



# Annual Report 2018

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„Competition Authorities have high responsibility,  
but often not enough powers or resources.  
Digital Giants have high powers and resources, but no responsibility.“  
Věra Jourová, EU-Justizkommissarin

## Preface

2018 was another very busy year for Austria's Federal Competition Authority, but also a very successful one. With 481 national mergers (2017: 439), another new record was set in merger control. At the instigation of BWB, fines totalling € 2.4 million were imposed by Vienna Higher Regional Court sitting as the Cartel Court. Eight leniency applications were filed, and four companies had their premises searched during the course of the year.

BWB published four new documents in 2018:

- Guidance for fair conduct in business
- Position on funeral service
- Austrian Pharmacy Market interim report
- Guidance on transaction value thresholds

The Guidance was written jointly with the German Bundeskartellamt (BKartA) and has been recognised with the international distinctions “Best Soft Law” and “Readers’ Award for Best Soft Law”.

There were also seven Competition Talks in 2018, and the Competition Law Moot Court was staged for the fourth year in succession.

I would like to take this opportunity to thank the highly dedicated team at BWB who have once again carried out excellent work in the area of competition in 2018.



Theodor Thanner  
Director General for Competition



Theodor Thanner Director  
General for Competition

# BWB in 2018

## Facts and figures

7 Competition Talks

Competition Law Moot Court 2018

Guidance for fair conduct in business | Position on funeral service

Guidance on transaction value thresholds | Austrian Pharmacy Market interim

481 national & 327 EU mergers

Fines totalling € 2,376,888

4 dawn raids

8 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 the role independently and autonomously.

### What are the aims of BWB?

- Safeguarding competition in Austria
- Eliminating distortions and restrictions of competition
- Merger control
- Information and prevention

Achievement of these goals is based on antitrust and competition law, the ban on cartels as defined in Article 101 and the ban on 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 alleged 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 the following tools with which BWB can fulfil these duties<sup>1</sup>:

- Companies and associations of companies are obliged to provide information to BWB
- BWB may call witnesses and experts
- Access to business documents and records including the right to make copies and/or transcripts
- Implementation of dawn raids (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 the Federal Cartel Act (KartG) or Articles 101 and 102 TFEU and to support the European Commission in its investigations

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

BWB is also responsible for enforcing injunctions pursuant to § 14 para. 1 UWG and for cooperating 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 of the WBK are appointed for a four-year term by the Federal Ministry for Digital and Economic Affairs (BMDW). In addition, the Austrian Federal Economic Chamber (WKO), the Federal Chamber of Labour (AK), the

<sup>1</sup> With regard to enforcing injunctions under the UWG, BWB does not hold any of the investigative powers listed here (§ 2 para. 1 no. 7 WettbG).

<sup>2</sup> On 29 December 2006, see § 14 VBKG.



Austrian Trade Union Federation (ÖGB) and the Presidential Conference of the Austrian Chambers of Agriculture each have the right to nominate one member (deputy member). In exercising their activity the members (deputy members) are not bound by instructions and are subject to official secrecy.

The current period of office runs from 2018 to 2022, and the current chair of the Competition Commission is Jörg Zehetner.

Member	Deputy member	Appointed by
<b>Jörg Zehetner (Chair)</b> Lawyer at KWR, Honorary Professor at Salzburg University	<b>Cordula Cerha</b> Institute for Retailing & Marketing, Vienna University of Economics and Business	<b>BMDW</b>
<b>Maria Mercedes Ritschl (Deputy)</b> Expert in Financial Policy & Law, Public Commercial Law, Federation of Austrian Industries	<b>Ingrid Schöberl</b> Head of Financial Policy & Law, Administrative Reform & Legal Policy, Federation of Austrian Industries	<b>BMDW</b>
<b>Michael Sachs</b> Federal Administrative Court	<b>Agnes Kügler</b> Research associate at the Austrian Institute of Economic Research	<b>BMDW</b>
<b>Stephan Wiener,</b> Cabinet at BMDW	<b>Georg Konetzky</b> Head of section IV, BMDW	<b>BMDW</b>
<b>Anton Reinl</b> Chamber of Agriculture	<b>Andreas Graf</b> Chamber of Agriculture	<b>Presidential Conference of the Austrian Chambers of Agriculture</b>
<b>Helmut Gahleitner</b> AK	<b>Roland Lang</b> AK	<b>Federal Chamber of Labour</b>
<b>Rosemarie Schön</b> WKO	<b>Winfried Pöcherstorfer</b> WKO	<b>Austrian Federal Economic Chamber</b>
<b>Georg Kovarik</b> ÖGB	<b>Ernst Tüchler</b> ÖGB	<b>Austrian Trade Union Federation</b>

### Federal Cartel Prosecutor

In addition to the Austrian Federal Competition Authority, the Federal Cartel Prosecutor, which is subordinate to the BMVRDJ, was established in July 2002 as another official party. The Federal Cartel Prosecutor is appointed to represent public interests in matters of competition law. Both the Competition Act and the Cartel Act provide for close cooperation between the official parties not only, but especially in the area of merger control. In 2018, the cooperation between the two official parties went very well again. (The annual report of the Federal Cartel Prosecutor is available on the website of the BMVRDJ).

## **BWB's approach and goals**

BWB had set itself the following goals for 2018:

### **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. The Authority also uses Twitter and YouTube to provide information. BWB increased transparency by maintaining a 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 in-house training, expert meetings, job rotation, study visits etc.), BWB ensures that this high quality standard is upheld and improved. Once again in 2018, 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.

#### **Aim 5: Digital challenges**

Digitisation is impacting on all areas of the economy, not least competition. BWB recognised the developments at an early stage and has been applying future-proof methods for several years. It uses IT tools for its analysis during investigations, as well as incorporating the latest technology into its prevention campaigns and staff training. In this way BWB is ideally placed to tackle the digital challenges of the future.

## 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 2018:**

ECN Working Groups	
ECN Directors General Meeting	ECN Chief Economist
ECN Vertical Restraints	ECN Cartel
ECN Cooperation Issues and Due Process	ECN Merger
ECN Horizontal & Abuse	ECN Forensic IT
ECN Financial Services	ECN Telecom
ECN Plenary Meeting	ECN Energy
ECN Digital Markets	ECN Food
ECN Pharma and Health	

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

Since mid-May 2017, the Council Working Group on competition has been working on the proposal from the European Commission 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. The aim of the proposal is to make the enforcement of European competition rules in the Member States more effective and efficient by means of harmonised institutional conditions and procedural rules.

Political agreement on the text was reached on 30 May 2018. The ECN+ Directive has now been published as Directive (EU) 2019/1 in Official Journal L 11 of 14 January 2019, page 3. It must be transposed into national law by 4 February 2021. The Directive focuses on the following key areas:

### Independence

To guarantee the independence of national administrative competition authorities and to ensure they have the resources they need, Article 4 stipulates that the national authorities must be able to perform their duties and exercise their powers free of any external influence.

Article 5 of the Directive calls for a sufficient number of qualified staff and sufficient financial, technical and technological resources for the effective performance of their duties, and for the effective exercise of their powers.

### Budgetary autonomy

The national competition authorities are also given further operational independence by being enabled to set their own priorities when selecting cases and to decide independently on the spending of the budget allocations for the purpose of carrying out their duties, ensuring that such resources are used as efficiently as possible.

### Investigative powers and sanctions

The main benefit of the Directive is that it shores up the achieved standard of enforcement in EU law.

In terms of the national competition authorities' investigative powers, the Directive makes reference to inspections of business premises (Article 6) and other premises, particularly private premises (Article 7), requests for information (Article 8) and interviews of all persons who may possess relevant information (Article 9).

The provisions on sanctions (Articles 13 to 16) enshrine the principles of Union law, including with regard to the imposition of fines by national authorities. Fines must be effective, proportionate and dissuasive, and be determined in proportion to the total worldwide turnover of the undertaking or association of undertakings, taking into account such factors as the gravity and duration of the infringement. The fine that may be imposed should be set at a maximum level of not less than 10% of the total worldwide turnover. The conditions governing fines are also defined.

## Leniency programmes

The Directive focuses heavily on leniency programmes (Articles 17 to 23), with the harmonisation of immunity from fines and/or reduction of fines in exchange for disclosing participation in a secret cartel. Detailed rules apply to the general conditions for leniency, the form of leniency statements and the process for applying for leniency. There is also the possibility of a summary application in cases affecting more than three Member States and where the Commission is the main interlocutor in the first instance. The Directive also defines how national criminal rules apply to natural persons in the case of a cartel infringement that is the subject of a leniency application.

The options for mutual assistance in the form of cooperation between national competition authorities are also extended (Articles 24 to 28). In future, the requested authority may also serve documents during a case or collect fines, while mutual assistance is extended to cover cases in which compliance with investigative measures and decisions is reviewed.

### 1.3 BWB and its development

Development of BWB staffing levels

In 2018 there were 41 people, including 32 case handlers, working for BWB. Three out of the 32 case handlers were part-time employees.

Breakdown of 32 case handlers by training	
Legal	24
Economics	6
Public management	1
IT forensics	1

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

Federal Finance Act	Case handlers	Administration			Total
		A1/V1	A2/V2	A3/V3	
2003	13	1	2	3	19
2004	17	1	3	3	24
2005	17	1	3	4	25
2006	17	1	3	4	25
2007 to 2010	24	2	3	4	33
2011 to 2012	24	3	3	4	34
2013	27	9			36
2014	27	9			36
2015	27	9			36
2016	37	9			46
2017	37	9			46
2018	36	10			46

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

## Staffing levels 2017 to 2018



Source: BWB Annual Reports. Employees including Director General and Managing Director.

## Quality management - Continuing professional development

The low level of personnel and financial resources means that the employees working at BWB come under particular pressure. As far as financially possible, BWB strives to provide them with a tailored training programme.

Some of the topics covered by the specialist training provided in 2018 included:

- European law
- Procedural law
- Criminal law
- IT forensics
- Interrogation techniques

BWB has also launched an exchange programme with the European Commission enabling BWB staff to be seconded to the Directorate-General for Competition (DG Competition) and to gain experience there.

A basic agreement is also in place with the Austrian judges based in Luxembourg, according to which BWB case handlers can be seconded to a European court's office there as part of their training. This has been done three times to date. Two BWB employees have been able to use their high level of expertise to work with judges in Luxembourg on a longer term basis..



## BWB's budget

The changes in the funds available to BWB, with around two thirds covering personnel expenses, are detailed in the following paragraphs.

## Budget and staffing levels 2007 to 2018

### BWB income

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



Source: BWB Annual Reports.

Pursuant to § 10a para. 1 WettbG, the flat rate fee for notifying a merger is € 3,500. With 481 merger notifications in 2018, this gives total income of € **1.683.500**<sup>3</sup>.

At the request of BWB, fines totalling € **2.376.888** were imposed.<sup>4</sup>

<sup>3</sup> One ninth of the collected merger notification fees must be transferred to the Federal Ministry of Justice (§ 10a para. 1 WettbG).

<sup>4</sup> These fines are received by the Federal Government. Annually, amounts of € 1.5 million are earmarked for both BWB and the Association for Consumer Information (VKI) (see § 32 KartG).

## 1.4 International cooperation

International cooperation between competition authorities is an important tool in tackling infringements of antitrust law and abuse of a dominant position. 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.

### 1.4.1 European Competition Day 2018: Thinking Outside the Box

The 2018 European Competition Day was held at Austria Center Vienna on 24 September 2018. The event, which focused on competition law, issues in the value chain and the health market, was opened by Margarete Schramböck (Austrian Federal Minister for Digital and Economic Affairs), Margrethe Vestager (European Commissioner for Competition) and Theodor Thanner (Director General of BWB).

Around 200 experts from every EU Member State, the EU institutions, universities and business attended the conference. In her opening address, Margarete Schramböck underlined the importance of “the ideal framework conditions for healthy competition”. The European Commissioner for Competition, Margrethe Vestager, highlighted the importance of national competition authorities, pointing out that these have been responsible for around 85% of all decisions on the enforcement of competition in the EU. Vestager also noted that the introduction of the new ECN+ Directive would make it easier for these authorities to implement the EU’s competition rules effectively, given that it provides for more independent authorities.

In the presence of Theodor Thanner, Director General of BWB, the Commissioner cited Austria’s Federal Competition Authority as an excellent example of the work being done by national competition authorities. For his part, Thanner devoted his keynote speech to the work of BWB, now and going forward, while also looking ahead to the “Competition & Health Care Markets” panel organised by BWB.

At this “Competition & Health Care Markets” panel session, Natalie Harsdorf, Head of Legal Service and Deputy Managing Director of BWB, discussed the issue with co-panelists Rainer Becker (Head of Unit in DG Competition), Annemieke Tuninstra (Senior Economist at ACM, Netherlands), Laura Romero Valero (Economist at CNMC Spain) and Gottfried Haber (Head of Department for Economy and Health, Danube University Krems).




Director General Thanner and EU Competition Commissioner Vestager

The healthcare sector is highly and increasingly important to value creation in all of the Member States. At the same time, the public sector is highly influential in healthcare, with the result that competition is often restricted at best and non-existent at worst. The debate touched on the potential of more intensive competition in the strongly regulated health sector, with calls for the interests of consumers and producers to be balanced against each other. Reference was also made to BWB’s sector inquiry in the health market, with its report on the Austrian pharmacy market




Panel on Competition & Health Care Markets



Margrethe Vestager   
@vestager

Folgen 

Good to be at #EUCompetitionday - welcomed by minister Margarete Schramböck. Strong speech by @BWB\_WETTBEWERB Theodor Thanner about fairness that matters. #eu2018at helps strengthening National Competition Authorities to have stronger power and more independence.

 Tweet übersetzen



Tweet by  
EU Commissioner Vestager

14:43 - 24. Sep. 2018

### 1.4.2 Tusculum

Theodor Thanner was invited to give a talk at the Tusculum event in Salzburg on 6 July 2018. His speech at this legal discussion forum was entitled “Economic realities and the rule of law”.

Together with Justice Anthony M. Kennedy (a former US Supreme Court judge) and Gertrude Tumpel-Gugerell (a former member of the ECB Executive Board), Thanner dealt with such issues as whether the major influence of economic analysis had changed the fundamental character of competition law. Justice Kennedy referred to the decision in the *Leegin Creative Leather Products, Inc. v. PSKS, Inc.* case, notably explaining his economic reasons for the move away from the previous approach of treating vertical price restraints as illegal per se.

Director General Thanner made the case for a pragmatic approach to economic access that struck a balance between the costs and benefits of competition interventions and was not based on ideological principles at variance with the Harvard and Chicago School approach. He also stressed the increasing importance of empirical work to implement competition rules based on the ubiquity of data in an increasingly digitalised economy



Theodor Thanner, Anthony M. Kennedy and Anastasios Xeniadis at the Tusculum discussion forum in Salzburg

Finally, Director General Thanner emphasised the huge importance of judicial control of competition enforcement, including against the background of strong political and media cycles in democratic societies. Particular thanks is owed to the organiser, Wolfgang Berger.

### 1.4.3 Country Conference Austria - Germany - Switzerland - Liechtenstein

In late October 2018 the competition authorities from Austria, Germany, Switzerland and Liechtenstein once again convened in Vienna. As usual, this annual event highlighted the very similar cases and challenges facing the German-speaking authorities, resulting in intense discussion. The next conference will be held in Switzerland.



4-Country Conference Austria - Germany - Switzerland - Liechtenstein

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

Numerous working meetings and visits involving staff from foreign competition authorities also took place in <sup>2018</sup>.

Delegations were welcomed from the following countries and areas:

- Albania
- Georgia
- Eurasian Economic Commission

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

##### Albania

Together with BWB, the European Commission organised a study visit for Albanian colleagues from the Albanian Competition Authority (ACA) as part of the TAIEX (Technical Assistance and Information Exchange) programme, which is financed by the Commission. The theme of the visit was economic analysis and legal evaluation in the field of competition. The visit took place from 17 to 19 September 2018 in the BWB offices.

The following subject areas were covered during the delegates' visit:

- Economic analysis in relation to the abuse of a dominant position, e.g. with regard to pricing but also in terms of notified mergers that are prohibited or only approved with conditions.
- Economic analysis in relation to
  - oligopolistic markets and coordinated conduct cases
  - prohibited arrangements setting prices, quantities and markets
  - excluded arrangements
- Legal and economic analysis of cases identified with prohibited pricing agreements
- Analysis of legal framework conditions and presentation of the leniency programme used by BWB and of the whistleblowing system
- Success stories and findings from international cooperation e.g. in relation to OECD, UNCTAD, ICN, ECN etc.
- Experience reports from the areas of public relations and awareness raising.

## Georgia

Thanks to an EU-funded project “Support of the Georgian Competition Agency”, two members of the Georgian agency ([www.competition.ge/en](http://www.competition.ge/en)) visited BWB in Vienna from 3 to 7 September 2018. This week-long visit focused on the following areas:

- Organisational structure, decision-making structure and workflows at BWB
- Antitrust problems in relation to sales agreements and exclusivity agreements regarding vertical sales and related practical cases
- Detection, prosecution and sanctioning of pricing agreements in the foodstuff sector that breach cartel law
- Economic methods to establish whether an economic operator holds a dominant market position in terms of cartel law
- Process for setting conditions during a merger control procedure and the review of compliance with such conditions
- Legal framework conditions and practical implementation of dawn raids, as well as subsequent forensic evaluation of electronic data secured during such raids.

