

ICN MERGER NOTIFICATION AND PROCEDURES TEMPLATE

Merger Working Group

Germany

Updated September 2021

IMPORTANT NOTE: This template is intended to provide background on ICN jurisdiction's merger notification and review procedures.

Reading the template is not a substitute for consulting the referenced statutes and regulations.

[Please include, where applicable, any references to relevant statutory provisions, regulations, or policies as well as references to publicly accessible sources, if any.]¹

1. Merger notification and review materials [references to publicly accessible sources (homepage address) and indication of the languages in which these materials are available]
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Statutory Laws

A. Notification provisions	Sections 35 et seq. of the Act Against Restraints of Competition (Gesetz gegen Wettbewerbsbeschränkungen - GWB), http://www.gesetze-im-internet.de/gwb/BJNR252110998.html . An English translation of the GWB can be found at http://www.gesetze-im-internet.de/englisch_gwb/index.html .
B. Substantive merger review Provisions	Section 36 (1) GWB.
C. Implementing regulations	None.

¹ Editor's note: all the comments in [square brackets] are intended to assist the agency when answering this template but will be removed once the completed template is made public.

D. Notification forms or information requirements	Merger notifications must contain all the information required under Section 39 (3) GWB.
Interpretative Guidelines and Notices	
E. Guidance on Merger Notification Process [e.g., information on calculation of thresholds, etc.]	<ul style="list-style-type: none"> • Guidance document on domestic effects in merger control (September 2014) http://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Merkblaetter/Leaflet%20-%20Guidance%20document%20domestic%20effects%202014.pdf?__blob=publicationFile&v=2 • Guidance document on Transaction Value Thresholds for Mandatory Pre-merger Notification (July 2018) https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Leitfaden/Leitfaden_Transaktionsschwelle.pdf?__blob=publicationFile&v=2
F. Guidance on Substantive Assessment in Merger Review [Please include reference separately, if applicable]	<ul style="list-style-type: none"> • Guidance document on substantive merger control (March 2012) http://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Leitlinien/Guidance%20-%20Substantive%20Merger%20Control.pdf?__blob=publicationFile&v=6
G. Has your agency published guidelines or directives on notification of mergers involving specific sectors (e.g., digital economy)? [If affirmative, please provide references and languages available]	No.

<p>H. Other relevant notices, policy statements, interpretations, rules, or guidance on aspects of merger review or the agency's decision-making process</p>	<ul style="list-style-type: none"> • Guidance on remedies / Model texts for commitments and trustee mandate (January 2005): <ul style="list-style-type: none"> • Model text for conditions precedent (up-front buyer) • Model text for conditions subsequent • Model text for obligations • Model text for trustee mandate • Best practices for expert economic opinions (October 2010): http://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Bekanntmachungen/Notice%20-%20Standards%20for%20economic%20opinions.pdf?__blob=publicationFile&v=2 • Information leaflet on procedures for post-merger notification (German version, January 2005) http://www.bundeskartellamt.de/SharedDocs/Publikation/DE/Merkbl%C3%A4tter/Merkblatt%20-%20Behandlung%20nachtraeglich%20angemeldeter%20Zusammenschluesse.html?nn=3590380 • Best practices on cooperation between EU National Competition Authorities in merger review (November 2011) http://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Others/BestPractices-EUmergerWorkingGroup.pdf?__blob=publicationFile&v=2 • Principles on the application, by National Competition Authorities within the ECA, of Articles 4 (5) and 22 of the EC Merger Regulation (January 2005) http://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Others/ECA_Principles_application_Articles_EC_Merger_Regulation.pdf?__blob=publicationFile&v=5 • ECA Procedures Guide for the exchange of information between members on multijurisdictional mergers (April 2003) https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Others/ECA_procedures_Guide_exchange_informatio n_%20mergers.pdf?__blob=pubationFile&v=7=
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2. Agency (or Agencies) responsible for merger enforcement.

A. Name of the Agency which reviews mergers. If there is more than one agency, please describe the allocation of responsibilities.	Bundeskartellamt.
B. Contact details of the agency [address and telephone including the country code, email, website address and languages available on the website]	Bundeskartellamt Kaiser-Friedrich-Str. 16 53113 Bonn, Germany Phone: +49 228-9499-0 Fax: +49 228-9499-400; e-mail: info@bundeskartellamt.bund.de WWW: http://www.bundeskartellamt.de/ ; German and English pages.
C. Is agency staff available for jurisdiction/filing guidance? [If yes, please provide contact points for questions on merger filing requirements and/or consultations]	Contact points are the Decision Divisions which can be contacted via switchboard +49 228-9499-0. For general questions on merger control, the responsible section can be contacted at +49 228-9499-388.

