



Annual Report 2020

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*„Competition is the best medicine
against unimaginativeness and comfort.“*

Prof. Querulix (*1946), German satirist

Preface

The year 2020 was challenging on many levels. First and foremost, the Corona pandemic not only had and continues to have enormous health, societal and social impacts, but all companies and entire industries also „felt“ the effects in the area of business and competition.

For this reason, the BWB has dealt intensively with the topic of „Corona“. A macroeconomic analysis of the effects of mergers in the context of the COVID-19 crisis was carried out and a position on shutdown mergers was published.

Effects of this have also been seen in merger filings: Compared to the previous year, 425 mergers were notified to the BWB in 2020 (2019: 495). This represents a decrease of 70 mergers. In total, the BWB carried out 3 dawn raids and imposed more than € 394,000 in fines through applications by the BWB to the Cartel Court.

Another important topic was prevention and information work. Several position papers, thesis papers and industry reports were issued (e.g., digitalisation and competition law, applicability of the group privilege under cartel law, industry investigation on the taxi and rental car market).

I was particularly pleased that the Antitrust Law Moot Court, which was organised for the sixth time in a row, could be held. This took place virtually for the first time and was - thanks to the great performance of the students - a complete success.

Finally, I would like to thank my entire team at BWB, which has shown that even in difficult times, top performance can be achieved.

And the most important thing at the end: Stay healthy!



Dr. Theodor Thanner
Director General for
Competition

A stylized, handwritten signature in green ink, consisting of several loops and a long horizontal stroke at the end.

Dr. Theodor Thanner
Director General for Competition

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Note: For the sake of better understanding and easier reading, the chosen form applies to both genders for all personal designations throughout the entire Annual Report, unless otherwise stated.

The BWB in 2020

Facts and Figures

2 Competition talks

Antitrust Law Moot Court

Update of the position on questions of the applicability of the group privilege under cartel law | Thesis paper on digitalisation and competition law | Position on „shutdown mergers“ | Industry enquiry on the taxi and rental car market

425 national & 252 EU mergers

394.000 Euro fines

3 Dawn raids

5 Leniency applications

59 Whistleblowing reports

1 General part

1.1 The Bundeswettbewerbsbehörde (Federal Competition Authority)

The Federal Competition Authority (BWB) was established in 2002 as a monocratically organised apprehension and investigation authority. It is headed by the Director General for Competition, who is independent and not subject to directives.

What are the objectives of the Bundeswettbewerbsbehörde?

- Ensuring functioning competition in Austria
- Eliminate distortions and restrictions of competition
- Merger control as well as
- Information and prevention

The foundations for achieving these goals are the Cartel and Competition Act, the prohibition of cartels in Article 101 and the prohibition of abuse of market power in Article 102 TFEU (AEUV), as well as the EU Merger Regulation FKVO (ECMR).

What are the tasks of the BWB to achieve the objectives?

- Investigation of suspected or alleged restrictions of competition
- Prosecution by means of exercising official party status before the Cartel Court and Cartel Supreme Court
- Enforcement of European competition rules in Austria
- Investigation of economic sectors where it is suspected that competition in these sectors is restricted or distorted
- Cooperation with regulators
- Providing administrative assistance to courts and administrative authorities
- Issuing statements on general issues of economic policy („competition advocacy“), as well as on legislative projects
- Application pursuant to § 7 para 2 Federal Act on the Improvement of Local Supply and Competitive Conditions, Federal Law Gazette 392/1977, as amended by Federal Law Gazette I 62/2005

- Assertion of claims for injunctive relief pursuant to § 14 para 1 (Unfair Competition Act) UWG as well as
- Conducting competition monitoring
- Cooperation between consumer authorities
- Participation in the preliminary examination of contracts according to §§ 6 ff ORF Act

The following instruments for the purpose of fulfilling the tasks are provided for in the WettbG¹:

- Auskunftspflicht von Unternehmen und Unternehmensvereinigungen gegenüber der BWB
- Möglichkeit der BWB, sich insbesondere Zeugen und Sachverständiger zu bedienen
- Einsichtnahme in geschäftliche Unterlagen samt der Befugnis zur Anfertigung von Kopien oder sonstigen Abschriften
- Durchführung von Hausdurchsuchungen (auf Grundlage eines Hausdurchsuchungsbefehls des Kartellgerichts, ggfs unter Heranziehung der Sicherheitskräfte) bei begründetem Verdacht auf schwere Verstöße gegen das Kartellgesetz oder die Art 101 und 102 AEUV
- sowie zur Unterstützung der Europäischen Kommission bei Nachprüfungen

In addition, the BWB is responsible for asserting claims for injunctive relief under Section 14 (1) Unfair Competition Act (UWG) as well as for participating in the preliminary examination of ORF's new offers insofar as the BWB has to issue an opinion on the likely effects of the new offer on the competitive situation of other media companies operating in Austria.

1.2 The Competition Commission

The Competition Commission (WBK) is the advisory body of the BWB. It consists of eight members who must have special economic, business management, socio-political, technological or economic law knowledge and experience. The members of the WBK are appointed every four years by the Federal Ministry for Digitalisation and Economic Location (BMDW). The Austrian Federal Economic Chamber, the Federal Chamber of Labour, the Austrian Federation of Trade Unions and the Presidential Conference of the

¹ The BWB does not have any of the investigative powers mentioned below for the purpose of asserting claims for injunctive relief under the Unfair Competition Act (section 2(1)(7) of the Competition Act (Cartel Law)).

Austrian Chambers of Agriculture each have the right to nominate one member (substitute member). The members (substitute members) are not bound by any instructions in the exercise of their activities and are subject to official secrecy.

The current term of office lasts from 2018 to 2022. The Competition Commission is currently chaired by Hon.-Prof. DDr. Jörg Zehetner, Attorney-at-Law.

Member	Substitute member	Nominated by
RA Hon.-Prof. DDr. Jörg Zehetner Attorney-at-law (Chair) Lawyer at KWR; Honorary Professor University of Salzburg	FH-Prof. Dr. Cordula Cerha Institute for Trade and Marketing, WU Vienna	BMDW
Mag. Maria Mercedes Ritschl (Stellvertretung) IV	Mag. Ingrid Schöberl Deputy Head of Division, IV	BMDW
Dr. Michael Sachs Vice President of the BVwG	Mag. Dr. Agnes Kügler, MSc WIFO	BMDW
MMag. Dr. Stephan Wiener, LL.M. Office of the Tyrolean Provincial Government	Mag. Georg Konetzky Section Head IV, BMDW	BMDW
Ing. Mag. Andreas Graf Chamber of Agriculture	Mag. Martin Längauer Chamber of Agriculture	Presidents' Conference of the Chambers of Agriculture Austria
Mag. Helmut Gahleitner Chamber for Workers and Employees Vienna (AK)	Mag. Roland Lang Chamber for Workers and Employees Vienna (AK)	Federal Chamber of Labour
Dr. Rosemarie Schön WKÖ	Dr. Winfried Pöcherstorfer LL.M. (LSE) WKÖ	Austrian Federal Economic Chamber
Mag. Georg Kovarik ÖGB	Mag. Ernst Tüchler ÖGB	Austrian Federation of Trade Unions
As at: 12/31/2020		

1.3 The Federal Cartel Prosecutor

In addition to the BWB, the Federal Cartel Prosecutor was established in July 2002 as a further official party, which is subordinate to the Federal Ministry of Justice (BMJ). The Federal Cartel Prosecutor is appointed to represent public interests in matters of competition law. Both the Competition Act and the Cartel Act provide for close cooperation between the official parties, not only

but especially in the area of merger control. This cooperation continued to be positive in the year 2020. The annual report of the Federal Cartel Prosecutor is available on the website of the Federal Ministry of Justice.

1.4 Impact orientation and objective of the BWB

The BWB had set itself the following goals for the year 2020:

Objective 1: Improve/maintain competition

One of the BWB's primary goals was to investigate competition violations, control mergers and engage in European and international cooperation. These goals were achieved through the successful execution of investigations, effective merger control and the constructive continuation of cooperation with other EU authorities.

Objective 2: Building Awareness

This objective was characterised by the continuation and improvement of educational work. In order to fulfil its mission of informing the public about its activities, the BWB operates its own website, on the one hand to comply with the legal publication obligations (Section ¹⁰b Competition Act (WettbG)) and on the other hand to ensure transparency. Furthermore, the BWB provides information via Twitter and YouTube. An increase in transparency through the maintenance of an informative and clear homepage and the continuation of effective press work was implemented. In addition, the BWB receives a large number of press enquiries (national and international) on procedures and general economic contexts on a daily basis.

Objective 3: Quality management

High demands are placed on the BWB's staff, as they are in direct contact with the market (company and consumers) and have to defend the public interest before the courts in merger and cartel proceedings. In order to successfully perform these tasks, it is necessary that the BWB employees meet the same quality standards as the legal representation and economic advice of the company.

With a customised training programme (ongoing internal training, expert meetings, job rotation, study visits, etc.), BWB ensures that the high-quality standard is maintained and improved. In ²⁰¹⁹, we were once again able to implement and develop a number of measures for staff training and development.

Objective 4: Consolidation

Effective and modern antitrust enforcement makes it necessary to constantly develop the authority professionally and structurally. An evaluation of its own processes, the evaluation of the authority's inputs and outputs as well as the implementation of the insights gained from this are aimed at making the FCA future-proof for its daily work and the resulting challenges.

Objective 5: Digital challenges

Digitalisation affects all areas of the economy, including competition. The BWB recognised the developments early on and has been using future-proof methods for several years. Both in investigations - for example, through IT-supported tools for evaluation - and in prevention campaigns, right up to the training of the authority's employees. In this way, the BWB is well equipped for the digital challenges of the future.

1.5 The BWB and the European Union

Cooperation with the European Commission

The enforcement of the European competition rules in Austria has two main aspects. On the one hand, the national competition authorities directly enforce the competition rules under Union law and, on the other hand, the national authorities support the European Commission in its investigative actions in the proceedings conducted by the European Commission (in this case: Directorate General for Competition) in application of Union law and are authorised to present their views in these proceedings.

In addition, there is ongoing and close cooperation, combined with regular knowledge and information exchange, as well as the development of best practices within the network of competition authorities established under Regulation 1/2003 to ensure consistency in the decentralised application of Union law, the so-called European Competition Network (ECN).

BWB has participated in the following working groups at European level in the year 2020:

ECN Arbeitsgruppen	
ECN Director Generals Meeting	ECN Plenary Meeting
ECN Cooperation Issues and Due Process	ECN Merger Working Group
ECN Horizontal & Abuse Working Group	ECN Digital Markets Working Group
ECN Chief Economist Group	ECN Digital Investigations & AI Working Group
ECN Vertical Restraints Working Group	ECN Financial Services Working Group
ECN Pharma & Health Working Group	ECN Food Working Group

In addition to the regular working group meetings, further workshops and ad-hoc meetings on legal topics took place in 2020 with the participation of the BWB. These include, for example, competition law issues in the railway sector as well as the revision of the Commission announcement on the definition of the relevant market or the preparatory work for the creation of a „New Competition Tool“ (now part of the draft regulation for a Digital Markets Act).

Due to the worsening COVID-19 situation in the course of spring, planned working group meetings in March and April had to be postponed for the time being. Subsequently, these meetings could take place within the framework of videoconferences, which, in view of the number of participants and the limitations of the medium, necessitated changes in the way of working, especially shorter appointments focussed on individual topics but more frequent. Nevertheless, the cooperation within the ECN was able to continue largely unaffected in terms of content even under these conditions.

1.6 The BWB and its development

The development of employment at the BWB

In 2020, a total of 42 people, 31 of whom were case handlers, were employed by the BWB as of the reporting date 12/31/2020. Of the 31 case handlers, 4 were employed part-time. In addition, the BWB employs one employee as an apprentice administrative assistant.

Overall, it is regrettable to highlight for 2020 that the BMDW made a cut in the total number of positions and staff, from 47 to a total of 44. Another position was postponed in the course of the migration of consumer protection competences. As a result, the FCA only had 43 positions at the end of 2020.

Allocation of employees	
Legal area	21
Economy area	8
Public Management area	1
IT Forensics area	2

The following positions are or were provided for in the personnel plan of the Federal Finance Act:

Federal Finance Act	Caseworker	Administration			Sum
		A2/V2	A3/V3	A4/V4	
Year	A1/V1				
2003	13	1	2	3	19
2004	17	1	3	3	24
2005	17	1	3	4	25
2006	17	1	3	4	25
2007 to 2010	24	2	3	4	33
2011 to 2012	24	3	3	4	34
2013	27	9			36
2014	27	9			36
2015	27	9			36
2016	37	9			46
2017	37	9			46
2018	36	10			46
2019	37	10			47
2020	37	7			44

Source: Federal Finance Acts; changes during the year are not taken into account. Explanation: Case Handlers including Director General, Head of Office and Deputy Head of Office as well as Head of Staff.

Employee development 2010-2020



Source: BWB Annual Reports. Staff including Director General and Managing Director. Administration including one apprentice administrative assistant.

Quality Management - Continuing Education

Particularly against the background of low staffing and budgetary resources, special pressure is placed on the staff. The BWB counters this within the limits of its budgetary possibilities with a tailor-made training programme.

In 2020, specialisation measures took place on the following topics, among others:

- IT forensics
- Competition economics
- Competition law

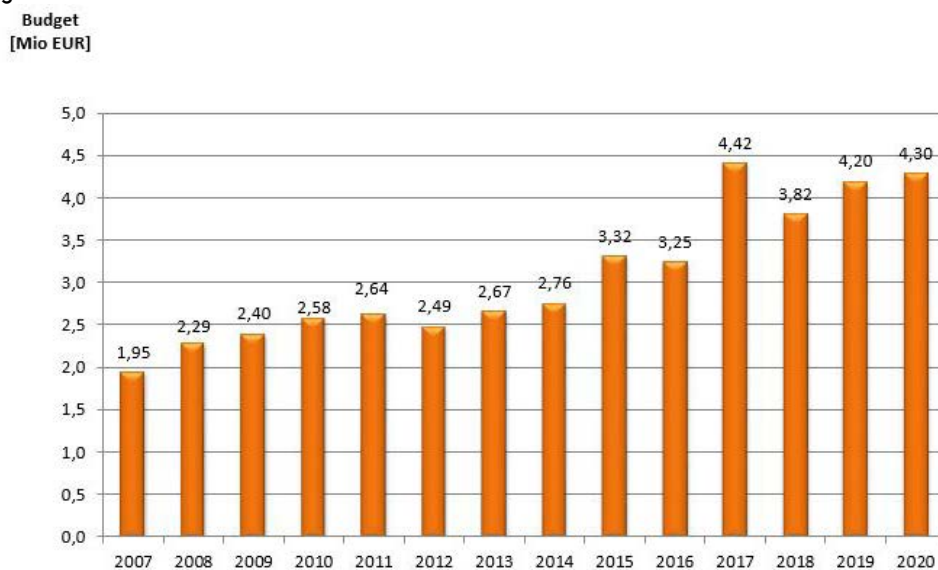
The BWB has also continued an exchange programme with the European Commission, which allows BWB staff to be assigned to the Directorate General for Competition (DG Competition) so that they can gain experience there. In addition, there is a general agreement with the Austrian judges in Luxembourg, according to which the BWB can send case handlers from the BWB to the chambers of the European courts as part of their training. So far, use has been made of this three times. Two BWB employees have already been able to take up their work with judges in Luxembourg on a longer-term basis due to their high level of expertise.

As part of the basic training, 1 staff member was assigned to other organisations such as the Directorate General for Competition (DG Competition) and the Federal Criminal Police Office (BMI). This mainly promotes professional competence as well as networking among the organisations.

In addition to the specialisation measures, BWB employees attended a large number of language courses and seminars in the area of personality development and social communication skills at the Federal Academy of Administration (VAB).

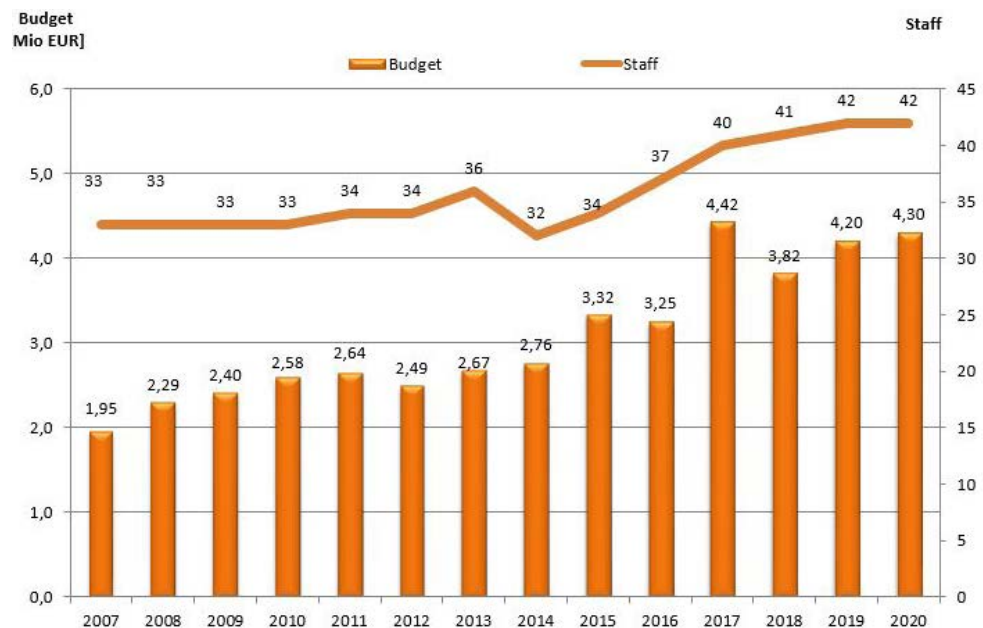
Budget development of the BWB

The development of the funds used for the BWB is as follows (of which about a quarter is accounted for by personnel costs). Unfortunately, the regular budget continues to fall short of the minimum requirement, so that costs can only be covered by means of applications to the Federal Ministry of Finance for funds to be exceeded during the year on the basis of the provision of § 32 Cartel Act..



Source: BWB Annual Reports

Budget and employee development 2010-2020



Source: BWB Annual Reports.

The revenues of the BWB

The revenues generated by the BWB from fines or merger notifications do not flow into the budget of the BWB, but into the general federal budget.

Pursuant to § 10a para 1 WettbG, a flat fee of 3,500 € is to be paid for a merger application. With 425 merger notifications in the year 2020, this results in revenues of **1.487.500 €**².

At the request of the BWB, fines amounting to **394,500 €** were imposed.

² One ninth of the collected merger notification fees must be transferred to the Federal Ministry of Justice (§ 10a para. 1 WettbG)

1.7 International cooperation

International cooperation between competition authorities is an important instrument for eliminating antitrust violations and abuses of market power. This may be in the case of transnational offences, when joint investigations are required, in the case of mergers involving several countries or for the exchange of best practices.

International relations play an essential role especially in cross-border antitrust investigations, as cooperation is unavoidable here.

1.7.1 United Nations Conference on Trade and Development (UNCTAD)



The 8th United Nations Conference on Competition and Consumer Protection took place in a hybrid format from 19th to 23rd October 2020. Participation was therefore possible both on-site in Geneva and virtually. Due to the entry restrictions applicable to Austria, the BWB team took part in the conference virtually, with the following topics being dealt with in the „Competition“ section:

- Strengthening consumer protection and competition in the digital economy;
- International cooperation under section F of the Set: Adoption of the guiding policies and procedures;
- Competitive neutrality;
- Combating cross-border cartels;
- Review of capacity-building in and technical assistance on consumer protection and competition law and policy;
- Voluntary peer review of competition law and policy: West African Economic and Monetary Union.

It is particularly pleasing that the „Guiding Policies and Procedures under Section F of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices“, which were negotiated over two years with the intensive participation of the BWB and agreed by consensus by the Intergovernmental Group of Experts in 2019, were officially adopted. This Guidance Document represents the essential reference points, especially for

young competition authorities as well as authorities from developing countries, for entering the international competition community and for the transfer of knowledge between competition authorities for cooperation in combating competition agreements.

In addition, the BWB organised a round table on competitive neutrality on October 23rd 2020, chaired by Dr. Natalie Harsdorf. The importance of the concept of competitive neutrality in general and in particular during times of crisis and economic recovery after Covid-19 was emphasised. The entire session is available on UN Web TV.

Chair Natalie Harsdorf at the (virtual) Round Table of the 8th UN Review Conference on Competitive Neutrality



Australia reported on the development of a strict enforcement system in the area of competitive neutrality from the 1990s, Mexico in particular on the liberalisation of the Mexican electricity market. The Philippines has been paying increased attention to competitive neutrality since 2011 and has implemented reforms for SOEs (state-owned or state-affiliated companies) towards liberalisation and participation in the open market. Morocco has made legal progress in bringing SOEs into line with free market conditions, and the Moroccan authority has been involved by the government in developing measures to address the economic impact of COVID-19.

Furthermore, the BWB took over the coordination of the OECD Group B countries with regard to the resolution that defines the work programme of the UNCTAD Consumer and Competition Branch for the next five years. In addition, the agenda for next year's 19th UNCTAD Intergovernmental Group of Experts on Competition Law and Policy was set.

1.7.2 Organisation for Economic Cooperation and Development (OECD)



Another forum for the discussion of competition policy issues is the Organisation for Economic Cooperation and Development (OECD). The Competition Committee and its working groups met twice in 2020. In addition, the Global Forum on Competition took place, which was also attended by non-OECD members. Due to the Covid 19 pandemic, the meetings were held virtually. The content of the meetings therefore had to be shortened, but they were accessible to a larger group of participants than would otherwise have been possible.

Within the framework of the meetings, topics of particular relevance to the competition authorities were discussed and experiences of the national authorities were exchanged. The country contributions and a summary of the discussion, which is partly supported by a background paper of the General Secretariat, can be accessed on the individual topics.

Once again, the BWB was able to actively contribute its own experience in various discussion rounds, for example in discussions on the criminalisation of cartels and bid-rigging and the use of industry investigations. The BWB was also able to participate in the discussion on the revision of a recommendation on combating bidder agreements as well as the joint report of the OECD and ICN on international cooperation.

Other discussions covered sustainability and competition, start-ups, killer acquisitions and merger control, consumer data rights and competition, competition in digital advertising markets and many other topics. The opening of the Global Forum entitled „Time for a reset?“ with a speech and discussion with EU Commissioner Vestager and other experts can be viewed on Video.

1.7.3 International Competition Network (ICN)

The International Competition Network (ICN) Annual Conference in September 2020 was also held virtually due to the Corona pandemic. This meant that a wide range of discussions, with a focus on challenges in the digital age, were open to a larger group of participants. The discussions were also recorded and can be accessed on the ICN website, as can all the corresponding written contributions.

2 Competition Advocacy

Advocacy refers to the totality of projects, events and initiatives that serve to bring about a change in awareness of a specific issue in society.

The BWB uses competition advocacy programmes in a targeted manner to awaken and deepen interest in antitrust and competition law. This is achieved in particular through preventive and informative measures.

Despite the limited capacities, the BWB tries to offer services in the field of prevention and information.

