



**FEDERAL
COMPETITION
AUTHORITY**
Fairness matters!

Annual Report 2017

Imprint

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***„There is no resting place for an enterprise
in a competitive economy.“***

Alfred P. Sloan (13 May 1875 to 17 February 1966), President of General Motors

Preface



2017 was a momentous year for Austria's Federal Competition Authority. Established in 2002, BWB celebrated its 15th anniversary. Since its inception, BWB has made a name for itself as a pragmatic and modern authority, achieving major success in the area of competition in Austria. This Activity Report contains a chapter dedicated to the Authority's 15th anniversary.

Meanwhile, 2017 was also a year of consolidation. BWB launched successful new measures and continued to grow into its role as a modern antitrust authority. At the same time, some organisational restructuring was required to cope with the Authority's growing size. Consequently, two departments were created in August, namely a legal service and a litigation department.

In addition to numerous presentations and publications by BWB employees, six Competition Talks were organised in 2017, along with the Competition Law Moot Court, held for the third time in a row.

Seven companies had their business premises searched during the year under review. Fines of more than € 1.35 million were imposed by the Cartel Court. National mergers in 2017, numbering 439, were well up the previous year's record of 420.

I would like to make particular mention of our Guidance on dawn raids publication, published in October 2017, for which we received an international award in the form of the Antitrust Writing Awards 2018 – Best Soft Law.

Finally, an authority like BWB can only be successful if it has motivated and dedicated staff. Our employees have carried out excellent work again in 2017, and I am extremely grateful to them.

A handwritten signature in blue ink, appearing to read 'Theodor Thanner', with a stylized, flowing script.

Dr. Theodor Thanner
Director General for Competition

BWB in 2017

Facts & Figures

6 competition talks
Competition Law Moot Court 2017

2 new departments (Legal service and Litigation)
Guidance on dawn raids
Antitrust Writing Award 2018

439 national &
327 EU mergers

Fines totalling € 1.350.200
7 dawn raids
7 leniency applications

1. General section

1.1 The Federal Competition Authority

The Federal Competition Authority (BWB) was set up in 2002 as an authority with complete control over the handling and investigation of competition-related issues. The Authority is led by the Director General for Competition, who performs this role independently and autonomously.

What are the aims of BWB?

- To safeguard competition in Austria
- To eliminate distortions and restrictions of competition
- To examine mergers and ensure they comply with competition law
- To provide information and improve prevention

What are the duties of BWB in order to achieve these aims Achievement of these goals is based on antitrust and competition law, the ban on cartels as defined in Article 101 and the ban on the abuse of a dominant position as defined in Article 102 of the Treaty on the Functioning of the European Union (TFEU), and the European Merger Regulation.

What are the duties of BWB in order to achieve these aims?

- Investigation of suspected or claimed restrictions of competition
- Appearance as a party in procedures before the Cartel Court and Supreme Cartel Court
- Enforcement of European competition rules in Austria
- Investigation of economic sectors in the event of suspicions that competition is being restricted or distorted in these areas
- Cooperation with regulators
- Provision of assistance to the courts and administrative authorities
- Issuing of opinions on general economic policy issues (competition advocacy) and legislative proposals
- Applications pursuant to § 7 para. 2 of the Federal Act on Improvement of Local Supply and Competitive Conditions (NahVG), Federal Law Gazette I No. 392/1977, as amended by Federal Law Gazette I No. 62/2005
- Enforcement of injunctions pursuant to § 14 para. 1 of the Unfair Competition Act (UWG)
- Monitoring of competition
- Consumer protection cooperation
- Executing the powers pursuant to the Austrian Broadcasting Corporation Act (ORF-G)

The Competition Act (WettbG) provides for the following tools with which to fulfil these duties¹:

- Companies and associations of companies are obliged to provide information to BWB
- BWB may make use of witnesses and experts
- Access to business documents and records including the right to make copies and/or transcripts
- Implementation of searches of business premises (after a warrant has been issued by the Cartel Court, if necessary with the help of public security officers) if there are substantial grounds for assuming severe violations of cartel law or Articles 101 and 102 TFEU and to support the European Commission in its investigations.

¹ For the purposes of enforcing injunctions under the UWG, BWB does not hold any of the investigative powers listed here (§ 2 para. 1 subpara. 7 WettbG).

Since the entry into force of the Consumer Protection Cooperation Act (VBKG)² in late 2006, BWB has been obliged to tackle intra-Community infringements of certain consumer protection laws enacted to transpose relevant EU directives into law, working in cooperation with the European Commission and other responsible authorities.

BWB is also responsible for enforcing injunctions pursuant to § 14 para. 1 UWG and for co-operating on the preliminary review of new ORF offerings insofar as BWB is required to issue a statement on the likely impact of the new offering on the competition situation for other media companies operating in Austria.

The Competition Commission

The Competition Commission (WBK) is the advisory body of BWB. It consists of eight members who are required to have specialist knowledge and experience of economics, business management, socio-politics, technology or business law. The members and deputy members are appointed for a four-year term by the Federal Minister for Digital and Economic Affairs. In addition, the Austrian Federal Economic Chamber (WKO), the Federal Chamber of Labour (AK), the Austrian Trade Union Federation (ÖGB) and the Presidential Conference of the Austrian Chambers of Agriculture (LKÖ) each have the right to nominate one member (deputy member). In exercising their activity the (deputy) members are not bound by instructions and are subject to official secrecy.

The current period of office runs from 1 July 2014 to 30 June 2018. With effect from July 2014, Anna Hammerschmidt (Institute for International Economics and Development, Department of Economics, Vienna University of Economics and Business) took over as chair of the Competition Commission. The Commission's main recommendations can be viewed (in German) on the BWB website.

Members of WBK since July 2014

Member	Deputy member	Appointed by
Anna Hammerschmidt	Barbara Oberhofer	Federal Ministry for Digital and Economic Affairs
Franz Zehetner	Ernest Gnan	Federal Ministry for Digital and Economic Affairs
Michael Böheim	Maarten Janssen	Federal Ministry for Digital and Economic Affairs
Erhard Fürst	Ulrich Schuh	Federal Ministry for Digital and Economic Affairs
Rosemarie Schön	Winfried Pöcherstorfer	Austrian Federal Economic Chamber
Helmut Gahleitner	Roland Lang	Federal Chamber of Labour
Georg Kovarik	Ernst Tüchler	Austrian Trade Union Federation
Anton Reinl	Andreas Graf	Presidential Conference of the Austrian Chambers of Agriculture

² Since 29 December 2006, see § 14 VBKG

BWB's approach and goals

BWB had set itself the following goals for 2017:

Aim 1: Improving/safeguarding competition

BWB's primary goals were the investigation of anti-competitive practices, merger control and both European and international cooperation. The successful implementation of investigations, effective merger control and constructive ongoing cooperation with other EU authorities all helped to achieve these aims.

Aim 2: Building awareness

The continuation and improvement of its education work were key aspects in achieving this goal. To meet its obligation to inform the public about its activity, BWB maintains its own website, thereby meeting its statutory disclosure obligations (§ 10b WettbG) and also guaranteeing transparency. BWB increased this transparency by maintaining its clear and informative website and continuing its effective press relations work. It also receives a high number of press enquiries (national and international) on a daily basis covering current proceedings and general economic issues.

Aim 3: Quality management

High demands are made of BWB staff, as they are in direct contact with the market (companies and consumers) and need to defend the public interest before the courts in merger and cartel cases. To be able to perform these tasks successfully, BWB employees must meet the same quality standard as those providing legal representation or as economic advisors in the corporate sector.

Through its customised training programme (ongoing programme of inhouse training, expert meetings, job rotation, study visits etc.), BWB ensures that this high quality standard is upheld and improved. Once again in 2017, BWB implemented and also developed numerous staff training and continuing professional development measures.

Aim 4: Consolidation

For the purposes of effective and modern cartel law enforcement, the Authority must always be developing further, from a specialist and structural perspective. By evaluating its own processes, and the Authority's inputs and outputs, as well as implementing the resulting findings, BWB aims to future-proof its approach to its day-to-day work and the related challenges.

1.2 BWB and the European Union

Cooperation with the European Commission

There are essentially two aspects to the enforcement of European competition rules in Austria. Firstly, the national competition authorities directly enforce EU competition rules. Secondly, they also support the European Commission in its investigations during proceedings that the Commission (and specifically the Directorate-General for Competition) carries out in application of EU law and are authorised to contribute their viewpoints during these proceedings.

In addition, BWB is involved in ongoing and close cooperation, coupled with the regular exchange of experience and information, and the development of best practices under Council Regulation (EC) No 1/2003 to ensure coherence in the decentralised application of the EU's network of competition authorities, known as the European Competition Network (ECN).

At European level, BWB participated in the following working groups during 2017:

ECN Director Generals Meeting	ECN Vertical Restraints
ECN Cooperation Issues and Due Process	ECN Horizontal & Abuse
ECN Plenary Meeting	ECN Financial Services
ECN Chief Economist	ECN Digital Markets
ECN Cartel	ECN Sports
ECN Merger	ECN Telecom
ECN Forensic IT	ECN Food
ECN Transport	

Empowering national competition authorities to be more effective enforcers: ECN+

The European Semester for the coordination of economic policy is a political management tool introduced by the European Union in 2011 following a proposal from the European Commission as part of the EU's Europe 2020 agenda. The agenda aims to guarantee economic performance and budgetary discipline in the EU Member States.

In its Communication of 9 July 2014 marking ten years of antitrust enforcement under Council Regulation (EC) No 1/2003, the Commission noted that the national competition authorities had become a key pillar of the application of the EU competition rules and that a substantial level of convergence had been achieved in the application of these rules.

At the same time, however, the Commission also highlighted ongoing differences, primarily due to the differences in the institutional position of national authorities and to differences in national procedures and sanctions. The Commission praised the work done within the ECN (e.g. best practice recommendations, ECN Model Leniency Programme), recognising that this has contributed to coherent enforcement and a more level playing field, while nevertheless encountering limitations due to a lack of legally binding impact.

To guarantee even better and more efficient enforcement of EU competition rules, the Commission has identified four main areas on which further initiatives should be focused. These are:

1. Strengthening the national competition authorities in terms of their independent position and the resources available to them
2. Definition of a minimum level of investigative and decision-making powers to be held by all national competition authorities
3. Harmonisation of the rules on imposing fines
4. Regulations designed to guarantee convergence in the area of leniency programmes

After carrying out a public consultation in late 2015/early 2016 and after a public hearing in the Economic and Monetary Affairs Committee of the European Parliament, the Commission proposed a directive to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market on 22 March 2017. Since May 2017 the Council Working Group on competition has been looking at this proposal. Austria is represented in this Working Group by the Federal Ministry of Science, Research and Economy (now Digital and Economic Affairs) and the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice. The legislative process in the European Parliament is also running in parallel.

BWB has been playing an active part in this process from the outset by issuing various statements to these institutions at both national and European level. In particular, the adoption of new rules to reinforce independence, not least through the provision of sufficient resources for the national authorities, responds to a demand that has long been made by BWB, but also by the European Commission, in the context of the European Semester.

1.3 BWB and its development over the years – Taking stock

“Safeguarding well-functioning competition and application of national (and decentralised application of European) competition rules in a manner consistent with Community law and decision-making by the regulator, achievement of more efficient legal enforcement, simpler and faster procedures through the establishment of the Federal Competition Authority [...]”³

These were the aims set out in the enclosures with the government bill from 2002. Considering the achievements of BWB over the interim 15-year period, it can justifiably be claimed that these aims have essentially been met. BWB, supported by its pillars of information, prevention and enforcement, has earned recognition across every sector, both at home and abroad.

Since it was first created, more than 140 dawn raids have been carried out and companies have been fined a good € 196 million, primarily in response to vertical and horizontal price fixing, the abuse of a dominant position and illegal mergers.

By comparison, the cost of running BWB between 2002 and 2017 has been a mere € 33 million. With regard to mergers, more than 4,600 national mergers and 4,900 EU mergers have been reviewed. On the grounds of competition concerns, 126 requests for examination have been submitted to the Cartel Court. The number of staff at the Authority has grown from an initial team of 17 to 40 employees, which still makes it one of the smallest such authorities in the EU and indeed the world.

It has however been agreed that the Authority should be allocated a further 10 members of staff. The addition of lawyers and economists is scheduled to take place before the end of the year. The increase in staffing levels and related rise in administrative expenses required the creation of efficient, modern structures in order to guarantee efficient and modern enforcement of antitrust law in Austria. A legal service department and a litigation department were set up and allocated staff in August 2017 for this very reason (see below).

BWB’s budget has also been increased after many years of negotiation. These measures to strengthen the Authority are in response to calls being made for many years to equip BWB efficiently. Overall, four major conferences attended by delegates from over 50 different countries were organised, while 14 Memoranda of Understanding were signed with other competition authorities covering support, knowledge transfer and expert exchange. BWB is also involved in 12 international cooperation ventures, including the European Competition Network (ECN), International Competition Network (ICN) and Euro-Mediterranean Competition Forum (EMCF). The ECN alone has accounted for more than 240 meetings with other competition agencies and the European Commission. Additionally, BWB has also been involved in developing an efficient and effective system of cartel law for the Moldovan competition authority through a twinning project.

3 Cf. government bill in annex 1005 to the shorthand verbatim records of the National Council, 21st legislative period, available at https://www.parlament.gv.at/PAKT/VHG/XXI/I/I_01005/index.shtml



Two new departments

As the number of employees grew it became necessary to restructure BWB. Consequently, a legal service department and a litigation department were set up in August 2017.

After an external recruitment process with candidate panel interviews, Dr. Natalie Harsdorf, LL.M. was appointed as the Head of Legal Service and Dr. Anastasios Xeniadis, LL.M. as the Head of Litigation. Natalie Harsdorf also remains in the position of deputy to the Managing Director, Dr. Peter Matousek.

The Legal Service department is responsible for:

- The Legal Service department is responsible for:
- Fundamental legal issues, national questions of competition law (European and international cooperation projects)
- Statements on legislative proposals
- Investigations, in accordance with § 11 para. 3 WettbG (leniency) and § 12 WettbG (dawn raids) in particular
- Prevention and knowledge management
- Reviewing whether mergers are subject to notification obligations

The Litigation department is responsible for:

- Preparing for legal cases and representation before courts and authorities
- Economics and litigation strategy
- Issuing notices
- Quality management



Director General Theodor Thanner with the two department heads Natalie Harsdorf and Anastasios Xeniadis

Development of BWB staffing levels

In 2017 there were 40 people, including 31 case handlers, working for BWB. Three out of the 31 case handlers were part-time employees.

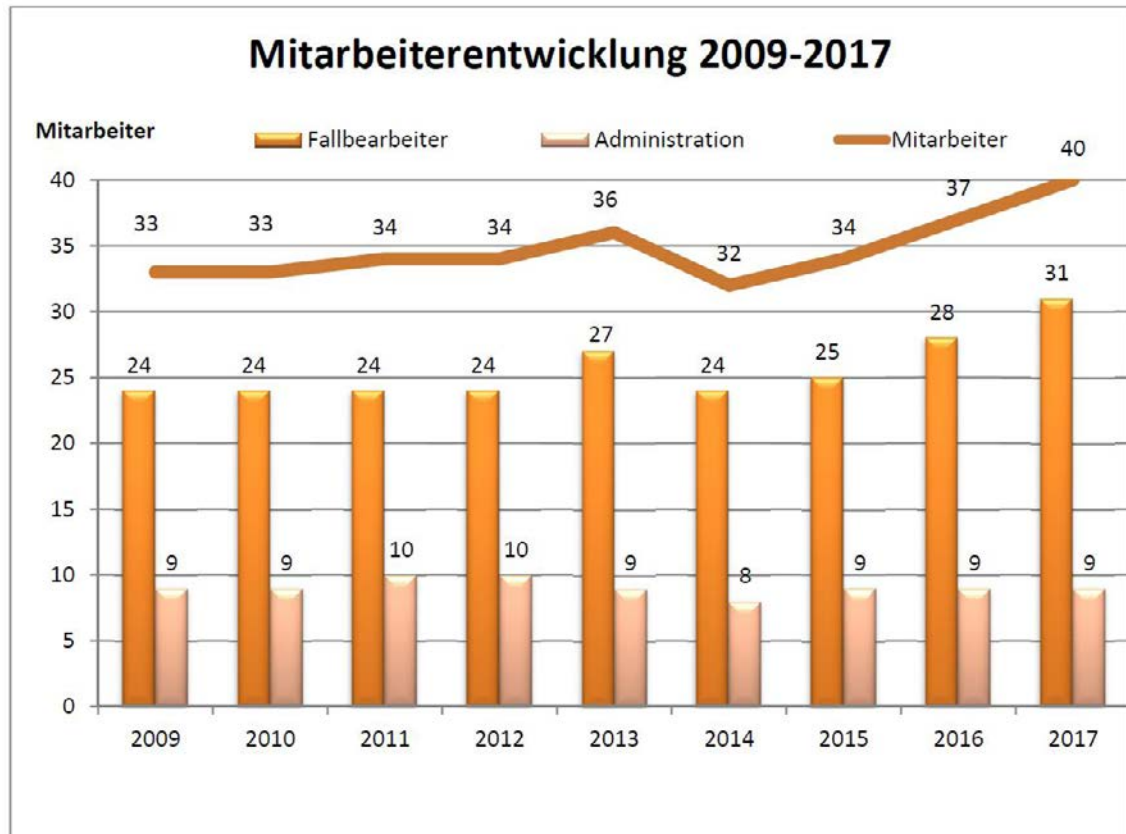
Breakdown of 28 case handlers by specialism	
Legal	24
Economics	5
Public management	1
IT forensics	1

The staff plan included in the Federal Finance Act (BFG) includes/included the following permanent posts:

Federal Financing Act (BFinG)	Case handlers	Administration			Total
Year	A1/v1	A2/v2	A3/v3	A4/v4	
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 bis 2010	24	2	3	4	33
2011 bis 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*

NB: Case handlers including Director General, Managing Director and Deputy Managing Director.
Source: Federal Finance Acts; changes made during year not included.

Chart 1: Staffing levels 2009 to 2017



Source: BWB Activity Report. Case handlers including Director General and Managing Director.

Job Rotation

Employees working in public service must complete a basic training course at the start of their employment. They are required to pass five examinations on different subjects and to complete two three-month secondments to a different ministry department or an international organisation.

They must then spend a further three months working in a specialist department at the Federal Ministry for Digital and Economic Affairs. Three employees were involved in the job rotation scheme in 2017.

Quality management – Continuing professional development

Providing its staff with support and training is very important to BWB. High demands are made of BWB employees, as they are in direct contact with the market (companies and consumers) and need to defend the public interest before the courts in merger and cartel cases. To be able to perform these tasks successfully, BWB employees must adhere to the same quality standard as those providing legal representation or as economic advisors in the corporate sector. The low level of personnel and financial resources means that the public servants working at BWB come under particular pressure. As far as financially possible, BWB strives to provide these employees with a tailored training programme.

Some of the topics covered by the specialist training provided in 2017 included:

- European law
- Procedural law
- Public law
- Criminal law
- IT forensics
- Interrogation techniques
- Integrity officer
- Data protection officer

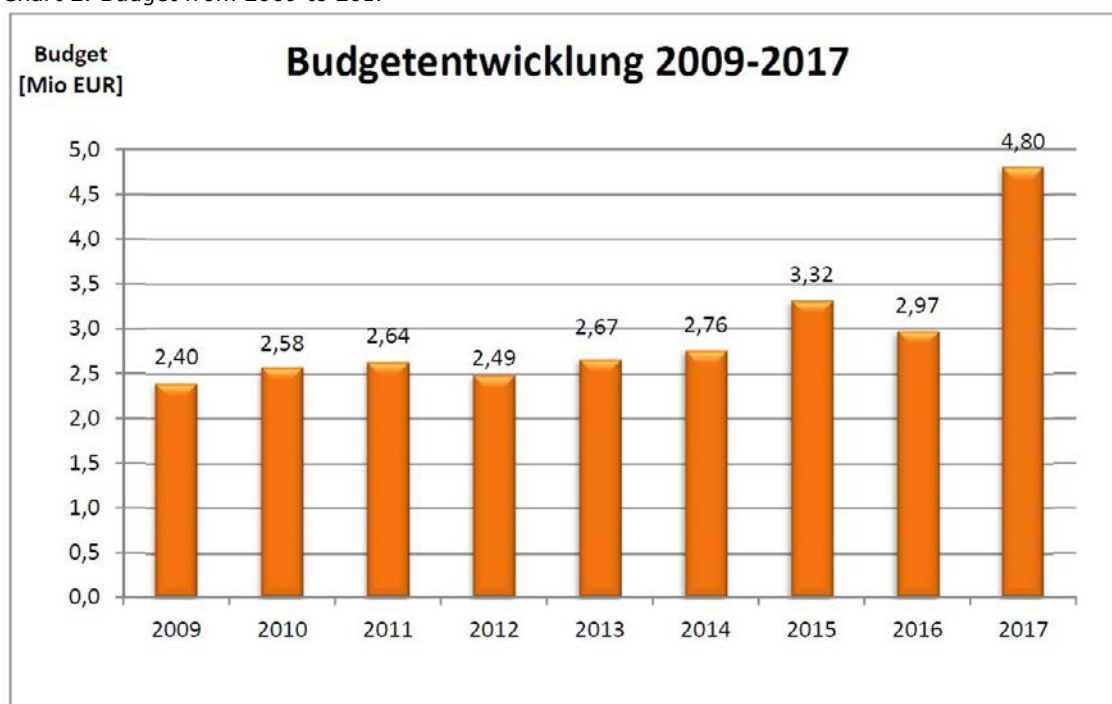
BWB has also launched an exchange programme with the European Commission enabling BWB staff to be seconded to the DG Competition and to gain experience there.

A basic agreement is also in place with the Austrian judges in Luxembourg, according to which BWB case handlers can be seconded to a judge's office there as part of their training. This has been done three times to date.

