted a first analysis of the data collected and summarized its findings in the report "One Year of Market Transparency Unit for Fuels (MTU Fuels): A First Stocktaking".⁵ The analysis showed that in a town a motorist can save on average up to 15 - 20 cent per liter if he drives to the cheapest petrol station in town and at the cheapest time of the day. The report has also revealed clearly identifiable pricing patterns. The striking pattern of price rises in the evenings and gradual price drops during the day could be witnessed to the same extent every day of the week. Consequently there were the same possibilities to buy cheap petrol on every day of the week.

16. After the launch of a Market Transparency Unit for Fuels, a transparency unit for electricity and gas is well under way. This transparency unit will be jointly operated with the Federal Network Agency.

2.3 Government proposals for new legislation

17. The German Federal Ministry for Economic Affairs and Energy, which is in charge of competition policy within the Federal Government, is currently drafting a proposal for the 9th amendment to the GWB. One cornerstone of the envisioned revision of the GWB is the transposition of the EU directive on antitrust damages actions into German law. Another key element of the proposal will be a reform of the current provisions providing the legal basis for the liability for administrative fines. It is also planned to evaluate the effective legal framework with a view to improve its applicability in light of current developments in the digital economy.

18. The EU directive on antitrust damages, which has to be implemented into German law by the end of 2016, will entail some amendments to the current GWB. Since German competition law already corresponds to most specifications of the directive, the need for changes will be limited to some provisions only. For example there is no need for an adjustment of German competition law with respect to one central element of the EU directive: the binding effect of final decisions of competition authorities on subsequent legal proceedings (damages actions). The current legal situation in Germany concerning the content of compensation claims also already corresponds to the provisions of the EU directive.

19. Mainly procedural rules need to be amended. For example, it will be necessary to introduce some specifications regarding the proof of damages. In particular, German legislation regarding the disclosure of evidence by leniency applicants needs to be aligned with the requirements of the EU directive. Other changes include a longer duration for limitation periods.

20. The Federal Ministry for Economic Affairs and Energy also intends to modify the current system of liability for administrative fines in order to align it closer to EU law. The current proposal intends to close existing loopholes for undertakings to circumvent a fine by means of restructuring. In this context, it is planned to clarify and extend liability to parent companies and to secure liability in all cases of restructuring, including asset deals.

⁵ The report (in German) can be found on the website of the Bundeskartellamt.
http://www.bundeskartellamt.de/SharedDocs/Publikation/DE/Berichte/Ein_Jahr_MTS-K.html?nn=3600108.

3. Enforcement of competition laws and policies

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

3.1.1 Statistics and summary of activities

21. With regard to cartel detection, the Bundeskartellamt received 86 leniency applications from July 2014 to June 2015. It conducted 15 dawn raids relating to its own proceedings and 3 inspections on behalf of the European Commission. In the period covered by the report the Bundeskartellamt imposed several fines totalling approximately EUR 611 million.

3.1.2 Description of significant cases

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

3.1.2.1 Agreements

Hardcore restrictions

Customer allocation agreements concerning services provided for heat exchangers used in power plants

23. In July 2014 the Bundeskartellamt imposed a fine of 1.89 million euros on Alstom Power Energy Recovery GmbH on account of an anticompetitive customer allocation agreement concerning services provided for the heating surfaces of regenerative heat exchangers used in power plants. Apart from Alstom Power Energy Recovery GmbH, Balcke-Dürr GmbH was also involved in the customer allocation agreement, which covered the whole of Germany.

Price-fixing on sausages

24. In July 2014 the Bundeskartellamt imposed fines totalling approx. 338 million euros on 21 sausage manufacturers as well as 33 individuals involved for concluding illegal price-fixing agreements. A number of 22 companies participated in the agreements. There was a traditional "basic consensus" among the manufacturers to inform one another regularly about demands for price increases. Accordingly, over several decades well-known sausage manufacturers had regularly met to discuss market developments and prices. In addition to the group meetings there had been actual agreements between several sausage manufacturers, in particular since 2003, to jointly implement price increases for the sale of sausage products to the retail trade. Most of the agreements were made by telephone either by reciprocal calls or organised ring-round calls.

Price fixing and bid-rigging in the mining sector

25. In August 2014 the Bundeskartellamt imposed fines totalling 17.4 million euros on five providers of specialist underground mining services on account of price-fixing agreements and bid-rigging. The companies were BeMo Tunnelling GmbH, Deutschland, Deilmann-Haniel GmbH, Feldhaus Bergbau GmbH & Co. KG, Schachtbau Nordhausen GmbH and Thyssen Schachtbau GmbH, which does not belong to the ThyssenKrupp company. The proceedings were initiated with a dawn raid in April 2013. The companies coordinated their bids for the award of service contracts to avoid any form of price competition. Incoming orders were divided up among themselves in advance. In the proceedings the Bundeskartellamt worked closely together with the public prosecutor's office since the cartels involved publicly tendered services. The public prosecutor's office is investigating the natural persons involved.

Price-fixing concerning paving stones

26. In September 2014 the Bundeskartellamt concluded its investigations in the cartel proceedings against manufacturers of concrete paving stones and imposed further fines on 14 companies and 17 individuals involved on account of price-fixing agreements. The fines amount in total to approx. 6.2 million euros. The proceedings concerned agreements on prices for concrete paving stones in the market region of North Rhine-Westphalia and the bordering districts of neighbouring federal states during the period from the end of 2006 (in part from the end of 2007) to early 2010. In total 13 companies were involved.

Price-fixing agreements of manufacturers of prefabricated garages

27. In June 2015 the Bundeskartellamt imposed fines amounting to 11 million euros on ten manufacturers of prefabricated garages for their involvement in price-fixing agreements. In total 10 companies were involved in the price-fixing agreement in southern Germany. The authority also imposed a fine on Hanse-Betonvertriebs-Union GmbH, Lauenburg on account of its participation in a bilateral price-fixing and customer allocation agreement in northern Germany. The companies involved in the south German cartel set up three different price zones for Baden-Württemberg and neighbouring regions and in setting their minimum sales prices differentiated according to sales volume and typical customer groups (private clients or architects and construction companies as commercial customers). At regular meetings they also agreed on the introduction and amount of various surcharges for toll, energy and steel costs as further price components. From 2005 to 2009 some of the manufacturers, whose key areas of supply are in the south-west of Baden-Württemberg, also held smaller follow-up meetings in order to set even higher sales prices specifically for the postcode areas 78 and 79 and to agree on a reciprocal allocation of regular customers.

Price fixing by automotive part manufacturers

28. In June 2015, on account of price fixing agreements, the Bundeskartellamt imposed fines totalling 75 million euros on five manufacturers of acoustically effective components and staff responsible which supply the automotive industry. Six companies were involved. The companies agreed on and coordinated prices in their bids for tenders and orders placed by car manufacturers. The cartel participants were generally in agreement that they would where possible not target the existing business and follow-on orders of their competitors. The companies agreed e.g. on minimum price levels, to pass on increases in raw material prices to their customers, discounts to be granted, compensation for tool costs and to include cost escalation clauses in their contracts. This was the first proceeding to be triggered by an anonymous notification to the Bundeskartellamt's electronic whistle-blowing system and concluded with fines.