2.1 The BWB's Competition Talks

In 2012, the BWB established a platform for an exchange of ideas between companies, law firms, courts and authorities on competition policy and anti-trust issues with the regular event series „Competition Talk“.

In this series of events, lectures are held on various topics relevant to antitrust and competition law and these are discussed afterwards.

In 2020, the BWB hosted two Competition Talks.

Competition Talks der BWB seit deren Einführung	
1 st Competition Talk on 10/23/2012	Planned changes in antitrust and competition law
2 nd Competition Talk on 11/27/2012	Dawn raids - legal scope and current developments
3 rd Competition Talk on 01/29/2013	Print landscape in Austria: How much concentration is still possible? When does media diversity fall by the wayside?
4 th Competition Talk on 03/19/2013	Competition monitoring: new instrument in antitrust law. Design possibilities and expectations
5 th Competition Talk on 04/30/2013	The new leniency handbook
6 th Competition Talk on 06/18/2013	Vertical price agreements: What is allowed? What is prohibited?
7 th Competition Talk on 10/08/2013	Franchising - a permissible cartel?
8 th Competition Talk on 11/05/2013	The role of experts in antitrust proceedings

Competition Talks der BWB seit deren Einführung	
9 th Competition Talk on 02/25/2014	Current antitrust case law in practice
10 th Competition Talk on 04/01/2014	Compliance and Antitrust Status quo - quo vadis?
11 th Competition Talk on 06/03/2014	Effectiveness of conditions in mergers
12 th Competition Talk on 09/23/2014	Follow-up: Dawn raids
13 th Competition Talk on 10/28/2014	Cartel law from the perspective of the Ministry of Justice
14 th Competition Talk on 11/06/2014	The New Directive on Private Enforcement on EU Competition Law: the way forward in its Implementation
15 th Competition Talk on 02/16/2015	The liberal professions put to the test of competition
16 th Competition Talk on 04/21/2015	Online trade in the focus of the competition authorities
17 th Competition Talk on 06/30/2015	Competition and Statutory Health Insurance - A natural area of tension?
18 th Competition Talk on 09/01/2015	The latest on antitrust law from Germany, Switzerland and Austria
19 th Competition Talk on 11/26/2015	Dawn raids in cartel law (first time in Graz)
20 th Competition Talk on 12/15/2015	Competition, productivity and economic development
21 st Competition Talk on 02/08/2016	Industry and competition
22 nd Competition Talk on 04/25/2016	Media and competition
23 rd Competition Talk on 05/09/2016	Current developments from Luxembourg
24 th Competition Talk on 06/09/2016	Dawn raids in cartel law (first time in Salzburg)
25 th Competition Talk on 09/13/2016	Credit cards and competition
26 th Competition Talk on 10/24/2016	Good governance and competition
27 th Competition Talk on 11/21/2016	Directive on cartel damages compensation
28 th Competition Talk on 02/15/2017	Uber - Freedom vs Regulation
29 th Competition Talk on 04/26/2017	Economic policy and competition
30 th Competition Talk on 05/17/2017	Current developments from Brussels
31 st Competition Talk on 06/14/2017	Brexit and competition
32 nd Competition Talk on 09/12/2017	Competition, innovation and inclusive growth
33 rd Competition Talk on 10/24/2017	BWB guidance on dawn raids
34 th Competition Talk on 02/01/2018	Digital and competition
35 th Competition Talk on 04/11/2018	The Economy of the Common Good and Competition

Competition Talks der BWB seit deren Einführung	
36 th Competition Talk on 05/09/2018	Compliance and Antitrust Law (in Salzburg)
37 th Competition Talk on 07/09/2018	Joint guidance on the new transaction value threshold in Germany and Austria
38 th Competition Talk on 10/24/2018	Competition along the value chain
39 th Competition Talk on 11/12/2018	Current developments in Antitrust Law (in Dornbirn)
40 th Competition Talk on 11/13/2018	Compliance and Antitrust Law (in Innsbruck)
41 st Competition Talk on 12/18/2018	Arbitration and competition
42 nd Competition Talk on 02/27/2019	Blockchain and competition
43 rd Competition Talk on 02/29/2020	UTP-RL - Unfair Trade Practices Directive
44 th Competition Talk on 03/10/2020	Market delineation in the digital space under cartel law

2.2 Publications & Lectures

The BWB's experts regularly publish articles in Austrian and international specialist publications.

The **Austrian Journal of Competition Law (Österreichische Zeitschrift für Kartellrecht, ÖZK)** offers articles on practice-relevant topics of Austrian and European antitrust and competition law. The journal contains a comprehensive overview of case law and is a forum for relevant legal experts from academia and practice. The ÖZK publishes articles as well as in-depth reviews of important court and authority decisions in German and English and appears six times a year.

Publications by BWB employees in the ÖZK 2020
Becka/Cavada , The Antitrust Moot Court 2020, ÖZK 2020, 231.
Becka/Tresnak , 43 rd Competition Talk of the BWB on the topic of "UTP-RL - Directive on Unfair Trading Practices", ÖZK 2020, 97.
Becka/Tresnak , 44 th Competition Talk of the BWB on the topic of "Market delineation under cartel law in the digital space", ÖZK 2020, 146.
Cavada , Pay for delay - end of a saga?, ÖZK 2020, 141.
Fürlinger/Hofbauer/Wurm , Antitrust proceedings in market power abuse: Where is the digital journey heading?, ÖZK 2020, Issue 6, December 2020.

Publications by BWB employees in the ÖZK 2020
Luger/Ruech/Xeniadis , (No) seller wanted? - On the status of the seller as a party in merger proceedings, ÖZK 2020, 179 following.
Ruech/Schicho/Xeniadis , Current case law on vertical price maintenance in franchise systems, ÖZK 2020, 93 following.

Further publications

The BWB's experts publish not only in the ÖZK, but also in other relevant literature.

Publikationen der Mitarbeiterinnen und Mitarbeiter der BWB in anderer Fachliteratur 2020
Cavada/Erharter/Xeniadis , Merger control in handbook Change of Shareholders in the GmbH (publisher Frenzel), Linde Verlag 2020
Cavada/Ivanova , Working groups and antitrust law, ecolex 2020, 996.
Fürlinger/Zimmerer , Competition law in the Austrian funeral sector, RFG 2020/33.

2.3 Antitrust Moot Court

In 2020, the Antitrust Moot Court, jointly organised by the BWB, the law firm DORDA and the student organisation ELSA Austria (European Law Students Association), took place for the sixth time. Due to Corona, the Cartel Law Moot Court 2020 was held virtually.

The case concerned grocery trade and organic products. It dealt with issues related to market definition, a possible abuse of a dominant position and the design of distribution.

The following teams competed:

- Team WU Vienna 1, supported by Haslinger / Nagele Rechtsanwälte GmbH
- Team WU Vienna 2, supervised by Dr. Peter Thyri
- Team Juridicum Vienna 1, supported by CERHA HEMPEL Rechtsanwälte GmbH
- Team Juridicum Vienna 2, supported by bpv Hügel Rechtsanwälte GmbH
- Team Graz 1, supported by bpv Hügel Rechtsanwälte GmbH
- Team Graz 2, supported by WOLF THEISS Rechtsanwälte GmbH & Co KG
- Team Salzburg, supported by Taylor Wessing

The jury consisted of Senate President Dr. Manfred Vogel (Cartel Supreme Court), Gf Office Manager Dr. Natalie Harsdorf, LL.M. (BWB) and Dr. Heinrich Kühnert M.Jur. (DORDA).



The assessment of the submissions and the oral hearing was carried out according to set criteria. Factual and legal analysis, argumentation, rhetoric, teamwork and time management of the participants played an essential role.

The winner was Team Graz 1 (Martin Klemenjak, Kaja Radojcic and Florentina Raith), who beat Team Graz 2 (Lena Al Yazdi, Niki Götz and Theresa Weger) in the final. The Best Speaker Final was won by Anna Reumann (Team Juridicum Vienna 1).



The jury together with the organising team of BWB (Cavada, Becka) and ELSA Austria (Quitt)

Director General
for Competition
Dr. Theodor Thanner



„This Year, the Antitrust Moot Court took place under special circumstances. The students prepared excellently for the competition and showed a lot of knowledge and commitment in their technical presentations. Many thanks and congratulations to all of them!“, said Dr. Theodor Thanner, Director General for Competition.“

The Antitrust Moot Court will take place again in 2021.

2.4 Update of the merger application form

The BWB has revised the merger notification form and published it in October 2020.

The update primarily clarifies what information is required in the case of a submission under the new transaction threshold (Section 9(4) Cartel Law). In addition, it now requires various internal documents in certain cases and specifies the information deemed necessary in case of assertion of possible countervailing factors such as countervailing buyer power, market entry, efficiencies and reorganisation mergers.

Other changes concern the following points:

- The submission must now include in the description of the project all essential key data, such as the beneficial owners, in order to enable third parties to exercise their right to comment.

- A template for a so-called „waiver“, with which the preservation of official secrecy vis-à-vis other competent national competition authorities as well as the European Commission is waived, is attached.

Attention is drawn to the necessary disclosure of NACE codes and the enclosure of a non-confidential version, and it is made possible to provide links only for certain documents.

2.5 Update of the position on questions of the applicability of the Group Privilege under Cartel Laws



In the past, the BWB has been approached with questions in connection with the group privilege under cartel law. In December 2019, the BWB therefore published its position on the applicability of the group privilege under cartel law. It serves as information and is intended to facilitate compliance with the cartel law provisions. Due to the case law of the highest courts on the issue of group privilege, the position was slightly revised in May 2020 and, in particular, clarified for constellations with several parent companies.

The conclusions state that the prohibition of cartels under Art 101 TFEU (AEUV) and Section 1 Cartel Law remains fully applicable even between otherwise affiliated companies if there is no case of economic unity and thus the group privilege between companies does not apply. In the case of several parent companies, an economic unit can generally exist in relation to (at most) one parent company. Special constellations are conceivable on a case-by-case basis in connection with joint ventures. The exercise of contractually agreed minority rights by shareholders is possible within the limits of antitrust law. In particular, shareholder rights aimed at preserving a financial investment are permissible in principle, but no detailed information may be passed on, only information that complies with antitrust law, i.e., information that does not call into question autonomous market behaviour. The position can be downloaded from the [BWB](#) website.

2.6 Thesis paper on digitalisation and competition law



The BWB published its thoughts on the influence of digitalisation on competition law in a thesis paper at the beginning of June. The paper is one of a series of similar publications by various European competition authorities. It is set against the backdrop of a variety of legislative projects and political initiatives, some of which have been completed and some of which are ongoing (P2B Regulation, implementation of the ECN+ Directive, notice on the definition of the relevant market, proposals for the extension of antitrust instruments to market structure problems and ex-ante regulation of large platforms), which are intended to ensure fair competition conditions in connection with the digitalisation of the markets.

Accordingly, in addition to the demand for adequate resources for the responsible institutions, the paper also contains concrete considerations for a selective further development of the existing antitrust instruments, which are in principle also suitable for recording digital facts. This concerns in particular the law on abuse of dominance, merger control and the enforcement procedure. Equally decisive is the smooth interaction with new regulations and regulatory instruments, which should establish fair and transparent rules below the threshold of market dominance. Another important point concerns the need to strengthen and institutionalise cooperation and the exchange of information between the various authorities and institutions (especially competition authorities and regulators as well as data and consumer protection institutions) at national and international level in order to make use of existing expertise.

In preparation for the publication, the BWB sought substantive exchange with selected groups of stakeholders. There was essentially agreement that the approach to be taken extends beyond competition law. Likewise, solutions at the European level are given preference over national unilateral action. However, the contrast between demands for faster proceedings and the protection of defence rights, for example, also became clear. The thesis paper can be downloaded from the [BWB](#) website.

2.7 Viewpoint - Macroeconomic effects of mergers in the context of the COVID-19 crisis - „shutdown mergers“

Bundeswirtschaftskammer

Standpunkt -
Gesamtwirtschaftliche
Auswirkungen von
Zusammenschlüssen im Kontext
der COVID-19 Krise

Wien, Juli 2020

The BWB published a position on the “[Macroeconomic Impact of Mergers in the Context of the COVID-19 Crisis](#)” in July 2020.

Due to the COVID-19 crisis, there was a decline in merger applications in Austria in the second and third quarters of 2020. Since the fourth quarter of 2020, catch-up effects have been observed (see following chart).

Merger applications 2019/2020



A suspension of the obligation to file for insolvency in the case of over-indebtedness led to a temporary decline in the number of insolvencies opened in 2020, especially among small and medium-sized companies.³ Here, too, catch-up effects can be expected as soon as the legal measures end.⁴ Small and medium-sized companies do not fall within the scope of merger control. In some cases, however, the takeover of financially distressed companies may have to be examined within the scope of merger control.

The takeover of a financially distressed company - a so-called restructuring merger - is a special case for which specific criteria have been developed in European merger control: the takeover of a financially distressed company is to be approved if the company would exit the market in the short term without the merger, there is no acquirer that raises fewer competitive concerns, and the competitive structure does not ultimately deteriorate more as a result of the merger than without the merger.⁵

The criteria for the existence of a restructuring merger are also applied in the Austrian merger control. In the context of the COVID-19 crisis, the BWB also takes into account the appreciability of competitive effects and the objective urgency for the rapid implementation of a merger. In this context, it assesses whether there is an acute financial emergency, what state aid has been applied for and paid out and since when the M&A process has been prepared.⁶

It is shown in a simple macroeconomic model with oligopolistic competition that an increase in market power - e.g., by unblocking anti-competitive mergers - is detrimental to economic growth and employment. Market power allows companies to raise prices. This reduces consumer demand for goods and services. This decrease in production results in less demand for labour and a decrease in employment. In more complex models, it can be shown that more market power also leads to a decline in investment. Current empirical research confirms these findings. Even in times of the COVID-19 crisis, a functioning merger control thus makes macroeconomic sense.⁷

3 See KSV1870, Business Insolvency Statistics 2020, 01/07/2021.

4 With the - as of the time of editing - latest amendment to Section 9 2nd COVID-19-Justice Accompanying Act of 12/23/2020 (Federal Law Gazette I no. 157/2020), the obligation to file for insolvency in the event of over-indebtedness was suspended for the period from 03/01/2020 to 12/31/2021 (para 1). There are also deadlines for opening insolvency proceedings.

5 Position, Chapter 3.

6 Position, Chapters 3 and 4

7 Position, Chapter 2 and Appendix..

With this initiative, the BWB has once again made a significant contribution to transparent and efficient procedures; reference may therefore be made here to the corresponding recommendation of the Competition Commission's priority recommendations for the year 2020.

2.8 5G expansion

In the course of an agreement concluded between A1, H3G and T-Mobile (the „MNOs“) on cooperation for the joint construction and operation of mobile network sites and their passive infrastructure, RTR referred the matter to the BWB.

The background of the Clean Team Agreement (CTV) is the intention of the MNOs to evaluate possibilities and to develop concepts how to support roll-outs of new mobile radio generations through so-called „active sharing“ and how to use mobile radio infrastructure even more efficiently and to reduce the expansion and operating costs of mobile radio infrastructure.

The draft submitted was subjected to close scrutiny by both authorities. In cooperation, RTR and the BWB questioned various formulations and demanded adjustments or clarifications. Specifically, this involved clarifications in the area of data backup, data transfer outside the Clean Team and the manner of data destruction after the end of the cooperation. The possibilities for sanctions in the event of violations of the CTV were formulated more precisely, in particular a report to the BWB or RTR was provided for, and precise wording on the content and objectives of the Active Sharing project was included in the CTV.

Against the background of these adaptations, RTR and the BWB have come to the conclusion that they will not raise any objections to CTV as things stand. The expansion of networks, especially the 5G network, is cost-intensive. It is important here to make the framework conditions for network expansion investment-friendly. By making the sharing framework more liberal (active and passive sharing is now permitted - with exceptions, see also the RTR⁸ position paper), the expansion of networks can be driven forward and the associated timely fulfilment of coverage obligations can be ensured.

8 RTR, position paper, Infrastructure Sharing 2018.

2.9 Covid-19 and the impact on competition law in Austria - joint action of the ECN

The national competition authorities of the member states work closely with the European Commission in the European Competition Network (ECN). In the wake of the Covid 19 crisis, the ECN published a joint statement by all European competition authorities on 03/23/2020 for the uniform application of competition law during the Covid 19 crisis.⁹

The Covid 19 outbreak led to major social and economic challenges. In the joint statement, the competition authorities announced that cooperation between competitors may be necessary in this situation to ensure the supply of all consumers and the fair distribution of scarce products. Necessary and temporary cooperation's to ensure security of supply are presumed not to constitute a restriction of competition or to outweigh such a restriction, provided that they take place with adequate participation of consumers and contribute to improving the production or distribution of goods.

In the course of this statement, the BWB also announced that it is available to companies for enquiries on the interpretation of competition law.

Particularly in times of economic crisis, a transparent handling of antitrust issues is important; therefore, reference may be made here to the corresponding recommendation 3) of the Competition Commission's priority recommendations for the year 2020.

2.10 The pharmaceutical sector has highest priority for Competition authorities in the European Union

The pharmaceutical sector has been a top priority in the European Union since the European Commission's corporate investigation in the year 2009. The European competition authorities work closely with the European Commission to ensure effective competition in the pharmaceutical sector. Since 2009, fines totalling 1 billion Euros have been imposed in more than 29 decisions against pharmaceutical companies that had violated antitrust law.

Generics or biosimilars support effective price competition in the pharmaceutical sector. Therefore, preserving the market entry opportunities of generic manufacturers is of particularly great public interest. The cost reductions that result for the health system in the long term can be used, for example, for new, innovative medicines.

⁹ ECN, Antitrust: Joint statement by the European Competition Network (ECN) on application of competition law during the Corona crisis, available at https://ec.europa.eu/competition/ecn/202003_joint-statement_ecn_corona-crisis.pdf.

The BWB has been analysing the healthcare market since 2017. As part of an industry investigation, the BWB has already published two reports on the pharmacy market (2018) and on healthcare provision (2019) in rural areas. Another report on the topic of „Medication supply from a competitive perspective“ will be published in 2021 (see also under point 3.2)

2.11 Merger control and resolution of financial institutions

In a joint project of the BWB and the FMA (in their function as national resolution authorities), it was developed how, in the theoretical case of a company sale as an instrument of bank resolution, the requirements of resolution law on the one hand and merger control on the other hand can be taken into account. The cornerstones of the procedure are clearly defined process steps, which include informing the competition authorities as early as possible. On the basis of preliminary work and information to be provided by the FMA on the companies involved and data on the market as a whole, the BWB, with the involvement of the Federal Cartel Prosecutor, can make an initial assessment under merger control law of the suitability of potential acquirers. This does not affect the requirement to conduct merger control proceedings, but potential competition problems can be identified at an early stage and taken into account in the FMA's proceedings.

2.12 Meeting on digitisation, competition and data protection between BWB, DPO, E-Control and RTR-GmbH

The collection, aggregation and analysis of data is usually at the core of digital business models. Data is currently receiving more attention than almost any other topic. In recent reports on competition law enforcement, data has been given a central role in the digital age. According to these reports, data enables better products and services, but at the same time data also provides a competitive advantage and enables potential discrimination against competitors, for example through self-preference of own services or barriers to entry.

In addition to competition-relevant topics, data affect a multitude of other areas, such as data protection and sector-specific regulation in particular. With increasing digitalisation and the associated collection of data in practically all areas of life - keyword Internet of Things - the broadest possible examination of the possibilities and dangers that data bring with them appears to be a current necessity. Interdisciplinary cooperation is a useful instrument for

addressing current and future challenges with data. This allows synergies to be used and resources to be deployed efficiently.

The need for interdisciplinary cooperation became clear only recently when the European Data Protection Board (EDPB) intervened in the course of a proposed merger. In the Google/Fitbit merger case (M.9660), the EDPB noted the following prior to the merger review: “There are concerns that the possible further combination and accumulation of sensitive personal data regarding people in Europe by a major tech company could entail a high level of risk to the fundamental rights to privacy and to the protection of personal data.”

Therefore, on 07/01/2020, the head of the BWB, Dr. Theodor Thanner, the head of the data protection authority, Dr. Andrea Jelinek, the board member of E-Control, Dr. Wolfgang Urbantschitsch, LL.M., and the managing director of RTR’s Telecommunications and Postal Division, Dr. Klaus M. Steinmaurer, met to exchange ideas on digitalisation, data protection and competition.

At the meeting, interfaces between competition supervision, data protection and regulation were discussed. Furthermore, ongoing projects such as the cooperation „Platform Monitoring“ of RTR and the BWB were presented, and national and European developments in the field of competition and data protection as well as preventive measures and possible advocacy projects were discussed.

3 Sector investigations, monitoring and studies

3.1 Sector study in the taxi and rental car market

The BWB launched a comprehensive corporate investigation under section 2(1)(3) of the Competition Act into the taxi and rental car market in September 2019, on the basis of a presumption that competition in this market may be restricted or distorted.

The amendment of the Occasional Transport Act (GelserkG) merged the formerly separate taxi and rental car trades into a uniform passenger transport trade. Uniform regulations based on this for the new trade have an effect in particular on online intermediary services (Bolt, FreeNow, Holmi, Uber, etc.), which in Austria cooperate primarily with rental car companies.

In order to assess the impact of the new Occasional Services Act on competition and innovation in the taxi and rental car market, the BWB surveyed a total of 1,243 people on their use of taxi and online intermediary services and sent 173 requests for information to the companies. In doing so, the cooperative community of traditional taxi operators lagged significantly behind that of online intermediary services in terms of responses. After the market conditions of the taxi and rental car market had been examined, it was also possible - with deeper insight into the market mechanisms of the various business models - to compare the regulatory variants with different countries in Europe from the perspective of competition economics and competition law. This made it possible for the BWB to carry out a detailed analysis of possible changes to the then planned legislative amendments on competition and innovation.

The results of these extensive investigations were finally presented in a final report, which was published on 09/24/2020. The main findings of the investigation - based on the legal and economic framework conditions that were still in place at the time - did not represent a positive forecast for competition:

The planned merging of the trades would have meant the legal fixing of the original taxi trade as the sole business model. Such a determination would lead to a prevention of the development of new and innovative business models.

An additional introduction of a fixed taxi tariff would completely exclude price competition on the market and cause new business models such as app-based online intermediary services to exit the market.

These circumstances were particularly critical in view of the customer survey conducted, in which 40% of respondents indicated a preference for new business models. However, this interest of the population in new and innovative transport models is not taken into account within the framework of a rigid passenger transport industry with legally prescribed tariffs. Rather, the reduction in supply deprives customers of the choice to freely choose between transport providers based on their respective preferences. Indeed, the major advantage of the business models of online intermediary services is price transparency and comparatively lower transport costs for consumers. With a fixed tariff for the entire industry, not only would price transparency have been eliminated, but at the same time there would probably have been little incentive to maintain corresponding quality competition.

In general, it was found that, based on the relevant economic literature, taxi markets tend to be over-regulated.

Although price regulation can be justified, fixed tariffs tend to have negative effects. In an EU-wide comparison, Austria and Germany would have been the only countries with fixed tariffs, whereas countries such as Sweden, Norway or Ireland tend to rely on deregulation strategies. Even partial regulation in the sense of a maximum tariff would at least partially allow competition. However, the findings of the report show that too much regulation restricts competition to the detriment of customers.

