Universität zu Köln

Taming the Tech Titans – Competition Law and Digital Markets in Germany

Dr Carsten Koenig | University of Cologne – Department of Law | 4 October 2018

Universität zu Köln

Outline

1. Introduction
2. **Anticompetitive agreements** in digital markets
3. **Abuse of dominance** in digital markets
4. **Merger control** in digital markets
5. **Consumer protection** in digital markets
6. Conclusion

Introduction

- **German competition law** is contained in the **German Competition Act** ('**GWB**')
- **§ 1, 2 GWB** prohibit **anticompetitive collusion**, in particular agreements (very similar to Article 101 TFEU)
- **§ 19, 20 GWB** prohibit the **abuse of dominance** and the **abuse of relative or superior market power** (a bit stricter than Article 102 TFEU, which only refers to dominance)
- **§§ 35-42 GWB** contain rules for **merger control**
- German competition law is primarily enforced by the German Federal Cartel Office, the ***Bundeskartellamt* (*BKartA*)**
- Appeals go to the ***Higher Regional Court of Düsseldorf*** and from there to the ***Federal Court of Justice***

Introduction

- The *BKartA* may issue **prohibition decisions** in **administrative proceedings** or may impose **fines** in **regulatory offence proceedings** (under stricter procedural rules)
- Fines can be imposed on **undertakings** and **individuals**
- **Bid-rigging** is the only **criminal** competition law offence (‘classic’ price-fixing is only considered a regulatory offence)
- **Private enforcement** (i.e. damages actions) is much less relevant than public enforcement, but that is likely to change as a result of the **EU Antitrust Damages Directive** and a number of current high-profile cases (including multi-million euro follow-on actions resulting from the **rails cartel** and the **lorry cartel**)

ANTICOMPETITIVE AGREEMENTS IN DIGITAL MARKETS

Dr Carsten Koenig | University of Cologne – Department of Law | 4 October 2018

Universität zu Köln

amazon marketplace

Price parity clauses – Amazon Marketplace

- In 2013, the *BKartA* prohibited Amazon from using **price parity clauses** in its terms and conditions for **Amazon Marketplace**
- These clauses prevented sellers on the Marketplace platform from offering their goods **elsewhere at lower prices** (including in other online shops and on their own websites)
- The *BKartA* considered the **relationship** between Amazon and sellers on Amazon Marketplace to be not only **vertical**, but **also horizontal** since Amazon and third-party sellers on the Marketplace platform compete for same customers
- Consequently, the price parity clauses were part of a (partly) horizontal **cooperation agreement** and thus amounted to a **hardcore restriction** that could not be justified (**price-fixing**)
- Amazon abandoned the clauses throughout the **EU**

Universität zu Köln

Best price clauses – Hotel booking cases

- In 2013, the *BKartA* prohibited ***HRS***, a hotel booking website, from using '**best price' clauses** in its contracts with hotels
- Under these clauses, the hotels were obliged to always offer *HRS* their **lowest room prices**, maximum room capacity and most favourable booking and cancellation **conditions** available on any competing hotel reservation website on the internet
- *BKartA* found this to **restrict competition between platforms** because offering lower commissions would not enable platform operators to offer lower prices than HRS to end customers
- The *Higher Regional Court of Düsseldorf* confirmed in 2015 that *HRS's* 'best price' clauses restrict competition to such a degree that they **cannot be exempted** under Regulation 330/2010 on vertical agreements or Article 101(3) TFEU

Best price clauses – Hotel booking cases

- In 2015, building on *HRS*, the *BKartA* prohibited ***Booking.com***, another hotel booking website, from using so-called **narrow** '**best price' clauses** in its contracts with hotels
- **Narrow 'best price' clauses** allow hotels to offer their rooms at lower prices to operators of **competing** reservation **platforms**, but not on their **own corporate websites**
- The *BKartA* found these clauses to be **equally harmful to competition** as the wide 'best price' clauses dealt with in *HRS:*
  - *they restrict competition between hotels because they reduce the incentive to offer lower prices on the hotel's own website,*
  - *they restrict competition between platforms because they reduce the incentive to offer lower prices to competing platforms*
- NCAs in some other Member States have issued **less restrictive** decisions on narrow 'best price' clauses

Questions?