#### 1.4.5 Bilateral meeting of the Eurasian Economic Commission (EEC) and BWB

This bilateral meeting was held from 10 to 13 December 2018 in the form of a working meeting between the two authorities at the BWB's offices.

Leading the high-calibre EEC delegation was the Member of the EEC Board and Minister in charge of Competition and Antitrust Regulation, Marat Kussainov.



Working meeting  
with the  
EEC delegation

Intensive working meetings included talks on improvements to the working relationship between national and supranational authorities and audit bodies, analysis of the system of EU competition control, and discussion on achievements in economic research and forensics, and the potential involvement of international courts of arbitration in the work of the EEC.

#### 1.4.6 Working meeting with the Russian competition authority FAS

On 4 December 2018 Director General Thanner met the deputy head of the Federal Antimonopoly Service (FAS Russia), Andrey Tsarikovskiy, in Vienna. The meeting acknowledged the successful experiences of almost ten years of bilateral cooperation between the two countries. The issue of adapting competition law in line with the modern-day challenges of the digital economy also featured on the agenda.





Working meetings  
between Andrey  
Tsarikovskiy and  
Theodor Thanner

### 1.4.7 United Nations Conference on Trade and Development (UNCTAD)



The 17th UNCTAD Intergovernmental Group of Experts on Competition Law and Policy was staged by the United Nations in Geneva from 11 to 13 July 2018, with the representatives from the different competition authorities focusing on the following subject areas in particular:

- Reports on the UNCTAD Discussion Group on International Cooperation and the UNCTAD Repository of Best Practice Tools
- Competition issues in the sale of audiovisual rights for major sporting events
- Challenges faced by developing countries in competition and regulation in the maritime transport sector
- Capacity-building initiatives (Ethiopia), peer review of competition law and policy (Botswana)

BWB was particularly involved in the area of Reports on the UNCTAD Discussion Group on International Cooperation and the UNCTAD Repository of Best Practice Tools, giving a speech that underlined the importance of improving international relations and cooperation between competition authorities. In this regard, BWB supported the resolution for the continuation of the Discussion Group on International Cooperation established in 2017.

The aim of this discussion group is to develop a guidance paper on international cooperation so that, in keeping with the spirit of UNCTAD, young competition authorities and authorities in developing countries in particular can be given key pointers on how to join the international competition community and become involved in the transfer of knowledge between competition authorities.

#### 1.4.8 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 2018. Meanwhile, the Global Forum on Competition, which includes non-OECD members, was also held in the year under review.

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 online (Compare: <http://www.oecd.org/daf/competition/roundtables.htm>).

BWB took part in a range of discussions, actively contributing its own experiences. Particularly topical issues this time round included healthcare (Designing publicly funded healthcare markets and Excessive pricing in pharmaceuticals), with BWB able to provide information on the first interim report relating to its sector inquiry in the healthcare market. BWB was also able to talk about Austria's experience of prohibited practices (gun jumping) and best practices in relation to dawn raids.

Further areas of discussion included e-commerce, the challenges associated with designing and coordinating leniency programmes, the question of whether competition can contribute to a more just society, and much more (Compare: Further information is available at <http://www.oecd.org/daf/competition/roundtables.htm> and <http://www.oecd.org/competition/globalforum/>).

### Dr. Natalie Harsdorf appointed as OECD/UNCTAD coordinator



Natalie Harsdorf, Frédéric Jenny and François Souty

At the November 2018 meeting of the Competition Committee, Natalie Harsdorf from BWB was unanimously selected by all delegations as the OECD/UNCTAD coordinator. This also means that Austria will be represented in the OECD Competition Bureau for the first time. Natalie Harsdorf is succeeding François Souty, who held the position for the past decade.

This appointment is a great honour for BWB and once again confirms the Authority's commitment to international cooperation.

#### 1.4.9 OECD-BWB Workshop for Competition Officials

A first Workshop for Competition Officials organised by the OECD was held in Vienna on 6 and 7 December 2018. Tackling the theme of complex cartel case management, this workshop marked the start of a new series of OECD events aimed specifically at the national competition authorities in the OECD member countries in order to promote exchange.

BWB was the first cooperation partner in this new venture, designing and implementing the workshop together with the OECD. The event was held at the BWB offices.

A total of 30 competition experts from 20 different countries travelled to Vienna for this workshop, with the delegates and speakers including employees and managers from various European competition authorities, as well as from Canada, Israel, Japan and Mexico.

The workshop was opened by Director General Theodor Thanner and António Gomes, Acting Deputy Director of the OECD Directorate for Financial and Enterprise Affairs, who stressed the importance of employees from the national authorities exchanging practical experiences in order to develop further.



Theodor Thanner and  
António Gomes

The workshop programme included panels dedicated to the different phases of a cartel case, a practical exercise and a look to the future. During Panel I on Detection and Screening, authorities presented their experiences in relation to the detection of cartels in public tendering.

This was an area in which the use of screening tools was deemed key. Panel II dealt with Case Management, with the presentation of methods for team and case management. During a group exercise, participants shared their knowledge of settlement using different case scenarios, chaired by a moderator. Panel III also looked at the issue of settlement, providing the authorities with an opportunity to share their negotiating experience and present more specific negotiating techniques. Finally, Panel IV on “The future of cartel enforcement” provided delegates with individual insights into the current and future challenges facing their authorities as well as impetus for subsequent workshops.

The participants reacted positively to the workshop and used the event to share their findings from working on complex cartel cases. The informal setting and the size of the workshop helped to ensure that everyone had a chance to actively contribute and that there was time to address specific questions during the discussions

The desire to continue with these OECD workshops for competition officials was expressed on many occasions. From continuing to exchange their experiences and views, and from regular exchange in particular, the participants hoped to be better placed to tackle the everyday challenges of their work.



#### 1.4.10 ECN Merger Working Group in Wien

The European Competition Network (ECN) organises meetings for the European competition authorities covering various topics several times per year. Some of these are devoted to mergers with the aim of greater harmonisation of practices and giving delegates the chance to share experiences.

In October 2018 BWB hosted the Merger Working Group meeting in Vienna for the first time. Discussions focused on the formulation and review of conditions, as well as planned legislative changes in the area of merger control in some Member States.

Organisers and participants at the OECD-BWB Workshop for Competition Officials



ECN Merger Working Group in Vienna

## 2 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 also strives to provide prevention and information services.

### 2.1 BWB's Competition Talks

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

The format of these Talks includes presentations on a range of relevant topics followed by a discussion.

BWB staged a total of 7 Competition Talks in 2018, with more than 250 participants taking part and 20 different experts presenting on their area of expertise.

<b>BWB's Competition Talks from the beginning</b>	
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 the 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
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

<b>BWB's Competition Talks from the beginning</b>	
	Hausdurchsuchungen im Kartellrecht (erstmalig in Salzburg)
BWB's Competition Talks from the beginning	Kreditkarten und Wettbewerb
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
34th Competition Talk on 1 February 2018	Digitisation and competition
35th Competition Talk on 11 April 2018	The economy for the common good and competition
36th Competition Talk on 9 May 2018	Compliance and cartel law (held in Salzburg)
37th Competition Talk on 9 July 2018	Joint Guidance on Transaction Value Thresholds in Germany and Austria
38th Competition Talk on 24 October 2018	Competition along the value-added chain
39th Competition Talk on 12 November 2018	Current developments in cartel law (held in Dornbirn)
40th Competition Talk on 13 November 2018	Compliance and cartel law (held in Innsbruck)
41st Competition Talk on 18 December 2018	Arbitration and competition

## 2.2 Publications and presentations

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

In 2018 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) is a compendium of essays on practical aspects of Austrian and European antitrust and competition law. The journal 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, written in either German or English, six times per year.

Contributions by BWB employees to the ÖZK in 2018
Theodor <b>Thanner</b> , Kartellrecht neu denken [Rethinking cartel law], ÖZK 2018, 43.
Theodor <b>Thanner</b> , Rethinking Competition Law for the Digital Economy, ÖZK 2018, 79.
Lisa <b>Schwarz</b> , Verhängung hoher Geldbußen durch Verwaltungsbehörden verfassungskonform? Der VfGH zu § 99d BWG [Is it constitutional for administrative authorities to impose high fines? The VfGH on § 99d of the Austrian Banking Act], ÖZK 2018, 69.
Georg <b>Hanschitz</b> , Fusionskontrolle in Fällen der Gebrauchsüberlassung zwischen Wet-Lease und Sharing Economy [Merger control in leasing arrangements between wet lease and sharing economy], ÖZK 2018, 83.
Marcus <b>Becka</b> , 34. Competition Talk der BWB zum Thema „Digitales und Wettbewerb“, ÖZK 2018, 105.
Marcus <b>Becka</b> , 35. Competition Talk der BWB zum Thema „Gemeinwohl-Ökonomie und Wettbewerb“, ÖZK 2018, 105.
Sarah <b>Fürlinger</b> / Nathalie <b>Jeneral</b> , Öffentlichkeitsarbeit als wesentliche Aufgabe des Kartellrechtsvollzuges [Public relations, an important task of anti-trust law enforcement], ÖZK 2018, 145.
Marcus <b>Becka</b> , 36. Competition Talk der BWB zum Thema „Compliance und Kartellrecht“, ÖZK 2018, 180.
Marcus <b>Becka</b> , 37. Competition Talk der BWB zum Thema „Gemeinsamer Leitfaden zur neuen Transaktionswert-Schwelle in Deutschland und Österreich“, ÖZK 2018, 185.
Georg <b>Hanschitz</b> , European Competition Day: Thinking Outside the Box, ÖZK 2018, 199.
Georg <b>Hanschitz</b> , Kartellverbot in Fällen der Gebrauchsüberlassung – Grenzen der B2B Sharing Economy [Ban on cartels in leasing arrangements – limitations of the B2B sharing economy], ÖZK 2018, 218.

## Weitere Publikationen

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 2018
Georg <b>Seper</b> , Relevante Entwicklungen im Kartellrechtsvollzug [Relevant developments in antitrust law enforcement], Gottfried Holzer (Hg) Agrarrecht. Jahrbuch 2018, Wien, Graz 2018.
Natalie <b>Harsdorf</b> /Alexander <b>Koprivnikar</b> , Die Richtlinie zur Stärkung der nationalen Wettbewerbsbehörden: Eine Reform der kleinen Schritte [The Directive empowering national competition authorities: a step-by-step reform], ecolex 2018, 91.

## 2.3 BWB receives international award for Guidance on Transaction Value Thresholds

Austria's Federal Competition Authority (BWB) and Germany's Bundeskartellamt (BKartA) together won an Antitrust Writing Award in the category of Best Soft Law for their Guidance on Transaction Value Thresholds, published in July 2018.

After a three-month selection process, conducted by a panel consisting of 50 international experts in antitrust law and readers, the Guidance on Transaction Value Thresholds publication was announced as the winner in the categories "Best Soft Law" and "Readers' Award for Best Soft Law". Five soft law projects were recognised in total.

The award was presented at a ceremony held in Washington DC on 26 March 2019.

Martin Janda and Teresa Eckhard accept the award certificates



Head of Staff Martin Janda represented BWB in Washington and accepted the award on the Authority's behalf. "Transparency is key to our daily work. It is our goal to help companies comply with antitrust laws. And this is also why we prepared the Guidance on Transaction Value Thresholds," he said at the award-winning ceremony.

Director General Thanner added, "With this second award in a row BWB has once again been recognised for its focus on greater transparency. I am very pleased because this award confirms the added value that guidance documents provide for their users. My special thanks go to the legal service unit of BWB for its outstanding work, and to its Head Natalie Harsdorf as well as Daniela Trampert-Paparella and Stefan Ruech in particular. Congratulations also to Andreas Mundt and his team."

Certificates "Best Soft Law Readers' Vote" and "Best Soft Law" for BWB and BKartA



## 2.4 Fairness in business – Guidance for fair conduct in business



On 22 October 2018 BWB's Director General, Theodor Thanner, and Federal Minister for Sustainability and Tourism, Elisabeth Köstinger, together presented the Guidance for fair conduct in business, prepared by BWB and dealing with competition issues in the supply chain and unfair trading practices (UTPs).



Through this initiative BWB made a valuable contribution to Austria's Council presidency, one of the central aims of which was to establish a legal framework to tackle UTPs.

The preparation of the Fairness in business publication was preceded by BWB receiving numerous complaints about problematic practices relating to the design of terms and conditions as a result of an imbalance in the supply chain. No court action had been taken as the complainants had been afraid of retaliation (delisting) if they cooperated with BWB. With weaker contracting partners being at a disadvantage, SMEs in particular may be hindered from fully developing their businesses. This in turn impacts negatively on market development because there is then less innovation and a less diverse product offer for consumers. The Competition Commission has examined this issue in the food retail industry and recommended the preparation of a guidance document for market participants.

Right at the start of the initiative, BWB decided not to limit its guidance to specific branches of industry but to prepare guidance on how to design supplier/buyer relationships that would apply across all sectors. An economic imbalance can positively or negatively affect the supplier or the buyer side, depending on sector. Stakeholders were closely involved in the preparation of the guidance document, ensuring it included many practical examples from real business life. A draft was published in June 2018, and a round of public consultation launched and comments invited.

The guidance should provide unambiguous information on how to evaluate corporate behaviour and on what is understood by good conduct. Its central part is a list of business practices that are deemed to be incompatible with good conduct, irrespective of their legal interpretation by the courts in the individual case. General principles of interpretation should help in the assessment of individual practices. Finally, the guidance provides an overview (not

exhaustive) of various pieces of legislation including practical examples, which should help with the legal classification of individual cases. It concludes with recommendations for companies that are affected by unfair practices.

Shortly after publication, six well-known food retail companies that are members of the Austrian Retail Association, and which together cover around 90% of the market, signed a document expressly committing themselves to the content of the guidance. BWB invites companies from all sectors to follow suit and also voluntarily commit to the guidance.

The guidance document can be downloaded from the [BWB-Homepage](#) in German and English.

## 2.5 Sector Inquiry Health



Since 2017 BWB has been analysing the Austrian health-care market as part of its sector inquiries, which examine the competitive conditions on certain submarkets.

The inquiry is based on information received from market participants, academic literature, as well as experience reports and investigation findings of other national competition authorities. Additionally, businesses, interest groups and other institutions that are engaged in the healthcare market have been

interviewed in depth.

The objective of the inquiry is to identify possible restrictions of competition and to demonstrate opportunities for liberalisation that create more latitude for companies and benefits for consumers. Studies have shown that a certain degree of competition may also be beneficial to the healthcare market as it improves supply and results in a higher quality of products and services.

The first interim report published by BWB analyses possible restrictions of competition in the community pharmacy market in the areas of:

- Market entry for pharmacies (needs assessment)
- Ownership of pharmacies (e.g. prohibition of third-party ownership, wholesalers, branch pharmacies)
- Provisions on operating a pharmacy (e.g. opening hours, additional services, online selling, prerogative of pharmacies to sell OTC medicines)

The report examined whether existing restrictions of competition are necessary to ensure the reliable supply of medicines to the population or whether liberalisation of the pharmacy market would bring greater efficiency for consumers.

The report can be downloaded from the [BWB-Homepage](#) in German and English.

## 2.6 Position on funeral service



BWB has been observing the funeral market for some time now and published recommendations including on how price transparency could be improved for consumers back in 2011. The funeral market was liberalised in 2002. However, the restrictions of 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 parlors operating in Austria.

An evaluation of funeral parlors' websites showed that only about 3.5% gave price details online.

For these reasons BWB decided to review its position of 2011, publishing the updated version in December 2018.

The position provides an overview of numerous issues:

- Prohibited business practices in cartel law
- The market participants in Austria's funeral market including problems and trends
- Appropriate and fair access to chapels of rest
- Recommendations for municipalities and churches as lessors of chapels of rest
- Concrete explanations of problems using practical examples

The position's target group include funeral parlors, municipalities, churches, nursing homes and hospitals, as well as consumers. It describes the current funeral market, its market participants and resulting competition issues. The position also details how to proceed as a funeral service or consumer when encountering excessive prices or other competition issues.

The Position on funeral service can be downloaded from the [BWB-Homepage](#) (currently available in German only).

## 2.7 Competition Law Moot Court 2018

BWB organised the fourth Competition Law Moot Court in 2018, doing so in cooperation with the law firm DORDA and the European Law Students' Association (ELSA). The Moot Court involves a fictitious court case in the Cartel Court on a cartel-related issue. This year's case focused on competition issues related to the selective distribution of tablet computers. The distribution contracts in question included a rebate system as well as an online platform through which one manufacturer collected sales information, which was then used to generate individual, algorithm-based price recommendations. Further information is available on the website of the Federal Competition Authority (in German).