In addition, the BWB's report also drew attention to the fact that the new legal regulations in the passenger transport sector would mean that in the future, drivers for rental cars would also have to have a taxi licence and take a corresponding examination, which probably could not be completed in time due to the existing examination capacities. There was therefore a danger that with such regulation, that companies would not have survived on the market and jobs would have been lost. Based on the amendments to the law planned at the time, the BWB came to the conclusion that the advantages of both trades were not taken into account accordingly, as the characteristics of online intermediary services - such as dynamic pricing, price transparency, simple booking, payment and rating systems - were completely disregarded.

Following the publication of the report, new legal regulations were introduced in the passenger transport sector. As of 03/01/2021, more flexibility is to be created in the tariff regulations. In December 2020, the National Council decided to amend the GelVerkG and not to impose a taximeter obligation for journeys that are concluded by means of a communication service. For such journeys, the binding tariff, if any, would not apply, provided that an agreement on the fare as well as the place of departure and destination had been reached in advance. However, the states have the option to set both minimum and maximum fares, including surcharges. In addition, from 03/01/2021 there would be the possibility to share the fare with other consumers and thus pay less than for an individual journey. These proposed amendments should make it possible for companies with technology-based business models to continue to operate in the market and for price and innovation competition to continue in the future - an important step towards maintaining competition.

Finally, in this context, reference may be made to the Competition Commission's priority recommendation to monitor service platforms and compliance with the framework conditions under competition law accordingly.

3.2 Sector study health: Third partial report on drug supply launched

The BWB has been analysing the Austrian healthcare market since the beginning of 2017. As part of the industry investigation, the BWB evaluates the competitive framework conditions in certain submarkets of the healthcare market. The aim is to identify possible distortions of competition and to point out opportunities that give the companies more room to manoeuvre and bring benefits to consumers. In this context, the first sub-report „The Market for Public Pharmacies“ was published in 2018 and the second sub-report „Health Care in Rural Areas“ in 2019.

There have been some considerable challenges with regard to the supply of drugs for several years for various reasons. In the recent past, also with regard to the SARSCoV-2 pandemic, this problem has gained further importance. The third sub-report (hereinafter the „industry enquiry“) will therefore deal with the topic of drug supply from a competitive point of view with a focus on Austria, but also taking into account the European and global dimensions. Although there are no patent remedies for the complex challenges in connection with the supply of drugs, the aim of this industry investigation is to present the es-

sentia aspects of this topic in a structured manner and to introduce impulses and possible solutions into the discussion from a competition perspective.

The industry enquiry will be based on requests for information to market participants, scientific literature and relevant publications, intensive discussions with companies, interest groups, institutions active in the health care market, ministries and the health policy spokespersons of the governing parties of the current 27th legislative term.

3.3 Funeral market - BWB evaluated developments on price transparency since 2018

In 2018, the BWB carried out an evaluation of online price transparency on funeral director websites, which showed that only 3.5% of all undertakers published their prices online. At the same time, the BWB also revised its position on funeral services to address this issue.

In July 2020, i.e., about two years after the last survey, a new evaluation was carried out with regard to undertakers' websites and price transparency. It was found that transparency had increased slightly. Prices were now to be found on 3.9% of all undertakers' websites. The states of Tyrol and Carinthia are leading in this regard, whereas in Styria, Vorarlberg and Burgenland not a single undertaker published prices online.

The digitalisation of the funeral industry is thus slowly but surely progressing. Especially during the current Corona pandemic, contactless price comparisons and order placements via website are a safe and easy way to help the bereaved compare offers more easily in an emotionally stressful situation.

In this context, reference may be made to the recommendation of the Competition Commission to treat the topic of online trade as a focal point

3.4 RTR/BWB monitoring study on instant messaging

The focus on digitalisation is growing. Due to the current Covid-19 crisis, the speed of digitalisation is increasing rapidly once again. In addition to many new opportunities, this brings new challenges. If you think of internet search engines, social networks, messenger services or e-commerce platforms,

dominant companies act as gatekeepers in these markets. In addition to the competitive framework conditions, digitalisation affects a number of other areas, such as data protection and sector-specific regulation. For this reason, the Telecommunications and Post Division of RTR and the BWB have been cooperating closely on digital issues since autumn 2019.

A key focus of the cooperation is the monitoring of digital platforms. The aim of the monitoring is to develop an initial identification system that provides an overview of the competitive dimension and includes an initial analysis of possible economically harmful developments.

In the first step, RTR developed the methodology paper „Monitoring of digital communications platforms and gatekeepers of open Internet access“ in close cooperation with the BWB. According to this paper, platforms are services which comprise at least two user groups and realise indirect network effects. Central to the monitoring of platforms and their competitive assessment is the broad view from the individual services to the ecosystems in which various services and platforms are embedded.

Building on the methods paper published in May 2020, RTR has published a report on „Interpersonal communications services with a focus on instant messaging“ with the involvement of the BWB. Instant messaging refers to communication services in which two or more participants can communicate (e.g., WhatsApp, Facebook Messenger, Telegram, Skype, iMessage). The demand for these communication services, which are usually free of charge, has increased enormously in recent years. Nowadays, they are an essential part of social interaction.

Not surprisingly, the analysis showed that WhatsApp is the market leader in Austria. The Facebook Messenger service is also very important. Snapchat, Skype, iMessage and Telegram are less important in Austria.

Some users have several of the above-mentioned services installed and in use on their smartphones in parallel. This is also called „multi-homing“, which promotes competition and thus innovation. However, WhatsApp is a „must-have“ for many users and has a strong market position.

Due to the high reach and high usage intensity of WhatsApp, the transfer of market power, for example in the form of a coupling of different services, can lead to the rapid establishment of a new service. One example could be new apps for payment systems on smartphones.

4 National mergers

In 2020, a total of 425 mergers were registered.

424 cases (this corresponds to 99.8% of the registered mergers) could be completed in the four-week procedural phase I. As a rule, mergers are approved by deadline expiry or by an audit waiver. Of the 424 cases, two cases were cleared with conditions in phase I.

One case (0.2%) was dealt with in the second phase of proceedings. Here, both the Federal Cartel Prosecutor and the BWB filed a request for review.

18 cases were notified to the BWB under the new transaction value threshold pursuant to section 9(4) Cartel Law.

EU mergers

In 2020, a total of 252 mergers notified to the European Commission due to their EU-wide significance were also examined for possible negative effects on Austria and then brought to the attention of the Member States in accordance with the relevant EU law.

677 mergers audited

A total of 677 mergers were therefore examined by the BWB. Each BWB case handler therefore handled an average of around 22 mergers in the year 2020.

4.1 Merger statistics

MERGER STATISTICS 2010 to 2020										
Applications	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Total applications	281	307	299	322	366	420	439	481	495	425
Phase I										
Approval by Dead-line expiry	226	251	246	276	328	386	409	451	467	382
Audit waiver	43	45	39	38	29	28	23	27	21	27
Withdrawal of the application	3	6	4	5	3	3	4	2	6	15
Other	0	0	0	0	1	0	1	0	1	1
Case completion in phase I	272	302	289	319	361	417	437	480	494	424
these are % of the applications	96,7	98	96,7	99	98,6	99,3	99,5	99,8	99,8	99,8
open phase I	0	0	0	0	0	0	0	0	0	0
Phase II										
Withdrawal of the application	2	0	2	0	1	1	1	0	0	0
Withdrawal of application for examination	4	4	1	2	0	0	0	1	1	1
Case closure without KG decision	6	4	3	2	0	0	1	1	1	1
Prohibition by KG	0	0	0	0	1	0	0	0	0	0
Non prohibition without conditions	0	1	2	0	1	0	0	0	0	0
Non-prohibition with conditions	1	0	4	1	1	2	0	1	0	0
Other KG decision	2	0	1	0	1	0	0	0	0	0
Case closure with KG decision	3	1	7	1	4	2	0	0	0	0
Open phase II	1	0	0	0	0	0	1	0	0	0
Sum phase II cases	9	5	10	3	5	3	2	1	1	1
these are % of the applications	3,3	2	3,3	1	1,4	0,7	0,5	0,2	0,2	0,2
Examination applications BWB	9	4	10	3	4	3	2	0	0	1
Examination applications BKartAnw	4	3	8	3	5	2	2	1	1	1

4.2 Pre-notification talks

If there are doubts about the necessity of a notification or if a merger is very complex or the market shares after the merger are very high, a pre-notification meeting can be advised in many cases. It is in the interest of both the notifying parties and the BWB to conduct merger control proceedings as quickly and smoothly as possible. With the help of a discussion on the basis of a submitted draft notification, important information can often be obtained for the assessment of the competitive effects.

If it is possible at this early stage to delimit the competition issues and reach an agreement between the BWB and the notifying parties on effective remedies (restrictions or conditions), a complex and cost-intensive procedure before the Cartel Court can be avoided. In the year 2020, 23 pre-notification proceedings were conducted.

4.3 FUNKE Österreich Holding GmbH; Signa Holding GmbH; Krone-Verlag GmbH

By decision of 07/23/2020 (GZ 25 Kt 1/20i, Kt 2/20m), the Cartel Court dismissed the petitions for review filed by the official parties - as requested by them.

On 12/30/2019, FUNKE Österreich Holding GmbH and WAZ Ausland Holding GmbH (both together the „Notifying Parties“) notified the BWB of the change from joint control to sole control of (i) Krone-Verlag Gesellschaft m.b.H., (ii) Krone Media Aktiv Gesellschaft m.b.H., (iii) Krone-Verlag Gesellschaft m.b.H. & Vermögensverwaltung KG and (iv) Krone-Verlag Gesellschaft m.b.H. & Co KG. as a merger.

In the course of the examination of the merger, complex questions of company law arose, in particular in connection with the articles of association submitted, which led to considerable concerns regarding the notifiability of the notified transaction. In particular, the validity and scope of the submitted articles of association are in dispute between the parties, which are also the subject of pending (arbitration) court proceedings.

Both official parties therefore filed petitions for review with the Cartel Court and requested the dismissal of their petitions for review for lack of notifiability of the notified transaction and, in the alternative, the review and prohibition

of the merger. As it is not possible for the official parties to reject an inadmissible merger notification due to the lack of a legal basis, they requested the Cartel Court to reject the request for examination, whereby such a rejection of the request for examination also includes the rejection of the notification.

The Cartel Court granted the applications of the official parties and dismissed the petitions for examination for lack of filing capacity. The applicants appealed against this decision. The Supreme Court, as the higher cartel court, did not uphold the applicants' appeal and confirmed the first instance decision of the cartel court. The Supreme Court came to the conclusion that in the present case there was no fundamental agreement on the exact structures of the alleged merger, but on the contrary, the shift of influence between the shareholder groups (which formed the basis of the notification) was disputed, and thus there was no eligibility for notification.

4.4 Brau Union Aktiengesellschaft; Fohrenburg Beteiligungs-Aktiengesellschaft

On 02/13/2020 Brau Union notified the proposed acquisition of 62.94% of the shares in and sole control over Fohrenburg Beteiligungs-Aktiengesellschaft (Fohrenburg) by Brau Union Aktiengesellschaft (Brau Union). The merger involved the production and distribution of beer, as well as the wholesale of beverages. Fohrenburg is a Vorarlberg brewery based in Bludenz. The Brau Union Group is the largest brewery in Austria and is owned by the Heineken Group. However, Brau Union has hardly been active in Vorarlberg so far.

The investigations in Phase I of the merger review revealed competition concerns with regard to compartmentalisation and predatory strategies against competing brewers and beverage wholesalers. The parties submitted conditions pursuant to Section 17 (2) sentence 2 Cartel Law which, in the opinion of the BWB and the Federal Cartel Prosecutor, were not suitable to eliminate the competition concerns. On 03/12/2020, the official parties therefore filed petitions for review with the Cartel Court.

An economic expert was appointed to investigate the merger in the cartel court proceedings. The expert's investigations revealed that competing breweries had considerable reservations about the merger, but did not consider themselves to be in concrete danger of being squeezed out of the market. The merging parties again submitted conditions pursuant to section 17 (2)

sentence 2 Cartel Law which, in the opinion of the official parties, were suitable to remove the remaining concerns. The conditions include:

- a monitoring of discount promotions in grocery retailing for the next 3 years;
- Brau Union must provide the BWB and the Federal Cartel Prosecutor with all necessary information (in particular cost data) in the event of concerns about discount campaigns in grocery retailing or direct sales to the catering trade;
- Brau Union undertakes not to buy or lease any new restaurants in Vorarlberg for the next five years;
- Brau Union undertakes not to acquire any other breweries based in Austria for the next five years under certain conditions.

The aim of the requirements is to prevent the ousting of competing breweries through anti-competitive practices and to counteract a gradual monopolisation of the Austrian brewing industry.

The examination requests of the official parties were withdrawn against the imposition of these conditions on 08/26/2020. The conditions and a case report were published on the [BWB's website](#).

4.5 ProSiebenSat.1, Puls 4 GmbH/ATV Privat TV GmbH & Co KG.

Temporary restriction of commitments due to Covid-19

ProSiebenSat.1Puls 4 GmbH acquired 100% and thus sole control of the shares in ATV Privat GmbH and ATV Privat TV GmbH & Co KG in 2017. Due to the competition concerns at the time and in order to maintain diversity of opinion and media, commitments were agreed for the participating companies in the area of „News & Information“, among other things, before the merger was cleared. An amendment clause was also stipulated in the commitments. Should an exceptional situation arise, the commitments could be re-evaluated with the involvement of the BWB, the Federal Cartel Prosecutor and KommAustria.

On 03/16/2020, ProSiebenSat.1Puls 4/ATV requested a modification of the commitments in the area of „News & Information“ in order to be able to react to the difficult framework conditions due to the Covid 19 pandemic in the production of news.

The amendment of the commitments was initially limited until 04/30/2020 to the extent necessary to maintain the operation of the newsrooms. In April, ProSiebenSat.1Puls 4 GmbH again requested an extension of the restriction until 06/30/2020. The BWB, the Federal Cartel Prosecutor and KommAustria granted the request.

After the end of the exemption period on 07/01/2020, the commission trustee found that only minor use had been made of the restrictions imposed on the commitments.

4.6 MedMedia Verlag and Mediaservice GmbH/ Universimed Cross Media Content GmbH approved subject to conditions

On 03/12/2020, the merger of MedMedia Verlag and Mediaservice GmbH (MedMedia) / Universimed Cross Media Content GmbH (Universimed) was notified to the BWB. The parties will bring their business into a joint holding company called Futuro Holding GmbH and will have majority control of 70% of this company. The current Universimed shareholders will retain 30% of the shares in Futuro, with Dr. Bartosz Chlap holding 10.5% and Wolfgang Chlud 19.5%.

The transaction concerned the markets for the publication and marketing of medical journals. MedMedia publishes fifteen medical journals in Austria and markets them as well as the three medical journals of Ärztekrone. The publishing offer is delivered multichannel (print, digital, mobile and via face-to-face events). Universimed publishes medical journals and online media in eighteen specialist areas, eleven of them in Austria, seven in Switzerland. Since specialist medical media are made available to recipients free of charge, only the advertising market was relevant for the audit. Advertising for medicinal products is subject to legal restrictions (§ 50ff ArzneimittelG). Austria was considered the relevant geographic market.

The market share of the parties in the market for advertising in medical journals exceeded - already on the basis of the information provided in the notification - the presumption thresholds for market dominance under section 4 of the Cartel Act. The BWB conducted investigations among competitors and pharmaceutical advertising customers. The investigation made it clear that the market had undergone a phase of strong consolidation in recent years as a result of numerous title discontinuations and market exits and that

there was a high degree of concentration in the niche markets for specialised journals (so-called clinical). Against the background of these findings, it was clear that the transaction would clearly strengthen the position of the parties in the market.

Conditions were therefore agreed to prevent the discontinuation of titles for the majority of the joint journals for a period of seven years and to ensure the continuation of separate editorial teams. In addition, the parties undertook to comply (including monitoring) with the limits on their marketing practices set out in the case law on the abuse of market power. The commitments are available on the [BWB's website](#).

4.7 OMV Aktiengesellschaft/KSW Elektro- und Industrieanlagenbau Gesellschaft m.b.H. Amendment of the conditions

The merger notified by OMV Aktiengesellschaft (OMV) on 05/26/2017 concerning the intended indirect acquisition of 25.1% of the shares and thus joint control over KSW Elektro- und Industrieanlagenbau Gesellschaft m.b.H. (KSW) was cleared in phase 1 on 06/30/2017, subject to conditions.

KSW is active in the construction and maintenance of tank facilities and has locations in Austria, Germany, Switzerland and Slovenia. The activities include facility management of tank installations as well as sales and maintenance of automation technologies for the control and monitoring of (tank) installations.

In the course of the investigations in phase 1, possible competition concerns arose to the effect that the planned merger could give OMV access to competitively sensitive information via its shareholding in KSW, which would enable OMV to gain a strategic competitive advantage over other market participants in the petrol station market. These concerns were eliminated by conditions proffered by the notifying party.

In a letter dated 04/24/2020, OMV requested a modification of the conditions due to a change in material circumstances regarding the framework conditions of OMV's shareholding in KSW. The official parties agreed to the amendment and the conditions were restricted. Furthermore, they provide for (i) mandatory confidentiality declarations for certain service employees of KSW, (ii) a waiver of the right of delegation and (iii) a prohibition of any

disclosure of information by KSW to OMV. The amended conditions came into force on 05/28/2020 and are available on the [BWB's website](#).

4.8 Corporate governance for the joint venture „Instandhaltungs GmbH“ of ÖBB-Technische Services GmbH, LTE Logistik- und Transport-GmbH und ELL Austria GmbH

Corporate governance was developed in the context of the planned joint venture „Instandhaltungs-GmbH“ between ÖBB-Technische Services GmbH (ÖBB), LTE Logistik- und Transport-GmbH (LTE) and ELL Austria GmbH (ELL Austria).

In agreement with the BWB and the Federal Cartel Prosecutor, the commitments made in earlier merger proceedings were thereby specified in concrete terms. This should further ensure that there is no coordination of the competitive behaviour of ÖBB with Graz-Köflacher Bahn und Busbetrieb GmbH.

In the context of the merger of Graz-Köflacher Bahn und Busbetrieb GmbH and LTE Logistik und Transport GmbH, undertakings were given by the BMVIT in 2011. The undertakings do not allow Graz-Köflacher Bahn and ÖBB to coordinate their competitive behaviour. These undertakings are still valid.

ÖBB and LTE (whose parent company is 50% Graz-Köflacher Bahn und Busbetrieb GmbH, which in turn is owned by the Republic of Austria) and ELL Austria were now planning the joint venture „Instandhaltungs-GmbH“. This was to offer smaller workshop services for locomotives from all manufacturers on a non-discriminatory basis for all railway operators. The merger was notified to the European Commission and cleared by it in mid-April 2020.

Due to the new intention to establish a joint venture, it was necessary to ensure that the agreed undertakings in 2011 would continue to be met.

The corporate governance of the new joint venture, which has been agreed with the official parties, is intended to guarantee that neither behavioural coordination nor an inadmissible exchange of strategic information in the field of rail freight transport can take place.

The non-confidential version can be found on the [BWB's website](#).

4.9 Jacoby GM Pharma GmbH; Kwizda Pharmahandel GmbH; Richter Pharma AG

On 04/30/2020, the merger project Jacoby GM Pharma GmbH; Kwizda Pharmahandel GmbH; Richter Pharma AG was notified to the BWB.

This relates to the merger of the respective „Blistering“ divisions of Jacoby GM Pharma GmbH (Jacoby GM), Kwizda Pharmahandel GmbH (Kwizda) and Richter Pharma AG (Richter) into Apotheken Blister Center GmbH (ABC) through a contribution in kind of the company's „Blistering“ division. At the same time, Richter acquires one third of the shares in ABC.

The BWB conducted a comprehensive market survey, asking both competitors and customers of the parties about the impact of the merger.

Based on the comments submitted by the market participants, competition concerns were identified. These were essentially as follows:

- ABC could cooperate exclusively or preferentially with the parties on both the purchasing and sales sides, which could create a „closed system“.
- ABC could grant special benefits to group pharmacies and thus discriminate against independent pharmacies.
- ABC could make the supply or the granting of any discounts for the supply of newly blistered medicinal products dependent on the purchase of further products or services from the parties.

The competition concerns were communicated to the merging parties and possible undertakings were discussed. The proposed undertakings were considered by the BWB to be suitable to address the competition concerns. These can be found on the [BWB's website](#). No request for review was submitted to the Cartel Court.

4.10 ProSiebenSat.1 Media SE/General Atlantic GmbH/The Meet Group, Inc.

On 05/04/2020, a merger concerning the platform market for online dating was notified to the BWB. The ProSiebenSat.1 Company operates Parship and ElitePartner, two dating platforms with a high profile in Austria. The target company operates several singles exchanges with LOVOO, MeetMe, Skout,

Tagged/Hi5 and Growlr. The merger was also notified in the USA and Germany, with the focus of the merger in the DACH region. Therefore, the merger was also approved in the USA by the Federal Trade Commission already on 04/13/2020 (early termination). The German Federal Cartel Office (B6-29/20) cleared the merger on 07/06/2020.

Of the target company's singles exchanges, LOVOO in particular is represented on the Austrian market, which is also increasingly appearing as a streaming platform. The BWB examined this merger in detail and conducted a market survey of the main competitors in the market for online dating. The topics of the market survey included market definition, market structure and competitive proximity of the merging parties. Although both ProSiebenSat.1 and LOVOO are basically active in the online dating sector in Austria, their respective offerings differ to a large extent. In fact, Parship and ElitePartner, on the one hand, and LOVOO, on the other hand, are each located at the opposite end of the spectrum within online dating, as Parship and ElitePartner are pure dating platforms, while LOVOO's business activities are limited exclusively to those of a singles exchange with increasing elements of mobile social entertainment platforms. However, the market delineation could ultimately be left open.

In addition, the BWB examined whether the merger could result in negative vertical effects, such as cut-off of third-party providers in the area of TV advertising. The BWB found that, in principle, various advertising channels are available and that ProSiebenSat.1 has a strong position on the TV market with its private channels. However, this is met by a few large media agencies as negotiating partners, which bundle the demand. Due to the highly concentrated demand, any attempts at isolation with regard to individual clients seemed unlikely. In order to clear up remaining questions, the deadline was extended by two weeks at the request of the applicants. The approval was granted by deadline expiry on 06/15/2020. The case report is available on the [BWB's website](#).

4.11 Lafarge Perlmooser GmbH; Perlmooser Beton GmbH

The merger Lafarge Perlmooser GmbH (Lafarge); Perlmooser Beton GmbH (PB) was notified to the BWB on 05/28/2020. This concerned the market for the production and distribution of ready-mixed concrete. PB operates several ready-mixed concrete plants in Austria, while Lafarge is particularly active in the upstream market for the production of grey cement.

Lafarge intended to increase its shareholding in PB from 20% to 100% and thus acquire sole control. Lafarge's strategic objective is to reintegrate the ready-mixed concrete production activities into the company. In 2011, the ready-mixed concrete business was spun off and transferred to the newly established PB. This is therefore a reintegration of PB.