3. Covered transactions	
A. Thorough definition of potentially covered transactions [i.e., share acquisitions, asset acquisitions, mergers, demergers, consolidations, consortia, amalgamations,	According to Section 37 (1) GWB, a concentration arises in the following cases: 1. Acquisition of all or of a substantial part of the assets of another undertaking. 2. Acquisition of direct or indirect control by one or several undertakings of the whole or parts of one or several other undertakings. 3. Acquisition of shares in another undertaking if the shares, either separately or together with other shares already held by the undertaking, reach 25 per cent or 50 per cent of the capital or the voting rights of the undertaking to be acquired.

joint ventures or other forms of contractual relationships, such as partnerships and alliance agreements]	4. Any other combination of undertakings enabling one or several undertakings to directly or indirectly exercise a material competitive influence on another undertaking.
B. What is the geographic scope of transactions covered?	According to Section 130 (2) GWB, the Act applies to all restraints of competition that have an appreciable effect in Germany, even if the restraints are caused outside Germany. Therefore also foreign-to-foreign transactions are principally subject to German merger control, if thresholds set out in Section 35 of the GWB are met (see question 4 A) and an “appreciable effect” within the territory of Germany can be determined. For more detailed information, see the guidance on domestic effects in merger control at http://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Merkblaetter/Leaflet%20-%20Guidance%20document%20domestic%20effects%202014.pdf?__blob=publicationFile&v=2 .
C. If change of control is a determining factor, how is control defined and interpreted in practice?	Control is defined as the "possibility of exercising decisive influence on an undertaking". It is not relevant whether this decisive influence is actually exercised. The mere possibility is sufficient. Whether this possibility exists has to be examined on the basis of all legal and factual circumstances of an individual case. Control can also be exercised jointly by several undertakings.
D. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels? Are acquisitions of assets ever covered? If so, do the assets have to form a free-standing business or can the combination of the assets with the business of the acquirer be considered in order to have jurisdiction?	Yes. A merger is subject to notification if the acquired shares, together with the shares already held by the acquiring undertaking, reach 25 per cent or 50 per cent of the capital or the voting rights of the other undertaking. However, an acquisition of less than 25 per cent of the capital or voting rights is subject to notification if the merger results in one or several undertakings being able to exercise directly or indirectly a material competitive influence on another undertaking.

<p>Does the authority have jurisdiction over “bare” asset purchases, e.g. where the assets purchased do not relate to the acquirer’s existing business?</p>	
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4. Thresholds for notification	
<p>A. What are the general thresholds for notification? [If the thresholds are subject to adjustment, state on what basis and how frequently (e.g., for inflation, annually)]</p>	<p>1. Turnover Threshold</p> <p>In the last business year preceding the merger, the combined aggregate worldwide turnover of all participating undertakings must have been more than 500 million Euros, the domestic turnover of at least one participating undertaking must have been more than 50 million Euros and the domestic turnover of another participating undertaking must have been more than 17.5 million Euros (Section 35 (1) no. 1 and no. 2 GWB).</p> <p>2. Transaction Value Threshold</p> <p>In the last business year preceding the merger, the combined aggregate worldwide turnover of all participating undertakings must have been more than 500 million Euros and the domestic turnover of at least one participating undertaking must have been more than 50 million Euros. Furthermore neither the target undertaking nor any other undertaking concerned must have achieved a domestic turnover of more than 17.5 million Euros, the transaction value must amount to more than 400 million Euros and the target has to have substantial operations in Germany (Section 35 (1a) no. 1, 2, 3 and no. 4 GWB).</p> <p>3. Provisions set out in Section 39a GWB</p> <p>Furthermore, the Bundeskartellamt may order an undertaking by formal decision to notify its mergers with other undertakings in one or several specific sectors of the economy for a period of three years from the date on which the decision is served, if the following requirements according to Section 39a GWB are fulfilled:</p> <ul style="list-style-type: none"> • the undertaking concerned has achieved turnover of more than EUR 500 million worldwide in its last business year, • there are objectively verifiable indications that future concentrations could substantially impede effective competition in Germany in the sectors of the economy specified, and • the undertaking concerned has a share of at least 15% of the supply of or demand for goods or services in Germany in the economic sector specified,

	<ul style="list-style-type: none"> • the undertaking to be acquired achieved a turnover of more than EUR 2 million in the last business year and • achieved more than two thirds of its turnover in Germany. <p>However, before an order is issued the Bundeskartellamt shall conduct a sector enquiry for the economic sectors in question (cf. Section 32e GWB).</p>
<p>B. To which entities do the merger notification thresholds apply, i.e., which entities are included in determining relevant undertakings/firms for threshold purposes? If based on control, how is control determined?</p>	<p>The total turnover of all affiliated undertakings is relevant, regardless of the ownership percentage. Turnover between the affiliated undertakings is not taken into account. In regards to control, if a participating undertaking is a controlled or controlling undertaking, then the undertakings so affiliated have to be regarded as a single undertaking.</p> <p>However in the case of an acquisition of parts of one or several undertakings only the turnover or market share attributable to the sold parts shall be taken into account for the seller, regardless of whether the sold parts form legal entities. But this shall not apply if the seller remains control as defined by Section 37 (1) no. 2 GWB or 25 percent or more of shares.</p>
<p>C. How is the nexus to the jurisdiction determined (e.g., sales or assets in the jurisdiction)? If based on an “effects doctrine”, please describe how this is applied in practice. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?”</p>	<p>The local nexus is mainly determined through the requirement of a minimum turnover in Germany of 50 million Euros by one participating undertaking and of 17.5 million Euros by another participating undertaking, cf Section 35 (1) no. 2 GWB.</p> <p>However, there are some instances where a merger does not fall under German merger control, even if the domestic turnover exceeds the thresholds of Section 35 (1) no. 2 GWB. According to Section 130 (2) GWB, the merger must have domestic effects. For more detailed information, see the guidance on domestic effects in merger control at http://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Merkblaetter/Leaflet%20-%20Guidance%20document%20domestic%20effects%202014.pdf?__blob=publicationFile&v=2.</p> <p>In cases based on the transaction-value threshold other parameters can be used to determine the local nexus. Those parameters depend on the characteristics of the economic sector or the products/services concerned. See for further information the Guidance on Transaction Value Thresholds https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Leitfaden/Leitfaden_Transaktionsschwelle.html?nn=3590380.</p>

