

## Germany

### COMPETITION FRAMEWORK

Competition Law	<p>The German Act against Restraints of Competition was enacted in 1958 on January 1, amended in 1958, 1965, 1973, 1976, 1980, 1989, 1998, 2005, 2007.</p> <p>In addition, the Regulation on the Administrative Charges Imposed by Competition Authorities was enacted in 1970 on November 16, amended in 2017.</p> <p><i>[Please Introduce the name of the laws constituting the National Competition Law Regime. Include the year of enactment and the corresponding amendments as well.]</i></p>
Competition Authority	<p>Federal Cartel Office (Bundeskartellamt - BKartA). It was established on January 1, 1958, Section 48 of the German Act against Restraints of Competition. Website: <a href="http://www.bundeskartellamt.de">www.bundeskartellamt.de</a></p> <p><i>[Please introduce here the name of the competition authorities that are part of the enforcement process of the laws mentioned in the previous question. In that regard, please specify the norms that established those agencies, the year in which they started operation, and their website. Include tribunals only if they have a role in the process of founding guilt and imposing sanctions. This point specifically excludes judicial authorities that only have judicial review powers]</i></p>

### POLICY-MAKING AGENTS

#### -DIVERSIFICATION-

How many agencies are responsible for competition enforcement?	<p>Bundeskartellamt is an independent and principal competition authority and has a broad mandate to enforce competition law and ensure fair market competition in Germany. Because Germany is a federal state, there are another set of enforcement bodies at the regional level. For conduct (other than mergers) whose effect is limited to a single <i>Land</i>, the competent enforcement authority is not Bundeskartellamt, but the authority designated by the local law (Section 48 of the German Act against Restraints of Competition).</p> <p>The Bundeskartellamt deals with all restraints of competition that affect Germany. If only one of the <i>Länder</i> is affected, the cartel authority of the respective <i>Land</i> is responsible; mergers, however, are scrutinised by the Bundeskartellamt. The work of the Bundeskartellamt is based on the Act against Restraints of Competition. Where appropriate, the Bundeskartellamt also bases its rulings on European competition law, provided that the European Commission does not take action itself.</p> <p>Under the German Act against Restraints of Competition primary purposes of Bundeskartellamt are:</p> <ol style="list-style-type: none"> <li>1. Antitrust Enforcement: Bundeskartellamt enforces both German and European competition laws, primarily focusing on preventing anti-competitive practices such as cartels, abuse of dominant market positions, and anti-competitive mergers. It investigates and takes action against companies engaged in anti-competitive behavior.</li> <li>2. Merger Control: Federal Cartel Office reviews mergers and acquisitions to ensure they do not significantly impede competition in the relevant markets. It assesses the potential anti-competitive effects of proposed transactions and may require remedies or prohibit mergers that would harm competition.</li> <li>3. Sector-Specific Regulation: Federal Cartel Office may have responsibilities for regulating specific sectors, such as telecommunications or energy, where competition issues are particularly relevant. It ensures fair competition within these sectors,</li> </ol>
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	<p>investigates market abuses, and enforces sector-specific regulations.</p> <p>4. Consumer Protection: The authority also works to protect consumer interests, particularly in cases involving unfair or deceptive practices by companies. It monitors markets for consumer-related issues and takes action against companies engaging in anti-consumer behavior.</p> <p>5. Market Investigations: Bundeskartellamt has the power to initiate sector-wide investigations to analyze and address structural or competition-related concerns in specific markets. It can gather information, conduct market studies, and propose regulatory or policy changes to improve competition and consumer welfare.</p> <p>Application of the German Act against Restraints of Competition, either by the Federal Cartel Office or by <i>Land</i> competition office, involves both administrative tasks such as reviewing notifications and request for authorization and investigation and enforcement against conduct that violates the prohibitions. Sects. 81-86 of German Act against Restraints of Competition deal with conduct that might be to administrative fines; for those proceedings, the rules are set by the Administrative Offences. The prosecutor might become involved when the Criminal Code's penalties for procurement fraud are applied to bid rigging.</p> <p><i>[Please mention how many authorities have a general mandate to enforce competition in your jurisdiction. Include a brief reference on their duties e.g.: if they impose criminal, civil or administrative liability. The purpose is that readers can quickly understand, which are the agencies charged with competition enforcement in the jurisdiction, the difference between them, and if they have concurrent, overlapping, or exclusionary authority. Include the relevant provisions on which their powers are based. Exclude in this point sector regulators or enforcers]</i></p>
<p>Do sector regulators have a competition policy enforcement mandate?</p>	<p>Sector regulators in Germany generally do not have a primary competition policy enforcement mandate. Their main role is to regulate and oversee specific sectors to ensure compliance with sector-specific regulations and promote fair competition within their industries. However, they may indirectly contribute to competition policy enforcement by addressing anti-competitive practices or market abuses within their respective sectors.</p> <p>While sector regulators may not have direct competition policy enforcement powers, they often collaborate and cooperate with the Bundeskartellamt. They share information and insights regarding potential competition concerns or anti-competitive behavior within their sectors. This collaboration helps the Bundeskartellamt in its overall enforcement efforts.</p> <p>If a sector regulator identifies potential anti-competitive behavior or a breach of competition laws within its sector, it can refer the case to the Bundeskartellamt for further investigation and enforcement action. In such cases, the competition authority takes the lead in enforcing competition policy.</p> <p><i>[Please introduce the name agencies that have powers to enforce any aspect of competition law, including merger control, in specific sectors. Introduce the relevant provisions on which their powers are based]</i></p>
<p>Have the Competition Authority and other agencies signed protocols or memoranda of understanding with sector regulators?</p>	<p>Bundeskartellamt has signed memoranda of understanding (MoUs) with various sector regulators and agencies to enhance cooperation and coordination in enforcing competition laws and addressing competition-related issues within specific sectors. These agreements aim to facilitate information sharing, collaboration, and joint efforts in promoting fair competition and addressing anti-competitive practices.</p>