The BWB examined this merger in depth and conducted a market survey of the main competitors in the market for the production and distribution of ready-mixed concrete. The topics of the market survey were, in particular, the geographic market definition, the developments on the market since 2011 and the spin-off of the ready-mixed concrete business at that time.

Lafarge also holds a stake in Kirchdorfer Zementwerk Hofmann GmbH (Kirchdorfer), which according to the notifying parties is non-controlling. Indirectly, Kirchdorfer also produces ready-mixed concrete in the Linz area, from which potential horizontal overlaps could arise. Therefore, the perception of the influence of the merging parties on the market behaviour of Kirchdorfer was also the subject of the market survey.

As a result, however, there were no indications of current competition problems. Therefore, no undertakings had to be agreed with the company. The BWB did not submit a request for review to the Cartel Court.

4.12 Examination request Fujifilm Corporation/ FujiFilm Healthcare Corporation

On 05/22/2020, the BWB was notified of the proposed acquisition by FUJIFILM Corporation of all the shares in and sole control of FUJIFILM Healthcare Corporation. Under the proposed merger, the following businesses were to be acquired by Fujifilm Corporation:

- Diagnostic Imaging
- Healthcare IT
- Support-Lösungen für Digital Operations
- und Kältetherapie-Ausrüstung von Hitachi, Ltd

FUJIFILM Healthcare Corporation (incorporated in Japan) is a subsidiary of Hitachi (incorporated in Japan) established for the purpose of transferring the Target Business to FUJIFILM Corporation. The areas of overlap between the company's business activities in Austria and the European Economic Area were the following product categories:

- Computer Tomography Scanner (CT)
- External Ultrasound Systems (UDE)
- Endoscopic Ultrasound Systems (EUS)

Competitors expressed competition concerns, particularly in the area of ultrasound processors in the „Endoscopic Ultrasound Systems“ (EUS) business area, and argued that a dominant position might arise. The BWB was in close contact with the competition authorities of Germany, Japan and the USA (US Department of Justice) to clarify the situation.

The BWB's investigation identified competition concerns, in particular in the EUS business area, due to horizontal overlaps and possible vertical foreclosure and predatory strategies. Among other things, potential foreclosure and predatory strategies were expressed in the supply of processors, endoscopes, software and service/maintenance services.

In addition, high market entry barriers for new competitors were evident in the EUS sector due to the complex manufacturing, technology and regulatory framework. In the last 10 years, there have been no new market entries from other companies in the EU in this business area.

Due to the aforementioned competition concerns, the BWB and the Federal Cartel Prosecutor filed a request for review with the Cartel Court on 07/01/2020. The merging parties subsequently withdrew the merger notification on 07/09/2020

4.13 London Stock Exchange Group/ Refinitive business/Blackstone

The BWB was heavily involved in the London Stock Exchange Group/Refinitive Business/Blackstone transaction. This merger transaction consisted of the combinations of (i) the acquisition of sole control of the Refinitive business by the London Stock Exchange Group (main transaction) and (ii) the acquisition of an indirect non-controlling minority stake of approximately 29% in the London Stock Exchange Group by Blackstone (minority stake acquisition).

The main transaction was subject to notification to the European Commission (M.9564) with regard to competition aspects and as a media merger in Austria. The minority share acquisition was also subject to review by the Austrian official parties with regard to both the competition aspects and the effects on media plurality.

With a view to the subordinate effects on media plurality, the BWB's comprehensive examination focused on the competitive effects of Blackstone's minority shareholding in the London Stock Exchange. In doing so, the BWB was in intensive exchange with the competent case team of the European Commission's Directorate General for Competition, in particular in order to analyse the competition implications of any conditions on the acquisition of minority interests.

The main transaction was finally cleared by the European Commission with conditions on 01/13/2021 after intensive examination in Phase II. No additional competition concerns arose in the Austrian merger proceedings and the transaction was cleared with effect from 01/15/2021.

4.14 Merger EVN AG/Wiener Stadtwerke GmbH approved after comprehensive examination

On 07/03/2020, the acquisition of a non-controlling minority shareholding of approximately 28.35% in EVN AG (EVN) from EnBW Trust e.V. by Wiener Stadtwerke GmbH (Wiener Stadtwerke) was notified to the BWB as a merger. The phase 1 procedure was preceded by a pre-notification procedure. As part of the pre-notification procedure, the BWB had already carried out a detailed, preliminary examination of the intended merger and obtained extensive information by way of requests for information. The BWB's aim was to obtain as

comprehensive a picture as possible of the proposed merger and, moreover, of the structure of the energy industry in Austria.

From the BWB's point of view, the merger in question had to be considered in the context of Austria's past and present energy industry situation, taking into account the structure of the energy industry in Austria. During the examination of the merger (as part of the pre-notification procedure and after the notification was submitted), the BWB was in contact with the regulator E-Control and Austria Tech Gesellschaft des Bundes für technologienpolitische Maßnahmen GmbH.

In the course of the merger investigation, markets in the areas of electricity, gas, waste management, heating and cooling solutions and e-mobility were examined. An examination of the individual markets on the basis of the information obtained and provided showed that the merger is not expected to have any negative effects on end-customer prices in the individual markets. A comprehensive market survey was conducted as part of the Phase 1 proceedings. A total of 29 competitors of Wiener Stadtwerke and EVN in the affected markets were surveyed. The surveyed companies are active in the areas of energy and waste management, e-mobility and heating and cooling solutions. The survey of the most important competitors of Wiener Stadtwerke and EVN essentially confirmed the BWB's view.

In this context, the creation of the Energie Allianz Österreich was also analysed and it was noted that a more in-depth competitive analysis of this merger would be necessary.

As there are only minor overlaps between Wiener Stadtwerke and EVN, and as this is a non-controlling minority shareholding, a critical increase in market concentration is not to be expected. The merger was therefore cleared without conditions. A detailed case report was published.

In this context, reference may be made to the recommendation of the Competition Commission to treat the energy sector as a focal point.

4.15 Prohibited transactions or incorrect/misleading

Castanea Rubra Assets

At the request of the BWB, the Cartel Court imposed a fine of €100,000 on Castanea Rubra Assets GmbH, a company of the Prevent Group, by decision of 02/13/2020 (25 Kt 2/19k) for the prohibited implementation of an acquisition of 94% of the shares in Neue Halberg Guss GmbH.

The notification was omitted due to the incorrect geographical attribution of the target company's turnover and the associated erroneous assumption that the threshold of 30 million euros in joint domestic turnover would not be reached.

The Cartel Court followed the BWB's legal view that turnover for goods delivered directly to the place of use is deemed to be generated at this place even if the order or invoicing is carried out by a central purchasing department located elsewhere. The decisive factor for this view, which is in line with the European Commission's interpretation of the ECMR and the case law of the German Federal Court of Justice, is that the circumstances relevant for competition are determined by the circumstances at the place of delivery.

Also, because the delimitation of competences between the European Commission and national authorities in the area of merger control is based on a system of geographical allocation of achieved turnover, it is necessary that the allocation of turnover takes place in unison.

In determining the amount of the fine, the Cartel Court assumed that the failure to notify was merely negligent. The fact that the acquisition had no negative effects on competition and that the prohibited conduct lasted only for a relatively short period of about six and a half months was taken into account to mitigate the penalty.

However, in comparison to the leading decision of the Cartel Supreme Court in this regard (16 Ok 2/13), it had to be taken into account that with lower total worldwide sales, the target company had achieved significantly higher domestic sales.

5 Cartels, concerted practices and investigations

5.1 Dawn raids

In 2020, a total of 3 dawn raids took place. The object of the investigations was the suspicion of horizontal agreements in the area of driving schools that violated cartel law.

Dawn raids 2011-2020



5.2 Ongoing investigations in the construction industry

Since 2017, the BWB has been investigating in cooperation with the Public Prosecutor's Office for Economic Affairs and Corruption and the Federal Office for the Prevention of and Fight against Corruption on suspicion of an Austria-wide, yearlong, comprehensive infringement of the ban on cartels (Section 1 Cartel Law and Art 101 TFEU) in the construction industry.

The alleged cartel included price fixing, market sharing, exchange of competition-sensitive information as well as work/bidding consortia in connection with tenders in the building and civil engineering sector in violation of cartel law. In the first instance, tenders (under the Federal Public Procurement Act)

by the federal government, the states, municipalities and public companies were affected. However, private tenders were also included in the alleged cartel. Currently, more than 40 construction companies are suspected of having participated in the infringement. They are alleged to have divided up contracts among themselves over several decades and to have agreed on their bid prices in order to secure market shares and margins. This could have caused damage to the clients concerned.

On 10/29/2020, the BWB filed a first application with the Cartel Court to impose an appropriate fine on four affiliated construction companies. The four construction companies are suspected of having participated in the comprehensive infringement at least from 2002 to 2017 and of having entered into agreements and concerted practices with their competitors in violation of cartel law to share customers and markets and to coordinate prices. The tenders affected by this include contract volumes of approximately 50,000 euros to 60 million euros and range from contracts in road, sewer, pipeline and bridge construction to the construction of power plants, rehabilitation centres, kindergartens and housing complexes. Further applications to the Cartel Court against construction companies involved will follow in 2021.

5.3 Ongoing investigations in the area of metering and billing of energy and water (submetering)

In July 2019, the BWB conducted dawn raids at several companies active in the submetering industry. It is suspected that, among other things, meetings of an industry association were used to exchange or agree on market parameters. Submetering includes the individual recording and billing of heating, hot and cold water costs in building units for private or commercial use (residential buildings, office buildings, etc.) and regularly also the provision of the necessary measuring equipment, namely heat cost allocators, hot and cold water meters and heat meters.

The BWB's ongoing investigations into suspected antitrust violations are extensive and will continue in 2020. The BWB is analysing the evidence seized in the course of the dawn raids. In general, the submetering market in Austria is characterised by a high concentration on the supply side.

In this context, reference may be made to the recommendation of the Competition Commission to treat the energy sector as a focal point.

5.4 Zodiac Pool Care Europe

At the request of the BWB, the Cartel Court imposed a fine of €294,000 on Zodiac Pool Care Europe on 06/26/2020. Zodiac Pool Care Europe colluded with various distributors/resellers on resale prices in relation to „automatic pool cleaning equipment“ between March 2016 and September 2019. The acts were aimed at interfering with the resellers' price fixing in order to restrict or eliminate intra-brand price competition, i.e., competition between suppliers of the same brand, and thereby secure certain prices. Such vertical price agreements on resale prices - as fixing of sales prices - constitute so-called core violations of Article 101 TFEU or § 1 Cartel Law. The decision is final.

5.5 Application for a finding of abuse of dominant position by predatory pricing in the distribution of an oncological medicinal product

On 05/14/2020, the BWB filed an application against a global company active in the pharmaceutical sector for a finding of abuse of a dominant market position pursuant to Article 102 TFEU and Section 5(1) Cartel Law of 2005 through predatory pricing in the distribution of an oncology drug.

During the relevant period, the company held market shares of over 85% in the market concerned and thus a dominant position. It is suspected that the company ensured through predatory pricing that hospitals had no incentive to switch to generic versions of the medicinal product, thus preventing successful market entries by generic manufacturers. The first hearing at the Cartel Court took place on 10/08/2020.

5.6 Requests for declaratory relief against two manufacturers of musical instruments due to vertical price maintenance

At the request of the BWB, the Cartel Court determined on 07/23/2020 that Yamaha Music Europe GmbH had infringed the cartel prohibition in the period from 2004 to April 2017 and on 09/24/2020 that Roland Germany GmbH had committed a corresponding infringement in the period from January 2010 to April 2018. These were two independent cases of vertical price fixing between the manufacturers and their respective distributors. The BWB took action on the basis of leniency applications submitted by the two musical instrument

manufacturers, in which they provided extensive information on the respective facts. In the course of its investigations, the BWB also addressed requests for information to several retailers.

Typically, the anti-trust behaviour occurred as follows: Retailers contacted the respective manufacturer and complained about the prices offered by other retailers - mainly in online shops and on websites - combined with a partly explicit request to intervene and partly with an unspoken but clearly recognisable expectation in this respect. In fact, in many cases the latter then asked retailers to raise their sales prices.

Some of the contacts were made verbally (by telephone or in the course of personal meetings), but some were also made by e-mail. Retailers throughout Austria as well as a major German company were affected by these practices. In addition, both manufacturers also took action on their own initiative to maintain a certain price level, for example by Yamaha intervening with dealers on its own initiative or by Roland setting a uniform deadline for the implementation of sales prices, which was coordinated with particularly important customers and whose timely implementation was monitored.

The products affected by the infringement were, in the case of Yamaha, all musical instruments manufactured by the company and, in individual cases, audio and video products and commercial audio products and, in the case of Roland, electronic musical instruments and related equipment and software.

Agreements setting fixed or minimum price levels or fixed or minimum selling prices are so-called core restrictions which reduce or even eliminate intra-brand price competition. Since both companies cooperated fully with the BWB in the leniency programme, it was not necessary to apply for fines.

In this context, reference may be made to the recommendation of the Competition Commission to treat the topic of online trade as a focal point.

5.7 Cartel court rejects application for abolition of dominant position against transmission system operators in the electricity market

Austropapier, the Association of the Austrian paper industry, voestalpine, VERBUND and the Austrian energy exchange EXAA jointly filed an application to the Cartel Court to stop the abuse of a dominant position against the German transmission system operator TenneT TSO GmbH.

In October 2018, congestion management was introduced at the German-Austrian border. Congestion management refers to measures that grid operators implement to avoid or eliminate bottlenecks in the electricity grid. In this way, it is intended to ensure grid stability and the security of electricity supply.

The application was dismissed by the Cartel Court (24 Kt 1/19f) in its decision of 02/25/2020 for the following reasons:

- (i) lack of passive legitimacy of the defendant,
- (ii) lack of capacity to sue with regard to an applicant; and
- (iii) unjustified „Regulated Conduct Defence“.

The applicants did not appeal against the decision of the Cartel Court. The order is therefore legally binding.

In this context, reference may be made to the recommendation of the Competition Commission to treat the energy sector as a focal point.

5.8 KOG submitted questions to the EuGH in the appeal proceedings on territorial agreements in the distribution of industrial sugar

The subject matter of the case in the main proceedings before the Cartel Court was the BWB's application filed with the Cartel Court in September 2010 for a declaration of participation in an infringement against Nordzucker AG (N-AG) and the imposition of fines against Südzucker AG (S-AG) and Agrana Zucker GmbH due to the accusation of cartel violations within the meaning of Article 101 TFEU and Section 1 Cartel Law of 2005 in the industrial sugar sector in the period from 01/01/2005 to 10/31/2008.

Cartel proceedings were also conducted against (but not limited to) N-AG and S-AG in Germany at approximately the same time. In Germany, they decided to end the proceedings amicably in a settlement, whereupon the German Federal Cartel Office imposed fines totalling around 281.7 million euros in February 2014.

In its decision of 05/15/2019, the Cartel Court dismissed the BWB's application for a declaratory judgement in the first instance due to a lack of interest in a declaratory judgement, the application for a fine against S-AG was dismissed on the basis of *ne bis in idem* (Double Jeopardy) and the application against Agrana was dismissed due to a lack of evidence at the factual level. The BWB filed a partial appeal against this decision on 07/02/2019, arguing that the first-instance decision was based on an incorrect legal interpretation of the *ne bis in idem* principle.

In addition, the BWB also argued that the cartel court should have made findings on factual elements that would also have led it to conclude that the *ne bis in idem* principle was not applicable in the present case. In this respect, a secondary deficiency in the findings was also asserted in the alternative. Furthermore, an incorrect legal assessment was asserted regarding the admissibility of the declaratory application against the leniency applicant N-AG. The BWB also suggested obtaining an opinion from the European Commission pursuant to Article 15(1) of Regulation (EC) No 1/2003 or making a request for a preliminary ruling.

The BWB therefore expressly welcomes the fact that the Supreme Cartel Court has referred these questions to the EuGH. The BWB's appeal was also accompanied, among other things, by a statement from the German Federal Cartel Office dated 06/28/2019, which once again summarised the scope of the German fine decision in all clarity. The statement emphasised in particular that the facts taken into account for the fine concerned Germany alone and that the Federal Cartel Office could only fine impacts on Germany. The decision of the EuGH is expected in 2021.

5.9 Investigations in the area of construction and furniture production

As already reported in the Annual Report 2019, the Vienna Court of Audit (StRH Wien) undertook a construction audit of the renovation work at the Krankenanstalt Rudolfstiftung (now Klinik Landstraße Clinic), which is run by the Vienna Hospital Association (now the Vienna Health Association), in 2018. In the process, the StRH Vienna discovered irregularities relevant to competition, including in the awarding of carpentry work.

As a result, the BWB conducted dawn raids at a total of six carpentry companies in May and November 2019. In parallel, the Public Prosecutor's Office for Economic Affairs and Corruption (WKStA) is conducting criminal investigations. The BWB's investigations have largely been completed. The evidence seized in the course of the dawn raids has already been comprehensively analysed. The suspicion that there was collusion to restrict competition has been confirmed by the evidence available to the BWB. The majority of the tenders for construction and furniture joinery work concerned are tenders from public clients in the health care sector.

Some of the six carpentry companies cooperate with the BWB. In December 2020, a Statement of Objections was sent to four of the carpentry companies concerned.

5.10 Vertical price maintenance in the distribution of school bags

In 2019 and 2020, the BWB conducted investigations into suspected vertical price fixing against a manufacturer of school bags and backpacks, respectively, as well as against some retailers. The investigations were triggered by complaints from consumers. The evidence obtained in this way made it possible to conduct a dawn raid at the German-based company in January 2020. This was carried out in cooperation with the German Federal Cartel Office, which also initiated an investigation.

The company filed a leniency application during the dawn raids and subsequently cooperated fully with the BWB in order to fully clarify the facts. This also made it possible to initiate investigations against three Austrian dealers, in the course of which two dawn raids also took place. One dealer is also cooperating with the BWB within the framework of the leniency programme.

The manufacturer sells its school bags, which belong to the upper price segment and are produced according to ergonomic aspects, in Austria through a network of about 135 dealers who purchase them directly from it and resell them to end consumers. Most of the turnover comes from sales to stationary specialist retailers (mostly office and school supplies, leather goods). A small but growing part of the turnover takes place online, on its own websites and certain third-party platforms, but also on the retailers' own websites.

The conduct in violation of cartel law usually took place as follows in the period from January 2012 to January 2019:

In the course of initiating the business relationship with dealers, the manufacturer expressed to them the need to pursue a „policy of price stability“ with a uniform non-binding sales price. Until 2014, compliance with the non-binding sales price for the two most important brands was usually mentioned as a prerequisite for the business relationship; thereafter - as well as for products of the other brands - compliance with the non-binding sales price was often strongly recommended or given to understand that it was expected. Dealers generally agreed with this „policy of price stability“ in view of their interest in stable margins.

The company has asked retailers to comply with the non-binding sales price during ongoing business relationships, for example, after learning from other retailers or through its own price monitoring - carried out online - that a particular retailer was selling backpacks below the non-binding sales price.

Furthermore, the company also restricted - to varying degrees depending on the brand - the possibility of online sales by dealers on their own websites as well as on third-party platforms. Until the introduction of selective criteria for online trade in mid-2016, there was a general ban on online sales for the two most important brands. In addition to sales via the dealers' own online shops and via third-party platforms, the presentation of products on price comparison portals or via price search engines was also prohibited.

Agreements setting fixed or minimum price levels or fixed or minimum selling prices are so-called core restrictions which reduce or even eliminate intra-brand price competition.

6 Other procedures and reports

6.1 Preliminary contract audits pursuant to §§ 6 following ORF-G

Since 2010, new ORF offerings have had to undergo a preliminary review pursuant to §§ 6 ff ORF Law, in which KommAustria examines not only the contribution of these offerings to the fulfilment of the public service remit, but also their impact on competition and diversity of offerings, and may attach conditions to the approval.

In this procedure, the BWB represents the interests of competition as an official party. In this function, the BWB comments on the likely effects of the new offer on the competitive situation of other media companies operating in Austria and can subject KommAustria's decisions to review (§ 6a (4) and (5) ORF Law).

6.1.1 ORF preliminary contract review procedure „Online short news broadcasts“

On 09/11/2019, the BWB was requested by KommAustria (KOA) to comment within 6 weeks on the application for approval of the ORF proposal for online short news broadcasts pursuant to Section 6a (4) 2 ORF Law.

The project was described by the ORF as follows: „In order to take into account the fundamental change in media use and also to provide a younger, „digital“ and partly less „news-savvy“ audience with the necessary basic information for discourse on socially relevant topics, online news programmes of less than three minutes - updated several times a day - are to be produced and made available on TVthek. ORF.at and in other ORF offerings.

After analysing the proposal, there were no indications that it would have a negative impact on the competitive situation of other media companies operating in Austria. This result was communicated to the KOA in a statement dated 10/02/2019. In a letter dated 01/03/2020, the KOA submitted an expert opinion from its official expert, which shared the BWB's assessment.

In its decision of 02/25/2020, KommAustria approved ORF's application as described above..

6.1.2 ORF „TOPOS“ preliminary contract review procedure“

ORF applies for the approval of its new online service TOPOS pursuant to § 6b ORF Law. TOPOS is to cover the subject areas of art, culture, research, science and religion and contain predominantly content from existing ORF offerings in the areas of TV, radio and online - both live and time-delayed. The hallmark of TOPOS is its multimedia nature: audio-visual, graphic and image, sound and text elements are to be available side by side or linked to corresponding content. In addition, there will be interactive applications (e.g., forums) and the integration of elements from social networks and other third-party websites. On a small scale, „online-only“ audio and audio-visual content produced especially for TOPOS will be published. Content will be available on TOPOS for the duration of one year. TOPOS will also be marketed for advertising purposes.

On 09/16/2020, the BWB was requested by KommAustria (KOA) to comment within 6 weeks on the application for approval of the ORF proposal for TOPOS pursuant to § 6a para. 4 no. 2 ORF Law.

In its statement, the BWB critically examined the question of the extent to which new ORF online offerings can be approved with recourse to Section 4f ORF Law which do not comply with the limits of Section 4e ORF Law for ORF online offerings. Section 4e ORF Law provides for a limited time availability of 7 days to 1 month for the entire ORF online offer (with the exception of archives) and prohibits news archives, in-depth reporting and publisher-like design. TOPOS goes beyond these limits, especially with the significantly longer availability period of one year and the greater use of text messages. In legal practice, it is recognised that new public service offerings lead to a more or less significant loss of use/reach for private providers. In the case of advertising-financed offerings, the marketable advertising performance also decreases with the reach of private offerings. According to the BWB's assessment, editorial online offerings in particular will be affected by these negative effects. Pursuant to Section 6b (1) ORF Law, the effects of a new ORF online service on the market constitute one of the two central review criteria for the

preliminary review of the contract. An approval should therefore refer to the specific key figures on which this review is based (budget, number of published contributions/videos/audios, advertising revenues), which are relevant for the effects of the new offering on the market. The BWB has therefore expressed its support for an approval which would stand in the way of a future further development of TOPOS with a considerably greater use of resources or more extensive marketing. Proposals for conditions were also put forward.

The proceedings are pending.