BWB's budget

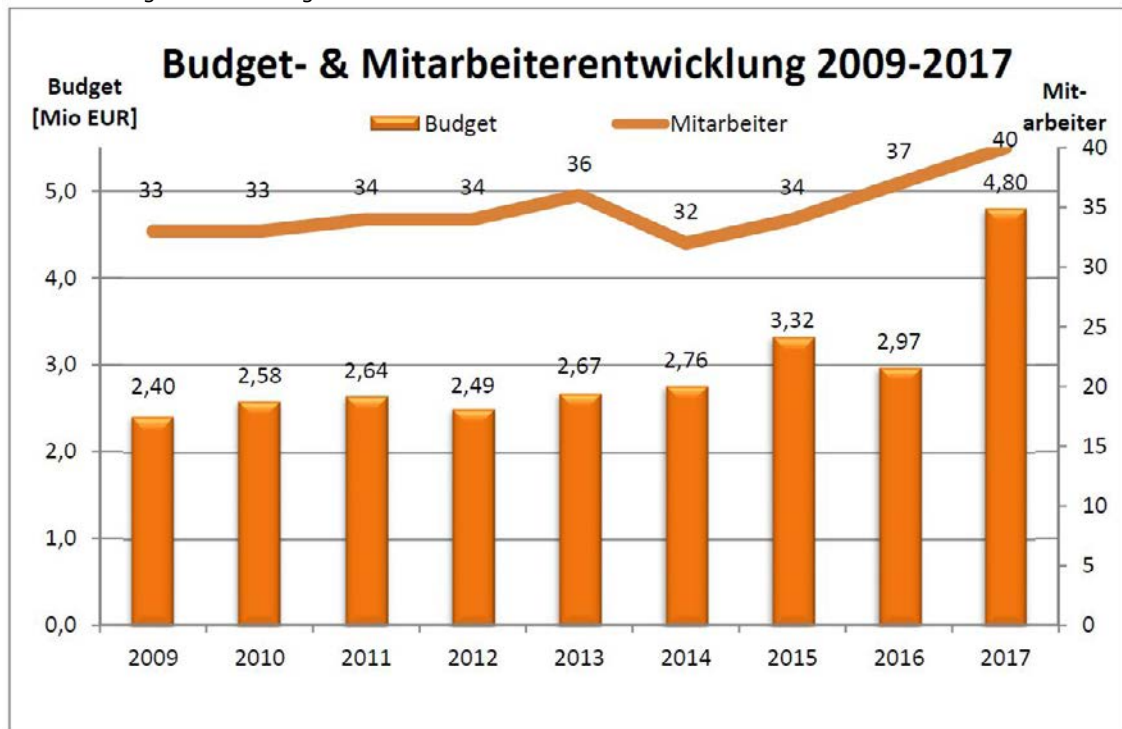
The funds available to BWB have changed over time as shown (with around two thirds covering personnel expenses):

Chart 2: Budget from 2009 to 2017



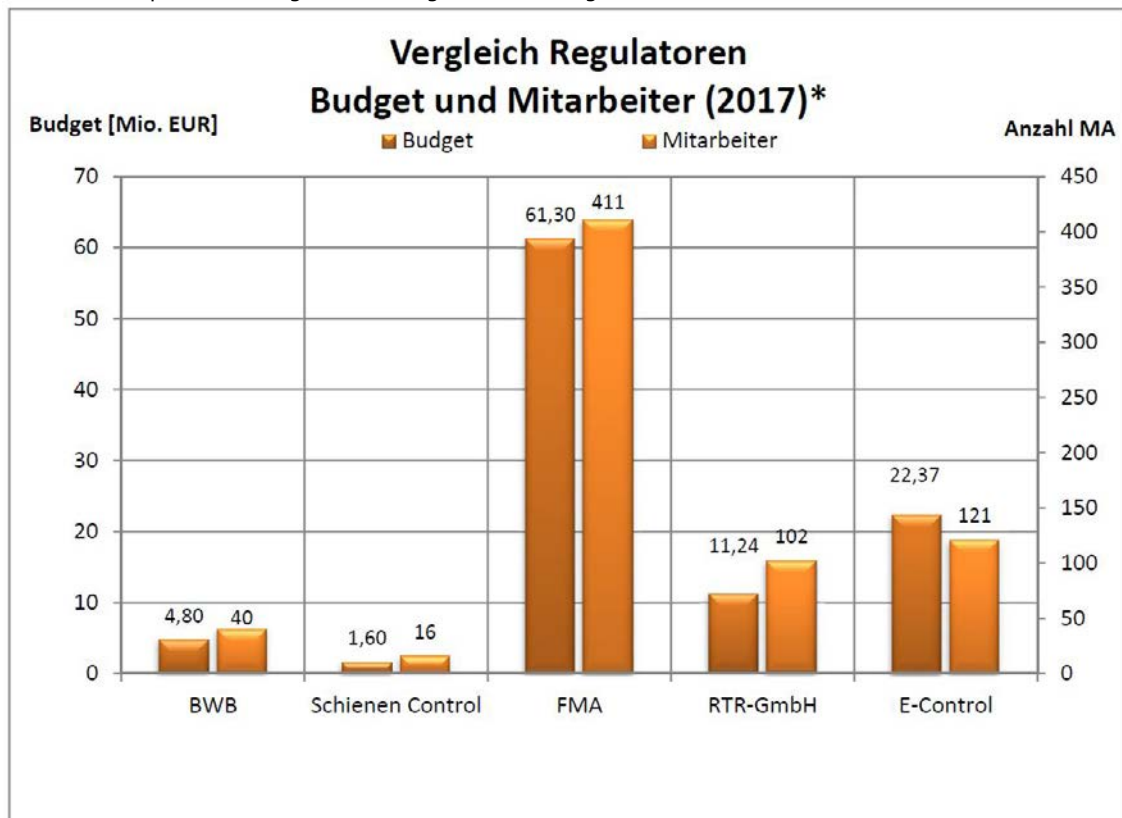
Source: BWB Activity Report.

Chart 3: Budget and staffing levels 2009 to 2017



Source: BWB Activity Report. Case handlers including Director General and Managing Director.

Chart 4: Comparison of regulators budget and staffing 2017



Source: Current figures from respective authority. Expenses were used in each case for comparison purposes.

BWB income

The income generated by BWB from fines or merger notification fees does not flow directly into BWB's budget but rather into the general federal budget.

Pursuant to § 10a para. 1 WettbG, the flat rate fee for notifying a merger is € 3,500 (up to 25 April 2017: € 1,500). With 439 merger notifications in 2017 (108 notifications prior to 25 April 2017, 331 after), this gives total income of € **1,350,200**¹

The total turnover of the companies involved in national mergers in 2017 was 1.3 trillion euros.

At the request of BWB, fines of € **1,350,200**² were imposed.

1.4 International cooperation

International cooperation between competition authorities is an important tool in tackling infringements of antitrust law and abuse of market dominance. It may take the form of joint investigations into cross-border offences, or relate to mergers encompassing several countries or the exchange of best practices.

International relations are particularly key in relation to cross-border antitrust investigations, as there is no alternative to cooperation.

Work visits and other visits to Vienna by European and international competition authorities

Numerous working meetings and visits involving staff from foreign competition authorities and BWB also took place in 2017.

The delegations came from the following countries:

- Serbia
- Georgia
- China

Robust international relations are particularly key in relation to cross-border antitrust investigations, as there is no alternative to cooperation.

The organisation of regular international meetings helps to find a common approach, promotes the exchange of experience and case-specific knowledge and helps to resolve key critical issues.

Our Deputy Managing Director and Head of Department Natalie Harsdorf undertook a study visit to Canada in autumn 2017.

Additionally, two staff from the Austrian Financial Market Authority (FMA) were seconded to BWB, enabling them to take valuable experience back to their own departments.

⁴ One ninth of the collected merger notification fees must be transferred to the Federal Ministry of Justice (§ 10a para. 1 WettbG).

⁵ See also § 32 KartG. The extent to which this provision will be implemented remains to be seen.

Serbia

On 27 and 28 February 2017 three experts from the Serbian Commission for Protection of Competition (www.kzk.gov.rs/en) visited BWB in Austria. Their visit began with an introduction to BWB's structures and powers. They then attended presentations on the basic legal parameters in Austria and the resulting practical experience gained by BWB during court-ordered dawn raids. Finally, BWB demonstrated its IT forensics equipment as used during dawn raids, as well as its data evaluation laboratory and related software.

Georgia

On the basis of an EU-backed project for the development of competition in Georgia, two Georgian members of the country's competition authority (www.competition.ge/en/) visited BWB from 18 to 29 September 2017. Their two-week visit focused on the following areas:

- Allocation of responsibilities and BWB's internal organisational structure, as well as options for improving the internal structure of the Georgian competition authority in relation to:

- ☐ Internal management of cases
- ☐ Decision-making process and implementation of the principles of due process, transparency, parties' rights, right to an appeal
- ☐ Structure of decision-making (focus on economic and judicial considerations when making decisions)

- Enforcement of competition rules in regulated sectors in Austria and the scope for improvement in Georgia in terms of:

- ☐ Lessons to be learned in relation to effective enforcement
- ☐ Measures to improve working relationship with the regulatory authorities
- ☐ Opportunities for strengthening the powers of the competition authority in the regulated sector

China

BWB hosted a delegation from the National Development and Reform Commission of the People's Republic of China (NDRC) on 18 October 2017.

The delegation comprised members of the following bodies:

- Institute of Market Economy and Competition Policy Research
- Institute of Market and Price Research
- Academy of Macroeconomic Research

Their main areas of interest were the structure of BWB, the decision-making process following infringements of antitrust law and cooperation with other national competition authorities, as well as with the European Commission, including the division of powers.



Working visit from Georgia



Working visit from China

United Nations Conference on Trade and Development (UNCTAD)



The 16th UNCTAD Intergovernmental Group of Experts on Competition Law and Policy was staged by the United Nations in Geneva from 5 to 7 July 2017, with the representatives from the different competition authorities focusing on the following subject areas in particular:

- Capacity-building and technical assistance activities implemented
- Challenges faced by young and small competition authorities in the design of merger control
- Enhancing international cooperation in the investigation of cross-border competition cases: tools and procedures.

In terms of merger control on the part of younger and small(er) competition authorities, BWB reported during the plenary session on its experience of establishing a well-functioning merger control system in Austria. With the benefit of hindsight, the key factors were considered to be the selection of an appropriate system (thresholds, time limits, appeal court), having a sufficiently large workforce (lawyers and economists) and a big enough budget. Meanwhile, as far as the future is concerned, the introduction of a new merger control aspect, namely transaction value, with the focus on companies in the digital economy was recommended, as provided for in § 9 para. 4 of Austria's Cartel Act (KartG).

With regard to the theme of enhancing international cooperation, a working group was set up following the conference, with BWB involvement, in order to evaluate the potential for improved cooperation in cross-border antitrust and abuse of dominance cases. A survey on this subject was prepared in autumn 2017 before being distributed among the UNCTAD member states and organisations for completion in December 2017. The survey results were due to be presented and discussed at the 17th UNCTAD Conference in July 2018.

Organisation for Economic Cooperation and Development (OECD)



The Organisation for Economic Co-operation and Development (OECD) and its Competition Committee, along with its two working groups dedicated to Competition and Regulation and to Cooperation and Enforcement, provide a further forum for discussion of competition issues. The Competition Committee and its working groups met on two occasions in 2017. Meanwhile, the Global Forum on Competition was also held in the year under review, including non-OECD members.

The various roundtable discussions focused on issues of particular relevance to the competition authorities and the experiences of the national bodies. The submissions from the national authorities and a summary of the discussions, in some cases supported by an OECD background note, can be viewed at <http://www.oecd.org/daf/competition/roundtables.htm>.

Over the course of 2017 BWB was again able to take part in a range of roundtables, actively contributing its own experiences, including for example during a roundtable focusing on small agencies and those in developing economies, which looked at overcoming adversity and attaining success. Given the divergent points of view of the various speakers, a hearing on common ownership and its potential impact on competition was particularly enlightening. Further examples of authorities being able to exchange experience and knowledge include roundtables on the extraterritorial impact of legal requirements and on safe harbours and legal presumptions.

BWB also presented its study on ATM fees.

1.5 Competition advocacy

The concept of advocacy refers to all projects, events and initiatives that are carried out in an effort to raise awareness of a particular issue among the public at large.

BWB uses competition advocacy programmes to awaken and expand interest in cartel and competition law. Preventive and informative measures are both used successfully in this regard.

Despite limited resources, BWB strives to provide prevention and information services.

BWB's Competition Talks

In launching its regular Competition Talks back in 2012, BWB created a platform for an exchange of ideas between business, the legal profession, the courts and the authorities on competition and cartel issues.

The format of these Talks includes presentations on various relevant topics followed by a discussion. More than 220 participants took part in BWB's Competition Talks in 2017, with 15 different experts presenting on their area of expertise.

Impressions from the Competition Talks 2017



BWB's Competition Talks from the beginning

1st Competition Talk on 23 October 2012	Planned amendments of cartel and competition law
2nd Competition Talk on 27 November 2012	Dawn raids – legal scope and current developments
3rd Competition Talk on 29 January 2013	The print landscape in Austria: How much more concentration is possible? At what point is media diversity lost?
4th Competition Talk on 19 March 2013	Competition monitoring: A new tool in cartel law. Possibilities and expectations
5th Competition Talk on 30 April 2013	The new Handbook on Leniency Programme
6th Competition Talk on 18 June 2013	Vertical price fixing: What is allowed? What is prohibited?
7th Competition Talk on 8 October 2013	Franchising – a permitted cartel?
8th Competition Talk on 5 November 2013	The role of expert opinions in cartel court cases
9th Competition Talk on 25 February 2014	Current antitrust jurisdiction in practice
10th Competition Talk on 1 April 2014	The compliance and antitrust status quo – quo vadis?
11th Competition Talk on 3 June 2014	The effectiveness of conditions on mergers
12th Competition Talk on 23 September 2014	Follow-up: dawn raids
13th Competition Talk on 28 October 2014	Cartel law from the perspective of the Ministry of Justice
14th Competition Talk on 6 November 2014	The new directive on private enforcement of EU competition law: the way forward in its implementation
15th Competition Talk on 16 February 2015	The liberal professions and competition
16th Competition Talk on 21 April 2015	Online trading as viewed by the competition authorities
17th Competition Talk on 30 June 2015	Competition and statutory health insurance – a natural conflict?
18th Competition Talk on 1 September 2015	The latest developments in cartel law in Germany, Switzerland and Austria

BWB's Competition Talks from the beginning	
19th Competition Talk on 26 November 2015	Dawn raids in the context of cartel law (held in Graz for the first time)
20th Competition Talk on 15 December 2015	Competition, productivity and economic development
21st Competition Talk on 18 February 2016	Industry and competition
22nd Competition Talk on 25 April 2016	Media and competition
23rd Competition Talk on 9 May 2016	Current developments in Luxembourg
24th Competition Talk on 9 June 2016	Dawn raids in the context of cartel law (held in Salzburg for the first time)
25th Competition Talk on 13 September 2016	Credit cards and competition
26th Competition Talk on 24 October 2016	Good governance and competition
27th Competition Talk on 21 November 2016	Directive on Antitrust Damages Actions
28th Competition Talk on 15 February 2017	Uber – freedom versus regulation
29th Competition Talk on 26 April 2017	Economic policy and competition
30th Competition Talk on 17 May 2017	Current developments in Brussels
31st Competition Talk on 14 June 2017	Brexit and competition
32nd Competition Talk on 12 September 2017	Competition, innovation and inclusive growth
33rd Competition Talk on 24 October 2017	BWB Guidance on dawn raids

Publications and presentations

BWB experts regularly contribute articles for publication in Austrian and international journals.

In 2017 BWB staff gave and chaired more than 30 presentations and seminars at a range of institutions including universities, interest groups, specialist events and international conferences.

The **Austrian Competition Journal (ÖZK)**, edited by Norbert Gugerbauer, Alfred Mair and Theodor Thanner, contains essays on practical issues relating to Austrian and European antitrust and competition law. The journal also includes a comprehensive overview of case law and provides a forum for legal experts working in these areas in both academia and practice. The ÖZK publishes essays and in-depth reviews of key decisions made by the courts and authorities in both German and English six times per year.

Contributions by BWB employees to the ÖZK in 2017
Nathalie Jeneral , 25th BWB Competition Talk: "Credit cards and competition", ÖZK 2017, 24.
Georg Seper , 26th BWB Competition Talk: "Good governance and competition", ÖZK 2017, 27.
Teresa Eckhard /Maximilian Mertel /Sebastian Schmid , "Supreme Cartel Court on how to obtain a search warrant", ÖZK 2017, 31.
Philipp Maunz /Maximilian Diem /Anastasios Xeniadis , "Supreme Cartel Court on the repeated extension of a search warrant", ÖZK 2017, 34.
Georg Seper , 27th BWB Competition Talk: "Damages Directive", ÖZK 2017, 74.
Rainer Kaltenbrunner /Philipp Maunz , "Supreme Cartel Court on appeal against Cartel Court decision prohibiting a merger in the gambling sector", ÖZK 2017, 79.
Maximilian Mertel , "Extension of merger control in the form of the 2017 Cartel and Competition Law Amendment Act", ÖZK 2017, 91.
Nathalie Jeneral , "Material party status in merger control", ÖZK 2017, 108.
Marcus Becka /Sigrid Tresnak , 28th BWB Competition Talk: "Uber – freedom versus regulation", ÖZK 2017, 116.
Sarah Fürlinger /Luca Schicho , "Competition Law Moot Court 2017", ÖZK 2017, 118.
Marcus Becka , "15 years of BWB – Fairness matters!", ÖZK 2017, 132.
Marcus Becka /Sigrid Tresnak , 29th BWB Competition Talk: "Economic policy and competition", ÖZK 2017, 155.
Marcus Becka /Sigrid Tresnak , 30th BWB Competition Talk: "Current developments in Brussels", ÖZK 2017, 157.
Georg Christoph Hanschitz , "Competition on the healthcare market – a question of definition", ÖZK 2017, 186.
Marcus Becka /Sigrid Tresnak , 31st BWB Competition Talk: "Brexit and Competition", ÖZK 2017, 192.
Marcus Becka , 32nd BWB Competition Talk: "Competition, innovation and inclusive growth", ÖZK 2017, 193.
Teresa Eckhard /Maximilian Mertel /Sebastian Schmid , "Vienna Higher Regional Court in the capacity of Cartel Court on anti-competitive agreements during tenders", ÖZK 2017, 199.
Marcus Becka , 33rd BWB Competition Talk: "Guidance on dawn raids", ÖZK 2017, 212.

Further publications

As well as being published in the ÖZK, BWB experts also contribute to other relevant publications.

Contributions by BWB employees to other specialist publications in 2017	
Peter Matousek / Natalie Harsdorf , „Das Neue reizt“ [The allure of the new], <i>ecolex</i> 2017, 384.	
Peter Matousek / Volker Weiss / Martin Gassler , „Zusammenschlusskontrolle – Neuer Transaktionswerttest“ [Merger control – new test of transaction value], <i>ecolex</i> 2017, 388.	
Natalie Harsdorf / Christian Gänser in Jaeger/Haslinger (Hrsg), „Mitteilung Beihilfebegriff IV: Vorteilsbegriff „neu“? Eine Analyse einzelner Aspekte im Lichte der Rechtsprechung“ [An analysis of the definition of state aid based on case law], <i>Jahrbuch Beihilferecht</i> 2017.	
Natalie Harsdorf in Gugler/Schuhmacher (Hrsg), <i>Vertikale Beschränkungen: „Ein Schlaglicht auf Judikatur & Praxis in Österreich“</i> [Vertical restrictions: focusing on case law and practice in Austria, <i>Vertikale Wettbewerbsbeschränkungen Band 2</i> .	
Beatrix Krauskopf / Luca Schicho , „Die Umsetzung der Schadenersatzrichtlinie in Österreich“ [Implementing the Damages Directive in Austria], <i>VbR</i> 2017, 157	
Stefan Ruech , <i>Beschränkungen im digitalen Binnenmarkt</i> , in Krauskopf/Babey (Hrsg), „Internationales Wirtschaftsrecht - Recht im Wandel zwischen Globalisierung und Re-Nationalisierung“, 2017, 16 ff	
Maximilian Mertel , <i>Zielpunkt: „Übernahme von LEH-Standorten als Zusammenschluss“</i> [Austrian retail chain Zielpunkt: acquisition of retail food stores as a merger], <i>WUW</i> 2017, 68	

Guidance on dawn raids



On 24 October 2017 BWB's Guidance on dawn raids was presented for the first time during the 33rd Competition Talk.

In the interests of legal security and transparency for the companies concerned and for their staff, the guidance describes how a dawn raid begins, how it proceeds and how it ends. The rights and obligations of BWB employees and of the company and its staff are also explained.

In issuing several guidance documents in the past, covering such areas as vertical price fixing, settlements and the leniency programme, BWB has demonstrated its commitment to openness and transparency.

These principles ensure that rules are adhered to, and also mean that the public and businesses are able to foresee what action will be taken by state bodies.

In this regard, BWB's Director General, Theodor Thanner, cited Diane Woods, chairing Judge at the US Court of Appeal, at the 33rd Competition Talk: "[N]either laws nor the procedures used to create or implement them should be secret". BWB also abides by this motto. Transparency is a key element of the rule of law and of the principle of good governance. Rules of procedure must be easy to understand and accessible.

The guidance can be downloaded from the BWB website www.bwb.gv.at in both German and English.

Antitrust Writing Awards 2018

The Federal Competition Authority won the 2018 Best Soft Law award for its Guidance on dawn raids, published in October 2017.

The Antitrust Writing Awards are presented annually by the competition law journal *Concurrences* covering a range of categories such as Best Soft Law, Best Academic Articles and Best Business Articles.

After a three-month judging process with a panel consisting of 50 international experts in antitrust law and *Concurrences* readers, BWB's Guidance on dawn raids publication was announced as the winner in the category "Most Innovative Antitrust Soft Law". Five soft law projects were recognised in total.

The award was presented at a ceremony held in Washington DC on 10 April 2018. Natalie Harsdorf, Deputy Managing Director of BWB and the head of department responsible for the guidance attended the event to collect the award on behalf of BWB.



Natalie Harsdorf accepts the award.

BWB's Director General, Theodor Thanner, and his team are delighted to have received the Antitrust Writing Award: *"This award confirms that BWB is pursuing the right approach in order to create greater transparency in its area of work. Companies should be able to access information on the legal basis for searches. Initial experience shows that the guidance has been warmly received by companies and is helping to ensure that dawn raids are carried out quickly and efficiently."*



The Antitrust Writing Award 2018 certificate awarded to BWB

Competition Law Moot Court 2017

As part of its efforts to raise awareness of cartel and competition law, BWB organised its Competition Law Moot Court for the third time in 2017, doing so in cooperation with the law firm Dorda Brugger Jordis (DORDA) and the European Law Students' Association (ELSA).

Applications to take part were received from 42 students. The Moot Court involves a fictitious court case in the Cartel Court on a competition-related issue. This year's case focused on competition law in the area of digital advertising and the disclosure of interoperability information in relation to location-based mobile games. Further information is available on the BWB website www.bwb.gv.at (currently in German only).

Eight teams of three people from six different universities took part in the 2017 event. Over a seven-week period the teams first put together a pleading of up to 15 pages. The teams then faced each other during oral proceedings. As well as being assessed on the quality of their arguments, the participants were also judged on the basis of their presenting skills, their spontaneous reaction to the other side's arguments and their responses to questions from the judging panel.

Each team was supported by a legal firm during the preparation of the pleading and the oral proceedings.

The starting line-up comprised the following teams:

- Team 1 from the Vienna University of Economics and Business with the support of Haslinger | Nagele & Partner Rechtsanwälte GmbH
- Team 2 from the Vienna University of Economics and Business with the support of Peter Thyri, lawyer
- Team 1 from the Law Faculty with the support of CHSH Cerha Hempel Spiegelfeld Hlawati law partners
- Team 2 from the Law Faculty with the support of Hügel Rechtsanwälte OG
- Team Graz with the support of Eisenberger & Herzog Rechtsanwalts GmbH
- Team Innsbruck with the support of Binder Grösswang Rechtsanwälte GmbH
- Team Linz with the support of Hintermayr & Partner legal practice
- Team Salzburg with the support of Taylor Wessing

The winning team was Team 1 from the Law Faculty (Claudia Pöttinger, Daniel Metz and Paul Nimmerfall).

The final was held on 16 May 2017 at Vienna University of Economics and Business. The judging panel comprised Nikolaus Schaller (Cartel Court), Thomas Jaeger, LL.M. (Vienna University), Deputy Managing Director Natalie Harsdorf, LL.M. (BWB) and Heinrich Kühnert M. Jur. (DORDA). The written submissions and oral proceedings were assessed on the basis of the participants' analysis of the case and legal situation, the arguments presented, public speaking skills and team work.

The closing address was given by the European Commission's Director-General for Competition, Johannes Laitenberger.

"I am delighted to have been invited to the BWB's Competition Law Moot Court. The students taking part have displayed a keen interest in the issue at stake, passion and enthusiasm." Director-General of DG COMP Johannes **Laitenberger**.

"The Competition Law Moot Court is a successful example of the link between academia and practice, as reflected in the excellent performances during the court and the high level of interest in the event." Director General of BWB Theodor **Thanner**.

