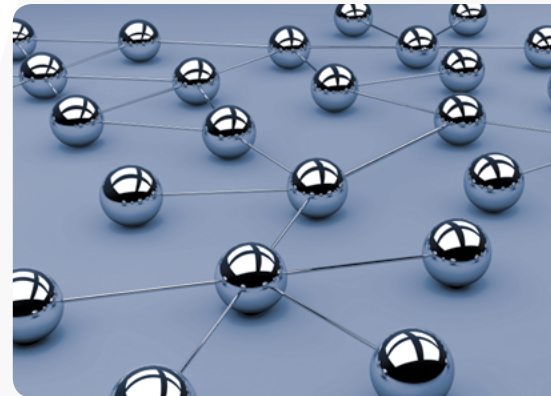




## Cartels

Prevention – Identification – Procedural assistance



## Effects on efficiency and consumer welfare



Since 1986 we have advised numerous companies in many sectors in close cooperation with legal expert teams. As the first consulting firm in Germany to specialise in competition economics we have wide experience in the analysis, assessment and classification of cartel effects. In doing so, we have supported our clients with economic reports as well as in oral hearings at competition authorities and courts. We have explained our results to the “case teams” and economic general policy department at the competition authorities or at court.

The competition economic analysis of coordination between companies has considerably gained in importance over the past few years for two reasons:

- On the one hand both the European as well as German antitrust law demands self-assessment by companies of the competitive consequences of their market behaviour. During this business cooperations and alliances must judge whether information exchange, concluded agreements or arrangements between the companies have anti-competitive consequences from which drawbacks for consumer welfare could result.
- On the other hand the European Commission strongly supports private actions for damages in the case of a breach of antitrust law. In the past few years hard-core cartels of direct competitors were particularly affected by this.

Many cooperations and agreements can be exempted if proven efficiency effects also lead to a reasonable increase in consumer welfare. Due to the complexity of the market conditions, economic expertise is essential for proving efficiencies, but this is also necessary for detailed and robust damage analyses and assessments.

### Cooperation or cartel

The demarcation between behaviour promoting efficiency and anti-competitive behaviour requires a high level of awareness of the people involved. Therefore, our competition economic consulting about cartels also addresses prevention and identification as well as all other compliance questions in relation to this.

### Indirect and direct concern

Cartels can limit and distort competition in many different ways. The circle of those potentially affected is large: Not just end customers but also intermediaries, subcontractors, suppliers or manufacturers of complementary products can be affected if a price increase generated by the cartel is passed on to downstream market levels. Even for the proof of indirect cartel damages courts have high demands which require detailed knowledge of the market connections and cartel mechanisms along with sophisticated methodology. In the determination of such “passing on effects” we benefit from our many years of experience of analysing investment, product, consumer goods and services markets.



## Competition economic indicators in cartel cases

Our range of services includes the whole process of cartel analysis from the efficient implementation of preventative measures to the identification of anti-competitive violations right through to damage quantification and assistance in proceedings involving fines or compensation.

### Prevention – “Structural screening”

If you issue tenders and appear in different supply markets as a buyer, you are at risk of suffering damages by a cartel. As part of an institutionalised and preventative functioning monitoring mechanism, the damage potential is identified in advance when tendering supply contracts and if necessary corresponding rules of conduct are derived. For this an economically consolidated analysis of the supplier markets is required in order to attain an estimation of the intensity of competition and the cartel risks. By working closely with in-house lawyers and law firms the building of cartels and the effectiveness of anti-competitive arrangements has been made considerably harder on the supplier side due to an optimised contract design and the adaptation of the tendering procedures.

### Identification – “Behavioural screening”

There are numerous economic signs that point to cartel arrangements or cartel effects. For the identification of potential cartels we track both qualitative and quantitative

analysis approaches. Market data can be analysed regarding noticeable price and margin developments or bid patterns using econometric processes on the basis of structural interruptions.