Non-hardcore horizontal restrictions

Booking.com's 'best price' clauses

29. In April 2015 the Bundeskartellamt informed Booking.com Deutschland GmbH, Berlin, of its competition concerns regarding the continued use of 'best price' clauses in its contracts with hotels in Germany. This step became necessary because the hotel booking portal had continued to use its 'best price' clauses although the Bundeskartellamt's prohibition decision in the parallel proceedings against HRS had been confirmed by the Düsseldorf Higher Regional Court. Under the 'best price' clauses the hotels are obliged to always offer the hotel portal their lowest room prices, maximum room capacity and most favourable booking and cancellation conditions available on the Internet.

Verivox 'best price' clauses

30. In the context of its examination of energy price comparison websites the Bundeskartellamt discontinued its investigations against Verivox in June 2015. The authority examined data products and tariff optimisation services offered by Verivox in the energy sector. At least the current design of these offers does not raise any competition law concerns. Moreover, Verivox has removed all the 'best price' clauses (MFNs) that it had agreed with energy providers from its existing and future contracts. Verivox's decision to stop using these clauses is based on the Bundeskartellamt's decision (which has been confirmed by the Higher Regional Court) to prohibit 'best price' clauses in contracts concluded between the hotel booking portal HRS and hotels in the market for the sale of hotel rooms via hotel booking portals.

Electronic cash

31. In the past retailers in Germany have had to pay a fee of 0.3% of the value of each electronic cash card payment transaction to the bank issuing the card. The level of the fee was jointly set by the leading associations of the German banking sector. The Bundeskartellamt initiated a proceeding against this practice. In April 2014 the banking associations undertook to abandon the standard charges for retailers and to introduce a system of negotiated fees. Since 1 November 2014 electronic cash transactions in Germany are only processed on the basis of negotiated fees between retailers and banks and not between the banks and concentrators, which in the past represented a group of retailers. After cash payments, electronic cash is by far the most used means of payment in Germany. In 2013, over 2.5 billion transactions with a sales volume of 140 billion euros were processed via electronic cash. Income earned from retailer fees amounted to over 300 million euros. For retailers, an important alternative to the electronic cash system is the electronic direct debit system (ELV).

Paid access to programme platform

32. In the course of the transition from DVB-T to DVB-T2 Media Broadcast GmbH planned to establish a programme platform to market in particular the HD content of private TV channels against payment. This marketing model was submitted to the Bundeskartellamt for examination under competition law. Media Broadcast has conducted separate negotiations with the private TV channels to conclude individual agreements on the transmission of the programmes against payment. According to the Bundeskartellamt's findings, each of the broadcasting companies involved have made an independent decision on whether and under which terms they would make their programmes available for transmission by Media Broadcast. This conduct does not restrict competition.

Proceeding against pharmacists association

33. In October 2014 the Bundeskartellamt concluded its proceeding against the pharmacists association in Westphalia-Lippe (Apothekerverband Westfalen-Lippe e.V. (AVWL)) in Münster. AVWL represents the interests of around 95 per cent of the pharmacists in the Westphalia-Lippe region. The AVWL had agreed with the major health insurance funds that patients be supplied with blood glucose strips preferably via pharmacies in Westphalia-Lippe and for this purpose had concluded a clause prohibiting the health insurance funds from controlling and influencing the procurement of these strips. This restricted the sales possibilities of competitors such as direct mailing companies or medical supplies shops. As a consequence of the Bundeskartellamt's proceeding AVWL has now promised to forgo its rights under its prohibitive control and influence clause. The annual market volume of blood glucose strips in Germany is estimated at more than 600 million euros.

Cooperation in the telecommunication sector for the supply of fast broadband services

34. In November 2014 the Bundeskartellamt announced that it had no objections to the cooperation between Telekom Deutschland GmbH, Bonn, and Telefónica O2 Germany GmbH & Co. OHG, Munich

for the provision of fast broadband connections. Telefónica is one of three mobile network operators in Germany. Although to a lesser extent the company is also active in the fixed network business. Telefónica offers final customers broadband connections and markets wholesale broadband access products to providers without their own infrastructure. Deutsche Telekom has a nationwide telecommunication infrastructure from which it provides DSL telephone and broadband data services. Telekom and Telefónica have submitted to the Bundeskartellamt cooperation agreements based on which they plan to work more closely together in future in the supply of fast broadband access. Telefónica is dependent on the cooperation to be able to offer its customers a faster broadband connection. From the cooperation Telekom expects to be able to carry out broadband expansion with faster access in areas which are already connected within a shorter time period. The Bundeskartellamt has decided not to take any action against the cooperation (decision under § 32 c of the GWB) as the cooperation is not expected to impede infrastructure competition between the parties concerned or with third companies since Telefónica will not have its own fixed network infrastructure in the future.

Vertical restraints

adidas

35. In July 2014 the Bundeskartellamt closed its proceedings against adidas AG (adidas) after the company amended its conditions for online sales in such a way that it now allows its authorized retailers not only to operate their own online shops but also to operate shops at online market places. Adidas also clarified that all authorized retailers are free to use adidas brand related terms as search words for search engine advertising such as Google AdWords.

36. The Bundeskartellamt had initiated proceedings against adidas after it had received numerous complaints by sports retailers. Adidas operates a selective distribution system which only allows authorised retailers to sell adidas products to consumers. The conditions for online sales, which were introduced in 2012, included a far-reaching prohibition for retailers to sell via the large online marketplaces eBay and Amazon Marketplace, as well as other platforms. Manufacturers can select their distributors according to certain quality requirements. However, under both European and German competition law, manufacturers are prohibited from largely eliminating a principal distribution channel such as the web. This is particularly important for small and medium-sized sports retailers who want to expand their customer base.

Resale price maintenance imposed by mattress manufacturers

37. In August 2014 the Bundeskartellamt fined Recticel Schlafkomfort GmbH 8.2 million euros on account of imposing resale price maintenance on retailers selling its products. From July 2005 to December 2009 representatives of Recticel agreed with its retailers that they should not offer certain strategic "Schlaraffia" products below the sales prices set by the manufacturer.

38. In February 2015 the Bundeskartellamt fined Metzeler Schaum GmbH 3.38 million euros for imposing resale price maintenance on retailers selling its products. From early 2007 to July 2011 representatives of Metzeler had repeatedly agreed with the company's retailers that they should generally offer certain mattresses in their brick-and-mortar stores and online at the sales prices set by the manufacturer. The proceedings were initiated in response to complaints within the market. In August 2011 the Bundeskartellamt conducted searches at several companies in the sector.

Resale price maintenance in the sale of portable navigation devices

39. In May 2015 the Bundeskartellamt imposed a fine of 300,000 euros on United Navigation GmbH, Ostfildern, for enforcing resale price maintenance on retailers selling its products. From July 2009 to May 2014 representatives of the company agreed with several retailers that the latter would not sell

portable navigation devices produced by United Navigation below certain end customer prices. Individual price agreements had already been concluded in 2007 for the navigation devices sold under the brand names "Becker" and "Falk". United Navigation monitored the prices of online retailers in particular. As soon as a retailer dropped its sales price below a certain level, it was asked to maintain the prescribed price level. In other cases price increases were achieved either under the threat of refusal to supply or of legal action because of the unauthorised use of copyright material or by granting advantages in the form of bonuses for raising rises.