6.2 Consumer agency cooperation

The new EU Regulation on Consumer Agency Cooperation (Regulation (EU) 2018/302) came into force on 01/17/2020. This also necessitated legal amendments to the Consumer Authorities Cooperation Act (VBKG) in Austria.

In the course of the amendment, there was also a change in the enforcement authority: Accordingly, the Federal Office of Metrology and Surveying (BEV) will be the competent CPC authority instead of the BWB.

The BWB was the competent authority for the enforcement of consumer protection rules in cross-border cases for 13 years. During this time, numerous cases were handled and a strong network was built up.

What is the Consumer Protection Cooperation?

The Consumer Protection Cooperation (CPC) is a network of consumer authorities to tackle cross-border breaches of consumer protection rules across the EU.

The focus here is primarily on collective interests, i.e., the protection of a large number of consumers. The competent national CPC authorities are to communicate with each other by way of administrative assistance and ensure that consumer violations in various areas are remedied.

These areas concern, for example:

- unfair commercial practices
- e-commerce
- package holidays
- online sales
- passenger rights
- geo-blocking

Balance sheet of the last years

The CPC Network, and therefore the BWB, has been working on numerous EU-wide issues affecting consumers in recent years, including:

- **Booking.com und Expedia** are committed to making changes in the way offers, discounts and prices are presented to consumers.
- **Airbnb** has improved the way it offers accommodation to consumers. In addition, it provided adequate and complete price information (including all mandatory fees and charges).
- **Facebook, Twitter und Google+** have updated their terms of use due to unfair terms in social media contracts and created a special procedure to signal problematic content.
- The five leading car rental companies (**Avis, Europcar, Enterprise, Hertz** and **Sixt**) had unclear conditions for renting cars. The transparency of their offers and the handling of damages were significantly improved after the CPC authorities intervened.
- **Apple iTunes und Google Play** developed information on the availability and price of items that can be purchased as part of games.
- Baggage regulations were reviewed at **Ryan Air**
- Complaints about various **subscription traps**.

In Austria, for example, the following cases were dealt with:

- **Air travel** (presentation of the price): No information was provided on the exact composition of the air fare (price of the ticket, taxes, other fees, etc). This involved several cross-border cases between Germany and Austria. Due to previous enforcement requests by the BWB, corresponding German court decisions were issued to stop this behaviour.
- **Circus** (advertising with wild animals): A German circus advertised with wild animals on its homepage and on posters on site. This is prohibited by law in Austria. The BWB took up the case and the infringement was successfully stopped.

- **Button solution:** In doing so, the so-called „button solution“ (i.e., by clicking on the registration, the consumer has concluded a subscription) and the applicable right of withdrawal were violated. In total, there were about 1400 victims in Austria, Germany and Switzerland. Intensive investigations were carried out by the BWB. As a result, the infringement was stopped and the website was deleted.

In the last few years, the European CPC authorities under the leadership of the European Commission have also been able to take numerous actions. For this purpose, a topic is defined each year and websites throughout the EU are checked by the CPC authorities in a joint coordinated procedure for compliance with consumer law regulations (so-called „sweeps“). The BWB checked numerous websites in the process.

In recent years, joint actions have been carried out in the following areas:

- airlines (2007)
- mobile content (2008)
- electronic goods (2009)
- online tickets (2010)
- consumer credit (2011)
- digital content (2012)
- travel services (2013)
- guarantees for electronic goods (2014)
- Consumer Rights Directive (2015)
- comparison tools in the travel sector (2016)
- telecommunications and other digital services (2017)
- prices (focus on „drip pricing“) and discounts in online shopping (2018)
- delivery terms and withdrawal rights (2019)

„I would like to thank Sigrid Tresnak and Marcus Becka LL.M. in particular for their tireless commitment in this area over the past years. Of course, we will continue to strongly advocate for consumers within the framework of competition supervision. I wish the Federal Office of Metrology and Surveying, which will be responsible in the future, success in coping with its new responsibilities.“

Director General Dr. Theodor Thanner

6.3 BWB's power of action under the P2B Regulation

As of 07/12/2020, Regulation 2019/1150 on promoting fairness and transparency for business users of online intermediary services („Platform-to-Business“ or „P2B Regulation“ in short) is directly applicable in the European Union. The aim of the Regulation is to provide adequate transparency, fairness and effective legal recourse for business users of online intermediary services and users with their own websites with regard to search engines.

The P2B Regulation applies to online intermediary services and online search engines, irrespective of the place of establishment or domicile of the providers of these services, which are provided or offered for provision to commercial users and users with their own website who have their establishment or domicile in the European Union and who offer goods or services to consumers located in the European Union through these online intermediary services or online search engines.

Among other things, the regulation provides for certain requirements regarding the content and design of the GTCs of online intermediary services. For example, they must be formulated clearly and unambiguously and be easily available to commercial users at all times, as well as contain the following information, among other things:

- Information on the objective grounds for deciding to suspend, limit or terminate the provision of the online intermediary services in whole or in part,
- Information on the termination of contractual relations,
- Restriction on the ability of commercial users to offer the same goods or services on different terms by other means,

- Data access,
- Functioning of the internal complaints management system,
- Disclosure of at least two mediators for the extrajudicial settlement of disputes.

Both online intermediary services and online search engines have to inform about

- the main parameters in rankings as well as the possibilities of influencing rankings in return for payment, and
- any differentiated treatment of goods and services offered by the provider of the online intermediary service or the online search engine itself and by other commercial users.

With regard to enforcement, the Regulation provides that Member States shall lay down rules on the measures applicable to infringements. These must be effective, proportionate and dissuasive.

In addition, organisations and associations with a legitimate interest in representing commercial users or users with company websites, as well as public bodies in the Member States, have the right to bring an action before the competent national courts with the aim of ending or prohibiting non-compliance with provisions of the Regulation. In Austrian law, a course of action under § 1 of the UWG (Unfair Competition Act) (breach of law) is possible in this respect. In this context, Austria has notified the BWB as well as the Austrian Federal Economic Chamber and the Protection Association against unfair competition to the Commission as competent to take legal action. This is without prejudice to action for abuse of a dominant position, if the relevant conditions are met.

6.4 Whistleblowing-System

In 2018, the BWB launched the whistleblowing system. This enables whistleblowers to contact the BWB anonymously and report suspected violations that fall within the BWB's material area of responsibility. The whistleblower can communicate with the BWB via a secure communication interface.

In 2020, 59 notifications were submitted to the BWB, further broken down as follows:

- 2 notifications could be classified as not relevant for the BWB as well as for other authorities;
- 31 notifications (25 suspected cartels, 6 suspected abuse of market power) are still in an intensive examination phase,
- 16 notifications could be terminated without further action after verification;
- investigations pursuant to the UWG were initiated for 4 notifications;
- 1 notification concerned a suspected misuse of the „Corona short-time work scheme“; this was forwarded to the locally competent financial police;
- 5 notifications had no discernible substantive content or were so-called „jokemails“.

6.5 Statements by the BWB on legislative projects

During the reporting period, the BWB participated in a number of formal and informal consultations on legislative projects in the area of competition law at national and European level, contributing its experience from ongoing enforcement and case practice. These include:

ECN+ Richtlinie

Preparatory work on the national implementation of the ECN+ Directive within the framework of a Cartel and Competition Law Amendment Act; in addition to technical issues in connection with the extended powers under the Directive, the BWB has also made proposals on the proportion and effective interplay of cartel law and criminal law provisions concerning cartel agreements in the course of public tenders (bidding cartels), with particular regard to the protection of leniency witnesses. Further adjustments that go beyond the immediate need for implementation and need to be dealt with within the framework of an amendment exist, for example, in the area of merger control, where the BWB has advocated a revision of the notification thresholds and an approximation to the substantive European standard of review (SIEC test).

Revision of the Notice of the European Commission on the definition of the relevant market

The BWB continues to see the definition of the relevant market as a starting point for the assessment of facts relevant to cartel law. Interim developments, especially in digital markets, should be taken into account by referring to the criteria for assessing multi-sided markets, zero-price markets, digital ecosystems, product bundles and cases of asymmetric substitution. It is consistent with the function of market definition as a technical tool for determining market forces to leave out other (political) objectives, such as those related to market distortions caused by state-subsidised competitors, and to deal with them in the context of other instruments.

Reform of the Vertical Block Exemption Regulation

As part of this process, the BWB has contributed its experience in the enforcement of cartel law against restrictions of competition. These relate in particular to direct and indirect agreements and practices to restrict the pricing autonomy of dealers as well as restrictions on online commerce. In this context, agreements concluded within the framework of selective distribution systems - in principle permissibly - which grant suppliers a high degree of control over their distribution systems and restrict the resellers' autonomous room for manoeuvre are often to be critically scrutinised. However, the lack of effective possibilities to withdraw the exemption in individual cases was also discussed.

Reform of the Motor Vehicle Block Exemption Regulation

Here, the BWB particularly pointed out the concentration tendencies to be observed both on the manufacturers' and on the dealers' side as well as possible competition problems resulting from the economic imbalance of the players involved. In addition, the increasing importance of data was also pointed out in this area.

Initiatives to address structural competition problems and ex-ante regulation of platforms/Digital Markets Act

The BWB has responded positively to the initiatives of the European Commission to supplement the regulations of classic antitrust law with additional instruments. The original proposal for a „New Competition Tool“ was intended to create the possibility of taking action against market structure problems at an early stage by imposing suitable conditions and thus preventing a „tipping“ of markets, which can be observed in particular in the presence of economies of scale and network effects. These ideas, together with the considerations on an ex-ante regulation of large online platforms, which take on a „gatekeeper“ function, have now resulted in the draft regulation for a Digital Markets Act. In particular, the BWB has pointed out unresolved issues in connection with the demarcation from and interaction with national regulatory instruments and emphasised the importance of institutionalised cooperation between national and European authorities and institutions from the areas of competition law, regulation and data and consumer protection.

Competition law and sustainability

In the course of the European Commission's Green Deal, it was discussed how competition law can support the achievement of sustainability goals. In its statement, the BWB pointed out that certain forms of cooperation in this regard are certainly possible under the currently applicable regulations, especially insofar as no binding obligations are imposed or it is primarily a matter of greater information and transparency towards customers. At the same time, it was stated that the definition of legitimate goals should primarily be a task of the legislator. In the light of the difficulties often encountered in quantifying „green effects“, the legislator must also define the standards according to which different goals are to be weighed against each other. This applies all the more if positive effects occur outside the relevant market or do not directly benefit the consumers concerned. It is also important to prevent

the misuse of environmental arguments to disguise restrictive agreements. In the context of merger control, similar balancing issues arise between the loss of competition and incentives for innovation on the one hand and an increased ability to operate sustainably on the other.

National evaluation procedures

Furthermore, the BWB has issued opinions on issues relevant to competition law within the framework of national review procedures. Examples of these are:

- **Amendment to the Patent Attorneys Act:** the BWB has pointed out that the procedure in accordance with Directive (EU) 2018/958 on the proportionality of decisions of the bodies of the patent attorney association restricting the taking up or the exercise of the profession of patent attorney or the activity as a patent attorney trainee does not automatically also establish compatibility with the competition rules.
- **Burgenland Spatial Planning Act:** the BWB has expressed concerns about the intended reservation of the construction and operation of large ground-mounted photovoltaic plants by the state or by an entity controlled by it. The objective pursued with this, to counteract an uncoordinated expansion, could also be achieved by less restrictive measures.
- **Amendment to the Audiovisual Media Services Act:** the BWB welcomed the inclusion of video-sharing platforms in the scope. As they exert significant competition on the advertising and viewer/user market on Austrian media entrepreneurs, the existence of a level playing field is a building block for the creation of a level playing field that enables fair and undistorted competition. In this context, the BWB also pointed out the necessity of effective law enforcement.

7 Appendix

7.1 File accumulation 2020

File accumulation 01/01/2020 to 12/31/2020	Q1	Q2	Q3	Q4	SUM
Cases national					
Merger applications	107	61	114	143	425
Other merger acts	5	7	6	5	23
Prohibited implementation of mergers	1	0	0	0	1
Cartel cases KartG	11	5	3	4	23
Market power abuse proceedings KartG	5	1	2	6	14
UWG/Consumer Protection/ORF Act/ TKG	3	5	5	0	13
Miscellaneous cases (incl. information notice)	25	34	25	31	115
SUM cases national	157	113	155	189	614
Cases Europe					
Antitrust and abuse of market power (EU) – EC	1	0	0	5	6
Merger cases (EU) – EM	98	45	52	57	252
SUM cases Europe	99	45	52	62	258
SUM cases national and Europe	256	158	207	251	872
Other					
Dawn raids	0	0	0	6	6
Forensic IT	0	0	0	1	1
Administrative	2	7	6	7	22
International affairs (IN, OECD)	6	4	9	4	23
Legislative process	4	15	14	20	53
European Court Proceedings (CFI Proceedings)	3	5	3	1	12
Competition Commission	0	0	0	1	1
Eur. Comp. Network	24	13	31	32	100
Miscellaneous (GD, AW, RA, RI, etc.)	10	16	14	30	70
SUM other	49	60	77	102	288
SUM total 2020	305	218	284	353	1160

The data refer to the time of the case filing and may therefore differ from the merger statistics.

7.2 Fining decisions in Austria from 2002-2020

Fine table

Based on applications by the Bundeswettbewerbsbehörde (Federal Competition Authority) and/or the Bundeskartellanwalt (Federal Cartel Prosecutor) (official parties) and a legally binding decision. This table is an extract from the last 10 years. The full table is available on the [BWB-Webseite](#).

Industry	Company	Fine amount in €	Year
Pool cleaning equipment	Zodiac Pool Care Europe	294,000	2020
Bicycles	Specialized Europe B.V.	378,000	2019
Electronics	Bose Ges.m.b.H.	665,000	2019
Waste material collection	Banner GmbH	60,000	2019
Baked goods	Anker Snack & Coffee Gastronomiebetriebs GmbH	210,000	2019
Mobile devices	Ingram Micro GmbH	288,888	2018
Petrol stations	A1 Tankstellenbetriebs GmbH	70,000	2018
Electronics	Devol Austria GmbH	223,000	2018
Rubber (disposable gloves)	Semperit Technische Produkte GesmbH	1,600,000	2018
Electronics	Pioneer & Onkyo Europe GmbH	120,000	2017
Drywall construction	3P Trockenbau GmbH	185,000	2017
Drywall construction	Kaefer Isoliertechnik Ges.m.b.H	190,000	2017
Electronics	Robopolis GmbH	208,200	2017
Drywall construction	Perchtold Trockenbau Wien GmbH	48,000	2017
Drywall construction	E+H Trockenbau GmbH	110,000	2017
Drywall construction	Tüchler Ausbau GmbH	130,500	2017
Drywall construction	Wagner & Jüptner GmbH	22,500	2017
Electronics	Makita Werkzeug Gesellschaft m.b.H.	1,560,000	2016
Electronics	De'Longhi-Kenwood GmbH	650,000	2016
Grocery trade	Spar Österreich-Gruppe II	10,210,000	2016
Grocery trade	RAUCH Fruchtsäfte GmbH & Co OG	1,700,000	2016
Freight transport and logistics	ETRANSA Speditions AG	3,500,000	2016

Industry	Company	Fine amount in €	Year
Freight transport and logistics	Schenker & Co AG	318,000	2016
Freight transport and logistics	PANALPINA Welttransport GmbH	2,000,000	2016
Freight transport and logistics	Rail Cargo Logistics Austria GmbH	184,000	2016
Electronics	Hewlett-Packard Gesellschaft mbH	640,000	2015
Electronics	KTM Fahrrad GmbH	112,000	2015
Electronics	United Navigation GmbH	100,000	2015
Electronics	Samsung Electronics Austria GmbH	1,050,000	2015
Grocery trade	Spar Österreich-Gruppe	30,000,000	2015
Electronics	Nikon GmbH (Branch Vienna)	170,000	2015
Steel trade	Frankstahl Rohr- und Stahlhandels-gesellschaft mbH	147,000	2015
Grocery trade	Pago International GmbH	152,460	2015
Lebensmittelhandel	Pfeiffer HandelsgmbH und die Ziel-punkt GmbH	562.500	2015
Steel trade	Großschädl Stahlgroßhandel Gesell-schaft m.b.H.	47,500	2015
Steel trade	Eisen Wagner Gesellschaft mbH	150,000	2015
Steel trade	Filli Stahlgroßhandels-gesellschaft m.b.H	32,500	2015
Steel trade	Mechel Service Stahlhandel Austria GmbH	200,000	2015
Sporting goods trade	Sport Pangratz & Ess GmbH, Alber Sport GmbH, Sport Jennewein Martin e.U., Sport Fauner GmbH & Co KG	419,000	2015
Grocery trade	Vöslauer Mineralwasser AG	653,775	2015
Grocery trade	Brauerei Joseph Baumgartner GmbH	56,250	2014
Grocery trade	NÖM AG	583,200	2014

Industry	Company	Fine amount in €	Year
Speditionen	<p>Speditionssammelladungskonferenz ABX Logistics (Austria) GmbH*, Alpentrans Spedition und Transport GmbH*, Logwin Solutions Austria GmbH (vormals Logwin Invest Austria GmbH), DHL Express (Austria) GmbH, G. Englmayer Spedition GmbH, Rail Cargo Logistics-Austria GmbH (vormals Express-Interfracht Internationale Spedition GmbH), A. Ferstl Speditionsgesellschaft mbH*, Spedition, Lagerei und Beförderung von Gütern mit Kraftfahrzeugen Alois Herbst GmbH & Co KG*, Johann Huber Spedition und Transportgesellschaft mbH, Kapeller Internationale Spedition GmbH, Keimelmayr Speditions- u. Transport GmbH*, Koch Spedition KG (vormals Koch Speditions GmbH), Kühne + Nagel GmbH, Lagermax Internationale Spedition Gesellschaft mbH, Morawa Transport GmbH in Liquidation, Johann Ogris Internationale Transport- und Speditions GmbH, Logwin Road + Rail Austria GmbH, Internationale Spedition Schneckenreither Gesellschaft mbH, Leopold Schöffl GmbH & Co KG*, „Spedpack“-Speditions- und Verpackungsgesellschaft mbH*, Johann Strauss GmbH, Thomas Spedition GmbH*, Traussnig Spedition GmbH, Treu Speditionsgesellschaft mbH, Spedition Anton Wagner GmbH*, Gebrüder Weiss GmbH, Wildenhofer Spedition und Transport GmbH, Marehard u. Wuger Inter-nat. Speditions- u. Logistik GmbH* und Rail Cargo Austria AG</p> <p>* Only small fines were imposed on these companies because, despite their membership to the freight shipping consolidation conference, they had not achieved any turnover with national groupage transports, played a very subordinate role within the framework of this conference and partly cooperated with the BWB.</p>	17.500.000	2014
Grocery trade	MPREIS Warenvertriebs GmbH	225,000	2014
Grocery trade	Sutterlüty Handels GmbH	78,750	2014
Insulation materials	Austrotherm GmbH	187,500	2014

Industry	Company	Fine amount in €	Year
Grocery trade	Stieglbrauerei zu Salzburg GmbH; Stiegl Betriebsholding GmbH; Stiegl Getränke & Service GmbH & Co. KG	196,875	2014
Electronics	Grundig Intermedia GmbH	372,000	2014
Grocery trade	Brauerei Hirt Gesellschaft mbH	58,500	2014
Electronics	SSA Fluidra	50,000	2014
Grocery trade	AFS Franchise-Systeme	225,000	2014
Insulation materials	swisspor Österreich GmbH & Co KG	290,000	2014
Grocery trade	Braucommune in Freistadt	52,500	2014
Electronics	Hans Lurf GmbH	100,000	2014
Grocery trade	Mohrenbrauerei August Huber KG	82,500	2014
Electronics	Media-Saturn BeteiligungsgmbH	1,230,000	2014
Electronics	Pioneer Electronics Deutschland GmbH	350,000	2014
Grocery trade	Privatbrauerei Zwettl Karl Schwarz Gesellschaft m.b.H.	82,500	2014
Grocery trade	Brauerei Schloss Eggenberg Stöhr GmbH & Co KG	57,000	2014
Grocery trade	Vereinigte Kärntner Brauereien AG	195,000	2014
Grocery trade	Kärntner Milch reg.GenmbH	375,000	2013
Grocery trade	Vorarlberger Mühlen- und Mischfutterwerke GmbH	58,500	2013
Grocery trade	Brauerei Ried e.Gen.	52,500	2013
Grocery trade	Emmi Österreich GmbH	210,000	2013
Insulation materials	bauMax AG	90,000	2013
Grocery trade	REWE International Lager und Transport GmbH; Merkur Warenhandels-AG; Billa AG	20,800,000	2013
Electronics	Philips Austria GmbH (Consumer Lifestyle)	2,900,000	2013
Grocery trade	Berglandmilch eGen	1,125,000	2013
Insulation materials	Steinbacher Dämmstoff GmbH	600,000	2013
Insulation materials	Bauhaus Depot GmbH	100,000	2012
Insulation materials	Hornbach Baumarkt GmbH	100,000	2012
Insulation materials	OBI Bau- und Heimwerkermärkte	235,000	2012
Beer	BRAU UNION Österreich Aktiengesellschaft	750,000	2012
Beer	Ottakringer Brauerei AG	190,000	2012
Other cases (selection)			
Misuse III	Telekom Austria	1,500,000	2009
Breach of the duty to provide information	Manner	120,000	2008
Misuse	Constantin (Filmverleih)	150,000	2006
Misuse II	Telekom Austria (Tiktak/ Minimumtarif)	500,000	2004

Industry	Company	Fine amount in €	Year
Prohibited implementation of a merger			
Prohibited implementation of a merger	Castanea Rubra Assets GmbH	100,000	2020
Prohibited implementation of a merger	Aktieselskabet af 5.5.2010	75,000	2019
Prohibited implementation of a merger	Eurazeo SE	30,000	2019
Prohibited implementation of a merger	KTM AG und Kiska GmbH	60,000	2019
Prohibited implementation of a merger	WIG Wietersdorfer Holding GmbH	70,000	2019
Prohibited implementation of a merger	Lagardère Travel Retail Austria GmbH / CP Convenience Partner GmbH	17,500	2019
Prohibited implementation of a merger	REWE International AG	212,000	2019
Prohibited implementation of a merger	Erne Group GmbH; TONOS GmbH	30,000	2019
Prohibited implementation of a merger	TCH s.r.l.	55,000	2018
Prohibited implementation of a merger	Containex Container-Handelsgesellschaft mbH; Česko-slezská výrobní a.s	100,000	2018
Prohibited implementation of a merger	Luxembourg Holdings 70 S.a.r.l.; Texbond S.p.A.	40,000	2018
Prohibited implementation of a merger	Stahl Lux 2 S.A.	185,000	2017
Prohibited implementation of a merger	Comparex AG	40,000	2017
Prohibited implementation of a merger	Comparex AG	30,000	2017
Prohibited implementation of a merger	Vulcan Holdings, L.P. und Apollo Management L.P.	70,000	2017
Prohibited implementation of a merger	SWOCTEM GmbH; Dr.-Ing. E.h. Friedhelm Loh	11,000	2017