The Moot Court will be organised again in 2018.



The winning team, Law Faculty 1, back row from left to right: participants Kofler-Senoner, Jäger, Harsdorf, Schaller, Kühnert; front row from left to right: BWB's Theodor Thanner, participants Hirner, Nimmerfall, Pöttinger, Metz and DG Comp Johannes Laitenberger.



**Best speaker:
Michael Otti (Team
Graz University)**

2. Mergers

National mergers

In 2017 there were 439 merger notifications, which is 19 more than in the previous year.

Companies intending to merge are subject to notification requirements if the combined turnover of the companies concerned was more than € 300 million worldwide, if it was more than € 30 million in the domestic market, and if at least two of the companies had a worldwide turnover of more than € 5 million each in the business year preceding the transaction (§ 9 para. 1 KartG).

The total turnover of the companies involved in national mergers in 2017 was 1.3 trillion euros.

409 cases, i.e. 99.5% of all notified mergers, were concluded within the four-week phase I investigations. Mergers are usually cleared as a result of the deadline expiring or after the Authority waives the examination.

Two merger cases (0.5%) were treated in phase II of the process, which means that BWB submitted a request for examination of the merger.

EU mergers

In 2017 BWB also handled 448 EU mergers.

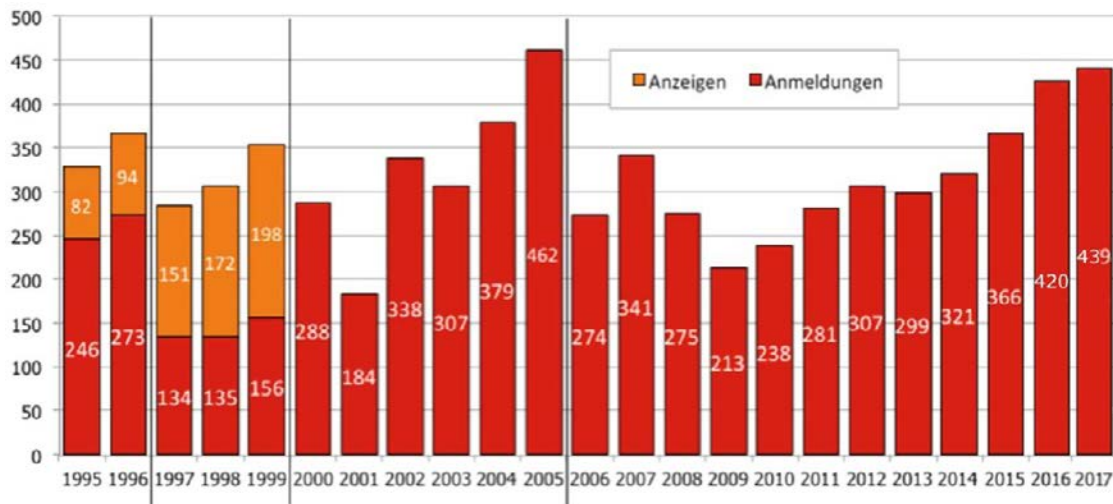
886 mergers examined

BWB therefore examined a total of 887 mergers. This means that each BWB case handler processed an average of 29 mergers in 2017.

2.1 Merger statistics

Merger statistics 2010-2017								
	2010	2011	2012	2013	2014	2015	2016	2017
Total notifications	238	281	307	299	322	366	420	439
Phase I								
Expiry of deadline	182	226	251	246	276	328	386	409
Waiver of examination	41	43	45	39	38	29	28	23
Withdrawal of notification	5	3	6	4	5	3	3	4
Other	0	0	0	0	0	1	0	1
Cases concluded in phase I	228	272	302	289	319	361	417	437
As a percentage of all requests (including any pending phase I cases)	95,8	96,7	98	96,7	99	98,6	99,3	99,5
Pending phase I cases	0	0	0	0	0	0	0	0
Phase II								
Withdrawal of notification	2	2	0	2	0	1	1	1
Withdrawal of request for examination	5	4	4	1	2	0	0	0
Cases concluded without Cartel Court decision	7	6	4	3	2	0	0	1
Prohibition by Cartel Court	0	0	0	0	0	1	0	0
Non-prohibition without conditions	0	0	1	2	0	1	0	0
Non-prohibition with conditions	1	1	0	4	1	1	2	1
Other Cartel Court decisions	1	2	0	1	0	1	0	0
Cases concluded with Cartel Court decision	2	3	1	7	1	4	2	0
Pending phase II cases	1	1	0	0	0	0	0	0
Total phase II cases	9	9	5	10	3	5	3	2
As a percentage of all requests	3,7	3,3	2	3,3	1	1,4	0,7	0,5
BWB requests for examination	7	9	4	10	3	4	3	2
Requests by Federal Cartel Prosecutor	7	4	3	8	3	5	2	2

Chart 5: Development of merger notifications in Austria 1995-2017



Quelle: BWB

2.2 Pre-notification talks

If there are doubts about whether a merger has to be notified, or if the merger is highly complex or if the merger would result in substantial market shares, a pre-notification talk is often an advisable option. It is in the interest of both the notifying party and BWB that merger control procedures are handled quickly and smoothly. These tasks, drawing on information provided in a draft application, are often a source of key information for evaluating the competition effects.

If the competition issues can be narrowed down and an agreement reached between BWG and the notifying party on effective remedies (restrictions or conditions) at this early stage, this will help avoid complex and costly procedures before the Cartel Court. In 2017 BWB conducted 44 pre-notification talks, i.e. 16 more than in 2016 when they totalled 28.

2.3 Bergbahnen Aktiengesellschaft Wagrain und Fremdenverkehrs GmbH/Bergbahnen Flachau Ges.m.b.H

On 18 May 2017 Bergbahnen Aktiengesellschaft Wagrain and Fremdenverkehrs GmbH notified BWB of a merger.

According to the merger notification BWB/Z-3472, Bergbahnen AG Wagrein (BB Wagrein) and Fremdenverkehrs GmbH (FVG) acquired all of the shares in Bergbahnen Flachau Ges.m.b.H (BB Flachau). From an antitrust perspective, FVG and BB Wagrein are part of Raiffeisenverband Salzburg eGen (RVS). Also relevant from an antitrust perspective is the fact that RVS holds a stake in Alpendorf Bergbahnen AG (Alpendorf BB), a company located in close proximity to it (in St. Johann im Pongau). All of these companies are part of the Ski amadé network, which sets the prices for multi-day ski passes throughout the entire region.

The companies approached BWB before filing their official merger notification in order to clarify any competition issues during pre-notification talks, in which they submitted detailed and comprehensive information. This forward-looking approach has paid off in this case too: the merger was cleared with effect from 15 June 2017.

BWB thoroughly examined the case against the following background: ski area networks undisputedly have many advantages for consumers as they combine individual ski lift operators to create one large ski area, within which skiers can use a single ski pass. However, this requires a degree of coordination among the independent companies that have to cooperate to provide this service, the effect of which starts to resemble that of a cartel, damaging competition to the detriment of consumers.

During the pre-notification talks the companies agreed to introduce new types of ski passes that had not been offered before. These new tickets include a family weekend pass for BB Flachau, BB Wagrein and BB Alpendorf, and various types of daily passes for families which are valid in the smaller (without ski circuits) ski areas Eben and Filzmoos, as well as multi-day passes for individuals for those ski areas. To make this new offer even more attractive, the tickets will be sold at a considerable discount compared with other tickets currently available for the same services. In addition, the fares for the ski bus services will be agreed individually in future (no more fixed Ski amadé fares).

BWB believes that the new products (and related discounts) will give consumers more choice and reduce price pressure, with families benefiting the most.

These commitments were included in the merger notification and became binding upon the merger being cleared.

2.4 ProSieben-Gruppe / ATV

On 9 February 2017 BWB received a merger notification according to which ProSiebenSat.1 PULS 4 GmbH (Vienna) intended to acquire 100% of the shares in ATV Privat TV GmbH (Vienna) and 100% of the limited partner's interest in ATV Privat TV GmbH & Co KG (Vienna) thereby gaining sole control. The planned merger concerned free TV and TV advertising.

Together with the Austrian Communications Authority (KommAustria) and the Federal Cartel Prosecutor, BWB conducted extensive pre-notification talks with the merger parties and thoroughly examined any potential effects of the planned merger on competition in the markets concerned (the free-TV advertising market in particular) as well as its impact on the diversity of opinion and media in Austria.

One possibility to ensure diversity of opinion and media and to tackle competition issues is to agree on commitments.

During the pre-notification talks the parties agreed on a bundle of commitments, which was subjected to an extensive market test during phase I of the merger control procedure. Ten companies submitted written statements. BWB analysed the statements and incorporated some of the suggestions into the commitments where appropriate.

The commitments were ultimately deemed to be an appropriate way of preventing the merger parties from dominating the free-TV advertising market and of avoiding any constraints on diversity of opinion and media, which is why BWB, KommAustria and the Federal Cartel Prosecutor agreed that there was no need for further examination of the case before the Cartel Court. During the entire period adherence to the commitments will be monitored by an independent trustee, who is obliged to report regularly to the official parties and KommAustria

2.5 Wiener Hafen und ÖBB-Infrastruktur / Wien Freudenu und Wien Inzersdorf

On 30 November 2016 Wiener Hafen und Lager Ausbau- und Vermögensverwaltungs, GmbH & Co KG (Hafen Wien) and ÖBB-Infrastruktur AG (ÖBB-Infrastruktur) notified BWB of the following planned acquisition:

Hafen Wien and ÖBB-Infrastruktur intended to create a joint venture to operate the container terminal in Freudenu, formerly operated by WienCont Containerterminal GmbH, and a recently constructed container terminal in Inzersdorf (both in Vienna), and to render related services. The planned merger therefore concerned container terminal and related services.

On 27 December 2016 BWB filed for examination of the merger in proceedings before the Cartel Court due to serious concerns about the details provided by the merger parties in their merger application.

In a more in-depth examination of the case, the Cartel Court had to assess whether the concentration would create or intensify a position of dominance in the regional market for container terminal services. In particular, the Court had to consider the geographic market definition and the market shares given in the merger notification.

The court-appointed expert confirmed the official parties' concerns about the geographic scope of the market, which was defined very broadly in the merger notification, resulting in market shares that were much lower than realistically estimated, and therefore concluded that a position of market dominance would arise. Likewise, synergy effects claimed by the merger parties were examined in a supplementary report, which stated that such effects would not justify clearance of the merger. As a consequence, the merger parties withdrew their application on 18 May 2017.

In October 2017 all parties met for roundtable talks to discuss whether and how cooperation would be possible between the involved companies in future.

2.6 Gewista / Ankünder

On 19 April 2017 the Cartel Court authorised the merger of Gewista and Ankünder with conditions. The decision is now final.

As already mentioned in the last Activity Report, the merger notified on 24 October 2016 concerned the increase of the stake held by the leading provider of outdoor advertising, Gewista-Werbegesellschaft m.b.H., Vienna (Gewista), in the third-largest provider Ankünder GmbH, Graz/Styria (Ankünder) from 24.9% to 33.3%. In turn, Ankünder acquired 49% from Gewista in Megaboard and (indirectly) its business in the Tyrol and Vorarlberg, both previously having been wholly owned by Gewista, as well as expertise in digitisation, a field in which Gewista and particularly also its parent company JC Decaux are innovation leaders.

Both BWB and the Federal Cartel Prosecutor filed an application for further examination of the case before the Cartel Court. In BWB's view an examination was required to determine whether the planned merger would create or intensify Gewista's position of dominance in the national outdoor advertising market (e.g. if Ankünder gives preference to Gewista when allocating/booking advertising space in Styria over other competitors; if Ankünder ceases to be an actual or potential competitor of Gewista; if Gewista gains a competitive edge in digitisation and the establishment of a national digital network; if Ankünder gives preference to Gewista when booking national advertising space etc.). Another issue to be examined was whether the merger would create or intensify Ankünder's position of dominance in the Styria-

ian outdoor advertising market (e.g. if Gewista gives preference to Ankünder or increasingly books Ankünder over other competitors; because of being a leader or having more expertise in digitisation etc.).

Like BWB the Cartel Court continued to assume, based on an expert opinion it had commissioned, that the market for outdoor advertising was a separate market that needs to be distinguished from other advertising markets. It also ruled that the merger would result in a significant concentration in the markets concerned, which can no longer be considered uncritical.

In contrast to BWB, the Cartel Court proceeded on the assumption, however, that this increased concentration would not cause competition problems. The Court did not expect “classic” negative horizontal effects such as higher prices or reduced qualities since the high share of fixed costs and the balancing market power of media agencies in national advertising campaigns would counter the effect. It also did not expect negative vertical effects such as foreclosure of customers (if Ankünder and Gewista only booked with each other in future and no longer booked any competitors) as this either happens already, and is not being expected to change, or any change induced by the merger would be only marginal. In addition, the Court did not consider digitisation to be a transformative subject in the near future, with the result that it was not viewed as a decisive factor.

The only area in which the Cartel Court shared BWB’s concerns was the issue of incentives for, and the possibility of, input foreclosure with regard to national campaigns. Enabling competitors to book sufficient advertising space for national campaigns on all types of media carriers (particularly City Lights and Poster Lights as they are owned almost exclusively by Ankünder) in Graz and the province of Styria, at the usual quality and terms and in a non-discriminatory way, was therefore imposed as a condition.

The behavioural constraints offered by the merger parties were reviewed by an expert (appointed by the Cartel Court) at the companies concerned in various market tests and finally found sufficient to dispel any competition concerns. Adherence to the conditions will be monitored by a trustee who reports to the official parties.

2.7 Fressnapf / Tomy’s Zoo

On 20 July 2017 Fressnapf Handels GmbH (Salzburg) notified BWB of its acquisition of all of the shares in Tomy’s Zoo GmbH (St. Pölten). The planned merger concerned pet food and pet supplies.

On 25 August 2017 BWB filed for examination of the merger in proceedings before the Cartel Court for the following reasons:

The Authority had concerns about the company’s market definition. The notifying party argued, without being able to rely on common decision-making practice, that the relevant market would comprise the retailing of pet food, pet supplies and pets, and would have to be defined nationally.

BWB held that because the retail markets for:

1. pet food,
2. pet supplies, and
3. small pets

are not interchangeable, they must be distinguished from each other and the markets regionally defined, as is done in food retailing.

The Fressnapf Group, with its 130 outlets, is the market leader in pet food and pet supplies and holds a proportionately strong market position. The only fully-fledged competitors of Fressnapf are Das Futterhaus (37 outlets), Tierkönig (3 outlets), which is new on the Austrian market, as well as some independent pet supply stores. If the 9 Tomy's Zoo stores were taken over, this imbalance would be further increased.

Market data shows that the Fressnapf Group dominates the market in all regional pet supplies retail markets as well as in four regional pet food retail markets with the thresholds (from 30% upwards) pursuant to § 4 para. 2 subpara. 1 KartG 2005 having (mostly) been (clearly) exceeded. There were also additional concerns that Fressnapf held a position of market dominance compared with other providers and/or suppliers, as well as in the retail trade with small pets, which would have to be examined more closely in proceedings before the Cartel Court.

Illustrative Price Rise tests (IPR testing is a methodology to determine potential price rises in a merger scenario) have shown that if the Tomy's Zoo stores were taken over average price increases for pet supplies of up to 12.60% could be expected at those locations. Price increases of up to 40% in the special pet supplies segment could not be ruled out either.

The notifying party did not offer any viable remedies to eliminate the competition concerns, which is why BWG requested an examination. On 27 September 2017 the notifying party withdrew its merger notification.

2.8 Aeronautics

On 15 August 2017 the airline Air Berlin and its personally liable partner company Air Berlin PLC applied for the opening of insolvency proceedings in Germany.

The Federal Republic of Germany granted a bridging loan in the amount of € 150 million to ensure that flight operations could be continued, which the European Commission approved after thorough consideration. At the end of the bidding deadline on 15 September 2017, BWB stepped up its discussions both with potential buyers and with the European Commission. On 25 September 2017 the insolvency administrator announced that it was negotiating with the airlines easyJet and Lufthansa on the takeover of the majority of shares in Air Berlin.

Subsequently, easyJet acquired 25 A320 aircraft leases and slots at Berlin Tegel airport. On 12 October 2017 Lufthansa agreed to take over the Air Berlin subsidiaries Niki and LGW. On 1 November 2017 insolvency proceedings were opened on the realisable assets of the Air Berlin companies. On 12 December 2017 the Commission approved that part of the takeover planned by easyJet.

In the autumn of 2017, BWB analysed the impact that Lufthansa's takeover of the Air Berlin subsidiary Niki would have. The Austrian leisure air carrier Niki had been performing well for a long time, with an economically sound basis, acting as a market-stabilising competitor for certain routes (see the Chart below). There was now the risk of this being lost.

BWB's responsibility is to protect competition (price, quality and innovation competition) in the best possible manner and to prevent the creation of monopoly routes that push up prices; the Authority met this responsibility by involving a broad range of stakeholders in the process, all the while engaging in constant consultation with the Commission.

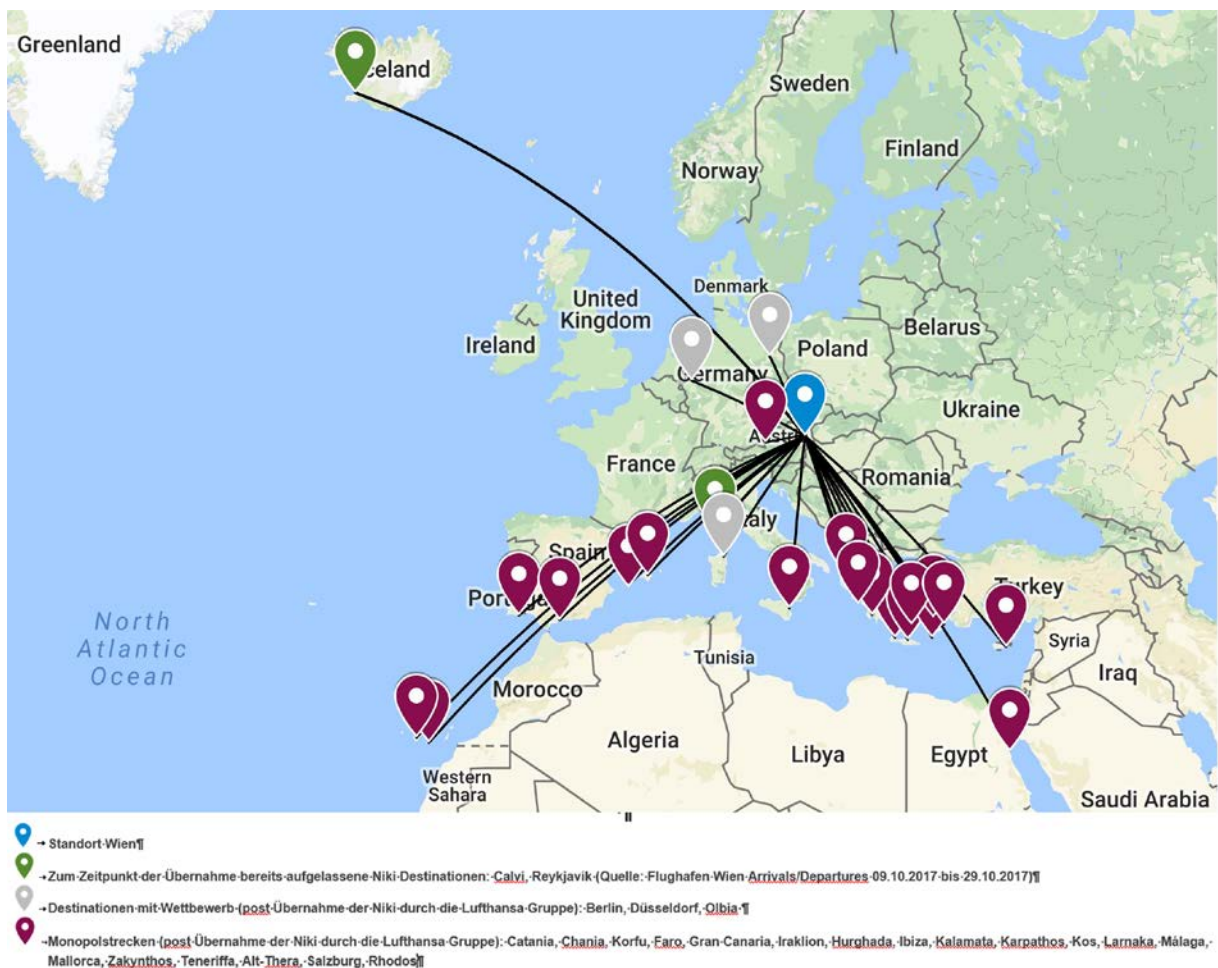
After the market had reacted negatively to the news that Lufthansa intended to take over Niki, the German airline withdrew its offer on 13 December 2017. The competition authorities had had concerns about 80 of the routes to be taken over from Niki; Lufthansa would have had a monopoly on 50 of those routes after the takeover.

The European Competition Commissioner, Margrethe Vestager, warned of a considerable risk of higher fares and less consumer choice. Lufthansa withdrew its offer for Niki within the Commission's period of examination, which ended on 21 December 2017 with the acquisition by Lufthansa of LGW being approved.

After the Niki insolvency proceedings had been opened in Germany on 13 December 2017 and a best bidder been found in the British Airways parent company IAG, the Lower Austrian regional court of Korneuburg ruled that the main proceedings would have to be conducted or repeated in Austria, in line with the European Insolvency Regulation, given that Vienna was the venue of the competent supervisory authority. The company concerned was an Austrian company with an Austrian licence to operate.

On 23 January 2018 the right to take over Niki was awarded to Laudamotion GmbH after all competences had been clarified in the main proceedings. Laudamotion had been the best bidder and subsequently notified BWB of a merger. After thorough investigation BWG cleared the notified merger between Laudamotion and Niki on 23 February 2018.

Analysis of Niki routes after planned merger of Air Berlin/Lufthansa (12/2017)



2.9 VTG Rail Assets / CIT Rail Holdings

On 4 September 2017 VTG Rail Assets GmbH (VTG) notified BWB of the planned acquisition of 100% of the shares in CIT Rail Holdings (Europe) S.A.S. (CIT RH) as a merger. VTG is engaged in railcar leasing, rail logistics and tank container logistics. CIT RH is the sole shareholder of the railcar leasing company Nacco S.A.S. with subsidiaries in Germany, Ireland, Luxembourg and the United Kingdom. The merger would mean an increase in market shares in the area of railcar leasing.

The notifying party argued that the former state railways (e.g. German DB-Cargo, Czech ČD Cargo, Austrian Rail Cargo, Swiss SBB) should also be included as market participants in the market for railcar leasing. BWB asserted that former state railways would lease their wagons only to a limited extent to external companies that are not part of their groups. After BWB had subtracted the state railways' transport capacities from the company's calculations, it became clear that the threshold pursuant to § 4 para. 2 subpara. 1 KartG (market shares in excess of 30%) would be greatly exceeded in the areas of dry bulk and tank wagon leasing if the intended merger were to go ahead. The company would thus be dominating the railcar leasing market.

Based on these concerns and because of unresolved questions about market definition, both the Federal Competition Authority and the Federal Cartel Prosecutor filed an application for further examination of the planned merger before the Cartel Court pursuant to § 12 KartG prior to the expiry of the four-week examination period. On 13 December 2017 the Cartel Court commissioned an expert to submit an opinion on how to define the (regional) scope of the market, as well as on the issue of whether the merger would create or increase a position of market dominance. Proceedings were still pending as at the end of 2017. Following an application to extend the deadline pursuant to § 14 para. 1 KartG, the new deadline for a decision is 29 March 2018. The notifying party offered a range of conditions (advance sale of some 30% of the Nacco business to be acquired to third parties), which was examined as part of a supplementary opinion and found suitable to dispel competition concerns. Imposing adherence to the agreed conditions, the Cartel Court did not prohibit the merger in a ruling issued on 28 March 2018.

