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Wettbewerbszentrale

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Institution of the  
economy for  
fair competition

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Our task:

# Promoting fair competition

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The Centre for Protection against Unfair Competition [Wettbewerbszentrale] is the largest and most influential German and cross-border self-regulatory institution for the enforcement of the Act against Unfair Competition, UWG [Gesetz gegen den unlauteren Wettbewerb]. Its activities are based on its authority to take legal action as an association under § 8 (3) No. 2 of the UWG and § 33 (2) of the GWB (Law against Restraints on Competition, Gesetz gegen Wettbewerbsbeschränkungen). The Wettbewerbszentrale's task is to promote fair competition through legal research, information services, and law enforcement.

## Self-responsibility of the economic actors

The Wettbewerbszentrale is a registered association. It is an independent institution of the German business community and encourages economic players to act responsibly in order to achieve functioning and fair competition.

The Centre for Protection against Unfair Competition is not a lobby or interest group. It does not represent the economic interests of individual industries or companies. Rather, it is a self-regulatory institution for the entire business community with the task of protecting competition in the interest of the general public. It is therefore subject only to the competition laws currently in force. Neutrality and independence are the foundations of its activities and of the role its members think it should play.

The Wettbewerbszentrale is not a consumer protection association. However, it ensures compliance with consumer protection provisions in the interests of the economy. Market behaviour that violates such provisions results in a distortion of competition to the detriment of competitors and consumers, since the protection of competition and consumer protection are two sides of the same coin.

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Our model:

# Self-regulation as a market-based organizing principle

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The work of the Centre for Protection against Unfair Competition moves between the two poles of the free market system and the German fair competition laws which have been derived from that system.

## The principle of free competition and its limits

The principle of free competition based on the market-oriented economic system in the Federal Republic of Germany is the initiator of all economic success and therefore the guarantor of the welfare of the public. However, this freedom can be abused by individual market participants. Competition, as a selection and supply system, can be just as seriously impaired by the abuse of a strong position of power in the market, e.g. by a monopoly, as by conduct that attempts to gain unfair advantage over competitors.

Modern market economies therefore counteract the risks of impairment or even suppression of competition through governmental protective measures. In Germany, economic competition is regulated by the two correlated legal areas of cartel law and unfair competition law. Both areas of the law protect competition in the interest of the general public and the market participants.

## Cartel law

The purpose of cartel law is to safeguard the structure of competition, and it is directed against restraints on competition, such as the formation of monopolies. The enforcement of cartel law is a government function which has been delegated to the Federal Cartel Office and the Regional cartel authorities. At the same time, under the Law against Restraints on Competition (GWB – Cartel Act), affected persons and the Centre for Protection against Unfair Competition are entitled to seek prohibitive injunctions against cartel-law violators under civil law. The most recent legal developments show that the policy of the European Union relies on strengthening “private enforcement” as an adjunct to action by the cartel authorities.

## Law against Unfair Competition

In contrast to cartel law, the purpose of the Law against Unfair Competition is to protect against unfair and anti-competitive actions by competitors, such as misleading advertising or disparagement of competitors.

While compliance with cartel law is also – and at times primarily – monitored by the government, enforcement of the Law against Unfair Competition is exclusively in the hands of the competitors themselves in Germany – and therefore in private hands. In Germany government authorities are not responsible for punishing violations of fair competition laws. Rather, the Law against Unfair Competition (UWG) authorizes competitors to file claims seeking injunctions, abatement and damages regarding unfair competition. Such claims can be asserted in civil law proceedings before the courts.

## Legal action instituted by associations in the interest of the general public

Since the prevention of unfair competition is not only in the interest of the affected competitors, but also in the general public's interest in undistorted competition, legislators created legal action for associations as early as 1909. This kind of legal action was introduced into cartel law in 1965. Its purpose is to ensure legal prosecution of unfair competition, independent of individual interests. Associations of businesses, competitors, and consumers can therefore seek court injunctions against unfair actions in Germany. In addition, competitors' associations can seek injunctions against practices that violate cartel law.

