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Overview

Jürgen Busch

Mannheimer Swartling

Federal Cartel Office – organisation and tasks

The surveillance of compliance with competition rules in Germany falls primarily in the purview of the Federal Cartel Office (Bundeskartellamt). This is an independent federal authority, established in 1958 and currently located in Bonn. It is assigned to the Federal Ministry of Economics and Technology. Its main task is the protection of competition and the enforcement of the ban on cartels in Germany, as well as the enforcement of EC competition law in Germany.

The head of the Federal Cartel Office is the president, currently Bernhard Heitzer. The president represents the Federal Cartel Office externally, particularly in its relations with the government and parliament, the media and in international committees. Decisions of the Federal Cartel Office are taken by eleven decision divisions, whose areas of responsibility are generally organised according to economic sectors. There is, however, one decision division that deals exclusively with the prosecution of cartel agreements. The chairman and two associate members of the relevant decision division decide by majority vote and are not subject to internal or external instructions. In addition to the decision divisions, the Federal Cartel Office has, inter alia, three public procurement tribunals, a litigation department and a general policy department.

The Competition Act

Competition matters in Germany are regulated by the Act against Restraints of Competition (ARC), which came into force on 1 January 1958. In some fields, for example, telecommunication and post, additional regulations apply. However, these are not enforced by the Federal Cartel Office, but by other competition authorities. Germany was one of the first states in Europe to adopt and implement vigorous merger control laws. The ARC is now in line with the respective EC rules, in particular articles 81 and 82 of the EC Treaty. The ARC prohibits cartels and the

abuse of a dominant position and also contains provisions regulating control over mergers and public procurement procedures.

Competition law enforcement

One of the major tasks of the Federal Cartel Office is the control of mergers. A merger that has an effect in Germany must be pre-notified and approved, if the parties' combined aggregate annual worldwide turnover exceeds €500 million and the domestic turnover of at least one party exceeds €25 million. The merger shall not be executed unless it is cleared by the Federal Cartel Office. If the merger does not give rise to competition concerns, it will be cleared within one month. If not, the Federal Cartel Office initiates main examination proceedings, which last up to three more months, to decide whether the merger shall be cleared, possibly subject to conditions, or prohibited. The German merger control provisions are rather strict, and therefore a high number of mergers are notified to the Federal Cartel Office every year. There are approximately 1,400 decisions in merger control proceedings each year.

Apart from merger control, another main task of the Federal Cartel Office is to enforce the ban on cartels. For this purpose, it has broad investigative and enforcement powers. It may, for example, request information from enterprises, inspect business documents and, after obtaining a relevant order from a local court, search enterprises and seize evidence. Enforcement action can lead to orders and substantial financial sanctions.

Other competition bodies

There are several other competition authorities besides the Federal Cartel Office. Under certain circumstances, a merger prohibited by the Federal Cartel Office may be authorised by the federal minister of economics and technology. In addition, the cartel offices of the federal states decide on competition agreements that do not affect

competition beyond the territory of a single state. The Federal Network Agency for Electricity, Gas, Telecommunications, Post and Railways is an additional independent federal authority, which has the task of promoting liberalisation and

deregulation and preventing abusive behaviour in these sectors. Furthermore, the Commission on Concentration in the Media is an independent regulatory body that ensures the diversity of opinion in the private broadcasting sector.

Mannheimer Swartling

Mauerstrasse 83/84
10117 Berlin
Germany
Tel: +49 30 22 66 990
Fax: +49 30 22 66 99 10

Jürgen Busch
jbu@msa.se

www.mannheimerswartling.de

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Mannheimer Swartling has extensive experience in handling national and EU competition law issues and regularly represents clients before national courts, national competition authorities, the European Commission and the European Court of Justice. The firm's practice group for EU law and competition law comprises approximately 25 lawyers.

The competition team in the Berlin office advises on all aspects of German and European Community law. This includes, inter alia, merger and antitrust notifications to the German Federal Cartel Office, the coordination of multiple filings to other national competition authorities, general competition law advice on restrictive agreements and abuse of a dominant position, EU and competition litigation, general EC law and legislative and regulatory developments, state aid and public procurement.