Resale price maintenance in the food retail sector

40. In June 2015 the Bundeskartellamt concluded most of its cartel proceedings against manufacturers and retailers in the food sector for illegally maintaining the retail prices of well-known brand products in the following categories: confectionery, coffee, pet food, beer and body care products. In these proceedings the authority has so far imposed fines totalling approx. 151.6 million euros on seven retailers and four brand manufacturers. The so-called "vertical case" proceedings began with dawn raids at 15 sites in January 2010 on account of information gained in horizontal cartel proceedings involving the product categories coffee and confectionery. On the retailer side fines have been imposed so far in the vertical case on 12 companies for numerous agreements, differing in the numbers of manufacturers and product categories. On the brand manufacturers' side the four companies received a fine. The illegal practices of resale price maintenance included influencing the setting of shop prices by the exertion of pressure by one of the contracting parties or granting monetary incentives as well as the coordination of retailer prices under the moderation of a manufacturer.

Radius clauses

41. In March 2015 the Bundeskartellamt prohibited the operator of Wertheim Village Factory Outlet Center, VR Franconia GmbH, from using radius clauses in its lease contracts with brand product manufacturers if these extend beyond a 50 km air radius and a term of five years. Franconia has forbidden brand product manufacturers in its factory outlet center in Wertheim from opening up shops in another factory outlet center or individual outlets within a radius of 150 kilometres of Wertheim. In the Bundeskartellamt's view the non-compete clause as applied so far is neither functionally necessary for implementing the lease contracts nor proportionate to achieving the purpose of the contracts as claimed by Franconia. Its chief aim, rather, is to restrict competition between Wertheim Factory Outlet Center and its current and potential competitors by curtailing the freedom of action of its tenants.

3.1.2.2 Abuse of a dominant position

Concessions for gas networks in Berlin

42. In July 2014 the Bundeskartellamt initiated proceedings to examine the award of concessions for gas networks in Berlin following a complaint filed by GASAG Berliner Gaswerke AG and NBB Netzgesellschaft Berlin-Brandenburg. The Bundeskartellamt asked the competent authority of the State of Berlin to provide it with the relevant documents e.g. the offers submitted by bidders and details on how the department evaluates bids. It is currently examining whether the evaluation of the bids and the selection decision made in the award of concessions for the Berlin gas network violate the prohibition of abusive practices under competition law. Already in 2012, upon a request by the competent senate department, the Bundeskartellamt had been consulted on the selection procedure for assigning rights of way for the operation of gas networks. The Bundeskartellamt was not involved in the evaluation of the bids for concessions and the current award decision which were carried out solely by the competent Berlin senate department. In the same case a legal dispute between an unsuccessful bidder and the State of Berlin is

pending at the civil courts. The Decision Division has therefore suspended the proceeding for the time being.

Abusive practices of a municipality in the award of rights of way for electricity and gas networks

43. In a decision issued in January 2015 the Bundeskartellamt established that the municipality of Titisee-Neustadt acted abusively in awarding rights of way for electricity and gas networks. The municipality was ordered to carry out a new, non-discriminatory award procedure. According to the case law of the Federal Court of Justice, municipalities act as entrepreneurs in the award of rights of way and, as the sole owners of these rights, have a dominant position in the market. A precondition for the operation of electricity and gas networks is being granted rights of way. These rights must be re-awarded every 20 years. In the current re-awarding procedures of the municipalities a trend towards remunicipalisation can be observed. In individual cases municipalities have tried to give their own utilities preference in the award decision. However, the legal criteria which have to be complied with in the award of new contracts rule out such preferential treatment. In the Bundeskartellamt's view the municipality of Titisee-Neustadt abused its dominant position by carrying out a discriminatory selection procedure, giving preference to one specific bidder without any objective justification, applying inadmissible and unlawful selection criteria and violating the principle of secret competition and the prohibition to agree or grant other benefits than those admissible under the German Ordinance on Concession Fees for Electricity and Gas (KAV).

Abusive practice by SodaStream

44. In January 2015 the Bundeskartellamt imposed a fine of 225,000 euros against SodaStream GmbH on account of abusive practices. Due to the dominant position held by SodaStream (formerly Soda Club) other companies must also be given the possibility to refill the CO2 cartridges of the soda makers sold by SodaStream. The Bundeskartellamt's decision to this effect, which was ultimately confirmed by the Federal Court of Justice, had already been issued in 2006. However, the company's warning and safety instructions as well as disclaimers of warranties still gave customers and business partners the impression that SodaStream was exclusively entitled to refill the cartridges. SodaStream cooperated with the Bundeskartellamt in the proceedings. In a binding commitment the company has undertaken to correct the texts objected to by the authority. Furthermore, during the next three years SodaStream will attach a label to its CO2 cartridges stating that they can also be refilled by other companies that comply with the legal provisions.

Deutsche Post AG

45. In July 2015 the Bundeskartellamt concluded its abuse proceedings against Deutsche Post AG (DPAG). The Bundeskartellamt accused the company of having abused its dominant position in the provision of postal services and by doing so of having hindered its competitors. DPAG abandoned the measures objected to.⁶

46. With a market share of well above 80%, DPAG continues to hold a dominant position in the market for licensed postal services despite the liberalisation of the postal markets. As a dominant postal service provider DPAG is obliged to grant competitors access to its network for the provision of parts of their services (partial service access). If a competitor wishes to make use of this right, he collects the letters at his customers, prepares them for mailing (i.e. franks, numbers and presorts them) and delivers them to

⁶ Additional information will be provided in the OECD Annual Report July 2015 – June 2016. Also see the Bundeskartellamt's press release: http://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2015/07_07_2015_Post.htm?nn=3591568

one of DPAG's mailing centres from where they are onward delivered by DPAG. DPAG charges a fee for this service.

47. The Bundeskartellamt ascertained that DPAG agreed on letter prices with four large volume mailers that were below the prices a competitor has to pay in order to gain access to the delivery network of DPAG. The agreements were implemented in the form of so-called "target price agreements". By offering these prices DPAG engaged in a so-called margin squeeze. This margin squeeze hindered DPAG's competitors because they were no longer able to make a competitive offer to the large customers in question.

Food retail sector

48. In July 2014 the Bundeskartellamt issued a decision stating that the demands made by EDEKA Zentrale AG & Co. KG on suppliers after its takeover of the Plus stores in 2009 ("wedding rebates") were abusive. By a combination of demands made with retroactive effect, "cherry picking" of individual preferential conditions granted to Plus and demands for substantial bonuses without substantiation, EDEKA violated the so-called "Anzapfverbot" which prohibits retailers from inducing their suppliers to grant them benefits without any objective justification. After the Bundeskartellamt had issued its statement of objections in July 2013, EDEKA, as well as REWE Zentralfinanz eG and the Trademark Association (Markenverband) as third parties to the proceedings, provided comments on the Bundeskartellamt's preliminary assessment.