	<p>Energy Sector: The Bundeskartellamt has signed MoUs with sector regulators such as the Federal Network Agency for Electricity, Gas, Telecommunications, Post, and Railway (Bundesnetzagentur). These agreements outline the cooperation and exchange of information between the two authorities regarding competition issues in the energy sector, including areas such as network access, pricing, and market behavior.</p> <p>Financial Sector: The Bundeskartellamt has established cooperation agreements with regulatory bodies in the financial sector, including the Federal Financial Supervisory Authority (BaFin). These agreements focus on exchanging information, coordinating enforcement efforts, and addressing potential competition concerns within the financial industry.</p> <p>Telecommunications Sector: MoUs exist between the Bundeskartellamt and sector regulators like the Federal Network Agency (Bundesnetzagentur) and the Federal Office for Information Security (BSI). These agreements facilitate cooperation in areas such as telecommunications market regulation, spectrum allocation, network access, and ensuring fair competition in the telecommunications sector.</p> <p><i>[Please mention here any provision or interinstitutional agreement that allows the competition authorities to coordinate behavior to effectively enforce competition law]</i></p>
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**DISAGGREGATED FUNCTIONS—PROSECUTORIAL MODEL**

<p>Are there different authorities or agencies that make the decision to investigate and the final ruling in the cases?</p>	<p>No</p>	<p><i>[If the answer is yes, please explain briefly the enforcement process, and include the relevant provisions. The purpose of this question is to understand the enforcement model of the jurisdiction and establish how many independent authorities are involved in the enforcement process and what are their functions.]</i></p>
<p>Are disputes presented for decision to judiciary authorities?</p>	<p>Yes</p>	<p>Under Section 58 of the German Act against Restraints of Competition, enforcing compliance with investigative requests can require going to court. For examination of documents on the company or association premises, consent of Bundeskartellamt is necessary, but for a search, there must be a court order.</p> <p>The enforcing authority may take possession of evidence (section 58) and enter premises to search for evidence (section 59.3), under the supervision of the local court.</p> <p><i>[If the answer to your question is “yes”, please introduce the name of the judiciary authorities that are involved and their role until the final decision in the process is achieved; exclude from this question judiciary authorities whose role in the process is the judicial review of administrative decisions.]</i></p>
<p>Do private rights of action to challenge competition law infringements exist in your jurisdiction</p>	<p>No</p>	<p>Claims for private relief, either damages or an injunction, are provided for violations of “protective” provisions of the German Act against Restraints of Competition. These are usually taken to be the prohibitions against horizontal cartels and abusive practices. The protected parties are typically competitors who are excluded from the market. Associations representing the interests affected have standing to seek injunctions to protect their members, a power that is particularly significant where terms of doing business are at</p>

