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Annual Report on Competition Policy Developments in Germany

-- 2021 --

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Germany

1. Executive summary

1.1. Digital economy

1. The digital economy remained a key focus of the German competition policy in 2021. The digital transformation has fundamentally changed many economic sectors, made completely new business models possible and led to the rapid growth of the large digital platforms. The Covid-19 crisis has further accelerated this development – online sales have experienced strong growth whilst brick-and-mortar retail has suffered closures in many areas. With the 10th amendment to the German Competition Act (GWB) in early 2021, the Bundeskartellamt gained new competences to deal with large digital companies. The new Section 19a GWB allows the authority to intervene at an early stage by prohibiting certain practices by companies of paramount significance for competition across markets, even in markets where they do not have a dominant position. Such conduct includes, e.g., the self-preferencing of a group’s own services or creating or raising barriers to market entry by processing data relevant for competition. The amendment also modernised the traditional control of abusive practices by making it even more applicable to digital business models. The Bundeskartellamt initiated new proceedings against Facebook, Amazon, Google and Apple based on Section 19a GWB shortly after the provision came into force. The authority also continued its sector inquiry into “online advertising”. The results will be published over the course of 2022.

2. Germany played an active role in developing the European legislative proposal for the Digital Markets Act.¹ The DMA aims to ensure fair and contestable digital markets and sets out a list of obligations for particularly large online platforms offering key platform services which serve business customers as a gateway to consumers (so-called gatekeepers). There are some similarities between the DMA and Section 19a GWB since both apply to large digital companies and both cover certain practices. There are, however, also differences e.g. with regard to the definition of the companies that are addressed by the respective provisions. In addition, due to its open wording Section 19a GWB can be applied more flexibly to other or new practices whereas the DMA sets out a more specific list of rules and prohibitions; while Section 19a GWB provides for a case-by-case assessment of practices including the possibility for companies to objectively justify their conduct, the rules and prohibitions under the DMA apply immediately and directly to gatekeepers. Section 19a GWB remains applicable in Germany and supplements the DMA.

1.2. Action against anticompetitive practices

3. Cartel prosecution was another focal point of the Bundeskartellamt’s work in 2021. This included uncovering cartels, carrying out dawn raids, evaluating what is now mostly electronic evidence, hearing witnesses and assessing the facts of the cases, often followed by extensive court proceedings. Fines of around 105 million euros were imposed by the Bundeskartellamt on eleven companies and eight individuals.

¹ In late March 2022, the European Commission, the European Parliament and the Council reached a political agreement on the DMA. After entering into force, the act will be directly applicable in all EU Member States following a transitional period of six months.

1.3. Merger control

4. The Bundeskartellamt examined around 1,000 notified mergers in 2021. Eleven led to an in-depth review, including one case that was referred to the Bundeskartellamt by the European Commission. Ten second phase reviews were concluded in 2021. In one case, (Edeka/Real) clearance was only granted subject to conditions. Three cases were cleared without conditions following in-depth examinations (Rethmann/TSR; Andros/Spreewaldkonserve; Rohrdorfer/Ganser). Three notifications were withdrawn by the merging parties during the ongoing examination as a response to the Bundeskartellamt's actions (Dana/Modine, notified and withdrawn twice; TSR/Rhein Main Rohstoffe). Two other merger filings were withdrawn for other reasons. One merger (Funke Mediengruppe/Ostthüringer Zeitung) was prohibited. Four second phase proceedings were still ongoing by the end of 2021.

2. Changes to competition laws and policies

2.1. Summary of new competition law provisions and related legislation

5. The 10th amendment to the German Competition Act (GWB) entered into force in January 2021 as the “GWB Digitalisation Act”. The amendment adapted national competition law to key challenges of the digital economy. Amongst other things, the GWB Digitalisation Act introduced stricter rules for platforms of paramount significance for competition across markets and improved data access for other undertakings. The control of abuse of dominant positions was also strengthened so that restraints of competition can be tackled more effectively and more quickly (due to the amendment, it is easier for the national competition authority to take interim measures). Further to this, the GWB Digitalisation Act transposed obligations contained in EU law (implementation of the ECN+ Directive), revised merger control to focus more on cases of relevance to competition (mainly by revising the thresholds), and delivered greater legal certainty for cooperating companies.²

2.2. New guidelines, studies and reports

2.2.1. Policy-related studies of the Federal Ministry for Economic Affairs and Climate Action³

6. The Federal Ministry for Economic Affairs and Climate Action commissioned two studies on intensively discussed issues in the recent competition policy debate. The studies will be presented in the course of 2023.

7. The first study covers the consideration of sustainability issues in competition policy. Although competition and sustainability concerns converge in most cases, the Federal Ministry for Economic Affairs and Climate Action continuously assesses and revises competition law to keep up with the current enormous challenges in the field of sustainability. In particular, companies must be able to pursue sustainability goals with legal certainty within the framework of competition law. Among other things, the study is supposed to examine how to clearly define or capture sustainability and whether and to

² For a more detailed description of the provisions, please see the 2020 Annual Report on Competition Policy Developments in Germany (DAF/COMP/AR (2021)11), available [here](#).

³ Formerly, until September 2021, the Federal Ministry for Economic Affairs and Energy.

what extent the competition framework should be altered (e.g. through sustainability guidelines or even amendments of competition law).

8. The second study focuses on the issue of data access and its role in competition law. The GWB Digitalisation Act from 2021 improved data access for other undertakings (and especially for SME). Moreover, recently proposed and discussed acts at EU level (e.g. Digital Markets Act, Data Governance Act, Data Act) also contain provisions regarding data access. The study examines under which conditions and to what extent obligations to grant data access can be valuable tools in competition policy. Moreover, the study discusses the limits of the competition policy framework regarding collaborations on mutual data access. In these cases, synergy effects usually have a great impact and can provide arguments for such collaborations. However, exchanging information can easily become illegal and harm competition, thus calling for a well-balanced and clear competition framework.

2.2.2. New guidelines on the leniency programme⁴ and the setting of fines⁵

9. The Bundeskartellamt published new guidelines on its leniency programme and on the setting of fines in cartel proceedings.

10. Leniency programmes enable cartel participants to be granted immunity from or a reduction of the fine if they contribute to uncovering a cartel. These witnesses are of key importance to uncover and thus prosecute a cartel. The Bundeskartellamt's programme dates back to the year 2000 and has been regularly updated; in January 2021 it was eventually enshrined into law as part of the 10th amendment to the GWB.

11. In revising the supplementary guidelines on the setting of fines, the Bundeskartellamt has provided specific details on how the proceeding is conducted, on the exercise of its discretionary powers in determining the fine and on the amount of the reduction of the fine. In particular, the method of calculation has been adapted more closely to court practice with the result that the turnover linked to the infringement and the size of the company now serve as a basis for the amount of the fine. Also, the Bundeskartellamt can now take into account compliance measures taken by a company prior to and following the infringement as a mitigating factor. Ultimately, the amendments will create more flexibility in the individual case but no essential change in the level of fines is expected.