3.1.3 *Activities of the courts*

Ultimate parent company demands compensation for fines

49. The European Commission had fined a parent company for the anticompetitive conduct of two of its subsidiaries. The subsidiaries were later sold. The parent company paid a part of the fines and demanded compensation from the now independent companies. In November 2014, in light of the case-law of the European Court of Justice, the German Federal Court of Justice decided that the decision on compensation had to be made based on national law. The Federal Court of Justice referred the case back to the court of appeal for it to determine the relevant circumstances in the contested case. These included the causal contribution and fault attributable to the parties concerned as well as the additional proceeds or other advantages which they had gained from the violation of competition law.

No fine for legal successor St. Gobain Weber

50. A fine of around 12 million euros had been imposed on maxit which, according to the Bundeskartellamt's findings, had played a leading role in a dry mortar cartel. After maxit was taken over by St. Gobain Weber GmbH (St. Gobain), which had also been involved in the cartel, maxit was merged with St. Gobain only a few months after the cartel proceeding had been concluded. In December 2014 the Federal Court of Justice confirmed the view of the Düsseldorf Higher Regional Court that the requirements for fining St. Gobain as the legal successor of maxit were not fulfilled. In the court's view, this still applied even if the relevant provisions were interpreted in accordance with European law. The assets of the merged company and its legal successor were in any case not "essentially identical".

Düsseldorf Higher Regional Court and Federal Court of Justice confirm liability of the legal successor in cartel fine proceedings against coffee roasters

51. In early 2014 the Düsseldorf Higher Regional Court imposed a fine of 55 million euros on Melitta Europa GmbH & Co. KG, confirming the Bundeskartellamt's fines decision of 2009. The main focus of the proceedings was not so much the accusation itself as the question of whether Melitta was

liable to pay the fine because in the meantime restructuring measures had been carried out within the company group. Both the Düsseldorf Higher Regional Court and the Federal Court of Justice, which confirmed the higher regional court's decision in early 2015, decided that Melitta Europa GmbH & Co. KG as the legal successor of Melitta Kaffee GmbH is liable to pay the fines imposed on the latter because from an economic perspective Melitta Kaffee GmbH and Melitta Europa GmbH & Co. KG can be assumed to be identical.

Fines for clay roof tile cartel

52. With a decision in May 2015 by the Düsseldorf Higher Regional Court the proceedings against members of the clay roof tile cartel have been concluded with non-appealable fines amounting to 66 million euros. In 2006 the companies concerned had agreed to add an energy cost surcharge to their prices for clay roof tiles. Non-appealable fines totalling approx. 60.5 million euros were imposed on them by both the Bundeskartellamt and the Düsseldorf Higher Regional Court as a result. Furthermore, five companies agreed in 2006 to raise their prices for beaver tiles for which they were fined approx. 5.5 million euros. Four of the companies appealed against the authority's decision. Two of them were sold or restructured during the appeal proceedings. Their fines of 70 million euros have therefore become unenforceable by the Düsseldorf Higher Regional Court because due to the restructuring measures undertaken by the companies they were able to benefit from a loophole in the German law on fines.

Düsseldorf Higher Regional Court confirms prohibition of best price clauses

53. In January 2015 the Düsseldorf Higher Regional Court rejected the appeal of the hotel booking portal HRS against a decision of the Bundeskartellamt in which the latter had prohibited the portal from continuing to implement so-called best price clauses. Under the 'best price' clauses the hotels are obliged to always offer the hotel portal their lowest room prices, maximum room capacity and most favourable booking and cancellation conditions available on the Internet. The decision of the Düsseldorf Higher Regional Court is final. The authority is conducting further proceedings against the hotel portals Booking and Expedia which have similar clauses in their contracts with hotels.

3.2 Mergers and acquisitions

3.2.1 Statistics

54. In 2014 1,188 mergers were notified to the Bundeskartellamt. In-depth investigations were conducted in 22 cases. The Bundeskartellamt prohibited one merger and cleared nine, one of them subject to conditions and obligations. Ten cases were withdrawn during the second phase proceedings. Two in-depth investigations were still ongoing at the end of 2014.

3.2.2 Summary of significant cases

3.2.2.1 Prohibition of mergers

Prohibition of EDEKA/Tengelmann merger

55. In April 2015 the Bundeskartellamt prohibited the acquisition of around 450 Kaiser's Tengelmann outlets by EDEKA. In the authority's view the project would have considerably worsened competition conditions on a large number of highly concentrated regional markets and in municipal districts in greater Berlin, Munich, Upper Bavaria and North Rhine-Westphalia. The takeover of Kaiser's Tengelmann would have greatly limited choice for local consumers and the possibilities for them to switch to another retailer. The elimination of an important competitor would also have given the remaining competitors greater leeway for raising prices in future. The project would have also caused competition

problems in the procurement markets. If the merger had been implemented, manufacturers of branded products would have lost an important independent buyer. The commitments submitted by the parties in February 2015 were not adequate to solve the competition concerns. It would have been possible to clear the merger if the large part of Kaiser's Tengelmann's three regional networks - at least in the critical regional sales markets - had been transferred to one or two independent competitors which could have assumed Kaiser's Tengelmann's competition position. This would have also solved the problems on the procurement markets. However, EDEKA and Tengelmann were not prepared to consider the conditions for clearance formulated by the Bundeskartellamt. So the project had to be prohibited.

56. In December 2014 the Bundeskartellamt imposed an interim injunction on EDEKA and Tengelmann to prevent them from implementing parts of the planned merger before the authority has concluded its examination proceedings. Before notifying their merger project EDEKA and Tengelmann had already agreed on concrete measures on the joint purchasing and invoicing of goods, changes to some parts of the branch network, warehousing and meat processing plants and related staff measures. The interim injunction is a precautionary measure to ensure that the status quo is maintained for the time being and the merger can be examined in an open-ended procedure.

Withdrawal of notification: Medienhaus Lensing, acquisition of local editions of the newspaper dailies Westfälische Rundschau and Westdeutsche Allgemeine Zeitung

57. In July 2014 the Bundeskartellamt confirmed that the media company Medienhaus Lensing (Ruhr-Nachrichten) had withdrawn its notification of plans to acquire seven local editions of the newspaper dailies Westfälische Rundschau (WR) and Westdeutsche Allgemeine Zeitung (WAZ) in the Dortmund area from the media group Funke Mediengruppe after the Bundeskartellamt had announced that it would prohibit the acquisition. The parties had invoked the failing company defence principle. According to this a merger can be cleared in spite of the creation of a monopoly if the target company faces insolvency, its market position would fall to the acquiring company in any case in the event of its exit from the market and if there is no alternative purchaser. However, the requirements for the failing company defence were not fulfilled.