2.10 Illegal mergers and incorrect/ misleading information

Vulcan Holdings, L.P. und Apollo Management L.P.

On 21 April 2017 the Cartel Court, at BWB's request, imposed a fine of € 70,000 on Vulcan Holdings L.P., Delaware, USA (Vulcan) and Apollo Management L.P., New York, USA (Apollo) on grounds of an illegal merger implemented between 31 March 2016 and 27 September 2016, for which the parties concerned are jointly and severally liable. The opponents had informed BWB of the breach on their own initiative and facilitated investigations into the facts of the case by not disputing it.

On 29 August 2016 Vulcan notified BWB of the acquisition of further stakes in Warrior Met Coal, LLC, Delaware, USA (WMC), which means that Vulcan and other associated funds increased their share in WMC from 24.5% to roughly 31% by converting debt to equity and through the acquisition of newly issued capital. The merger related to the company's coal division.

No request for examination was filed, with the standstill obligation consequently expiring as at 27 September 2016. The shares were acquired as part of proceedings before a U.S. Bankruptcy Court with the aim of securing WMC's economic survival. The acquiring funds, together with other first-class creditors, agreed to a backstop commitment within the scope of a private offering of rights to purchase new business shares, which WMC offered in accordance with US insolvency law. For this purpose the acquiring funds, together with other first-class creditors, undertook to take over all unsubscribed business shares. Since not all first-class creditors participated in the rights offering, the acquiring funds were obliged to act on the offering, acquiring additional shares in WMC (about 5%) and thus exceeding the 25% threshold (§ 7 para. 1 subpara. 3 KartG), without attaining control of WMC however.

The acquiring funds had not originally assumed that notification would be necessary and only realised at a later stage that the additional acquisition of business shares, as a consequence of the backstop commitment, would necessitate a merger control notification in Austria.

SWOCTEM GmbH and Friedhelm Loh

On 21 April 2017 the Cartel Court, at BWB's request, imposed a fine of € 11,000 pursuant to § 29 subpara. 1 (a) in conjunction with § 17 para. 1 KartG on opponents SWOCTEM GmbH and Friedhelm Loh on grounds of an illegal merger implemented between 13 May 2016 and 17 September 2016, for which the parties concerned are jointly and severally liable.

By buying shares on the stock exchange the opponents had acquired a stake of more than 25% of the capital and voting rights in Klöckner & Co SE. As a result of the turnover thresholds being exceeded, the merger had to be notified. Klöckner had even exercised its voting rights at the annual general meeting. The opponents' legal representatives had subsequently informed BWB on their own initiative and notified the Federal Competition Authority of the merger.

In BWB's opinion, if in doubt, the standstill obligation applies from the time of implementation of the merger. However, this was of no further significance in this case since an extension of the period of offence would not have resulted in a significantly higher fine. An illegal merger existed at least between 13 May 2016 and 27 September 2016 (when the standstill obligation ended), which means that a fine was to be imposed pursuant to § 29 subpara. 1 (a) in conjunction with § 17 para. 1 KartG.

In this case the opponents had informed BWB of a possible breach pursuant to § 17 KartG on their own initiative and facilitated investigations into the facts of the case by not disputing it. The law was only breached for a few months. The breach and fault were not classed as serious given that the acquisition did not result in a controlling but only a minority shareholding, and due to it being unlikely that the merger would have been prohibited.

All things considered, a fine of € 11,000 seemed appropriate in view of the opponents' economic strength. The Cartel Court's decision is final.

Stahl Lux 2/ Leather chemicals business of Clariant International

On 12 May 2017 Stahl Lux notified BWB of its indirect acquisition of the assets of BASF SE, Germany, as well as of sole control over the company's leather chemicals business (BASF transaction). During its examination of the BASF transaction BWB had concerns about an earlier acquisition of Stahl Lux that had not been notified, namely the acquisition of the target business (Clariant transaction), which had already been executed by Stahl Lux on 30 April 2014.

The Authority found that the Clariant transaction would also have been subject to notification requirements in Austria. On 3 August 2017 Stahl Lux therefore notified BWB of the Clariant transaction retroactively, with the standstill obligation applying from 1 September 2017 in the absence of a request for examination by the official parties.

Subsequently, BWB – pursuant to § 17 para. 1 in conjunction with § 29 subpara. 1 (a) KartG – filed an application with the Cartel Court for imposition of a fine, stating as the legal facts that the Clariant transaction had been an illegal merger pursuant to § 17 para. 1 KartG, at least between the period of 30 April 2014 and 1 September 2017. Stahl Lux did not dispute the facts of the case as brought forward by BWB, and the Cartel Court imposed a fine of € 185,000, this being the amount that BWB had applied for.

When determining the amount of the fine, BWB had considered, among other things, the long period of the offence (at least 40 months), the degree of fault, both companies' voluntary co-operation and the fact that no enrichment could be ascertained. The decision is final.

Comparex AG / Agile Software B.V., InfraControl B.V

On 19 December 2017 the Cartel Court, at BWB's request, imposed a fine of € 30,000 pursuant to § 29 subpara. 1 (a) in conjunction with § 17 para. 1 KartG on Comparex AG on grounds of an illegal merger implemented between 24 April 2013 and 28 October 2017, namely the acquisition of Agile Software B.V., Netherlands, and InfraControl B.V., Netherlands.

The opponent had informed BWB of the breach on its own initiative and facilitated investigations into the facts of the case by not disputing it.

On 29 September 2017 the opponent retroactively notified BWB of its acquisition on 24 April 2013 of all shares in the Dutch companies Agile Software B.V. and InfraControl B.V. The merger related to the software, IT services and hardware divisions. On 1 April 2015 the target companies were merged with COMPAREX Nederland B.V., a subsidiary of the opponent, which is why the application was only directed to the opponent. No request for examination was filed, with the standstill obligation consequently expiring as at 28 October 2017.

When determining the amount of the fine, BWB had taken into account the fact that the law firm advising the company had overlooked the need for notification in Austria as the target companies were not engaged in any business activities in Austria and generated no sales there, which is why the merger had not been notified in Austria. It appeared plausible that this had been an oversight as the merger had been notified by the required deadline in the Netherlands.

Comparex AG / DATALOG Software AG

On 19 December 17 the Cartel Court, at BWB's request, imposed a fine of € 40,000 pursuant to § 29 subpara. 1 (a) in conjunction with § 17 para. 1 KartG on Comparex AG on grounds of an illegal merger implemented between 6 February 2012 and 28 October 2017, namely the acquisition of DATALOG Software AG.

The opponent had informed BWB of the breach on its own initiative and facilitated investigations into the facts of the case by not disputing it.

On 29 September 2017 the opponent retroactively notified BWB of its acquisition on 6 February 2012 of 100% of the shares in DATALOG Software AG, Germany. The merger related to

the software and IT services divisions. The target company was merged with the opponent under company law on 31 May 2012, which is why the application was only directed to the opponent. No request for examination was filed, with the standstill obligation consequently expiring as at 28 October 2017.

When determining the amount of the fine, BWB had taken into account the fact that the law firm advising the company had overlooked the need for notification in Austria owing to the target company's marginal turnover in the country (€ 742,000 or only about 1% of total turnover, with 90% of turnover generated in Germany), which is why the merger had not been notified in Austria. It appeared plausible that this had been an oversight as the merger had been notified by the required deadline in Germany.

3. Cartels, coordinated behaviour and investigations

3.1 Dawn raids

During 2017 BWB conducted seven dawn raids focusing on the construction and consumer electronics industries. These dawn raids were intended to uncover breaches such as price fixing with suppliers, price coordination among suppliers or coordinated behaviour.

3.2 Decisions in the dry construction industry

During 2017 BWB conducted seven dawn raids focusing on the construction and consumer electronics industries. These dawn raids were intended to uncover breaches such as price fixing with suppliers, price coordination among suppliers or coordinated behaviour.

Decisions in the dry construction industry

The Federal Competition Authority has been investigating the dry construction industry since October 2015. The Authority launched its investigation following a leniency application filed with BWB.

In March and April 2016, BWB raided the premises of eight companies. Based on the information derived from the leniency application and the dawn raids, the Authority analysed more than 400 construction projects for anti-competitive behaviour. It also submitted requests for information to public and private customers.

After the information presented had been fully analysed, it became clear that the companies had engaged in the following anti-competitive behaviour in relation to restricted public and private tender procedures:

- Horizontal price fixing and customer sharing
- Horizontal exchange of information about construction projects

The restricted tenders related to the drywall construction markets in Vienna, Lower Austria and Burgenland, and partly also in Styria, Upper Austria and Salzburg.

BWB filed an application with the Cartel Court for the imposition of a fine on six companies. One case was discontinued because of bankruptcy. Two companies were granted leniency.

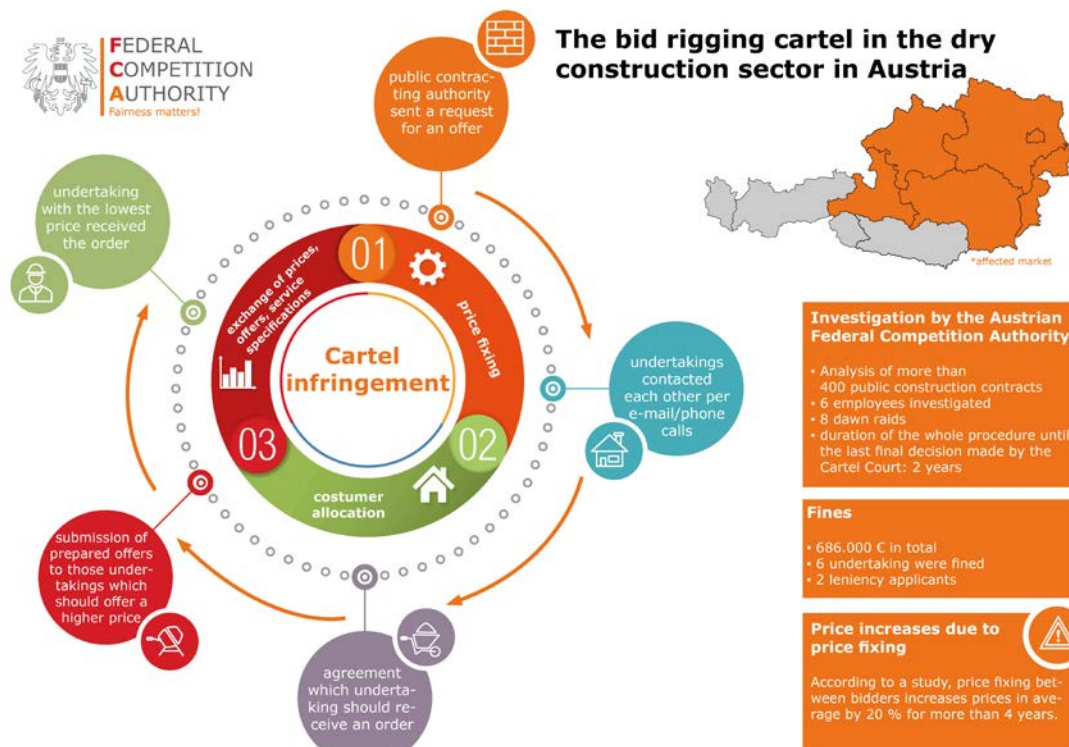
Only six months passed between the initial investigations and the first BWB application with the Cartel Court. The entire process up until the Cartel Court's final decision took around two years. The Cartel Court imposed fines totalling € 686,000 on the companies concerned.

The following companies were found to be in breach of § 1 para. 1 KartG¹:

- 3P Trockenbau GmbH
- Akustik Blasch- und Wärmedämmung GmbH
- E+H Trockenbau Ges.m.b.H
- Kaefer Isoliertechnik Ges.m.b.H.
- Perchtold Trockenbau Wien GmbH
- Tüchler Ausbau GmbH
- Wagner & Jüptner GmbH

The Cartel Court decisions can be viewed at www.edikte.justiz.gv.at (in German).

Chart: The dry construction cartel



3.3 Disposable gloves

At the request of BWB, the Cartel Court ruled in its partial decision of 27 June 2016 that the exclusive allocation (territorial protection) of the European market for the distribution of jointly produced products (in particular latex examination gloves) in favour of Semperit, as laid down in the joint venture agreements between Semperit and the Sri Trang Group (Thailand), was in breach of both Article 101(1) TFEU and § 1 KartG. The affected market was the market for disposable gloves, particularly examination gloves made from natural and nitrile rubber.

In accordance with § 26 KartG, the Cartel Court prohibited Semperit from invoking the provisions of the agreement, thus complying with BWB's request of 9 October 2015. Semperit filed an appeal against this partial decision to the Supreme Cartel Court.

¹ With the exception of the decisions on the companies Kaefer Isoliertechnik Ges.m.b.H and 3P Trockenbau GmbH, the actual construction projects during which § 1 para. 1 KartG was breached are named in the Cartel Court's decisions.

The Supreme Cartel Court examined in detail the concept of collateral agreements within the scope of a joint venture. Semperit argued that the allocation of exclusive sales territories (sole distribution agreement) was accessory to the joint venture agreements and that this arrangement met all of the criteria of a permissible collateral agreement, namely objective necessity and proportionality.

Before deciding on whether this agreement constituted a collateral agreement, the Supreme Cartel Court dealt with how the relationship between the founders of this joint venture could be classified and how the relevant clauses could be characterised. The Court proceeded on the assumption that agreements establishing a joint venture were to be classified as horizontal agreements even if the founders were not competitors.

The establishment of a joint venture means that the founders start operating on the same market level. The Court also determined that the Sri Trang Group and Semperit had been (at least potential) competitors in Europe, the geographically relevant market, since 1 January 2015. Concerning the characterisation of the relevant clauses, the Court stated that the agreement did not constitute a sole distribution agreement but a “stipulation of sales areas between the founders of a production joint venture”.

The Supreme Cartel Court also ruled that the stipulation of sales areas was neither necessary nor unavoidable in order to carry out a production joint venture. In assessing the objective necessity of the relevant clauses, the Court relied on the assessment criteria as used in European decisions on collateral agreements. Accordingly, the assessment of objective necessity was an abstract one, and differed from a consideration of the pro-competitive and anti-competitive effects of a given arrangement. The parties’ subjective perception was of no further relevance in this case.

The Supreme Cartel Court decided on 6 September 2017 to reject the appeal. The decision is final. The proceedings to determine the fine are still pending.

3.4 Online sales

Once again BWB focused on online selling. Following applications filed by BWB, the Cartel Court fined four companies a total of € 2,538,200 (De’Longhi-Kenwood, Makita, Robopolis and Pioneer & Onkyo).

De’Longhi-Kenwood

On 14 November 2016 the Cartel Court imposed a fine of € 650,000 on De’Longhi-Kenwood GmbH.

De’Longhi-Kenwood had infringed the ban on cartels as defined in Article 101 TFEU and § 1 KartG between January 2006 and September 2015. The company had entered into vertical price fixing arrangements with various retailers, effectively setting minimum resale prices. It had also concluded agreements with retailers restricting cross-border sales as well as generally banning Internet sales.

De’Longhi-Kenwood staff checked several times per week that these minimum prices were being observed and, if the price had fallen below the minimum level, immediately contacted the retailer (by phone or e-mail) to request that the prices be realigned with those of other retailers. Various methods were used to ensure that this price cartel, which De’Longhi-Kenwood referred to as a “European minimum price system”, worked as intended. Some retailers were forbidden from appearing on price comparison sites, while others were no longer supplied until they complied with the agreed prices again. In other cases De’Longhi-Kenwood threatened to no longer pay its share of advertising costs as previously agreed.

In some cases, employees working at partner companies in neighbouring countries were

contacted and asked to demand price discipline from retailers that were not charging the agreed minimum prices to ensure price stability even outside Austria. The price arrangements involved the setting of a uniform minimum sales price at the horizontal level of retailers. The decision is final.

Makita

On 7 December 2016 the Cartel Court imposed a fine of € 1,560,000 on Makita Werkzeug Gesellschaft m.b.H.

Makita had agreed resale prices with various retailers/resellers during the period from August 2002 to September 2015. These arrangements primarily concerned price and advertising campaigns for products offered by Makita. The fixing of sales prices, as well as retail price maintenance in which Makita was directly involved, constitutes a wilful restriction of price competition. The arrangements were intended to intervene in resellers' pricing in order to restrict or avoid intrabrand competition (i.e. competition among providers of the same brand) and thereby secure certain prices. Such vertical fixing of resale prices constitutes a material infringement of Article 101 TFEU and § 1 KartG.

Moreover, Makita also restricted cross-border parallel sales between July 2008 and December 2014 by prohibiting retailers from selling abroad. These infringements primarily concerned price and advertising campaigns for products offered by Makita. The decision is final.

Robopolis

On 9 November 2017 the Cartel Court imposed a fine of € 208,200 on Robopolis GmbH due to anti-competitive vertical agreements on resale prices as well as territorial protection for resellers in relation to the iRobot brand of vacuuming robots during the period between October 2008 and November 2014.

The Cartel Court ruled that the vertical price fixing and territorial protection arrangements constituted material infringements and wilful restrictions of competition, and negated the presence of grounds of justification within the meaning of Article 101(3) TFEU. Robopolis GmbH did not contest the ruling. The decision is final.

Pioneer & Onkyo

On 9 November 2017 the Cartel Court fined Pioneer & Onkyo GmbH € 120,000 for having entered into anti-competitive vertical agreements on the resale prices of Onkyo and TEAC home audio and visual equipment products (particularly receivers/amplifiers and record players) during the period between March 2011 and April 2017.

The Cartel Court ruled that the vertical price fixing constituted material infringements and wilful restrictions of competition, and negated the presence of grounds of justification within the meaning of Article 101(3) TFEU. Pioneer & Onkyo GmbH did not contest the ruling. The decision is final.

4. Reports, sector inquiries and monitoring

4.1 Report on a Possible Regulation of ATM Fees

The Federal Competition Authority completed its investigation into the Austrian card payment system and a possible regulation of ATM fees, and presented its report in February 2017.

The report is based on discussions with institutions and stakeholders (Federal Ministry of Finance, Federal Ministry of Labour, Social Affairs, Health and Consumer Protection, Oesterreichische Nationalbank, Financial Market Authority, European Commission, Austrian Economic Chamber, Austrian Chamber of Labour etc.), information provided by banks and third-party providers (bank survey) and a survey among ATM card users (customer survey).

The objective of the report was to provide a market analysis and make sound recommendations, as the basis for a decision on a possible regulation of ATM fees.

The following areas were analysed during the preparation of the report:

- The Austrian debit card payment system
- Market definition
- Market participants and their market position
- ATM transactions and their costs
- Consumer behaviour of cardholders

In summary, the analysis yielded five key findings:

- 95% of bank customers use their ATM card to make cash withdrawals; 76% use it to make cashless payments. The number of cashless card payments has risen substantially over the past few years, with the number of ATM withdrawals having remained more or less the same.
- 43% of cardholders did not know what the charges for their current account were. Only one in five bank customers knows exactly what their account costs.
- A ban on ATM fees would not be expedient as banks can cover their costs in a variety of other ways.
- The number of third-party providers of ATMs (FirstData, Euronet) has risen during the last few years. A ban on ATM fees could lead to third-party providers exiting the market and the number of ATMs falling significantly.
- In conclusion, the promotion of competition in the current account segment by increasing transparency and reducing barriers to account switching, perhaps in combination with regulating the service fees between banks and ATM operators, would seem the most promising way both to increase the efficiency of the card payment system and to enable consumers to benefit appropriately from the resulting efficiency gains.

4.2 Sector Inquiry Health

BWB launched a sector inquiry into healthcare in 2017. From a competition perspective, the Austrian healthcare system is characterised by tight regulations.

When selecting the subject matter of this inquiry, BWB decided not to dedicate it to just one partial area of the healthcare system but to focus on several different aspects. Complaints submitted to BWB and notified healthcare-related mergers formed the basis for the inquiry, as they allowed conclusions to be made on the relevant competition issues. During 2017 the Authority distributed more than 50 requests for information and held numerous discussions with stakeholders.

Apart from processing and analysing the information gathered from the perspective of competition law, the BWB staff involved in the inquiry attended a whole range of events such as symposia and conferences in order to gain a better insight into the healthcare system and its particular features. In addition, the Authority has so far commissioned one expert to submit an economic opinion on one partial area.

The inquiry is currently focusing on the following subject areas:

- Pharmacies
- Patient transports
- Blood donations
- Social insurance for entrepreneurs
- Private hospitals
- Private additional health insurance

The aim of the inquiry is to analyse the healthcare system from a competition perspective, as it is currently rather devoid of competition, and to make proposals for the introduction of more competition. This is done without calling the system of solidarity into question. After completion of its inquiry, BWB will make the results available to the general public.

4.3 Code of conduct for supplier/buyer relationships in food retailing

In the past few years BWB has consistently received complaints about business practices related to the manufacture of own brands and to the terms and conditions in the food retail industry, which reflect the imbalance in the supply chain. The key issue here that makes it nearly impossible to take action is the fact that these practices are often difficult to pin down from an antitrust perspective and the companies affected are usually afraid of retaliation and therefore not prepared to give evidence in any potential court case.

The Competition Commission has looked into the issue in great detail, focusing its investigations on the food retail industry while not ruling out the possibility that other industries might be affected as well. After having completed those investigations it published a recommendation on 3 July 2017 proposing, among other things, a redesign of the Internet-based whistleblowing system (whistleblower hotline), which had been introduced following the KaWeRÄG 2017, such that it can also be used to report problematic business practices in supplier/buyer relationships. It also recommended publishing a code of conduct based on the example set by BWB's Guidance on Vertical Price Fixing, which can be used by market participants as a source of information.

The recommended use of the Internet-based whistleblowing system for reporting breaches of good business conduct would require an extension of the legal basis. Currently, § 11 para. 6 WettbG refers solely to reports of possible infringements of competition law within the meaning of § 37b KartG. This could be considered within the scope of an amendment of the Competition Act.

BWB has acted on the Competition Commission's recommendation to prepare a guidance and is working on a document about good business conduct , which deals not only with problematic practices in business relationships among food retailers and their suppliers but also with similar occurrences across all sectors. On 22 December 2017 the initiative was presented to stakeholders, who were invited to make suggestions. Experts and interest group representatives will continue to be involved in the preparations, ensuring that the guidance will be highly relevant and useful. A draft for public consultation should be published during the summer of 2018, and the final guidance will be presented after the responses received have been incorporated.

The importance and topical nature of this BWB initiative is reflected in the recent activities of the European Union in relation to unfair trading practices and also in the Austrian government's programme for 2017-2022, which includes measures to tackle unfair trading practices and promote relevant initiatives at a national and a European level in order to improve farmers' competitive position.

5. Other processes and reports

5.1 Preliminary review of video-on-demand platform “Flimmit”

A preliminary review of the acquisition of the video-on-demand platform “Flimmit” was carried out in accordance with § 6 et seq. of the Austrian Broadcasting Corporation Act (ORF-G). The intended aim of the platform was to enable online users to watch ORF’s own and commissioned productions as well as co-productions and, to a lesser extent, purchased content, as part of the ORF’s public service charter. ORF applied for permission from the regulator, KommAustria, on 6 October 2017.