2.2.3. New guidelines on cooperatives⁶

12. The Bundeskartellamt published new guidelines on the conformity of cooperatives with competition law. The publication followed a public consultation on the first draft of the guidelines; the authority took account of many comments from different market participants and interested parties.

13. Cooperatives play an important role in many sectors of Germany's economy. Working together as a cooperative can enable smaller companies in particular to strengthen their position in the market and thus stimulate competition. At the same time, cooperatives and their members are market players that have to operate within the limits set by competition law, which cannot always be conclusively determined at first glance.

⁴ Guidelines on the leniency programme, updated in August 2021, available [here](#).

⁵ Guidelines on the setting of fines in cartel administrative offence proceedings, updated in October 2021, available [here](#).

⁶ Bundeskartellamt, press release of 2 November 2021, available [here](#).

14. Using practical examples, the guidelines explain the background, purpose and scope of the prohibition of anticompetitive agreements and outline the possible scope of cooperative activities. The guidelines – especially intended for small and medium-sized companies with sometimes limited access to continuous and specialised advice on competition law – refer to the relevant decisions of the Bundeskartellamt and the European Commission. They also provide useful information on new forms of digital distribution and cooperation.

2.2.4. Annual Report of the Market Transparency Unit for Fuels

15. In April 2021, the Bundeskartellamt published its sixth annual report on the work of the Market Transparency Unit for Fuels. The authority evaluated fuel prices (E5, E10 and diesel) throughout Germany for 2020 and the first months of 2021. Based on the observed pattern which fuel prices follow in the course of a day, the authority showed how motorists can save money when filling up. With the information provided by the Market Transparency Unit and a fuel prices app, consumers can take advantage of the differences in the price of petrol at different times of the day and between the various petrol stations and save money.⁷

16. The Market Transparency Unit for Fuels collects price data from over 14,750 petrol stations in Germany. The Unit does not itself offer real-time price information to interested citizens but forwards information on notified price changes to consumer information services in a very short space of time. Motorists can call up the information from a number of information service providers, both online and via mobile apps.

2.2.5. Energy Monitoring Report 2021

17. In December 2021, the Federal Network Agency for Electricity, Gas, Telecommunications, Post and Railway (Bundesnetzagentur) and the Bundeskartellamt published their joint annual monitoring report on developments in the German electricity and gas market. The data analysed in the report refer primarily to 2020 but also show developments for the first quarter of 2021 as well as more recent trends. The report states, inter alia, that there was a further decline in market concentration in conventional electricity generation. However, despite the falling level of concentration, the upcoming closures of power plants in the course of the nuclear and coal phase-out will lead to a reduction of domestic generating capacity and thereby strengthen the competitive significance of the remaining major power plant operators to cover German demand, which is manifested in the residual supply index. Furthermore, the report shows that after a decline in average electricity and gas prices due to the pandemic, prices are rising again.⁸

⁷ Due to the geopolitical situation, petrol station prices have risen sharply across Germany since March 2022. In addition to changes in crude oil prices, other market developments and upheavals at the refinery and wholesale level caused by the crisis in Ukraine in particular may influence the price level at petrol stations. Imports from Russia also play an important role for some products. However, the Bundeskartellamt has observed a decoupling of crude oil prices and petrol station prices in spring and early summer 2022. The authority has thus intensified its monitoring of the fuel prices especially in view of the upcoming tax reduction on fuel in Germany as of 1 June 2022. In addition, it has launched an inquiry into refineries and wholesalers in an attempt to create maximum transparency for the entire fuel market. No indications of a violation of competition law have so far been found.

⁸ Bundeskartellamt, press release of 1 December 2021, available [here](#).

2.3. Government proposals for new legislation

18. With regard to strongly increased energy prices, the Federal Government is planning to extend and intensify the monitoring and abuse control of the energy sector by the national and regional competition authorities, i.e. the Bundeskartellamt and the Landeskartellbehörden. To this end, the Federal Ministry for Economic Affairs and Climate Action presented a draft to amend the German Competition Act (GWB) to the German legislator. The draft focuses on the sectors electricity, natural gas, district heating and fuels (petrol and diesel).

19. Firstly, the existing framework for stricter abuse control of electricity and gas prices (Section 29 GWB) will apply for five more years until the end of 2027 and will in the future also cover the district heating sector.

20. Secondly, both the mandate and the database of the Market Transparency Unit for Fuels at the national competition authority will be broadened. In the future, the Market Transparency Unit will be able to monitor the entire fuels supply chain, from crude oil procurement, its processing in the refinery, to the wholesale and retail markets. Consequently, the Market Transparency Unit will have various investigative powers, e.g. to issue formal requests for information, examine business documents or carry out searches. Moreover, operators of public petrol stations will be required to report data on quantities to the Market Transparency Unit, in addition to the existing reporting obligation on prices.

3. Enforcement of competition laws and policies

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

3.1.1. Summary of the Bundeskartellamt's activities

21. In 2021 the Bundeskartellamt imposed fines amounting to around 105 million euros on a total of eleven companies and eight individuals. The fines were imposed on special steel producers and steel forging companies and for vertical price-fixing agreements for musical instruments, school bags and consumer electronics.

22. Nine companies informed the authority about infringements in their sector by making use of the authority's leniency programme. Further tip-offs were received from other sources.

23. The Bundeskartellamt conducted two dawn raids in 2021, strictly observing Covid-19 hygiene requirements.

3.1.2. Summary of the courts' activities

Antitrust

Facebook: Düsseldorf Higher Regional Court seeks preliminary ruling by the European Court of Justice

24. In the authority's 'Facebook' case the main proceedings continue before the Düsseldorf Higher Regional Court after the Federal Court of Justice sided with the authority in a preliminary ruling in 2020. The Düsseldorf Higher Regional Court has submitted a number of questions to the European Court of Justice. One line of questions seeks further clarification as to the competences of competition authorities to refer to the

principles of data protection law, namely the GDPR, in assessing the abusiveness of the general business terms of dominant internet platforms under Article 102 TFEU and similar provisions of national competition laws. Another line of questions concerns specific issues regarding the interpretation of the GDPR. A decision of the European Court of Justice is expected for the second half of 2022.