3.2.2.2 Clearance of mergers

Acquisition of 88 Karstadt department stores by SIGNA Holding

58. On 21 August 2014 the Bundeskartellamt cleared the acquisition of 88 Karstadt department stores by SIGNA Holding GmbH. The acquisition had been notified to the Bundeskartellamt on 15 August. SIGNA Holding GmbH, which is indirectly managed by the Austrian real estate dealer René Benko, acquired the Karstadt department stores from their previous owner, the financial investor Nicolas Berggruen. With the acquisition, all the Karstadt department stores are once again united under one holding. In October 2013, SIGNA had already acquired the three Karstadt premium stores in Berlin, Hamburg and Munich as well as the Karstadt sports stores. The acquisition of several Karstadt real estate properties by SIGNA was also examined and cleared by the Bundeskartellamt. Ultimately, this was merely a change of investor. From a competition point of view, the market positions of the individual Karstadt department stores were not affected by this transaction at all.

Acquisition of the regional daily Münstersche Zeitung by the publishing house Aschendorff Verlag - failing firm defense

59. In September 2014 the Bundeskartellamt cleared plans by the Münster-based publishing house Aschendorff Verlag (which publishes Westfälische Nachrichten) to acquire the regional daily Münstersche Zeitung. The daily is sold by the Dortmund-based publishing house Medienhaus Lensing (which also

publishes the daily Ruhr-Nachrichten). Münstersche Zeitung includes the local newspaper editions printed in Münster, Steinfurt and Greven. Even though with the merger Aschendorff gains, or comes close to, a monopolistic position on the reader and advertising markets affected, the merger could be cleared due to the failing firm defense. Under the failing firm defense, a merger can be cleared in spite of the creation of a monopoly if the target company faces insolvency on account of its economic difficulties, its market position would then fall to the acquiring company in any case, and if there is no alternative purchaser. The Bundeskartellamt was able to verify that the conditions for a failing firm defense were met in this case.

Acquisition of four waste management sites belonging to the Sita group by Remondis

60. In September 2014 the Bundeskartellamt cleared the acquisition by Remondis of four waste management sites belonging to the Sita group. The merger project affected various markets for the management of domestic and industrial waste. Remondis originally intended to acquire seven sites from Sita. However, in the Bundeskartellamt's view this would have considerably restricted competition in the market for the collection and transport of residual and biological waste in southern Baden-Württemberg. Apart from Remondis' high market shares in this area, the decisive factor in the critical assessment of Remondis' original plans was that with the acquisition the company would further expand its already superior network of locations in the south-west region of the market. There was also no substantial competitive tendering in the region. Taking into account these concerns Remondis modified its project accordingly.

Acquisition by Continental AG of Veyance Technologies Inc.

61. In September 2014 the Bundeskartellamt cleared the acquisition of Veyance Technologies, Inc., Fairlawn, Ohio/USA, by Continental AG. Both companies are component suppliers to the automotive industry. The merger project primarily affected the EEA-wide market for air springs for heavy-duty utility vehicles. These are sold to manufacturers of trucks, trailers and axles. In spite of Continental's high market shares and the reduction of the number of major suppliers in this market from four to three, the Bundeskartellamt found that the merger posed no significant competition problems. According to its investigations Veyance, which is the smallest of the four major suppliers, only plays a minor role in this market. An analysis of the customers' purchasing procedures also showed that the parties to the merger seldom compete with one another in calls for tender issued by motor vehicle manufacturers. Continental's closest competitors are in fact Vibracoustic and Firestone rather than Veyance. Competitive pressure is also exerted by smaller suppliers. The Bundeskartellamt also examined the markets for the supply of hoses/hose assemblies for the automotive industry as Veyance holds a strong position in the market for the supply of certain types of hose. It was found that the project did not raise any significant concerns in these markets either. The same applies to the markets for automotive drive belts, industrial drive belts and conveyor belts.

Acquisition by EWE AG of a majority interest in VNG

62. In October 2014 the Bundeskartellamt cleared the acquisition of a further 15.79% of the shares in VNG AG, Leipzig, by EWE AG, Oldenburg. EWE AG acquired the shares from Wintershall Holding GmbH, Kassel. EWE AG will now hold a total of 63.69% of the shares in VNG and gain sole control of the company under merger control law. EWE AG is an energy supplier active in the supply of electricity, gas and water mainly in the Ems/Weser/Elbe region, in east Brandenburg and on Rügen Island. It is the largest German gas distribution network operator with the highest number of household customers. In 2013 EWE AG's sales revenue was about 8.9 billion euros, of which more than 90% was achieved in Germany. VNG is a gas transmission company which is active throughout the new German federal states. Its activities focus mainly on the import, trade, transport and storage of natural gas. Via its subsidiary ONTRAS the company operates the gas transmission network in the east German federal states which

covers more than 7,200 kilometers. VNG is also active in the production of natural gas in Norway, Denmark as well as in five other European countries. In 2013 VNG's sales revenue amounted to approx. 11 billion euros, of which more than 80% was accounted for by sales in Germany.

63. The merger project could be cleared due to the positive development of competition in the gas sector. The geographic wholesale market for natural gas is defined as a national market; its definition will no longer be based on the network or market area. This also applies to the downstream market for the supply of gas to regional and local distributors, in particular municipal utilities. The market for the supply of gas to industrial customers will also no longer be defined on the basis of the network or market area, but as a national market. The geographic market for the supply of gas to basic supply household customers will still be defined on the basis of the network. Under this definition each basic supplier has a monopoly position in its region.

Joint venture between Bundesdruckerei GmbH and Giesecke & Devrient GmbH

64. Following an in-depth examination the Bundeskartellamt cleared the establishment of a joint venture for the production of foreign identity documents between Giesecke & Devrient GmbH, Munich (G&D) and Bundesdruckerei GmbH, Berlin in October 2014. G&D is an international technology group focusing on banknote printing, mobile security and secure ID documents (government solutions). G&D's sales revenue in 2013 amounted to about 1.75 billion euros of which 90% was achieved abroad. Bundesdruckerei, which since 2009 has again been wholly owned by the state, produces documents and devices for secure identification and offers related services. In 2013 its worldwide sales revenue amounted to approx. 398 million euros of which more than 90 % was accounted for by sales in Germany. G&D will take over 60% and Bundesdruckerei 40 % of the shares in the new joint venture. G&D will have sole control of the company under merger control law. The joint venture will respond to invitations to tender issued by foreign public contracting authorities for ID documents, driving licenses and health insurance cards. The project could ultimately be cleared although the companies involved have a strong market position in Germany. For security reasons, in Germany all contracts relating to passports, identity cards and electronic residence permits are awarded by the Federal Ministry of the Interior to Bundesdruckerei without a tender procedure. This practice of awarding contracts is not likely to change in the short and medium term. The establishment of the joint venture is thus not expected to significantly impede effective competition.

Acquisition by J. Bunting Beteiligungs AG of Jibi handel GmbH & Co.

65. In October 2014 the Bundeskartellamt cleared the complete acquisition of Jibi Handel GmbH & Co. by J. Bunting Beteiligungs AG in the first phase of merger control. With around 400 outlets (including independent retailers) Bunting is predominantly active in the north west of Germany. The 88 Jibi outlets acquired are located within a radius of approx. 150 kilometers of Jibi's headquarters in Bielefeld. In the past Jibi was a member of a purchasing cooperation with Bunting. EDEKA is by far the leading food retailer in nearly all the regional markets affected by the acquisition. The expansion of Bunting's market position is therefore likely to stimulate competition in these markets.

Merger between Applied Materials Inc. and Tokyo Electron Ltd.