		<p>issue.</p> <p>Courts have entertained complaints by customer interests about exploitation or about agreements directed specifically against them. But the courts have not welcomed consumer-level complaints against horizontal cartels. The basis for private action for damages is subjective fault, that is, “willful” or “negligent” conduct violating a provision that protects third parties (section 33, sections 87-90). Obtaining an injunction requires a showing that further violations are likely. The courts must alert the Bundeskartellamt about disputes that involve the German Act against Restraints of Competition (sec. 90), and the Bundeskartellamt offers its views in private suits.</p> <p>Third parties and complainants have a limited ability to challenge Bundeskartellamt action. If the Bundeskartellamt issues a formal decision, that can be appealed, even by third parties. The Bundeskartellamt now issues formal decisions to clear mergers, whether or not subject to conditions, that go through the second “main” investigation, and thus third-party appeal of a clearance decision is possible. But if proceedings are discontinued without reasons, no appeal is possible. A party whose application for exemption is rejected can appeal that action. But the courts have so far denied that parties have any right to compel the Bundeskartellamt to exercise its powers to control abuse or challenge a merger.</p> <p><i>[If the answer is “yes”, please explain briefly the process and who are the persons entitled to exercise those rights; mention the relevant provisions]</i></p>
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\* Please fill the next sections for each of the authorities mentioned in the prior sections excluding sector regulators

**FEDERAL CARTEL OFFICE (BUNDESKARTELLAMT - BKARTÄ).**

**STATUS OF THE COMPETITION AUTHORITY**

<b>Accountability</b>	Please, answer “Yes” in the boxes of this line if any of the duties on the right column apply to the authority, and “No” if they do not.	Answer with X/√ as it applies		Please, in the boxes of this line mention the relevant provisions in which the obligations are based.
Does the Competition Authority have obligations before the executive?	Yes	√	Obligations to report to the executive on on-going investigations upon request.	Section 59.5 of the German Act against Restraints of Competition. <i>[Introduce the relevant provisions]</i>
		√	The decisions of the Competition Authority may be vetoed by a ministry or by the executive branch.	Section 42.1 of the German Act against Restraints of Competition. <i>[Introduce the relevant provisions]</i>
		X	The executive has to report on an annual basis to the executive.	<i>[Introduce the relevant provisions]</i>
Does the Competition Authority have obligations before the legislature?	Yes	X	Obligation to publish an annual report on its activities.	<i>[Introduce the relevant provisions]</i>

		X	Obligation to stand before parliament and to respond to congressmen on an annual basis.	<i>[Introduce the relevant provisions]</i>
		√	Its activities are monitored by an independent auditor or by oversight committees.	Monopolies Commission, Section 44 of German Act against Restraints of Competition.  <i>[Introduce the relevant provisions]</i>
Does the Competition Authority have obligations before the judiciary or independent agencies?	Yes	√	Decisions of the Competition Authority are subject to judicial review.	<p>The higher regional court competent for the district in which the competition authority has its seat (section 73.4 of German Act against Restraints of Competition).</p> <p>The Federal Court of Justice [Bundesgerichtshof] shall decide as the court of appeal in the first and last instance on all disputes against decisions of the Bundeskartellamt (section 73.5 of German Act against Restraints of Competition).</p> <p>German Social Courts Act shall apply to all decisions of a higher social court [Landessozialgericht] in disputes regarding voluntary associations of health insurance funds (section 77.1 of German Act against Restraints of Competition).</p> <p>The jurisdiction of one higher regional court or of the supreme court of a <i>Land</i> for individual districts or for the entire territory of several <i>Länder</i> may be established by treaties between the <i>Länder</i> (section 92.2 of German Act against Restraints of Competition).</p> <p>The higher regional courts shall set up cartel panels. They shall decide on legal matters assigned to them pursuant to Section 57(2) sentence 2, Section 73(4), Sections 83, 85 and 86, and on appeals against final judgments and other decisions in civil actions pursuant to Section 87 (section 91 of German Act against Restraints of Competition).</p> <p><i>[Aside from the relevant provisions please mention the judicial authority charged with the review.]</i></p>
		X	Decisions of the Competition Authority are subject to review or control of an independent authority	Monopolies Commission (section 44 of German Act against Restraints of Competition).  The Federal Minister for Economic