<p>D. Can a single party trigger the notification threshold (e.g., one party's sales, assets, or market share)?</p>	<p>No, see questions 3 A and 4 A above.</p>
<p>E. Are any sectors excluded from notification requirements? If so, which sectors? To what period(s) of time do the thresholds relate (e.g., most recent calendar year, fiscal year; for assets-based tests, calendar year-end, fiscal year-end, other)?</p>	<p>If credit institutions, financial institutions or insurance undertakings acquire shares in another undertaking for the purpose of resale, this shall not be deemed a concentration as long as they do not exercise the voting rights attached to the shares and provided the resale occurs within one year (Section 37 (3) GWB).</p> <p>Also the merger control regime does not apply to the hospital sector, if the requirement set out in Section 186 (9) GWB are fulfilled:</p> <ol style="list-style-type: none"> 1. the concentration concerns the merger of several hospitals or individual specialised areas of several hospitals across locations, 2. the concentration does not conflict with other provisions of competition law and the <i>Land</i> has confirmed this at the time the application is filed pursuant to Section 14(2) no 3a) of the German Regulation on Structural Funds for Hospitals, 3. it has been established by way of a payment notice pursuant to Section 15 of the German Regulation on Structural Funds for Hospitals that the other requirements for support pursuant to Section 12a(1) sentence 4 of the German Hospital Financing Act in conjunction with Section 11(1) no 2 of the German Regulation of Structural Funds for Hospitals have been met and 4. the concentration will be implemented by 31 December 2027. <p>However, any concentration which meets the set out criteria shall be notified to the Bundeskartellamt after it has been implemented (Section 186 (9) Sentence 2 GWB).</p>
<p>F. Are there special threshold calculations for specific sectors (e.g.,</p>	<p>Yes. For more details see answers no. (2) and no. (3) to question 4 J below.</p>

<p>banking, airlines, media, digital markets) or specific types of transactions (e.g., joint ventures, partnerships, financial investments)? If yes, for which sectors and types of transactions?</p>	
<p>G. Are there special rules or exceptions/exemptions regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign (foreign-to-foreign transactions)? [Describe the methodology for identifying and calculating any values necessary to determine if notification is required, including the value of the transaction, the relevant sales or turnover, and/or the relevant assets]</p>	<p>No, but in the context of foreign-to-foreign transactions the question of domestic effects can play an important role (see question 3 B above). For more detailed information see guidance document on domestic effects in merger control.</p> <p>http://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Merkblaetter/Leaflet%20-%20Guidance%20document%20domestic%20effects%202014.pdf?__blob=publicationFile&v=2</p>
<p>H. Does the agency have the authority to review transactions that fall below the thresholds or otherwise do not meet notification requirements? If so, what is</p>	<p>The Bundeskartellamt does not have the authority to review transactions that fall below the thresholds under German merger control (Sections 35 et seq. GWB).</p> <p>However, the Bundeskartellamt may initiate proceedings against transactions that may violate other competition law provisions, e.g. Articles 101, 102 Treaty on the Functioning of the European Union (TFEU) or Sections 1 ff. GWB. See also question 4A, par. 3 above, relating to Sect. 39a GWB.</p>

<p>the procedure to initiate a review? [Describe methodology for calculating exchange rates]</p>	
<p>I. Are current notification criteria catching relevant transactions related to digital markets?</p>	<p>No specific criteria are applicable to digital markets.</p>