Booking.com: Federal Court of Justice overturns narrow price parity clauses

25. In May 2021, the Federal Court of Justice upheld a decision of the Bundeskartellamt in which the authority had required the hotel booking platform Booking.com to refrain from using “narrow” price parity clauses in its terms of business applicable to hotels listed on the platform. Those clauses prohibit hotels from undercutting prices shown on Booking.com in their direct online and offline sales. Booking.com is the leading hotel platform in Germany with market shares way above 30% so the clauses could not be exempted under the VBER. Firstly, the Federal Court of Justice rejected the Düsseldorf Higher Regional Court’s notion that the clauses did not violate Article 101 (1) TFEU because they were to be viewed as an ancillary restraint to the contracts between hotels and online booking platforms. Secondly, the Federal Court of Justice saw no objective justification for the clauses under Article 101 (3) TFEU, since any advantages associated with combating free riding did not balance out their anticompetitive effects in the form of a significant impediment to the hotels’ own online distribution alongside the platform.

Cartel prosecution

Cartel of local beermakers: Bundeskartellamt seeks Federal Court of Justice ruling

26. The Düsseldorf Higher Regional Court granted the benefit of the doubt to a participant in an alleged cartel of local beermakers from the Cologne area (‘Kölschbrauereien’). The remaining suspects settled the case with the authority. Although the decision could only be appealed on points of law, the Bundeskartellamt saw sufficient grounds to take the case to the Federal Court of Justice.

Undertaking evaded stricter punishment by failing to appear at new hearing

27. In another case referred back to the Düsseldorf Higher Regional Court by the Federal Court of Justice, the undertaking concerned dodged an imminent hike of the fine by failing to appear at the new hearing before the Düsseldorf Higher Regional Court. In this second proceeding (after the referral), the Düsseldorf Higher Regional Court threw out the appeal with the effect of concluding the case with the fines imposed by the authority. These had been substantially lower than those handed out by the Düsseldorf Higher Regional Court before the first appeal to the Federal Court of Justice. Upon a second appeal, the Federal Court of Justice held that under the relevant procedural law legal entities could not evade a reformation in peius by not appearing in court. The case was handed back to the Düsseldorf Higher Regional Court for a third proceeding.

BayWa’s official liability suit against the Bundeskartellamt

28. A member of the pesticides cartel sued the Bundeskartellamt for damages due to alleged procedural misconduct in the initial phase of the proceedings. The undertaking had accepted the authority’s findings on the cartel and the cartel proceeding was concluded with a settlement. The following suit for damages, aiming at recollecting the fine and defence costs, was thrown out in the first two instances by the Regional Court of Bonn and the

Higher Regional Court of Cologne. The plaintiff has now turned to the Federal Court of Justice seeking leave to appeal the decisions.

Follow-on cases in rail track cartel: Federal Court of Justice delivers landmark decision

29. The Federal Court of Justice decided in a follow-on case to the rail track cartel that contractual lump-sum clauses for cartel damages in supply agreements are not incompatible with the rules governing general terms and conditions. In the present case, several supply contracts between the claimant, a public transport operator, and the defendant, a supplier of railway materials, contained a 5% lump-sum clause for damages in the event of anticompetitive conduct. According to the Federal Court of Justice, such a lump-sum clause is legally valid, provided that it does not exceed the estimated damage caused in the usual course of events and that it does not preclude the defendant's right to prove that the damage is lower or non-existent. Regarding the estimated damage caused in the usual course of events, a reference to economic meta-studies on average cartel related price overcharges may be sufficient. Once the claimant has provided such proof, the burden of proof shifts to the carteliser, who then basically has to meet the same standard of proof that applies to claimants seeking compensation for the damage caused by a cartel infringement. Thus, the judgment is likely to facilitate follow-on damages litigation in the future.

3.1.3. Description of significant cases, including those with international implications

30. The list of cases described below is not an exhaustive list of merger proceedings conducted by the Bundeskartellamt in the period covered by this report, but rather focuses on cases that were subject to an in-depth investigation in second-phase proceedings.

Agreements

Online Copyright Clearance System – launch cleared⁹

31. In March 2021, the Bundeskartellamt cleared the launch of the “Online Copyright Clearance System”, a sector initiative to take action against systematic infringements of copyrights and ancillary intellectual property rights. Participants in the initiative are, on the one hand, holders of copyrights and ancillary intellectual property rights or their associations from the music, film, gaming and scientific publications sectors and, on the other hand, all the large internet access providers in Germany. The initiative aims to use an IP-address-related blocking technology that makes access to websites which by their very nature infringe copyrights more difficult. With regard to similar initiatives in the past, the Bundeskartellamt made clear that such initiatives must not result in a boycott, violating competition law. Given the project's envisaged security mechanisms and possible efficiencies, the Bundeskartellamt decided not to raise any antitrust objections at the time. It will, however, observe how the practice unfolds.

Emergency Platform for Vaccination Equipment – launch cleared¹⁰

32. The Bundeskartellamt gave the green light for the launch of the “VCI Emergency Platform for Vaccination Equipment” and the participation of full-line pharmaceutical wholesalers in it. The platform helps to better coordinate the supply of vaccination

⁹ Bundeskartellamt, press release of 11 March 2021, available [here](#).

¹⁰ Bundeskartellamt, press release of 29 March 2021, available [here](#).

equipment (syringes, cannulas, and NaCl solution) and hence to prevent any shortages in the supply of vaccination equipment to the vaccination centres. On the platform, the federal Länder and manufacturers of vaccination equipment provide information on their current situation and their capability to deliver, limited to the emergency situation. No details on the prices are disclosed.

Manufacturers and retailers of musical instruments¹¹

33. In August 2021, the Bundeskartellamt imposed fines totalling approx. 21 million euros on three manufacturers and two retailers of musical instruments and on staff responsible. The manufacturers Yamaha Music Europe GmbH, Roland Germany GmbH and Fender Musical Instruments GmbH and two local retailers were accused of resale price maintenance and the retailers also of agreeing on horizontal price-fixing in several cases.

34. To some extent Yamaha and Roland used price tracking software to monitor end consumer prices. In individual cases the manufacturers threatened the retailers with or even imposed penalties such as a suspension of supply or a worsening of terms and conditions. However, the minimum sales prices recommended for some products were not or only sporadically enforced or monitored. The retailers often did not comply with the requirements either by not implementing them or avoiding them, e.g. by bundling several products in an overall price.

35. The proceedings were initiated in April 2018 with a dawn raid following tip-offs from market participants. In setting the fine the Bundeskartellamt took into account that the cartelists had cooperated extensively with the authority in uncovering the agreements and that a settlement could be reached.

Developer and manufacturer of school backpacks and bags¹²

36. In August 2021, the Cologne-based company Fond of GmbH, which specializes in the development and manufacture of school backpacks and school bags, was fined by the Bundeskartellamt and had to pay by around 2 million euros for having restricted the pricing of such bags sold by retailers cooperating with the company. In addition, only a small number of retailers were permitted to engage in online sales. Fond of intervened if retailers deviated from its prices and rules and, except in some cases, the retailers stopped the conduct objected to.

