



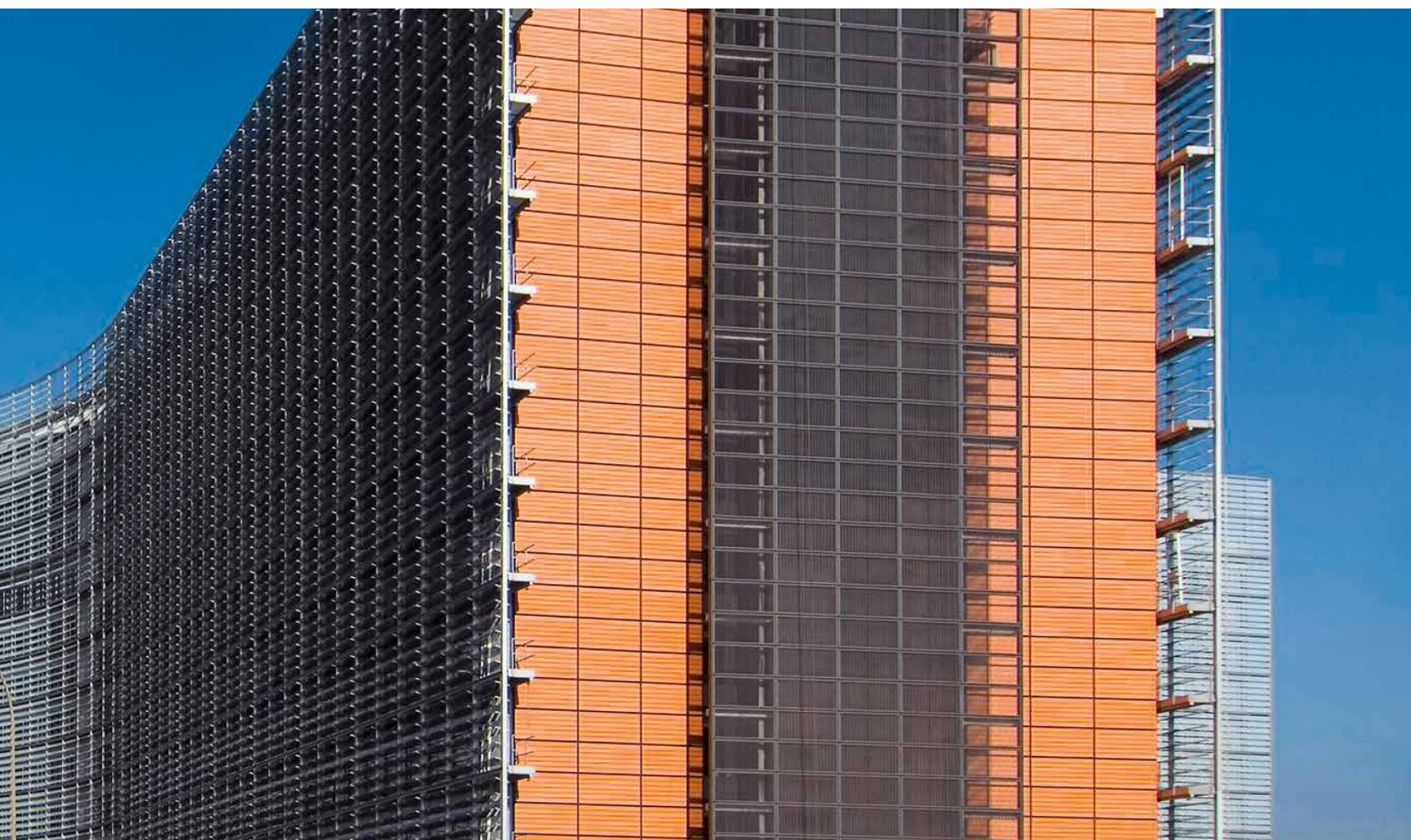
## Antitrust Law



## **Comprehensive Legal Counseling: Nationally and Internationally**

Heuking Kühn Lüer Wojtek stands for the competence of one of the large commercial law firms in Germany. Our specialized lawyers, tax consultants and notaries represent the interests of national and international clients, including mid-sized and large companies from industry, the retail and service sectors, financial investors, banks, associations, public corporations and discerning private clients.

Important business decisions often raise antitrust questions. Merger control procedures may have to be carried out for corporate transactions. Cooperation agreements between companies, such as in distribution or in research and development, must always meet antitrust requirements. Companies with an exposed market position have to comply with particular rules of conduct in competition. If companies are granted public aid, the law regarding such aid needs to be considered.