Calculation Guidance and related issues

<p>J. If thresholds are based on any of the following values, please describe how they are identified and calculated to determine if notification is required:</p> <ul style="list-style-type: none"> i) the value of the transaction; ii) the relevant sales or turnover; iii) the relevant assets; iv) market shares; v) other (please describe). 	<p>The thresholds for notification are based on turnover. The methodology for calculating the turnover is defined in Section 38 GWB:</p> <p>(1) Section 277 (1) of the Commercial Code shall apply to the calculation of turnover. If an undertaking exclusively uses a different internationally recognised accounting standard for its regular corporate accounting, this standard shall be decisive for calculating the turnover. Revenues from the supply of goods and services between affiliated undertakings (intra-group revenues) as well as excise taxes shall not be taken into account.</p> <p>(2) For trade in goods, only three quarters of the turnover shall be taken into account.</p> <p>(3) For the publication, production and distribution of newspapers, magazines and parts thereof, four times the amount of the turnover shall be taken into account. For the production, distribution and broadcasting of radio and television programmes, and the sale of radio and television advertising time, eight times the amount of the turnover shall be taken into account.</p> <p>(4) The turnover shall be replaced, in the case of credit institutions, financial institutions and building and external loan associations, by the total amount of the proceeds referred to in Section 34 (2) sentence 1 no. 1 a-e of the Ordinance on the Regulation on the Rendering of Accounts of Credit Institutions, minus value added tax and other taxes directly levied on such income. In the case of insurance undertakings, the premium income in the last completed business year shall be relevant. Premium income shall be income from insurance and reinsurance business including the portions ceded for cover.</p> <p>(4a) Consideration within the meaning of Section 35 (1a) GWB shall include</p>
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	<ol style="list-style-type: none"> 1. all assets and other consideration in kind which the seller receives from the acquirer in connection with the concentration pursuant to Section 37 (1) GWB (purchase price) and 2. the value of any liabilities assumed by the acquirer. <p>(5) In the case of an acquisition of parts of one or several undertakings, only the turnover or market share attributable to the sold parts shall be taken into account for the seller, regardless of whether the sold parts form legal entities. This shall not apply if the seller remains control as defined by Section 37 (1) no. 2 GWB or 25 percent or more of shares. Two or more transactions which take place within two years between the same persons or undertakings shall be treated as one concentration if, as a result, the thresholds for notification of Section 35 (1) GWB are reached or the conditions under Section 35 (1a) GWB are fulfilled; the date of the concentration shall be the one of the last transaction.</p>
<p>K. Which entities are included in determining relevant investment funds for threshold purposes? If based on control, is the definition of control in these cases any different from the definition of control in general (question 3C)? If yes, how?</p>	<p>There are no special rules for investment funds. See question 4 B above.</p>
<p>L. In case an investment fund is part of a transaction, are its controllers required to present turnover information related to other funds under same manager (general partner) control? Are those other funds considered as part of the</p>	<p>No specific documents have to be submitted with the initial notification. See question 8 A below and question 4 B above.</p>

transaction for turnover purposes?	
M. Describe the methodology applied for currency conversion [e.g. which exchange rates are used].	The published exchange rates by the European Central Bank (ECB) are being used. Turnover in a foreign currency is therefore to be converted into euro at the official annual mean rate of the European Central Bank (see: https://www.ecb.europa.eu/pub/economic-bulletin/mb/html/index.en.html - Monthly Bulletin - Euro area statistics – Exchange Rates - Table: “Bilateral Exchange Rate”).
5. Pre-notification	
A. If applicable, please describe the pre-notification procedure and whether it can be mandatory or not [e.g., time limits, type of guidance given, etc.].	There is no mandatory pre-notification procedure in Germany. Pre-notification contacts are possible. The respective decision division in charge of the industry in question is the right contact point for pre-merger discussions (see above 2. C.).
B. If applicable, what information or documents are the parties required to submit to the agency during pre-notification?	Not applicable.
6. Notification requirements and timing of notification	
A. Is notification mandatory? [Please describe if notification is mandatory in pre-notification phase, post-merger or voluntary]	Notification is mandatory pre-merger.

B. If parties can make a voluntary merger filing when may they do so?	Not applicable.
C. What is the earliest that a transaction can be notified (e.g., is a definitive agreement required; if so, when is an agreement considered definitive?)	Before a merger can be notified, the participating undertakings and the form of the merger have to be established, cf. Section 39 (3) GWB.
D. When must notification be made? If there is a triggering event, describe the triggering event (e.g., definitive agreement) and the deadline following the event. Do the deadline and triggering event depend on the structure of the transaction? Are there special rules for public takeover bids?	<p>There are no special rules as to when the notification must be made. However, the merger may not be put into effect before it has been notified and cleared (Section 41 (1) GWB).</p> <p>This prohibition has an exemption for public takeover bids. The standstill obligation shall not prevent the implementation of a public bid or a series of transactions in securities including those convertible into other securities admitted to trading on a market such as a stock exchange, by which control, shares or a material competitive influence within the meaning of Section 37 (1), (2) GWB is/are acquired from several sellers either by way of a public takeover bid or by way of a number of legal transactions in securities on a stock exchange. This is provided that the concentration is notified to the Bundeskartellamt pursuant to Section 39 GWB without undue delay; and the acquirer does not exercise the voting rights attached to the securities in question, or does so only to maintain the full value of its investments based on a derogation granted by the Bundeskartellamt under Section 41 (2) GWB (cf. Section 41 (1a) GWB).</p>
E. If there is a notification deadline, can parties request an extension for the notification deadline? If yes, please	Not applicable.

describe the procedure and whether there is a maximum length of time for the extension.	
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7. Simplified Procedures	
A. Describe any special procedures for notifying transactions that do not raise competition concerns (e.g., short form, simplified procedures, advanced ruling certificates, discretion to waive certain information requirements, etc.).	<p>Not applicable.</p> <p>A clearance in the initial examination phase (see question 10 A below) can be regarded as a “simplified procedure”. The information requirements are very limited, pre-notification contacts are not mandatory, the time limit of one month is short, and often the clearance is issued even more quickly.</p>
B. Describe the criteria adopted to consider a transaction under the simplified procedure.	Not applicable.