Industry	Company	Fine amount in €	Year
Prohibited implementation of a merger	Europapier International AG	750,000	2016
Prohibited implementation of a merger	Grosso holding Gesellschaft mbH	50,000	2015
Prohibited implementation of a merger	W. Hamburger GmbH	40,000	2015
Prohibited implementation of a merger	VAMED Management und Service GmbH & Co KG	155,000	2015
Prohibited implementation of a merger	Graz-Köflacher Bahn- und Busbetrieb GmbH	40,000	2015
Prohibited implementation of a merger	Ankerbrot AG	20,000	2015
Prohibited implementation of a merger	21 Centrale Partners SA; Microcar S.A.S	30,000	2015
Prohibited implementation of a merger	Stahlgruber Holding GmbH	23,000	2014
Prohibited implementation of a merger	2. Servco Pacific Inc.	8,800	2014
Prohibited implementation of a merger	TGP / SERVCO / Fender	8,800	2014
Prohibited implementation of a merger	DB Mobility	100,000	2013
Prohibited implementation of a merger	Fachzeitschriften	5,000	2013
Prohibited implementation of a merger	Klambt-Verlag GmbH & Cie (Special Interest Zeitschriften)	10,000	2013
Prohibited implementation of a merger	WAB Privatstiftung	15,000	2013
Prohibited implementation of a merger	AGROFERT Holding a.s.; ECOPRESS a.s.	7,000	2013
Prohibited implementation of a merger	Alpenmilch / Käsehof	165,443	2012

Industry	Company	Fine amount in €	Year
Prohibited implementation of a merger	Conrad Electronic Linz GmbH	11,667	2012
Prohibited implementation of a merger	EPPG/ATEC	5,000	2012
Prohibited implementation of a merger	Conwert/ ECO	25,000	2012
Prohibited implementation of a merger	Alpenpumpe/Schwenk/Berger	5,000	2012
Prohibited implementation of a merger	A&F/Cellstrom	5,000	2012
Prohibited implementation of a merger	21 Centrale Partner SA/FRA (Kfz-Bereich)	200,000	2011
As of: 12/2020	Total of all fines/penalties	202,016,608	2002-2020

7.3 Merger statistics

Merger statistics 2020		
Case	Company	Status
4756	Yageo Corporation; KEMET Corporation	Deadline expiry
4758	capiton V GmbH & Co. Beteiligungs KG; AlphaPet Ventures GmbH; Healthfood24 GmbH	Deadline expiry
4759	Insight Holdings Group, LLC; Veeam Software Holding Limited	Deadline expiry
4760	Accenture GmbH; maihiro GmbH	Deadline expiry
4761	OEP Capital Advisors, L.P.; EPK Acquisition Limited; PWP Growth Equity; DPN Parent LLC	Deadline expiry
4762	Play Pro Management GmbH; Aerocool Advanced Technologies Corp.; Aerocool Germany GmbH; Aerocool Australia New Zealand Pty Ltd; Supercool Technologies Co., Ltd	Deadline expiry
4763	Toyota Motor Corporation; Toyota Peugeot Citroën Automobile Czech s.r.o.	Deadline expiry
4764	Stryker Corporation; Wright Medical Group N.V.	Withdrawal
4765	Volkswagen AG; diconium digital GmbH	Deadline expiry
4766	Dedalus Holding S.p.A.; Agfa HealthCare Imaging Agents GmbH	Deadline expiry
4767	IAC/INTERACTIVECORP; Care.com, Inc.	Deadline expiry
4768	Laborie Medical Technologies ULC; Clinical Innovations LLC	Deadline expiry
4769	Ganahl Aktiengesellschaft; Goerner Formpack GmbH	Deadline expiry
4770	XLCH GmbH; Interio Gruppe	Deadline expiry
4771	Aragorn Parent Corporation; OverDrive Holdings, Inc.	Deadline expiry
4772	Voith Global Trading SE; Toscotec S.p.A.	Deadline expiry
4773	Derendinger Holding AG; Swiss Automotive Group AG; PM Automotive s.r.o.; stahlgruber CZ s.r.o.	Deadline expiry
4774	Francisco Partners; Elliott Investment Management L.P.; LogMeIn, Inc.	Deadline expiry
4775	Invest Unternehmensbeteiligungs Aktiengesellschaft; MEH Mechanical Engineering Holding GmbH	Deadline expiry
4776	Voith Austria GmbH; ELIN Motoren GmbH	Deadline expiry
4777	Heinrich Bauer Verlag KG; Mitteldeutsche Zeitung Mediengruppe	Deadline expiry
4778	Art-Invest Hotel Management GmbH; GHOTEL Gruppe	Deadline expiry
4779	Coller International Partners VIII; Permira IV Feeder LP	Deadline expiry
4780	MEGGLE AG; M-Back GmbH	Deadline expiry
4781	MVI Magyar Villamos Művek Zrt.; Status Power Invest Kft	Deadline expiry
4782	PolyOne Corporation; Clariant Plastics & Coatings AG	Deadline expiry

Merger statistics 2020		
Case	Company	Status
4783	EQT VIII; LEO Pharma a/s	Deadline expiry
4784	Advent International Corporation; BHKW & Energie Holding GmbH	Deadline expiry
4785	IK VIII Fonds; MDT technologies GmbH	Deadline expiry
4786	Ardian SAS; Philippe Berthe; Proplast SAS	Deadline expiry
4787	Budamar Logistics a.s.; IF Invest East a.s.	Deadline expiry
4788	AURELIUS Equity Opportunities SE & Co. KGaA; Distrelec Business; Nedis Business	Deadline expiry
4789	Ardian SAS; Audiotonix Group Limited	Deadline expiry
4790	Saviola S.r.l.; Nolte Holzwerkstoff GmbH & Co. KG	Deadline expiry
4791	Atrahs Pharma UK Limited; bestimmte Vermögenswerte und Lizenzen von AstraZeneca UK Limited	Deadline expiry
4792	Fiege Warenhaus Logistik GmbH & Co. KG; GALERIA Karstadt Kaufhof GmbH	Audit waiver
4793	Incyte Corporation; MorphoSys AG	Deadline expiry
4794	Goldman Sachs Group, Inc.; Aptos Holding (US) 1, Inc.; Aptos UK Holding Limited; Aptos Holding (Canada) 1, Inc.	Deadline expiry
4795	Mitsubishi Corporation; Nippon Telegraph and Telephone Corporation; HERE International B.V.	Deadline expiry
4796	Wilhelm Reuss GmbH & Co. KG; Maryman B.V.	Deadline expiry
4797	TTI Beteiligungs und Managenent GmbH; Berger Beteiligungs GmbH	Deadline expiry
4798	EQT Mid Market Europe; RIMES Technologies Corporation	Deadline expiry
4799	Celanese Corporation; Nouryon Chemicals Holding B.V.	Deadline expiry
4800	Ecolab US 2 Inc.; Copal Invest N.V.	Deadline expiry
4801	Cobra Bidco S.À.R.L.; Covis Pharma B.V.; Covis Pharma Europe B.V.; Covis Pharma Canada Ltd.	Audit waiver
4802	Pallas Blocker Inc.; Accurate Background Holdings LLC; Career-Builder Employment Screening, LLC; CareerBuilder Investigations, LLC	Deadline expiry
4803	Parcom Buy-Out Fund V Coöperatief U.A.; Euramax BV	Deadline expiry
4804	Cordes & Graefe KG; MyCraftnote Digital GmbH	Deadline expiry
4805	BAE Systems plc; Raytheon Company	Deadline expiry
4806	Union LA Holdings L.P.; Haldia Petrochemical Limited; Lummus Technology L.L.C.; McDermott Technology (2) B.V.	Deadline expiry
4807	Serviceplan Group Austria GmbH & Co. KG; Wien Nord 1996 GmbH	Deadline expiry
4808	Brau Union Aktiengesellschaft; Fohrenburg Beteiligungs-Aktiengesellschaft	Approved with conditions in phase II

Merger statistics 2020		
Case	Company	Status
4809	Atlas Copco AB; ISRA VISION AG	Deadline expiry
4810	Hörmann Digital Beteiligungs GmbH; ORBIS AG	Deadline expiry
4811	Borealis AG; Novealis Holdings LLC; Bayport Polymers LLC	Deadline expiry
4812	VERBUND Hydro Power GmbH; Murkraftwerk Graz Errichtungs- und BetriebsgmbH	Deadline expiry
4813	Schweizerische Mobiliar Versicherungsgesellschaft AG; RingierAG	Deadline expiry
4814	Silgan Holdings Inc.; Twist Beauty Packaging S.A.S.	Deadline expiry
4815	Gebr. Heinemann SE & Co. KG; casualfood GmbH; smartseller GmbH & Co. KG	Deadline expiry
4816	SK Global Chemical Co., Ltd.; Arkema France	Deadline expiry
4817	CCEP Ventures Europe Limited; Inbev Nederland N.V.; BlueVillage B.V.	Deadline expiry
4818	L'Oréal S.A.; Prada S.p.A.	Deadline expiry
4819	Springer-Verlag GmbH; Gesundheitswirtschaft GmbH	Withdrawal
4820	Clearstream Holding AG; Fondcenter AG	Deadline expiry
4821	Bertelsmann SE & Co. KGaA; Penguin Random House Gruppe	Deadline expiry
4822	Advent International Corporation; Forescout Technologies, Inc.	Deadline expiry
4823	Phison Electronics Corporation; Sony Storage Media Solutions Corporation; Nextorage Corporation	Deadline expiry
4824	10B GmbH; Cerner Corporation	Deadline expiry
4825	Hellmann & Friedmann Capital Partners VIII, L.P.; Genesys Inc.	Deadline expiry
4826	Heise & Dumrath Medien GmbH & Co. KG; Schlütersche	Deadline expiry
4827	Breitling S.A.; Uhren-Vetriebsgesellschaft m.b.H.	Deadline expiry
4828	Mondelez Coffee HoldCo B.V.; JDE Peet's B.V.	Deadline expiry
4829	Evotec SE; Boehringer Ingelheim Venture Fund GmbH; QUANTRO Therapeutics GmbH	Deadline expiry
4830	ESSVP IV, L.P.; ESSVP IV (Structured) L.P.; Silenos GmbH & Co. KG; Westhouse Consulting GmbH; Westhouse Management GmbH; Westhouse Schweiz AG	Deadline expiry
4831	Springer-Verlag GmbH; Schaffler Verlag GmbH	Withdrawal
4832	FAM AB; Munters Group AB	Deadline expiry
4833	Bechtle AG; DPS Software GmbH; DPS Software AG; DPS Software GmbH	Deadline expiry
4834	Bregal Investments Inc.; Corcentric, Inc.	Deadline expiry
4835	HS Timber Group GmbH; Interfloat Corporation; GMB Glasmanufaktur Brandenburg GmbH	Deadline expiry
4836	Macquarie Group Limited; LG CNS Co.	Deadline expiry

Merger statistics 2020		
Case	Company	Status
4837	Held & Francke Baugesellschaft m.b.H.; Waldviertler Lieferasphalt GmbH	Deadline expiry
4838	The Goodyear Tire & Rubber Company; Baierlacher KG Groß- und Einzelhandel	Deadline expiry
4839	Alpine Metal Tech GmbH; IMT Intermato S.p.A.	Deadline expiry
4840	Kingspan Holding Netherlands BV; Colt Investments Ltd.	Deadline expiry
4841	AURELIUS Equity Opportunities SE & Co. KGaA; Geschäftsbereiche der Woodward Gruppe	Deadline expiry
4842	Kirchdorfer Fertigteilholding GmbH; Rudolf Kandussi GesmbH; LUIKI Betonwerke Gesellschaft m.b.H.	Deadline expiry
4843	Macquarie European Rail; Akiem Group SAS	Deadline expiry
4844	Bridgepoint Group Limited; Wild River Corporation S.à r.l.	Deadline expiry
4845	MedMedia Verlag und ediaservice GmbH; Universimed Cross Media Content GmbH	Approved with conditions in phase I
4846	OEP Capita/Advisors, L.P.; MCL Beteiligungs GmbH	Deadline expiry
4847	KCAKE Acquisition Inc.; DecoPac Holdings Inc.	Deadline expiry
4848	Deutsche Börse AG; Credit Suisse Asset Management International Holding AG; Natixis Investment Managers Innovation S.A.S.U.; Société de la Bourse de Luxembourg S.A.; FundsDLT S.A.	Deadline expiry
4849	Schneider Electric SE; RIB Software SE	Deadline expiry
4850	STADA Arzneimittel AG; GlaxoSmithKline Consumer Healthcare (No.2) Limited	Deadline expiry
4851	Versalis S.p.A.; Finproject S.p.A.	Deadline expiry
4852	WatchGuard Technologies, Inc.; Panda Security, S.L.	Deadline expiry
4853	Qatar Airways Group Q.C.S.C.; International Consolidated Airlines Group (IAG)	Deadline expiry
4854	AUDI AG; Capgemini SE	Deadline expiry
4855	Siemens Aktiengesellschaft; SWW Wunsiedel GmbH	Deadline expiry
4856	Allianz Strategic Investments S.à.r.l.; ControlExpert Holding B.V.	Deadline expiry
4857	Clayton, Dubilier & Rice, LLC; Huntsworth plc	Audit waiver
4858	Motorola Solutions Inc.; IndigoVision Group plc	Deadline expiry
4859	BMC Software, Inc.; Compuware Software Group LLC	Audit waiver
4860	Franz Eigl Gesellschaft m.b.H.; Hans Hoffelner GmbH; Seifriedsberger GmbH	Audit waiver
4861	Open Grid Europe GmbH; TÜV Süd AG; Horváth & Partner GmbH	Audit waiver
4862	Planet Payment Group Holdings Limited; Tribus S.A.	Deadline expiry
4863	Laura Holding GmbH; SIGMA Development Selection Beteiligung GmbH	Audit waiver
4864	SOSTNT Luxembourg S.à.r.l.; FTI Finanzholding GmbH	Audit waiver

Merger statistics 2020		
Case	Company	Status
4865	Daimler Truck AG; Ukuvela Holdings Proprietary Limited	Deadline expiry
4866	Thoma Bravo, LLC; AppExtremes Group Holdings, LLC	Audit waiver
4867	PETROL d.d.; E 3, ENERGETIKA, EKOLOGIJA, EKONOMIJA, d.o.o.	Deadline expiry
4868	Franz Haniel & Cie. GmbH; Bettzeit GmbH	Deadline expiry
4869	Huntsman Corporation; EPM Specialty Polymers Holding Corp.	Audit waiver
4870	PORR AG; Schertler Holding GmbH; Pocket House GmbH	Audit waiver
4871	A/NPC WEH Holdings, LLC; World Endurance Holdings Inc.	Deadline expiry
4872	Rotkäppchen-Mumm Sektkellereien GmbH; Casa Vinicola Botter Carlo & C. SpA	Deadline expiry
4873	Schneider Electric SE; ProLeiT AG	Deadline expiry
4874	The Paragon Fund III GmbH & Co. geschlossene Investment KG; WEKA-Gruppe	Deadline expiry
4875	European Diversified Infrastructure Fund II SCSp; Stimmrechte an MVV Energie AG	Deadline expiry
4876	Zenith Electronics LLC; Luxoft USA, Inc.	Deadline expiry
4877	Jacoby GM Pharma GmbH; Kwizda Pharmahandel GmbH; Richter Pharma AG	Approved with conditions in phase I
4878	Bridgestone Europe NV/SA; Geschäftsbereich der REIFF Reifen und Autotechnik GmbH	Audit waiver
4879	ProSiebenSat.1 Media SE; General Atlantic GmbH; The Meet Group, Inc	Deadline expiry
4880	Krüger Kaffee Holding GmbH; BL Balanced Lifestyle Food & Beverages GmbH	Audit waiver
4881	Arch Capital Group Ltd.; Coface S.A.	Deadline expiry
4882	Generali Versicherung AG; SK Versicherung AG	Deadline expiry
4883	UBM Development Österreich GmbH; ARE Austrian Real Estate Development GmbH	Deadline expiry
4884	OEP Capital Advisors, L.P.; Vexos Inc	Deadline expiry
4885	Apollo Capital Management L.P.; Lecta Gruppe	Audit waiver
4886	GeraNova Bruckmann Verlagshaus GmbH; VGB Verlagsgruppe Bahn Holding GmbH	Deadline expiry
4887	Lenzing Aktiengesellschaft; Palmers Textil Aktiengesellschaft; Joint Ventures Hygiene Austria LP GmbH	Audit waiver
4888	OÖ Gesundheitsholding GmbH; Kepler Universitätsklinikum GmbH	Deadline expiry
4889	H.I.G. Europe Capital Partners II, L.P.; Project Informatica S.r.l.	Deadline expiry
4890	SB BidCo; Swissbit Holding AG	Deadline expiry

Merger statistics 2020		
Case	Company	Status
4891	Greiner AG; Eurofoam GmbH	Deadline expiry
4892	Alexion Pharmaceuticals, Inc.; Portola Pharmaceuticals, Inc	Deadline expiry
4893	Clayton Dubilier & Rice, LLC; Radio Systems Holdings, Inc	Deadline expiry
4894	Koninklijke N.V.; Avril SCA	Deadline expiry
4895	Mutares SE & Co. KGaA; CSF POLAND sp. z o.o.; Cooper-Standard Automotive Piotrkow Sp. z.o.o. ; Cooper-Standard Automotive India Private Limited; Cooper-Standard India Private Limited	Deadline expiry
4896	Fujifilm Corporation; FujiFilm Healthcare Corporation	Withdrawal
4897	Bayside Capital, LLC; Techniplas-Gruppe	Audit waiver
4898	Argard Partners LP; Genui Sechste Beteiligungs-gesellschaft mbH; Cherry Holding GmbH	Deadline expiry
4899	Bodner GmbH; Bodner KG; DYWIDAG	Deadline expiry
4900	Mitsubishi Chemical Corporation (Japan); Gelest Intermediate Holdings, Inc.	Deadline expiry
4901	Lafarge Perlmooser GmbH; Perlmooser Beton GmbH	Deadline expiry
4902	Merck & Co., Inc.; Themis Bioscience GmbH	Audit waiver
4903	EQT Mid Market Europe Limited Partnership; Freepik Company, S.L.	Deadline expiry
4904	Microsoft Corporation; Metaswitch Networks Ltd.	Deadline expiry
4905	PSA Automobiles SA; Punch Powertrain NV	Deadline expiry
4906	Cisco Systems, Inc.; ThousandEyes, Inc.	Deadline expiry
4907	Project Eagle Parent, L.P.; Exostar Corporation, LLC.	Deadline expiry
4908	Clayton, Dubilier & Rice, LLC; SIG plc	Audit waiver
4909	London Stock Exchange Group plc.; The Blackstone Group Inc	Withdrawal
4910	Faerch Netherlands B.V.; 3PET Holding B.V.	Deadline expiry
4911	OEP Capital Advisors, L.P.; MDS Holdco LLC; Spartro-nics Inc.	Deadline expiry
4912	Intermediate Capital Group plc.; HSE24 Multichannel GmbH	Deadline expiry
4913	Orifarm Generics Holding A/S; Takeda Pharmaceuticals International AG	Deadline expiry
4914	Raiffeisen Ware Austria AG; RI Solution Data GmbH	Deadline expiry
4915	Evernex Deutschland GmbH; Techno System S.á.r.l.; Luxemburg	Deadline expiry
4916	HIG Europe Capital Partners II, L.P.; DGS S.p.A Italien	Deadline expiry
4917	Accelya US Inc.; Vista Equity Partners Management, LLC; Farelogix, Inc.	Deadline expiry
4918	BTV Multimedia GmbH; FiONiS GmbH	Deadline expiry

Merger statistics 2020		
Case	Company	Status
4919	DC NETHERLANDS B.V.; Nölle & Nordhorn GmbH	Deadline expiry
4920	CWS-boco International GmbH; Emdion GmbH	Audit waiver
4921	L'Oréal; Thayers Natural Remedies	Deadline expiry
4922	TIIC (SCA) SICAR; Parcheggi Italia S.p.A.; Best in Parking & Real Estate AG	Deadline expiry
4923	Climate City Holding B.V.; HC Groep B.V.	Deadline expiry
4924	Canada Pension Plan Investment Board; Axel Springer SE	Deadline expiry
4925	Pink Robin GmbH; Wastebox Deutschland GmbH	Deadline expiry
4926	Volkswagen Pensions Trust e.V.; BASF-Investoren; Allianz Global Diversified Infrastrucutre Equity Fund SCSp	Deadline expiry
4927	S&T AG; Fintel Holding d.o.o; Fintel Holding d.o.o & co k.d	Deadline expiry
4928	S&T AG; CITYCOMP Service GmbH	Deadline expiry
4929	Groupe Toisième Oeil; Groupe Les Nouvelles Editions Indépendantes; NJJ Presse; Mediawan S.A.	Deadline expiry
4930	OCS Luxco S.à r.l.; Verdane Fund Manager Future AB; Opus Capita Oy; Analyste International Oy	Audit waiver
4931	WIENER STADTWERKE GmbH; EVN AG	Deadline expiry
4932	ContiTech Techno-Chemie GmbH; dk Beteiligungs-gesellschaft mbH	Deadline expiry
4933	Mutares SE & Co. KGaA; Nexans Metallurgie Deutschland GmbH	Deadline expiry
4934	ArcelorMittal S.A.; France Rail Industry SAS	Withdrawal
4935	Carglass Austria GmbH; A.T.U Auto-Teile-Unger GmbH & Co.KG	Withdrawal
4936	The Carlyle Group Inc.; ENVEA S.A.	Deadline expiry
4937	Diamond Holdings BV; Sureca NV	Deadline expiry
4938	Discovery Communications Deutschland GmbH & Co. KG; TM-TV GmbH	Deadline expiry
4939	Stryker Corporation; Wright Medical Group N.V.	Deadline expiry
4940	Bregal Unternehmerkapital II LP; Bregal Unternehmerkapital II Feeder L.P., GUS Beteiligungs GmbH	Deadline expiry
4941	DER Touristik Hotels & Resort GmbH; Aldiana GmbH; LMEY Investments AG	Deadline expiry
4942	DeLaval Holding BV; Milkrite Interpuls Geschäftsbereich von Avon Rubber p.l.c	Deadline expiry
4943	FunderMax GmbH; Baufeld-Austria GmbH	Deadline expiry
4944	Koninklijke DSM N.V.; Erber Aktiengesellschaft	Deadline expiry
4945	Blackstone Group Inc.; Centric Brands Inc.	Deadline expiry
4946	Amari Austria GmbH; Ingrid L. Blecha Gesellschaft m.b.H	Deadline expiry
4947	Sharp Corporation; NEC Display Solutions, Ltd.	Deadline expiry