66. In November 2014 the Bundeskartellamt cleared the proposed merger between Tokyo Electron Limited, Tokyo, Japan and Applied Materials, Inc., Santa Clara, USA without conditions and obligations. The parties to the merger develop and produce equipment for the manufacture of semiconductors (chips). This includes many different and very sophisticated types of equipment, each of which covers a specific stage in the manufacture of semiconductors. If all the types of equipment produced are taken together, Applied Materials is the number one manufacturer in this sector and Tokyo Electron the number four. In a

one-year intensive investigation the Bundeskartellamt analysed whether the proposed merger of the two parties would have anticompetitive effects. Almost forty individual markets had to be examined in depth. Furthermore, the Bundeskartellamt investigated the extent to which the proposed merger is likely to affect innovation markets. The results showed that neither the competition in the forty individual markets nor in the innovative market would be significantly impeded. One reason is that some of the customers for the equipment are large international companies with huge buyer power which means that in negotiations with these companies the parties to the merger cannot make full use of their strong market positions. The project could thus ultimately be cleared. However, the parties have withdrawn their merger plans due to concerns expressed by the US Department of Justice.

Acquisition of Hochstift hospital in Worms by Klinikum Worms

67. In November 2014 the Bundeskartellamt cleared plans by Klinikum Worms to acquire the Hochstift hospital in Worms which is part of the Agaplesion group. With 555 beds the municipal Klinikum Worms is the largest hospital in the Rhine-Hesse-Nahe region, which is south of Mainz. It is a specialist care hospital with nine departments, a medical care centre and additional specialised centres. Hochstift in Worms is a primary care hospital with 141 beds and has two main departments and two specialist departments. The hospital belongs to the Agaplesion group via the Protestant hospital operator Hessischer Diakonieverein. The focus of merger control in the hospital sector lies in the examination of possible options for patients to choose from after the merger. The minimal increase in Klinikum Worms' market share resulting from its acquisition of Hochstift is not expected to significantly impede effective competition and is definitely not expected to create a dominant position.

Acquisition of Klinikum Tettang by Klinikum Friedrichshafen

68. In November 2014 the Bundeskartellamt cleared plans by Klinikum Friedrichshafen to acquire Klinikum Tettang. With 370 beds the municipal clinic in Friedrichshafen is the largest hospital in the Bodensee (Lake Constance) district. It is a specialist care hospital with 14 departments. With 140 beds the clinic in Tettang is a primary care hospital with seven specialist departments which up to now has belonged to the private Waldburg-Zeil group. On the one hand the merger leads to a powerful joint market position of the Friedrichshafen and Tettang clinics in the Friedrichshafen region. On the other hand the authority's investigations have shown that with the Helios Spital in Überlingen, the Oberschwabenkliniken in Ravensburg and Asklepios Klinik in Lindau, Bavaria, there are competitors in the immediate vicinity which can considerably influence patient behavior in the western and eastern parts of the market area. The acquisition is therefore unlikely to significantly impede competition.

Partial acquisition of Diehl Defence Land Systems GmbH by Krauss-Maffei Wegmann GmbH & Co. KG

69. In March 2015 the Bundeskartellamt cleared the acquisition of a part of Diehl Defence Land Systems GmbH, Freisen, by Krauss-Maffei Wegmann GmbH & Co. KG, Munich. The business to be acquired is the track production and repair business for Diehl armoured vehicles, which was transferred to DST Defence Service Tracks GmbH, Freisen. With DST, Krauss-Maffei Wegmann acquires the only German track manufacturer for military vehicles. Krauss-Maffei Wegmann's market position in the maintenance business will be strengthened but the merger will not significantly impede effective competition in the market. There are a large number of competitors in this sector which, although mostly smaller suppliers, can successfully compete for the orders put out to tender.

Acquisition of the durum wheat business of Pfalzmühle Mannheim by GoodMills Deutschland

70. In March 2015 the Bundeskartellamt cleared plans by GoodMills Deutschland GmbH, Hamburg, to acquire the durum wheat business of Pfalzmühle Mannheim from PMG Premium Mühlen Gruppe

GmbH & Co. KG, Neuss. In the course of its merger control proceeding the Bundeskartellamt carried out extensive market investigations. The main product in the relevant product market is semolina, which is derived from the milling of durum wheat and used for the production of pasta. GoodMills Germany is one of the largest milling companies in Germany. The merger will strengthen its position as market leader in southwest Germany. Nevertheless it can be assumed that the company will still be exposed to enough competitive pressure in the future. As there are considerable overcapacities in the market for durum wheat milling products, sufficient supply alternatives will still be available to customers even after the merger. These overcapacities can also be used for competition purposes as transport costs are relatively low and the customer switching rate is already relatively high.

Acquisition of sole control of Immowelt AG by Axel Springer SE and Joint Venture between Immonet and Immowelt

71. In April 2015 the Bundeskartellamt cleared plans by Axel Springer SE, Berlin to acquire sole control of Immowelt AG, Nuremberg and the launch of a joint venture between Immowelt AG and Immonet GmbH, Hamburg. The parties concerned are the online real estate portals www.immowelt.de and www.immonet.de. The joint venture brings together the second and third largest real estate portals in Germany. Immobilien Scout GmbH, Berlin, with the real estate portal www.immobilienscout24.de will remain the market leader even after the merger. Although it reduces the number of large real estate portals in Germany, the merger was not expected to significantly impede competition. The merger may also create an opportunity to increase competition vis-a-vis the market leader.

Takeover of large parts of Getreide AG by Agravis Raiffeisen AG and Danish Agro

72. In May 2015 the Bundeskartellamt cleared the proposed takeover of large parts of the agribusiness activities and the production of seeds and feedstuffs of Getreide AG, Rendsburg, by Agravis Raiffeisen AG, Münster/Hannover, and its Danish cooperation partner Danish Agro, Karise (Denmark). Due to competition concerns expressed by the Bundeskartellamt the parties to the merger had already previously withdrawn a total of nine locations from the takeover package. The merger project provides Agravis with very powerful market positions throughout the northern half of eastern Germany. The original plans included the acquisition of more than 70 agribusiness locations of Getreide AG based in the federal states of Schleswig-Holstein, Mecklenburg-West Pomerania, Saxony-Anhalt, Brandenburg and Saxony as well as the acquisition of several production sites and Getreide AG's terminal in the port of Rostock. A turnover of around 1 billion euros was achieved at these locations. With the changes made to the original project the Bundeskartellamt has ensured that local farmers will continue to have sufficient alternatives in the sale of their field crops and the purchase of agricultural inputs such as fertilizers, plant protection products and seeds.

Acquisition of flour brands "Diamant" and "Goldpuder" by GoodMills Deutschland

73. In June 2015, after carrying out intensive market investigations, the Bundeskartellamt cleared the planned acquisition by GoodMills Deutschland of the household flour brands "Diamant" and "Goldpuder". The trademark rights, other rights and receivables from trademark licensing agreements are to be sold by PMG Premium Mühlen Gruppe. A brand sharing agreement for the "Diamant" trademark has already existed between the two companies since the 1960s so that Goodmills already sells this brand of flour in the north and east of Germany. GoodMills Deutschland will be able to further expand its market leadership in the household flour sector, especially in branded products, as a result of the merger. GoodMills' share of the national single product market of household flour will remain lower than 40 % after the merger. Furthermore there is still enough competitive pressure in this commodity market to prevent the company from gaining an uncontrolled scope of competitive action.