8. Information and documents to be submitted with a notification

<p>A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents, internal documents).</p>	<p>No specific documents have to be submitted with the initial notification. However, a merger notification must contain the particulars specified in Section 39 (3) GWB. The Bundeskartellamt is entitled to request the undertakings to submit documents which it requires for examining the merger project, such as market studies, the acquisition agreement or by-laws (cf. Section 59 GWB).</p>
<p>B. Is there a distinction between tangible and intangible (e.g., customer portfolio, data on consumers, etc.) assets in the description of the transaction? [In respect to digital markets, state if the agency considers the amount of user data the companies have, and which will be passed on in the transaction]</p>	<p>No.</p>
<p>C. Are documents proving the efficiencies of the transaction required? [If applicable, please provide the type of documents normally required]</p>	<p>See question 8 A above.</p>
<p>D. What information is required in case the target</p>	<p>No specific documents have to be submitted (see question 8 A above).</p>

<p>company is experiencing financial insolvency?</p>	<p>However, if the merging parties want to invoke the failing firm defense, they have to prove that its requirements are fulfilled. The need for restructuring has to be proven by adequate documentation, a mere claim to that effect by the parties is not sufficient. Documents that have been compiled for other purposes or by independent third parties before the merger project was contemplated are particularly significant in this context. Documents containing, inter alia, the following information can be particularly useful for the assessment: Profit and loss accounts, balance sheets, credit ratings, ratings by rating agencies or suppliers, information on performance indicators such as EBIT, ROI, cash flow, liquidity, debt to equity ratio, return on equity, equity ratio (for more details see Guidance on substantive merger control).</p>
<p>E. Is there a specific procedure for obtaining information from target companies in the case of hostile/ unsolicited bids?</p>	<p>No, there are no special procedures or special rules for obtaining information from target undertakings in the case of hostile/unsolicited bids. The merger notification must contain all the information required under Section 39 (3) GWB, that is, <i>inter alia</i>, certain information on the acquiring undertaking as well as the undertaking to be acquired. The Bundeskartellamt is entitled to request information from undertakings to the extent necessary to assess the merger, Section 59 GWB, see also question 8 H.</p>
<p>F. Are there any document legalization requirements (e.g., notarization or apostille)? What documents must be legalized?</p>	<p>No.</p>
<p>G. What are the agency's rules and practice regarding exemptions from information requirements (e.g., information submitted or document legalization) for transactions in which the acquiring and acquired parties are foreign (foreign-to-foreign transaction)?</p>	<p>There are no exemptions from the information requirements. However, mandatory information is very limited. In addition, the Bundeskartellamt does not make the clearance of foreign-to-foreign mergers conditional upon the completeness of the submitted notification if the parties concerned are able to demonstrate that they are prevented by provisions of foreign law or other circumstances from submitting all the mandatory information requested in Section 39 GWB and if it is clear from the submitted documents or from information available to the Bundeskartellamt that a prohibition of the concentration is definitely not to be expected.</p>

<p>H. Can the agency require third parties to submit information during the review process? Can third parties voluntarily submit information or otherwise contact the agency to intervene?</p>	<p>Yes, the Bundeskartellamt is entitled to issue requests for information to third parties. The Bundeskartellamt may, to the extent necessary to perform its functions, request from undertakings and associations of undertakings the provision of information and the surrender of documents. This obligation covers all of the information and documents accessible to the undertaking or the association of undertakings. This also includes general market surveys which serve the purpose of evaluating or analysing the conditions of competition or the market situation and are in the possession of the undertaking or association of undertakings (cf. Section 59 (1) GWB).</p> <p>Third parties may also voluntarily submit information or contact the agency with any concerns about a concentration. Contact points are the competent Decision Divisions, which can be contacted via switchboard +49 228-9499-0. The Bundeskartellamt announces the fact that a notification has been made on its website where information can also be found on the competent Decision Division for the assessment of a certain concentration.</p>
<p>I. Are parties allowed to submit information beyond what is required in the initial filing voluntarily (e.g., to help narrow or resolve potential competitive concerns)?</p>	<p>A merger notification must contain the information required in Section 39 (3) GWB. Parties may submit additional information. It should also be noted that expert economic opinions submitted have to comply with the Bundeskartellamt's best practices for expert economic opinions (see http://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Bekanntmachungen/Notice%20-%20Standards%20for%20economic%20opinions.pdf?__blob=publicationFile&v=2).</p>
<p>J. Are there different forms for different types of transactions or sectors?</p>	<p>No.</p>
<p>K. With respect to investment funds:</p> <p>i) Is it requested that an investment fund taking part in a</p>	<p>See question 8 A and 4 B above.</p>

transaction provide a statement that its controllers do not manage any other investment funds in the same relevant market?