Eight teams of three people from six different universities took part in the 2018 event. Over a seven-week period the teams first put together a pleading of up to 15 pages. On 24 May 2018 the teams then faced each other during oral proceedings at the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice housed in Palais Trautson. 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 Juridicum 1 with the support of bpv Hügel Rechtsanwälte OG
- Team Juridicum 2 with the support of CHSH Cerha Hempel Spiegelfeld Hlawati Rechtsanwälte GmbH
- Team WU 1 with the support of Haslinger | Nagele & Partner Rechtsanwälte GmbH
- Team WU 2 with the support of Peter Thyri
- Team Graz 1 with the support of Eisenberger & Herzog Rechtsanwalts GmbH
- Team Graz 2 with the support of Taylor Wessing
- Team Innsbruck with the support of Binder Grösswang Rechtsanwälte GmbH
- Team Linz with the support of Hintermayr Burgstaller & Partner Rechtsanwälte

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 teamwork.

The winning team was Team Linz from the Johannes Kepler University (Michael Rubenzucker, Mario Gasselsdorfer, Mirko Marjanovic), supervised by Hintermayr Burgstaller & Partner Rechtsanwälte. Team WU 1 from the University of Economics and Business (Evelyne Schober, Daniel Grimmer, Kathrin Shahroozi), supervised by Haslinger | Nagele & Partner Rechtsanwälte GmbH, took second place. Raphaela Virgolini (Team WU 2, supervised by Peter Thyri) was found by the judging panel to be the Best Speaker. Second-best speaker was Mario Gasselsdorfer (Team Linz, supervised by Hintermayr Burgstaller & Partner Rechtsanwälte).



Alle Siegerinnen und Sieger des Moot Court 2018 mit GD Dr. Thanner, VfGH-Präsidentin Dr. Bierlein und der Jury

The closing address was given by the President of the Constitutional Court, Brigitte Bierlein.



“The Competition Law Moot Court of BWB is a valuable interface between theory and practice”, explained President Bierlein in her closing address.



Best Speaker Raphaela Virgolini (Team WU 2) with President Bierlein

“It was a joy to watch how passionate and committed the participants were as they presented the case. I don’t think we will be lacking in good young cartel lawyers in future”, concluded Director General Thanner.



The winning team (Team Linz) with their supervisor Harald Lettner and President Bierlein

The Moot Court will be organised again in 2019.

## 3 National mergers

In 2018 there were 481 merger notifications, 42 more than in the previous year.

480 cases, i.e. 99.8% 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 the Authority waiving the examination.

One case (0.2%) was treated in Phase II of the process. In this case, the Federal Cartel Prosecutor had submitted a request for examination.

17 cases were notified to BWB because they exceeded the new transaction value threshold pursuant to § 9 para. 4 of the Federal Cartel Act (KartG).

### EU mergers

In 2018 BWB also handled 388 EU mergers.

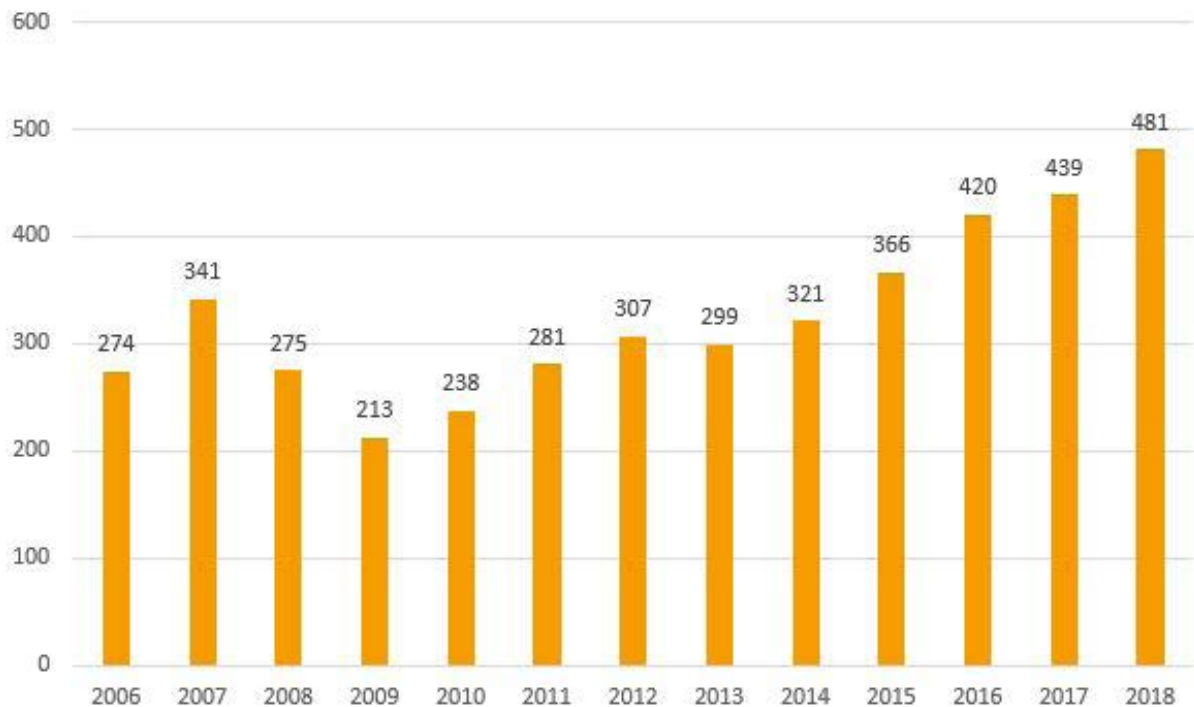
### 869 mergers examined

BWB therefore examined a total of 869 mergers over the course of the year, which means that each BWB case handler processed an average of 27 mergers in 2018.

### 3.1 Merger statistics

MERGER STATISTICS 2010-2018									
Notifications	2010	2011	2012	2013	2014	2015	2016	2017	2018
Total notifications	238	281	307	299	322	366	420	439	481
<b>Phase I</b>									
Clearance by expiry of deadline	182	226	251	246	276	328	386	409	451
Waiver of examination	41	43	45	39	38	29	28	23	27
Withdrawal of notification	5	3	6	4	5	3	3	4	2
Other	0	0	0	0	0	1	0	1	0
Cases concl. in Phase I	228	272	302	289	319	361	417	437	480
As a percentage of all notifications	95,8	96,7	98	96,7	99	98,6	99,3	99,5	99,8
Pending Phase I cases	0	0	0	0	0	0	0	0	0
<b>Phase II</b>									
Withdrawal of notification	2	2	0	2	0	1	1	1	0
Withdrawal of request for exam.	5	4	4	1	2	0	0	0	1
Cases concluded without Cartel Court decision	7	6	4	3	2	0	0	1	1
Prohibition by Cartel Court	0	0	0	0	0	1	0	0	0
Non-prohibition without conditions	0	0	1	2	0	1	0	0	0
Non-prohibition with conditions	1	1	0	4	1	1	2	0	1
Other Cartel Court decisions	1	2	0	1	0	1	0	0	0
Cases concluded with Cartel Court decision	2	3	1	7	1	4	2	0	0
Pending Phase II cases	1	1	0	0	0	0	0	1	0
Total Phase II cases	9	9	5	10	3	5	3	2	1
As a percentage of all notifications	3,7	3,3	2	3,3	1	1,4	0,7	0,5	0,2
BWB requests for examination	7	9	4	10	3	4	3	2	0
Requests by Federal Cartel Prosecutor	7	4	3	8	3	5	2	2	1

## Development of merger notifications 2006-2018



Development  
of merger  
notifications

### 3.2 Pre-notification talks

If there are doubts about whether a merger has to be notified, or if the merger is highly complex or 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 as quickly and smoothly as possible. These talks, drawing on information provided in a draft application, are often a source of key information for evaluating the likely impact on competition.

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 2018 BWB conducted 26 pre-notification talks.

### 3.3 Knauf / Armstrong

Following initial pre-notification talks, BWB was notified of the proposed merger of Knauf/Armstrong on 17 January 2018. Knauf International GmbH intended to acquire Armstrong World Industries' entire ceilings business outside the Americas. The merger related to the market for modular suspended ceilings.

Modular suspended ceilings are pre-fabricated products consisting of a grid (including suspension and fastening material) and ceiling tiles placed in that grid structure. Both Knauf and Armstrong operate in the area of modular suspended ceilings. Accordingly, depending on the definition of the relevant product and geographic market, there was quite a significant horizontal overlap between the companies' activities.

Initial investigations conducted in a highly cooperative manner with other European competition authorities, the German Bundeskartellamt and the European Commission in particular, found that competition concerns were not limited to Austria. Since the proposed merger threatened to significantly affect competition within the countries and given that Knauf and Armstrong held high market shares in several Member States, the Austrian Federal Competition Authority submitted a referral request to the Commission pursuant to Article 22 of the EU Merger Regulation on 7 February 2018. This request was subsequently joined by the authorities in Germany, Lithuania, Spain and the United Kingdom, with the Commission accepting it on 15 March 2018.

The merger was notified to the Commission on 20 June 2018 but subsequently withdrawn shortly before the end of Phase I. The transaction was notified to the Commission again on 17 October 2018. On 7 December 2018 the Commission approved the acquisition subject to conditions. Competition concerns were raised in Austria, specifically that the proposed acquisition would significantly reduce the level of competition in the markets for mineral fibre tiles for modular suspended ceilings and for grids. Similar concerns were also raised in Lithuania, Spain and the UK.

The proposed remedies are structural in nature:

- Armstrong's sales business (including sales teams and customer base) for mineral fibre tiles and grids in Austria and the other relevant countries must be transferred.
- Armstrong's plants for the production of mineral fibre tiles and grids located in Team Valley, UK must be divested.
- The buyer may sell mineral fibre tiles under the Armstrong brand without paying licence fees for a period of five years.

### 3.4 Air traffic

Early in 2018 the Federal Competition Authority worked hard to prevent monopoly routes and price increases in the event of parts of Air Berlin being taken over by other air carriers (for more details, see also BWB's Annual Report 2017).

Lufthansa Group proposed a merger with Air Berlin subsidiary Niki, which met with negative signals from the market and also received similar feedback from national competition authorities and the Commission; it finally withdrew its offer at the end of 2017/in early 2018. Laudamotion subsequently acquired the insolvent Air Berlin subsidiary in February 2018.

Following Ryanair's acquisition of a 75% stake in Laudamotion in August 2018 and with new companies entering the market throughout 2018, new routes opened up for Vienna Airport, with price advantages of 36% compared with the autumn of 2017. This is a direct result of increased competition.

### 3.5 BGO Holding / hali; svoboda

On 12 February 2018 BGO Holding GmbH (Vienna) notified BWB of its acquisition of all of the shares in hali GmbH (Eferding, Upper Austria) and svoboda büromöbel GmbH (St. Pölten, Lower Austria). The proposed transaction related to the development, production and distribution of office and seating furniture.

BWB held intensive pre-notification talks with all parties to the transaction. Following notification, the Authority conducted a market test asking 300 customers to provide information as well as submitting 172 requests for information to national and international competitors. The effort involved was higher in this case as neither the Commission nor any national competition authority had previously reached decisions pertaining to the office furniture market.

BWB held intensive talks and studied numerous comments, positions and expert opinions. To address potential competition issues, the companies offered a package of commitments.

These commitments are:

- To keep production sites
- To maintain brands

- To keep prices and quality unchanged for existing customers (except for inflation adjustments)
- To ensure that Hali and Svoboda are free to write their own quotes and set their own prices
- To provide regular reports to BGO Holding GmbH

Based on these commitments, BWB cleared the merger on 26 March 2018.

### 3.6 Signa / WAZ / Funke

On 22 November 2018 BWB was notified of the acquisition of a non-controlling shareholding of approximately 49.5% by Signa Holding (Signa) in WAZ Ausland Holding (WAZ) based in Essen, Germany. The remaining 50.5% stake in WAZ is still held by Funke Österreich Holding (Funke), which therefore continues to be the controlling shareholder.

The target company holds – indirectly via other legal persons – the Funke Group’s shareholdings in the Austrian media companies Kronen Zeitung, Kurier, Kronehit and – indirectly via them – in the media support companies Mediaprint (printing, distribution, sale of advertising space) and IP Austria (sale of TV ads). Through WAZ, Funke controls the Kurier Group together with Raiffeisen Group, and the Krone Group together with the founding Dichand Family.

The acquisition of a minority shareholding only increases a dominant position in exceptional cases: if a dominant company were involved and the possibility existed of securing or increasing the position of dominance through behaviour coordinated with that company or by using the influence gained by the minority shareholding<sup>5</sup>.

This is not the case here: the acquirer Signa is not engaged in media or upstream markets (daily newspapers, sale of advertising space or similar). There is therefore no likelihood of coordinated behaviour with Krone, Kurier or Mediaprint that would impede competition..

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<sup>5</sup> Refer also to Cartel Court 26 Kt 143, 186, 191/01, Wolters Kluwer/prohibition; 27 Kt 164, 165/13 and 29 Kt 1, 2/14, Funke/Axel Springer/clearance with conditions.

### 3.7 VTG Rail Assets GmbH; CIT Rail Holdings (Europe) S.A.S.; Nacco-Gruppe

On 4 September 2017 VTG Rail Assets GmbH notified BWB of its planned acquisition of 100% of the shares in CIT Rail Holdings (Europe) S.A.S. in the form of 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 share in the area of railcar leasing.

Due to concerns regarding the potential establishment of a dominant position, particularly in the area of dry bulk wagon leasing, as well as unresolved questions about the relevant product and geographic market, BWB 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 product and geographic market, as well as on the issue of whether the merger would create or increase a position of market dominance. Following receipt of the opinion in February 2018, possible remedies were discussed. The notifying parties offered a package of commitments, which was subsequently examined as part of a supplementary opinion and found suitable to dispel competition concerns.

The notifying parties undertook to sell around 30% of the Nacco business to be acquired to third parties beforehand. The same commitments were also agreed on 21 March 2018 in the merger control procedure conducted by the German Bundeskartellamt. Immediately after receipt of the resolution, the notifying parties mandated an independent and experienced trustee to oversee adherence to these commitments.

To ensure effective control in Austria, all information relating to compliance with the step-by-step selection of a buyer and that had been submitted by the notifying parties to the Bundeskartellamt was immediately also submitted to the official parties and the expert appointed by the Cartel Court. Imposing adherence to the above commitments, the Cartel Court did not prohibit the merger in its ruling issued on 28 March 2018. The sale, as agreed, to a third company was completed in October 2018.



## 3.8 Illegal mergers and incorrect/misleading information

### 3.8.1 Luxembourg Holdings 70 S.a.r.l.; Texbond S.p.A.

On 28 March 2018 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 Luxembourg Holdings 70 S.a.r.l. and Texbond S.p.A. on the grounds of an illegal merger implemented between 28 July 2016 and 10 January 2017, namely acquisition by Luxembourg Holdings 70 S.a.r.l. of 50% of the shares in Texbond S.p.A. The respondent had informed BWB of the breach on its own initiative and facilitated the investigation of the case by not disputing it.

On 12 December 2016 the respondent had retroactively notified BWB of the acquisition by Luxembourg Holdings 70 S.a.r.l. of 50% of the shares in Texbond S.p.A. on 28 July 2016. The merger related to the production of nonwovens. No request for examination was filed, with the standstill obligation consequently expiring as at 10 January 2017.

When setting the fine, BWB had taken into account the fact that the company had voluntarily reported its own offence, and that the merger did not have any negative impact on competition and lasted only 4 1/2 months.

### 3.8.2 TCH s.r.l.

On 12 September 2018 the Cartel Court, at BWB's request, imposed a fine of € 55,000 pursuant to § 29 subpara. 1 (a) in conjunction with § 17 para. 1 KartG on TCH s.r.l. on the grounds of an illegal merger implemented between 18 May 2017 and 27 March 2018, namely acquisition of CIMOS d.d. AVTOMOBILSKA INDUSTRIJA.

The respondent had informed BWB of the breach on its own initiative and facilitated the investigation of the case by not disputing it.

On 26 February 2018 the respondent retroactively notified BWB of its acquisition on 18 May 2017 of CIMOS d.d. AVTOMOBILSKA INDUSTRIJA. The merger related to the manufacture of turbochargers, power train components and braking systems. No request for examination was filed, with the standstill obligation consequently expiring as at 27 March 2018.

When setting the fine, BWB had taken into account the fact that the company had voluntarily reported its own offence, that the merger did not have any negative impact on competition and that the acquisition negotiations had taken place under considerable time pressure owing to the target company's looming insolvency; the company had sought legal advice during negotiations, and the firm providing it had overlooked the need for notification.

### 3.8.3 Containex

On 24 April 2018 the Cartel Court, at BWB's request, imposed a fine of € 100,000 pursuant to § 29 subpara. 1 (a) in conjunction with § 17 para. 1 KartG on Containex Container-Handelsgesellschaft mbH and Českoslezská výrobní a.s on the grounds of an illegal merger implemented between 20 July 2006 and 19 December 2017, namely acquisition by Containex Container-Handelsgesellschaft mbH of 66.51% of the shares in Českoslezská výrobní a.s, Zlaté Hory, Czech Republic. The respondent had informed BWB of the breach on its own initiative and facilitated the investigation of the case by not disputing it.

