

Phase Zero

What will change under the German competition law reform?

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For the fifth time in ten years, German competition law is facing a comprehensive reform. On 4 June 2026, the Federal Ministry for Economic Affairs and Energy published its draft bill for the 12th Amendment to the Act against Restraints of Competition (ARC). Its aim is to make competition law more efficient with faster procedures and greater enforcement powers for the Federal Cartel Office (FCO). Uncontroversial mergers shall be excluded from the notification regime so that resources are freed up for cases with genuine competitive relevance. This shift in focus is complemented by new tools that were previously not available to the FCO, such as systematic screening of procurement data. What are the key elements of the proposed amendment?

Merger control: Higher Bars, Sharper Focus

General notification thresholds are raised: The global turnover threshold from €500 million to €750 million, the domestic thresholds from €50 million to €75 million and from €17.5 million to €20 million. This is sensible procedural streamlining, freeing up FCO capacity for transactions that actually matter for competition. Moreover, the scope of the transaction value threshold (TVT) will be adjusted. This is probably the change practitioners have been watching most closely in the wake of the *Meta/Kustomer* decision of the Federal Court of Justice (FCJ) and the FCO's unclear positioning on whether Germany needs a call-in power (see our [briefing](#)).

Since the *Meta/Kustomer* ruling from June 2025 there has been acute legal uncertainty on the scope of the TVT specifically for foreign-to-foreign transactions because the FCJ confirmed a very broad effects-based approach for assessing the local nexus requirement: For the TVT to apply, a transaction needs to have sufficient domestic effects in Germany, i.e. the target must have 'substantial operations in Germany'. In *Meta/Kustomer* the FCO had taken the view that even pure data-processing activities relating to German end-users can satisfy this test – even where the target had less than ten German business customers and generated less than 1% of its global turnover in Germany. The FCO went even further and signalled that the ruling's precedential scope could extend beyond data-processing to virtually any business-related link to Germany. Obviously, this made it almost impossible to assess filing obligations for any company assessing a high-value acquisition. In the past year, FCO President Andreas Mundt – who had long rejected the need for call-in powers in Germany because of a sufficiently efficient TVT test – changed his mind and advocated openly for some form of a 'modified discretionary call-in power' for the FCO, following the trend already well under way across the EU.

The draft now opts for a targeted fix rather than structural reform. TVT applies where a transaction value exceeds €400 million and the target has, or is expected to have, significant operations in Germany. The domestic nexus requirement is extended as part of the reform, with anticipated operations in Germany now sufficient. A credible market entry plan alone may be enough, even without any existing German revenue.

The TVT continues to sit alongside the standard turnover thresholds as a separate, parallel trigger; a deal can be caught by one, the other, or both. For TVT-only deals, however, a different procedure applies. Rather than filing a full merger notification from the outset, parties first submit a short preliminary notice: Phase 0. The required (limited) information: names and business descriptions of the parties and their groups, a summary of any horizontal or vertical overlaps, and a brief deal rationale backed by relevant board-level documents. No full market data required. The FCO must then respond within two weeks. If no response is received, the transaction is deemed cleared and no formal notification is required. Conversely, where the FCO requires a full merger notification is, the phase 1 review period begins upon receipt of the filing. The referral to phase 1 is not a formal ruling and cannot be appealed.

For merging companies and advisors, the key question to address will be whether the target has a market entry strategy for Germany and its anticipated footprint in Germany falls within the scope of the TVT.

Greater Legal Certainty for Supply and Distribution Agreements

Companies have long had the possibility to seek the FCO's competitive assessment before putting horizontal cooperation agreements in place. Now, this option will also be available for vertical cooperation between suppliers and customers. The change is overdue. Demand for regulatory guidance goes well beyond traditional competitor relationships, particularly as new business models such as shared data pools create uncertainty that businesses need resolved early.

Uncovering Bid-Rigging Cartels

For companies regularly participating in public tenders, the detection risk of collusive agreements will increase in the future. Bid rigging arrangements among bidders in public tenders are difficult to detect, mostly because clues are usually found in the unsuccessful bids, rather than the winning ones. The draft reform therefore introduces a procurement screening mechanism modelled on other Member States, such as Spain and Denmark. Under Section 32h ARC, the FCO is, for the first time, granted the power to systematically analyse tender data without the need for specific suspicion. In addition, reporting obligations will be introduced for public contracting authorities regarding the data of all bidders – including unsuccessful ones – that must be reported

within 30 days of the award. The FCO may analyse this information for up to five years, including name, address, tax ID and tender price.

Ministerial Approval: Lower Barriers for Third Parties

Ministerial approval is the legal safety valve in German merger control: the Federal Minister for Economic Affairs can approve a merger that was prohibited by the FCO based on overriding public interest considerations. While so far, such decisions could only be contested by third parties claiming an infringement of their own subjective rights, this threshold is now being lowered: In the future, it will be sufficient to be affected in economic interests, effectively allowing competitors, suppliers and other market participants to seek judicial protection.

Procedural Fees: Time to Pay Up

Administrative fees for any type of proceedings before the FCO will increase. This is the first time after more than 35 years that fee caps are raised. For a phase 1 merger control review this could result in an increase to around €10k, for a phase 2 review from €30k to around €50k.

From Draft to Law

The draft bill is now undergoing consultation among ministers and with the federal states and industry associations; the law is expected to come into force in 2027 at the earliest. Thus, there is still some time but it is never too early to prepare for planned changes.

BLOMSTEIN will closely monitor further developments and keep you informed. If you have any questions [Anna Huttenlauch](#), [Philipp Trube](#), [Lisa Dudeck](#) and the entire team is ready to assist you.

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