ii) Should an investment fund be controlled by an entity that is also responsible for other funds in the same relevant market, are such funds considered part of the transaction? Is it requested that the controlling entity provide market information (e.g., market share) related to the other funds it manages and which are in the same relevant market?

iii) Should there be no classic concentration, is there any sort of

<p>exemption regarding presenting certain information requested in the form?</p>	
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9. Translation	
<p>A. In what language(s) can the notification forms be submitted?</p>	<p>The notification of merger projects must be submitted in German.</p>
<p>B. Describe any requirements to submit translations of documents:</p> <ul style="list-style-type: none"> i) with the initial notification; and ii) later in response to requests for information. <p>In addition:</p> <ul style="list-style-type: none"> iii) what are the categories or types of documents for which translation is required; iv) what are the requirements for certification of the translation; 	<p>No specific documents have to be submitted with the initial notification (see question 8 A above).</p> <p>Documents which are submitted in response to requests for information must generally be submitted in German. This does not exclude the possibility that the Bundeskartellamt may also, in individual cases, accept documents in which only certain passages have been translated. As a rule the authority will refrain from insisting on this requirement if the relevant documents are in English and if the case handlers concerned have adequate language skills.</p> <p>If translations are required these need not be certified.</p>

<p>v) which language(s) is/are accepted; and vi) are summaries or excerpts accepted in lieu of complete translations and in which languages are summaries accepted?</p>	
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<p>10. Review Periods</p>	
<p>A. Describe any applicable review periods following notification.</p>	<p>An initial examination phase of one month starts as soon as a complete notification has been received (“first phase”). During this phase the Bundeskartellamt can inform the notifying undertakings that it has initiated a so-called in-depth investigation (“second phase”, cf. Section 40 (1) GWB). In-depth investigations are initiated if a further examination of the merger is required. If no such notification is given by the authority within the time limit of one month, the merger may be put into effect.</p> <p>In-depth investigations generally last for a maximum of five months starting from the date on which the complete notification was received and are concluded by a clearance decision (possibly subject to conditions/obligations) or a prohibition decision. For details on extensions of the review period, see question 10 C and G. Mergers may not be put into effect before the in-depth investigations have been concluded either by a clearance decision or by the expiry of the review period, provided that no prohibition decision was issued.</p>
<p>B. Are there different rules for public tenders (e.g., open market stock purchases or hostile bids)?</p>	<p>The prohibition not to put a merger into effect before it has been notified and cleared has an exemption for public takeover bids (cf. Section 41 (1) GWB). For details see question 6 D.</p>

<p>C. What are the procedures for an extension of the review periods, if any? Do requests for additional information suspend or re-start the review period?</p>	<p>The Bundeskartellamt may extend the review periods if the notifying undertakings have consented to an extension (Section 40 (2) Sentence 4 no 1 GWB).</p> <p>The review period is not generally suspended or re-started by requests for information. However, the deadline for the review period is suspended if the Bundeskartellamt has to request information once again from one of the parties to the concentration because this party has not or not completely answered an earlier request for information owing to circumstances for which the said party is responsible (Section 40 (2) Sentence 5 GWB).</p> <p>The review period is extended automatically by one month if a notifying undertaking proposes conditions and obligations to the Bundeskartellamt for the first time (Section 40 (2) Sentence 7 GWB), see question 10 G.</p>
<p>D. Is there a statutory or other maximum duration for extensions?</p>	<p>There is no statutory maximum duration for such extensions.</p>
<p>E. Does the agency have the authority to suspend review periods? Does suspending a review period require the parties' consent?</p>	<p>See question 10 C.</p>
<p>F. What are the time periods for accelerated review of non-problematic transactions, if any?</p>	<p>Not applicable.</p> <p>Non-problematic transactions are cleared expeditiously within the initial examination phase (see question 10 A above).</p>
<p>G. If remedies are offered, do they impact the timing of the review?</p>	<p>If a further examination of the concentration is required, the Bundeskartellamt opens an in-depth investigation. The in-depth investigations are concluded with a clearance or prohibition decision. Clearance can be granted subject to conditions and obligations. It should be noted that it is not possible for the Bundeskartellamt to clear a merger subject to conditions and obligations in the initial examination phase (first phase).</p>