"Media Impact" Marketing Cooperation between Funke-Mediengruppe and Axel Springer SE

74. In June 2015 the Bundeskartellamt cleared the "Media Impact" marketing cooperation between Funke-Mediengruppe (FMG) and Axel Springer SE. The investigations have shown that although the "Bild" newspaper has a strong position in nationwide newspaper advertising, it does not hold a dominant position under competition law. Its joint marketing of advertising space with Funke-Mediengruppe does not pose a significant impediment to effective competition. One reason for this is that advertising customers have various possibilities of booking advertising space in a combination of regional dailies and of thus achieving a nationwide market coverage. Such supraregional cooperations between newspapers which are usually regionally active do not generally raise any competition concerns. In addition, the "Bild" newspaper is also exposed to strong competition from other media in neighboring markets like, for example, nationwide TV advertising. The venture is the third step of a wider transaction between Axel Springer and FMG, which in the first stage included the already approved sale to FMG by Axel Springer of the Berliner Morgenpost, Hamburger Abendblatt and other newspapers and advertising newspapers as well as of Springer's women's magazines. The second step of the transaction concerned the acquisition by FMG of all Springer's TV programme magazines, which the Bundeskartellamt cleared subject to conditions in 2014.

32323 *Activities of the courts*

Federal Court of Justice Court confirmed prohibition of a merger in the masonry units sector

75. Already in the last reporting period the Düsseldorf Higher Regional Court had confirmed the prohibition of a merger between Xella and H+H, two manufacturers of masonry units. The court had rejected the parties' appeal on points of law against the decision. In September 2014 the Federal Court of Justice rejected the parties' appeal against the denial of leave to appeal. The Federal Court of Justice emphasized that the creation or strengthening of dominant position under § 36 (1) sentence 1 (GWB) is a standard example for a significant impediment of effective competition. According to the court it was not necessary to clarify in an appeal proceeding whether or not a significant impediment of effective competition could be construed from the creation or strengthening of a dominant position, if, as in the Xella/H+H case, no circumstances had been established which could show that the merger would have pro-competitive effects. In examining whether the merger creates a dominant position based on the findings of the judges many aspects have to be considered without establishing the importance of an individual criterion.

3.3 Sector inquiries

76. In September 2014 the Bundeskartellamt published its report on the sector inquiry into buyer power in the food retail sector.⁷ The inquiry focuses on the conditions of competition between the food retail companies on the one hand and their suppliers on the other. The German food retail market is highly concentrated. Edeka, Rewe, Aldi and the Schwarz Group with its Lidl and Kaufland outlets make up approx. 85% of the market. This is reflected in the many complaints received by the Bundeskartellamt concerning the buyer power in the food retail sector. In a number of proceedings conducted by the authority the issue of buyer power has already been examined under competition law, e.g. in the Edeka / Trinkgut merger proceedings, the examination of the planned purchasing cooperation between Rewe and Wasgau and, most recently, in the abuse control proceedings against Edeka on account of its violation of the prohibition of inducing suppliers to grant benefits without any objective justification (so-called

⁷ An English summary can be found on the website of the Bundeskartellamt:
http://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Sector%20Inquiries/Summary_Sector_Inquiry_food_retail_sector.pdf?__blob=publicationFile&v=3.

"Anzapfverbot"). The issue has become the subject of intensive political debate. At the European level this has already resulted in more concrete calls for the provision of rules or commitments by the companies themselves to abide by "fair practices" in negotiations.

77. Over a period of three years the Bundeskartellamt has examined the market structures in the German food retail sector and has focused in particular on the negotiations between food retailers and brand manufacturers. The authority requested information from more than 200 manufacturers and 21 retail companies and carried out a comprehensive evaluation of the answers received. This was followed by an econometric analysis of approx. 3,000 concrete negotiations on the basis of a representative sample of 250 branded products from different product categories. The authority processed approx. 65,000 data sets including a large number of individual data.

78. The results of the sector inquiry prove that the highly concentrated market structure of the food retail sector is likely to deteriorate even further. Also the large retail companies can make use of their structural advantages in their negotiations with brand manufacturers. Consequently, the strict approach taken by the Bundeskartellamt in its case practice must be consistently pursued.

4. Cooperation in international fora

4.1 *International Competition Network (ICN)*

79. The ICN is the most important network of competition authorities worldwide. It comprises of 132 competition agencies from 119 jurisdictions. Andreas Mundt, President of the German Bundeskartellamt, has been the ICN Steering Group Chair since September 2013 and was re-elected by the Steering Group for a second term in May 2015.

80. The ICN is a virtual organisation. Its work takes place in results-based, project-orientated specialized Working Groups. The Bundeskartellamt played an active role in all Working Groups. The Working Groups organize periodic workshops on specific enforcement and policy topics. The Bundeskartellamt took part in several of these workshops, e.g. the Cartel Workshop in Taipeh, Taiwan on 1-3 October 2014 and the Merger Workshop in New Delhi, India on 1-2 December 2014. Furthermore, the Bundeskartellamt actively participated in the annual ICN Conference that was held in Sydney, Australia, on 28 April to 1 May 2015. Over 500 participants from more than 70 jurisdictions, including other representatives and stakeholders such as the business community, legal and economic professionals, international organisations and academics attended the Conference. At the Conference the past year's ICN work products were approved, inter alia a guidance document on investigative process that reflects key investigative tools and procedural fairness principles, a new chapter for the ICN Anti-Cartel Enforcement Manual on the relationship between competition agencies and public procurement bodies, a practical guide to international cooperation in mergers, a workbook chapter on tying and bundling and a report on developing an effective competition culture.

4.2 *ECN/ECA*

81. In 2014 the competition authorities of the EU continued their successful cooperation within the European Competition Network (ECN).

82. By the end of June 2015, a total of 1,958 cases were posted on the competition authorities' joint intranet, 194 of these were Bundeskartellamt cases. The competition authorities also made use of the opportunities for information exchange and official assistance within the ECN. In several cases the Bundeskartellamt exchanged confidential information with other competition authorities in accordance with Article 12 of Regulation 1/2003. Within the framework of official assistance under Article 22 of Regulation 1/2003 the Bundeskartellamt assisted other competition authorities in dawn raids and hearings

of witnesses. The Bundeskartellamt assisted for example the Austrian Competition Authority in recovering electronic evidence. In the period July 2014 to June 2015, under Article 11(3) of Regulation 1/2003, the European Commission was informed about 114 new proceedings initiated by the national competition authorities (NCAs), 12 of which were Bundeskartellamt cases.