Selective Distribution Systems (SDS)

- **Background**: SDS are **distribution systems** in which a supplier enters into (**vertical**) **agreements** with a limited number of **selected dealers** for the **exclusive distribution** of the supplier's products in a certain geographic area
- SDS typically restrict ***intrabrand competition***, but they may be procompetitive and therefore justified under Art 101 TFEU/ § 1 GWB if they promote ***interbrand competition***
- **Three requirements** under EU law (ECJ in ***Metro*** [1977]):
  1. criteria to select distributors must be **objective**, **qualitative**, determined **uniformly** for all and applied in a **non-discriminatory** fashion,
  2. **nature of the product** must **necessitate** an **SDS** to preserve the product's **quality** and to ensure its **proper use**, and
  3. the **terms** of the SDS must not go beyond **what is necessary**

Selective Distribution Systems (SDS)

- ECJ held in ***Coty*** (2017) that it can be lawful under Article 101 TFEU if a **supplier of luxury goods** prohibits the members of its SDS from **making online sales** through discernible **third-party platforms** (such as Amazon Marketplace or Ebay)
- Article 101 TFEU does not preclude such a '**platform ban**' if (i) the objective is to **preserve the luxury image of a product** ('aura of luxury'), (ii) the restriction is laid down **uniformly** and **not applied** in a **discriminatory fashion**, and (iii) it is **proportionate** in the light of the **objective pursued**
- A prohibition to distribute luxury cosmetics through Amazon Marketplace is **appropriate** and does not, in principle, go beyond what is **necessary** to preserve the **luxury image**

Selective Distribution Systems (SDS)

- In its judgment of 12 December 2017, the **Federal Court of Justice** held that a producer of sport shoes (ASICS) violates Article 101 TFEU/§ 1 GWB if it prohibits its dealers from advertising its products on **price comparison websites**
- According to the decision, **per se prohibitions** to use certain **distribution channels** are unlawful under Art 101 TFEU/§ 1 GWB if they are **not** tied to **quality requirements**
- The Federal Court of Justice found the infringement to be so **obvious** that it did not conduct a hearing. Neither saw the court any need to refer the case to the ECJ.
- The Court also found that sports and running shoes are **not luxury goods**. (A Dutch Court held differently in 2017 confirming a platform ban for the distribution of Nike shoes.)

Selective Distribution Systems (SDS)

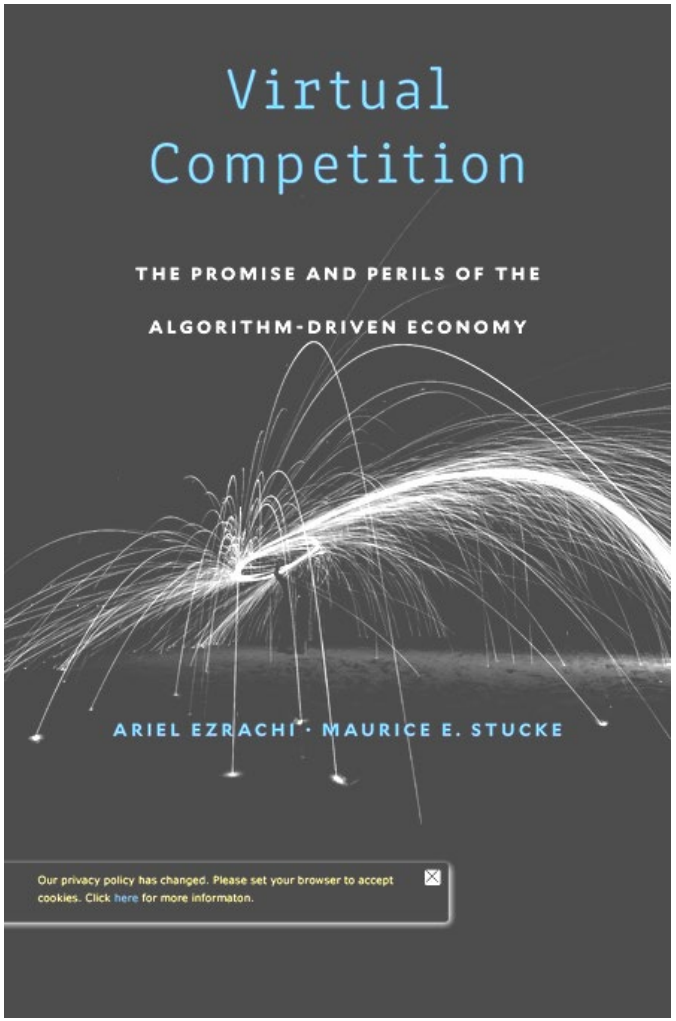
- The Federal Court of Justice in its opinion reasoned that price comparison websites are of **key importance** to consumers and that restrictions of their use are therefore **hardcore restrictions** under Article 4 lit. c) of Regulation 330/2010 on vertical agreements. Thus, they **cannot be justified** even below the market share threshold of 30%.
- The court upheld an earlier ruling by the Higher Regional Court of Düsseldorf, which had confirmed the initial **prohibition decision** by the BKartA from 2015 (no fine had been imposed)
- Note that the case might have been decided differently if ASICS had not imposed a ***per se ban*** of using price comparison websites, but had only required its authorized dealers to ensure that certain **quality requirements** are met