On 20 November 2017 the respondent retroactively notified BWB of the acquisition by Containex Container-Handelsgesellschaft mbH of 66.51% of the shares in Českoslezská výrobní a.s, Zlaté Hory, Czech Republic, on 20 July 2006. The merger related to the production of portable and sanitary cabins. No request for examination was filed, with the standstill obligation consequently expiring as at 19 December 2017.

When setting the fine, BWB had taken into account the fact that the company had voluntarily reported its own offence, that the merger did not have any negative impact on competition and that the transaction had no significant bearing on Austria, in the respondent's view: while the turnover generated by the target company with the acquiring party was billed in Austria, the products were predominantly delivered to other countries.

# 4 Cartels, concerted practices and investigations

## 4.1 Dawn raids

During 2018 BWB conducted four dawn raids. Consumer electronics and the materials industry were two of the sectors affected. These dawn raids were intended to uncover breaches such as price fixing with suppliers, price coordination among suppliers or concerted practices.

## 4.2 Ongoing investigations in the construction sector

BWB launched an investigation in the construction sector after tax inspectors had found a suspicious file in a Carinthian company. The documents in the file suggested price fixing arrangements and the exchange of competition-sensitive information in connection with invitations to tender for construction projects.

Based on these documents, BWB cooperated with the Central Public Prosecutor for Economic Crime and Corruption (WKStA) and the Federal Bureau of Anti-Corruption (BAK), searching the premises of numerous Austrian construction companies in May 2017. Further dawn raids were carried out in June 2018.

The Supreme Court of Justice (OGH) confirmed that the seized documents raised serious suspicions that anti-competitive agreements had been used widely and systematically for years and in at least 80 cases (after reply to the appeal: 93). The OGH found no basis for the assertion that these agreements were restricted to certain sectors of the construction industry, as the companies involved according to the documents were active in several sectors (e.g. surface, road, bridge and underground construction). It was also unclear from the respondents' arguments why these agreements should have been limited to two provinces and one single construction sector, namely the underground construction sector (cf. Supreme Court sitting as the Supreme Cartel Court 16 Ok 1/17h).

BWB's ongoing investigations into suspected anti-competitive behaviour in relation to construction tenders are extensive and cover a large number of differently sized construction projects. The construction projects that might be affected by such agreements, as currently known, were put out to tender by both the public sector and private companies, and they also relate to various different construction sectors, as already found by the OGH. As things now stand, the primary victims are public buyers and therefore the taxpayer. No unequivocal conclusion has been drawn about the affected regions; it appears that as good as the whole country is affected.

BWB is working closely with WKStA and BAK to fully resolve the issue of anti-competitive practices in the construction sector.

### 4.3 Disposable gloves

At BWB's request, the Cartel Court imposed a fine of € 1.6 million on Semperit because of a breach committed during the period from July 2002 to March 2017.

Joint venture agreements between Semperit and the STA Group laid down that the European market for the distribution of jointly produced products (in particular latex examination gloves) would be exclusively allocated to Semperit.

In its partial decision of 27 June 2016 the Cartel Court banned Semperit from invoking the relevant contract terms. The Supreme Cartel Court confirmed this decision.

The STA Group submitted an application for leniency to BWB in 2015. The company had fulfilled all of the conditions for acceptance of the leniency application and had cooperated consistently and comprehensively during the investigation. For this reason, BWB refrained from applying for a fine and only applied to the Cartel Court for a declaratory judgment in relation to a breach against Article 101 TFEU and § 1 KartG 2005.

With regard to the STA Group (based in Thailand), the Cartel Court only declared them to be in breach during the same period of time but imposed no fine as the company had applied for leniency with BWB.

All agreements and concerted practices which have as their object or effect the prevention, restriction or distortion of competition are prohibited under Article 101 TFEU and § 1 KartG 2005. The ban on cartels specifically prohibits the sharing of markets. Semperit and the STA Group did not contest the decision. The decision is final.

## 4.4 Online-Handel

BWB again focused on online selling in 2018. Following applications filed by BWB, the Cartel Court fined Devolo Austria GmbH and Ingram Micro GmbH a total of € 511,888.

### 4.4.1 Devolo Austria GmbH

On 28 August 2018 the Cartel Court, at the request of BWB, imposed a fine of € 223,000 on Devolo Austria GmbH.

Devolo had agreed resale prices relating to connectivity devices with various retailers/resellers during the period from March 2012 to December 2015.

The arrangements were intended to influence resellers' pricing in order to restrict or avoid intrabrand competition, i.e. competition among providers of the same brand, and thereby secure certain prices.

This type of vertical fixing of resale prices constitutes a material infringement of Article 101 TFEU and § 1 KartG. The decision is final.

### 4.4.2 Ingram Micro GmbH

At BWB's request, the Cartel Court imposed a fine of € 288,888 on Ingram Micro GmbH on 6 November 2018.

Ingram Micro had agreed resale prices for lifecycle services (mobile end devices) with various retailers and resellers during the period from March 2012 to October 2017.

The arrangements were intended to influence resellers' pricing in order to restrict or avoid intrabrand competition, i.e. competition among providers of the same brand, and thereby secure certain prices. On account of the direct impact on price competition, this is a hardcore restriction and therefore a severe violation of cartel law.

Repeatedly "leaning" on retailers with the clear aim of making them follow a price recommendation rules out the possibility of the recommendation being considered as non-binding. The decision is final.

## 4.5 A1 Tankstellenbetriebs GmbH

The Cartel Court imposed a fine of € 70,000 on A1 Tankstellenbetriebs GmbH for a breach committed during the period from April 2015 to February 2018.

A1 Tankstellenbetriebs GmbH entered into brand and supply agreements with individual filling station leaseholders that included illegal price fixing.

Furthermore, the filling station leaseholders also used a POS system from A1 Tankstellenbetriebs GmbH into which the latter was able to input its selling prices directly.

These selling prices were also shown on the price display signs (totem displays) and the filling stations' petrol pumps, which constitutes illegal price fixing in accordance with § 1 KartG.

The company did not contest the decision. The decision is final.

## 4.6 Distribution of surgical instruments

A public hospital provider submitted a complaint, thereby instituting proceedings on the definition of active and passive sales in connection with a (Europe-wide) procurement process for surgical instruments that was subject to the Federal Public Procurement Act (BVergG).

Applicable EU rules, specifically Article 101 TFEU and Article 4 of Commission Regulation (EU) No 330/2010 (Block Exemption Regulation), permit restrictions of active sales within the scope of exclusive distributorship as long as a market share threshold of 30% is not exceeded. Passive sales, particularly fulfilling unsolicited orders, however, must always be possible.

The question of whether participation in an official award procedure constitutes an active or passive sale is yet to be resolved by the courts and legal literature. BWB opined that it merely constitutes a passive sale transaction that must not be subject to any kind of restriction as a result of distribution agreements.

BWB argued that the initiative to conclude a contract comes from the customer, and a tender or request to participate was always only submitted by the bidder in reaction to an invitation to tender.

Otherwise, public buyers would be disadvantaged while, in accordance with EU procurement rules, they should benefit from receiving bids from the entire EEA, creating an insoluble inconsistency with European antitrust rules.

The situation in relation to the internal market is similar. If it was considered an active sale, companies would be able to uphold the foreclosure of their national markets, particularly where public buyers were concerned.

The parties undertook to consider participation in public-sector invitations to tender as passive sales in future. On 10 October 2018 the Cartel Court declared these commitments to be binding pursuant to § 27 KartG.

# 5 Other processes and reports

## 5.1 Preliminary reviews in accordance with ORF-G

Since 2010 any new offerings from ORF, Austria's public broadcaster, must be the subject of a preliminary review as defined in § 6 et seq. of the Austrian Broadcasting Corporation Act (ORF-G). As well as reviewing the contribution that the new offering will make to fulfilment of ORF's public service remit, the Austrian Communications Authority (KommAustria) also considers the impact on competition and diversity, and may also approve the new offering subject to certain conditions being met.

BWB is the authority responsible for upholding the interests of competition during this process. In this capacity, it issues a statement on the likely effects of the new offering on the competition situation of other media companies that operate in Austria and may subject the decisions made by KommAustria to a review (§ 6a paras. 4 and 5 ORF-G).

In 2018 KommAustria and the Federal Administrative Court (BVwG) made decisions on several pending cases on which BWB had issued a statement or which had been the subject of an appeal.

### 5.1.1 YouTube

The object of the preliminary review was the launch of an ORF YouTube channel (see BWB Annual Report 2017, p. 49). The idea was that this channel would include content from ORF television broadcasts as well as web-only videos produced exclusively for YouTube. Following the results of the public consultation during the preliminary process, the originally planned commercial marketing of the offer, in cooperation with YouTube, was removed from the ORF application.

The BWB statement of 14 June 2017 was positive in its assessment of ORF's aim of improving the way it communicates with the younger generation of 14 to 29-year-olds. However, it was critical of the fact that the practical implementation would conflict with the conditions defined in § 4e ORF-G for the protection of competition interests and called for any approval of the plan to



be subject to qualitative, quantitative and time-based limits being placed on ORF's YouTube content, in this way restricting any impairment of competition interests protected by law to the extent required for performance of the public service remit.

KommAustria, in its decision of 9 May 2018 (KOA 11.278/18-001 - available online), rejected ORF's application for a change to its "Social media" offering pursuant to § 6b in conjunction with § 4f ORF-G. The main reason given for the rejection was a breach of the ban on discrimination under § 2 para. 4 ORF-G as a result of ORF cooperating exclusively with YouTube and to the detriment of all other media and social media platforms. KommAustria also questioned whether the new offering would contribute to performance of ORF's public service remit insofar as ORF content would be moved away from ORF's own platforms to YouTube, thereby weakening the existing public offering as defined in § 6b para. 3 subpara. 1 ORF-G. ORF has not objected to the decision, with the result that it is now legally binding.

### 5.1.2 Flimmit

This case related to the intended inclusion in ORF's public service charter of the video-on-demand Flimmit platform, enabling online users to watch ORF's own and commissioned productions as well as co-productions and, to a lesser extent, purchased content (see BWB Annual Report 2017, p. 49).

BWB issued its statement on the ORF proposal on 19 December 2017, essentially concluding that there were no 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.

KommAustria, in its decision of 9 May 2018 (KOA 11.280/18-004 - available online), rejected ORF's application for a "Public on-demand service focusing on fiction (films and series)" pursuant to § 6b in conjunction with § 4f ORF-G. The reason given for the rejection was that the financing concept submitted by ORF had not been compliant with the terms of the ORF-G. ORF lodged an appeal against this decision with the BVwG on 13 July 2018. Given that the issue at stake is not a competition issue as defined in § 6a para. 4 subpara. 2 ORF-G, BWB refrained from issuing a statement to the Court. The case is still pending.

### 5.1.3 Ö3-Live-Visual

ORF applied to have its new Ö3-Live/Visual offering approved in September 2014. Its application was rejected by KommAustria in the latter's decision of 18 February 2015 (KOA 11.266/15-001 - available online) (see BWB Annual Report 2014, p. 59).

ORF lodged an appeal against this decision with the BVwG. In its statement to the Court, BWB explained that the introduction of an online television channel would create inconsistencies, as online offerings are not required to comply with all of the rules set out in the ORF-G for television channels (including limits on advertising time, advertising bans, sponsoring and product placement). It was BWB's view that such inconsistencies, as well as the statutory definition of the public service remit under EU law, were arguments against an extension of the statutory remit in the context of a preliminary review, which was not covered by a statutory authorisation.

In its ruling of 1 October 2018 (GZ W249 2104463-1/10E), the BVwG rejected ORF's appeal, upholding the KommAustria decision in its entirety. The Court ruled that ORF's remit to supply terrestrial television and radio content was conclusively defined in § 3 ORF-G.

Given that Ö3-Live/Visual is classed as a television channel, this new offering would extend beyond the remit as clearly defined in law and could also not be approved on the basis of § 4e ORF-G as a new online offer. The Court's decision is not yet legally binding, and ORF has now appealed to the Administrative Court (VwGH).

### 5.1.4 Radiothek

ORF applied to have its new Radiothek offering approved in September 2014. Its application was approved by KommAustria in its decision of 22 July 2015 (KOA 11.277/15-004 - available online), subject to certain conditions (see BWB Annual Report 2015, p. 49). Any impact on radio markets was excluded from the review forming the basis of the decision.

In its appeal against the decision, lodged on 20 August 2015, BWB referred to the European legal framework and the Commission's Broadcasting Communication to argue that the preliminary review pursuant to § 6 et seq. of ORF-G must take account of all of the potential effects of a new offer. The aim, according to BWB, was to make the approval of Radiothek subject to certain conditions in order to reduce the negative impact on its closest rivals in radio broadcasting.

The BVwG rejected BWB's appeal in its ruling of 23 November 2018 (GZ W249 2113388-1/21E), fundamentally acknowledging the responsibility of BWB, in its capacity as an official party, for securing the objective lawfulness of the final decision by upholding the interests of competition and also recognising that BWB may therefore appeal to the BVwG despite the lack of any explicit instruction in § 6a para. 5 ORF-G. In this case, however, the Court sided with KommAustria. In its view, existing live stream products from ORF did not need to be included in the review due to a lack of essential changes as defined in § 6 ORF-G. For this reason, any potential impact on radio broadcasting markets (listeners and advertising) could not be included in the review. BWB has not lodged any further appeal.

## 5.2 Consumer Protection Cooperation

The Consumer Protection Cooperation (CPC) 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 competent 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.

The Ministry of Social Affairs acts in the capacity of Single Liaison Office (SLO). There was once again a good working relationship between the Ministry and BWB in 2018.

### Alerts

Alerts take the form of unsolicited warnings issued by one authority to another. BWB received 26 such alerts during the period from 1 January to 31 December 2018.

### 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. For its part, BWB made one request to another CPC authority, in this case Germany.

This request for information related to a German circus that toured various Austrian locations in 2016 and 2017.

As well as being advertised on the circus's website and on Facebook, the circus performances were also advertised on posters that included pictures of wild animals, in particular an elephant, giraffe and grizzly bear.

BWB believed that advertising the event using wild animals was a misleading and dishonest business practice. Given the cross-border nature of the case, with both Germany and Austria involved, BWB was able to take action in the context of consumer protection cooperation.

This involved BWB sending its German colleagues at the Federal Ministry of Justice and Consumer Protection an information request, as a result of which it was possible to put an end to the circus operator's breach of the rules.

Since this time, no references to wild animals and no adverts using wild animals have been seen on the circus's website or on Facebook.

### **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 an intra-Community breach. BWB received two such requests during the period from 1 January 2017 to 31 December 2018, one of which was no longer required due to the breach coming to an end.

### **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 16 January 2018 and is due to take effect from 17 January 2020.

The Communication from the Commission of 6 May 2015 entitled "A Digital Single Market Strategy for Europe" names as one of the priorities the need to enhance consumer confidence through more rapid, agile and consistent enforcement of consumer rules. The Commission's Communication of 28 Oc-

tober 2015 on “Upgrading the Single Market: more opportunities for people and business” reiterates 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 competent authorities’ current powers.

## Geoblocking

Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers’ nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC aims to eliminate unjustified discrimination during online selling. The ban on geo-blocking is a key component of the strategy for a digital single market.

While the Regulation entered into force in all EU Member States back on 23 March 2018, it was not applied until 3 December 2018 to give smaller retailers in particular time to prepare.

The Commission will carry out an initial assessment within two years of the legislation entering into force in order to determine its impact on the internal market, particularly with regard to certain services that are provided electronically and content protected by copyright such as downloadable music, e-books, software and online games, as well as transport and audiovisual services.

With regard to the Geo-blocking Regulation, BWB is responsible for enforcement in the event of cross-border breaches in the B2C (business-to-consumer) sector.

## Consumer Protection Cooperation meetings and workshops

### Consumer Policy Forum

BWB was involved in the annual Consumer Policy Forum organised by the Ministry of Social Affairs once again in 2018. This two-day conference is dedicated to the consumer policy issues of the day and is attended by a broad range of consumer protection organisations, associations and authorities.

### European Consumer Centre Sweden (ECC)

The ECC Sweden paid a study visit to Vienna in June 2018. The Austrian Ministry of Social Affairs, the European Consumer Centre Austria, the deputy Federal Cartel Prosecutor and BWB were all involved in the visit.

### Workshops with BWB involvement:

- CPC-Committee-Meeting
- IT-Tool Summary Key User
- Priority
- Geoblocking Regulation
- Joint Workshop CPC/ECC/BEUC

### Sweep 2018

BWB was also involved in a “sweep” in 2018. This is a coordinated set of checks carried out by the European Commission and Member States in a particular sector.

The focus of the 2018 sweep was drip pricing, particularly in relation to online shops and discrepancies between the initial price and the final price caused by the addition of fees and surcharges during the booking process.