83. The Bundeskartellamt is among those competition authorities which participate regularly and actively in the Advisory Committees on competition law proceedings and merger control cases of the Commission in Brussels. An essential part of the ECN's joint work takes place in the various ECN Working Groups (Cooperation Issues, Cartels, Fines, Vertical Issues, Competition Chief Economists, Forensic IT and Merger Working Group). The Working Group on Cooperation Issues and Due Process, of which Germany has been one of the co-chairs since 2004, is currently dealing with the further harmonization of the EU Member States' national procedural frameworks for implementing the EU antitrust rules. Other horizontal ECN Working Groups, in particular the Cartels and Fines Working Groups, are dealing with similar issues within their remit.

84. Furthermore, the Bundeskartellamt plays an active role in all the ECN sectoral subgroups in which an exchange of practical experience takes place. Currently the ECN sectoral subgroups dealing with the food sector and the banking sector are particularly active. Within the Sectoral Subgroup Food, the Bundeskartellamt reported on the final results of its sector inquiry "Buyer power in the food retail sector", which it published in September 2014. Within the Sectoral Subgroup Banking and Payments, the Bundeskartellamt reported on the stage of the proceedings in its Sofort AG case. It announced that a statement of objections is being prepared and will be sent to the involved parties in due time. After the regulation on interchange fees for card-based payment transactions entered into force on 29 April 2015, Germany started a legislative procedure to transpose the regulation into national law.

85. Last year the Bundeskartellamt again contributed to the ECN Brief, the official ECN newsletter published since 2010, informing the interested public (e.g. lawyers and companies) about the ECN's activities and decisions made by the NCAs.⁸

86. This year the Annual Directors General meeting of the ECA forum (European Competition Authorities) took place in Bergen (Norway). The issues discussed at the meeting included the Competition Authorities' use of and experience with settlement procedures, illegal bid rigging and the need for the independence of the competition authorities.

4.3 Annual Meeting of the Working Group on Competition Law

87. On 2 October 2014 the Working Group on Competition Law met in Bonn at the invitation of the Bundeskartellamt. About 100 experts met to discuss the role of competition and competition law in the context of state entrepreneurial activities. The Working Group on Competition Law meets once a year to discuss current issues of competition policy. The 2014 meeting was again attended by many university professors from law and economics faculties, high-ranking representatives of national and European competition authorities and ministries, as well as judges from the cartel divisions of the Düsseldorf Higher Regional Court and the Federal Court of Justice.⁹

⁸ A link to the ECN Brief can be found on the website of the Bundeskartellamt: http://www.bundeskartellamt.de/SharedDocs/Meldung/DE/AktuelleMeldungen/2014/27_10_2014_ECN%20Brief.html.

⁹ The working paper which formed the basis for the discussion and the individual statements of the conference participants in German can be found on the Bundeskartellamt's website:

88. On 1 October 2015 the Working Group discussed and exchanged views on the theme "Internet platforms in the digital economy: competition law, privacy and consumer protection."

4.4 *International Conference on Competition*

89. The Bundeskartellamt's 17th International Conference on Competition (ICC) took place in Berlin on 25 - 27 March 2015. The ICC has been held every second year since 1982. On this occasion the conference brings together heads of competition authorities, antitrust lawyers, academics, politicians, prominent representatives of internationally active companies and other high-ranking participants, who discuss current and internationally relevant issues of competition policy and competition law. Above all expectations around 400 participants from more than 50 countries attended this year's conference.

90. On the first official day of the conference, speeches were given by, amongst others, Rainer Sontowski, State Secretary at the Federal Ministry for Economic Affairs and Energy, Margrethe Vestager, European Commissioner for Competition, and Timotheus Höttges, Chief Executive Officer of Deutsche Telekom AG. In four panel discussions heads of competition authorities, antitrust lawyers, academics, politicians, representatives of internationally active companies and other high-ranking participants examined current issues of international competition law. In the first panel discussion, Edith Ramirez, Chairwoman of the US Federal Trade Commission, Dr. Mathias Döpfner, Chairman and Chief Executive Officer of Axel Springer SE, Kent Walker, Senior Vice President & General Counsel at Google Inc., and Alex Chisholm, Chief Executive of the UK Competition and Markets Authority, debated the issue of "Big data, media and competition - new rules for the digital economy?". The second panel discussion examined the current trend towards more convergence in the international application of merger control. The third panel discussion took a close look at the role of state-owned enterprises between state and economy and the challenges competition authorities face when dealing with these enterprises. The fourth panel discussed the design of effective procedures and sanctions in cartel prosecution, addressing the issue of private antitrust enforcement through damages actions.

4.5 *Franco-German Competition Day*

91. In October 2014 the 6th Franco-German Competition Day was held in Bonn at the invitation of the Bundeskartellamt. The Franco-German Competition Day is a biennial bilateral conference which is hosted in turn by the French competition authority, Autorité de la Concurrence, and the Bundeskartellamt. The first meeting was held in Paris in 2004. The Competition Day provides a forum for its participants to exchange information on the legal frameworks and enforcement experience in both countries. In addition, the conference aims to identify possibilities for closer cooperation between the two authorities. The topics of this year's meeting, which were addressed in two panel discussions, were "Vertical Restraints in Online Sales" and "Convergence and Consolidation in the Telecommunications Sector - Fixed Networks, Cable Networks, Mobile Communications". Among the approximately 100 conference participants were members of the French and German competition authorities, court judges, university professors, lawyers, company representatives, and representatives of trade associations. The meeting was opened by the presidents of the two competition authorities, Andreas Mundt and Bruno Lasserre.¹⁰

http://www.bundeskartellamt.de/SharedDocs/Publikation/DE/Diskussions_Hintergrundpapier/Bundeskartellamt%20-%20Der%20Staat%20als%20Unternehmer.html?nn=3590858.

¹⁰ The presentations and contributions in German and French can be found on the website of the Bundeskartellamt: http://www.bundeskartellamt.de/EN/AboutUs/Conferences/Franco-GermanCompetitionDay/german-francocompetitionday_artikel-hidden_Infos2014.html?nn=3590834.

5. Resources of the Bundeskartellamt

5.1 Annual budget

Budget 2014	Change over 2013
EUR 31.5 million	+1.4 million
USD ¹¹ 35.25 million	+ 1.57 million

5.2 Number of employees

	2015*	Change over 2014
Economists	50	0
Lawyers	87	+2
Other experts	13	0
Support staff	159	-1
Total	309	+1
Updated: 30 June 2015		

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

6. References to new reports and studies on competition policy issues

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¹¹ European Central Bank: Exchange rate as of 30 June 2015: 1 EUR = 1.1189 USD
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Jungbluth, Armin	Berücksichtigung von Compliance bei Kartellverstößen In: Neue Zeitschrift für Kartellrecht, 2015; p. 1-2.
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Mundt, Andreas	On the way to more cooperation In: International cooperation and competition enforcement, 2014; p. 25- 27.

	<p>Ten years of ECN – cooperation at its best</p> <p>In: Mundi et Europae civis, 2014; p. 503-514.</p>
<p>Stockmann, Kurt</p>	<p>Zur Reform des französischen Kartellrechts</p> <p>In: Zeitschrift für Wettbewerbsrecht, 2014; p. 341-365.</p>
<p>Temme, Eberhard</p>	<p>Krankenkassen und Kartellrecht</p> <p>In: Wettbewerb im Gesundheitswesen, 2013; p. 123-140.</p>
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