The Federal Competition Authority has the rights to act as a party in the preliminary review procedure created by the ORF-G and upholds the interests of competition. In this capacity, BWB gives an opinion on the expected impact of the new offering on the competition situation of other media companies that operate in Austria (§ 6a para. 4 subpara. 2 ORF-G) and may appeal to the Administrative Court against the decision reached by KommAustria.

BWB presented its opinion on the ORF proposal on 19 December 2017, concluding that there were no significant concerns from a competition perspective in terms of a negative impact on other media companies operating in Austria, provided that conditions were put in place to ensure that films and series were made available to view on the basis of standard market conditions and that third providers also had access to ORF productions at appropriate market prices.

Moreover, BWB called on KommAustria for consideration of the extent to which the financing model selected by ORF, comprising partial financing from ORF programming fees and fees for either annual subscriptions or individual programmes, was compatible with the ORF-G, whether § 4 et seq. ORF-G represented a sufficient legal basis for the planned platform and whether the application from ORF complied with the requirement for detailed reasoning as defined in § 6b para. 2 ORF-G.

KommAustria’s decision is expected during the first half of 2018.

5.2 Preliminary review of the change to ORF’s online offering in social media (ORF YouTube channel)

DBy means of a public announcement in accordance with § 6a para. 2 ORF-G unveiling its proposal to make changes to ORF’s online offering in social media, ORF started the process of a new preliminary review in February 2017. The ORF application and statements from the preliminary stage were submitted by KommAustria to BWB with a request for a statement pursuant to § 6a para. 4 subpara. 2 ORF-G in late April.

ORF was applying to set up its own YouTube channel. As well as offering a wealth of ORF television content (drama and news as trailers; themed content, genre playlists with documentation, reportages and other factual content; old classics), it also wanted to include additional content, such as its own web-only videos produced specifically for YouTube. The range of additional content includes everything from company information to news, fiction and sports reporting.

Based on the results of the public consultation, ORF completely cancelled the commercial marketing of this offering, planned in cooperation with YouTube, during the preliminary stage.

In accordance with § 6a para. 5 ORF-G, BWB is the party involved in the preliminary review with responsibility for upholding the interests of competition. Its statement on the new YouTube content was issued on 14 June 2017.

In this statement, BWB expressed its basic understanding of ORF's aim of using a new YouTube channel to improve communication with the younger 14-29 age group, who tend to favour social media and are more difficult to reach with the existing ORF offering. However, its closer review of the ORF application had thrown up questions regarding the plan's compatibility with the ORF-G. This applied in particular with regard to some of the barriers specified in § 4e ORF G for the protection of competition interests, such as limiting the online availability of ORF broadcasts to a maximum period of seven days.

Consequently, BWB proposed that KommAustria, when approving the plan, should stipulate qualitative, quantitative and time-based barriers for the content that ORF makes available via YouTube, ensuring that any impairment of competition interests protected by law (private online offerings with commercial content, forums and archives related to politics, industry, sport, academia and culture) is kept to the absolute minimum needed to fulfil ORF's public service remit.

KommAustria's decision is expected during the first half of 2018.

5.3 Preliminary review for Ö3-Live/visual radio and radiothek.ORF.at 2015

In 2014 ORF applied for two preliminary reviews by KommAustria pursuant to § 6 et seq. ORF G. KommAustria announced its decision on the Ö3-Live/Visual offering in February 2015 (decision of 18 February 2015, [KOA 11.266/15-001](#)). ORF filed an appeal against this decision to the Federal Administrative Court (BVwG) on 20 March 2015. The case is still pending.

KommAustria announced its Radiothek decision in July 2015 (decision of 22 July 2015, [KOA 11.277/15-004](#)). BWB submitted an appeal against this decision to the BVwG on 20 August 2015. The case is still pending.

In accordance with § 6 para. 5 ORF-G, BWB is an official party responsible for upholding competition and issued detailed statements in both cases regarding the potential impact of the Ö3-Live/Visual radio and Radiothek plans on the competition situation for other media companies that operate in Austria, and on radio broadcasters in particular. More detailed information on these cases can be found in the BWB Activity Reports for 2014 and 2015.

5.4 Funeral directors

BWB has been observing the funeral market for some time now and published its recommendations in 2011 on how price transparency could be improved for consumers, among other aspects. The funeral market was liberalised in 2002. However, the restrictions on competition in this market are not insignificant in number, distorting competition as a result. Since 2006 there have been 16 suspected cases of market dominance being abused. Accusations that a dominant position is being abused relate to 3.2% of the 500 or so funeral directors operating in Austria.

One example of this abuse includes refusing access to chapels of rest. Local authorities frequently lease chapels of rest to undertakers, which are obliged to also grant access to other funeral directors. Any measures to prevent or hinder such access could be deemed abuse of a dominant market position pursuant to § 5 KartG, as these chapels of rest are classed as essential facilities, to which other companies also require access in order to perform their services. Preventing or hindering access, for example by means of excessively high prices, can result in competitors being forced out of the market. This results in less competition and thus higher prices, less choice and lower quality.

In the BWB's recommendations back in 2011, the Authority called for greater price and product transparency on undertakers' websites. The aim is to help consumers quickly and efficiently compare funeral services when they need them.

An evaluation of funeral directors' websites showed that fewer than 1% gave price details online. Consequently, consumers have no means of selecting the best option without unnecessary delay. However, it is positive to note that a small number of funeral directors stated that they were willing to include price lists on their websites in future. The [City of Vienna](#) and [City of Salzburg](#) undertakers have already responded to the BWB recommendations and added information on pricing to their online content.

BWB's recommendation that price transparency should be guaranteed on the websites continues to apply. Consideration is also being given to whether to include this recommendation in the Austrian Price Marking Act (PrAG), which would make the display of prices binding on all companies.

5.5 Consumer Protection Cooperation

The Consumer Protection Cooperation is a network of public authorities designed to tackle intra-Community (cross-border) breaches of certain key consumer protection rules that could or indeed actually do damage the collective interest of consumers (interests of a large number of consumers). The aim is for the responsible authorities (BWB is one of six in Austria) to communicate with each other and provide mutual assistance (enforcement requests, requests for information, warnings). The remit here does not include the enforcement of claims made by individual consumers.

At the request of another authority, BWB takes all enforcement measures necessary to effect the immediate cessation or prohibition of the infringement committed within the EU and to supply all the relevant information that is required to establish whether an intra-Community infringement has occurred or whether there is a reasonable suspicion that it could occur. For its part, BWB may also submit enforcement requests or requests for information to consumer protection authorities in other EU Member States.

A single liaison body responsible for forwarding all requests coming from and to other EU Member States has been established within the Federal Ministry of Labour, Social Affairs, Health and Consumer Protection.

The liaison body cooperates and coordinates solely within the official network. Aggrieved consumers may not enlist the help of the body to enforce their own claims.

If an operator is suspected of having committed an intra-Community infringement, BWB may submit a request for cessation to the Civil Court. BWB may also effect a declaration of discontinuance secured by an appropriate penalty.

Alerts

Alerts take the form of unsolicited warnings issued by one authority to another. BWB received 18 such alerts during the period from 1 January 2017 to 31 December 2017.

Information requests

At the request of another authority, the authority in question provides all relevant information needed to determine whether an intra-Community breach has occurred or if there are justifiable grounds for suspecting such a breach. BWB received one such request during the reporting period.

Enforcement requests

Authorities may use enforcement requests to implement all of the enforcement measures needed in order to effect an immediate stop to or prohibition of the intra-Community breach. BWB received one such enforcement request during the period from 1 January 2016 to 31 December 2017.

New Consumer Protection Cooperation Regulation

The new Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004 entered into force on 21 December 2017.

The Communication from the Commission of 6 May 2015 "A Digital Single Market Strategy for Europe" identified as one of the priorities of that strategy the need to enhance consumer confidence through more rapid, agile and consistent enforcement of consumer rules. The Commission's Communication of 28 October 2015 on "Upgrading the Single Market: more opportunities for people and business" reiterated that the enforcement of Union consumer protection legislation should be further strengthened by the reform of Regulation (EC) No 2006/2004 [recital (2) of Regulation (EU) 2017/2394].

In the run-up to the new Regulation's introduction, numerous discussions were held in the form of working groups and interministerial meetings, also involving BWB. The new Regulation also provides for an expansion of the responsible authorities' current powers.

5.6 Whistleblowing system

The Cartel and Competition Law Amendment Act 2017 (KaWeRÄG 2017) marked an overhaul of Austrian competition law with the addition, pursuant to § 11b para. 6 WettbG, of an Internet-based whistleblowing system for BWB. This system can be used to report justified concerns about potential infringements of competition law in accordance with § 37b KartG 2005, anonymously if preferred.

This system, which has already been tried and tested internationally, gives potential whistleblowers a means of reporting their knowledge and evidence in relation to infringements of competition law to BWB online and anonymously. Anonymity is guaranteed by a sophisticated security system that makes it impossible to identify whistleblowers from their IP address in cases where they wish to maintain anonymity throughout the process.

BWB has looked intensively at which whistleblowing system would be the best fit for its needs. On 10 March 2017 BWB applied to the Austrian Data Protection Authority for permission to implement its chosen whistleblowing system. This permission was granted on 9 October 2017, and the system went live in February 2018. The system can be accessed via the BWB website, which also includes films introducing the anonymous system and user guides.

5.7 Cartel and Competition Law Amendment Act 2017

The amendments to competition law and to cartel law that entered into force in late April (WettbG) and 1 May 2017 (KartG) respectively resulted in some major changes, the most important of which are summarised below:

1. Actions for damages in the event of competition infringements

The amended law introduces provisions on actions for damages specific to the infringement of competition rules. The changes to the KartG and WettbG transpose Directive 2014/104/EU on certain rules governing actions for damages under national law for infringements of the competition law provisions into Austrian law and are closely based on the text of the Directive itself. This relates in particular to culpability and presumption of loss, the passing-on defence, joint and several liability, settlement between parties with joint and several liability, limitation periods and disclosure rules.

However, as well as implementing the Directive, the new law also involves a series of changes in relation to public antitrust law enforcement.

2. New form of merger control: Guidance currently being prepared

The new provisions regarding thresholds in the area of merger control, introduced with effect from 1 November 2017, have brought merger control into line with structural change triggered by the latest technological developments and international competition. § 9 para. 4 KartG closes a loophole in the merger control system in order to meet the demands of an ever more dynamic economic world, and to cope with the challenges of advancing digitisation and the interlinking of the economy and society. The criterion of the transaction value of a merger is introduced as an additional, subsidiary threshold in the form of § 9 para. 4 KartG. This means that mergers involving the acquisition for a high price of companies or assets that are (still) generating low sales can be reviewed from the perspective of competition law.

The aim of this threshold is thus to identify those cases where there is an imbalance between previous sales and transaction price. A high purchase price for this type of acquisition is frequently an indicator of innovative business ideas with significant market potential. By making an acquisition at an early stage in the development process, market leaders can fully integrate up-and-coming rivals or their assets into their own operations, modify the original activity of the acquired company or even bring the activity in question to a complete halt.

From a competition perspective, this type of acquisition may require a preventive review, particularly in terms of protecting innovation potential and competition on technology markets. Given the very close links between the Austrian and German economies and resulting significant number of proposed mergers requiring notification in both Germany and Austria, as well as the similar design of the new thresholds, it seems sensible to create a level playing field for the companies concerned at as early a stage as possible.

In the context of the close cooperation between Germany's Federal Cartel Office and BWB, a joint guide is currently being prepared for the first time. The aim is to provide users with a basic guide on interpreting the statutory rules.

3. Change in limitation periods for infringements of antitrust law

The amended § 33 KartG stipulates that the limitation period is suspended as soon as at least one of the operators involved in a legal infringement is informed of a BWB action for the purpose of the investigation or proceedings in respect of the infringement (e.g. through a request for information). An absolute limitation period of ten years is also stipulated, along with the provision that the duration of any interim proceedings before courts should not be counted

towards the period. The new version of § 33 KartG is worded more or less exactly the same as the European rules on European Commission proceedings, as detailed in Article 25(3) of Council Regulation (EC) No 1/2003 and is based on European best practices.

4. Second trial court "light": Options for appeals to the Supreme Court extended

Based on the newly inserted para. 3 under § 49, the appeal may also be based on the fact that the files give rise to considerable concerns about the accuracy of the key facts underlying the Cartel Court's decision. The wording is based on § 281 para. 1 subpara. 5a of the Code of Criminal Procedure (StPO). In the absence of any provision to the contrary in the KartG, the Cartel Court and the Supreme Cartel Court make their decisions on the basis of the KartG in uncontested proceedings or on the basis of the Code of Civil Procedure (ZPO) (§ 38 KartG). Both the ZPO and the Non-Contentious Proceedings Act (AußStrG) provide for inaccurate factual findings being used as comprehensive grounds for appeal.

5. Access principle and securing of electronic data

The importance of digital communication has an unavoidable impact on investigations. The access principle guarantees the effectiveness of access through dawn raids even in the digital age. The key factor is that electronic documents in the premises included in the search warrant can be inspected. It is therefore irrelevant whether such electronic documents are stored on the hard disk of one of the devices located in the searched premises or are stored off-site.

This is clarified further in § 11a para. 2 WettbG, according to which the owners of the companies and their representatives, and in the case of legal entities and partnerships with partial legal capacity the representatives according to law or the by-laws, are required to submit business documents and enable access to such documents that exist electronically. Upon request they must be submitted on an electronic data medium in a commonly used file format and permission must be granted to review the business documents and to produce copies or extracts from the documents.

Provisions are now in place for fines to be imposed in order to enforce the securing of electronic data. These may be imposed by the Cartel Court at BWB's request.

6. Public information

Essentially, the provisions on the use of leniency programmes have been summarised in a separate Article for greater transparency. § 11b para. 1 WettbG has been clarified to the extent that there is now no doubt that only a single company or single association of companies may be a principal witness for the purpose of immunity from fines. The law now also stipulates that BWB must file an application for findings against this single witness.

7. Leniency programmes

Essentially, the provisions on the use of leniency programmes have been summarised in a separate Article for greater transparency. § 11b para. 1 WettbG has been clarified to the extent that there is now no doubt that only a single company or single association of companies may be a principal witness for the purpose of immunity from fines. The law now also stipulates that BWB must file an application for findings against this single witness.

8. Anonymous whistleblowing system

BWB was also given the means of setting up an anonymous whistleblowing system to be used for the official reporting of justified concerns about potential breaches of competition law. (This has also been implemented, see point 5.6).

9. Improved transparency

In accordance with § 13 WettbG companies that are the subject of investigation must be informed by BWB “within an appropriate period of time” that no case is being referred to the Cartel Court at the given time based on the current circumstances. This means that BWB is obliged to provide information to companies that are being investigated that the investigation is being suspended.

With regard to the settlement procedure in § 38 KartG 2005, the provisions clarify that the preparation of a shortened decision (without reasons) is not permitted even in the case of concurring submissions from the parties and the waiver of an appeal in fine proceedings.

5.8 IT forensics

In the course of handling major merger cases in 2016 and 2017, BWB came up against its limits in terms of infrastructure. As the electronic evidence seized during dawn raids becomes ever more comprehensive, BWB has needed to invest in forensics hardware in order to fulfil its tasks in a targeted and effective way.

Hardware to secure data during searches has been acquired, enabling large quantities of electronic data to be secured as quickly as possible and helping to keep searches as short as possible. BWB has also invested further in mobile forensics, enabling it to secure even more mobile devices for evidence purposes and to evaluate their content.

In order to be able to evaluate the electronic material seized during raids quickly and as effectively as possible, so that the company concerned can also be kept up to date on proceedings, BWB has also invested in an extremely high-performance server landscape with additional software tools.

CPD is a crucial aspect of forensics and the employees on the BWB forensics team attended a variety of training events. This will remain a key priority in 2018.

6. Annex

6.1 Cases in 2017

Cases 1 January 2017 to 31 December 2017	Q1	Q2	Q3	Q4	TOTAL
FCASES Austria					
Zusammenschlussanmeldungen	78	117	126	117	438
Other merger cases	8	16	19	8	51
Cartel cases KartG	9	13	5	6	33
Abuse of dominance cases KartG	5	8	2	6	21
UWG/Consumer protection/ ORF-G	5	1	24	6	36
Miscellaneous (incl. requests for information)	19	11	13	8	51
TOTAL cases national	124	166	189	151	630
CASES Europa					
Antitrust and abuse of dominance (EU) – Commission	14	6	4	3	27
Merger cases (EU)	136	102	90	93	421
TOTAL cases Europe	150	108	94	96	448
TOTAL cases	274	274	283	247	1078
MISCELLANEOUS					
Dawn raids	1	2	2	0	5
Forensic IT	0	0	0	0	0
Administrative matters	21	2	8	16	47
International matters (OECD and others)	16	9	16	12	53
Legislation	20	10	19	14	63
European court proceedings (General Court)	2	2	0	1	5
Competition Commission	2	2	3	3	10
European Competition Network	16	17	20	16	69
Other (Dir. Gen., general eco- nomic/legal cases etc.)	18	23	26	30	97
TOTAL miscellaneous	96	67	94	92	349
SUM TOTAL 2017	370	341	377	339	1427
* Data refers to when the case arose and may differ from that in merger statistics					

6.2 Fines imposed in Austria 2002-2017

Industry	Cartel agreements and abuse of dominant position	Fine in €	Year
Electronics	Pioneer & Onkyo Europe GmbH	120,000	2017
Dry construction	3P Trockenbau GmbH	185,000	2017
Dry construction	Kaefer Isoliertechnik Ges.m.b.H	190,000	2017
Electronics	Robopolis GmbH	208,200	2017
Dry construction	Perchtold Trockenbau Wien GmbH	48,000	2017
Dry construction	E+H Trockenbau GmbH	110,000	2017
Dry construction	Tüchler Ausbau GmbH	130,500	2017
Dry construction	Wagner & Jüptner GmbH	22,500	2017
Electronics	Makita Werkzeug Gesellschaft m.b.H.	1,560,000	2017
Electronics (online)	De'Longhi-Kenwood GmbH	650,000	2017
Food retailing	SPAR Austria Group II	10,210,000	2016
Food retailing	RAUCH Fruchtsäfte GmbH & Co OG	1,700,000	2016
Freight transport and logistics	ETRANSA Expeditions AG	3,500,000	2016
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 (online)	Hewlett-Packard Gesellschaft mbH	640,000	2015
Electronics (online)	KTM Fahrrad GmbH	112,000	2015
Electronics (online)	United Navigation GmbH	100,000	2015
Electronics (online)	Samsung Electronics Austria GmbH	1,050,000	2015
Food retailing	SPAR Austria Group	30,000,000	2015
Electronics (online)	Nikon GmbH (Vienna branch)	170,000	2015
Steel trade	Frankstahl Rohr- und Stahlhandelsgesellschaft mbH	147,000	2015
Food retailing	Pago International GmbH	152,460	2015
Food retailing	Pfeiffer HandelsgmbH und die Zielpunkt GmbH	562,500	2015
Steel trade	Großschädl Stahlgroßhandel Gesellschaft m.b.H.	47,500	2015
Steel trade	Eisen Wagner Gesellschaft mbH	150,000	2015
Steel trade	Filli Stahlgroßhandelsgesellschaft m.b.H	32,500	2015
Steel trade	Mechel Service Stahlhandel Austria GmbH	200,000	2015

Industry	Cartel agreements and abuse of dominant position	Fine in €	Year
Sporting goods trade	Sport Pangratz & Ess GmbH, Alber Sport GmbH, Sport Jennewein Martin e.U., Sport Fauner GmbH & Co KG	419,000	2015
Food retailing	Vöslauer Mineralwasser AG	653,775	2015
Food retailing	Brauerei Joseph Baumgartner GmbH	56,250	2014
Food retailing	NÖM AG	583,200	2014
Forwarding trade	Austrian Freight Forwarding Agents Consolidated Consignment Conference (SSK) ABX Logistics (Austria) GmbH*, Alpentrans Spedition und Transport GmbH*, Logwin Solutions Austria GmbH (formerly Logwin Invest Austria GmbH), DHL Express (Austria) GmbH, G. Englmayer Spedition GmbH, Rail Cargo Logistics-Austria GmbH (formerly 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 Speditionen- u. Transport GmbH*, Koch Spedition KG (formerly Koch Spedition GmbH), Kühne + Nagel GmbH, Lagermax Internationale Spedition Gesellschaft mbH, Morawa Transport GmbH in Liquidation, Johann Ogris Internationale Transport- und Speditionen GmbH, Logwin Road + Rail Austria GmbH, Internationale Spedition Schneckenreiter Gesellschaft mbH, Leopold Schöffl GmbH & Co KG*, „Spedpack“-Speditionen- und Verpackungsgesellschaft mbH*, Johann Strauss GmbH, Thomas Spedition GmbH*, Traussnig Spedition GmbH, Treu Speditionsgesellschaft, Spedition Anton Wagner GmbH*, Gebrüder Weiss GmbH, Wildenhofer Spedition und Transport GmbH, Marehard u. Wuger Internat. Speditionen- u. Logistik GmbH* and Rail Cargo Austria AG Only minor fines were imposed on these asterisked companies as they either did not generate any sales with national consolidated consignments, despite their membership in the SSK, or they played only an insignificant role within the SSK, and some of them cooperated with BWB.	17,500,000	2014
Food retailing	MPREIS Warenvertriebs GmbH	225,000	2014
Food retailing	Sutterlüty Handels GmbH	78,750	2014
Insulating material	Austrotherm GmbH	187,500	2014
Food retailing	Stieglbrauerei zu Salzburg GmbH; Stiegl Betriebsholding GmbH; Stiegl Getränke & Service GmbH & Co. KG	196,875	2014

Industry	Cartel agreements and abuse of dominant position	Fine in €	Year
Electronics (online)	Grundig Intermedia GmbH	372,000	2014
Food retailing	Brauerei Hirt Gesellschaft mbH	58,500	2014
Electronics (online)	SSA Fluidra	50,000	2014
Food retailing	AFS Franchise-Systeme	225,000	2014
Insulating material	swisspor Österreich GmbH & Co KG	290,000	2014
Food retailing	Braucommune in Freistadt	52,500	2014
Electronics (online)	Hans Lurf GmbH	100,000	2014
Food retailing	Mohrenbrauerei August Huber KG	82,500	2014
Electronics (online)	Media-Saturn BeteiligungsgmbH	1,230,000	2014
Electronics (online)	Pioneer Electronics Deutschland GmbH	350,000	2014
Food retailing	Privatbrauerei Zwettl Karl Schwarz Gesellschaft m.b.H.	82,500	2014
Food retailing	Brauerei Schloss Eggenberg Stöhr GmbH & Co KG	57,000	2014
Food retailing	Vereinigte Kärntner Brauereien AG	195,000	2014
Food retailing	Kärntner Milch reg.GenmbH	375,000	2013
Food retailing	Vorarlberger Mühlen- und Mischfutterwerke GmbH	58,500	2013
Food retailing	Brauerei Ried e.Gen.	52,500	2013
Food retailing	Emmi Österreich GmbH	210,000	2013
Insulating material	bauMax AG	90,000	2013
Food retailing	REWE International Lager und Transport GmbH; Merkur Warenhandels-AG; Billa AG	20,800,000	2013
Electronics (online)	Philips Austria GmbH (Consumer Lifestyle)	2,900,000	2013
Food retailing	Berglandmilch eGen	1,125,000	2013
Insulating material	Steinbacher Dämmstoff GmbH	600,000	2013
Insulating material	Bauhaus Depot GmbH	100,000	2012
Insulating material	Hornbach Baumarkt GmbH	100,000	2012
Insulating material	OBI Bau- und Heimwerkermärkte	235,000	2012
Beer	BRAU UNION Österreich Aktiengesellschaft	750,000	2012
Beer	Ottakringer Brauerei AG	190,000	2012

