

Bundeskartellamt's Activity Report 2009/2010

Bonn, 28 July 2011: Today, the President of the Bundeskartellamt, Andreas Mundt, has presented the authority's report on its activities in 2009 and 2010. "This Activity Report shows once again that protecting competition is a multi-faceted task. No sector seems immune from the desire to eliminate or bypass competition wherever this is allowed. Wherever we can, we rigorously strive to maintain competition."

The last two years were characterized by intensified cartel prosecution and important merger control cases. The Bundeskartellamt conducted further proceedings to increase liberalisation in the energy markets. It made increased use of sector inquiries, e.g. in the fuel and electricity wholesale markets. The Public Procurement Tribunals which are assigned to the Bundeskartellamt also had a record number of 394 review proceedings to report.

Effective cartel prosecution

The uncovering and punishment of illegal cartels were once again a key feature of the authority's activities. The number of cartels uncovered remained high. In the period under review the Bundeskartellamt carried out searches at a total of 172 companies and 6 private homes in 27 proceedings. The authority was often able to trace cartels with the help of leniency applicants. In total, 78 applications for leniency were filed during the reporting period. The Bundeskartellamt imposed fines totalling € 297.5 million in 2009 and € 266.7 million in 2010.

Andreas Mundt: "Illegal cartel agreements cause immense harm to our economy. Thanks to the consequent intervention of the Bundeskartellamt we spare the victims of cartels e.g. consumers, municipalities and companies year after year extra costs in the three-digit million range."

The proceedings during the period under review spanned a variety of product areas such as coffee, ophthalmic lenses, liquefied gas, roof tiles,

mortar silos, printroom chemicals and utility steam generators for use in lignite-fired power stations.

In January 2010 the authority searched a large number of food retail companies and consumer goods manufacturers. In these intensive proceedings the Bundeskartellamt is following up suspicions that price agreements were reached between the manufacturers and retailers.

Rigorous merger control to protect competition

With a total of 1985 merger projects, approx. 50 % fewer merger projects were notified under merger control in 2009/2010 than in the two previous years. This fall in number is attributable firstly to less acquisition activity in the business sector as a result of the global economic crisis. Secondly, since an amendment to German competition law in 2009, mergers realized abroad which have only an insignificant effect on the German market are no longer subject to notification. Nonetheless with 31 cases in second phase examination proceedings, eight clearances subject to conditions and four prohibitions, the Bundeskartellamt had the usual high number of complex, competitively problematic cases to decide.

In 2009 the Bundeskartellamt prohibited the oil company Total from acquiring the East German petrol station network of OMV. This was one of the first consequences which the authority drew from its sector inquiry into the fuel sector, basing its decision on the risk that the collective dominance of the five major fuel groups would be strengthened.

In the European market for convertible roof tops, plans by the company Magna to take over its rival, Karmann, made the creation of a duopoly likely. The Bundeskartellamt's prohibition of the case ensured that three independent competitors remained in the European market.

The planned merger of the iron ore production of the two global players BHP Billiton and Rio Tinto would have had serious repercussions for the German market. This large merger in the raw materials sector would have consolidated the worldwide production of the two major suppliers. In

agreement with several international competition authorities the Bundeskartellamt had expressed vehement criticism of the project with the result that the companies finally withdrew their notification.

The authority also examined merger projects in the food retail sector. Approx. 85% of this market is now divided up among four major companies. Even smaller acquisitions have to be subjected to close scrutiny to prevent the market from toppling. EDEKA's acquisition of the beverage chain "Trinkgut", for example, could only be cleared subject to strict obligations.

Sector inquiries uncover market structures

The evaluation of buyer power is of growing significance in the competitive evaluation of the food retail sector. The Bundeskartellamt has recently launched a sector inquiry in order to better assess the relationship of retail companies to consumer goods manufacturers in future.

Sector inquiries are not targeted against individual companies. Nor do they follow up a concrete suspicion of a cartel violation. The Bundeskartellamt applies this tool in sectors which show indications of competitive imbalances in order to determine their causes.

In the reporting period the Bundeskartellamt conducted a very elaborate sector inquiry into the fuel markets. The findings of the collective dominance of the major fuel companies and price-setting patterns at petrol stations were published in May this year.

An extensive analysis of electricity generation and the electricity wholesale markets in Germany also met with great interest. The results of this analysis were published in January 2011.

Further inquiries were launched and conducted in 2009/2010 in the following sectors: milk, rolled asphalt, gas transmission networks and district heating.

Opening of markets in the energy sector

In the last two years the Bundeskartellamt continued to set the pace for the further liberalisation of the energy markets.

The proceedings against numerous gas suppliers were concluded with extensive compulsory reimbursements. The evaluation of the long-term gas supply contracts showed that the authority's practice led to substantial improvements. Capacity bottlenecks in the gas transmission networks could be removed. Far-reaching commitments were gained from electric heating providers to further open up this market. Here too, the companies were obliged to reimburse their customers with amounts reaching millions of euros.

Andreas Mundt: "During the reporting period we continued to push ahead with one or another measure for further liberalisation in the energy markets. Over many years the European and national authorities and legislators have made a collective effort to strengthen competition in the energy markets. With the turnaround in energy policy in Germany, there is the danger that there will be a step backwards. But we should not throw the baby out with the bathwater. The promotion of renewable energies itself would also fare better if it were based on competition principles rather than with the support of state intervention.

Prospects

Andreas Mundt: "In international terms the Bundeskartellamt is a very small competition authority. In the face of the increasing complexity of our cases, the refined economic assessment required in all areas of competition law and the increased demands of the courts on our work, we are frequently pushed to the limits of our capacities.

The Act against Restraints of Competition is currently being revised. There are areas of uncertainty, especially with regard to fines, which complicate our daily work. However, we are confident that the legislator will deal adequately with these issues.

The Bundeskartellamt can look back on two very successful years of protecting competition. We intend to keep up this intensive pace of work. But to do this we depend on the right framework conditions".

For more informations please contact:

Kanzlei Dr. Reuter
Rechtsanwalts- und Steuerberatungskanzlei
Germany
++49-(0)203-370063
info@reuter-law.com