BWB will subsequently be arranging for enforcement requests to be made to the relevant competent authorities in relation to the breaches identified during the sweep

### 5.3 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.

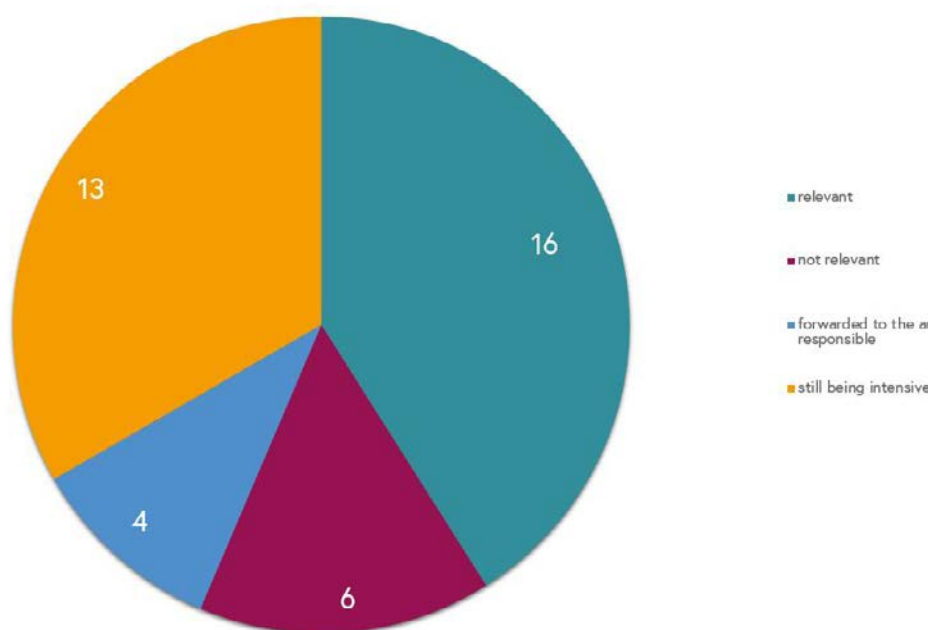
BWB published its whistleblowing system in February 2018. Anyone can use this system at any time of day to get in touch with BWB anonymously to report potential breaches of cartel law.

By the end of 2018, 39 reports had been submitted, of which:

- 16 were immediately classed as not relevant to BWB or other authorities,
- 6 were classed, following an in-depth review, as not relevant to BWB or other authorities,
- 4 were forwarded to the authorities responsible, and
- 13 are still being intensively reviewed.

#### Whistleblowing notifications

See the following diagram for an illustration of the whistleblowing notifications.



# 6 Annex

## 6.1 Cases in 2018

Cases 1 January to 31 December 2018	1.Q.	2.Q.	3.Q.	4.Q.	TOTAL
<b>Cases Austria</b>					
Merger notifications	99	118	127	138	482
Other merger cases	7	7	7	5	26
Illegal mergers	2	0	1	3	6
Cartel cases KartG	9	9	15	13	46
Abuse of dominance cases KartG	3	5	4	7	19
UWG/Consumer protection/ORF-G	6	5	4	10	25
Miscellaneous (incl. requests for information)	17	10	18	14	59
<b>TOTAL Cases Austria</b>	<b>143</b>	<b>154</b>	<b>176</b>	<b>190</b>	<b>663</b>
<b>Cases Europe</b>					
Antitrust and abuse of dominance (EU) - Commission	1	3	2	2	8
Merger cases (EU)	87	97	113	91	388
<b>TOTAL Cases Europe</b>	<b>88</b>	<b>100</b>	<b>115</b>	<b>93</b>	<b>396</b>
<b>TOTAL Cases Austria and Europe</b>	<b>231</b>	<b>254</b>	<b>291</b>	<b>283</b>	<b>1059</b>
<b>Other</b>					
Dawn raids	1	4	0	1	6
Forensic IT	1	0	1	0	2
Administrative matters	7	4	7	15	33
International matters (OECD and others)	11	13	13	16	53
Legislation	23	13	7	7	50
European court proceedings (General Court)	0	5	3	1	9
Competition Commission	1	3	0	2	6
European Competition Network	19	33	13	13	78
Other (Dir. Gen., general economic/legal cases etc.)	21	11	10	19	61
<b>TOTAL Miscellaneous</b>	<b>84</b>	<b>86</b>	<b>54</b>	<b>74</b>	<b>298</b>
<b>SUM TOTAL 2018</b>	<b>315</b>	<b>340</b>	<b>345</b>	<b>357</b>	<b>1357</b>

Data refers to when the case arose and may differ from that in merger statistics.



## 6.2 Fines imposed in Austria 2002-2018

### Table of fines

The following table lists all fines imposed with a final decision of the Cartel Court following requests made by the Federal Competition Authority and/or the Federal Cartel Prosecutor.

Industry	Cartel agreements and abuse of a dominant position	Fine in €	Year
Mobile end devices	Ingram Micro GmbH	288,888	2018
Filling stations	A1 Tankstellenbetriebs GmbH	70,000	2018
Electronics	Devalo Austria GmbH	223,000	2018
Rubber (disposable gloves)	Semperit Technische Produkte GesmbH	1,600,000	2018
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	2016
Electronics	De'Longhi-Kenwood GmbH	650,000	2016
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 Speditions 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	Hewlett-Packard Gesellschaft mbH	640,000	2015
Electronics	KTM Fahrrad GmbH	112,000	2015
Electronics	United Navigation GmbH	100,000	2015
Electronics	Samsung Electronics Austria GmbH	1,050,000	2015
Food retailing	SPAR Austria Group	30,000,000	2015
Electronics	Nikon GmbH (Vienna branch)	170,000	2015

Industry	Cartel agreements and abuse of a dominant position	Fine in €	Year
Steel trade	Frankstahl Rohr- und Stahlhandels-gesellschaft mbH	147,000	2015
Food retailing	Pago International GmbH	152,460	2015
Food retailing	Pfeiffer HandelsgmbH und die Ziel-punkt GmbH	562,500	2015
Steel trade	Großschädl Stahlgroßhandel Gesell-schaft m.b.H.	47,500	2015
Steel trade	Eisen Wagner Gesellschaft mbH	150,000	2015
Steel trade	Filli Stahlgroßhandels-gesellschaft m.b.H	32,500	2015
Steel trade	Mechel Service Stahlhandel Austria GmbH	200,000	2015
Sporting goods trade	Sport Pangratz & Ess GmbH, Alber Sport GmbH, Sport Jennewein Martin e.U., Sport Fauner GmbH & Co KG	419,000	2015
Food retailing	Vöslauer Mineralwasser AG	653,775	2015
Food retailing	Brauerei Joseph Baumgartner GmbH	56,250	2014
Food retailing	NÖM AG	583,200	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
Electronics	Grundig Intermedia GmbH	372,000	2014
Food retailing	Brauerei Hirt Gesellschaft mbH	58,500	2014
Electronics	SSA Fluidra	50,000	2014
Food retailing	AFS Franchise-Systeme GmbH	225,000	2014
Insulating material	swisspor Österreich GmbH & Co KG	290,000	2014
Food retailing	Braucommune in Freistadt	52,500	2014
Electronics	Hans Lurf GmbH	100,000	2014
Food retailing	Mohrenbrauerei August Huber KG	82,500	2014
Electronics	Media-Saturn BeteiligungsgmbH	1,230,000	2014
Electronics	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

Industry	Cartel agreements and abuse of a dominant position	Fine in €	Year
Forwarding trade	<p>Austrian Freight Forwarding Agents Consolidated Consignment Conference (SSK)</p> <p>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 &amp; Co KG *, Johann Huber Spedition und Transportgesellschaft mbH, Kapeller Internationale Spedition GmbH, Keimelmayr Speditions- u. Transport GmbH*, Koch Spedition KG (formerly Koch Speditions GmbH), Kühne + Nagel GmbH, Lagermax Internationale Spedition Gesellschaft mbH, Morawa Transport GmbH (in liquidation), Johann Ogris Internationale Transport- und Speditions GmbH, Logwin Road + Rail Austria GmbH, Internationale Spedition Schneckenreither Gesellschaft mbH, Leopold Schöffl GmbH &amp; Co KG*, „Spedpack“-Speditions- und Verpackungsgesellschaft mbH*, Johann Strauss GmbH, Thomas Spedition GmbH*, Traussnig Spedition GmbH, Treu SpeditionsgesmbH, Spedition Anton Wagner GmbH*, Gebrüder Weiss GmbH, Wildenhofer Spedition und Transport GmbH, Marehard u. Wuger Internat. Speditions- u. Logistik GmbH* and Rail Cargo Austria AG</p> <p>* 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.</p>	17,500,000	2014
Food retailing	Kärntner Milch reg.GenmbH	375,000	2013
Food retailing	Vorarlberger Mühlen- und Mischfutterwerke GmbH	58,500	2013

Industry	Cartel agreements and abuse of a dominant position	Fine in €	Year
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	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
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

Industry	Cartel agreements and abuse of a dominant position	Fine in €	Year
<b>Other cases (selection)</b>			
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
<b>Illegal mergers</b>			
Illegal merger	TCH s.r.l.	55,000	2018
Illegal merger	Containex Container-Handelsgesellschaft mbH; Česko-slezská výrobní a.s	100,000	2018
Illegal merger	Luxembourg Holdings 70 S.a.r.l.; Texbond S.p.A.	40,000	2018
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; Friedhelm Loh	11,000	2017
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	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

Industry	Cartel agreements and abuse of a dominant position	Fine in €	Year
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	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 2019	Total fines/penalty payments	200,044,608	2002-2018

## 6.3 Merger statistics

Merger statistics 2018		
Case No.	Companies	Status
3777	LYB Americas Finance; SUEZ Recycling & Recovery Netherlands; SUEZ Polymers; QCP	Expiry of deadline
3778	Italmatch Chemicals S.p.A.; Changzhou Jiayou Chemical Co., Ltd.	Expiry of deadline
3779	Faurecia Exhaust International S.A.S.; Hug Engineering AG	Expiry of deadline
3780	Autogrill Deutschland; Le Fournil "Frédéric Neuhauser" Backwaren; Le Crobag; Le Crobag Polska	Expiry of deadline
3781	Liechtensteinische Landesbank; SEMPER CONSTANTIA PRIVATBANK	Expiry of deadline
3782	KKR & Co. L.P.; Sandvik Hyperion Group	Expiry of deadline
3783	Nestlé S.A.; Acquisition Glacier II Inc.	Expiry of deadline
3784	Platinum Equity Group; Husky IMS International Ltd.	Expiry of deadline
3785	KKR & Co. L.P.; Pillarstone Italy Holding S.p.A.; Manucor S.p.A.	Expiry of deadline
3786	Warner Bros. Entertainment Inc.; Pottermore Inc.	Expiry of deadline
3787	Onex Corporation; Southern Graphics, Inc.; Diadeis Group	Expiry of deadline
3788	ESSVP IV, L.P.; ESSVP IV (Structured) L.P.; Siljan Group AB; Silenos GmbH & Co. KG	Expiry of deadline
3789	Stalprodukt Spółka Akcyjna; GO Steel Frýdek Místek a.s.	Expiry of deadline
3790	Boardriders; Quiksilver Australia Pty; Poseidon Acquisition Company Pty; Billabong	Expiry of deadline
3791	Höganäs AB; H.C. Starck; H.C. Starck Surface Technology and Ceramic Powders	Expiry of deadline
3792	Nagarro Austria; ANECON Software Design und Beratung	Expiry of deadline
3793	Brau Union Aktiengesellschaft; Ammersin Gesellschaft m.b.H.	Expiry of deadline
3794	DCC Energy LPG Holdings Ltd; TEGA-Technische Gase und Gasetechnik GmbH	Expiry of deadline
3795	Vonovia SE; BUWOG AG	Waiver of examination
3796	Knauf International GmbH; Armstrong World Industries, Inc.	Expiry of deadline
3797	Electrolux Deutschland GmbH; Schneidereit GmbH	Expiry of deadline

Merger statistics 2018		
Case No.	Companies	Status
3798	Intelligent Apps GmbH; Transcovo SAS	Expiry of deadline
3799	Plastech Beteiligungs GmbH; Kautex Holding GmbH	Expiry of deadline
3800	Daimler AG; Daimler Mobility Services GmbH; Intelligent Apps GmbH	Expiry of deadline
3801	Fin. Fer. S.p.A.; ORI Martin S.p.A.	Expiry of deadline
3802	Otto International GmbH; Scan-Thor Group, A/S	Expiry of deadline
3803	KIRKBI Invest A/S; Välinge International AB	Expiry of deadline
3804	UNIQA Insurance Group AG; Dolphin Technologies GmbH	Expiry of deadline
3805	Infopro Digital International B.V.; Docu Group (Lux 1) S.à r.l.	Waiver of examination
3806	Bayerische Motoren Werke; DriveNow GmbH & Co. KG; DriveNow Verwaltungs-GmbH	Expiry of deadline
3807	Laudamotion GmbH; NIKI Luftfahrt GmbH	Waiver of examination
3808	Télévision Française 1 SA; Aufeminin SA	Expiry of deadline
3809	Motorola Solutions Inc.; Avigilon Corporation	Expiry of deadline
3810	Europapier International; Carl Bernh. Hoffmann	Expiry of deadline
3811	Gerflor S.A.S.; DLW Group	Waiver of examination
3812	Bain Capital Investors, LLC; Bugaboo Holding B.V.; Royalty Bugaboo GmbH	Expiry of deadline
3813	STRABAG Real Estate GmbH; Erste Group Immorent GmbH	Expiry of deadline
3814	GVC Holdings PLC; Ladbrokes Coral Group PLC	Expiry of deadline
3815	Triumph Science and Technology Group LLC; Singulus Technologies AG	Expiry of deadline
3816	Equistone Partners Europe Ltd.; Ramesh Flowers Pvt Ltd.	Expiry of deadline
3817	BGO Holding GmbH; hali gmbh; svoboda büromöbel gmbh	Expiry of deadline
3818	Sonepar Österreich GmbH; GFI Gesellschaft für Installationstechnik GmbH	Expiry of deadline
3819	Compagnie Financière Michelin ScMA; Christophorus Holding GmbH	Expiry of deadline
3820	Rohrdorfer Transportbeton GmbH; ALAS Klöch GmbH; Betonexpress FH Vertriebs-GMBH	Expiry of deadline



Merger statistics 2018		
Case No.	Companies	Status
3821	Clayton Dublier & Rice; Three-Twenty-Three Family, LLC 2; American Greetings Corporation	Expiry of deadline
3822	Miba; John Crane Bearing Technology; Orion; Turbo Components and Engineering	Expiry of deadline
3823	DPE Deutsche Private Equity Management III GmbH; VTU Engineering Group	Expiry of deadline
3824	Eurazeo S.E.; Rhône Group L.L.C.	Expiry of deadline
3825	APA-Austria Presse Agentur eG; Schweizerische Depeschenagentur AG	Expiry of deadline
3826	SAP SE; Callidus Software Inc.	Expiry of deadline
3827	UMCOR Holding GmbH; Etablissements Gindre Duchavany S.A.S.	Expiry of deadline
3828	Bridgepoint Group Limited; Safety Technology Holdings, Inc.	Expiry of deadline
3829	TE Connectivity Ltd.; ABB ENTRELEC Sp. z.o.o.	Expiry of deadline
3830	OFFICE PLANET GmbH; GB Immobilien G.m.b.H.	Expiry of deadline
3831	Adolf Würth GmbH & Co. KG; Liqui Moly GmbH	Expiry of deadline
3832	svt; Rolf Kuhn; Rolf Kuhn Brandschutz; Flamro Brandschutz	Expiry of deadline
3833	PGIM LTIF S.C.S.; SIGNA HOLDING GMBH; AOC Holding GmbH	Expiry of deadline
3834	Japan Vilene Company, Ltd.; Hanns Glass GmbH & Co. KG	Expiry of deadline
3835	Meridiam Infrastructure Finance Sarl; Bonaventura Straßenerichtungs-GmbH	Expiry of deadline
3836	Georg Fischer AG; Precicast Industrial Holding AG	Expiry of deadline
3837	West Corporation; Nasdaq, Inc.	Expiry of deadline
3838	General Atlantic LLC; NCG - Nucom Group SE	Expiry of deadline
3839	Schur Flexibles Holding GesmbH; Hänsel Flexible Packaging; Cats Flexible Packaging; Nimax	Expiry of deadline
3840	KKCG AG; SAZKA Group a.s.	Expiry of deadline
3841	European Laboratory Services S.à r.l.; lifebrain AG	Expiry of deadline
3842	Thoma Bravo, LLC; Nintex Global Ltd.	Expiry of deadline
3843	IPH S.A.S.; OREFI PARTICIPATION SAS; Minetti S.p.A.	Expiry of deadline