Industry	Cartel agreements and abuse of dominant position	Fine in €	Year
Beer	Stieglbrauerei zu Salzburg GmbH; Stiegl Betriebsholding GmbH	170,000	2012
Printing chemicals	Donau Chemie AG/ Donauchemie GmbH	675,000	2010
Printing chemicals	DC Druck-Chemie Süd GmbH & Co KG	397,000	2010
Printing chemicals	Brenntag Austria Holding /Brenntag CEE GmbH	381,000	2010
Printing chemicals	Ashland-Südchemie-Kernfest GmbH/ Hantos GesmbH	66,000	2010
Industrial chemicals	Donau ChemieAG / Donauchem GmbH	1,900,000	2009
Lifts and escalators	Doppelmayr Aufzüge AG	3,700,000	2008
Lifts and escalators	Kone AG	22,500,000	2008
Lifts and escalators	SCHINDLER Aufzüge und Fahrtreppen AG	25,000,000	2008
Lifts and escalators	Haushahn Aufzüge GmbH	6,000,000	2008
Lifts and escalators	Otis GmbH	18,200,000	2008
Driving schools	Driving schools in Innsbruck	70,000	2008
Banks	Europay Austria Zahlungsverkehr GmbH	7,000,000	2007
Film distribution	Constantin (film distribution)	150,000	2006
Driving schools	Driving schools in Graz	80,000	2005
Advertising and marketing communications	Advertising and marketing communications association/Federal Economic Chamber	7,000	2004
Other cases (selection)			
Abuse case III	Telekom Austria	1,500,000	2009
Breach of information obligation	Manner	120,000	2008
Abuse	Constantin (film distribution)	150,000	2006
Abuse case II	Telekom Austria (Tiktak rate/minimum rate)	500,000	2004
Illegal mergers			
Illegal merger	Stahl Lux 2 S.A.	185,000	2017
Illegal merger	Comparex AG	40,000	2017
Illegal merger	Comparex AG	30,000	2017
Illegal merger	Vulcan Holdings, L.P. and Apollo Management L.P.	70,000	2017
Illegal merger	SWOCTEM GmbH; Dr.-Ing. E.h. Friedhelm Loh	11,000	2017

Industry	Cartel agreements and abuse of dominant position	Fine in €	Year
Illegal merger	Europapier International AG	750,000	2016
Illegal merger	grosso holding Gesellschaft mbH	50,000	2015
Illegal merger	W. Hamburger GmbH	40,000	2015
Illegal merger	VAMED Management und Service GmbH & Co KG	155,000	2015
Illegal merger	Graz-Köflacher Bahn- und Busbetrieb GmbH	40,000	2015
Illegal merger	Ankerbrot AG	20,000	2015
Illegal merger	21 Centrale Partners SA; Microcar S.A.S	30,000	2015
Illegal merger	Stahlgruber Holding GmbH	23,000	2014
Illegal merger	2. Servco Pacific Inc.	8,800	2014
Illegal merger	TGP/SERVCO/Fender	8,800	2014
Illegal merger	DB Mobility	100,000	2013
Illegal merger	Periodicals	5,000	2013
Illegal merger	Klambt-Verlag GmbH & Cie (special interest magazines)	10,000	2013
Illegal merger	WAB Privatstiftung	15,000	2013
Illegal merger	AGROFERT Holding a.s.; ECOPRESS a.s.	7,000	2013
Illegal merger	Alpenmilch/Käsehof	165,443	2012
Illegal merger	Conrad Electronic Linz GmbH	11,667	2012
Illegal merger	EPPG/ATEC	5,000	2012
Illegal merger	Conwert/ECO	25,000	2012
Illegal merger	Alpenpumpe/Schwenk/Berger	5,000	2012
Illegal merger	A&F/Cellstrom	5,000	2012
Illegal merger	Conwert/ECO	25,000	2012
Illegal merger	21 Centrale Partner SA/France (automotives)	200,000	2011
Illegal merger	SPZ/Gmundner Zement	140,000	2006
Illegal merger	AVAG, Opel Beyschlag	70,000	2006
Illegal merger	XXXLutz/Mann	15,000	2006
Illegal merger	Lenzing/Tencel	1,500,000	2005
As of February 2018	Total fines/penalty payments (2002-2016)	197,463,220	

[illegible]

Phase I			Phase II		Without Cartel Court decision				Cartel Court decision				Pending					
Case	Month	Companies	Expiry of deadline	Waiver	Assurance	With-dawl	Other	Request for examination	Initiation	Without Cartel Court decision		Cartel Court decision						
										BWB	BKA	Assur- ance	Merger notification	Request for exam.	Jes	No	Prohibited	Other
3349	Januar	KALENDERMACHER GmbH & Co KG; Leykam Alpina Verlags- und Vertriebsges.m.b.H.	1											Ph I	Ph II			
3350	Januar	The Blackstone Group L.P.; SESAC Holdings, Inc.	1															
3351	Januar	Canyon Bridge Acquisition Company, Inc.; Lattice Semiconductor Corporation	1															
3352	Januar	Max Aicher GmbH & Co. KG; FÉMKER	1															
3353	Januar	Hewlett Packard Enterprise Company; Simplivity Corporation	1															
3354	Januar	Keter Group BV; ABM Italia S.p.A.	1															
3355	Januar	NAXICAP Partners; HTL S.A.S.	1															
3356	Januar	Panasonic Corporation; Zetes Industries SA	1															
3357	Januar	Stadler Rail AG; Solaris Tram sp. z o.o.	1															
3358	Januar	Krones AG; Integrated Packaging Systems FCZO	1															
3359	Januar	Daimler AG; T-Systems EETS GmbH	1															
3360	Januar	capiton V GmbH & Co. Beteiligungs KG; Olivier Somers; Gemaco	1															
3361	Januar	Faurecia S.A.; Parrot Automotive S.A.S.	1															
3362	Januar	Yanmar Holdings Co., Ltd.; International Tractors Limited	1															

			Phase I					Phase II		Without Cartel Court decision			Cartel Court decision			Pending																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
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								Initiation		Without Cartel Court decision		Cartel Court decision		Cartel Court decision					
										Assurance	Withdawl	Other	Request for exam.	without condition	without condition				
																Request for exam.			without condition
Case	Month	Companies	Expiry of deadline	Waiver	Assurance	Withdawl	Other	BWB	KA	Assur- ance	Merger notification	Request for exam.	Jes	No	Other		Ph I	Ph II	
3376	Feber	Capvis Equity IV, L.P.; Wer liefert was?; Europages; PP Produktinformation	1																
3377	Feber	Teufelberger Holding Aktiengesellschaft; Teufelberger Wireurope GmbH; Redaelli Tecna S.p.A.	1																
3378	Feber	Bain Capital Investors, LLC; Resilux NV; Petainer UK Holdings Limited	1																
3379	Feber	OSI Europe Foodworks GmbH; Hynek Schlachthof GmbH	1																
3380	Feber	Luxempart German Investments S.A.; S-UBG AG; Rattay Holding GmbH	1																
3381	Feber	Springer-Verlag GmbH; KuP GmbH		1															
3382	Feber	MTGx International AB; InnoGames GmbH	1																
3383	Feber	Madison Dearborn Partners, LLC; BlueCat Networks (USA), Inc.	1																
3384	Feber	Nokia; Comptel Corporation (Comptel Oyj)	1																
3385	Feber	Flex Ltd.; AGM Automotive LLC	1																
3386	Feber	Accenture plc; SinnerSchrader Aktiengesellschaft	1																
3387	Feber	EQT Mid Market US GP B.V.; Dörner Holding Corp.		1															
3388	Feber	Tchibo (Austria) Holding GmbH; Ipanema Agrícola S/A; Ipanema Comercial e Exportadora S/A	1																

			Phase I					Phase II		Without Cartel Court decision			Cartel Court decision			Pending		
								Initiation		Without Cartel Court decision		Other	Cartel Court decision		Other			
										Withdrawal	Assur- ance	Merger notification	Request for exam.	Jes	No	with condition	without condition	
Case	Month	Companies	Expiry of deadline	Waiver	Assurance	With- dawl	Other	BWB	KA	Assurance	Merger notification	Request for exam.	Jes	No	with condition	without condition	Ph I	Ph II
3389	Feber	CirclePrinters Holding B.V.; Roto Smeets Group B.V.	1															
3390	Feber	Comcast Corporation; Euronews S.A.	1															
3391	Feber	Ardian SA; ASF Cruise L.P.; Mubadala Development Company PJSC	1															
3392	Feber	EMERAM Private Equity Fund I GmbH & Co. KG; Frostkrone Management GmbH		1														
3393	Feber	Advantage Smollan Limited; Combera Group GmbH	1															
3394	Feber	Bank für Ärzte und Freie Berufe Aktiengesellschaft; Österreichische Apothekerbank eG	1															
3395	Feber	Volksbank Niederösterreich AG; Waldviertler Volksbank Horn	1															
3396	März	grosso holding GmbH; Sanders.eu; Bettfedernfabrik Künsemüller; Alhambra	1															
3397	März	Advent International Corporation; Al Prime (Luxembourg) Bidco S.à.r.l.; Integer.pl SA	1															
3398	März	Twenty-First Century Fox, Inc.; Sky plc	1															
3399	März	Husqvarna Holding AB; P-HTC 2013 AB	1															
3400	März	S Wohnbaubk.; Öst. Hotel- u Tourismusbk.; Raiffeisen Bspk; Hypo-Wohnbaubk.; BAWAG P.S.K.	1															
3401	März	Hewlett Packard Enterprise Company; Nimble Storage, Inc.	1															

			Phase I					Phase II		Without Cartel Court decision				Cartel Court decision				Pending	
								Initiation		Without Cartel Court decision		Other	Cartel Court decision		Other				
													Prohibited	No			Yes		
								Request for examination	Assur- ance	Merger notification	Request for exam.	Yes	No	Request for exam.	with condition	without condition			
Case	Month	Companies	Expiry of deadline	Waiver	Assurance	With- dawl	Other	BWB	BKA							Ph I	Ph II		
3402	März	Mercer International, Inc.; Klausner Holzindustrie KG	1																
3403	März	Blue Ocean ; Pabel-Moewig Verlag KG; VU Verlagsunion KG; Heinrich Bauer Verlag KG	1																
3404	März	Loacker Recycling GmbH; Häusle GmbH	1																
3405	März	easybank AG; SIX Payment Services (Austria) GmbH	1																
3406	März	Invest Unternehmensbeteiligungs Aktiengesellschaft; Steuber GmbH		1															
3407	März	Krankenhaus St. Elisabeth GmbH; FRANZISKUS SPI-TAL GMBH	1																
3408	März	Invest Unternehmensbeteiligungs Aktiengesellschaft; ISOROC Holding AG	1																
3409	März	Arriva Hrvatska d.o.o.; Autotrans d.o.o.	1																
3410	März	Droege International Group AG; ALSO Holding AG; All 4U B.V.	1																
3411	März	Zalando SE; RM 1642 Vermögensverwaltungs GmbH	1																
3412	März	Henkel AG & Co. KGaA; GCP Applied Technologies Inc.	1																
3413	März	Ardian SA; AESF Polar SARL; Steadfast Capital Fund	1																
3414	März	Volksbank Salzburg eG; Volksbank Steirisches Salzkammergut	1																

			Phase I					Phase II		Without Cartel Court decision			Cartel Court decision			Pending						
								Initiation														
								Request for examination	Withdrawal			Jes	No	Other								
Case	Month	Companies	Expiry of deadline	Waiver	Assurance	Withdawl	Other	BWB	BAK	Assur- ance	Merger notification	Request for exam.	with condition	without condition	Ph I	Ph II						
3415	März	SK Global Chemical Co., Ltd.; The Dow Chemical Company	1																			
3416	März	SARIA SE & Co KG; Hesco B.V.	1																			
3417	April	SCHWENK Zement KG; Schretter & Cie GmbH & Co KG; Vilser	1																			
3418	April	SIGNA Sport Online GmbH; Internetstores Holding GmbH; Dolphin France SAS	1																			
3419	April	Coty Inc.; Burberry Limited	1																			
3420	April	Evonik Industries AG; Dr. Straetmans GmbH	1																			
3421	April	AGCO International Holdings B.V.; Lely Holding S.A.R.L.	1																			
3422	April	Konica Minolta, Inc.; Pioneer Corporation	1																			
3423	April	Doppler Mineralöle GmbH; Doppler Vertriebs GmbH; Bildstein GmbH & Co KG	1																			
3424	April	Ardian Holding S.A.S.; Hyprod GmbH; PP Hygiene Beteiligungs GmbH; Anti-Germ Gruppe	1																			
3425	April	ECS Corporate NV; EMVI Holding NV	1																			
3426	April	VOLKSBANK WIEN AG; SPARDA-BANK AUSTRIA eGen	1																			
3427	April	EnBW Energie Baden-Württemberg AG; MVV Energie AG	1																			

			Phase I					Phase II		Without Cartel Court decision				Cartel Court decision		Pending																																																																																																																																																																																																																																																																																																																															
								Initiation		Request for examination		Request for exam.		Request for exam.				Request for exam.																																																																																																																																																																																																																																																																																																																													
								Assurance	Waiver							Withdawl	Other			BWB	BKA	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	Request for exam.	

			Phase I					Phase II		Without Cartel Court decision			Cartel Court decision			Pending	
								Initiation									
			Expiry of deadline	Waiver	Assurance	With- dawl	Other										
Case	Month	Companies	Expiry of deadline	Waiver	Assurance	With- dawl	Other	BWB	BKA	Assur- ance	Merger notification	Request for exam.	Jes	No	Other	Ph I	Ph II
3441	April	RAG-Stiftung Beteiligungsgesellschaft mbH; ACBRO Holding S.r.l.	1														
3442	April	HMP Vermögensvw. GmbH; Auto 2015 Beteiligungs GmbH; Porsche Automobil Holding SE	1														
3443	April	The Goldman Sachs Group, Inc.; Transcendia Holdings, Inc.	1														
3444	April	KKR & Co. L.P.; Ivalua SAS	1														
3445	April	Indorama Ventures PCL; Glanzstoff Industries GmbH	1														
3446	April	Saint Elmo's; GFB & Partner Marketing Services GmbH	1														
3447	April	Permira Holdings Limited; Icebox Holdings, Inc.; DiversiTech Holdings Inc.	1														
3448	April	Baumeit Beteiligungen GmbH; w&p Baustoffe GmbH	1														
3449	April	Richemont International S.A.; Kering Eyewear S.p.A.	1														
3450	April	Hitachi Chemicals Co., Ltd.; HT Beteiligungs GmbH	1														
3451	April	EQT Mid Market Europe LP; Open Systems AG	1														
3452	April	Eugen Marketing Beteiligungen GmbH; FirmenABC Entwicklung und Management GmbH	1														
3453	Mai	OJSC Rosneft Oil Company; Eni S.p.A.; Shorouk Petroleum Company	1														

			Phase I					Phase II		Without Cartel Court decision			Cartel Court decision			Pending			
								Initiation		Without Cartel Court decision			Cartel Court decision						
													Prohibited	Other					
								Request for examination		Withdrawal			Jes	No		with condition	without condition		
Case	Month	Companies	Expiry of deadline	Waiver	Assurance	Withdawl	Other	BWB	BKA	Assur- ance	Merger notification	Request for exam.		with condition		without condition		Ph I	Ph II
3454	Mai	Heraeus Holding GmbH; Argor-Heraeus SA	1																
3455	Mai	ARP Thirtyone GmbH; SIGNA Development Selection AG; Ferris Wheel Beteiligung GmbH & Co KG; BAI Bauträger Austria Immobilien GmbH; Bareal Immobilienverhand GmbH; Dr. W.W. Donath Immobilienverwaltung GmbH; STC Immo Beteiligungs- und Management	1																
3456	Mai	International Business Machines Corporation; Verizon Communications, Inc.	1																
3457	Mai	Siemens Aktiengesellschaft; HaCon Ingenieurgesellschaft mbH		1															
3458	Mai	zur Mühlen ApS & Co. KG; Joh. Blankemeyer GmbH & Co. KG		1															
3459	Mai	Dubai Aerospace Enterprise (DAE) Ltd; AWAS Aviation Capital DAC	1																
3460	Mai	Proservia GmbH; ES Field Delivery Deutschland GmbH	1																
3461	Mai	Deutsche Bank AG; Frostkrone Management GmbH	1																
3462	Mai	RAG-Stiftung Beteiligungsgesellschaft mbH; GAW Beteiligungs GmbH	1																
3463	Mai	HR Group GesmbH; Schuh & Schuh PKTS GmbH	1																

			Phase I					Phase II		Without Cartel Court decision				Cartel Court decision		Pending	
								Initiation		Without Cartel Court decision		Other	Cartel Court decision				
															Prohibited		
								Request for examination		Withdrawal			Jes	No			
Case	Month	Companies	Expiry of deadline	Waiver	Assurance	Withdawl	Other	BWB	KA	Assurance	Merger notification	Request for exam.	with condition	without condition	Ph I	Ph II	
3464	Mai	A1 Tankstellenbetrieb GmbH; Gutmann Gesellschaft m.b.H.; Doppler Mineralöle GmbH; Austrocard GmbH	1														
3465	Mai	Stahl Lux 2 S.A.; BASF SE	1														
3466	Mai	The Blackstone Group L.P.; Industrie De Nora S.p.A.	1														
3467	Mai	Novacap SAS; Produits Chimiques Auxiliaires et de Synthèse	1														
3468	Mai	Freiberger Lebensmittel GmbH & Co. Produktions- und Vertriebs KG; HASA GmbH	1														
3469	Mai	Hitachi High-Technologies Corporation; Oxford Instruments PLC	1														
3470	Mai	RAG-Stiftung Beteiligungsgesellschaft mbH; Roschmann Verwaltungs-GmbH; Roschmann-Gruppe	1														
3471	Mai	Polyplastics Co., Ltd.; TOPAS Advanced Polymers GmbH	1														
3472	Mai	Bergbahnen Aktiengesellschaft Wagrain; Fremdenverkehrs GmbH; Bergbahnen Flachau Gesellschaft m.b.H.	1														
3473	Mai	AP Mixtape Holdings, L.P.; The Blackstone Group L.P.; Mood Media Corporation	1														
3474	Mai	Archer-Daniels-Midland Company; Chamtor SA	1														

			Phase I					Phase II		Without Cartel Court decision			Cartel Court decision			Pending		
								Initiation		Without Cartel Court decision		Other	Cartel Court decision					
																		Without Cartel Court decision
								Request for examination	BWB	Other	Assurance	Waiver	Expiry of deadline	Other	Withdawl	Assurance	Request for exam.	
Case	Month	Companies	Expiry of deadline	Waiver	Assurance	Withdawl	Other	BKA	Assurance	Merger notification	Request for exam.	Jes	No	with condition	without condition	Ph I	Ph II	
3475	Mai	Henkel AG & Co. KGaA; Sonderhoff Holding GmbH; Westhoff Holding GmbH	1															
3476	Mai	Herold Druck und Verlag Aktiengesellschaft; Paul Gerin GmbH & Co KG; Gerin Druck GmbH	1															
3477	Mai	PAI Partners SAS; Haciendas Investments Sarl; Elitech Group SAS	1															
3478	Mai	Ardian US, LLC; Huron Inc.	1															
3479	Mai	Transgourmet Deutschland GmbH & Co. OHG; Team Beverage AG	1															
3480	Mai	OMV Aktiengesellschaft; KSW Elektro- und Industrieanlagenbau Gesellschaft m.b.H.	1	1														
3481	Mai	Ardian II US, LLC; Dynamic Technologies S.p.A.	1															
3482	Mai	Nidec Corporation; Secop Holding GmbH; Secop s.r.o; Secop Compressors (Tianjin) Co. Ltd.; Secop Inc.	1															
3483	Mai	Sanova Pharma GesmbH; Menges Medizintechnik GmbH; MeMed Cz s.r.o.	1															
3484	Mai	Asta Energy Transmission Components GmbH; PPE Fios Esmaltados S.A.	1															
3485	Mai	Triton IV LuxCo No. 34 S.à r.l.; Werner Luxembourg Holdings S.à r.l.; New Werner Holding Co., Inc.	1															
3486	Mai	A&E Television Networks, LLC; The History Channel (Germany) GmbH und Co. KG	1															

			Phase I					Phase II		Without Cartel Court decision			Cartel Court decision			Pending	
								Initiation					Prohibited	Other			
								Request for examination		Withdrawal			Jes	No		with condition	without condition
Case	Month	Companies	Expiry of deadline	Waiver	Assurance	Withdawl	Other	BWB	BKA	Assur- ance	Merger notification	Request for exam.				Ph I	Ph II
3487	Mai	SYNLAB Bondco PLC; ALcontrol Group Limited	1														
3488	Juni	Littlebit Technology AG; ActionIT GmbH	1														
3489	Juni	ANDRITZ (USA) Inc.; Paperchine Inc.	1														
3490	Juni	Wien Holding GmbH; Therme Wien GmbH & Co KG; Therme Wien Ges.m.b.H.	1														
3491	Juni	Cancom SE; Antauris AG	1														
3492	Juni	Bechtle Systemhaus Holding AG; Ulbel & Freidorfer GmbH	1														
3493	Juni	Sport Pliz Lienz GmbH; Johann Pötscher GmbH; WIN West GmbH; KK Sport GmbH; SPORTSDIRECT.COM Austria GmbH	1														
3494	Juni	Vista Equity Partners Management, LLC; Lithium Technologies, Inc.	1														
3495	Juni	DekaBank Deutsche Girozentrale; Candour Five GmbH & Co KG	1														
3496	Juni	SPI Global Content Holding Pte. Ltd.; Asia Outsourcing Philippines Holdings, Inc.; SPI Global Shared Services Pte. Ltd.; SPI Global (Xi'an) Information Technology Ltd.; SPI Technologies India Private Limited	1														
3497	Juni	Triton Managers IV Limited; TFF IV Limited; Giroflex Holding AG	1														
3498	Juni	Intel Corporation; Mobileye N.V.	1														

			Phase I						Phase II		Without Cartel Court decision				Cartel Court decision		Pending	
									Initiation		Without Cartel Court decision		Cartel Court decision		Other			
											Request for examination	Assur- ance	Merger notification	Request for exam.	with condition	without condition		
									BWB	BKA								
Case	Month	Companies	Expiry of deadline	Waiver	Assurance	With- dawl	Other										Ph I	Ph II
3499	Juni	NKM Nemzeti Közművek Zrt.; FŐGÁZ Zrt.	1															
3500	Juni	Trinseo Italia S.r.l.; API Holding S.r.l.		1														
3501	Juni	Aegis International Limited; media.at GmbH	1															
3502	Juni	Hasslacher Holding GmbH; Nordlam GmbH; Abbundzentrum Nordlam GmbH	1															
3503	Juni	Porsche Zweite Beteiligung GmbH; PTV Planung Transport Verkehr AG	1															
3504	Juni	FAM AB; Sandvik AB	1															
3505	Juni	zur Mühlen ApS & Co. KG; Vermögenswerte der August Strothlücke GmbH & Co. KG Fleischwarenfabrik	1															
3506	Juni	Bregal Unternehmerkapital LP; NRW Building Technology Holding GmbH	1															
3507	Juni	JTEKT Corporation; Fuji Kiko Co., Ltd.	1															
3508	Juni	Intermediate Capital Group, plc; Monitor Clipper Partners LLC	1															
3509	Juni	Miele & Cie. KG; INTERNATIONAL STEEL CO, S.p.A.	1															
3510	Juni	Elis S.A.; Berendsen Plc.				1												
3511	Juni	MTGx US Gaming Holding, Inc.; Kongregate, Inc.	1															
3512	Juni	Apollo Management L.P.; West Corporation	1															