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Our fields of activity:

# The four pillars of fair competition

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“The guardian of fair competition” – law enforcement in the marketplace

Under its charter and on the basis of § 8 (3) No. 2 of the UWG and § 3 (1) No. 2 of the Injunctions Act [UKlaG], the Centre for Protection against Unfair Competition seeks to create the conditions for fair competition among market participants by taking action against violations of fair competition laws utilizing the means provided by statute.

The Centre for Protection against Unfair Competition has had decades of experience with legal proceedings, which enables it to take efficient action. It has a statutory right to information and keeps itself informed of industry-specific market developments through extensive networking with various business associations.

Advisor to its members

The goal of the Centre for Protection against Unfair Competition is not only to take repressive action against competitive violations once committed, but also to provide preventive assistance. A large part of its work therefore consists of advising its members on all matters related to fair competition law. The Wettbewerbszentrale assists its members in meeting statutory requirements and detecting and managing relevant risks in a highly dynamic competitive process. The Centre for Protection against Unfair Competition will review materials before their publication in advertising campaigns to ensure that they are permissible under fair competition laws. This can avoid costly and time-consuming legal disputes.

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## Provider of specialized information services

The Centre for Protection against Unfair Competition provides the entire business community and the public with extensive information on general and industry-specific competition law. The ongoing analysis of published technical papers and court decisions and about 14,000 individual cases and requests for expert information per year guarantee that the Centre has one of the largest pools of information on competition law and related areas. This knowledge is passed on by organizing seminars and workshops, sending out information bulletins, online analysis of court rulings and literature for practitioners in the field, and publishing specialized books and articles.

## Participant in shaping the legal framework for competition

The Centre for Protection against Unfair Competition, as a neutral advisor, provides support to national and European legislators in shaping the legal framework for fair competition law. As a cross-industry institution of the business community which is independent of individual and industry interests, and an expert on legal practice in fair competition matters, the Wettbewerbszentrale's input is particularly sought-after by various parliamentary committees and ministries.

The Centre for Protection against Unfair Competition guarantees efficient, non-bureaucratic legal protection through private-law self-regulation, which makes government intervention in competition matters largely unnecessary.

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Our strategy:

# Specialization and regional presence

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Competition and the legal regulation of competition are marked by increasing complexity and dynamism. Regulation is becoming increasingly sector-specific and legal questions are arising more frequently and becoming more complex. Specialized knowledge of each industry is indispensable.

The Centre for Protection against Unfair Competition has therefore specialized in certain areas of the law and areas of business. In addition, it ensures efficient service that meets regional economic needs by maintaining six offices in various major German cities.

## Specialized departments

The specialization in certain areas of the law and industries within the Centre for Protection against Unfair Competition results from the legal framework applicable to them. Many competition-related rules of conduct for entrepreneurs in certain industries are set forth in special laws, such as the Law on the Advertising of Medicinal Products [Heilmittelwerbegesetz], the Fee Regulation for Architects and Engineers [Honorarordnung für Architekten und Ingenieure] or the Banking Act [Kreditwesengesetz]. Extensive knowledge of these special laws is necessary to properly answer competition law questions in this context.

The attorneys in the specialized departments therefore have detailed expertise, particularly with respect to industries that have a tendency to be confronted with competition law questions on a regular basis and in areas of the law that directly affect competition.

The following industries and professions are only mentioned as examples

Automotive industry	Food industry
Banks	Health care profession
Beverage industry/beverage stores	Health insurance industry
Breweries	Insurance
Competition in the public sector	Pharmaceutical industry
Discount stores	Pharmacists
Doctors	Professional experts
Drug stores/electronics stores	Telecommunications industry
Energy/utilities industry	Tourism/air travel
Financial services	

## Regional support services – local offices

Close and intensive collaboration with trade associations and chambers of commerce and handicraft allows for direct input regarding special regional requirements and economic needs into the work of the Centre for Protection against Unfair Competition. This makes an important contribution to finding quick and economically satisfactory solutions to competition law problems.