Merger statistics 2018		
Case No.	Companies	Status
3844	VOLKSBANK WIEN AG; Waldviertler Volksbank Horn reg Gen mbH	Expiry of deadline
3845	HIRSCH Porozell GmbH; Saint-Gobain Rigips GmbH	Expiry of deadline
3846	TCH S.r.l.; CIMOS d.d. AVTOMOBILSKA INDUSTRIJA	Expiry of deadline
3847	TŘINECKÉ ŽELEZÁRNY, a.s.; Brück AM spol. s r. o.	Expiry of deadline
3848	SIGNA Retail GmbH; Publikat GmbH; Publikat Verlags- und Handels GmbH & Co. KG	Expiry of deadline
3849	Mayr-Melnhof Weiterverarbeitungs Holding GmbH; Hüttemann Group	Expiry of deadline
3850	MET Holding AG; TIGÁZ Tiszántúli Gázszolgáltató Zártkörűen Működő Részvénytársaság	Expiry of deadline
3851	Sberbank of Russia; Yandex.Market B.V.	Expiry of deadline
3852	Medienholding Klambt; assets of women's magazine "Jolie" and online portal mädchen.de	Expiry of deadline
3853	Daimler Mobility Services GmbH; car2go Europe GmbH	Expiry of deadline
3854	Fosun Industrial Holdings Limited; Wolford Aktiengesellschaft	Expiry of deadline
3855	Triton Managers IV Limited; TFF IV Limited; Profim sp. z o.o.	Expiry of deadline
3856	Tamedia AG; Goldbach Group AG	Expiry of deadline
3857	Intersnack International B.V.; Grefusa, S.L.	Expiry of deadline
3858	The Braun Corporation; Autoadapt AB	Waiver of examination
3859	PORR AG; ABW Abbruch-, Boden- und Wasserreinigung; AUL Abfallumladelogistik Austria	Expiry of deadline
3860	Viessmann Werke GmbH&Co KG; ETHERMA Holding GmbH	Expiry of deadline
3861	WestRock Company; KapStone Paper and Packaging Corporation	Expiry of deadline
3862	Südbayerisches Portland-Zementwerk Gebr. Wiesböck; Semmelrock Stein + Design	Expiry of deadline
3863	REWE International AG; industrial property rights of Toni's Handels-GmbH	Expiry of deadline
3864	BZ Bank Aktiengesellschaft; United Grinding GmbH	Expiry of deadline
3865	Equistone Partners Europe Ltd.; Korona Candles S.A.	Expiry of deadline

Merger statistics 2018		
Case No.	Companies	Status
3866	Equistone Partners Europe Ltd.; BOAL Holding B.V.	Expiry of deadline
3867	Shandong Ruyi International Fashion Industry Investment Holding Co, Ltd.; Bally International AG	Expiry of deadline
3868	Duff & Phelps LLC; Kroll, LLC	Expiry of deadline
3869	MORAVIA STEEL, a.s.; Kovárna VIVA, a.s.	Expiry of deadline
3870	AVAG Holding SE; Wiesenthal Handel und Service GmbH	Expiry of deadline
3871	Schur Flexibles Holding GesmbH; SAS UNI Packaging; UPA GmbH	Waiver of examination
3872	J.C. Flowers & Co. LLC; HSH Nordbank AG	Expiry of deadline
3873	Cerberus Capital Management LP; HSH Nordbank AG	Expiry of deadline
3874	The Goldman Sachs Group, Inc; Voodoo SAS	Expiry of deadline
3875	HIRSCH Porozell GmbH; Isobouw GmbH; Genevad Holding AB	Expiry of deadline
3876	Axel Springer SE; Universum Communications Sweden AB	Expiry of deadline
3877	SOF-11Starlight 10 EUR S.à r.l.; CA Immobilien Anlagen Aktiengesellschaft	Expiry of deadline
3878	AUDI Electronics Venture GmbH; Valtech GmbH	Expiry of deadline
3879	BSA International; Routhier-Weber; Alwelis Weber	Expiry of deadline
3880	Eckes-Granini Beteiligungsverwaltung GmbH; true fruits GmbH	Expiry of deadline
3881	Rome Topco B.V.; BBS Automation GmbH	Expiry of deadline
3882	Quadriga Capital Private Equity Fund IV; Aspire Education; Enterprise Training Center; Global TC	Expiry of deadline
3883	Compagnie Générale des Établissements Michelin SCA; Fenner PLC	Expiry of deadline
3884	SHW Beteiligungs GmbH; SHW AG	Expiry of deadline
3885	Sanova Pharma GesmbH; Ökopharm GmbH	Expiry of deadline
3886	FUJIFILM Holdings Corporation; IS Japan Co. Ltd.; Irvine Scientific Sales Company, Inc.	Expiry of deadline
3887	Naxicap Partners; European Cargo Service SA	Expiry of deadline

Merger statistics 2018		
Case No.	Companies	Status
3888	A-Gas Deutschland GmbH; Arthur Friedrich Kältemittel GmbH	Expiry of deadline
3889	capiton V GmbH & Co. Beteiligungs KG; Magix Software GmbH	Expiry of deadline
3890	Microchip Technology Incorporated; Microsemi Corporation	Expiry of deadline
3891	The Ambassador Theatre; BB Entertainment; Mehr! Entertainment	Expiry of deadline
3892	KLA-Tencor Corporation; Orbotech Ltd.	Expiry of deadline
3893	UFP Holding GmbH; item holding GmbH; timo printware GmbH	Expiry of deadline
3894	Capvis Equity V L.P.; Partners Group Holding AG; Limera GmbH; Amann GIRRbach AG	Expiry of deadline
3895	Budamar Logistics, a.s.; Tatravagónka a.s.	Expiry of deadline
3896	Vista Equity Partners Management, LLC; LogicMonitor, Inc.	Expiry of deadline
3897	Matterhorn Buyer, LLC; H-Food Holdings, LLC	Expiry of deadline
3898	Vacalians Group SAS; Select in Leisure Holding BV	Expiry of deadline
3899	KKR & Co. L.P.; Petainer Topco Limited	Expiry of deadline
3900	IntReal International Real Estate Kapitalverwaltungsgesellschaft; Weberzeile Ried	Expiry of deadline
3901	Smyths Toys EU HQ; Toys "R" Us Handelsgesellschaft; Toys "R" Us; Toys R Us	Waiver of examination
3902	S&T; S&T Services; Kapsch CarrierCom	Expiry of deadline
3903	DFDS A/S; U.N. Ro-Ro İşletmeleri A.Ş.	Expiry of deadline
3904	manroland web systems GmbH; Goss Holdco, LLC	Expiry of deadline
3905	Molkerei Gropper GmbH & Co. KG; Dr. Oetker Frischeprodukte Moers KG	Expiry of deadline
3906	Weyland GmbH; Ferrochema GmbH; Ferroservice W. Miklitsch GmbH	Waiver of examination
3907	OÖ Beteiligungsgesellschaft; LP Holding; LP Beteiligungs- und Managementgesellschaft	Expiry of deadline
3908	EQT Mid Market Europe Limited Partnership; Dunlop Protective Footwear Holding B.V.	Expiry of deadline
3909	Veolia Environnement S.A.; Pink Robin GmbH	Expiry of deadline

Merger statistics 2018		
Case No.	Companies	Status
3910	Unifirm Limited; TUI AG	Expiry of deadline
3911	PRIMEPULSE SE; Katek GmbH	Expiry of deadline
3912	Investor AB; Patricia Industries AB; Piab Group AB	Expiry of deadline
3913	Churchill Holdco Corporation; The Alpha Corporation of Tennessee	Expiry of deadline
3914	Intermediate Capital Group plc; Linear Holding S.r.l.	Expiry of deadline
3915	Comcast Corporation; Sky plc	Waiver of examination
3916	AIT Austrian Institute of Technology GmbH; PROFAC-TOR GmbH	Expiry of deadline
3917	Joh. Winklhofer Beteiligungs GmbH & Co KG; Unimet GmbH	Expiry of deadline
3918	Saudi Basic Industries Corporation; Clariant AG	Expiry of deadline
3919	Jupiter Due S.p.A.; Scigno Holding S.p.A.	Expiry of deadline
3920	Bartenstein Holding GmbH; KNAPP AG	Expiry of deadline
3921	Sandvik AB; Metrologic Group S.A.S.	Expiry of deadline
3922	Sun Capital Partners, Inc.; ESIM Chemicals GmbH	Expiry of deadline
3923	Continental Aktiengesellschaft; OSRAM CONTINENTAL GmbH	Expiry of deadline
3924	ArcelorMittal Spain Holding S.L.; FRANKSTAHL Technology GmbH	Expiry of deadline
3925	Emerson Electric Co.; Tools and Test Equipment business of Textron Inc.	Expiry of deadline
3926	Naxicap Partners; Berlin Acoustics Group GmbH	Expiry of deadline
3927	OSRAM GmbH; BAG electronics GmbH	Expiry of deadline
3928	Koninklijke DSM NV; Zhejiang Garden Biochemical Hi-Tech Co, Ltd	Expiry of deadline
3929	Færch Plast SAS; C.G.L. Pack Service SAS	Expiry of deadline
3930	PwC Europe; PwC Schweiz; PwC Deutschland; PwC Strategy Austria	Expiry of deadline
3931	OSI Europe Foodworks GmbH; A+B HIDES GmbH & Co. KG	Expiry of deadline

Merger statistics 2018		
Case No.	Companies	Status
3932	Outokumpu Stainless AB; Fagersta Stainless AB	Expiry of deadline
3933	Let's Print Holding AG; NP Druck Gesellschaft m.b.H.	Expiry of deadline
3934	Astorg Asset Management sàrl; IGM SPECIALTIES HOLDING COÖPERATIEF U.A.	Expiry of deadline
3935	HELM AG; Phargentis S.A.	Expiry of deadline
3936	Oceanwood Capital Management Limited; NS Norway Holding AS; Norske Skog AS	Expiry of deadline
3937	Emerson Electric Co.; Aventics Holding S.à r.l.	Expiry of deadline
3938	Bluegill Acquisition Corporation; ARMO BioSciences, Inc.	Withdrawal of application (Phase I)
3939	Broadview Industries AG; Westag & Getalit Aktiengesellschaft	Expiry of deadline
3940	Fritz Schäfer GmbH & Co. KG, Einrichtungssysteme; DS Automation GmbH	Expiry of deadline
3941	Chip Bidco Limited; Corin Orthopaedics Holdings Limited	Expiry of deadline
3942	Investindustrial Group Holdings S.A.; HTL-Strefa S.A.	Expiry of deadline
3943	GSO Capital Partners LP; Concordia International Corp.	Expiry of deadline
3944	CMA CGM S.A.; CEVA Logistics AG	Expiry of deadline
3945	Smurfit International B.V.; Reparenco Holding B.V.	Expiry of deadline
3946	Amer Sports Corporation; Peak Performance Production AB	Expiry of deadline
3947	Servier S.A.S.; Shire Pharmaceutical Holdings Ireland Limited	Expiry of deadline
3948	Bain Capital Europe Fund IV, L.P.; Gruppo Cordenons S.p.A.	Expiry of deadline
3949	Bayerische Motorenwerke Aktiengesellschaft; Critical Holding S.A.	Expiry of deadline
3950	Deutsche Vermögensberatung Aktiengesellschaft; Allfinanz Aktiengesellschaft DVAG	Expiry of deadline
3951	The Hearst Corporation; Fulcrum Financial Data LLC; LevFin Insights, LLC	Expiry of deadline
3952	Intersnack International B.V.; KP Snacks Limited; Thunderball Bidco Limited	Expiry of deadline
3953	Invest Unternehmensbeteiligungs Aktiengesellschaft; e-tec electronic GmbH	Expiry of deadline

Merger statistics 2018		
Case No.	Companies	Status
3954	Ningbo Jihong Investment Co., Ltd.; GRAMMER Aktiengesellschaft	Expiry of deadline
3955	Mettler-Toledo; Mettler-Toledo; Labor für Meßtechnik Dr. Hans Stabinger	Expiry of deadline
3956	Mitsubishi Heavy Industries Thermal Systems, Ltd.; Heifo Refer GmbH	Expiry of deadline
3957	Intermediate Capital Group, plc.; Suanfarma, S.A.	Expiry of deadline
3958	Gemaco Holdings NV; Supremia International Ltd.	Expiry of deadline
3959	Vista Equity Partners Management, LLC; Integral Ad Science, Inc.	Expiry of deadline
3960	The Goldman Sachs Group; HarbourVest Partners; Altamar Capital Partners; DH New Funds	Expiry of deadline
3961	Alpha AB Bidco BV; AI Alabama Holding BV	Expiry of deadline
3962	INTERSEROH DIENSTLEISTUNGS GmbH; Saubermacher Dienstleistungs AG	Expiry of deadline
3963	Nestlé S.A.; Starbucks Corporation	Expiry of deadline
3964	KAP Beteiligungs-AG; Heiche Group	Expiry of deadline
3965	IMMOFINANZ AG; S IMMO AG	Expiry of deadline
3966	Worldline S.A.; SIX Group AG	Expiry of deadline
3967	Culligan Wassertechnik GmbH; Aqua Vital Holding GmbH	Expiry of deadline
3968	Raiffeisen KMU Beteiligungs AG; AVV Investment GmbH; SYN TRAC GmbH	Waiver of examination
3969	Dürr; Babcock & Wilcox MEGTEC; Babcock & Wilcox MEGTEC; Babcock & Wilcox Universal	Expiry of deadline
3970	TIWAG-Tiroler Wasserkraft AG; VERBUND AG; Gemeinschaftskraftwerk Inn GmbH	Waiver of examination
3971	Henkel AG & Co. KGaA; F.A. Stichweh GmbH & Co. KG; Stichweh AG	Expiry of deadline
3972	Circle Media Group B.V.; Cameron France Holding S.A.S.	Expiry of deadline
3973	Royal Caribbean Cruises Ltd.; Silversea Cruises Holding Ltd.	Expiry of deadline
3974	Pamoja Acquisition B.V.; Elcee Group B.V.	Expiry of deadline
3975	BUWOG AG; MARINA TOWER Holding GmbH; MARINA CITY Entwicklungs GmbH	Expiry of deadline
3976	SIGNA Group; operational companies and real estate companies of the Kika/Leiner Group	Waiver of examination

Merger statistics 2018		
Case No.	Companies	Status
3977	Discovery Communications, LLC; ProSiebenSat.1 Media SE; 7TV Joint Venture GmbH	Waiver of examination
3978	Investment Corporation of Dubai; Inchcape Shipping Services Holdings Limited	Expiry of deadline
3979	FSI SGR S.p.A.; Missoni S.p.A.	Expiry of deadline
3980	Lenzing Aktiengesellschaft; Duratex S.A.	Expiry of deadline
3981	Bain Capital Investors; BCPE Hercules; BSN SPORTS; VARSITY SPIRIT; HERFF JONES	Expiry of deadline
3982	Douglas GmbH; AKZENTE GmbH	Expiry of deadline
3983	Westinghouse Air Brake Technologies Corporation; General Electric Company	Expiry of deadline
3984	BC Partners Holdings Limited; Forno d'Asolo S.p.A.	Expiry of deadline
3985	W.EG Italia S.r.l.; M.E.B. S.r.l.	Expiry of deadline
3986	Yageo Corporation; Pulse Electronics Corporation	Expiry of deadline
3987	Austro Holding GmbH; grosso holding Gesellschaft mbH; Gaulhofer Industrie-Holding GmbH	Expiry of deadline
3988	The Blackstone Group LP; PSAV Intermediate Corp	Expiry of deadline
3989	Miba Aktiengesellschaft; Zollern GmbH & Co. KG	Expiry of deadline
3990	Bundesrepublik Deutschland; Toll Collect GmbH	Expiry of deadline
3991	Saint-Gobain Performance Plastics Isofluor GmbH; K Isolier- und Textiltechnik GmbH	Expiry of deadline
3992	S&T AG; Exceet Group SE	Waiver of examination
3993	HANNOVER Finanz Group; Erste Tinten Holding GmbH	Expiry of deadline
3994	Zinkpower International GmbH; OTS-GmbH Oberflächentechnik Sinabelkirchen	Expiry of deadline
3995	Onex Corporation; PVHC Holding Corporation	Expiry of deadline
3996	Equistone VI FPCI; International Logistic Group S.à.r.l.	Expiry of deadline
3997	ALPLA Pharmaholding GmbH; Argo S.A.	Expiry of deadline
3998	Ardian France S.A.; Corob S.p.A.	Expiry of deadline



Merger statistics 2018		
Case No.	Companies	Status
3999	HarbourVest Partners, LLC; Lauderdale GmbH & Co KG	Expiry of deadline
4000	SIA S.p.A.; First Data Slovakia, s.r.o.; First Data Hellas Processing Services and Holdings S.A.	Expiry of deadline
4001	ORPEA S.A.; Stadtgemeinde Knittelfeld Wegwarte Seniorenpflege-Betriebs-KG	Expiry of deadline
4002	The Goldman Sachs Group, Inc.; GSR Holdco, Inc.	Expiry of deadline
4003	GBA Holding GmbH; Hygienicum Institut für Mikrobiologie und Hygiene-Consulting GmbH	Expiry of deadline
4004	Archer Daniels Midland (UK) Limited; Probiotics International Ltd	Expiry of deadline
4005	CL Austria RE S.à r.l.; BBBMZ Immobilienanlage GmbH	Expiry of deadline
4006	Comm-Unity; Gemsoft Pelzer & Szep; Kommunal- und Unternehmensberatung; STED; STS	Expiry of deadline
4007	Thoma Bravo, LLC; Centrifify Corporation	Expiry of deadline
4008	Kärntner Beteiligungsverwaltung; City of Klagenfurt; Lilihill Capital; Klagenfurt Airport	Expiry of deadline
4009	Ravago S.A.; The Dow Chemical Company	Expiry of deadline
4010	AT&T Inc.; AppNexus Inc.	Expiry of deadline
4011	Thermo Fisher Scientific Inc.; Roper Technologies, Inc.	Expiry of deadline
4012	Alpha MD BidCo BV; Partners Group AG; Megadyne SpA	Expiry of deadline
4013	Raiffeisen-Landesbank Steiermark AG; Landes-Hypothekenbank Steiermark Aktiengesellschaft	Expiry of deadline
4014	KKR & Co. Inc.; AppLovin Corporation	Expiry of deadline
4015	L-Fashion Group Oy; Dachstein Outdoor & Lifestyle GmbH	Expiry of deadline
4016	Faurecia Investments S.A.S.; Parrot S.A.; Parrot Faurecia Automotive S.A.S.	Expiry of deadline
4017	Zementwerk Leube; HOLLIZER Baustoffwerke Linz; SSL Linz	Expiry of deadline
4018	Voith GmbH & Co. KGaA; CRRC Group Corporation	Expiry of deadline
4019	S.D.L. Süddeutsche Beteiligungs GmbH; NEUE HALBERG-GUSS GmbH	Expiry of deadline
4020	TAL Betonchemie Handel GmbH; Rombold & Gfröhner GmbH & Co. KG	Expiry of deadline
4021	Færch Plast Group A/S; 3PET Holding B.V.	Expiry of deadline