			Phase I					Phase II		Without Cartel Court decision			Cartel Court decision			Pending	
								Initiation					Prohibited	Other			
								Request for examination	Withdrawal		Assur- ance	Merger notification	Request for exam.	Jes	No		
Case	Month	Companies	Expiry of deadline	Waiver	Assurance	With- dawl	Other	BWB	BJA				with condition	without condition		Ph I	Ph II
3513	Juni	Hitachi Chemical Co., Ltd.; Thai Storage Battery Public Company, Ltd.	1														
3514	Juni	Hilti Corporation AG; Øjglænd Group Holding AS	1														
3515	Juni	KKR & Co. L.P.; Hitachi Kokusai Inc.	1														
3516	Juni	Julius Stiglechner GmbH; Tank Roth GmbH	1														
3517	Juni	Gartner Transport Holding GmbH; Gartner Spedi- tions GmbH; Gustav Ziegler GmbH	1														
3518	Juni	Bregal Unternehmerkapital LP; SHD AG	1														
3519	Juni	Alligator Topco Ltd; 3M Attenti Holdings S.á r.l.	1														
3520	Juni	CANCOM SE; Synaix Gesellschaft für angewandte Informations-Technologien mbH; Synaix Service GmbH				1											
3521	Juni	Europapier CE GmbH; EU-RO Handelsgesellschaft m.b.H.	1														
3522	Juni	Clayton Dubilier & Rice, LLC; Hillhouse Capital Man- agement, Ltd.; HCare CSD Holdings Limited; Care- stream Dental Parent Limited	1														
3523	Juni	HANNOVER Finanz-Gruppe; Sporternährung Mit- teregger GmbH	1														
3524	Juni	RWA Raiffeisen Ware Austria AG; Lagerhaus Tech- nik-Center GmbH & Co KG	1														

			Phase I					Phase II		Without Cartel Court decision				Cartel Court decision				Pending	
			Initiation	Request for examination			Request for exam.		Prohibited					Other					
											Assurance	Merger notification	Request for exam.		with condition	without condition			
																	Expiry of deadline	Waiver	Assurance
Case	Month	Companies	Expiry of deadline	Waiver	Assurance	Withdawl	Other	BWB	BKA	Assurance	Merger notification	Request for exam.	Jes	with condition	without condition	Ph I	Ph II		
3525	Juni	Robert Bosch GmbH; M.T.A. S.p.A.	1																
3526	Juni	Bregal Unternehmerrkapital LP; gabo Systemtechnik GmbH	1																
3527	Juni	Triton Smaller Mid-Cap Fund I L.P.; Triton Smaller Mid-Cap Fund F&F L.P.; univativ Holding GmbH; univativ Management GmbH	1																
3528	Juni	Goldcup 14865 AB; 7Travel Flights HoldCo AB	1																
3529	Juni	Koninklijke Philips N.V.; Spectranetics Corporation	1																
3530	Juni	Lufthansa Technik AG; MTU Aero Engines AG	1																
3531	Juni	K-Mail Order GmbH & Co. KG; Schneider Versand GmbH	1																
3532	Juli	Novacap SAS; Chemoxy International Limited	1																
3533	Juli	Bell Food Group AG; Hilcona AG	1																
3534	Juli	Kyocera Corporation; Senco Holdings, Inc.	1																
3535	Juli	IMS Internet Media Services, Inc.; Httpool Holdings UK Limited	1																
3536	Juli	Centerbridge Partners III, L.P.; Syncsort Inc.; Vision Solutions, Inc.	1																
3537	Juli	Traxys S.à r.l.; Commercial Metals Company	1																

			Phase I					Phase II		Without Cartel Court decision			Cartel Court decision			Pending			
								Initiation		Without Cartel Court decision			Cartel Court decision		Other				
										Withdrawal			Jes	No					
								Request for examination	BWB	BKA	Assur- ance	Merger notification	Request for exam.	with condition	without condition		Ph I	Ph II	
Case	Month	Companies	Expiry of deadline	Waiver	Assurance	With- dawl	Other												
3538	Juli	S&T AG; S&T Deutschland Holding AG; Kontron AG	1																
3539	Juli	Pierer Industrie AG; SHW AG	1																
3540	Juli	Italmobiliare S.p.A.; Tecnica Group S.p.A.	1																
3541	Juli	Europcar Participations SAS; Buchbinder-Gruppe	1																
3542	Juli	TSUBAKI Nakashima Co., Ltd.; NN, Inc.	1																
3543	Juli	Tyco Electronics Germany Holdings GmbH; Car Com- munication Holding GmbH	1																
3544	Juli	EQT Services (UK) Limited; Delta Topco NV	1																
3545	Juli	Best S.p.A.; Electrolux Italia S.p.A.	1																
3546	Juli	PwC Europe SE Wirtschaftsprüfungsgesellschaft; PwC Yönetim Danismanlığı A.S.; PwC Danismanlık Hizmetleri A.S.	1																
3547	Juli	EQT Services (UK) Limited; Certara Holdco, Inc.	1																
3548	Juli	Hypo-Rent Leasing- und Beteiligungsgesellschaft mbH; HYPO EQUITY Unternehmensbeteiligungen AG	1																
3549	Juli	DOC Dairy Partners B.V.; UniekAas Holland B.V.	1																
3550	Juli	ČEZ, a. s.; TGA Elektro Holding Deutschland GmbH; Elevion GmbH	1																
3551	Juli	Swilux S.A.; Caffitaly System S.p.A.	1																

			Phase I					Phase II		Without Cartel Court decision				Cartel Court decision		Pending			
								Initiation		Without Cartel Court decision		Prohibited		Other					
										Request for examination	Assur- ance	Merger notification	Request for exam.	with condition	without condition			Jes	No
Case	Month	Companies	Expiry of deadline	Waiver	Assurance	With- dawl	Other	BWB	BKA							Ph I	Ph II		
3552	Juli	EVN AG; BIOMA Energie AG Kraftwerkepool Aktiengesellschaft	1																
3553	Juli	Altor Fund Manager AB; BTI Studios Holding AB	1																
3554	Juli	Hörmann Automotive GmbH; Hörmann Automotive Gustavsburg GmbH	1																
3555	Juli	Thomas Hörmann; Martin Hörmann; Christoph Hörmann; Elutek Investments Limited	1																
3556	Juli	Cyberport GmbH; HQ-Patronen GmbH	1																
3557	Juli	Laboratoire HRA Pharma S.A.S.; Cilag GmbH International; Compeed A/S	1																
3558	Juli	Kairos Industrie Holding GmbH; VA Intertrading AG	1																
3559	Juli	BC European Capital X Fund; Blitz 17-568 GmbH; PlusServer GmbH	1																
3560	Juli	Fressnapf Handels GmbH; Tomy's Zoo GmbH	0					1	1	1									
3561	Juli	DekaBank Deutsche Girozentrale; Viertel Zwei Hoch GmbH & Co KG; Viertel Zwei Plus GmbH & Co KG	1																
3562	Juli	PORR AG; Erika Brandstetter Hinteregger-Holding GmbH; Hinteregger Holding Gesellschaft m.b.H.; G. Hinteregger & Söhne Baugesellschaft m.b.H.; Fritz & Co. Baugesellschaft m.b.H.	1																

			Phase I					Phase II		Without Cartel Court decision			Cartel Court decision			Pending			
								Initiation		Without Cartel Court decision		Other	Cartel Court decision		Other				
													Prohibited	No					
								Request for examination	BWB	BKA	Assur- ance	Merger notification	Request for exam.	with condition	without condition	Yes	No	Ph I	Ph II
Case	Month	Companies	Expiry of deadline	Waiver	Assurance	With- dawl	Other												
3563	Juli	Haushahn Aufzüge GmbH; Salzburger Aufzugsdienst Gesellschaft m.b.H.	1																
3564	Juli	Slovenia Broadband S.à. r.l.; Nova TV d.d.; Produk- cija Plus storitveno podjetje d.o.o.	1																
3565	Juli	Borg Warner Inc; Sevcon Inc	1																
3566	Juli	Daimler AG; Cinteo GmbH	1																
3567	Juli	WPP Marketing Communications Germany GmbH; thjnk ag	1																
3568	Juli	ILF Consulting Engineers GmbH; Oesterreichische Entwicklungsbank AG	1																
3569	Juli	ABB Ltd; Keymile GmbH	1																
3570	Juli	Bonnier Media Deutschland GmbH; Münchner Ver- lagsgruppe GmbH	1																
3571	Juli	NETLETIX GmbH; MAIRDUMONT GmbH & Co. KG; MAIRDUMONT NETLETIX GmbH & Co. KG	1																
3572	Juli	Triton Managers IV Limited; TFF IV Limited; Bormioli Rocco S.p.A.	1																
3573	Juli	Haselsteiner Familien-Privatstiftung; SIGNA Core Holding GmbH; SIGNA Development Selection AG	1																
3574	Juli	Catluxe S.à r.l.; San Patrick S.L.U.	1																
3575	Juli	FUNKE MEDIENGRUPPE GmbH & Co. KGaA; Frauen- zeitschrift "myself"	1																

			Phase I					Phase II		Without Cartel Court decision				Cartel Court decision			Pending	
								Initiation		Without Cartel Court decision		Other	Cartel Court decision		Other			
													Prohibited	No				
								Request for examination		Withdrawal		Assur- ance	Merger notification	Request for exam.	Jes	No	with condition	without condition
Case	Month	Companies	Expiry of deadline	Waiver	Assurance	With- drawl	Other	BWB	BKA	Ph I	Ph II							
3576	Juli	Tönnies Holding GmbH & Co. KG; Lutz Fleischwaren Gruppe; Vermögenswerte der Artland Convenience GmbH; Artland Property Badbergen GmbH; Lutz Convenience Food GmbH; Imltal Fleischwaren GmbH	1															
3577	Aug	UGI Corporation; DVEP Investeringen B.V.	1															
3578	Aug	Intersnack International B.V.; Intersnack Rajkumar Cashew Company Pte. Ltd.	1															
3579	Aug	Itochu Fibre Limited; Metsä Fibre Oy	1															
3580	Aug	FUNKE MEDIENGRUPPE GmbH & Co. KGaA; Frauenzeitschrift "Donna"	1															
3581	Aug	Beta Film GmbH; ZDF Enterprises GmbH	1															
3582	Aug	ARDIAN France S.A.; imes-icore GmbH	1															
3583	Aug	DB Cargo AG; Trans-Eurasia Logistics GmbH	1															
3584	Aug	Stahl Lux 2 S.A.; Lederchemikaliengesellschaft von Clariant International AG	1															
3585	Aug	VERBUND AG; AQUANTO GmbH	1															
3586	Aug	CEP IV Investment 16 S.à.r.l.; ADB Safegate Luxembourg SA	1															
3587	Aug	Discovery Communications LLC; P7S1 Digital GmbH	1															

			Phase I					Phase II		Without Cartel Court decision			Cartel Court decision			Pending	
								Initiation									
			BWB	BKA	Jes	No	Other										
Case	Month	Companies	Expiry of deadline	Waiver	Assurance	Withdawl	Other	BWB	BKA	Assurance	Merger notification	Request for exam.	with condition	without condition			
3588	Aug	A. Moksel GmbH; Vermögenswerte der Otto Nocker GmbH; der Lutz Fleischwaren GmbH; der Fleisch- und Frischemarkt Ingolstadt GmbH; der Fleisch- und Frischemarkt Traunstein GmbH	1														
3589	Aug	MH Sub I, LLC; WebMD Health Corp.	1														
3590	Aug	PIPES Holding GmbH; Erne Group GmbH	1														
3591	Aug	Aptos, Inc.; TXT e-solution Retail Software Geschäftsbereich	1														
3592	Aug	Temasek Holdings (Private) Limited; Sportswear Company S.p.A.	1														
3593	Aug	"UNSER LAGERHAUS" Warenhandelsgesellschaft m.b.H.; Anton Rauch GmbH & Co KG	1														
3594	Aug	DS Brookes Ltd; Maillefer International Oy	1														
3595	Aug	AFINUM Achte Beteiligungsgesellschaft mbH & Co. KG; IT WORKS GmbH	1														
3596	Aug	HNA Group (International) Asset Management Company Limited; C-QUADRAT Investment AG	1														
3597	Aug	The Carlyle Group, L.P.; Betafence Holding NV	1														
3598	Aug	SAZKA Group a.s.; Casinos Austria Aktiengesellschaft	1														
3599	Aug	AVX Limited; TT Electronics plc	1														

			Phase I					Phase II		Without Cartel Court decision			Cartel Court decision			Pending	
								Initiation	Without Cartel Court decision								
								Request for examination	BWB	BKA	Assur- ance	Merger notification	Request for exam.	with condition	without condition		
Case	Month	Companies	Expiry of deadline	Waiver	Assurance	With- dawl	Other								Ph I	Ph II	
3600	Aug	AWIN AG; affilinet GmbH	1														
3601	Aug	Temasek Holdings (Private) Limited; SoundCloud Limited		1													
3602	Aug	Continental Bakeries B.V.; Delicpol spółka z ograniczoną odpowiedzialnością	1														
3603	Aug	Siemens Aktiengesellschaft; Epocal Inc.	1														
3604	Aug	Triton Fund IV; SGL CFL CE GmbH	1														
3605	Aug	Sun Capital Partners, Inc.; C&K Holdings, Inc.	1														
3606	Aug	ArcelorMittal France S.A.S.; Lorraine Tubes, S.A.S.; Condesa	1														
3607	Aug	The Walt Disney Company; BAMTech, LLC	1														
3608	Aug	The Kraft Heinz Company; Mondelez International, Inc.		1													
3609	Aug	Temasek Holdings (Private) Limited; BluJay Topco Limited	1														
3610	Aug	Umicore, S.A./N.V.; Haldor Topsøe A/S	1														
3611	Aug	Vista Equity Partners Management, LLC; Applause App Quality, Inc.	1														
3612	Aug	Fresenius Kabi AG; Akorn, Inc.	1														

			Phase I					Phase II		Without Cartel Court decision			Cartel Court decision			Pending	
								Initiation					Prohibited		Other		
													Jes	No			
								Request for examination	Withdrawal		Assur- ance	Merger notification		Request for exam.			
Case	Month	Companies	Expiry of deadline	Waiver	Assurance	With- dawl	Other	BWB	BKA						Ph I	Ph II	
3613	Aug	Schneider Electric SE; ASCO Power Technologies, L.P.; ASCO Power GP, LLC; ASCO Power Services, Inc.	1														
3614	Aug	Robert Bosch AG; SAPCORTA SERVICES GmbH	1														
3615	Aug	Exxon Mobil Corporation; Eni East Africa S.p.A.; Cor- al FLNG S.A.; Coral South FLNG DMCC	1														
3616	Aug	Österreichische Post AG; adverse Holding GmbH	1														
3617	Aug	Camlog Holding AG; ALLTEC Dental GmbH	1														
3618	Aug	VB Erneuerbare Energien und Infrastruktur-L SCSp; OCM Luxembourg EPF Railpool SCS	1														
3619	Aug	Eclipse Topco Holdings, L.P.; ECI Acquisition Holding Company Inc.	1														
3620	Aug	Turing Acquisition LLC; ThoughtWorks, Inc.	1														
3621	Aug	Invest Unternehmensbeteiligungs AG; WESTCAM Datentechnik Gesellschaft m.b.H.; WESTCAM Tech- nologies GmbH; WESTCAM czech s.r.o.	1														
3622	Aug	NAXICAP Partners; NEXTSTONE Capital; Financière OFIC	1														
3623	Aug	Capvis Equity IV, L.P.; BDD Beteiligungs GmbH	1														
3624	Aug	Intermediate Capital Group, plc; Quadriga Capital Private Equity Fund III L.P.	1														

			Phase I					Phase II		Without Cartel Court decision			Cartel Court decision			Pending		
								Initiation		Without Cartel Court decision			Cartel Court decision					
Case	Month	Companies	Expiry of deadline	Waiver	Assurance	Withdawl	Other	BWB	BKA	Assur- ance	Merger notification	Request for exam.	Jes	No	Prohibited	Other		
3625	Aug	Lidl Österreich GmbH; Zielpunkt GmbH				1												Ph I
3626	Aug	AGC Glass Europe SA; f glass GmbH; f solar GmbH	1															Ph II
3627	Aug	Equistone Partners Europe Ltd.; Defshop Gruppe	1															
3628	Aug	ICG Europe Fund VI (No 1) Limited Partnership; proALPHA Business Solutions GmbH	1															
3629	Aug	UGI Corporation; Totalgaz Italia Srl	1															
3630	Aug	Vista Equity Partners Management, LLC; ESW Capital, LLC; Zeus Jointco, LLC; Zeus Jointco Holdco, LLC	1															
3631	Sep	ProSiebenSat.1 Media SE; Jochen Schweizer GmbH	1															
3632	Sep	Indorama Ventures PLC; Longlaville DuraFiber Technologies (DFT) SAS; European DuraFiber Technologies (DFT) Holdings SAS	1															
3633	Sep	VTG Rail Assets GmbH; CIT Rail Holdings (Europe) S.A.S.; Nacco-Gruppe					1	1	1									1
3634	Sep	Sika CZ, s.r.o.; KVK Holding a.s.	1															
3635	Sep	CSC Computer Sciences International Operations Limited; LOGICALIS B.V.	1															
3636	Sep	Serviceplan Gruppe für innovative Kommunikation GmbH & Co. KG; Ruby Hotels & Resorts GmbH	1															

			Phase I					Phase II		Without Cartel Court decision				Cartel Court decision			Pending	
								Initiation				Prohibited	Other					
								Request for examination	Withdrawal		Request for exam.	Jes	No	with condition	without condition			
Case	Month	Companies	Expiry of deadline	Waiver	Assurance	Withdawl	Other	BWB	BKA	Assur- ance	Merger notification					Ph I	Ph II	
3637	Sep	Associated British Foods plc; Acetum S.p.A.	1															
3638	Sep	MF Bidco Limited; Matchesfashion Limited	1															
3639	Sep	Swiss Automotive Group AG; Trost Auto Service Technik SRL	1															
3640	Sep	Ceterum-Holding GmbH; Magdeburger Förderanlagen und Baumaschinen GmbH; Dr. Lutz Petermann	1															
3641	Sep	Hutchison Drei Austria GmbH; Tele2 Austria Holding GmbH	1															
3642	Sep	Sonafi SAS; Fromi GmbH	1															
3643	Sep	EQT Mid Market US Limited Partnership; TP Group-CI Inc.	1															
3644	Sep	Kirchdorfer Fertigteilholding GmbH; Kammel Ges.m.b.H.	1															
3645	Sep	Invest Unternehmensbeteiligungs Aktiengesellschaft; OÖ Beteiligungsgesellschaft m.b.H. & Co OG; TTI Personaldienstleistung GmbH; TTI Personaldienstleistung GmbH & Co KG	1															
3646	Sep	Raiffeisenverband Salzburg eGen; Modelleisenbahn Holding GmbH		1														
3647	Sep	DSM International B.V.; Trusco B.V.	1															
3648	Sep	Österreichische Post AG; ACL advanced commerce labs GmbH	1															

			Phase I					Phase II		Without Cartel Court decision			Cartel Court decision			Pending			
								Initiation		Without Cartel Court decision			Cartel Court decision						
													Prohibited	Other					
								Request for examination		Withdrawal		Request for exam.	Yes	No	without condition	with condition			
Case	Month	Companies	Expiry of deadline	Waiver	Assurance	Withdawl	Other	BWB	BKA	Assur- ance	Merger notification								
3649	Sep	REHAMED Beteiligungsges.m.b.H.; Oberösterreichische Gesundheits- und Spitals-AG; REHA Rohrbach Errichtungs GmbH	1																
3650	Sep	IFN Holding AG; Skaala Group Oy		1															
3651	Sep	Wienerberger AG; Wienerberger Ziegelindustrie GmbH; Ziegelwerk Brenner, F. Wirth Gesellschaft mbH	1																
3652	Sep	FountainVest China Capital Partners GP3 Ltd.; Bosch Mahle Turbo Systems Verwaltungs GmbH; Bosch Mahle Turbo Systems GmbH & Co. KG	1																
3653	Sep	Bourne Holdco AB; BTI Studios Holding AB	1																
3654	Sep	Equistone Partners Europe Ltd.; fm Büromöbel Franz Meyer GmbH & Co. KG	1																
3655	Sep	Synergie SE; Völker GmbH	1																
3656	Sep	Comparex AG; Agile Software B.V.; InfraControl B.V.	1																
3657	Sep	Comparex AG; DATALOG Software AG	1																
3658	Sep	SAP SE; Gigya, Inc.	1																
3659	Sep	Binder Beteiligungs AG; Franz Binder Privatstiftung; KLENK HOLZ AG	1																
3660	Okt	Georg Fischer AG; Eucasting RO S.R.L.	1																

			Phase I					Phase II		Without Cartel Court decision				Cartel Court decision		Pending	
								Initiation		Without Cartel Court decision		Cartel Court decision					
														Prohibited	Other		
Case	Month	Companies	Expiry of deadline	Waiver	Assurance	Withdrawal	Other	BWB	BKA	Jes	No	Ph I	Ph II				
3661	Okt	Verlagsgruppe Droemer Knaur GmbH & Co. KG; Groh Verlag GmbH; Groh Vertrieb GmbH; Groh Media GmbH	1														
3662	Okt	PIPES Holding GmbH; DZH-Logistikpark-Lagerbetriebsges.m.b.H.	1														
3663	Okt	Synthomer plc; BASF SE	1														
3664	Okt	Spinarella Küchen GmbH & Co. KG; pino Küchen GmbH	1	1													
3665	Okt	IFS Americas, Inc.; Marathon Acquisition, Inc.	1														
3666	Okt	Stadler Rail AG; MER MEC S.p.A.	1														
3667	Okt	Schneider Electric SE; AVEVA Group plc	1														
3668	Okt	AVAG Holding SE; AVS Automotive Versicherungs-Service GmbH	1														
3669	Okt	F & S BeteiligungsGmbH; Gutmann Gesellschaft m.b.H.; da emobil GmbH	1														
3670	Okt	Vista Equity Partners Management, LLC; JAMF Holdings, Inc.	1														
3671	Okt	Centerbridge Partners L.P.; Sompno Canopus AG	1														
3672	Okt	Autohaus Beteiligungs GmbH; Simscha GmbH	1														
3673	Okt	Blackstone Group Partners L.P.; Schenck Process Holding GmbH	1														

			Phase I					Phase II		Without Cartel Court decision				Cartel Court decision		Pending		
								Initiation		Without Cartel Court decision		Other	Cartel Court decision		Other			
													Prohibited	No				Jes
								Request for examination		Withdrawal			Request for exam.			Assur- ance	Merger notification	BKA
Case	Month	Companies	Expiry of deadline	Waiver	Assurance	With- dawl	Other											
3674	Okt	Atos SE; Siemens Convergence Creators Holding GmbH; Siemens Ltd	1															
3675	Okt	Allianz SE; ICON Inter GmbH & Co OG; ICON Immobilien GmbH & Co OG	1															
3676	Okt	Thomas Cook Group plc; Aldiana GmbH	1															
3677	Okt	Westbay Holdings Limited; WISD Holding Limited	1															
3678	Okt	SHKK-Rehabilitations GmbH; REHAMED Beteiligungs m.b.H.; Kinder-Reha Bad Erlach Betriebs GmbH	1															
3679	Okt	AL-KO SE; Endurance Capital AG; Teile der KOHL-Gruppe AG	1															
3680	Okt	Indutrade AB; Inovatools Eckerle & Ertel GmbH; LTT-Hebetechnik GmbH; Inovatools Austria GmbH; Inovatools USA LLC; Inovatools Italy S.R.L.	1															
3681	Okt	Dassault Systèmes SE; Exa Corporation	1															
3682	Okt	CERATIZIT S.A.; KOMET Group GmbH	1															
3683	Okt	mertus 355. GmbH; ZT Management Holding GmbH	1															
3684	Okt	Triton Fund IV; Athomstart Invest 200 AS; Glamox AS	1															