We also provide legal counseling to our clients at the interface of antitrust law with other areas of law, such as public procurement law, the law of regulated industries (such as energy, transport, environment, postal service and telecommunications), intellectual property law and patent law, media law, EU law, distribution law and international commercial law.

In our Antitrust Law Practice Group, we provide comprehensive counseling in German and European antitrust law to companies, associations and public authorities. We lead and coordinate the necessary merger control procedures on German, European and multinational levels and support our clients in avoiding antitrust law violations, in particular by means of our compliance counseling.

Our range of services also includes advising the European Commission and national antitrust authorities on legislative projects and in connection with the implementation and interpretation of laws. Members of our Practice Group participated in drafting antitrust law provisions in Eastern Europe and trained judges of EU candidate countries in antitrust law.

We represent our clients before the German Federal Cartel Office, the European Commission and before German and European courts. Our international focus and our well-established contacts to leading law firms in all of the major jurisdictions allow us to adapt to the increasing internationalization of antitrust law and the worldwide networking of antitrust authorities.

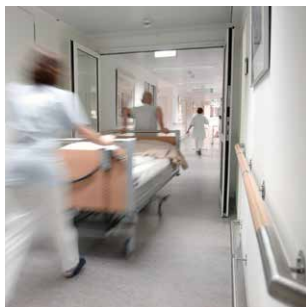




## Merger Control

In certain cases, the acquisition or the sale of corporations and assets and the establishment of joint ventures require approval by the competent antitrust authorities. Market participants concerned by the merger may assert their interests as interested parties in the merger control procedure.

We review whether it is necessary for our clients to notify under merger control law transactions and, if so, we file notifications with the Federal Cartel Office or the European Commission and coordinate proceedings which regulates to determine if a mergers is permissible. Thus, our Antitrust Law Practice Group has carried out numerous notifications and gained experience in all major industry and service sectors. With the support of a worldwide network of correspondence lawyers, we also coordinate the required filings within and outside the European Union („multi-jurisdictional filings“). We also represent interested parties as third-party interveners.



Representation of two hospital operators before the Federal Cartel Office: Acquisition of a children's hospital by a **university hospital**

Representation of a leading **tourism group** before the European Commission, the Federal Cartel Office and coordination of filings in third-party countries: Sale of the logistics division

Representation of a **logistics group**, active worldwide, before the European Commission: Acquisition of a British logistics company



Representation of a public **port operator** before the European Commission and the Federal Cartel Office: Establishment of a joint venture

Representation of a company in the **rail and tank container logistics industry** before the Federal Cartel Office: Acquisition of various interests and assets (rail transport cars and tank containers)

Representation of a **railway company** before the European Commission: Privatization of the Hungarian freight transport railway

Representation of a **food logistics** provider before the European Commission: Establishment of a joint venture in the freight forwarding sector

Representation of a leading **gas distributor** as interested party before the Federal Cartel Office: Acquisition of an interest in an integrated energy supplier by an energy group

Representation of an **energy supplier** before the Federal Cartel Office: Acquisition of an electricity producer





Representation of an international manufacturer of **energy supply plants** before the Federal Cartel Office: Acquisition of a solar plant manufacturer

Representation of an international **insurance group** before the European Commission: Acquisition of a financial service provider

Representation of a worldwide leading **optical group** before the Federal Cartel Office: Acquisition of a manufacturer of intraocular lenses

Representation of a **manufacturer of medical monitors** before the Federal Cartel Office: Acquisition of a medical engineering division of a worldwide leading electronics and technology group

Representation of a **hearing aid devices retailer** before the Federal Cartel Office: Sale of shares to a Dutch competitor

Representation of an international **automotive supplier** before the European Commission: Acquisition of another international automotive supplier

Counseling under merger control law and representation of a **secondary buyout investor**: Acquisition of venture capital portfolios from Infineon, STEAG, Siemens and 3i



Representation of a **State bank and of local municipal banks** before the Federal Cartel Office: Establishment of technology funds for new businesses

Representation of a **Scandinavian financial investor** before the Federal Cartel Office: Acquisition of a mechanical engineering company

Representation of a **paper wholesaler** before the Federal Cartel Office: Acquisition of shares in another paper wholesale company





# Anti-Competitive Agreements

## Cooperation Agreements Between Companies

Agreements between companies may promote competition and be useful to consumers. Examples of such cooperation agreements are research and development agreements (such as in the form of a consortium), technology transfer agreements, purchasing cooperatives and distribution agreements. However, there are also limits set by antitrust law in order to safeguard competition. It is the responsibility of the companies concerned to assess these limits, since the antitrust authorities no longer grant individual exemptions.

