[DE] Federal High Court Deliberates on Prohibition of Price-fixing Agreements for CD-ROM Products

IRIS 1997-4:1/11

Valentina Becker
Institute of European Media Law (EMR), Saarbrücken/Brussels

In Germany price-fixing agreements are theoretically prohibited under cartel law (Section 15 of the Act against restraints on competition (Gesetz gegen Wettbewerbsbeschränkungen - GWB)). According to Section 16 of the GWB the only exceptions to this are the products of publishing houses. In the present computer age an increasing quantity of literature of all kinds is now appearing on CD-ROM, thereby raising the question of whether at law these electronic publications should be treated as books and thus included in price-fixing.

In its decision of 11 March 1997, the cartel panel of the Federal High Court (Bundesgerichtshof - BGH) was affirmative.

The background of the dispute which had been going on for some years was an appeal on a point of law brought by the Beck publishing house in Munich with the support of the Börsenverein des Deutschen Buchhandels e.V. (Registered Association of the German Book Trade). The Beck publishing house, which publishes inter alia specialised legal literature, applied price-fixing to its specialised journals and compendia of judgements published in CD-ROM form. This meant that any dealer ordering a CD-ROM was obliged to sell the goods at the final consumer price set by the publishing house.

The Federal Cartel Office (Bundeskartellamt) in Berlin had prohibited the publishing house from making such price-fixing contracts on the grounds that electronic data supports of this kind could no longer be considered as being a mere substitute for the printed medium. Because of the many additional functions CD-ROM's offered, they were qualitatively a different product. The publishing house's appeal against this decision was turned down by the Superior Court of Justice for Berlin sitting in commercial matters, which found that the legislator had adopted the system of fixed retail prices in bookshops for reasons of culture policy alone, in order to protect the supply to the public of books as a cultural product. CD-ROM products could not be compared with printed books in terms of method of production, content, possibilities for use and sales methods.

The BGH did not agree, and set aside the decisions of the cartel authority and the Superior Court of Justice. The judges argued that the legislator's objective needed to remain open-ended to allow for unforeseen new technical developments which

© European Audiovisual Observatory (Council of Europe) 2026

could not have been taken into account originally. With new products of this kind it was largely a question of whether they were able to satisfy the demands made of books and thus whether users considered them a substitute for books.

The BGH felt this was the case in respect of CD-ROM products.

Bundesgerichtshof, Beschluß vom 11. März 1997, Aktenzeichen KVR 39/95

German Federal High Court, decision of 11 March 1997, ref. KVR 39/75

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026