Questions?

Algorithms and collusion

- Its is currently discussed (albeit primarily in academic circles) how competition law can and should deal with **collusion** that is facilitated by **algorithms** (e.g. pricing robots)
- The idea is that **self-learning systems** based on **artificial intelligence** could develop skills to assess **huge amounts of market data** in real-time and facilitate **pricing practices** that might be **harmful to competition** and **end consumers**
- If there is **no coordination**, but only very informed independent decisions based on troves of market data, the result could be **tacit collusion –** which is considered harmful, but not illegal
- If there is **coordination** (between algorithms of independent companies) the question arises whether and how this can be attributed to **human behaviour** and **responsibility**

Algorithms and collusion



„[…] the **industry-wide use of pricing algorithms** increases both **market transparency** and the risk of **conscious parallelism**. [...]
[…] the computers will already be programmed to **anticipate** and **respond** to **rivals‘ moves**. In such a scenario, **computers** can **rapidly calculate** the **profit implications** of myriad moves and countermoves. [...] **prices**, as a result of **conscious parallism**, **will climb**.“

Ariel Ezrachi & Maurice Stucke,
Virtual Competition, 2016, Ch. 7

Universität zu Köln

Algorithms and collusion

- The **Monopolies Commission**, an advisory body to the Federal Government, found this year that pricing algorithms can **promote collusion** in markets that are already prone to collusion because of **high barriers** to entry, a **small number** of **competitors** and a high degree of **market transparency**
- Pricing algorithms may also **stabilize** collusion and make it **difficult to detect**, since agreements may not be necessary
- The Commission proposes to **extend market monitoring and observation** through **sector inquiries** and **consumer associations** (potentially including **algorithmic surveillance**)
- Furthermore, the Commission proposes to **assess the liability of IT service providers** that design pricing algorithms in order to discover and close potential **liability gaps**

Questions?

ABUSE OF DOMINANCE IN DIGITAL MARKETS

Recent Amendments to the Competition Act

- In 2017, the German Competition Act (the 'GWB') was **amended** in order to ensure (among other things) its more effective application to **digital markets**
- Regarding **market definition**, § 18(2a) GWB now specifies that a market can be defined even if market participants exchange goods or services without consideration (free of charge)
  - This is supposed to accommodate for the special characteristics of **multi-sided platforms**, where different products are offered to at least **two separate groups** of customers and where the **demand of one group** (eg advertisers) **depends on the demand of another group** (eg users)
  - This mirrors the ***EU Commission**'s* approach (*Facebook/WhatsApp*)
  - Previously, the *Higher Regional Court of Düsseldorf* had stated, however, in the ***HRS*** **'best price' clause decision** that the **non-monetary side** of the platform was in itself **not part of the relevant market**