		different from the judiciary?	Affairs and Energy (section 42.1 of German Act against Restraints of Competition).  <i>[Aside from the relevant provisions, please mention the authority charged with the review.]</i>
		<b>Other obligations/comments:</b> <i>[Please introduce any other obligation or comment that you consider relevant. Introduce any comment that you consider relevant regarding the status of accountability of accountability of the competition authority.]</i>	
<b>Independence</b>	Please, answer "Yes" or "No"		
Are the criteria for appointment and removal of the head/board members clear and transparent?	Yes	<p>Section 51 of German Act against Restraints of Competition.</p> <p>(1) The Bundeskartellamt is an independent higher federal authority with its seat in Bonn. It is assigned to the Federal Ministry of Economic Affairs and Energy.</p> <p>(2) Decisions of the Bundeskartellamt shall be made by the decision divisions established as determined by the Federal Ministry for Economic Affairs and Energy. Further to this, the President shall determine the allocation and handling of business in the Bundeskartellamt by means of rules of procedure; these rules of procedure require confirmation by the Federal Ministry for Economic Affairs and Energy.</p> <p>(3) The decisions of the decision divisions shall be made by a chairperson and two associate members.</p> <p>(4) The chairperson and associate members of the decision divisions must be civil servants appointed for life and must be qualified to serve as judges or senior civil servants.</p> <p><i>[Please introduce the relevant provisions, and if the answer to this question is "no", explain briefly why in your opinion the criteria are not clear or transparent.]</i></p>	
Does the executive have powers to decide on specific cases based on public interest?	Yes	<p>Section 42 of German Act against Restraints of Competition.</p> <p>The Federal Minister for Economic Affairs and Energy will, upon application, authorise a concentration prohibited by the Bundeskartellamt if, in the individual case, the restraint of competition is outweighed by advantages to the economy as a whole resulting from the concentration, or if the concentration is justified by an overriding public interest.</p> <p><i>[Please introduce the relevant provisions, and if the answer to the question is "yes", explain in which cases the executive can decide on public interest bases.]</i></p>	
Does the executive retain decision-making powers over the Competition Authority?	No	<i>[Please introduce the relevant provisions.]</i>	
Is the Competition Authority obliged to publish reasoned decisions to ensure transparency?	Yes	<p>Section 32e.3 of German Act against Restraints of Competition.</p> <p>The Bundeskartellamt and the supreme Land authorities may publish a report on the results of the investigation</p> <p><i>[Please introduce the relevant provisions.]</i></p>	
Is there a provision of the national budget allocated by law to the Competition Authority to ensure its proper functioning?	No	<p>n/a.</p> <p><i>[Please introduce the relevant provisions and the budget assigned to the authority for the current year and the next if it is already approved]</i></p>	
Can the Competition Authority be financed by its own means (notification fees, fines, etc.)?	Yes	The Bundeskartellamt can be financed by its own means, including	

		notification fees, fines, and other sources of revenue generated through its activities (Section 34a of German Act against Restraints of Competition).  <i>[Please introduce the relevant provisions and mention the means by which the authority can be financed on its own]</i>
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**GOVERNANCE OF THE COMPETITION AUTHORITY**

Is the Competition Authority governed by a single chairman or by a collegiate body?	Collegiate body - chairperson and two associate members.  <i>[Answer "single chairman" if the directive organ of the authority is composed of one person. Answer "collegiate body" if the authority's directive organ is composed of two or more members, regardless if this organ is directed or presided by a chairman or president. Also mention how many board members or directors are part of the Direction Body]</i>
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How are the members of the Authority's directive organ chosen?	Section 51 of German Act against Restraints of Competition  (1) The Bundeskartellamt is an independent higher federal authority with its seat in Bonn. It is assigned to the Federal Ministry of Economic Affairs and Energy.  (2) Decisions of the Bundeskartellamt shall be made by the decision divisions established as determined by the Federal Ministry for Economic Affairs and Energy. Further to this, the President shall determine the allocation and handling of business in the Bundeskartellamt by means of rules of procedure; these rules of procedure require confirmation by the Federal Ministry for Economic Affairs and Energy.  (3) The decisions of the decision divisions shall be made by a chairperson and two associate members.  <i>[Please describe the election process for choosing the members of the directive organ. Include relevant provisions; mention the branch government involved in this process]</i>
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Is there a fixed period during which removal is prohibited?	No	Section 51.4 of German Act against Restraints of Competition,  The chairperson and associate members of the decision divisions must be civil servants appointed for life and must be qualified to serve as judges or senior civil servants.  <i>[If your answer is "yes", please introduce the duration of the tenure and the relevant provisions. If the answer is no, please refer if there are specific and restricted grounds under which the members of the Directive body can be removed; mention if they are elected for a term and introduce the relevant provisions]</i>
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Is the tenure of the heads renewable?	No	Section 51.4 of German Act against Restraints of Competition.  The chairperson and associate members of the decision divisions must be civil servants appointed for life.  <i>[Please, introduce the relevant provisions]</i>
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Are the heads required by law to have certain minimum qualifications (degree in law or economics, age, experience)?	Yes	Section 51.4 of German Act against Restraints of Competition.  The chairperson and associate members of the decision divisions must be civil servants appointed for life and must be qualified to serve as judges or senior civil servants.  <i>[If your answer is "yes", please make reference to the qualifications required by law and the relevant provisions].</i>
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**ARCHITECTURE A**

Is the Competition Authority a stand-alone agency with an independent physical location or is it part of a bigger entity such as a ministry?	Stand-alone	<i>[If your answer is "part of a bigger entity", please explain briefly how the bigger entity is organized.]</i>
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**POLICY DUTIES**