37. The proceeding was initiated in the context of a request for official assistance by the Austrian competition authority, which had also investigated the company, and a dawn raid conduct in January 2019. In setting the fine, the Bundeskartellamt took into account that the company had cooperated extensively with the authority and that a settlement could be reached.

Audio equipment manufacturer Bose¹³

38. In December 2021, the Bundeskartellamt imposed a fine totalling around 7 million euros on high-end audio consumer electronics manufacturer and distributor Bose GmbH on account of resale price maintenance. Bose employees agreed on concerted measures for

¹¹ Bundeskartellamt, press release of 5 August 2021, available [here](#); case summary of 5 August 2021, available [here](#) (German only).

¹² Bundeskartellamt, press release of 17 August 2021, available [here](#); case summary of 1 October 2021, available [here](#) (German only).

¹³ Bundeskartellamt, press release of 2 December 2021, available [here](#).

setting sales prices with the authorised dealers and monitored these prices. Bose intervened on several occasions when dealers deviated from the recommended resale price and the dealers stopped the conduct objected to in a number of cases.

39. The proceeding was initiated in the context of a request for official assistance by the Austrian competition authority and a dawn raid conducted in March 2018. In setting the fine the Bundeskartellamt took into account that Bose had cooperated extensively with the authority and that a settlement could be reached. No fines were imposed on the dealers involved and the persons acting on behalf of Bose.

Abuses of a dominant position

New competences for the Bundeskartellamt under Section 19a GWB

40. In January 2021, the 10th amendment to the German Competition Act (GWB Digitalisation Act) came into force. A key new provision set forth in Section 19a GWB now enables the authority to intervene earlier and more effectively, in particular against the practices of large digital companies. In a two-step procedure the Bundeskartellamt can prohibit companies which are of paramount significance for competition across markets from engaging in certain anticompetitive practices. Examples of conduct which could be prohibited under the new provision include the self-preferencing of a group's own services, the envelopment of non-dominated markets by way of non-performance based anticompetitive means, such as tying or bundling strategies, or creating or raising barriers to market entry by processing data relevant for competition. Throughout 2021, the Bundeskartellamt opened new or expanded existing proceedings against Google, Amazon, Facebook and Apple based on the new provision under Section 19a GWB.

Section 19a GWB proceeding against Facebook

41. In January 2021, the Bundeskartellamt expanded the scope of its abuse proceedings against Meta based on the linkage between Oculus and the Meta network. It investigated whether Meta was an “undertaking of paramount significance for competition across markets” according to Section 19a GWB and whether the linkage of the services was to be assessed on this basis.¹⁴

Section 19a GWB proceeding against Amazon

42. In May 2021, the Bundeskartellamt initiated a proceeding against Amazon based on Section 19a GWB in order to determine whether the company is of paramount significance for competition across markets.¹⁵

¹⁴ In May 2022, the Bundeskartellamt determined that Meta (formerly Facebook) is of paramount significance for competition across markets. The toolkit for extended abuse control according to Section 19a GWB can thus be applied to Meta. Meta has announced not to appeal the decision and not to deny its status as norm addressee of the provision; Bundeskartellamt, press release of 4 May 2022, available [here](#).

¹⁵ In addition, the Bundeskartellamt is currently conducting two abuse control proceedings against Amazon: In one proceeding, the authority is examining to what extent Amazon is influencing the pricing of sellers on Amazon Marketplace by means of price control mechanisms and algorithms. A second proceeding concerns the investigation whether agreements between Amazon and brand manufacturers excluding third-party sellers from selling brand products on Amazon Marketplace infringe competition law.

Section 19a GWB proceedings against Google

43. In May 2021, the Bundeskartellamt initiated two proceedings against Google and its parent company Alphabet Inc. based on Section 19a GWB to determine whether the company is of paramount significance across markets¹⁶ and to analyse in-depth Google's data processing terms. The Bundeskartellamt is examining whether Google/Alphabet makes the use of services conditional on users agreeing to the processing of their data without giving them sufficient choice as to whether, how and for what purpose such data are processed.

44. Furthermore, the Bundeskartellamt initiated another proceeding in June 2021 to examine under competition law the Google News Showcase service. Google News Showcase is a Google service which offers the possibility to present news content from publishers in a prominent and more detailed way, by using "story panels". Google has made the service available to a number of German publishers. The story panels are integrated in the Google News app and can also be found in Google News on the desktop. Google intends to also display the panels in the general Google search results. The Bundeskartellamt is examining whether this integration is likely to constitute self-preferencing or an impediment to the services offered by competing third parties. The authority is also examining the conditions for access to Google News Showcase and whether they include unreasonable conditions to the detriment of the participating publishers and make it disproportionately difficult for them to enforce the ancillary copyright for press publishers under German law.¹⁷

Section 19a GWB proceeding against Apple

45. In June 2021, the Bundeskartellamt initiated a proceeding against Apple based on Section 19a GWB in order to determine whether the company is of paramount significance for competition across markets. Based on this first proceeding, the authority intends to assess in more detail specific practices of Apple in a possible further proceeding. In this regard, the authority has received various complaints relating to potentially anticompetitive practices, inter alia a complaint from the advertising and media industry against Apple restricting user tracking, a complaint against the exclusive pre-installation of the company's own applications as potential self-preferencing, a complaint against the mandatory use of Apple's own in-app purchase system for apps and the 30% commission rate associated with this rule as well as the marketing restrictions for app developers in Apple's App Store.¹⁸

¹⁶ In December 2021, the Bundeskartellamt determined that Google and its parent company Alphabet are of paramount significance for competition across markets and are hence subject to extended abuse control under Section 19a GWB. Google has announced not to appeal the decision and not to deny its status as norm addressee of the provision; Bundeskartellamt, press release of 5 January 2022, available [here](#); case summary available [here](#).

Based on its decision, the Bundeskartellamt received a number of complaints against Google in accordance with Section 19a(2) GWB, which it is currently assessing.

¹⁷ Starting in January 2022, the Bundeskartellamt held consultations on the measures proposed by Google to dispel the authority's competition concerns. The authority started with obtaining statements on the measures from the complainant Corint Media and a number of German press publishers; Bundeskartellamt, press release of 12 January 2022, available [here](#).

¹⁸ In June 2022 the Bundeskartellamt initiated a proceeding against Apple to review its tracking rules and the App Tracking Transparency Framework; Bundeskartellamt, press release of 14 June 2022, available [here](#).