The business community can contact the Centre for Protection against Unfair Competition in six offices nationwide:

Bad Homburg (headquarters)	Berlin
	Dortmund
	Hamburg
	Munich
	Stuttgart



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Our goal:

# Efficient, and, where possible, out-of-court conflict management

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The tools available to the Centre for Protection against Unfair Competition to take action against violations of fair competition laws are prescribed by statute: as an institution of the business community authorized to initiate lawsuits, the Wettbewerbszentrale has a statutory right to seek injunctions against violators of fair competition laws. These can be filed in civil courts as private complaints.

## A clear step-by-step approach

As a rule, the violator is issued a warning letter in order to resolve the fair competition law violation without going to court. If no agreement can be reached, the Centre for Protection against Unfair Competition can take the case to the arbitration boards established by the Chambers of Commerce and Industry in numerous cases. In general, the majority of cases can be resolved without costly appeals to the courts. Only if out-of-court solutions cannot be achieved does the Wettbewerbszentrale appeal to the courts.

## Quick action and clear guidelines are indispensable in unfair competition situations

To avoid adverse effects on the market from violations of fair competition laws, the Centre for Protection against Unfair Competition will seek to stop anti-competitive practices as quickly as possible. It can petition the regional courts for temporary injunctions for this purpose. If there are questions of principle that need clarification for the business community, the Wettbewerbszentrale generally initiates main court proceedings. Thus the Wettbewerbszentrale takes numerous test cases to the German Supreme Court and the European Court of Justice to obtain clear guidelines for companies. The Wettbewerbszentrale sees itself as an engine for the development of the law.

## Independence and neutrality

As a rule, the Centre for Protection against Unfair Competition acts in response to complaints from the business community. However, it is also authorized to act on its own initiative if there are distortions of competition. It has the statutory entitlement to take legal action in its own name. It therefore cannot be “hired” by companies and associations seeking action nor is it subject to “instructions” from the complainant. Complaints about impermissible business practices are objectively assessed solely against the standards of applicable law and without regard to the identities of the complainants and respondents. Members of the Centre for Protection against Unfair Competition are, just like non-members, subject to legal prosecution without restriction. The legal assessment and the decision whether to initiate proceedings under fair competition laws are solely the responsibility of the management of the Centre for Protection against Unfair Competition.

With respect to the conduct of court cases, the Centre for Protection against Unfair Competition remains independent of the contributions of individual members to the greatest extent possible. In addition to its own budget, the Centre for Protection against Unfair Competition maintains a fund for litigation costs which is funded by voluntary payments from its members. In addition, the Wettbewerbszentrale receives a statutory allowance for justified warning letters as well as payments of liquidated penalty fines for violations of forbearance agreements. Most of the latter income is added to the fund for litigation costs.

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Our area of operations:

# The Centre for Protection against Unfair Competition in an international context

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The framework of fair competition laws is increasingly influenced by the European Union. And competition does not stop at national borders.

The work of the Centre for Protection against Unfair Competition is therefore not limited to Germany, but extends to the international level. Here the task is to promote fair international competition in light of increasing globalization.

## Cooperation with the EU's network of authorities

The European Union has created a network of authorities with central liaison offices in all the Member States, which are intended to take action against cross-border violations of consumer protection provisions. The Federal Office for Consumer Protection and Food Law (BVL) functions as the central liaison office in Germany. However, in contrast to most other Member States, the BVL generally does not take direct action in cases of cross-border violations of fair competition laws, but incorporates the efficient national private law enforcement system, which has been functioning for years, into its legal actions. This occurs in the following way: the BVL asks to the Centre for Protection against Unfair Competition, among other associations, to stop the violation in its own name according to a corresponding framework agreement.

## Advisor to EU institutions and foreign government authorities

In addition, the Centre for Protection against Unfair Competition is an expert advisor to the European Commission and the European Parliament in shaping the European legal framework for fair competition. It functions as a neutral advisor. For example, its opinion may be requested in the form of position papers on proposed fair competition laws.