Does the Competition Authority have an exclusive mandate on competition or multiple mandates?	Exclusive	√ <i>[Answer with X/√ as it applies]</i>	Concurrent consumer protection mandate.
		X <i>[Answer with X/√ as it applies]</i>	Concurrent IP mandate.
		<b>Other mandates:</b> Procurement mandate.  <i>[Include any other mandates entrusted to the Competition Authority]</i>	

**PORTFOLIO INSTRUMENTS**

**Law Enforcement**

Does the Competition Authority have powers to investigate cartels?	Yes	<p>The Bundeskartellamt's powers to investigate cartels are granted under the German Act against Restraints of Competition. These powers enable the authority to conduct investigations, gather evidence, and take enforcement actions against cartels to protect competition and consumers.</p> <p>Here are some of the key powers and tools available to the Bundeskartellamt for cartel investigations:</p> <ol style="list-style-type: none"> <li><b>Gathering Information:</b> The Bundeskartellamt can require companies to provide information, documents, and data relevant to a cartel investigation. This includes the power to request written statements, conduct interviews, and carry out on-site inspections (dawn raids) to collect evidence.</li> <li><b>Leniency Program:</b> The Bundeskartellamt operates a leniency program, which provides incentives for cartel members to come forward and cooperate with the authority. Companies that provide valuable information and assist in the investigation may receive reduced fines or immunity from fines.</li> <li><b>Fines and Penalties:</b> The Bundeskartellamt has the authority to impose fines and penalties on companies involved in cartels. The fines are designed to deter anti-competitive behavior and can be significant, taking into account the severity and duration of the cartel activity.</li> <li><b>Cease and Desist Orders:</b> The Bundeskartellamt can issue cease and desist orders to stop ongoing cartel conduct and prevent future anti-competitive behavior. These orders may include specific requirements for the companies involved to change their practices and comply with competition law.</li> <li><b>Market Investigations:</b> The Bundeskartellamt has the power to conduct market investigations to identify and address potential cartels and anti-competitive practices in specific sectors or industries.</li> </ol> <p><b>Section 81d of the German Act against Restraints of Competition - Setting the Administrative Fine</b></p> <p>When determining the amount of the fine, account shall be taken of both the gravity and the duration of the infringement. In the case of fines imposed on undertakings or associations of undertakings for agreements, decisions or concerted practices restricting competition pursuant to Section 1 or Article 101 of the Treaty on the Functioning of the European Union or for prohibited conduct pursuant to Sections 19, 20 or 21 or Article 102 of the Treaty on the</p>
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		<p>Functioning of the European Union, relevant circumstances should be considered.</p> <p><i>[If the answer is "yes", please mention the type of liability that the actions of the agency seek: civil, criminal, administrative. Introduce the relevant provisions; briefly explain if the powers of the authority are limited to certain types of cartels and what kind of sanctions can be imposed.]</i></p>
<p>Does the Competition Authority have powers to investigate unilateral Conduct?</p>	<p>Yes</p>	<p>The Bundeskartellamt, has powers to investigate and take actions against unilateral conduct that may be deemed anti-competitive.</p> <p>Examples of unilateral conduct that the Bundeskartellamt can investigate:</p> <ol style="list-style-type: none"> <li>1. Abuse of Dominant Position: The Bundeskartellamt can investigate cases where a company with a dominant market position engages in abusive practices that harm competition. This may include practices such as excessive pricing, predatory pricing, refusals to supply, tying or bundling, or discriminatory treatment of customers.</li> <li>2. Unfair Trading Practices: The Bundeskartellamt can examine cases involving unfair trading practices by companies that distort competition. These practices may include misleading advertising, unfair contractual terms, or other forms of anti-competitive behavior that harm consumers or competitors.</li> <li>3. Unilateral Market Power: The Bundeskartellamt can assess situations where a company has significant market power, even if it falls short of being considered a dominant player. If the exercise of this market power leads to anti-competitive effects, the authority can take action to address the issue.</li> <li>4. Vertical Restraints: The Bundeskartellamt can investigate vertical agreements and practices between companies in different stages of the supply chain that restrict competition. This includes issues related to exclusive dealing, resale price maintenance, or territorial restrictions that limit market access.</li> </ol> <p>Section 32 of the German Act against Restraints of Competition</p> <p>It may require them to take all necessary behavioural or structural remedies that are proportionate to the infringement identified and necessary to bring the infringement effectively to an end. Structural remedies may be imposed only if there is no behavioural remedy which would be equally effective, or if the behavioural remedy would entail a greater burden for the undertakings concerned than the structural remedies.</p> <p>Section 81 of the German Act against Restraints of Competition</p> <p>Administrative fines up to three times the additional proceeds obtained as a result of violation, or 500 000 Euro. The fixed sum is not a minimum nor mandatory fine, but it is not intended to ensure that a significant fine could be imposed even if the gain from the violation is not great.</p> <p><i>[If the answer is "yes", please mention briefly if the competition authority is invested with the power to pursue exploitative and exclusionary effects, also make reference to relevant provisions, the type of liability that the actions of the authority seek, and what kind of sanctions can be imposed.]</i></p>