### Procedural assistance – Handling cartel cases

We have extensive experience in fine and court proceedings, in follow-on suits as well as in out-of-court damage proceedings. In fine proceedings we are involved as competition economics or as witnesses at courts including as expert witnesses. In close cooperation with company representatives and external lawyers we develop reliable, legally robust case analyses. As fine and court decisions have pre-judgements for actions for damages, companies involved in cartels have to primarily already provide appropriate information at this stage and counteract inaccurate findings.

#### Cartel prevention

- **Cartel deterrence**  
Establish cartel deterring mechanisms when designing the contract and tendering process
- **Cartel destabilisation**  
Strengthening opportunistic behaviour by the bidding and tendering process



#### Cartel identification

- **Recognising cartel risks and concerns at an early stage**
- **“Structural Screening”**  
Establish a cartel early warning system
- **Behavioural screening**  
Identify cartel arrangements pro-actively
- **Authority information for cartel prosecution**  
Compare BKartA [Federal Cartel Office] and DG-COMP activity reports and with supplier relationships



#### Cartel handling

- **Use learning effects**  
Internalise previous experience on damage assessments
- **Data acquisition**  
Acquisition, preparation and protection
- **Initial estimation**  
Recognise and prioritise need for actions
- **Damage assessment**  
Prepare expert report and estimate damage
- **Conduct of negotiations**  
Assess supplier relationship and execute (or refuse) damage claims

## State-of-the-art methods



To estimate the effects of cartels regarding efficiencies or cartel damage, you will be confronted with “counterfactual” hypothetical market circumstances without anticompetitive behaviour. For this we implement modern economic procedures which have been proven in the application of law and strategy development and that make the central criteria of antitrust law measurable.

The focus is on the assessment of the competitive price which would have formed without a breach of antitrust law. Our progressive, complementary analysis processes are always on the pulse, methodically and academically, through cooperations with renowned universities:

- **Benchmark analyses:** Their application requires that markets are comparable from a temporal, spatial and substantive point of view and are not under suspicion, cartelised or influenced by the cartel. A particularly efficient form of the benchmark analysis is presented by the econometric examination of price or margin developments of a cartel (“World standard of cartel overcharge estimation”). In this area we have a large range of method competences and can draw on our involvement in very large cartel cases from a particularly rich wealth of experience.
- **Cost-based approach:** With taking customary risk-ad-equate profit margins and the development of input costs into account, approximate competitive prices and minimum prices can be determined.
- **Market simulation:** As an overarching approach it models oligopolistic markets under the assumption of strategic market behaviour of the participants. We implement these sophisticated models and present the results in front of competition authorities and courts.
- **Other methods:** If only insufficiently reliable market data are available, we use further appropriate methods beyond these standard processes, for example:
  - › **Event studies:** After a cartel detection resp. fining, they use modified expected returns of the stock market for quantifying cartel profits.
  - › **Survey and market experiments:** With these, for example, price differences in cartelised markets can be explained by the customers’ willingness to pay or elasticities estimated.



### 25 years of expert knowledge in competition economics

Lademann & Associates is the first German consulting firm having specialised in questions of competition economics. Many of our customers are listed on the stock market and belong to the biggest players in the German economy. In current projects we are involved in key cartel cases and misuse of market power proceedings.

With this we directly connect to our many years of experience. We supervise market leading companies from very different sectors and areas, which are partially listed below:

- automotive industry
- primary industries
- consumer goods industry
- network industries
- transportation services
- wholesale and retail trade
- facilities in the area of infrastructure (e.g. airports)
- mechanical and plant engineering
- steel industry
- insurance industry

### Lademann & Associates was involved as a consultant company in the following cartel cases:

- airports
- automotive dealer trade
- automotive automobile industry
- automotive automobile service network
- body-care and cosmetic industry
- cement industry
- construction industry
- crop protection industry
- detergent and cleaning product industries
- energy economy
- energy industry
- food and non-food retail trade
- insurance industry
- liquefied petrol gas trade
- mechanical and engineering construction
- media and communication economy
- primary industries
- public sector  
(the german monopoly commission, the eu commission, central associations, etc.)
- technical wholesale
- telecommunications industry
- transport services
- unions
- wholesale food trade
- vehicle rental



## Lademann & Associates Economists and Competition Consultants

### Your contacts

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Knowledge matters.