The Wettbewerbszentrale is also in close contact with the offices and ministries that are responsible for competition matters in neighbouring countries. Regular exchanges of information and mutual support in cross-border violations and in shaping the legal framework for the business community are in the foreground here.

## Member of international committees and associations

The Centre for Protection against Unfair Competition is, for example, a member of the following associations:

LIDC (International League of Competition Law), Geneva  
EASA (European Advertising Standards Alliance), Brussels  
ICC (International Chamber of Commerce), Paris  
British Chamber of Commerce in Germany, Berlin  
AIPPI (International Association for the Protection of Intellectual Property), Zürich

## Foreign delegations and embassies

Providing support and advice to former socialist states on the path to market-oriented structures has gained increasing importance, as has exchanging experiences and providing information about German competition law practice to Asian nations. The Centre for Protection against Unfair Competition has been able to explain the background and practices of German fair competition law to numerous delegations from such Eastern European nations as Slovenia, as well as to representatives of ministries, universities, and companies, e. g. from Russia, China, Indonesia, Japan and Vietnam. The Centre for Protection against Unfair Competition is available to foreign embassies and representative offices as a contact partner for competition law questions in connection with the entry of foreign companies into the German market.

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Our experience:

# Supported by the business community for over 100 years

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On 17 January 1912, three years after the Law against Unfair Competition was first adopted, a meeting was held in Berlin to found the Centre for Protection against Unfair Competition. In February 1913, the association was recorded in the Register of Associations at the Royal District Court in Berlin-Schöneberg. The Centre for Protection against Unfair Competition did not function during the Second World War. On 17 July 1949, it was re-established in Frankfurt am Main. Its administrative headquarters have been located in Bad Homburg outside Frankfurt since 1970.

## Continuing development – Expansion of the Centre’s field of activity

Through its activities, the Centre for Protection against Unfair Competition has made a major contribution to clarifying legal questions in the area of fair competition law. Since 1953, it has brought over 460 cases before the German Supreme Court and has assumed an active role as an “engine for development of the law”.

Parallel with this, the spectrum of work performed by the Centre for Protection against Unfair Competition has considerably expanded: apart from giving its members increased legal advice, the Wettbewerbszentrale has also established extensive information services and seminars, periodicals, and online services since the end of the 1990s. Moreover, a large part of the work of the Centre for Protection against Unfair Competition at the present time consists of providing advice within the framework of national and European legislative proceedings. Not only the UWG itself, but numerous ancillary competition-related laws and consumer protection provisions have been repeatedly amended in recent years and, at times, harmonized with European law. In particular, the Centre for Protection against Unfair Competition, as an institution involved in fair competition practice, has been repeatedly included in the evaluation and coordination process by the relevant ministries concerning the enforcement of various provisions and areas such as health care, tourism, justice, and the economy.

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The organization of our association:

# Structure und organization

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The Centre for Protection against Unfair Competition is a non-profit association registered with the Local Court in Frankfurt. Its members include many of the best known and largest German companies from diverse sectors of industry and commerce. In addition to about 1,200 companies, about 800 of the most important associations and organizations in the business community as well as economic and professional associations are members of the Centre for Protection against Unfair Competition.

## Governing bodies and management

The highest governing body is the General Assembly. Under the laws governing associations, the Steering Committee represents the Centre for Protection against Unfair Competition. It is an honorary body and consists of corporate representatives from commerce, industry, and other service industries elected by the General Assembly. The Advisory Council of the Centre for Protection against Unfair Competition, which is also elected, consists of representatives of well-known companies, important umbrella organizations in the business community, and other business community organizations.

According to its charter, management is the responsibility of the managing member of the Steering Committee, as the principal managing director, and other legal managing directors.

The Centre for Protection against Unfair Competition has six locations in Germany. It has 53 full-time employees, including 26 attorneys.

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