Does the Competition Authority have the powers to conduct <i>ex-ante</i> merger reviews?	No	<i>[If the answer is "yes", please explain briefly the process and which are the remedies that authority can seek or impose and mention the relevant provisions]</i>
Is the notification of merger transactions mandatory?	Yes	<p>The German Act against Restraints of Competition requires companies to notify the Federal Ministry for Economic Affairs and Energy of mergers that meet specific thresholds.</p> <p>Section 35 of the German Act against Restraints of Competition.</p> <p>The provisions on the control of concentrations shall apply if in the last business year preceding the concentration</p> <ol style="list-style-type: none"> <li>1. the combined aggregate worldwide turnover of all the undertakings concerned was more than EUR 500 million, and</li> <li>2. the domestic turnover of at least one undertaking concerned was more than EUR 50 million and that of another undertaking concerned was more than EUR 17.5 million.</li> </ol> <p>For mergers involving companies operating in specific sectors, such as media, banking, energy, and telecommunications, lower thresholds may apply, requiring notification even for smaller transactions.</p> <p><i>[If the answer is "yes", please explain whether all the transactions shall be notified or if there is a threshold; mention relevant provisions]</i></p>
Can the parties close the transaction before the final decision of the Authority (suspensory effect of merger notification)?	Yes	<p>Under Section 42 of the German Act against Restraints of Competition, once a merger notification has been submitted to the Federal Ministry for Economic Affairs and Energy, the standstill obligation is triggered, and the parties must wait for the competition authority's clearance before proceeding with the transaction. This is to ensure that the authority has sufficient time to assess the potential impact of the merger on competition.</p> <p><i>[Please mention the relevant provisions and add any explanation that you deem necessary]</i></p>
Does the Competition Authority have the power to carry out <i>ex-post</i> merger investigations?	Yes	<p>Under the German Act against Restraints of Competition Ex-post merger investigations typically occur when the Bundeskartellamt becomes aware of potential competition concerns arising from a merger that has already taken place. This could be through market monitoring, complaints from market participants, or other sources of information.</p> <p>If the Bundeskartellamt identifies anti-competitive effects resulting from a merger after it has been completed, it can initiate an investigation. The authority has the power to request information and documents from the merging parties, as well as third parties, to assess the impact of the merger on competition.</p> <p>During an ex-post merger investigation, the Bundeskartellamt can determine whether the merger has led to a significant impediment to effective competition or if it has resulted in anti-competitive effects, such as increased market concentration, reduced choice for consumers, or barriers to entry for competitors. If anti-competitive effects are found, the Bundeskartellamt</p>

		<p>can take enforcement actions, such as imposing fines, requiring divestments, or other remedies to restore competition.</p> <p><i>[Please mention relevant provisions]</i></p>
Does the Competition Authority have the power to impose remedies on <i>ex-post</i> merger investigations?	Yes	<p>The remedies that the Bundeskartellamt can impose in <i>ex-post</i> merger investigations aim to address the anti-competitive effects and restore competitive conditions. These remedies can take various forms, depending on the specific circumstances of the case, and may include:</p> <p>Structural Remedies (section 32): The Bundeskartellamt can require the divestment of certain assets, businesses, or subsidiaries to eliminate the anti-competitive effects of the merger. This may involve selling off a part of the merged entity to create a viable and competitive market structure.</p> <p>Behavioral Remedies (section 32): The authority can impose behavioral remedies to modify the conduct of the merged entity. These may include prohibiting certain practices, imposing pricing or access obligations, or requiring the implementation of specific measures to ensure fair competition.</p> <p>Commitments (section 32b): In some cases, the Bundeskartellamt may accept commitments proposed by the merging parties to address the identified competition concerns. These commitments must effectively address the anti-competitive effects and be binding on the parties.</p> <p><i>[If the answer is yes, please mention the remedies that the Authority can impose; mention relevant provisions]</i></p>
Does the Competition Authority have powers to conduct dawn raids at premises?	Yes	<p>Section 59b of the German Act against Restraints on Competition.</p> <p>The Bundeskartellamt must obtain proper authorization and a warrant from a judge before conducting a dawn raid. The warrant specifies the scope of the inspection, including the premises, documents, and data that can be searched and seized.</p> <p>During a dawn raid, the Bundeskartellamt has the power to seize and make copies of relevant documents, files, electronic data, emails, and other records that may be related to the investigation. The authority can also access and copy data from computers and servers on the premises.</p> <p><i>[If the answer is "yes", please mention whether the dawn raids shall be authorized by a judge, and mention the relevant provisions]</i></p>
Can the Competition Authority investigate <i>ex officio</i> cases?	Yes	<p>Section 54 of the German Act against Restraints on Competition.</p> <p>The authority can initiate an <i>ex officio</i> investigation based on various factors, such as information obtained through market monitoring, media reports, industry studies, or its own market intelligence. The Bundeskartellamt also collaborates with other authorities, receives leniency applications, and may have access to sector-specific information that can trigger an investigation.</p> <p>When initiating an <i>ex officio</i> investigation, the Bundeskartellamt conducts a comprehensive analysis of</p>