“Anzapfverbot” Edeka, Kaufland

46. In May 2021, the Bundeskartellamt discontinued its investigations against Edeka as the suspicion that Edeka violated the prohibition to demand unjustified benefits from suppliers (“Anzapfverbot”) and thus abused its market power could not be confirmed. In the context of Edeka’s acquisition of Real stores, the company had demanded special benefits from a number of suppliers which, during the investigations, turned out to be justified for several reasons.¹⁹

47. In July 2021, the Bundeskartellamt discontinued a similar investigation against Kaufland after the company had, due to the proceeding, modified its special demands imposed on the suppliers in the context of Kaufland’s acquisition of Real stores. In its assessment, the Bundeskartellamt took into account, inter alia, that the demands were imposed by Kaufland for a limited time only and would end with the complete integration of the former Real stores at the end of 2022.²⁰

3.2. Mergers and acquisitions

3.2.1. Statistics on the number, size and type of mergers notified and/or reviewed under competition law

48. The Bundeskartellamt examined 1,025 notified mergers. Eleven mergers notified in 2021 were closely examined in the so-called second phase. Three of these were cleared without obligations. One merger was cleared with obligations. Three notifications were withdrawn by the participating undertakings during the ongoing examination as a response to the Bundeskartellamt’s competitive concerns, two others were withdrawn for other reasons. One merger was prohibited. In four cases, second-phase proceedings were still ongoing by the end of 2021.

3.2.2. Summary of the Bundeskartellamt’s significant cases

49. The list of cases described below is not an exhaustive list of merger proceedings conducted by the Bundeskartellamt in the period covered by this report, but rather focuses on cases that were subject to an in-depth investigation in second-phase proceedings.

Clearance of mergers

RTL/SuperRTL²¹

50. In June 2021, the Bundeskartellamt cleared the merger between RTL and SuperRTL. RTL had already held 50% of the shares in the children’s TV channel SuperRTL and had planned to acquire the remaining 50% from then co-shareholder Disney. The merger in particular affected the German TV advertising market for which the Bundeskartellamt had established in 2011 that RTL and ProSiebenSat.1 held a joint dominant position. The question of whether they still held such a position at the time of the merger could be left open in the present case.

51. In its investigations the Bundeskartellamt closely examined potential links and overlaps between TV advertising and online video advertising. The information received

¹⁹ Bundeskartellamt, press release of 12 May 2021, available [here](#).

²⁰ Bundeskartellamt, press release of 22 July 2021, available [here](#).

²¹ Bundeskartellamt, press release of 11 June 2021, available [here](#).

from media agencies, advertising customers and TV channels indicated that there was still no wide substitutability between the two forms of advertising although online video advertising exerted some competitive pressure on TV advertising.

Hospitals

52. In 2021, the Bundeskartellamt cleared a couple of mergers in the hospital sector. An important case was the clearance of the merger between the cardiosurgical and cardiological services of the Charité, the university hospital of the federal state of Berlin, and Deutsches Herzzentrum Berlin in June 2021.²² The cardiac departments of these two hospitals now form an internationally leading heart centre at the joint location of Campus Virchow-Klinikum.

53. Irrespective of their operators, hospitals are independently active as entrepreneurs and compete with one another. Due to strict legal provisions there is almost no price competition in this sector. It is therefore the main objective of merger control to maintain competition in the quality of healthcare for patients. It is crucial to ensure that patients have sufficient local options to choose from.

54. In spite of the growing concentration in the hospital sector only very few mergers had to be prohibited by the Bundeskartellamt in recent years. Of the altogether 341 transactions notified between 2003 and July 2020 only seven were prohibited. Eight merger projects were not notified after they had been critically assessed following an informal advance enquiry.

Semiconductor industry

55. In February 2021, the Bundeskartellamt cleared plans by the Taiwanese company Global-Wafers Co. Ltd. to acquire the majority of shares in and control of Siltronic AG (Germany).²³ The acquisition concerned the manufacture and distribution of silicon wafers, an essential input product in the semiconductor industry. The Bundeskartellamt carried out a worldwide investigation involving numerous semiconductor manufacturers that were customers of the parties involved. The results showed that the parties were not particularly close competitors, that customers still had sufficient actual and potential alternative suppliers to choose from, that the market was characterized by a high degree of volatility and dynamism and that customers relied on multi-sourcing. In combination, these factors suggested that the leading suppliers were unlikely to coordinate their market behaviour and that competition among the suppliers was unlikely to be significantly restricted following the merger.

56. In April 2021, the Bundeskartellamt cleared the acquisition of Dialog Semiconductor PLC (UK) by the Japanese company Renesas Electronics Corporation.²⁴ Apart from numerous other semiconductor products, the acquisition concerned in particular the supply of so-called microcontrollers to the automotive industry. These products are used inter alia for control units of ABS airbags, window regulators or digital instrument panels. Renesas is one of the leading manufacturers of these products. At the time, Dialog's sales focused on the field of semiconductors for consumer applications and communication with marginal activities in power management solutions for complex semiconductors,

²² Bundeskartellamt, press release of 7 June 2021, available [here](#); case summary available [here](#) (German only).

²³ Bundeskartellamt, press release of 9 February 2021, available [here](#).

²⁴ Bundeskartellamt, press release of 29 April 2021, available [here](#).

which complemented the microcontrollers offered by Renesas. According to the Bundeskartellamt's investigations at automotive manufacturers and their suppliers, the merged entity was still exposed to competitive pressure by a sufficiently large number of effective alternative suppliers.

Food industry

57. The Bundeskartellamt cleared the acquisition of Spreewaldhof by Andros in second-phase proceedings in June 2021.²⁵ Spreewaldhof is a family-run company particularly known for its pickled gherkins, but also for its wide range of preserved fruit in glass jars, which are mainly sold in Germany. Andros is a family-run French business operating worldwide; in addition to preserved fruit, the company also manufactures various desserts, beverages and jams under the “Bonne Maman” brand name. The market affected by the merger was the market for preserved fruit in glass jars and cartons for distribution to German food retailers.

58. Even though the parties were market leaders, holding high joint market shares of 40 to 50% and enjoying a significant market share lead over their competitors – mostly SME or larger competitors from outside Germany with only small market shares in Germany – the merger was still not expected to significantly impede competition due to specific market conditions: The extensive investigations showed that the competitors had sufficient spare capacities and therefore could increase production volumes in the short term, limiting the parties' scope of action; the parties also face very strong customers from the food retail sector that could switch to the parties' competitors at short notice.

Vonovia/Deutsche Wohnen (residential property)²⁶

59. In June 2021, the Bundeskartellamt cleared plans by the apartments rental and management company Vonovia to acquire all shares in Deutsche Wohnen. Vonovia's portfolio in Germany includes approx. 354,000 apartments; Deutsche Wohnen's portfolio contains approx. 155,000 rental apartments, approx. 70% of which are located in Berlin. The project affected a large number of local or regional markets for the rental of residential property throughout Germany.