	<p>Remedies have to be proposed by the parties. If parties want to offer remedies, they are advised to discuss the remedies with the competent Decision Division before submitting their official proposal.</p> <p>Model texts for different types of commitments and trustee mandates can be found on the Bundeskartellamt's webpage.</p> <p>The review period will be extended automatically by one month if a notifying undertaking proposes conditions and obligations to the Bundeskartellamt for the first time (Section 40 (2) Sentence 7 GWB).</p> <p>See also question 14 G.</p>
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11. Waiting periods / suspension obligations	
A. Describe any waiting periods/suspension obligations following notification (e.g., full suspension from implementation, restrictions on adopting specific measures) during any initial review period and/or further review period.	The merger may only be put into effect after conclusion of the proceedings described in question 10 A above. There are, however, certain exceptions to the prohibition not to put a merger into effect before it has been notified and cleared (cf. Section 41 (1) GWB). One exemption concerns public takeover bids and has already been described in detail in question 6 D.
B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?	The Bundeskartellamt may, upon application, grant a derogation from the prohibition of putting a merger into effect in particular if the participating undertakings are able to substantiate that the derogation would prevent serious damage to a participating undertaking, Section 41 (2) sentence 1 GWB. In practice, it is often faster to obtain a clearance of the merger in the first phase, if it is clear that a concentration does not raise any competition issues. If the Bundeskartellamt's resources permit this, clearance can be granted even quicker than under the one-month time limit.
C. Are the applicable waiting periods/suspension obligations limited to aspects of the transaction that occur within the	No. The waiting periods described in question 11 A are applicable to the proposed merger as a whole. The parties may apply for a derogation from the suspension obligations (see question 11 B above).

<p>agency's jurisdiction (e.g., acquisition or merger of local undertakings/business units)? If not, to what extent can the parties implement the transaction outside the agency's jurisdiction prior to clearance (e.g., through derogation from suspension, hold separate arrangements)?</p>	
<p>D. Are parties allowed to close the transaction if no decision is issued within the statutory period?</p>	<p>Yes. See question 10 A above.</p>
<p>E. Describe any provisions or procedures available to the enforcement agency, the parties and/or third parties to extend the waiting period/suspension obligation.</p>	<p>See question 10 C and 10 G above.</p>
<p>F. Describe any procedures for obtaining early termination of the applicable waiting period/suspension obligation, and the criteria and timetable for deciding</p>	<p>See question 10 A and 10 F above.</p>

<p>whether to grant early termination.</p>	
<p>G. Describe any provisions or procedures allowing the parties to close the transaction at their own risk before waiting periods expire or clearance is granted (e.g., allowing the transaction to close if no "irreversible measures" are taken).</p>	<p>Not applicable.</p>

<p>12. Responsibility for notification / representation</p>	
<p>A. Who is responsible for notifying – the acquiring company(ies), acquired company(ies), or both? Does each party have to make its own filing?</p>	<p>Under the GWB all undertakings participating in a merger are obliged to notify (Section 39 (2) no. 1 GWB). In the case of acquisition of assets or shares this obligation is also upon the seller (Section 39 (2) no. 2 GWB). In practice, however, it is sufficient if one of these undertakings notifies the proposed merger and provides all necessary data on behalf of all participating undertakings. If, however, no notification has been made or if a notification is incorrect in terms of its content, each party subject to notification will be liable.</p>
<p>B. Do different rules apply to public tenders (e.g., open market stock purchases or hostile bids)?</p>	<p>No.</p>

<p>C. Are there any rules as to who can represent the notifying parties (e.g., must a lawyer representing the parties be a member of a local bar)?</p>	<p>No.</p>
<p>D. How does the validity of the representation need to be attested (e.g., power of attorney)? Are there special rules for foreign representatives or firms? Must a power of attorney be notarized, legalized, or apostilled?</p>	<p>Upon request by the Bundeskartellamt lawyers must submit written proof of their power of attorney. A legalisation is not required. Foreign undertakings must name a person authorised to accept service in Germany, Section 39 (3) no. 6 GWB.</p>

<p>13. Filing fees</p>	
<p>A. Are any filing fees assessed for notification? If so, in what amount and how is the amount determined (e.g., flat fee, fees for services, tiered fees based on complexity, tiered fees based on size of transaction)? [Please provide the amount in local</p>	<p>The notification of a merger project is subject to fees (cf. Section 62 GWB). The maximum fee generally amounts to 50,000 Euros. In exceptional cases the fee may amount to a maximum of 100,000 Euros. The exact amount of the fee depends on the economic significance of the merger as well as on the personnel and material expenses of the Bundeskartellamt. The economic significance of the merger is mainly determined by the turnover achieved by the participating undertakings in the market concerned and by the market shares held by the participating undertakings. Filing fees for a clearance decision in the initial examination phase typically range between 2,500 and 15,000 Euros.</p>

currency and in USD as of December 31 st , 2020]	
B. Who is responsible for payment?	The notifying undertaking is liable to pay the fees. If several undertakings notify a merger they are jointly and severally liable.
C. When is payment required?	Fees must be paid upon receipt of the note of fees.
D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?	Fees must be paid by transfer.