		<p>the market and the behavior of companies within it. This analysis involves gathering evidence, conducting interviews, requesting information and documents, and applying economic and legal expertise to assess potential competition concerns.</p> <p><i>[Please, mention the relevant provisions]</i></p>	
Does the Competition Authority have powers to accept leniency applications?	Yes	<p>Section 81i of German Act against Restraints on Competition.</p> <p>The leniency program in Germany operates under specific guidelines, and the eligibility for leniency and the level of benefits depend on several factors, including the timing and extent of cooperation provided by the leniency applicant.</p> <p>It's important to note that the leniency program has its own requirements and conditions, and companies considering seeking leniency should consult the Bundeskartellamt's leniency guidelines and seek legal advice to understand the specific procedures and implications of making a leniency application.</p> <p><i>[If the answer is "yes", please mention if there is any limitation for the applicants, what are the benefits, and mention the relevant provisions. Include any commentary that you consider relevant about the leniency program]</i></p>	
Does the Competition Authority have powers to seek criminal punishment?	No	<p><i>[If the answer is "yes", please mention the different kinds of sanctions that the agency can impose]</i></p>	
<b>Advocacy</b>			
Can the Competition Authority issue opinions on draft legislation?	Yes	<p>Bundeskartellamt can provide its expert opinion on the potential effects of the proposed measures. This can include assessing whether the proposed legislation promotes or hinders competition, identifying potential anti-competitive aspects, and recommending improvements or alternative approaches.</p> <p>The Bundeskartellamt's opinions on draft legislation are typically submitted to the relevant legislative bodies, such as the German federal government, the German Bundestag (parliament), or other competent authorities responsible for developing or reviewing the proposed laws or regulations.</p> <p><i>[If the answer is yes, please specify if there is any kind of limitation to the agency's authority to issue opinions, include relevant provisions]</i></p>	
Is the executive and/or the legislature obliged to request the opinion of the Competition Authority when drafting legislation that may impact competition?	No	<p><i>[If the answer is yes, include relevant provisions]</i></p>	
<b>Rulemaking</b>			
Can the Competition Authority issue guidelines?	Non-Binding	<p>√</p> <p><i>[Answer with X/√ as it applies]</i></p>	Guidelines on the calculation of fines.
		<p>√</p> <p><i>[Answer with X/√ as it applies]</i></p>	Guidelines on merger control.
		<p>√</p>	Guidelines on the economic analysis of abuse of dominance cases.