60. The Bundeskartellamt conducted in-depth investigations in the housing markets in different cities and municipalities. In spite of large housing associations, the provider structure for rental apartments was very fragmented. Apart from a large number of private landlords, municipal housing companies, housing cooperatives and other commercial providers were well represented in most of the relevant markets, which was expected to continue to limit Vonovia's scope of action. The merger was therefore not likely to significantly impede competition in local and regional markets.

Clearance with remedies

Agricultural trade²⁷

61. In April 2021, the Bundeskartellamt cleared the acquisition of 19 locations of the agricultural cooperative Raiffeisen Waren-Zentrale Rhein-Main eG (RWZ) by Raiffeisen Waren GmbH (RaiWa) after changes to their original merger plans. The authority also

²⁵ Bundeskartellamt, press release of 24 June 2021, available [here](#).

²⁶ Bundeskartellamt, press release of 28 June 2021, available [here](#).

²⁷ Bundeskartellamt, press release of 21 April 2021, available [here](#).

cleared the launch of a joint venture to market agricultural products at wholesale level. RaiWa supplies agricultural products and services in more than 60 locations; RWZ is a large central cooperative in the agricultural sales sector with 150 locations. The main customers of both companies are farmers.

62. The parties first informed the Bundeskartellamt of their intention to launch three joint ventures in July 2020, but withdrew the notification because joint control was incompatible with the main principles of a registered cooperative to support its members. A modified project was then notified: RWZ and RaiWa were to solely control the joint ventures on an alternating basis. After the Bundeskartellamt had initiated in-depth second-phase proceedings and expressed its competition concerns, RWZ and RaiWa withdrew their notification in late December 2020 and again restructured their cooperation project. The new notification submitted in April 2021 involved RaiWa's acquisition of 19 RWZH locations in three Länder in Germany, the launch of a joint venture, the conclusion of an agreement to jointly sell agricultural products at wholesale level and a purchasing agreement.

63. The merger mainly concerned the various regional markets for the purchase of grain and oil seeds and the sale of seeds, plant protection products and fertilisers. The parties' activities overlapped in some regional markets. Strong competitors and the flexibility of their customers to switch their supplier resulted in competitive pressure. However, the Bundeskartellamt had considerable competition concerns, inter alia, due to RaiWa's high market shares. The parties implemented specific measures to eliminate the competition concerns before re-notifying the project; one of the measures taken, for instance, was likely to result in the entry of a further competitor in the central Hesse region.

Edeka/Real²⁸

64. The Bundeskartellamt only partly cleared Edeka's plans to acquire up to 72 Real stores from SCP Retail S.à.r.l. Due to the authority's competition concerns, 21 stores could not be acquired. In the case of six other stores, carved-out retail space had to be given up to competitors for at least ten years after the acquisition or other Edeka stores in the market area had to be closed. Based on the divestiture process, medium-sized retailers would not have been able to acquire any of the stores without the authority's intervention.

65. The Bundeskartellamt had competition concerns relating to both the sales side (consumers of the stores) and the procurement side (food manufacturers and suppliers). The four big retailers Edeka, Rewe, the Schwarz Group including Lidl and Kaufland, and Aldi account for more than 85% of the food retail sector, which is by far the largest sales channel for food manufacturers. (accounting for more than 75% of the total sales in the food sector). In spite of the highly concentrated procurement market, it also had to be considered in the assessment that competition in procurement exists between the four leading retail chains. Another factor that was taken into account was that although the procurement markets are still largely national in scope, there are indications suggesting that the markets are developing into cross-border markets, particularly with regard to fruit and vegetables.

Kali Salze²⁹

66. In December 2021, the Bundeskartellamt cleared the launch of a joint venture between K+S Minerals and Agriculture GmbH and REMEX GmbH, a member of the

²⁸ Bundeskartellamt, press release of 17 March 2021, available [here](#).

²⁹ Bundeskartellamt, press release of 2 December 2021, available [here](#).

Remondis Group (Rethmann Group). K+S runs two underground disposal sites and four underground backfill facilities in Germany. REMEX is active in the areas of mineral waste management and in this context also deals with hazardous fly ashes. The joint venture REKS now distributes hazardous waste for underground disposal and backfilling at K+S's mining sites. In Germany, there are seven providers operating a total of 14 underground disposal facilities for hazardous waste.

67. In order to dispel the Bundeskartellamt's competition concerns, the undertakings first implemented extensive offsetting measures. REMEX sold its share in the company Minex which operates an underground backfill facility for flue gas residues. In addition, the parties agreed on several contractual arrangements to stimulate competition. The merger was first examined by the European Commission and then referred to the Bundeskartellamt upon request by the Federal Republic of Germany.

Withdrawals in second-phase proceedings

Scrap recycling sector³⁰

68. The companies TSR Recycling GmbH & Co. KG and Rhein-Main Rohstoffe GmbH withdrew their notification of the formation of a joint venture on 8 December 2021 due to concerns of the Bundeskartellamt about the merger's effects on competition. TSR Recycling GmbH & Co. KG is the parent company of the TSR Group, an association of undertakings active in the field of trading in secondary raw materials and belongs to the Remondis Group. Rhein-Main Rohstoffe GmbH is a Frankfurt-based waste disposal company specialising in scrap metal.

69. The Bundeskartellamt carried out extensive market investigations which showed that scrap iron can only partly be sold directly to steel mills and other end customers. A large part of the iron scrap has to be cut into predetermined sizes before it can be sold to end customers as secondary raw material. For this purpose scrap shears are used to process the material. The results showed that scrap iron which is to be processed with scrap shears is traded regionally.

70. TSR and Rhein-Main Rohstoffe would have merged on the regional market around Frankfurt where both companies operate large shears and are the leading providers of such services on the market. In its preliminary assessment, the Bundeskartellamt assumed that the merger would have resulted in the parties achieving a dominant position with a joint market share of around 50%. In addition to the parties' market position, the competitive pressure exerted by the remaining companies on the market as well as the legal and actual barriers to the market entry of new competitors were also decisive. The financial strength of TSR was also taken into account in the preliminary assessment since it is used to achieve external company growth.

Prohibitions

Local newspapers³¹

71. In September 2021, the Bundeskartellamt prohibited a company of Funke Mediengruppe from acquiring the sole control of the publishing companies of the daily

³⁰ Bundeskartellamt, press release of 14 December 2021, available [here](#) (German only).

³¹ Bundeskartellamt, press release of 28 September 2021, available [here](#) (German only); decision available [here](#) (German only).

newspaper “Ostthüringer Zeitung”. Funke publishes the “Thüringische Landeszeitung”, whose circulation area to some extent overlaps with that of the “Ostthüringer Zeitung”.