Merger statistics 2018		
Case No.	Companies	Status
4022	AT&T Inc.; AlienVault, Inc.	Expiry of deadline
4023	Actief Holding N.V.; JOBMADE Personal Service GmbH	Expiry of deadline
4024	Walstead; LSC Communications Europe; LSC Communications Germany; LSC Communications	Expiry of deadline
4025	Hellweg Die Profi-Baumärkte GmbH & Co KG; DIY Union GmbH	Expiry of deadline
4026	CymbiQ Group AG; anovis it-services and trading gmbh; anovis CZ s.r.o.	Expiry of deadline
4027	Blitz 18-459 GmbH; Play Pro Management GmbH	Expiry of deadline
4028	Indorama Ventures PCL; Kordárna Plus, a.s.	Expiry of deadline
4029	Borealis AG; Ecoplast Kunststoffrecycling GmbH	Expiry of deadline
4030	Bernhard Schlacher; Wiener Kongresszentrum Hofburg Betriebsgesellschaft m.b.H.	Expiry of deadline
4031	Italmobiliare S.p.A.; Iseo Serrature S.p.A.	Expiry of deadline
4032	ENVT Bidco AB; Envirotainer International AB	Expiry of deadline
4033	BC Partners Holdings Limited; NAVEX TopCo, Inc.	Expiry of deadline
4034	Mataar Holdings 2 BV; Corporación América Airports S.A.	Expiry of deadline
4035	Shenzhen H&T Intelligent Control International Co., Ltd.; NPE S.r.l.	Expiry of deadline
4036	ADCURAM O-N-K VI Holding GmbH; MEA AG	Expiry of deadline
4037	Bain Capital Investors; Europe-IV Fund; Gist-Brocades Internat; DSM Sinochem Pharmaceuticals	Expiry of deadline
4038	Atos SE; Syntel, Inc.	Expiry of deadline
4039	KKR & Co. Inc.; Gimli Parent Corporation; Shamrock RB Holdings, Inc.; RBmedia-Group	Expiry of deadline
4040	Maven Bidco Limited; Genius Sports Group Limited	Expiry of deadline
4041	Andritz AG; Xerium Technologies, Inc.	Expiry of deadline
4042	EQT Fund Management S.à.r.l.; SUSE Linux GmbH; mertus 435. GmbH; SUSE LLC	Expiry of deadline
4043	The Blackstone Group L.P.; Differential Brands Group Inc	Expiry of deadline
4044	Mylan N.V.; TOBI business of Novartis AG	Expiry of deadline

Merger statistics 2018		
Case No.	Companies	Status
4045	H.I.G. Capital, LLC; Recochem Inc.	Expiry of deadline
4046	NIDEC SHIMPO; MS-GRAESSNER; Graessner GmbH; Stadler Antriebstechnik	Expiry of deadline
4047	The Timken Company; Rollon S.p.A.	Expiry of deadline
4048	Quadriga Capital Private Equity Fund IV L.P.; LR Global Holding GmbH	Expiry of deadline
4049	NEXTCLINICS INTERNATIONAL GmbH; Zech Group affiliates	Expiry of deadline
4050	Canada Pension Plan Investment Board; Carsten Koerl; Sportradar AG	Expiry of deadline
4051	LEO Pharma A/S; parts of the Bayer Group's business	Expiry of deadline
4052	oel-direct.de GmbH; Kreuzmayr Bayern GmbH	Expiry of deadline
4053	Cisco Systems, Inc.; Duo Security, Inc.	Expiry of deadline
4054	Ardian France S.A.; Nuova Argo Finanziaria S.p.A.	Expiry of deadline
4055	WestRock Company; Schlüter Print Pharma Packaging; Schlüter Pharma Logistics	Expiry of deadline
4056	KKR & Co. Inc.; The Collected Group, LLC	Waiver of examination
4057	NPM Capital N.V.; Ploeger Oxbo Group B.V.	Expiry of deadline
4058	Tönnies International Holding GmbH; Unigrains Développement S.A.; Sinfo One S.p.A.	Expiry of deadline
4059	Hawesko Holding Aktiengesellschaft; Wein & Co Handelsges.m.b.H.	Expiry of deadline
4060	FNZ Germany Holdco Limited; European Bank for Financial Services GmbH	Expiry of deadline
4061	The Boston Consulting Group Inc.; Machine Max Limited	Expiry of deadline
4062	Siemens Aktiengesellschaft; Siemens International Holding B.V.; Mendix Holding e.V.	Expiry of deadline
4063	Lidl Österreich GmbH; NKV Wohnbau GmbH & Co. KG	Expiry of deadline
4064	Life Company Consolidation Group; Generali Worldwide Insurance Company	Expiry of deadline
4065	Sika AG; FLM Holding AG; Rathor AG; Hago Chemotechnik GmbH & Co. KG i.L.; Polypag AG	Expiry of deadline
4066	HEARTLAND Group; ABOUT YOU Holding GmbH	Expiry of deadline
4067	ANDRITZ AG; ASKO, Inc.	Expiry of deadline

Merger statistics 2018		
Case No.	Companies	Status
4068	m-holding & beteiligungs-gmbh; ALWA und DEIL Druckerei GmbH	Expiry of deadline
4069	Herold Druck und Verlag Aktiengesellschaft; Print Alliance HAV GmbH	Expiry of deadline
4070	Linmag GmbH; Rhomberg Sersa Rail Holding GmbH	Expiry of deadline
4071	AGC Inc.; Nelco Products, Inc.; Neltec Inc.; Neltec SA; Nelco Products Pte. Ltd	Expiry of deadline
4072	dnata; TROPO GmbH	Expiry of deadline
4073	Mubea International GmbH; FLAMM GmbH	Expiry of deadline
4074	OMG Germany; UDG South; UDG Köln; UDG München; UDG London; M, P, NEWMEDIA	Expiry of deadline
4075	L'Oreal Deutschland GmbH; LOGOCOS Naturkosmetik AG; Logo-Bau GmbH & Co.	Expiry of deadline
4076	OÖ Lagerhaus; RWA Raiffeisen Ware Austria Handel und Vermögensverwaltung eGen	Expiry of deadline
4077	HEARTLAND-Gruppe; ASOS Plc	Expiry of deadline
4078	De'Longhi Industrial S.A.; La Marzocco International L.L.C.	Expiry of deadline
4079	Stark One S.r.l.; Marval S.r.l.	Expiry of deadline
4080	GOLDCUP 17038 AB; SKF Motion Technologies AB	Expiry of deadline
4081	TONOS GmbH; ERNE GROUP GmbH	Expiry of deadline
4082	SOF-11 Starlight 10 EUR S.à r.l.; CA Immobilien Anlagen Aktiengesellschaft	Expiry of deadline
4083	Amadeus IT Group SA; TravelClick Inc.	Expiry of deadline
4084	Baritonos Invest GmbH & Co KG; TONOS GmbH	Expiry of deadline
4085	FTI Touristik GmbH; FTI Ticketshop GmbH	Expiry of deadline
4086	STADA Arzneimittel AG; Bioceuticals Arzneimittel AG	Expiry of deadline
4087	KKR & Co. Inc.; Gibson Brands, Inc.	Expiry of deadline
4088	TIWAG-Tiroler Wasserkraft; Speicherkraftwerk Kaunertal; RWE Power; Uniper Kraftwerke	Expiry of deadline
4089	Thoma Bravo, LLC; Apttus Corporation	Expiry of deadline

Merger statistics 2018		
Case No.	Companies	Status
4090	PremiQaMed Holding GmbH; Diakonissen & Wehrle Privatlinik GmbH	Expiry of deadline
4091	Ingenico Group; Deutscher Sparkassen Verlag; DI Deutsche Ingenico Holding; BS PAYONE	Expiry of deadline
4092	Bridgepoint Group Limited; Naxicap Partners SA; Newco AH SAS; Horace Holding	Expiry of deadline
4093	Swietelsky Baugesellschaft; Swietelsky Tunnelbau; Ing. Baierl GmbH	Expiry of deadline
4094	PORR Group; CCG Immobilien AG; UBM Development AG	Expiry of deadline
4095	Mitsubishi Chemical Corporation; Cleanpart Group GmbH	Expiry of deadline
4096	Grupa Azoty S.A.; Goat TopCo GmbH	Expiry of deadline
4097	Thermo Fisher Scientific Inc.; Advanced Bioprocessing business of Becton, Dickinson and Company	Expiry of deadline
4098	Temasek; Schneider Electric India; Schneider Electric JV	Expiry of deadline
4099	Array Holdings, Corp.; Willson & Brown - SP. Z.O.O.; WB SP. Z.O.O.	Expiry of deadline
4100	Novares Group SAS; APAG Holding AG	Expiry of deadline
4101	SCHOTT; Zhejiang Crystal-Optech; Zhejiang T.Best Electronic Information Technology	Expiry of deadline
4102	Kansas HoldCo 1, Inc.; Evonik Jayhawk Fine Chemicals Corporation	Expiry of deadline
4103	OM-Handels GmbH; POCO Group affiliates	Expiry of deadline
4104	Columbia Capital VI, LLC; DHL Resilience360 GmbH	Expiry of deadline
4105	Temasek Holdings Private Limited; Stamford Devices Ltd	Expiry of deadline
4106	Stryker Corporation; K2M Group Holdings, Inc.	Expiry of deadline
4107	Arca Investments, a.s.; Wiener Privatbank SE	Expiry of deadline
4108	L'Oréal S.A.; Valentino S.p.A.	Expiry of deadline
4109	Emirates NBD Bank PJSC; Denizbank A.Ş.	Expiry of deadline
4110	Sony Corporation of America; EMI Music Publishing	Expiry of deadline
4111	STRABAG Real Estate GmbH; GBI Projektentwicklung Ges.m.b.H.	Expiry of deadline

Merger statistics 2018		
Case No.	Companies	Status
4112	MAHLE GmbH; Behr Hella Service GmbH	Expiry of deadline
4113	Asmodée Group SAS; Blackfire Group	Expiry of deadline
4114	MHP SE; Perutnina Ptuj, d.d.	Expiry of deadline
4115	Trafigura Ventures V B.V.; ENOI S.p.A.; Alperg S.p.A.	Expiry of deadline
4116	CL AUSTRIA RE S.À R.L.; BBBSB Immobilienbesitz GmbH	Expiry of deadline
4117	Hiab Italia S.r.l.; Effer S.p.A.	Expiry of deadline
4118	Medienholding Klambt GmbH & Co. KG; acquisition of women's magazines	Expiry of deadline
4119	capiton AG; AEMtec GmbH	Expiry of deadline
4120	Al Yah Satellite Communications Company PrJSC; Hughes Network Systems, LLC	Expiry of deadline
4121	Nidec Corporation; Chaun-Choung Technology Corp.	Expiry of deadline
4122	Indorama Ventures; Indorama Netherlands; Schoeller; TTI Textile Technology Innovation	Expiry of deadline
4123	Tyr Holdings LLC & Co. KG; Erwin Hymer Group SE	Expiry of deadline
4124	Ravago Chemicals S.A.; KH Chemicals B.V.; KH Chemicals International B.V.	Expiry of deadline
4125	Esola Beteiligungsverwaltungs GmbH; Gantner Instruments GmbH	Expiry of deadline
4126	capiton V GmbH & Co. Beteiligungs KG; Euro Vital Pharma GmbH	Expiry of deadline
4127	Cargill PLC; Konspol Holding sp. z. o.o.	Expiry of deadline
4128	AURELIUS Equity Opportunities SE & Co. KGaA; VAG Holding GmbH; GA Industries Holdings LLC	Waiver of examination
4129	Triton Smaller Mid-Cap Fund I; Norres Industrial Hoses GmbH	Expiry of deadline
4130	INEOS Limited; Flint Hills Resources Joliet, LLC; Flint Hills Resources Sàrl	Expiry of deadline
4131	Honeywell International Inc.; Transnorm Group GmbH	Expiry of deadline
4132	Bechtle Managed Services AG; BT Stemmer GmbH	Expiry of deadline
4133	SIGNA Retail GmbH; SIGNA Prime Selection AG; Hudson's Bay Company	Expiry of deadline
4134	KC North Sea SCA; Nordsee Holding GmbH	Expiry of deadline

Merger statistics 2018		
Case No.	Companies	Status
4135	LKAB Minerals Limited; Gurney Slade Lime & Stone Limited; Francis Flower (Northern) Limited	Expiry of deadline
4136	Saint-Gobain Weber GmbH; Kaimann GmbH	Expiry of deadline
4137	Altamont Capital Management LLC; NSA International, LLC	Expiry of deadline
4138	PORR AG; ALPINE Bau CZ a.s.	Waiver of examination
4139	Moonlake Capital GmbH; PWSC Verwaltungs GmbH	Expiry of deadline
4140	Budamar Logistics a.s.; Optifin Invest s.r.o.; WBN Waggonbau Niesky GmbH	Expiry of deadline
4141	VELUX A/S; JET Group International B.V.	Expiry of deadline
4142	Westlake Chemical Corporation; Nakan compounds business of Ivy Ultimate	Expiry of deadline
4143	Heintz & Co. Kommanditgesellschaft für Beteiligungen; UBM hotels Management GmbH	Expiry of deadline
4144	Heel Veel Snoepjes B.V.; CPK S.A.S.; Lutti Holdings S.A.S.	Expiry of deadline
4145	Haubrich Holding SE; C&P Holding GmbH	Expiry of deadline
4146	Südbayerisches Portland-Zementwerk Gebr. Wiesböck & Co. GmbH; CONCRETE Rudolph GmbH	Expiry of deadline
4147	UNION TANK Eckstein; Road Account business of AirPlus Servicekarten GmbH	Expiry of deadline
4148	Liberty Media Corporation; Sirius XM Holdings Inc.; Pandora Media, Inc.	Expiry of deadline
4149	IQVIA Ltd.; ClinTec Luxembourg SA	Expiry of deadline
4150	Sberbank of Russia; Agrokor d.d.	Expiry of deadline
4151	Knight Acquisition B.V.; De Kinkelder Beheer B.V.	Expiry of deadline
4152	ZF Friedrichshafen AG; Zukunft Ventures GmbH; ASAP Holding GmbH	Expiry of deadline
4153	Vestar Capital Partners VII, L.P.; IRI Group Holdings, Inc.	Expiry of deadline
4154	BNP Paribas Securities Services SCA; DWS Beteiligungs GmbH	Expiry of deadline
4155	Thoma Bravo, LLC; Imperva, Inc.	Expiry of deadline
4156	Bain Capital Investors, LLC; Rocket Software, Inc.	Expiry of deadline
4157	Molex Electronic Technologies, LLC; business of Laird Limited	Expiry of deadline
4158	GNUTTI CARLO S.P.A.; Gnutti Carlo Beteiligungs GmbH; TCG UNITECH GmbH	Expiry of deadline

Merger statistics 2018		
Case No.	Companies	Status
4159	LGC Science Group Holdings Limited; SeraCare Life Sciences, Inc.	Waiver of examination
4160	IRI Investments B.V.; Next Generation Holding GmbH	Expiry of deadline
4161	Grünenthal Pharma GmbH & Co. KG; assets of Astra-Zeneca AB	Expiry of deadline
4162	KKR & Co. Inc.; Pillarstone Europe LLP; Famar Holding S.à.r.l.	Waiver of examination
4163	Bosch Thermotechnik GmbH; ADS-TEC Energy GmbH	Expiry of deadline
4164	Covis Pharma B.V.; rights and assets of AstraZeneca AB	Expiry of deadline
4165	grosso holding Gesellschaft mbH; Waagner-Biro Austria Stage Systems AG	Waiver of examination
4166	The Blackstone; Sona BLW Precision Forgings; Comstar Automotive	Expiry of deadline
4167	Smurfit Kappa Group plc; Fabrika Hartije d.o.o. Beograd; Avala Ada d.o.o. Beograd	Expiry of deadline
4168	The Walt Disney Company; Twenty-First Century Fox	Expiry of deadline
4169	Capvis Equity V L.P.; Polyusus XIV AG; Variosystems AG; Vario Properties Inc.	Expiry of deadline
4170	twinformatics GmbH; ConVista Faktor Zehn GmbH	Expiry of deadline
4171	Emerson Electric Co.; GE Intelligent Platforms Inc.	Expiry of deadline
4172	Accenture plc; Kolle Rebbe GmbH	Waiver of examination
4173	valantic GmbH; elemantic GmbH	Waiver of examination
4174	EQT Fund Management S.à.r.l.; Fund VIII Swe Bidco AB; Karo Pharma AB	Expiry of deadline
4175	KTM AG; Kiska GmbH	Waiver of examination
4176	Continental AG; Kathrein Automotive GmbH	Expiry of deadline
4177	Raffles Private Holdings Ltd; NAC Luxembourg I S.A.	Expiry of deadline
4178	A1 Telekom Austria AG; Unify GmbH	Expiry of deadline
4179	Generali Investments Holding S.p.A.; Sycomore Factory SAS	Expiry of deadline
4180	Fresenius Medical Care AG & Co. KGaA; D.Med Consulting GmbH	Non-prohibition with conditions (Phase II)