Case	Month	Companies	Phase I					Phase II		Without Cartel Court decision			Cartel Court decision			Pending	
			Expiry of deadline	Waiver	Assurance	Withdrawal	Other	Initiation	Request for examination	Assurance	Merger notification	Request for exam.	Yes	Prohibited	Other	Ph I	Ph II
3685	Okt	ABCON-Connect Holding GmbH; Inter-Connect Marketing, Consulting & Representation Services GmbH; Cruise-Interconnect AG; Inter-Connect Reisen GmbH	1														
3686	Okt	UBM hotels Management GmbH; Vienna International Hotelmanagement AG; UBM hotels München GmbH	1														
3687	Okt	Axel Springer SE; Ad Up Technology AG; Unister Factory GmbH		1													
3688	Okt	JELD-WEN, Inc.; Domoform International GmbH	1														
3689	Okt	Doppler Mineralöle GmbH; Doppler Vermietungs GmbH; Doppler Immobilien GmbH; Fazeni GmbH; Neubauer GmbH	1														
3690	Okt	TUIfly GmbH; Niki Luftfahrt GmbH	1														
3691	Okt	STRABAG SE; ZMH GmbH; SHKK-Rehabilitations GmbH	1														
3692	Okt	Financière Joconde S.à.r.l.; Sebia SA	1														
3693	Okt	Bridgepoint Group Limited; Bike24 GmbH	1														
3694	Okt	Franz Haniel & Cie. GmbH; RP Holding GmbH; RP Grundstücks GmbH	1														
3695	Okt	BC Partners LLP; Nexinto Limited	1														

			Phase I					Phase II		Without Cartel Court decision			Cartel Court decision			Pending		
								Initiation		Without Cartel Court decision		Other	Cartel Court decision					
													Prohibited	No				
								Request for examination		Withdrawal		Assur- ance	Merger notification	Request for exam.	Jes	No		
Case	Month	Companies	Expiry of deadline	Waiver	Assurance	With- dawl	Other	BWB	BKA							Ph I	Ph II	
3696	Okt	NKM Nemzeti Közművek Zrt.; Égáz-Dégáz Földgázelosztó Zrt.	1															
3697	Okt	MR Infrastructure Investment GmbH; STEAG Fernwärme GmbH		1														
3698	Okt	GoodMills Deutschland GmbH; GoodMills Innovation GmbH	1															
3699	Okt	MTH Retail Group Holding GmbH; OWiba AG		1														
3700	Okt	Indorama Ventures PLC; Teijin-DuPont Films, Incorporated; DuPont Teijin Films U.S. Limited Partnership; DuPont Teijin Films U.K. Limited; DuPont Teijin Films Luxembourg S.A.; DuPont Teijin Films China Limited	1															
3701	Okt	CEWE Stiftung & Co. KGaA; LASERLINE Druckzentrum Berlin KG; LASERLINE MEDIA GmbH; SUPER-STEADY GmbH	1															
3702	Okt	INEOS Holdings AG; Belstaff Group S.A.	1															
3703	Nov	The Hearst Corporation; Rodale Inc	1															
3704	Nov	H.I.G. Europe Capital Partners II, L.P.; TierOne Beteiligungs GmbH	1															
3705	Nov	Bühler AG; Bühler Holding AG; Franz Haas Vermögens- und Beteiligungs Aktiengesellschaft	1															
3706	Nov	Henkel AG & Co. KGaA; Zotos International, Inc.	1															

			Phase I					Phase II		Without Cartel Court decision				Cartel Court decision			Pending	
								Initiation	Without Cartel Court decision									
			Request for examination	BWB	BKA	Assur- ance	Merger notification	Request for exam.	Jes	No	Other							
Case	Month	Companies	Expiry of deadline	Waiver	Assurance	With- dawl	Other	BWB	BKA	Assur- ance	Merger notification	Request for exam.	Jes	No	Other	Ph I	Ph II	
3707	Nov	Airbus SE; C Series Aircraft Limited Partnership	1															
3708	Nov	Vista Equity Partners Management, LLC; Datto, Inc.	1															
3709	Nov	VIVATIS Beteiligungs-GmbH; Frisch & Frost Nahrungsmittel GmbH; LWM Austria GmbH	1															
3710	Nov	WAG Wohnanlagen Gesellschaft m.b.H.; KALL- CO Development GmbH & Co KG; Hausfeld Projek- tentwicklung GmbH	1															
3711	Nov	Discovery Communications, Inc.; Scripps Networks Interactive, Inc.	1															
3712	Nov	Bregal Freshstream LP; Herenweg Holding B.V.; IG Investments B.V.	1															
3713	Nov	The Hearst Corporation; G+J Media Nederland C.V.; G+J Magazines B.V.	1															
3714	Nov	Hitachi Chemical Company, Ltd.; Kyowa Medex Co., Ltd.	1															
3715	Nov	ESSVP IV, L.P.; ESSVP IV (Structured) L.P.; Silenos GmbH & Co. KG; SLR Giesserei St. Leon-Rot GmbH	1															
3716	Nov	HANNOVER Finanz-Gruppe; Mediashop Deutschland Vertriebs GmbH	1															
3717	Nov	ProSiebenSat.1 Advertising Platform Solutions GmbH; BuzzBird Beteiligungsgesellschaft mbH	1															
3718	Nov	Cinven Capital Management (VI) General Partner Limited; Dareva Equities, S.L.; Planasa Equities, S.L.	1															

			Phase I					Phase II		Without Cartel Court decision				Cartel Court decision			Pending	
								Initiation		Without Cartel Court decision		Other	Cartel Court decision					
													Prohibited	No				
								Request for examination		Withdrawal		Request for exam.	Yes	No	with condition	without condition		
Case	Month	Companies	Expiry of deadline	Waiver	Assurance	Withdawl	Other	BWB	BKA	Assur- ance	Merger notification					Ph I	Ph II	
3719	Nov	Beta Film GmbH; MR-Film Kurt Mrkwicka Gesellschaft m.b.H.	1															
3720	Nov	Containex Container-Handelsgesellschaft mbH; Česko-slezská výrobní a.s	1															
3721	Nov	Amgen Inc.; Kirin-Amgen Inc.	1															
3722	Nov	Constantia Beteiligungs AG; TECHTEX GmbH & Co. KG; Kufner Holding GmbH & Co. KG; Kufner Unternehmensführungs- und Beratungs GmbH; VMS Beteiligung Vier GmbH	1															
3723	Nov	ACCOR S.A.; Gekko SAS	1															
3724	Nov	Homair Vacances SAS; DBF Travel AG	1															
3725	Nov	S + B Gruppe AG; Donau City Residential GmbH; DC Waterline GmbH; STRABAG AG	1															
3726	Nov	Klamt-Verlag GmbH & Co. KG; G+J / Klambt Style-Verlag GmbH & Co. KG	1															
3727	Nov	Ardian France S.A.; CCC Erste Beteiligungs GmbH	1															
3728	Nov	VF Corporation; Icebreaker Holdings Limited	1															
3729	Nov	Screen Acquisition B.V.; ZND Group B.V.; ZND Holding B.V.	1															
3730	Nov	Perstorp AB (publ); Addcon GmbH	1															
3731	Nov	NPM Capital N.V.; Suit Supply TopCo B.V.	1															

			Phase I					Phase II		Without Cartel Court decision				Cartel Court decision		Pending	
								Initiation									
								Request for examination		Withdrawal			Jes	No			
Case	Month	Companies	Expiry of deadline	Waiver	Assurance	Withdawl	Other	BWB	BKA	Assur- ance	Merger notification	Request for exam.				Ph I	Ph II
3732	Nov	Blitz D17-514 GmbH; Caverion Deutschland GmbH	1														
3733	Nov	Zeitverlag Gerd Bucerius GmbH & Co. KG; Spotlight media group GmbH	1														
3734	Nov	The Goldman Sachs Group, Inc.; Vector Capital II/III Extensions, L.P.; Corel Corporation; WatchGuard Technologies, Inc.; CB Holdings (U.S.) Corp.; Network Enhanced Telecom, L.L.P.; Aflias Plc	1														
3735	Nov	Toyota Motor Corporation; Mazda Motor Corporation	1														
3736	Nov	40 North Latitude Master Fund Ltd.; Clariant Ltd.	1														
3737	Nov	Heinrich Bauer Verlag KG; Media Group Medweth AG	1														
3738	Nov	BASF SE; Bayer AG				1											
3739	Dez	BASF Plant Science GmbH; Biocrates Life Sciences AG; Metanomics Health GmbH	1														
3740	Dez	Lagardère Travel Retail GmbH; CP Convenience Partner GmbH	1														
3741	Dez	Aron Bidco GmbH; Triton IV LuxCo No. 46 S.à r.l.; AVS Beteiligungs GmbH	1														
3742	Dez	Orkla Care AB; Health and Sports Nutrition Group HSNB AB	1														
3743	Dez	Ergon Capital Partners III SA; svt Beteiligungen GmbH	1														

			Phase I					Phase II		Without Cartel Court decision			Cartel Court decision			Pending		
								Initiation		Without Cartel Court decision		Cartel Court decision		Other				
										Request for examination	Assur- ance	Merger notification	Request for exam.	Jes	No			with condition
								BWB	BKA									
Case	Month	Companies	Expiry of deadline	Waiver	Assurance	With- dawl	Other	BWB	BKA	Assur- ance	Merger notification	Request for exam.	Jes	No	with condition	without condition	Ph I	Ph II
3744	Dez	Sika Italia S.p.A.; Index S.p.A.	1															
3745	Dez	Sika Holding GmbH; Fidelio Holding DE GmbH	1															
3746	Dez	Pfizer Inc.; Basilea Pharmaceutica International Ltd.	1															
3747	Dez	Equistone Partners Europe Ltd.; ADCURAM Development Holding GmbH; Bien-Zenker Holding GmbH; Hanse Haus Holding GmbH	1															
3748	Dez	Sappi Papier Holding GmbH; CPG Italia S.p.A.; CPG Schweiz AG; CPG Asia Pte Ltd.	1															
3749	Dez	Carl Zeiss Industrielle Messtechnik GmbH; Bosello High Technology Srl	1															
3750	Dez	Itiviti Group AB; Ullink UK Holdco 1 Limited	1															
3751	Dez	Apple Inc.; Shazam Entertainment Ltd.					1											
3752	Dez	Lidl E-Commerce International GmbH & Co. KG; JT Touristik GmbH	1	1														
3753	Dez	Sun Capital Partners, Inc.; Afri Flowers Holding B.V.	1															
3754	Dez	Telekom Innovation Pool GmbH; Voltavest GmbH	1															
3755	Dez	Thoma Bravo, LLC; Barracuda Networks, Inc.	1															
3756	Dez	pino Küchen GmbH; Gustav Wellmann GmbH & Co. KG	1															

			Phase I					Phase II		Without Cartel Court decision			Cartel Court decision			Pending	
								Initiation					Prohibited	Other			
								Request for examination		Withdrawal			Jes	No		Request for exam.	Assur- ance
Case	Month	Companies	Expiry of deadline	Waiver	Assurance	With- dawl	Other	BWB	BKA						Ph I	Ph II	
3757	Dez	ProSiebenSat.1 Advertising Platform Solutions GmbH; esome advertising technologies GmbH	1														
3758	Dez	Ardian France SA; SQS Software Quality Systems AG	1														
3759	Dez	Oracle Corporation; Aconex Limited	1														
3760	Dez	BlackRock Capital Investment Corporation; CMP II AIV, L.P.; CMP II Coinvestment L.P.; Beach Point Capital Management LP; SVP Holdings Limited	1														
3761	Dez	Red Bull GmbH; Beta Film GmbH	1														
3762	Dez	PRIMEPULSE SE; Endurance Capital AG; WITTE Stromberg GmbH; WITTE Automotive Gruppe	1														
3763	Dez	Rhenus SE & Co. KG; Rhenus Beteiligungs GmbH	1														
3764	Dez	Pulse Electronics (Singapore) Pte. Ltd.; EGSTON Holding GmbH	1														
3765	Dez	China National Chemical Corporation; Drakkar Group S.A.; Nutriad Holding B.V.	1														
3766	Dez	Lapp Holding AG; SKS Automaatio Oy; SKS Connecto Oy; SKS Connecto Polska z.o.o.	1														
3767	Dez	Southern European Specialty Investment S.à.r.l.; CEME S.p.A.	1														
3768	Dez	Highlight; Studhalter Investment AG; Constantin Medien AG	1														
3769	Dez	IHO Holding GmbH & Co. KG; ATESTEO GmbH	1														

			Phase I							Phase II			Cartel Court decision				Pending	
										Initiation	Without Cartel Court decision		Cartel Court decision		Other			
										Request for examination		Withdrawal		Jes	No			
Case	Month	Companies	Expiry of deadline	Waiver	Assurance	Withdawl	Other	BWB	BKA	Assur- ance	Merger notification	Request for exam.		with condition	without condition		Ph I	Ph II
3770	Dez	Saxus Beteiligungsverwaltungs GmbH; FMW Förderanlagen GmbH	1															
3771	Dez	SOCAR Energy Holdings AG; A1 Tankstellenbetrieb GmbH; "PRONTO - OIL" et al	1															
3772	Dez	Husqvarna AB; Atlas Copco AB	1															
3773	Dez	IMI plc; Bimba Manufacturing Company	1															
3774	Dez	Eff fünfzigneun ; Landhof GesmbH & Co KG; H. Loidl	1															
3775	Dez	PFH S.p.a.; Uni Gasket S.r.l.	1															
3776	Dez	Lanxess AG; Solvay USA Inc.	1															
Summe Stand			409	23	1	4	1	2	2	0	1	0	0	0	0	0	0	1

6.4 List of abbreviations

Abkürzungsverzeichnis	
AG	Aktiengesellschaft (public limited company)
BJA	Federal Cartel Prosecutor
BMDW	Federal Ministry for Digital and Economic Affairs
BWB	Austrian Federal Competition Authority
ECN	European Competition Network
ELSA	European Law Students' Association
EMCF	Euro-Mediterranean Competition Forum
EU	European Union
GDP	Gross domestic product
GmbH	Gesellschaft mit beschränkter Haftung (limited liability company)
KartG	Cartel Act 2005
KaWeRÄG	Cartel and Competition Law Amendment Act 2017
OECD	Organisation for Economic Cooperation and Development
ORF	Austrian Broadcasting Corporation
ORF-G	Austrian Broadcasting Corporation Act
ÖZK	Austrian Competition Journal
SSK	Austrian Freight Forwarding Agents Consolidated Consignment Conference
StPO	Code of Criminal Procedure
TFEU	Treaty on the Functioning of the European Union
UNCTAD	United Nations Conference on Trade and Development
UWG	Unfair Competition Act
VBKG	Consumer Protection Cooperation Act
WBK	Competition Commission
WettbG	Competition Act

6.5 Main recommendations from the Competition Commission to BWB

Proposals from the Competition Commission (WBK) pursuant to § 16 para. 1 WettbG for BWB's priorities in the 2018 calendar year:

1) Introductory remarks

As part of its annual task, as defined in WettbG, of issuing recommendations for the future work of BWB, the Competition Commission takes the opportunity to highlight those areas that it believes require more in-depth and ongoing attention in the interests of fair competition. The WBK bases its recommendations on its findings from its ongoing activities and on the information provided to it, while striving to focus its proposals on those areas of competition in which heightened attention from BWB can be expected to produce the greatest benefit.

Its previous recommendations can be viewed on the BWB website (in German). Some of these remain particularly relevant to the current situation, such as the proposals made in earlier years regarding competition monitoring, online sales and service platforms.

2) Recommended priorities for 2018

a) Code of Conduct

Repeated complaints have been made over recent years with regard to the significance of the "fear factor" in contractual negotiations where the balance of power is unevenly distributed along the supply chain. This type of problem often arises in what is a competition grey area and thus difficult to pinpoint.

Consequently, the WBK is proposing the introduction of a Code of Conduct based on the BWB's Guidance on Vertical Price Fixing and providing market participants with a key source of information.

b) Competition monitoring

Over recent years the WBK has consistently encouraged the development of a system that ensures ongoing, systematic and transparent competition monitoring. The introduction of a competition monitoring system was also previously recommended in Study 87 of the Advisory Council for Economic and Social Affairs. In a welcome development, the first steps have been taken in this regard, as summarised in a BWB working paper. Practical implementation, including the subsequent evaluation of such a monitoring system, continue to be considered a priority by the WBK, not least in light of current price and structural developments in highly concentrated markets.

c) Energy sector

The WBK has repeatedly recommended that BWB should focus on and permanently monitor the electricity and gas sectors. Grid-based energies (electricity, gas and district heating) have a permanent presence on the competition agenda given the economic importance of these sectors. It is recommended that close attention be paid not just to grid-based energies but also, in particular, to the impact of the Federal Energy Efficiency Act (EEffG) on competition.

d) Online sales

Given the constant growth in the market power of global, online companies based outside the European Union and operating internationally, the WBK continues to recommend a review of the competition conditions in the online retail sector and, where necessary, initiatives to guarantee fair conditions for all.

e) Service platforms (sharing economy)

More and more service platforms are being launched as the concept of the "sharing economy" takes off. Compliance by the parties operating these platforms with the basic legal parameters, and with competition rules in particular, must be observed accordingly. Following the ban on best price clauses in the hotel sector, there are now signs that the major online booking platforms are attempting to sanction hotels that make better offers on their own websites or other online platforms. Various measures have been used including, by all accounts, limiting the information displayed for certain hotels in search lists (e.g. no picture of the hotel or no ratings). Known as "dimming" or "de-ranking" this method is massively anti-competitive and any use of it in Austria should be tackled by BWB as soon as possible.

f) Digital economy (particularly big data)

The issue of the digital economy is associated with a range of diverse questions, specifically the collection and commercial use of data are becoming ever more important as an economically relevant process. Data can be traded like a commodity but can also function as a new "currency" in the context of certain business models. The handling of big data, referring to large quantities of digital data and the analysis, use, collation, exploitation and marketing of that data, is therefore growing increasingly important in economic life. Guaranteeing pure competition between the different providers, many of which operate on a cross-border basis, is another critical aspect. Consequently, BWB should also make its activities in this particular area a higher priority.

3) Conclusion

The WBK reiterates its general willingness to make its expertise on all competition issues available and, for its part, expects information on current developments in the cases raised in the list of recommendations. The use of contemporary investigative tools is welcomed, and the WKB is particularly in favour of the rapid development of a whistleblower hotline.

Anna Hammerschmidt
Chair of the Competition Commission

6.6 Statement by the Competition Commission

Competition Commission Vienna, 7 May 2018

**Statement by the Competition Commission
on the Activity Report of the Federal Competition Authority
for the period from 1 January 2017 to 31 December 2017
pursuant to § 2 para. 4 of the Competition Act**

Fairness matters!

BWB celebrated its 15th anniversary in 2017. Many things have changed since the Authority was first established in 2002. At the heart of a dynamic environment, BWB must react to these changes while at the same time also adapting its own structure and approach. In 2017, for example, the number of case handlers was increased by three. The Competition Commission (WBK) welcomes this growth, having indicated in its statement on the 2015 Activity Report that the financial resources for the staffing levels already stipulated by law needed to be put in place immediately. Following the creation of an additional ten permanent posts in 2016, the requisite financial resources were finally also made available in 2017. BWB had a total staff of 40 in 2017, 31 of whom were employed as case handlers. The Authority's budget has increased from € 2.97 million in 2016 to € 4.8 million by 2017. Despite this expansion, BWB remains a small authority compared with other (sector-specific) regulatory bodies and also in international terms.

It is not only the budget and number of employees that have grown, however. BWB's remit has also developed in terms of both quantity and quality. The number of merger notifications has risen continuously over recent years, from 420 in 2016 to 439 in 2017. The number of European cases has climbed from 327 in 2016 to 448 in 2017. There have also been legislative changes, with the introduction of the KaWeRÄG 2017, which transposes the EU's Damages Directive (2014/104/EU) into Austrian law through § 9 para. 4 subpara. 3. This provision introduces a new aspect of merger control based on transaction value, according to which mergers require notification if the value of the consideration being paid for the merger is more than € 200 million. The WBK welcomes the work done by BWB in close cooperation with Germany's Federal Cartel Office to devise interpretation aids for this new aspect of the law in the run-up to its introduction. Meanwhile, KaWeRÄG 2017 also gives BWB the option of implementing an online whistleblowing system, by means of which information on potential breaches of anti-trust law can be reported anonymously. The BWB whistleblowing system was implemented in practice in 2017. In addition, Regulation (EU) 2017/2394 makes new demands of BWB with regard to consumer protection cooperation.

BWB has also been actively involved in the debate on potential future legislation. The EU's proposal for a Directive to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market (COM(2017) 142), generally referred to as ECN+, is just one such example.

Information and prevention are important areas of BWB's remit but less easy to quantify. With its Guidance on Dawn Raids published on 24 October 2017, BWB won an Antitrust Writing Award in the international category "Most Innovative Antitrust Soft Law". The WBK congratulates BWB on this success. Additionally, there were six competition talks in 2017, all focusing on antitrust and competition issues. Through its Moot Court event, BWB once again succeeded in raising interest in antitrust and competition law among students. All of these initiatives help to raise awareness of the relevant issues and are hugely beneficial.

Similarly, the higher number of pre-notification talks (up from 28 in 2016 to 44 by 2017) highlights the growing scope of BWB's work. The Authority's remit also encompasses sector inquiries (e.g. in the health sector) and the issuing of statements (e.g. on ATM fees), while work has been needed to update its IT infrastructure. All of these developments prompted a rethink of BWB's internal organisational structure. This resulted in the creation of a legal service and a litigation department in 2017, with a division of labour between the two.

In its capacity as an advisory body, the WBK is obliged pursuant to § 16 WettbG to provide BWB with annual proposals on the areas that it should prioritise in the fulfilment of its role. These priority areas and BWB's response were detailed in the 2015 Activity Report for the first time, as suggested by the WBK. This was repeated for the 2016 and 2017 reporting years. In its proposals for 2018, the WBK recommended that BWB draw up guidance on the issue of codes of conduct. It is gratifying to note that work has begun in this area, with concrete results hoped for in 2018.

In summary, it is positive to note that BWB has once again submitted a very well structured and attractive activity report this year. BWB's 2017 Activity Report provides a good overview of the work achieved with the available resources and is a high-quality document. The major merger cases from 2017 are described very clearly and informatively. Detailed reporting is also provided on mergers that entered the second examination phase. The social benefit of well-functioning competition is undisputed. The Activity Report describes in a very accessible way the specific measures taken to ensure that this benefit is felt by the economy and by the consumers in that economy.

As in recent years, BWB has assumed a clear and proactive role, performing its tasks well and in a focused manner. The antitrust and market abuse cases portrayed clearly show how important efficient competition control is in order to uphold the rules of competition. Compliance with these rules is key if competition is to function properly for the benefit of consumers, companies and the state. It is BWB's role to guarantee that this happens in Austria.

The WBK thanks BWB for the good working relationship during the reporting period while stressing that it is keen to continue and develop this cooperation in the interests of an efficient competition policy.

Anna Hammerschmidt
Chair of the Competition Commission