Recent Amendments to the Competition Act

- Regarding **assessments of dominance** (both in abuse of dominance cases and merger control), the new § 18(3a) GWB lists a number of factors to be taken into account, in particular with regard to **multi-sided markets** and '**networks'**
- The new list supplements the existing catalogue in § 18(3) GWB and is **not exhaustive**, but merely exemplary. It includes:
  - direct and indirect **network effects**,
  - parallel use of services (**multi-homing**) and **switching costs**,
  - **economies of scale** with regard to network effects,
  - **access to data** relevant to competition
  - and **innovation-driven competitive pressure**

Recent Amendments to the Competition Act

§ 18 Market Dominance

(1)-(2) [...]

(2a) The **assumption of a market** shall not be invalidated by the fact that a good or service is provided **free of charge**.

(3) [...]

(3a) In particular in the case of **multi-sided markets and networks**, in assessing the **market position** of an undertaking account shall also be taken of: 1. **direct and indirect network effects**, 2. the **parallel use of services** from different providers and the **switching costs** for users, 3. the undertaking's **economies of scale** arising in connection with network effects, 4. the undertaking's **access to data** relevant for competition, 5. **innovation-driven competitive pressure**.

(4)-(8) [...]

Questions?

Platform markets – CTS Eventim

- In December 2017, the *BKartA* prohibited *CTS Eventim* from using **exclusive contracts** with **event organisers** (concerts, sports events etc) and **advance booking offices**
- The **clauses** in question stipulate that the contracting parties **may only sell tickets exclusively** or to a **considerable extent** via *Eventim's* ticket sales system
- *Eventim* operates the **largest ticketing system** in Germany (with a market share of 60-70%)
- A ticketing system is a **platform**: On the one side it enables **event organisers** to sell tickets via **advance booking offices** and **online shops**, and on the other side it enables **advance booking offices** to book tickets for different **events**

Platform markets – CTS Eventim

- The case is known for the *BKartA's* **in-depth analysis** of the economics of **platform markets/multi-sided markets**
- A ticketing system brings together **two distinct groups of customers** (event organizers & booking offices) that depend on **each other** and the ticketing platform as an **intermediary**
- Ticketing systems are characterized by **indirect network effects**. As **more event organisers** use the ticketing system, **more advance booking offices** and **end customers** will depend on the system and **vice-versa**.
- Thus, ticketing market **tend towards monopoly** ('**tipping**')
- *BKartA* ordered *Eventim* to allow its partners to sell **at least 20%** of their ticket volume through **third-party** systems

Algorithmic pricing – Lufthansa

- **Algorithmic pricing** is not only discussed as a problem of (tacit) collusion but also with regard to **abuse of dominance**
- Main question : Who is/should be responsible if an **algorithm** engages in **abusive conduct**, e.g. excessive pricing?
- **Example**: After *Air Berlin* went into bankruptcy in 2017, *Lufthansa* became a **monopolist** on some domestic flight routes in Germany and increased prices **by 25-30%**
- *Lufthansa* defended itself by stating that the higher prices resulted from its **pricing algorithm's reaction** to supply and demand (taking into account the lack of flight capacity)
- This was reported as an **effort to shift blame** to the algorithm and **denying responsibility** for the higher prices

Algorithmic pricing – Lufthansa

- The *BKartA* opened a competition law investigation and looked into a potential **excessive pricing abuse**
- The investigation was closed in May 2018 **without a formal decision** after the *BKartA* had found that the higher prices were a **normal competitive reaction** to the decline in capacity following *Air Berlin's* **exit** from the market
- Regarding the pricing algorithm, the *BKartA* stated:

  *"**The use of an algorithm for pricing naturally does not relieve a company of its responsibility**. The investigations in this case have also shown that the airlines **specify the framework data** and **set the parameters** for dynamic price adjustment separately for each flight. The airlines also **actively manage** changes to these framework data and enter unanticipated events **manually**, which are not automatically accounted for by the system."*

Universität zu Köln

Questions?