Merger statistics 2018		
Case No.	Companies	Status
4181	Mayr-Melnhof Packaging International GmbH; Eurasia Invest Holding AG	Expiry of deadline
4182	Rethmann; Transdev Group; Transdev GmbH; Rhenus Veniro SE&CoKG; Rhenus Veniro SE	Expiry of deadline
4183	Bertelsmann SE & Co. KGaA; Saham Outsourcing Services Fund S.A.	Expiry of deadline
4184	GPV International A/S; CCS Group Holding AG	Expiry of deadline
4185	IBM Österreich Internationale Büromaschinen; Blue-IT-Services; IT Solutions AT Spardat	Expiry of deadline
4186	KEBA AG; LTI Motion GmbH; Heinz Fiege GmbH; LTI Motion Deutschland GmbH	Expiry of deadline
4187	Saubermacher Dienstleistungs AG; Trügler Recycling & Transport GesmbH; Höller Entsorgung GmbH	Withdrawal of application (Phase I)
4188	Porsche Holding Gesellschaft m.b.H.; Eurocar Italia S.r.l.; Dorigoni S.p.A.	Expiry of deadline
4189	KPS Capital Partners, L.P.; Trojan Battery Holdings, LLC	Expiry of deadline
4190	Tenneco Inc.; Öhlins Intressenter AB	Expiry of deadline
4191	Thoma Bravo, LLC; Veracode, Inc.	Expiry of deadline
4192	SIGNA Holding GmbH; WAZ Ausland Holding GmbH; FUNKE Österreich Holding GmbH	Expiry of deadline
4193	Victory & Dreams Holding B.V.; Charles Vögele (Austria) GmbH	Waiver of examination
4194	UNIQA Insurance Group; Raiffeisen Bank International; Speedinvest GmbH; Fintech Growth Fund	Expiry of deadline
4195	H.I.G. Capital LLC; Leuna Tenside Holding GmbH	Expiry of deadline
4196	ELCOWIRE Holding GmbH; NKT Catenary GmbH & Co. KG	Expiry of deadline
4197	Volkswagen AG; diconium digital GmbH	Expiry of deadline
4198	Continental AG; assets of Cooper-Standard Automotive Inc.	Expiry of deadline
4199	Ankerbrot Holding GmbH; Linauer & Wagner „Backstuben“ BackwarenproduktionsgmbH	Expiry of deadline
4200	One Equity Partners VII; One Equity Partners VII-A; One Equity Partners VII-B; Mera International	Expiry of deadline
4201	Excelsior AcquiCo GmbH; Reifen Gundlach GmbH; Goodwheel GmbH; Euro Tyre BV; et al	Expiry of deadline
4202	Canada Pension Plan Investment Board; Berlin Packaging Holdings L.L.C.	Expiry of deadline
4203	Röchling Engineering Plastics SE & Co. KG; Schwartz GmbH	Expiry of deadline

Merger statistics 2018		
Case No.	Companies	Status
4204	VAMED Standortentwicklung und Engineering GmbH; Grand Spa Wellness Betriebs GmbH	Expiry of deadline
4205	Liebherr-Hausgeräte Vertriebs- und Service; Liebherr-Hausgeräte; Hack-Eitel Industrievertretung	Expiry of deadline
4206	DPE Deutsche Private Equity Management III GmbH; BE-terna Holding GmbH	Expiry of deadline
4207	William Hill Holdings Limited; Mr Green & Co AB	Expiry of deadline
4208	KTM Industries AG; Kiska GmbH; Kiska Beteiligungs GmbH	Expiry of deadline
4209	Adecco Group AG; LOGworks GmbH	Expiry of deadline
4210	Eurazeo PME SA; EFESO Consulting Group SA	Expiry of deadline
4211	Continental AG; Reifen-John GmbH & Co KG	Expiry of deadline
4212	ATLANTIC Société Française de Développement Thermique-SA; COTHERM EVOLUTION	Expiry of deadline
4213	FunderMax GmbH; Ranheim Paper & Board AS	Expiry of deadline
4214	Thoma Bravo, LLC; Nuance Communications Inc.	Expiry of deadline
4215	Circle Media Group B.V.; Körner Druck GmbH & Co. KG	Expiry of deadline
4216	Containex Container-Handelsgesellschaft m.b.H.; Arcont IP d.d.	Expiry of deadline
4217	Quadriga Capital Private Equity Opportunities; Intermediate Capital; VESCON; Schiller	Expiry of deadline
4218	Callaway Golf Company; JW Stargazer Holding GmbH	Expiry of deadline
4219	SAP SE; Qualtrics International Inc.	Expiry of deadline
4220	SJL Partners LLC; KCC Corporation; Wonik QnC Corporation; MPM Holdings Inc.	Expiry of deadline
4221	ILAG MSU Holding GmbH; MSU Holding GmbH	Waiver of examination
4222	Energie Steiermark AG; Elektrizitätswerke Bad Radkersburg GmbH	Expiry of deadline
4223	Cargill Sweeteners Holding B.V.; DSM Food Specialities Stevia B.V.	Expiry of deadline
4224	Noble Ultimate Holding, LLC; Unico, LLC	Expiry of deadline
4225	CCC S.A.; HR Group Holding S.a.r.l.; CCC Germany GmbH	Expiry of deadline

Merger statistics 2018		
Case No.	Companies	Status
4226	Schaeffler AG; ELMOTEC STATOMAT Holding GmbH	Expiry of deadline
4227	BayWa AG; BayWa Agri Supply & Trade B.V.; Royal Ingredients Group International B.V.	Expiry of deadline
4228	Carlyle Europe Technology Partners III, L.P.; SERgroup Holding International GmbH	Waiver of examination
4229	Colfax Corporation; DJO Global, Inc.	Expiry of deadline
4230	ITINERA S.p.A.; ASCI Logistik GmbH; CIS Beton GmbH	Expiry of deadline
4231	Edwards Vacuum; cryogenics business of Brooks Automation; ULVAC CRYOGENICS	Expiry of deadline
4232	Bregal Unternehmerkapital II LP; ATP adhesive systems AG	Expiry of deadline
4233	Retina Bidco B.V.; E&M Holding B.V.	Expiry of deadline
4234	Hilti AG; Trimble Inc.	Expiry of deadline
4235	Linde (China) Forklift Truck Corp., Ltd.; Zhejiang EP Equipment Co., Ltd.	Expiry of deadline
4236	M. Kaindl OG; Peter Kaindl; M. Kaindl KG	Expiry of deadline
4237	Permira Holdings Limited; Cielo, Inc.	Expiry of deadline
4238	Unternehmens Invest Aktiengesellschaft; Plastech Holding GmbH; UIAG Informatik-Holding GmbH	Expiry of deadline
4239	Energie AG Oberösterreich; LINZ AG; ENAMO GmbH	Expiry of deadline
4240	WIG Wietersdorfer Holding GmbH; CALCIT, proizvodnja kalcitnih polnil d.o.o.	Expiry of deadline
4241	Cisco Systems, Inc.; Luxtera, Inc.	Expiry of deadline
4242	GlaxoSmithKline plc; Tesaro, Inc.	Expiry of deadline
4243	Indorama Ventures PCL; UTT Beteiligungsgesellschaft mbH	Waiver of examination
4244	Österreichische Post AG; D2D - direct to document GmbH	Expiry of deadline
4245	Siemens Aktiengesellschaft; Southern States Investment; Coelme Costruzioni Elettromeccaniche	Expiry of deadline
4246	DKV EURO SERVICE GmbH + Co. KG; innogy SE	Expiry of deadline
4247	ÅF AB; Pöyry Plc	Expiry of deadline

Merger statistics 2018		
Case No.	Companies	Status
4248	ELG Haniel GmbH; Iberinox Recycling Plus, S.L.	Expiry of deadline
4249	Invest; Bilfinger Gerätetechnik Deutschland; Bilfinger Gerätetechnik Beteiligung; Bilfinger Gerätetechnik	Expiry of deadline
4250	Fondo Italiano d'Investimento SGR S.p.A; Fonderie di Montorso S.p.A.	Expiry of deadline
4251	Italmatch S.p.A.; BWA Holdings LLC	Expiry of deadline
4252	Rhenus SE & Co. KG; Cesped S.p.A.	Expiry of deadline
4253	Katek SE; ETL Elektrotechnik Lauter GmbH	Expiry of deadline
4254	ALPLA AT Recyclingbeteiligungsgesellschaft; Fromm Holding; PET Recycling Team Wolfen	Expiry of deadline
4255	univativ management GmbH; Qiss IT B.V.	Expiry of deadline
4256	UBM Development Österreich GmbH; i-live GmbH	Expiry of deadline
4257	Bridgepoint Group Limited; European Entertainment (Holdings) S.à.r.l.; Cherry AB	Expiry of deadline

## 6.4 List of abbreviations

Abkürzungsverzeichnis	
ABGB	General Civil Code
AG	Aktiengesellschaft (public limited company)
BAK	Federal Bureau of Anti-Corruption
BEUC	European Consumer Organisation
BMDW	Federal Ministry for Digital and Economic Affairs
BVwG	Federal Administrative Court
BWB	Austrian Federal Competition Authority
CPC	Consumer Protection Cooperation
EC	European Community
ECC	European Consumer Centre
ECJ	European Court of Justice
ECN	European Competition Network
ELSA	European Law Students' Association
EU	European Union
GDP	Gross domestic product
GmbH	Gesellschaft mit beschränkter Haftung (limited liability company)
ICN	International Competition Network
KartG	Federal Cartel Act 2005
NahVG	Local Supply Act
OECD	Organisation for Economic Cooperation and Development
OGH	Supreme Court of Justice
ORF	Austrian Broadcasting Corporation
ÖZK	Austrian Competition Journal
RTR	Austrian Regulatory Authority for roadcasting and Telecommunications
SSK	Austrian Freight Forwarding Agents Consolidated Consignment Conference
TFEU	Treaty on the Functioning of the European Union
UGB	Corporate Code
UNCTAD	United Nations Conference on Trade and Development
UWG	Unfair Competition Act
VBKG	Consumer Protection Cooperation Act
VwGH	Administrative Court
WBK	Competition Commission
WettbG	Competition Act
WKStA	Central Public Prosecutor for Economic Crime and Corruption

## 6.5 Main recommendations from WBK to BWB

Proposals from WBK pursuant to § 16 para. 1 WettbG for BWB's priorities in the 2019 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 (WBK) 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 (in German) on the BWB website. Some of these remain particularly topical and relevant, such as the proposals made in earlier years regarding online selling.

### 2) Recommended priorities for 2019

#### a) Fairness in business – Guidance for fair conduct in business

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, on 3 July 2017, the WBK published its recommendation that a Code of Conduct be drawn up based on the BWB's Guidance on Vertical Price Fixing and providing market participants with a key source of information. This recommendation was repeated on 25 September 2017 in the proposals submitted by the WBK to BWB with regard to its main priorities for the 2018 calendar year.

BWB responded to this suggestion by preparing a draft document, feedback on which was accepted up until 27 August 2018. In October 2018 BWB finally published its document entitled “Fairness in business – Guidance for fair conduct in business”.

The WBK is grateful to BWB for its work in this area and welcomes the BWB plans to monitor the future development of legislation and case law, as well as any new situations that arise, to carry out an evaluation three years on from publication of the document, and to subsequently introduce any required updates.

Many forms of behaviour that are felt to be unfair in practice are very difficult to tackle under cartel law given that legal action can only be taken if the methods being used can be classed as abuse of a dominant position. However, the guidance document provides grounds for optimism that greater attention will be paid to fair business practices in future, with a general rise in awareness levels.

BWB expressly states that the guidance could also be used in the context of compliance programmes. Moreover, it provides a good overview of all of the alternative legal bases (NahVG, UWG, ABGB, UGB).

In particular, the WBK is calling for greater use to be made in future of the terms of the Local Supply Act (NahVG) and also of § 4 para. 3 KartG (relative market power). According to § 4 para. 3 KartG, undertakings are deemed to be dominant if they hold a paramount market position in relation to their buyers or suppliers. This applies in particular if the latter are reliant on the commercial relationship being maintained in order to avoid serious disadvantages for their business. The NahVG does not actually require there to be market dominance but merely a difference in the level of power held by the companies in question. In accordance with § 1 para. 1 NahVG, the practices that companies use in commercial transactions may be prohibited if they are likely to jeopardise fair competition based on performance.

This means that it is also possible to take action against cases that are not as serious as abuse of a dominant market position (§ 5 KartG).

Moreover, following the publication of the guidance, the WBK recommends focusing on measures (e.g. information events) to raise awareness of the existence and impact of the new rules.

## 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 entitled “Effizienz Rechtsstaatlichkeit – Transparenz im österreichischen Wettbewerbsrecht. Wettbewerbspolitische Herausforderungen für die 25. Gesetzgebungsperiode (2013-2018)” [Efficiency in the rule of law – Transparency in Austrian competition law. Competition challenges for the 25th legislative period], Vol. No. 87 (2014) 55). In a welcome development, the first steps have been taken in this regard, as summarised in a BWB working paper (BWB, Arbeitspapier Wettbewerbsmonitoring [Working paper on competition monitoring], 18 November 2015).

In light of recent experiences and the fact that Denmark, a country that was regarded as setting an example, has done away with its broadly based system of competition monitoring, the WBK recommends targeting monitoring in the form of preliminary reviews of specific sectors. These can then be extended into a full sector inquiry where appropriate.

Potential sectors include energy, online sales (particularly in conjunction with cross-border services) and service platforms (see also points c), d) and e) below).

## 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 importance of these sectors to the national economy. 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.

In particular, special attention should be paid to the development of electricity prices following the division of the German/Austrian electricity market. The power market bidding zone was split between Austria and Germany with effect from 1 October 2018. In competition terms, the question now is whether and to what extent the introduction of national price zones will trigger unjustified



price hikes. A further factor influencing the prices paid by end customers is the development of wholesale prices. Whether falls in wholesale prices are passed on to end customers as quickly as price increases is an issue that appears to be worth monitoring from a competition perspective.

#### 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 recommends a review of competition conditions in the online retail sector and, where necessary, initiatives to guarantee fair conditions for all.

The WBK believes that the following four areas in particular could result in competition being distorted:

- Infringements of property rights/counterfeit products
- Breach of labelling rules
- Unjustified preferential treatment in relation to postal tariffs
- Tax evasion (import sales tax, customs duties etc.)

There are by all accounts products being supplied to Austria that already benefited from a low postal tariff given that countries such as China are still being classed as developing countries and therefore enjoy special tariffs. In addition, shipments are frequently incorrectly declared (parcels sent as letters). The result is a two-fold cost advantage. Another factor is that many goods appear to be incorrectly declared (thereby taking advantage of EU VAT and duty-free allowances that should not apply).

This is just one way in which Austrian sellers are being exposed to unfair competition conditions. However, they are now also very noticeably seeing their businesses come under threat from what appear to be quite significant quantities of counterfeit goods. Generally speaking, counterfeit products will be of a lower quality. Many will also have mandatory safety labels on them that do not correspond to the product qualities.

The use of lower-quality materials can even pose a risk to health. Frequently, platforms assume a passive role and are reluctant to take action against providers offering counterfeit goods, contributing to a growing problem.

The recommendation for BWB, therefore, is to focus particularly strongly on a review of online selling, particularly in relation to imports from third countries (above all China). This is not just a purely competition-related issue, but also

impacts on the Austrian economy more generally. It can be assumed that Austria is losing out on jobs, income tax revenue, value-added tax revenue and social security contributions, and that companies operating in Austria are increasingly being put at a competitive disadvantage.

Given these wider issues, the WBK would encourage the creation of a task force straddling the various areas of expertise to deal with this issue in greater detail (Federal Competition Authority, Federal Ministry for Digital and Economic Affairs, Federal Finance Ministry etc.).

This is at least an EU-wide issue, which means that cooperation between the competition authorities in the EU (including the European Commission) and the relevant ministries seems like a sensible approach.

### e) Service platforms

Methods such as “dimming” or “de-ranking” on the part of online platform operators can create huge distortions in competition. Consequently, the WBK recommends that BWB monitor compliance with competition rules on a range of service platforms.

### 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.

Vienna, 5 November 2018

DDr. Jörg Zehetner  
Chair of the Competition Commission



