



Germany

Global Merger Control Handbook – Update

JANUARY 2021

Merger control legislation updates since 1 July 2018

On 19 January 2021 an amendment of the Act against Restraints of Competition (ARC) entered into force. The most important changes concern the implementation of new tools to dealing with digital markets and potential market power as well as an implementation of Directive (EU) 2019/1 that empowers competition authorities to be more effective in the enforcement of competition rules (“ECN+ Directive”).

However, the amendment also included significant changes to merger control thresholds that will potentially affect ongoing M&A transactions.

Under the amended ARC a transaction is notifiable in Germany, if the undertakings concerned meet the following turnover thresholds (in the last completed business year):

- All undertakings concerned globally: EUR500 million¹
- One participating undertaking in Germany: EUR50 million²
- Another participating undertaking in Germany: EUR17.5 million³

As a result, many transactions that were notifiable under the old thresholds due to the rather low domestic turnover thresholds in Germany, will no longer require clearance by the Federal Cartel Office (FCO) in the future.

¹This threshold has not been changed.

²Under the old law this threshold was EUR 25 million.

³Under the old law this threshold was EUR 5 million.

For the sake of completeness, it should be noted that even if the second domestic turnover threshold should not be met, a transaction can still be notifiable in Germany if the consideration for the acquisition exceeds EUR400 million.⁴

Furthermore, the amended ARC resulted in the following additional changes to the merger control rules:

- Minor markets clause: The threshold for the application of the so called minor markets clause – which is only relevant for the substantive review and not the question of notifiability – has been increased from EUR15 million to EUR20 million. This reduces the veto power of the FCO if a transaction only concerns a small market
- Reduction of press/media turnover multiplier from 8 to 4.
- Extension of Phase 2: The review period for a Phase 2/in-depth investigation has been extended from 4 to 5 months.

- Successive acquisition strategies: The FCO will be allowed to impose a general notification requirement on certain companies for all future acquisitions that take place in a certain sector, provided that the target company generated sales of at least EUR2 million and at least two-thirds of these sales were generated in Germany.

Landmark merger control cases since 1 July 2018

No merger cases that could be qualified as landmark cases since 1 July 2018.

Web link to the national competition authority

The Bundeskartellamt: www.bundeskartellamt.de

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⁴The transaction value threshold has not been changed.