Data protection abuse – Facebook

- In March 2016, the *BKartA* opened an investigation into a potential **abuse of dominance** by ***Facebook***
- The suspicion is that, „with its **specific terms of service** on the **use of user data**, *Facebook* has abused its possibly dominant position in the **market for social networks**"
- In other words, *Facebook* is accused of infringing competition laws by infringing **data protection laws**
- The *BKartA* published a **preliminary assessment** in December 2017. The **final decision** is expected by the end of this year. A prohibition is likely, a fine is not.
- The proceeding is conducted in close contact with the competent **data protection officers**, consumer protection associations, the **EU Commission** and competition authorities of other **EU Member States**

Data protection abuse – Facebook

The relevant market

- *BKartA* considers *Facebook* to have a dominant position on the **German market for social networks**
- The market includes smaller **social networks** (*Google+* etc), but neither **professional networks** (*LinkedIn*, *XING* etc) nor **messaging services** (*WhatsApp* etc) or **social media** (*YouTube*, *Twitter* etc), which are **only partial functional substitutes** that primarily serve **complementary needs**
- The relevant **geographical market** is **national**. *BKartA* found that German users predominantly use social networks to stay in touch with friends and family within Germany.

Data protection abuse – Facebook

Dominance

- *Facebook* is considered dominant because:
  - it has a **quasi-monopoly** with more than 90 per cent of user-based market shares (30 million monthly users in Germany)
  - it benefits from '**identity-based direct network effects**' ("people go where their friends go"), **high switching costs** and **lock-in effects** ("people won't leave unless their friends also leave")
  - the market is characterized by **high barriers to entry**
    - a **critical number** of users is needed for an **ad-financed product** – advertisers prefer larger audiences (**indirect network effect**)
    - **product design** and **advertising** depend on **access to user data**
    - **multi-homing** (i.e. using more than one network) is **not relevant**
  - as a result, *Facebook* benefits from **economics of scale** and **comparative cost advantages**

Data protection abuse – Facebook

Abuse

- The *BKartA* assesses whether **Facebook's rules on data use** are so unfair that they constitute '**exploitative business terms**' according to § 19(1) and (2) no. 2 GWB*
- **"§ 19 GWB Prohibited Conduct of Dominant Undertakings**

  (1) The **abuse of a dominant position** by one or several undertakings is **prohibited**.

  (2) An **abuse exists in particular** if a dominant undertaking [...]

  1. [...]

  2. demands **payment** or other **business terms** which **differ from those** which would very likely arise if **effective competition** existed; [...]"

  ** GWB = German Competition Act*

Data protection abuse – Facebook

Abuse

- The use of '**exploitative business terms'** is an **exploitative abuse** under German competition law [and Article 102 lit. a) TFEU!] (the concept is similar to excessive pricing)
- The Federal Court of Justice has held that **principles of contract law** and **constitutional law** may be taken into account when determining whether terms are 'exploitative'
  - "VBL-Gegenwert II" (2017): clause may be 'exploitative' because it is causes a **significant imbalance** in a contract and is thus to be considered '**unfair**' under EU/German **unfair contract terms law**
  - "Pechstein" (2016): clause may be 'exploitative' because it is so one-sided and imbalanced that it infringes upon **constitutional rights** (party autonomy and contractual freedom); the case concerned a professional athlete who was "forced" to sign an arbitration agreement in order to be able to participate in world championships

Data protection abuse – Facebook

Abuse

- *BKartA* aims to show that *Facebook's* data rules are 'exploitative business terms' because they are **not justified under data protection rules**
- The focus is on **third-party sources** ('off *Facebook*'), i.e. third-party websites that have embedded the '**like**' **button** or ***Facebook* login** or services such as "*Facebook* Analytics"
- *Facebook's* terms allow it to **merge data** from these sources with users' *Facebook* accounts **even if they block web-tracking** in their browsers or device settings
- *BKartA* considers this to be **inappropriate** under EU/German data protection rules and thus **exploitative** and **abusive**

Data protection abuse – Facebook

Abuse

- *Facebook* investigation is seen **critical** by many because it seems to indicate that ***any*** **violation of the law** by a dominant undertaking may be an **abuse of dominance**
- **Where is the connection between *Facebook's* dominance and the violation of data protection rules?**
  - Would *Facebook* **not be able** to violate the data protection rules **but for** its **dominant position** (i.e. would users otherwise switch?)
  - Does the violation enable *Facebook* to unfairly **protect its dominance** (because data is needed for product design and advertising?)
  - Wouldn't one expect that it is actually ***good*** **for competition** if a dominant firm **treats its customers badly** (because its drives them into the arms of its smaller competitors?)