We review agreements between companies for clauses impermissible under antitrust law and provide counseling to companies in drafting agreements in compliance with antitrust law, thus assuring that agreements will be valid before antitrust authorities and courts. In addition, we represent our clients in antitrust disputes before antitrust authorities and courts.





Drafting of supplier relationships in compliance with antitrust laws in the **machinery sector**

Counseling companies and associations in the **chemical industry** in research and development agreements

Counseling **operators of dual waste management systems** in the establishment of a Joint Center for Systems for Returnables

Ongoing counseling to a leading German **car manufacturer** in designing the distribution system



Drafting of agreements for the organization of several consortia for a U.S. **chemicals and synthetic fiber manufacturer** in order to comply with the registration obligations of chemical substances pursuant to the new EU REACH Regulation and supporting various consortia meetings

Counseling a German **manufacturer of office supplies** in the establishment of a joint venture for category management





## Cartels

Agreements between competitors impermissible under antitrust law, in particular with respect to pricing, quantities, regions or customers, are subject to high fines and in some States within and outside of the EU even criminal fines for management personnel involved. Moreover, actions for damages by customers and competitors keep gaining in importance.

We counsel and represent our clients in antitrust fine proceedings before cartel authorities and courts at national and EU levels, in particular, also in making use of leniency programs. The continuing integration of antitrust authorities on European and worldwide levels also often requires international coordination of defense strategies and activities which we conduct jointly with leading law firms in other jurisdictions.



Representation of a German **paper wholesaler** in a proceeding concerning administrative fines before the Federal Cartel Office and Düsseldorf Higher Regional Court

Representation of a manufacturer from the **bathroom fittings industry** in a proceeding concerning administrative fines before the European Commission

Representation of an international **manufacturer of metal notions and zip fasteners** in a proceeding concerning administrative fines before the European Commission and the European Court of First Instance (now the General Court), including possible effects of the investigation in all EU Member States under civil, criminal and labor laws

Representation of an **insurance company** in a proceeding concerning administrative fines before the Federal Cartel Office and Düsseldorf Higher Regional Court



Representation of a **manufacturer of ready-mix concrete** in a proceeding concerning administrative fines before the Federal Cartel Office and Düsseldorf Higher Regional Court

Representation of an international **machinery company** in a proceeding concerning administrative fines before the European Commission







## Private Antitrust Law Enforcement

Until recently, antitrust law enforcement in Europe had mainly been limited to (monetary / administrative fine) measures of antitrust authorities. However, this image has changed. Actions for damages under private law on the basis of antitrust violations keep increasing in number before national courts and in arbitration proceedings. European and national legislators have expressly made it their objective further to facilitate actions for damages under private law in the future and to promote them by appropriate statutory amendments.

We counsel and represent companies exposed to claims for damages, as well as companies wanting to sue parties responsible for damages caused by antitrust violations. The international coordination of all relevant official and court proceedings in consideration of international civil procedure law is of particular importance. Our team specializes both in trials of national jurisdiction and in ad hoc and institutional arbitration proceedings or proceedings of alternative dispute resolution.



Representation of an international corporate group in a mediation proceeding due to an antitrust contractual dispute in the area of **metal manufacturing**

Representation of an international corporate group in connection with antitrust **class actions** in the fashion industry in the U.S.

Counseling an **international corporate group** in the analysis and defense of possible antitrust claims for damages



Representation of an international corporate group in **the automotive industry** in an arbitration proceeding with reference to merger control

Counseling European companies and **industry associations** in various industries regarding the proposals of the European Commission on private antitrust law enforcement

Counseling and representation of a **retailer** in connection with the possible assertion of claims for damages by customers under civil law







## Abuse Control

Companies with high market shares are subject to particularly strict antitrust requirements. The abuse of a dominant market position is prohibited both under European and German antitrust law.

An abuse of market power may lie in a supply boycott or in the exploitation of customers, but also in predatory pricing, exclusive distribution agreements, in the type of discount setting or in the refusal of access to essential facilities and technologies. While these types of conduct may under certain circumstances be permissible for smaller competitors, dominant companies are subject to special monitoring in this respect.