		<i>[Answer with X/√ as it applies]</i>
Can the Competition Authority issue binding regulation on competition?	No	<i>[Please, explain which kind of regulation and mention the relevant provision on which the powers are based]</i>
<b>Research &amp; Reporting</b>		
Can the Competition Authority carry out market studies?	Yes	<p>Under German Act against Restraints on Competition, during a market study, the Bundeskartellamt can gather information from market participants, including companies, industry associations, and consumers. This may involve requesting data, conducting interviews, holding hearings, and engaging in dialogue with stakeholders to gather insights and perspectives on the market under investigation.</p> <p>Bundeskartellamt's market studies are non-binding in nature, meaning they do not impose legal obligations on market participants.</p> <p><i>[If the answer is "yes", include relevant provisions]</i></p>
Can the Competition Authority report to the legislature on the results of market studies?	Yes	<p>Section 53 of German Act against Restraints on Competition.</p> <p>Bundeskartellamt, has the ability to report to the legislature on the results of market studies it conducts. While the Bundeskartellamt operates independently, it is accountable to the legislature and has a responsibility to inform and provide insights to the relevant legislative bodies.</p> <p><i>[If the answer is "yes", include relevant provisions]</i></p>
<b>DECISION-MAKING FUNCTIONS</b>		
<b>Aggregated Functions</b>		
Does the Competition Authority make the decision to investigate and make guilty findings?	Yes	<p>Section 32e of German Act against Restraints on Competition.</p> <p>The Bundeskartellamt, is responsible for making the decision to investigate potential competition law violations and, if warranted, issuing guilty findings. The authority has the power to initiate investigations and conduct proceedings to assess potential anti-competitive conduct and determine whether there have been infringements of competition law.</p> <p><i>[If the answer is "yes", include relevant provisions]</i></p>
Does the Competition Authority impose punishments?	Yes	<p>Under German Act against Restraints on Competition, the Bundeskartellamt can impose several types of punishments or sanctions, depending on the nature and severity of the competition law violations. Some of the common punishments include:</p> <p>Fines: The authority can impose fines on companies and individuals involved in anti-competitive conduct. The fines are calculated based on the severity of the infringement, the duration of the violation, the market impact, and other relevant factors. The fines can be substantial and act as a deterrent to prevent future anti-competitive behavior.</p> <p>Cease and Desist Orders: The Bundeskartellamt can issue cease and desist orders that require the companies or individuals to stop engaging in the anti-competitive conduct. These orders may also include specific requirements to change business practices or take corrective</p>

		<p>measures to restore competition.</p> <p>Structural Remedies: In some cases, the Bundeskartellamt can impose structural remedies to address anti-competitive effects resulting from mergers or acquisitions. These remedies may involve divestitures or other measures aimed at restoring competition and preventing market dominance.</p> <p>Behavioral Remedies: The authority can impose behavioral remedies that modify the conduct of the companies involved. These remedies may include prohibiting certain practices, requiring the offering of fair access to essential facilities, or imposing non-discrimination obligations.</p> <p>Other Administrative Measures: The Bundeskartellamt may impose other administrative measures to address anti-competitive behavior, such as supervisory orders, monitoring obligations, or requirements to provide information or reports on an ongoing basis.</p> <p><i>[If the answer is "yes", please mention the different kinds of sanctions that the agency can impose]</i></p>
<p>Is there a single body that carries out the investigation and the guilty findings within the Competition Authority?</p>	<p>Yes</p>	<p>Under the German Act against Restraints on Competition, within the German Competition Authority, the Bundeskartellamt, there is a single body responsible for conducting investigations and making guilty findings. This body is typically referred to as the "decision-making division" or "decision division" (Entscheidungssenat).</p> <p>The decision-making division within the Bundeskartellamt is composed of members who are responsible for handling specific cases and making decisions based on the evidence and legal analysis. These members are typically experienced officials with expertise in competition law and economics.</p> <p>The division conducts investigations into potential competition law violations, gathers evidence, analyzes market dynamics, assesses the behavior of companies, and determines whether anti-competitive conduct has occurred. Based on its findings, the decision division issues decisions that may include guilty findings, fines, cease and desist orders, and other remedies or sanctions.</p> <p>The decision division operates independently within the Bundeskartellamt but is subject to internal procedures and guidelines to ensure consistency and legal correctness in its decision-making process. The decisions made by the decision division are subject to review by the courts, which can conduct a judicial review of the authority's findings and potentially modify or overturn them.</p> <p><i>[Regardless of the answer please explain briefly the enforcement process until the final decision is issued, include relevant provisions, and if the answer is "No" mention how the head of the body that carries out the investigation is elected and removed. The main idea of this last point is to establish whether the investigation authority is, in fact, independent from the decision-making body]</i></p>
<p>Can the Competition Authority's decisions be appealed to a court?</p>	<p>Yes</p>	<p>Under German Act against Restraints on Competition, when the Bundeskartellamt issues a decision, such as a finding of guilt, imposition of fines, or other administrative measures, the parties involved have the right to file an appeal with the competent court. The appeal allows the parties to contest the decision and present arguments and evidence supporting their position.</p>

		<p>The appeal process involves submitting a formal appeal to the court and providing the grounds on which the decision is being challenged. The court then reviews the case and conducts a judicial review of the authority's decision, examining both the facts and the legal reasoning.</p> <p>The court has the power to uphold the decision of the Bundeskartellamt, modify it, or overturn it entirely. The court's decision can have significant implications for the parties involved and may lead to the modification or reversal of the authority's findings, sanctions, or remedies.</p> <p><i>[Please, mention the judicial authority who is charged with the review, make reference to the relevant provisions, and if there is any requirement to exercise the right of the judicial review.]</i></p>
Please add commentaries or information that you consider relevant and were not covered in any of the previous sections and questions.		