Questions?

Reform

- The **Federal Government** pledged in its coalition agreement that it would put the *BKartA* in a better position to act against the use of **market power** on **fast-moving internet markets**
- An **academic study** was compiled by Profs *Schweitzer*, *Haucap* and *Kerber* and published in August this year
- An **advisory committee** to the Federal Ministry of Economic Affairs was commissioned with developing specific **proposals for legal amendments** until autumn 2019
- Interestingly, the mandate also refers to allowing for **industrial cooperation** and **data sharing** in artificial intelligence, autonomous technology and platform industries as well as the **creation of** "**competitive**" **enterprises** on the EU/world level – it remains to be seen whether the ultimate goal will be ***more* or *less* intervention**

Reform

- Proposals from the academic study (I):
  - The main idea is to enable the ***BKartA*** to **intervene** if certain cases **even** where companies are **not yet dominant** on a market
  - **§ 20 GWB** – already today – prohibits abuses and discrimination towards small or medium-sized enterprises (SME) by undertakings with **relative** or **superior market power** (i.e., below dominance)
  - The study suggests to abolish the SME requirement and open the clause to **all cases of relative or superior market power**
  - The study also suggests that, even **without dominance**, it should be considered an **abuse** if an undertaking hinders its competitors on platform markets with a **tendency for tipping**, i.e. markets that are likely to become monopolies due to **strong positive network effects**
  - Examples of such abuse would be the **thwarting of multi-homing and switching** to other platforms

Reform

- Proposals from the academic study (II):
  - A large part of the study deals with **access to data** and **data sharing**
  - The study does **not** suggest any **legal amendments** but refers to the **essential facilities doctrine**, **§ 20 GWB** on relative and superior market power and dependency, and **contract law**
  - The study does, however, strongly encourage further reflection on **data sharing obligations** that may enable and promote innovation and competition on **secondary markets** (**data-based solutions**)
  - **Andrea Nahles**, Chairwoman of the Social Democratic Party (SPD), recently proposed a **„Data-For-All"-Act** that would require companies holding a market share above a **certain threshold** to publicly share an „**anonymous and representative**" share of their **data treasures**, which could then be used by **competitors** and **start-ups** to develop **new products** and **services** to the benefit of everyone

Questions?

MERGER CONTROL IN DIGITAL MARKETS

Dr Carsten Koenig | University of Cologne – Department of Law | 4 October 2018

Universität zu Köln

Recent Amendments to the Competition Act

- The 2017 Amendment to the GWB also introduced a '**transaction value based threshold**' which allows for merger control to apply if the value of a transaction (i.e. the price paid by the acquirer) exceeds EUR 400 million
- Previously, merger control exclusively referred to **turnover thresholds** (as does the EU Merger Regulation)
- However, the target's turnover may not always adequately reflect its **importance** as a (**potential**) **competitor**
- **Platform markets** are often characterized by **low turnover** but extremely rapid growth ("grow first, monetize later")
- Example: The ***Facebook/WhatsApp*** concentration neither met the turnover thresholds of the EU Merger Regulation nor those in many Member States and **almost escaped review**

Platform markets – Real estate websites

- In April 2015, the *BKartA* allowed the owner of **Immonet**, the **third-largest** website for selling or renting real estate to acquire control of **Immowelt**, the **second-largest** website
- The *BKartA* emphasized that real estate platforms are **multi-sided markets** that are characterized by **indirect network effects** – real estate providers prefer platforms that attract a **large group of customers**, customers prefer platforms that attract a **large group of real estate providers**
- In markets with **many smaller competitors** it thus becomes more likely that both sides of the market (i.e. real estate providers and customers) chose **the market leader**
- The concentration may thus **increase competition** towards the market leader by creating **another large platform**