We counsel clients with high market shares, advising them on which types of conduct are available to them and proper in dealing with their competitors, as well as to companies fighting improper conduct of market-dominant companies.





Counseling an association of private **railway transport companies** and to its members for improper conduct of European state railways

Counseling and trial representation of a renowned German organizer of **live music entertainment** in connection with supply claims by a ticket marketer

Representation of various German **public utility companies** and Eastern European energy providers in abuse proceedings for excessive gas prices

Counseling a **regional rail transport company** in connection with antitrust supply claims

Counseling an international manufacturer in the **fashion industry** in designing its distribution and discount agreements

Representation of an **association of enterprises** before the European Commission in connection with alleged price abuse

Representation of media and **telecommunications companies** with respect to agreements of TV broadcasters and a satellite operator in the scope of introducing scrambled digital program packages



Counseling numerous companies in the **chemical industry** with a view to the application of European and German provisions on abusive market conduct

Counseling a company active worldwide in the **IT industry** for possible actions for damages against a competitor on the basis of antitrust abuse regulations

Representation of a **sporting association** against a manufacturer of time recording equipment for the admission of said equipment in competition

Counseling a **German Pay TV and digital platform operator** in connection with abuse proceedings by the Federal Cartel Office against competitors





## Compliance

Antitrust risks may not only lurk in the structuring of an agreement or in an impermissible refusal to supply. Even informal contact between employees of different companies may be considered an impermissible cartel, such as when non-publicly available sensitive information is exchanged or customers are coordinated. The European Commission and the national antitrust authorities of the individual EU Member States have made it their objective to prevent antitrust conduct with high fines imposed and even with prison sentences in some foreign countries. In addition, there is the danger of actions for damages by potentially injured parties and a loss of reputation that can only be repaired with difficulty.

Efficient compliance programs assist in avoiding the risks of monetary fines and damages. Comprehensive staff training in due time not only leads to better reactions in possible searches by the antitrust authorities ("dawn raids"), but may also serve to reduce sanctions in the final analysis.

We review our clients' business units for possible anti-trust violations, train employees, structure and introduce efficient internal control systems to avoid antitrust violations and assist in the implementation of these compliance systems.



**Drafting of compliance programs,  
including for companies and associations  
in the following industries:**

Automotive  
Building Materials Industry  
Wood Materials Industry  
Chemical Industry  
Pharmaceuticals Industry  
Paper Wholesale Industry  
Machinery  
Electronics Industry  
IT Industry  
Consumer Goods Industry  
Beverage Industry  
Mineral Oil Industry  
Energy Industry  
Insurance Industry  
Banking





## State Aid

Distortion of competition is not always the consequence of corporate conduct. State conduct in the form of aid may also lead to unjustified disadvantages for competitors. This is why State aid must be registered with the European Commission, which is all the more important since unjustified aid must be repaid by the recipient - a circumstance that regularly places a heavy burden on the companies concerned.

We support our clients in applying for State aid and in solving issues under State aid law, both in proceedings before the European Commission and the European Courts and before authorities and courts of the EU Member States.



Representation of an **industry association** before the European Commission and the European Court of First Instance

Representation of a German **energy supplier** in a proceeding before a German court and the European Commission



Counseling a private **rail track infrastructure operator** on State financing of track replacement investments

Counseling a **German State** on the structuring of commercial offerings of classical music under State aid law





## Regulated Industries

In recent years, several European and national markets have been liberalized, such as electricity, gas, telecommunications, postal services and transport (e.g., aviation). For a number of these industries, specific antitrust problems exist. From the beginning of the liberalization developments, we have provided detailed counseling to clients and continue regularly to advise on current issues in these areas.





Counseling a purchasing cooperative comprising more than thirty **public utility companies** on introducing a joint concept for structured electricity and gas purchases

Representation of **energy providers** and larger-scale consumers of electrical energy before the Federal Network Agency and the courts



Counseling under media concentration law and representation of **TV broadcasters** and investors before state media agencies and the German Commission on Concentration in the Media

Counseling in connection with the monitoring of conduct of **telecommunications companies** by the Federal Network Agency and the Federal Cartel Office

Application for licenses, carrying out of appeal proceedings and representation in regulation proceedings in **postal matters** before the Federal Network Agency and the courts

Counseling a U.S. **air carrier** in expanding its route network in Europe

Counseling airlines on the implementation of European and German safety regulations including **ground handling providers**