72. Funke Mediengruppe and its legal predecessor WAZ-Gruppe have had shares in the “Ostthüringer Zeitung” since the early 1990s, amounting to 60% prior to the notified merger. However, due to provisions in the association’s documents, the minority shareholder still had joint control at the time. The acquisition would have brought the “Ostthüringer Zeitung” and “Thüringische Landeszeitung” together under the sole control of Funke Mediengruppe. In addition, the newspapers were already closely linked in a number of co-operations relating to both publishing and editorial activities. With the merger, the remaining editorial independence and the potential for reviving competition would have been lost.

3.2.3. *Activities of the courts*

Appeal against a first phase merger clearance inadmissible even after prolonged pre-notification phase

73. The Federal Court of Justice refused to grant leave to appeal a decision of the Düsseldorf Higher Regional Court which had held that even after a prolonged pre-notification phase, a first phase merger clearance could not be contested by a third party. In that specific case the bulk of a complex merger project fell within the jurisdiction of the European Commission. The parties to the concentration (and third parties) had kept the Bundeskartellamt informed about the lengthy European prenotification phase and proceedings before the parties formally submitted their merger notification in Germany. In the eyes of the Court, this did not turn the Bundeskartellamt’s first phase clearance into an ‘illegal second phase decision’ open to third party appeal.

Clearance of the fibre joint venture between Telekom Deutschland and EWE annulled in first instance

74. The Düsseldorf Higher Regional Court annulled the Bundeskartellamt’s second phase decision to clear a joint venture between Telekom Deutschland and a local phone network operator to collaborate in constructing fibre network infrastructure in northern Germany. In a parallel proceeding under Article 101 TFEU the Bundeskartellamt had accepted a complex set of commitments by the parties to address the authority’s competitive concerns. However, the Düsseldorf Higher Regional Court deemed those commitments insufficient to address the concerns arising from the cooperation under the aspects of merger control. The authority is seeking leave to appeal the decision.

3.3. Sector inquiries

3.3.1. *Sector inquiry into hospitals*³²

75. In September 2021, the Bundeskartellamt published the final report³³ on its sector inquiry into German hospitals, which was launched in 2016. The outcome of the inquiry confirmed the important role of competition between hospitals – despite them being largely regulated – in ensuring the quality of health care for the population. Patients consciously choose a hospital, usually based on their doctors’ recommendation. Due to strict legal requirements, there is hardly any price competition in this area. The inquiry found that the

³² Bundeskartellamt, press release of 2 September 2021, available [here](#).

³³ Full report available [here](#) (German only).

quality of treatment is the most important selection criterion for both patients and resident doctors. Hospital revenues are based on the volume of treatments, with a fixed rate per case. As a result, hospital operators have an incentive to attract more patients by becoming more attractive, i.e. by providing better quality than their competitors. The primary aim of merger control is therefore to maintain competition in the quality of care provided to patients. The decisive factor here is that there are sufficient alternatives for patients in the region.

76. The inquiry was based on a survey of all hospitals in a representative corridor across Germany from Saarland to Saxony, covered approximately 22% of all hospitals in Germany and analysed anonymised data on all their treatment cases. In addition, approximately 600 registered physicians established in the Darmstadt region were surveyed by way of example.

77. The results of the sector inquiry highlighted the importance of consistent merger control in the hospital sector and expanded and consolidated the Bundeskartellamt's knowledge of the product and the geographic markets. The findings of the inquiry are often used in the Bundeskartellamt's merger control examinations.

3.3.2. Sector inquiry into mobile apps³⁴

78. In July 2021, the Bundeskartellamt presented the results³⁵ of its sector inquiry into apps run on mobile end devices using the Android or iOS operating system. The sector inquiry was launched in October 2020.

79. The final report identified three main risks to consumer rights: 1) a lack of information about the data being accessed when using apps, 2) a lack of transparency about the contractual partners when users download an app and 3) a lack of possibilities to control data processing. Potential solutions to these issues include improved app store search functions to allow consumers to search more selectively for consumer-friendly apps, clear and comprehensive information on whom to contact for warranty claims and how the personal data are processed along with simple setting options.

3.3.3. Sector inquiry into publicly accessible charging infrastructure for electric vehicles³⁶

80. In October 2021, the Bundeskartellamt published an interim report³⁷ on its ongoing sector inquiry into charging station infrastructure, launched in July 2020.³⁸ According to the plans of the German Federal Government, a nationwide charging infrastructure in Germany is to be established by 2030. The process of setting up and operating charging stations is not subject to the comprehensive regulation of electricity networks.

81. The report calls for more competition in this sector. For instance, the preliminary findings show that little use has yet been made of public tender procedures for public areas particularly at municipal level. Sometimes, these areas are awarded fully or for the most part to one and the same operator. The allocation of funds could be improved to develop competitive market structures. No evidence for systematic excessive pricing was found. In

³⁴ Bundeskartellamt, press release of 29 July 2021, available [here](#).

³⁵ Full report available [here](#) (German only).

³⁶ Bundeskartellamt, press release of 12 October 2021, available [here](#).

³⁷ Full report available [here](#) (German only).

³⁸ Bundeskartellamt, press release of 9 July 2020, available [here](#).

general, prices are expected to fall once more infrastructure is available and competition increases on this market. However, there seems to be no transparency when it comes to charging prices.

82. The final results and recommendations for action will be presented in a final report after the information and extensive data collected in the sector inquiry have been fully evaluated.

3.3.4. Sector inquiry into messenger and video services³⁹

83. In November 2021, the Bundeskartellamt published an interim report⁴⁰ on its sector inquiry into messenger and video services. The inquiry was launched in November 2020 and addresses consumers' concerns about the safety of their personal data when using such services and potential interoperability between the services of different providers. The report provides a first overview of the conditions in the sector and the various groups of providers, functions and business models. It also outlines the results of a survey of more than 40 different service providers in Germany. Within the framework of its existing cooperation with the Federal Office for Information Security (BSI), the Bundeskartellamt consulted experts on technical details and security issues in the sector.⁴¹ A final report including concrete recommendations is planned to be published in 2022.

3.3.5. Sector inquiry into the collection and transport of domestic waste⁴²

84. In December 2021, the Bundeskartellamt published the report⁴³ on its sector inquiry into the collection of domestic waste launched in 2016. Overall, the findings showed a significant decrease in competition in this sector during the analysed period from 2006 to 2018. The sector inquiry dealt with the collection and transport of packaging waste from private households (waste glass and lightweight packaging material) as well as with the collection and transport of municipal waste (especially residual waste, organic waste, used paper and bulky waste). Some of the markets analysed showed strong regional concentration with a few companies holding a strong and stable market position. Where contracted services were publicly tendered, the number of participants in the tender procedures was often low and the overall number of bids submitted in these tender procedures was also in decline.