Platform markets – Dating websites

- In October 2015, the *BKartA* allowed ***ElitePartner*** to acquire the control of ***Parship***, resulting in a merger of two of the largest online dating websites in Germany
- *BKartA* assessed **indirect network effects** and the risk of the market **'tipping' towards monopoly**, but found that even after the acquisition the two would **not lead** the market **by a sufficient margin** to make tipping likely
- A **huge number of competitors** exists in the online dating market, some of them with very diverse user groups
- **Multi-homing** (the use of several services at the same time) is common and counter-weighs indirect network effects
- **Barriers to entry** are relatively low and **novel products** (such as mobile dating apps) are growing rapidly

Reform

- The **academic study** commissioned by the Federal Ministry for Economic Affairs (mentioned earlier with regard to abuse of dominance) also proposes a stricter stance on **mergers and acquisitions** in **digital markets**
- The study suggests that it should be considered an **significant impediment to effective competition** (SIEC; i.e. grounds for prohibiting a concentration) if a dominant company acquires an undertaking that could become a **potential rival** in the future and if this is part of a **larger strategy to fight off competition through acquisitions** (sometimes termed **'shoot-out acquisitions'**)
- This is supposed to better take into account the effects of **conglomerate concentrations** that are currently very difficult to prevent under EU and German merger control

Questions?

Consumer Protection in Digital Markets

Dr Carsten Koenig | University of Cologne – Department of Law | 4 October 2018

Universität zu Köln

Consumer protection

- Unlike other NCAs (such as the CMA [UK] or the ACM [NL]), the *BKartA* does **not** have a general competence to enforce **consumer protection laws**
- Since 2017, the *BKartA* may, however, conduct **sector inquiries** (not targeted against specific companies) if there is probable cause for a "**substantial**, **continuous** or **repeated** infringement of **consumer protection laws**, potentially harming a **large number** of consumers"
- Under the same conditions, the *BKartA* may now also act as ***amicus curiae*** in consumer-related **court proceedings**
- But it still **lacks decision powers** (fines, termination etc.)
- In light of the new competences, the *BKartA* created a **new decision division** for consumer protection in 2017

Consumer protection

- In October 2017, the *BKartA* launched a sector inquiry into "online **price comparison websites**"
  - **Focus** on the inquiry is on travel, insurance, financial service, telecommunication, energy
  - **Issues** e.g. rankings/search algorithms, financing, corporate links, user reviews, availability, relevant market coverage
- In December 2017, the *BKartA* launched another sector inquiry into "**smart TVs**" and their use of **user data**
  - **Purpose** is to "clarify if and to what extent smart TV manufacturers collect, pass on and commercially use personal data, and whether the persons concerned are being appropriately informed of this practice"
- In October 2017, the *BKartA* for the first time acted as ***amicus curiae*** in a civil court proceeding concerning un-justified fees for **online ticketing services** (*Eventim*)

CONCLUSION

Conclusion

Bundeskartellamt

"**Our key focus is on protecting competition in the digital economy**. We have **two key objectives** when it comes to the **major internet companies**. Our task is to **keep markets open** to ensure they remain **contestable** and companies continue to have the opportunity to be successful with new ideas. We also need to make sure **consumers** can **select** the **products** and **services** matching their requirements in a **transparent** and **fair environment**."

Andreas Mundt, President, *Bundeskartellamt*

Universität zu Köln

Conclusion

- The *BKartA* is determined to keep digital markets **open** and **contestable**, even though many of them are characterized by **network effects** and **tend towards monopoly** ('tipping')
- **Online platforms** (for hotel bookings, ticketing services, real estate, online dating etc) receive **intense scrutiny**
- The ***Facebook* investigation** is the most prominent one, but many others are at least equally important for consumers
- **Major cases** concern **best price/price parity clauses**, **exclusivity agreements**, and **exploitative business terms**
- The Government prepares potential reform which is likely to include **more extensive powers** for the *BKartA* to monitor and prevent the creation of **market power** in digital markets

Thank you – Questions?

Dr Carsten Koenig
University of Cologne – Department of Law
carsten.koenig@uni-koeln.de

Universität zu Köln