Merger statistics 2020		
Case	Company	Status
4948	Dürr AG; System TM A/S	Deadline expiry
4949	Aurelius Wachstumskapital SE & Co. KG; detailM GmbH	Deadline expiry
4950	Auctus-Gruppe; Proflitubi S.p.A	Deadline expiry
4951	VNG AG; Gas-Union GmbH	Deadline expiry
4952	EnBW Energie Baden-Württemberg AG; SMATRICS GmbH & Co KG	Deadline expiry
4953	Unipetrol a.s.; Unipetrol Slovensko s.r.o.; Fontee S.r.o.	Deadline expiry
4954	Wiener Städtische Versicherung AG Vienna Insurance Group; VBV-Betriebliche Altersvorsorge AG	Deadline expiry
4955	Hewlett Packard Enterprise Company; Silver Peak Systems, Inc.	Deadline expiry
4956	Intersnack International B.V.; Li-Corn-Gruppe	Deadline expiry
4957	Providence Strategic Growth Capital Partners L.L.C.; Hornetsecurity GmbH	Deadline expiry
4958	Saur S.A.S.; Nijhuis Industries Holding B.V.	Deadline expiry
4959	Olympus Europa SE & Co KG; FH Finance SAS	Deadline expiry
4960	OEP 14 Coöperatief U.A.; Techedge S.p.A.	Deadline expiry
4961	Henkel AG & Co. KGaA; Hello Body Holding GmbH; Banana Beauty GmbH und Mermaid + Me GmbH	Deadline expiry
4962	Step Holco 3, Inc.; Castillon SAS; Devoteam S.A.	Deadline expiry
4963	Papier - Mettler Luxembourg GmbH; Tafarello S.p.A.	Deadline expiry
4964	Art-Invest Real Estate Funds GmbHQuadrant Q ELF Projektentwicklungs GmbH & Co KG	Audit waiver
4965	Caption VI GmbH & Co. Beteiligungs KG; CNP Pharma GmbH; MIP-Holding GmbH	Deadline expiry
4966	Volkswagen (China) Investment Company Limited; JAC Volkswagen Automotive Co., Ltd.; Anhui Jianghuai Automobile Group Holdings Limited	Deadline expiry
4967	Littelfuse Europe GmbH; Hirtenberger Automotive Safety GmbH & Co KG	Deadline expiry
4968	Ford Motor Company; ALD S.A.	Deadline expiry
4969	Clessidra SGR S.p.A.; Casa Vinicola Botter S.p.A.	Deadline expiry
4970	Eurazeo PME S.A.; UTAC Holding S.A.S.	Deadline expiry
4971	Arval Austria GmbH; UniCredit Leasing Fuhrparkmanagement GmbH	Deadline expiry
4972	KPS Capital Partners, LP; Briggs and Stratton Corp	Deadline expiry
4973	Gebrüder Weiss GmbH; Ipsen Logistics GmbH	Deadline expiry
4974	H.I.G. Capital LLC; Edison Control Corporation	Deadline expiry
4975	Grundfos Holding A/S; Silhorko-Eurowater A/S	Deadline expiry
4976	Prysmian Cables and Systems Canada Ltd.; EHC Global Inc.	Deadline expiry
4977	Georg Nolte; Oliver Bialowons; Nolte GmbH & Co. KGaA; Express Möbel GmbH & Co KG; Nolte Möbel Ltd.	Deadline expiry

Merger statistics 2020		
Case	Company	Status
4978	McKesson Europe AG; Alliance Healthcare Deutschland AG	Deadline expiry
4979	HH Global Group Limited; InnerWorkings, Inc.	Deadline expiry
4980	Arkema SA; Thermoplastic Powder Holding AG; SDP Holding NV	Deadline expiry
4981	DBAG Fund VII; PM Plastic Materials Srl; PM Plastic Flex Holding AB	Deadline expiry
4982	Mabanol GmbH & Co. KG; DuraLubes GmbH	Deadline expiry
4983	DBAG Fund VIII; Multimon AG	Deadline expiry
4984	3i Group plc.; A-Z Gartenhaus GmbH	Deadline expiry
4985	Findos Investors GmbH; Techsoft Datenverarbeitung GmbH; iTools Software GmbH	Deadline expiry
4986	AFINUM Achte Beteiligungsgesellschaft mbH & Co. KG; Listan GmbH	Deadline expiry
4987	Eurazeo SE; EasyVista, S.A.	Deadline expiry
4988	VGRD GmbH; Autohaus Möbus GmbH; Autozentrum Möbus GmbH	Deadline expiry
4989	Laboratorios Lesvi S.L.U.; Erwerb des Antiepileptikums Buccolam	Deadline expiry
4990	AMAG Austria Metall AG; Aircraft Philipp Gruppe	Deadline expiry
4991	Capvis Equity V L.P.; BSI Business Systems Integration AG	Deadline expiry
4992	SFS intec GmbH; Ludwig Hettic Holding GmbH & Co. KG	Deadline expiry
4993	Rewe-Zentralfinanz eG; Greenyard NV	Deadline expiry
4994	Thoma Bravo, L.P.; K2 Software, Inc.	Deadline expiry
4995	Valmet Oyj; Neles Oyj	Withdrawal
4996	Blackstone Group Inc.; Ancestry.com LLC	Deadline expiry
4997	Fonds für temporäres Wohnen in Wien; ARWAG Holding - Aktiengesellschaft; Wien Holding GmbH	Deadline expiry
4998	Evonik Industries AG; Porocel Holdings, Inc.; Porocel International, LLC	Deadline expiry
4999	ALSO Holding AG; dicom Computer-Vetriebsges.m.b.H.	Deadline expiry
5000	PCS3 R-G S.á r.l.; Reutib International GmbH	Deadline expiry
5001	Centerbridge, L.P.; AHEAD DB Holdings LLC	Deadline expiry
5002	Laborie Medical Technologies Corp; Signet Healthcare Partners; GI Supply Inc.	Deadline expiry
5003	Frankfurter Allgemeine Zeitung GmbH; Süddeutsche Zeitung	Deadline expiry
5004	DEUTZ AG; PRO MOTOR Beteiligungsgesellschaft mbH	Deadline expiry
5005	Swietelsky AG; ARGE ATROS; Stern & Hafferl Bau-gesellschaft m.b.H.	Deadline expiry
5006	DBAG Fund VIII; congatec Holding AG	Deadline expiry
5007	DCC Holdings GmbH; Innerhofer GmbH	Deadline expiry

Merger statistics 2020		
Case	Company	Status
5008	Invest Equity Management Consulting GmbH; IKA Innovation Kunststoffaufbereitung GmbH & Co KG	Deadline expiry
5009	Bregal Milestone L.P.; Cafeyn Group SAS	Audit waiver
5010	NZH Nordenham Zinc Holding GmbH; Weser-Metall GmbH	Deadline expiry
5011	Bombardier Aerospace U.K. Limited; Lufthansa Bombardier Aviation Services GmbH	Deadline expiry
5012	Nordic Capital Fund X; Siteimprove	Deadline expiry
5013	Barentz International B.V.; J.S.Polak Koninklijke Specerijenmaaldery B.V.; De Weerd Specerijen B.V.; Beheermaatschappij De Wijzer B.V.	Deadline expiry
5014	DPE Investment Gesellschaft mbH; DPE III Shield GmbH & Co. KG; M-Sicherheitsbeteiligungen GmbH	Deadline expiry
5015	Clayton Dubilier & Rice; Epicor Holdings Corporation	Deadline expiry
5016	Tencent Cloud Europe B.V.; Stan Holding SAS	Deadline expiry
5017	Intelsat S.A.; Gogo LLC; Gogo International Holdings LLC	Deadline expiry
5018	Temasek Holdings (Private) Limited; Rivulis Irrigation, Ltd.	Deadline expiry
5019	Alfa Laval AB; Neles Corporation	Deadline expiry
5020	Dekabank Deutsche Girozentrale; Spängler IQAM Invest GmbH; IQAM Partner GmbH	Deadline expiry
5021	Thomas Bravo, L.P.; AF Software Holdings, Inc.	Deadline expiry
5022	Image Frame Investment CHK Limited; Leyou Technologies Holdings Limited	Deadline expiry
5023	capiton VI GmbH & Co. Beteiligungs KG; CEDES AG	Deadline expiry
5024	Egger Holzwerkstoffe GmbH; Cleaf S.p.A.	Deadline expiry
5025	Accenture plc.; SALT Solutions AG	Deadline expiry
5026	Bpifrance Participations S.A.; Mediawan S.A.	Deadline expiry
5027	salesforce.com, inc.; Tableau Software, Inc.	Deadline expiry
5028	Bergmann; Capio Deutsche Klinik	Deadline expiry
5029	Bregal; Woom GmbH	Deadline expiry
5030	Schneider Electric SE; OSIsoft, LLC	Withdrawal
5031	Warburg Pincus LLC.; Infinvest Holding GmbH	Deadline expiry
5032	Union Asset Management Holding AG; ZBI Partnerships-Holding GmbH	Deadline expiry
5033	BTicino S.p.A.; Borri S.p.A	Deadline expiry
5034	Patricia Industries II AB; Advanced Instruments LLC	Deadline expiry
5035	SAP SE; EMARSYS eMarketing Systems AG	Deadline expiry
5036	Patricia Industries II AB; Advanced Instruments LLC	Deadline expiry
5037	Nikita SAS; Amplexor International S.A.	Deadline expiry
5038	Bechtle GmbH; dataformers GmbH	Deadline expiry

Merger statistics 2020		
Case	Company	Status
5039	Zimmer Biomet Holdings Inc.; VSC Medical Holdings, Inc.	Deadline expiry
5040	NV IT und Projektentwicklung GmbH; VI-Engineers Bauträger GmbH & Co KG; VI-Engineers Development GmbH	Deadline expiry
5041	Deutsche Börse AG; Origin Primary Limited	Deadline expiry
5042	Oculus Holding Corp.; CNT Holdings I Corp	Deadline expiry
4043	Yamana Gold Inc.; Glencore International AG	Deadline expiry
5044	Intermediate Capital Group plc.; Curium PikCo S.a.r.l.	Deadline expiry
5045	ÖBB-Infrastruktur AG; LCA Logistik Center Austria Süd GmbH	Deadline expiry
5046	Ondufin SAS; alwitra GmbH	Deadline expiry
5047	alwitra Holding (France) SAS; CB S.A.	Deadline expiry
5048	TFL Ledertechnik GmbH; Lanxess Deutschland GmbH	Deadline expiry
5049	Chiesi Pharmaceutici S.p.A.; Revcovi	Deadline expiry
5050	Mutares SE & Co. KGaA; Valmet Automotive Beteiligungs GmbH	Deadline expiry
5051	Caesars Entertainment, Inc.; William Hill plc	Deadline expiry
5052	Verbund AG; Gas Connect Austria GmbH	Deadline expiry
5053	Americold Realty Trust; Agro Merchants Group	Deadline expiry
5054	Blackstone Group Inc.; Precision Medicine Group Holdings, Inc.	Deadline expiry
5055	Schenck Process Holding GmbH; Baker Perkins Holdings Limited	Deadline expiry
5056	CMA CGM S.A.; Groupe Dubreuil Aéro	Deadline expiry
5057	NORD Holding; DMH II; Dr. Födisch Umweltmesstechnik AG	Deadline expiry
5058	DBAG Fund VI; Pfaudler Gruppe; Patel-Familie	Deadline expiry
5059	Caldic B.V.; Brand-Nu Laboratories, Inc., BNL Sciences Ltd.	Deadline expiry
5060	Atlas Copco North America LLC; Perceptron, Inc.	Deadline expiry
5061	Intermediate Capital Group plc.; CapVest Partners LLP; Datasite Global Corporation	Deadline expiry
5062	Post 102 Beteiligungs GmbH; D2D - direct to document GmbH; Raiffeisen Informatik GmbH & Co KG	Withdrawal
5063	AURELIUS Development Twenty-Three GmbH; GKN Wheels & Structures	Deadline expiry
5064	Bâloise Holding AG; BEN Fleet Services GmbH	Deadline expiry
5065	Thalia Bücher GmbH; Osiander Vertriebsgesellschaft GmbH & Co. KG	Deadline expiry
5066	Ivanti, Inc.; MobileIron, Inc	Deadline expiry
5067	Ardian Buyout Fund VII B SLP; Aruba Investments Holdings, LLC	Deadline expiry
5068	Quaero European Infrastructure Fund II SCS; CAMBER22 GmbH	Deadline expiry

Merger statistics 2020		
Case	Company	Status
5069	Sun Capital Partners Inc.; CNC Holding B.V.	Deadline expiry
5070	IK Investment Partners; Kersia SAS	Withdrawal
5071	TIBCO Software Inc.; Information Builders Inc.	Deadline expiry
5072	AR Packaging Holding GmbH; Kroha GmbH	Deadline expiry
5073	EQT AB; Chr. Hansen Holding A/S	Deadline expiry
5074	Sandvik AB; CGTech	Deadline expiry
5075	Hexagon AB; D.P. Technology Corp.	Deadline expiry
5076	Linde Material Handling GmbH; Hans Joachim Jetschke Industriefahrzeuge GmbH & Co. KG	Deadline expiry
5077	Thomas Bravo, L.P.; Axiom SL Group, Inc.	Deadline expiry
5078	ArcelorMittal S.A.; Cleveland-Cliffs Inc.	Deadline expiry
5079	Invest AG; PIP; Schöps; Polytec	Deadline expiry
5080	Bregal Unternehmenskapital; STP Holding GmbH	Deadline expiry
5081	Terve Bidco S.á.r.l.; ATM S.A.	Deadline expiry
5082	Adobe Inc.; Workfront, Inc.	Deadline expiry
5083	MET Holding AG; Pegasus Energie GmbH; Erwerb des Gasspeichergeschäftes der Gas-Union GmbH	Deadline expiry
5084	3i Group plc.; MPM Topco Limited	Deadline expiry
5085	PreZero Erste Verwaltungs-GmbH; Kunststoff Recycling Grünstadt GmbH	Deadline expiry
5086	Strategic Value Partners, LLC; Swissport Financing S.á.r.l	Deadline expiry
5087	Hansgrohe SE; Easy Sanitary Solutions B.V.	Deadline expiry
5088	Artemis Acquisitions (UK) Limited; Landini Giutini S.p.A.	Deadline expiry
5089	C.S.I. - Compagnia Surgelati Italiana SpA.; Findus Switzerland	Deadline expiry
5090	Faerch Group A/S; Sirap Gema S.p.A.	Deadline expiry
5091	European Crops Products 2 S.á.r.l.; Oro Agri Group	Deadline expiry
5092	Schneider Electric SE.; Planon Beheer B.V	Deadline expiry
5093	Cheplapharm Arzneimittel GmbH; TPI; Braun Beteiligungs GmbH	Deadline expiry
5094	Capvis Equity V L.P.; ARAG S.r.l	Deadline expiry
5095	zur Mühlen Gruppe; Tönnies Gruppe; Schwarz Cranz GmbH & Co. KG	Audit waiver
5096	Atos IT Solutions and Services GmbH; SEC Consult Unternehmensberatung GmbH	Deadline expiry
5097	Vista Equity Partners Management; Pipedrive, Inc	Deadline expiry
5098	Fujitsu Ltd.; Fanuc Corporation; NTT Communications Corporation	Deadline expiry
5099	AlpInvest Partners B.V.; Audax Private Equity Fund IV CF, L.P	Deadline expiry
5100	mertus 667. GmbH; BearingPoint Software Solutions GmbH	Deadline expiry

Merger statistics 2020		
Case	Company	Status
5101	Take-Two Interactive Software, Inc; Codemasters Group Holdings, plc.	Deadline expiry
5102	Wien Energie GmbH; Windpark Pongratzer Kogel GmbH; Windpark Herrenstein GmbH; Windpark Zagersdorf GmbH	Deadline expiry
5103	Triton Investment GmbH; Inwerk GmbH	Deadline expiry
5104	VF Corporation; Supreme Holdings Inc. (Delaware)	Deadline expiry
5105	Schneider Electric SE.; OSIsoft LLC	Deadline expiry
5106	Bregal Milestone L.P.; Greenstorm Mobility GmbH	Audit waiver
5107	Ardian France SA.; Sopura International Services SA	Deadline expiry
5108	Mate GmbH; System 7 Group GmbH	Deadline expiry
5109	EQT Fund Management S.á.r.l.; TP Monaco GmbH	Deadline expiry
5110	STRABAG AG; Hans-Heimo GÄNGER GmbH	Deadline expiry
5111	PAI Partners S.á r.l.; Lagumar Gruppe	Deadline expiry
5112	Banque Publique d'Investissement; Avril Protein Solutions 2 S.A.S; Koninklijke DSM N.V	Deadline expiry
5113	Cellnex Telecom S.A.; CK Hutchison Network (Austria) GmbH	Audit waiver
5114	RWA Raiffeisen Ware Austria AG; BayWa Vorarlberg	Deadline expiry
5115	De'Longhi S.p.A.; Capital Brands Holdings, Inc	Deadline expiry
5116	Husqvarna AB; Blastrac Global Inc	Deadline expiry
5117	Accor S.A.; 25hours Hotel Company Deutschland	Deadline expiry
5118	HarbourVest Partners, LLC., USA; Lagumar Group; Angulas Aguinaga, S.A.U	Deadline expiry
5119	BC Partners LLP; Keesing Media Group B.V.	Deadline expiry
5120	MAHLE GmbH; Keihin Termal Technology Corporation	Deadline expiry
5121	Presidio Inc.; Arkphire Group Limited	Deadline expiry
5122	NOVENTI Health SE; ADG Apotheken-Dienstleistungsgesellschaft mbH	Deadline expiry
5123	Deutsche Börse AG; Institutional Shareholders Services, Inc	Deadline expiry
5124	Snam S.p.A.; Cassa Depositi e Prestiti S.p.A.; Industrie De Nora S.p.A. (Italien)	Deadline expiry
5125	IK Investment Partners; Kersia SAS	Audit waiver
5126	AFINUM Achte Beteiligungsgesellschaft mbH & Co. KG; SanderStrothmann GmbH; Compes Cosmetic GmbH & Co. KG	Deadline expiry
5127	Neovia Gruppe; TLC Logistics Graz GmbH; TLC Logistik Ilz GmbH	Deadline expiry
5128	Budamar Logistics, a.s.; Optifin Invest. s.r.o.; Tatravagónka a.s.; Ing. Vitazoslav Moric; ZOS-Group	Deadline expiry
5129	Krenhof AG; Pankl Racing Systems AG	Deadline expiry

Merger statistics 2020		
Case	Company	Status
5130	OQEMA AG; CB Nutrition GmbH; tegaferm Holding GmbH; CB International Holding GmbH	Deadline expiry
5131	Norra Skog; Metsä Board Servige AB; Husum Pulp AB	Deadline expiry
5132	Grünenthal Pharma GmbH & Co. KG; Gewisse Rechte und Vermögenswerte im Zusammenhang mit der Marke Crestor sowie deren Zweitmarken Provisacor, Simestat, Crestastatin, Visacor	Deadline expiry
5133	Columna Datamars S.á.r.l.; Datamars Investors S.á.r.l	Deadline expiry
5134	Platinum Equity Advisors , LLC; Mad Engine, LLC	Deadline expiry
5135	Thomas Bravo, L.P.; Flexera Holdings L.P	Deadline expiry
5136	Robus SCSP, SICAV-FIAR - Robus Recovery Fund II; Eismann Beteiligungen S.à.r.l	Deadline expiry
5137	Viessmann Werke GmbH & Co. KG; PEWO Energietechnik GmbH	Audit waiver
5138	RWA Raiffeisen Ware Austria AG; Biohelp	Deadline expiry
5139	A1 Telekom Austria AG; NTT Austria GmbH	Deadline expiry
5140	Chequers Partenaires S.A.; The Paragon Fund III GmbH & Co. geschlossene Investment KG; 7 days HoldCo GmbH	Deadline expiry
5141	eBay Inc.; Adevinta ASA	Withdrawal
5142	Adevinta ASA; ebay Classifieds Group	Withdrawal
5143	Recticel SA NV; FoamPartner Group	Withdrawal
5144	Ahlstorm Invest B.V.; Ahlstrom-Munksjö Oyj	Deadline expiry
5145	Cisco Systems, Inc.; IIMobile plc	Deadline expiry
5146	UTAC; Eurazeo SE; Millbrook Group	Deadline expiry
5147	The Carlyle Group, Inc.; iC Consult Group GmbH	Deadline expiry
5148	Equinor ASA; A/S Norske Shell; TOTAL E&P Norge AS	Deadline expiry
5149	Cube Telecom Europe BidCo Limited; GTT Austria GmbH	Deadline expiry
5150	Smyrise AG; Erwerb des Geschäftsbereichs Duftstoffe und Aromachemikalien der Sensient Technologies Corporation, USA	Deadline expiry
5151	Allianz Capital Partners GmbH; Oakley Capital IV Co-Investment (B) SCSp	Deadline expiry
5152	Huntsman International LLC; Huntsman Corporation; GPP Acquisition, LLC	Deadline expiry
5153	Centerbridge Partners, L.P.; Speedcast International Ltd	Deadline expiry
5154	London Stock Exchange Group plc.; Refinitiv; The Blackstone Group Inc	Deadline expiry
5155	Heise Medien GmbH & Co. KG; Rheinwerk Verlag GmbH	Deadline expiry
5156	Harvest Partners VIII, L.P.; Vista Foundation Fund IV, L.P.; Wildebeest Topco, LLC	Deadline expiry

Merger statistics 2020		
Case	Company	Status
5157	SAS Shipping Agencies Services Sàrl; Traxens SAS	Deadline expiry
5158	LGT Bank AG; UBS Europe SE Niederlassung Österreich	Deadline expiry
5159	EIP Ruby Renewables Invest GmbH; BayWa r.e. renewable energy GmbH	Deadline expiry
5160	Innovex-Gruppe; Rubicon-Gruppe; Rubicon Holdings LP; Warburg Pincus	Deadline expiry
5161	Riccardo Limited; Catawiki B.V	Deadline expiry
5162	DBAG Fund VIII; TBS Brandschutzanlagen GmbH (Germany)	Deadline expiry
5163	Cyan AcquiCo GmbH; Gilde Buy-Out Fund VI	Deadline expiry
5164	Thread BidCo AG; SPT Roth AG; Felmada AG	Deadline expiry
5165	BAST Unternehmensbeteiligungs GmbH; ForTec GmbH; Forstinger Österreich GmbH	Deadline expiry
5166	H.I.G. Europe Capital Partners II, L.P.; Walter Hundhausen GmbH	Deadline expiry
5167	SMS group GmbH; OMAV S.p.A.; Hydromec S.r.l	Deadline expiry
5168	CEP V Investment 11 S.à r.l.; Acrotec Holding S.à r.l	Deadline expiry
5169	Vista Equity Partners Management, LLC.; Pluralsight, Inc	Deadline expiry
5170	Impact Bidco Holdings; JPack International SAS	Deadline expiry
5171	Equistone Partners Europe Limited; Ligentia Group Holdings Limited	Deadline expiry
5172	Dürr Aktiengesellschaft; Teamtechnik Maschinen und Anlagen GmbH	Deadline expiry
5173	KATEK SE; Leesy - Leipzig Electronic Systems GmbH	Deadline expiry
5174	SeneCura Gruppe; Gesundheitszentrum Revital Aspach	Deadline expiry
5175	Krüger Kaffee Holding GmbH; SODAPO Austria GmbH	Deadline expiry
5176	Blaguss Reisen GmbH; Herbert Gschwindl Urlaub-u. Reisen Gesellschaft mbH; Dr. Richard Linien GmbH & Co. KG	Deadline expiry
5177	Rocket Software B.V.; M4 Global Solutions Holding Coöperatief U.A	Deadline expiry
5178	Kontron Technologies GmbH; S&T AG; HC Solutions GesmbH	Deadline expiry
5179	Dana Incorporated; der Geschäftsbereich Thermalsysteme für PKW und leichte Nutzfahrzeuge der Modine Manufacturing Company	Withdrawal
5180	Mutares SE & Co. KGaA; Primetals Technologies France S.A.S	Deadline expiry
5181	Beiselen GmbH; ATR Landhandel GmbH & Co. KG	Deadline expiry