85. The Bundeskartellamt has dealt with the increasing level of concentration in the entire sector for several years. Mergers in this sector are assessed critically. However, many acquisitions of smaller waste management companies are currently not yet subject to merger control by the Bundeskartellamt since the target companies often do not reach the statutory minimum turnover thresholds required for merger control by the authority.

³⁹ Bundeskartellamt, press release of 4 November 2021, available [here](#).

⁴⁰ Full interim report available [here](#) (German only).

⁴¹ The BSI published a related report on the operating principles, safety requirements and security features of the latest messenger services, available [here](#) (German only).

⁴² Bundeskartellamt, press release of 21 December 2021, available [here](#).

⁴³ Full report available [here](#) (German only).

4. Cooperation in international forums and conferences

4.1. International Competition Network (ICN)

86. The ICN is the most important network of competition authorities worldwide. It comprises more than 140 competition agencies from 130 jurisdictions. Andreas Mundt, President of the Bundeskartellamt, has been the ICN Steering Group Chair since September 2013.

87. The Bundeskartellamt played an active role in all ICN Working Groups and took part in several virtual seminars and workshops. Furthermore, the Bundeskartellamt actively participated in the virtual 20th Annual ICN Conference held from 13 to 15 October 2021 and hosted by the Hungarian GVH.⁴⁴ The conference was the ICN's second conference in an entirely virtual format as a result of the COVID-19 pandemic. For the same reason, the Workshops of all ICN Working Groups were either postponed or held in a hybrid format. The ICN provides one of the most important forums for the exchange of experience and an informal venue for maintaining regular contact to address practical competition concerns. The Annual Conference provides an opportunity for members and other stakeholders to have in-depth discussions about existing work products and future topics. Over 2500 delegates from around the world, including representatives and stakeholders such as the business community, legal and economic professionals, international organisations and academics attended the virtual conference in 2021.

88. Andreas Mundt opened and closed the conference and spoke on a plenary panel on sustainable development and competition law. Other sessions dealt with international cooperation in fighting cross-border cartels, new investigative strategies for cartels in the digital era, joint ventures, defining dominance in the digital era, crisis cartels, compliance programmes, the ICN's third decade project and the intersection between competition, consumer law and privacy.

4.2. European Competition Network (ECN)/European Competition Authorities (ECA)

89. In 2021, the competition authorities of the EU continued their successful cooperation within the ECN.

90. The Bundeskartellamt participates regularly and actively in the Advisory Committees on competition law proceedings and merger control cases of the European Commission in Brussels. An essential part of the ECN's joint work takes place in the various ECN Working Groups (Cooperation Issues, Cartels, Vertical Issues, Horizontals and Abuse, Digital Markets, Competition Chief Economists, Digital Investigation and Artificial Intelligence, and Merger Working Group). The Working Group on Horizontals has been dealing with all substantive issues in horizontal agreements and abuse cases. The Working Group met virtually on four occasions in 2021 discussing in depth the amendment of the Guidelines for the assessment of horizontal cooperation agreements as well as the

⁴⁴ In May 2022, the 21st ICN Annual Conference was hosted by the Bundeskartellamt in Berlin. The in-person event with over 450 representatives from more than 80 countries was also livestreamed and video recorded. The topics covered included, amongst others, the standard of proof, cartel enforcement in the next decade, regulatory and competition law tools in the digital markets, merger control and effective remedies, sustainability, the impact of the COVID-19 pandemic on agencies' investigative processes and international enforcement cooperation. The recordings and more information are available [here](#).

horizontal Block Exemption Regulations (research and development agreements and specialisation agreements) and the question how to deal with sustainability initiatives. The Working Group on Vertical Issues met virtually on two occasions in 2021, concentrating on the revision of the Vertical Guidelines and the Vertical Block Exemption Regulation. Within the Working Group Digital Markets Meeting, the competition authorities discussed current challenges of enforcement activities in the digital economy.

91. Furthermore, the Bundeskartellamt plays an active role in all ECN sectoral subgroups, where an exchange of practical experience takes place. In 2021, the Bundeskartellamt's representatives attended meetings of the subgroups Food, Pharma & Health, Energy and Financial Services. All of them were held virtually due the pandemic.

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

4.3. Annual meeting of the Working Group on Competition Law

93. The meeting of the Working Group on Competition Law was held in virtual format on 7 October 2021. More than 150 competition law experts were invited to discuss the topic "Digital Markets Act – Perspectives in (inter)national competition law." Professor Daniel Zimmer and Professor Jan Krämer provided a legal and economical introduction to the rationales and regulations of the DMA drafts. The participants discussed a legal comparison between the latest legislative proposals from the USA and the DMA as well as the future relationship between the DMA and national competition law. Further topics were the DMA's effective enforcement and the role of national competition authorities in its enforcement. In the context of this event, the Bundeskartellamt published a comprehensive background paper to foster the debate.⁴⁵

4.4. Working Group on Competition Economics

94. The Working Group on Competition Economics held its sixth meeting in a virtual format on 5 November 2021. Bundeskartellamt staff and economic researchers discussed topical issues of competition economics. The agenda of the meeting included discussions about competition conditions on the market for the first-time sale of electricity as well as discussions about heterogenous market conditions using the example of furniture retail.

4.5. International Conference on Competition

95. Due to the pandemic, the International Conference on Competition was held in a virtual and also more compact format in the afternoon of 4 March 2021 hosting around 1000 participants. The event focused on the role of competition policy in dealing with Big Tech and on public interest objectives as a challenge for competition law practice.

96. The conference started with an interview with Peter Altmaier, the German Federal Minister for Economic Affairs and Energy at the time, and Margrethe Vestager, Executive Vice-President and European Commissioner for Competition, who discussed the role of

⁴⁵ Digital Markets Act: Perspectives in (inter)national competition law, Bundeskartellamt, 7 October 2021, available [here](#).

government and business in shaping the economy. In addition, Christian Klein, Chief Executive Officer of SAP SE, shared the business perspective in a keynote speech.⁴⁶

5. Resources of the Bundeskartellamt

5.1. Annual budget

Table 1. Annual budget

Budget 2021	Change over 2020
EUR 43.5 million/USD 49.2 million ⁴⁷	+EUR 9.1 million / USD 10.3 million

5.2. Number of employees

Table 2. Number of employees

	2021*	Change over 2020
Economists	57.3	+ 6.3
Lawyers	105.6	+ 4.6
Other experts	18.9	- 0.1
Support staff	188.8	+ 10.8
Total	370.6	+ 23.6

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

⁴⁶ In May 2022, the 21st International Conference on Competition was hosted by the Bundeskartellamt in Berlin as a back-to-back conference with the 21st ICN Annual Conference. The in-person event was also livestreamed and video recorded. The recordings and more information are available [here](#).

⁴⁷ 1 Euro = 1.13 US-Dollars (Conversion rate 31 December 2021).

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