7.4 List of abbreviations

List of abbreviations	
Par	Paragraph
AEUV (TFEU)	Treaty on the Functioning of the European Union
AG	Public limited company, defendant(s)
AK	Chamber of Labour
Art	Article
Ed	Edition(s)
B2C	Business to Consumer
BAK	Federal Office for the Prevention of and Fight against Corruption
BGBI	Federal Law Gazette
GDP	Gross domestic product
BKartAnw	Federal Cartel Prosecutor
BMDW	Federal Ministry for Digitalisation and Economic Location
BMVRDJ	Federal Ministry for the Constitution, Reforms, De-regulation and Justice
BSA	Amazon Services Europe Business Solutions Agreement
Ex.	Example/for example
BWB	Federal Competition Authority (Bundewettbewerbsbehörde)
BVwG	Federal Administrative Court
resp.	respectively
approx.	approximately
CPC	Consumer Protection Cooperation
DG Competition	Directorate-General for Competition
ECA	European Competition Authorities
ECN	European Competition Network
EG	European Community
EC	European Commission
ELI	European Law Institute
ELSA	European Law Students' Association
ELT	Electronic legal transactions
etc.	et cetera
EU	European Union
EuG	Court of the European Union
EuGH	European Court of Justice

List of abbreviations	
FKVO	Fusionskontrollverordnung (Merger Control Regulation)
GB	Geo-blocking
GD	Director General, General Management
GelverkG	Occasional Transport Act 1996
GmbH	Limited liability company
GSL	Office Manager
GZ	Business reference
HD	Dawn raids
ICN CAP	Framework on Competition Agency Procedures of the International Competition Networks
idF	in der Fassung
iHv	in (der) Höhe von
IMI	Internal Market Information System
incl.	inclusive
IT	Information technology
KartG	Cartel Act 2005
KAV	Vienna Hospital Association
KCA	Kosovo Competition Authority
KG	Cartel Court
KG	Limited partnership
KMU	Small and medium-sized company
KOG	Supreme Cartel Court
KommAustria	Communications Authority Austria
KWR	Karasek Wietrzyk Rechtsanwälte GmbH
lit	Littera
LK	Chamber of Agriculture
Mil.	Million(s)
MOU	Memorandum of Understanding
Bil.	Billion(s)
OECD	Organisation for Economic Cooperation and Development
ÖGB	Austrian Federation of Trade Unions
MOU	Memorandum of Understanding
Mrd	Milliarde(n)
OECD	Organisation for Economic Cooperation and Development
ÖGB	Österreichischer Gewerkschaftsbund
OG	Open society
OGH	Supreme Court
OLG	Upper Regional Court
ÖPAG	Österreichische Post AG

List of abbreviations	
ORF	Austrian Broadcasting (Österreichischer Rundfunk)
ÖZK	Austrian Journal of Cartel Law
PA	Examination application
PV	Audit waiver
Q	Quarter
RA	Attorney at Law
Dir	Directive
RTR	Rundfunk & Telekom Regulierungs-GmbH
S	See
SC	Section Head
StbL	Head of Staff
Stop	Code of Criminal Procedure
Dep	Deputy
TKG	Telecommunications Act 2003
i.a.	inter alia
UIA	Union Internationale des Avocats
UNCTAD	United Nations Conference on Trade and Development
USA	United States of America
UVP	Non-binding sales price
UWG	Federal Act against Unfair Competition
Esp	especially
VerbrSch	Consumer protection
VBK	Vereinigte Kärntner Brauereien AG
VBKG	Consumer Authorities Cooperation Act
Comp	compare
VKI	Association for Consumer Information
VO	Ordinance
Vs	Versus
VwGH	Administrative Court
WBK	Competition Commission
WCNA	Women in Competition Law Network Austria
WettbG	Competition Act
WKÖ	Austrian Federal Economic Chamber
WKStA	Economic and Corruption Prosecution
WS	Workshop
WU	University of Economics
No	Number

7.5 Priority recommendations of the WBK to the BWB

Proposals of the Competition Commission pursuant to section 16 para 1 Competition Act to the Federal Competition Authority for priorities in the fulfilment of its tasks in the calendar year 2020:

1) Introductory remarks

The Competition Commission (WBK) takes the opportunity, within the framework of the annual submission of a priority recommendation for the work of the Bundeswettbewerbsbehörde (BWB) as provided for in the Competition Act, to point out from its point of view those areas that suggest a more in-depth and ongoing treatment in the interest of fair competition. In drafting these recommendations, the Competition Commission draws on findings from its ongoing work and information it has received, and endeavours to focus its recommendations on those areas of competition policy whose in-depth treatment by the BWB can be expected to be of the greatest possible benefit.

The WBK's previous key recommendations can be seen on the BWB's homepage. Some of the previous recommendations are still particularly topical and relevant due to developments, such as online trade in particular.

2) Priority recommendation for 2020

a) Competition monitoring

For 2019, the WBK recommended targeted competition monitoring in the sense of preliminary investigations of certain industries, which may subsequently lead to a full industry investigation.

The energy sector, online trade (especially in connection with cross-border deliveries) and service platforms were mentioned as possible sectors (see below).

b) Energy sector

The WBK has repeatedly recommended, as it did last year, the electricity and gas sectors as focal points for continuous monitoring. The area of grid-based energy (electricity, gas, district heating) is a „permanent topic of competition policy“ due to the economic importance of these sectors. It is recommended (together with E-Control) to closely monitor not only grid-based energy but also the competitive effects of the Federal Energy Efficiency Act. Particular attention should be paid to the development of electricity prices after the separation of the German-Austrian electricity market. The separation of the electricity price zone between Austria and Germany took place on 10/01/2018. The competition-relevant question is now whether and to what extent the introduction of the electricity price zone leads to unjustified price increases. Another factor in determining the retail price is the development of wholesale prices. With regard to the question of whether falling wholesale prices are passed on to end customers just as regularly and quickly as rising prices, competitive monitoring appears to make sense.

c) Online trade

Given the steadily growing market power of global and network-based international companies based outside the EU, last year's report recommended an examination of the competitive situation in online trade and, if necessary, initiatives to ensure a level playing field for all players.

The WBK continues to be of the opinion that the following four problem areas in particular can lead to distortions of competition:

- Infringements of industrial property rights/plagiarism
- Infringement of labelling regulations
- Unjustified preference in postal tariffs
- Evasion of taxes and duties (import sales tax, customs etc)

See the WBK's priority recommendation for 2019 for more details.

For this reason, the WBK recommended that the BWB, within the scope of its duties, places a special focus on the investigation of online trade, especially in connection with deliveries from third countries (especially China). This raises not only questions of competition law in the narrower sense, but also questions of location policy. It can be assumed that Austria as a business location will lose jobs, income tax, VAT and social security contributions, etc. and that companies operating in Austria will be increasingly exposed to competitive disadvantages.

Since, in addition to competition law, questions of location policy also arise, the WBK suggested setting up a corresponding task force that could take a closer look at this cross-competence topic - if possible, with the involvement of other ministries with responsibility in this area.

Against the background that this is at least an EU-wide problem, the WBK recommended EU-wide cooperation between competition authorities (including the European Commission) and ministries.

The WBK reiterates these recommendations and would like to highlight in particular steps/measures already taken:

- The BWB took action in 2019 and launched an investigation into Amazon's business practices. The BWB's report on the Amazon case was interesting and enlightening. The BWB therefore encourages further investigations of this kind.
- With regard to the issue of preferential terminal dues for large letters (or small parcels) coming from China, following a threat by the USA to withdraw from the UPU, an agreement was reached among all member states at a special summit of this institution on 09/25/2019, according to which a faster increase in these terminal dues for large letters (small parcels) coming from China will be possible not only for the USA but also for countries such as Austria. This will enable the elimination of no longer justified preferential treatment more quickly and contribute to levelling the playing field.
- In Austria, the Federal Ministry of Finance has meanwhile also taken action (including changes in the area of the EUST): The exemption from import VAT for parcels from third countries (up to a goods value of EUR 22) has been abolished.

Therefore, the BWB should continue to intensively deal with future topics, such as the influence of algorithms, and further expand its relevant expertise in these areas and continue to focus the attention of its activities on this topic area.

d) Service platforms

Practices such as „dimming“ or „de-ranking“ by online platform operators can lead to massive distortions of competition. The BWB therefore recommends that the BWB continue to monitor compliance with the general conditions of competition law on various service platforms. In particular, those companies whose direct or indirect business is the collection of data should be examined more closely.

3) General remarks

Reliable and efficient enforcement of competition law is an essential advantage for Austria as a business location. The BWB should therefore continue to guarantee independence, efficiency, transparency and fast procedures.

For the rest, reference is made to the requirements in connection with the implementation of the „ECN+“ Directive.

4) Final remark

The WBK thanks the BWB for the measures already taken, the exchange of ideas and experiences that has taken place and wishes it continued success in its activities to improve the competitive situation.

Vienna 11/15/2019

Hon.-Prof. DDr. Jörg Zehetner
Chairman of the Competition Commission

7.6 Implementation of the priority recommendation for 2020 by the BWB

At an appropriate place in the text, reference is made to the corresponding recommendations of the WBK, insofar as they were suitable for implementation within the framework of the necessary prioritisation.

7.7 Statement of the WBK on the Annual Report 2020

Statement of the Competition Commission on the activity report of the Federal Competition Authority for the period 01/01/2020 - 12/31/2020 pursuant to section 2 para 4 Competition Act (WettbG):

1. Preliminary remark

In the BWB's Annual Report 2020 (pursuant to § 2 para 4 Competition Act), numerous activities for the year 2020 are presented, which are illustrated together with the annex on a total of one hundred and six pages. The Competition Commission (§ 16 Competition Act) is to be heard in this regard (§ 2 para 4 2nd sentence Competition Act). The following statement is based on this right to be heard.

The tasks of the BWB include in particular (see § 2 para 1 Competition Act):

- Exercise of the BWB's party status in proceedings before the Cartel Court and the Supreme Cartel Court pursuant to § 40 Cartel Act 2005.
- Implementation of the European competition rules in Austria (§ 3)
- General investigation of an industry where circumstances suggest that competition in the industry is restricted or distorted.
- Providing administrative assistance in competition matters towards the Cartel Court, the Supreme Cartel Court, courts and administrative authorities, including the regulators and the Federal Cartel Prosecutor.
- Issuing opinions on general economic policy issues
- Application pursuant to § 7 para 2 Federal Act on the Improvement of local supply and competitive conditions
- Assertion of claims for injunctive relief pursuant to section 14 para 1 of the Federal Act against Unfair Competition, whereby sections 11 to 14 Competition Act shall not apply.

- Carrying out competition monitoring, in particular on the development of the intensity of competition in individual economic sectors or markets relevant under competition law
- Carrying out the tasks pursuant to § 6a of the ORF Law and
- Perception according to § 3 para 1 no 3 Consumer Authorities Co-operation Act - VBKG

The BWB Annual Report for 2020 was submitted to the members of the WBK by the Federal Ministry of Digitalisation and Economy (BMDW) on 04/28/2021 pursuant to § 2 para 4 Competition Act (WettbG). The WBK dealt with the Annual Report in its meetings on 05/10 and 05/18/2021. The Competition Commission adopted its statement in a written decision procedure on 05/27/2021.

2. Quality of the Annual Report and formal comments

The Annual Report has a clear structure and is informative. It provides a good insight into the work of the BWB in the past year, which was also challenging for the BWB in view of the Corona pandemic. It should be emphasised that the BWB succeeded in fulfilling all its activities in full, despite the known limitations. The layout of the report is successful.

In terms of content, the report clearly outlines the specific activities that the BWB undertook in the year of the Covid 19 pandemic in addition to and in thematic accompaniment of the crisis within its area of responsibility, which are aimed at a rapid and targeted management of the crisis.

It is also noted positively that the suggestions of the Competition Commission were taken into account by the BWB in the current Competition Report. The independence of the Competition Commission (WBK) and the Federal Cartel Prosecutor is now taken into account by giving both institutions their own subsection. The WBK would also like to emphasise that the individual sections clearly show the extent to which the WBK's key recommendations have been incorporated into the work of the BWB.

In the year 2019, another staff position was established with the function of special advisor to the Director General (to „coordinate and summarise tasks and projects for the Director General“). The WBK has repeatedly expressed the wish for a more detailed description of this activity and to report on the division of tasks within the authority as a whole in the Annual Report.

3. ECN+

DDirective (EU) 2019/1 of the European Parliament and of the Council of 12/11/2018 on strengthening the competition authorities of the Member States with regard to more effective enforcement of competition rules and to ensuring the proper functioning of the internal market will be implemented within the framework of the Cartel and Competition Law Amendment Act 2021. The WBK has also submitted a statement on this to the BMDW. It is positive to note that Austria and the BWB were highlighted as a positive example within the EU during the drafting of the Directive, especially in the area of the necessary independence of the competition authorities, so that the technical need for implementation is limited.

4. Budgetary resources, employment development and training measures

In principle, it is noted that a reasonable budget and sufficient staff resources of the BWB is an essential prerequisite for effective competition control.

The graphs on page 12 and following show a difference between the planned positions and the actual number of employees. Not least because of the criticism of the low staffing of the authority, it would serve transparency to clarify this divergence for the readers of the report.

The further training and specialisation measures described above (e.g., IT forensics) appear to be sensible and useful, not least in order to keep pace with advancing digitalisation. At the same time, time-intensive training is naturally in a certain tension with the repeatedly raised burden on staff. It will probably be particularly important to find an appropriate and compatible balance here.

In the comments on the revenues of the BWB, a reference to Section 32 (2) Cartel Act would be welcome for reasons of transparency, which provides that €1.5 million of the fines are to be used annually for the purposes of the Federal Competition Authority.

5. „Competition Advocacy“

The BWB also welcomes the new presentations and views of the authority on antitrust issues published last year. Among other things, the BWB came out with the following elaborations, revisions and activities in 2020:

Update of the merger notification form

- Update of the position on questions of the applicability of the group privilege under cartel law
- Thesis Paper Digitisation and Competition Law
- Brochure Antitrust Law and Arbitration
- Position - Macroeconomic impact of mergers in the context of COVID-19 - „Shutdown mergers“.
- 5G expansion (investment-friendly framework conditions)
- ECN joint action - Covid-19 and the impact on competition law in Austria
- Meeting on digitisation, competition and data protection between the BWB, the DPA, E-Control and RTR

All these projects show the market participants possible argument scenarios and procedures in the respective application case and also facilitate the assessment of their behaviour with regard to conformity with competition law. The willingness of the Bundeswettbewerbsbehörde (Federal Competition Authority) to respond to enquiries from companies and to clarify the positions helps to prevent violations of competition law from the outset and improves the plannability of certain economic activities (such as, in particular, in connection with investments in mobile radio infrastructure). A continuation of this practice of presenting selected practice-relevant issues is desirable.

Beyond its core tasks, the BWB also participated in the legal policy discussion with the following studies/publications:

- Sector enquiry into the car rental and taxi industry
- Sector inquiry health: launch of the third partial report on drug supply
- Funeral market - evaluations on the development of price transparency
- RTR/BWB Monitoring Study on Instant Messaging Methods Paper (Monitoring of digital platforms)

The BWB once again succeeded in awakening and strengthening interest in antitrust and competition law in the context of university education through the **Cartel Law Moot Court 2020**, which this time took place virtually.

6. Merger control

Due to the Corona crisis, merger filings declined in the reporting year. Compared to the previous year, the number of notified mergers fell from 495 to 425 (- 14 percent).

Only one case entered examination phase 2 and an application for examination was filed with the Cartel Court by both the Federal Cartel Prosecutor and the BWB (takeover of Fohrenburg Beteiligungs-Aktiengesellschaft by Brau Union Aktiengesellschaft). The review requests by the official parties were withdrawn on 08/26/2020 in exchange for the imposition of further conditions (see page 38 of the report).

It is striking that 15 merger applications were withdrawn in the reporting year (+ 150% compared to 2019). A description of the reasons for this would be interesting insofar as it could be an explanation for the fact that only very few applications are submitted to the Cartel Court for in-depth examination.

In this context, the BWB refers to the **pre-notification talks** conducted prior to a notification (2020: 23), in which competition law issues can be clarified with the notifying parties in advance and, if necessary, an agreement can be reached on effective remedies (restrictions or conditions). A solution-oriented approach is to be welcomed from the point of view of users and competition, as it enables faster decisions. However, in order to make merger control as transparent as possible, it would be desirable for the BWB to indicate in the Annual Report with which companies' pre-notification talks were held and, if applicable, restrictions or conditions were agreed in the run-up to a merger notification. Of course, this should not apply to confidential pre-notification talks which ultimately led to a merger not being carried out or notified.

7. Cartels, concerted practices, fines

The BWB carried out three dawn raids in the reporting year on suspicion of collusion in the area of driving schools in violation of cartel law.

Since 2017, the BWB has been investigating cartel agreements in the construction industry in cooperation with the Public Prosecutor's Office for Economic Affairs and Corruption. In the reporting year, the BWB **filed** an initial application with the Cartel Court to impose an appropriate fine on four affiliated construction companies.

In 2020, one proceeding for **prohibited implementation of a merger** or for incorrect/misleading information was conducted and concluded with the imposition of a fine by the Cartel Court. In 2020, one proceeding for **cartel agreements/misuse of market power** was legally concluded with a fine imposed by the Cartel Court. Since 2002, the Cartel Court has imposed fines of approximately €202 million (of which €394,000 in 2020) at the request of the BWB.

It should be emphasised at this point, however, that from the point of view of the WBK, the imposition of the highest possible fines is not to be regarded as the goal. The goal is functioning competition, which would make the imposition of fines superfluous. The activities of the BWB, including in the area of competition advocacy, serve this goal.

It would be of particular interest if, in the future, considerations were also made and included in the Annual Report as to what effects the decisions of the BWB (and subsequently by the Cartel Court and the Supreme Cartel Court) had in the subsequent years and whether the assessments made at that time proved to be correct, especially in merger proceedings. This would be particularly interesting in the area of conditions and commitments. Such an ex-post analysis could possibly provide lessons for future enforcement practice.

8. Whistleblowing-System

Since February 2018, the BWB has had the possibility to anonymously report indications of violations of the Cartel Act (cartels and abuse of market power) (whistleblowing system). In 2020, this tool was used a total of 59 times to contact the BWB in cases of suspicion, 2 reports were rejected as not relevant, and 31 reports are currently being examined in more detail. It would also be interesting to know how many reports led to a prosecution. It is also suggested, as in 2018, that the tabular presentation be supplemented by a graphical one. In 2018, an evaluation of the whistleblowing system was announced. This has not yet been carried out.

9. Cooperation with the Federal Cartel Prosecutor

The BWB and the Federal Cartel Prosecutor have official party status in proceedings before the Cartel Court and the Supreme Cartel Court. Especially in merger cases and in prenotification talks, the two official parties cooperate. It would therefore be desirable if the BWB also reported in more detail on the functioning of the cooperation with the Federal Cartel Prosecutor in the Annual Report.

10. Cooperation with the WBK

As an advisory body, the WBK is obliged under Section 16 of the Competition Act (WettbG) to submit annual proposals to the BWB for areas of focus in the fulfilment of its tasks. Since 2015, these focus recommendations have also been included in the BWB's Annual Report. The recommendation of the WBK for 2020, which was submitted in autumn 2019, is also printed in this Annual Report.

It is pleasing that in the course of the presentation of processed cases from certain fields of activity, explicit reference is now also made to corresponding individual recommendations from the Competition Commission's priority recommendation for the calendar year 2020 (the WBK's priority recommendation can be found in the appendix under point 7.5).

11. ORF Law / Consumer Authority Cooperation / Cooperation with RTR

The agreement with RTR GmbH on intensified cooperation on digital issues is welcomed. According to the WBK, this is important and necessary in order to be able to effectively meet the challenges of the new digital economic world. The WBK also sees this as the beginning of a stronger involvement of the BWB with this topic and refers in this context to its corresponding priority recommendations for the years 2019, 2020 and 2021.

12. International activities

The multi-layered activity of the BWB in the area of international contacts is striking. Here, the use of the ECN for the enforcement of specific cases appears to be particularly valuable. This cross-border cooperation within the framework of the ECN represents an important building block in the detection of anti-competitive practices. In this context, the **cooperation with the German Federal Cartel Office** is particularly noteworthy. The BWB's activities within the framework of UNCTAD and OECD are also worth mentioning. For example, the BWB took over the coordination of the OECD Group B countries with regard to the resolution that defines the work programme of the UNCTAD Consumer and Competition Branch for the next five years.

13. Concluding appraisal

The Annual Report 2020 gives a good overview of the work done with the available resources. Individual cases are described informatively.

The social benefit of functioning competition is undisputed. The Annual Report clearly describes the concrete measures through which this benefit flows to the economy as well as to consumers.

As in previous years, the BWB documents its active role in its Annual Report. The cartel and abuse cases described clearly show how important efficient competition control is for compliance with the competition rules. Compliance with competition rules is the prerequisite for functioning competition, from which consumers, the companies and the state benefit equally. It is the responsibility of the BWB to ensure this for Austria.

The WBK thanks the BWB for its cooperation during the reporting period and emphasises its interest and willingness to continue and deepen the cooperation in the interest of an efficient competition policy.

RA Hon.-Prof. DDr. Jörg Zehetner
Chairman of the Competition Commission

BWB comments on the WBK's statement

The BWB thanks the WBK for its detailed examination of the Annual Report. Furthermore, the BWB suggests (as stated in its statement on the KaWeRÄG 2021 in para 78 p. 25) an evaluation process of the work of the WBK and the development of joint processes for cooperation.

We expressly welcome the fact that the BWB's objective is to ensure functioning competition and that the BWB's activities, including in the area of competition advocacy, serve this objective. This is also in line with the BWB's recommendation to maintain this objective on an equal footing with the prosecution of individual cases (which is not currently provided for in the draft KaWeRÄG 2021).

With regard to the statements in points 2 and 3 of the Competition Commission's opinion, reference is made to the overwhelming number of comments in the review procedure (including from important constitutional institutions and

stakeholders), according to which the requirements of Directive (EU) 2019/1 to strengthen the independence of the BWB have not been implemented in the review draft of the Competition Act. On the contrary, essential elements of the draft review would mean a weakening of the independence of the BWB. This problem is also viewed with concern by the European Commission.

Attention should be paid to structurally ensuring independence and avoiding conflicts of interest in future appointments (i.e., outside the nominations by the social partners). It is therefore suggested that representatives of the scientific community be more strongly represented, especially from the field of competition economics.

Furthermore, it is noted that tasks of the BWB and the individual organisational units as well as their functions are clearly and concisely presented on the website of the BWB and are generally accessible. Essential aspects of the tasks of the BWB's staff unit were already explained in detail at the WBK meeting on 10/19/2020.