14. Process for substantive analysis and decisions [Please give a brief summary and provide information on relevant Guidance papers]	
A. What are the key procedural stages in the substantive assessment (e.g., screening mergers, consulting third parties)?	<p>In general, the Bundeskartellamt firstly assesses which markets are affected by the concentration and defines the product and the geographic markets.</p> <p>Once the markets affected by the concentration are defined, the Bundeskartellamt analyses whether effective competition on these markets would be significantly impeded as a result of the concentration.</p> <p>The Bundeskartellamt can request further information from the parties as well as third parties (e.g. competitors, customers etc.), see also question 8 H above. Requests for information are generally issued in complex initial examination phases as well as in in-depth investigations.</p>
B. What merger test does the agency apply (e.g., dominance test or	A concentration is prohibited, if it would significantly impede effective competition, in particular if the concentration is expected to create or strengthen a dominant position (Section 36 (1) GWB). The Bundeskartellamt shall not prohibit a concentration if the parties prove that the concentration will also lead to improvements of the conditions of competition and that these improvements outweigh the impediment of competition (cf. Section 36 (1) no. 1 GWB).

<p>substantial lessening of competition test)?</p>	<p>A concentration shall also not be prohibited if competition is only impeded on markets on which goods or commercial services have been offered for at least five years and which had a total domestic sales volume of less than 20 million Euros in the last calendar year (cf. Section 36 (1) no. 2 GWB).</p>
<p>C. What theories of harm does the agency consider in practice?</p>	<p>Competitive concerns can arise due to unilateral and/or coordinated effects of horizontal, vertical and conglomerate mergers.</p>
<p>D. What are the key stages in the substantive analysis? Does this differ depending on the type of transaction (e.g., joint venture)?</p>	<p>In its analysis of possible unilateral effects, the Bundeskartellamt assesses <i>inter alia</i> market shares and concentration levels, , customer preferences and switching costs,diversion ratios between merging parties and their competitors, capacity constraints and capacity utilisation, intellectual property rights and know-how, market phase, access to suppliers and customers, structural links with other companies as well as financial resources. Depending on the constellation of the merger, the closeness of competition between the merging parties might be of particularly high importance. Outside the relevant market, potential competition and barriers to entry as well as imperfect substitution will be analysed. Countervailing buyer power might also be of relevance.</p> <p>In order to analyse the implications of a vertical merger, the Bundeskartellamt assesses <i>inter alia</i> the ability and incentive of the merging parties to pursue foreclosure or “raising rivals’ costs” strategies and their access to confidential data on the business activities of its competitors.</p> <p>In conglomerate mergers, the Bundeskartellamt analyses in particular whether the merger leads to a weakening of potential competition as well as anti-competitive tying or bundling.</p> <p>With regard to coordinated effects, the Bundeskartellamt focuses on the assessment of whether the merger provides the merging parties with the ability and incentive to coordinate their (future) behaviour in the market or whether it facilitates existing coordination or makes it more stable.</p> <p>Details on the substantive analysis can be found in the Bundeskartellamt’s guidance document on substantive merger control, which is available online:</p> <p>http://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Leitlinien/Guidance - Substantive Merger Control.pdf?__blob=publicationFile&v=6.</p>

<p>E. Are non-competition issues ever considered (in practice or by law) by the agency? If so, can they override or displace a finding based on competition issues?</p>	<p>The Bundeskartellamt assesses a concentration only with regard to competition issues. Non-competition issues may not be considered. However, the Federal Minister for Economic Affairs and Energy can authorize a concentration prohibited by the Bundeskartellamt upon application if the competition concerns are outweighed by advantages to the economy as a whole or if the concentration is justified by an overriding public interest (Section 42 GWB, see also questions 19 A to C).</p>
<p>F. What are the possible outcomes of the review (e.g., unconditional/conditional clearance, prohibition, etc.)?</p>	<p>A concentration is cleared within the initial examination phase of one month if a further examination of the concentration is not required and there are no competition concerns. Alternatively, the Bundeskartellamt initiates in-depth investigations. In-depth investigations are concluded by an unconditional clearance decision, a clearance subject to conditions and obligations or a prohibition decision.</p>
<p>G. What types of remedies does the agency accept? Is there a preference on any particular type of remedies? How is the process initiated and conducted?</p>	<p>In general, structural as well as behavioural remedies are possible. However, behavioural remedies are only accepted if they are as suitable and effective as structural remedies to remove the competition concerns identified. Also, behavioural remedies shall not aim at subjecting the conduct of the undertakings concerned to a continued control through the Bundeskartellamt (Section 40 (3) GWB).</p> <p>The remedies have to be proposed by the parties. The Bundeskartellamt assesses whether the remedies are suitable to remove the competition concerns. In this context, the Bundeskartellamt usually conducts a market test. If the Bundeskartellamt considers the remedies to be suitable, they are declared binding as conditions and obligations in the clearance decision. In many cases, the Bundeskartellamt appoints a trustee.</p>

<p>15. Confidentiality</p>	
<p>A. To what extent, if any, does the agency make public the fact that a premerger notification filing</p>	<p>The fact as such that a notification has been made is announced by the Bundeskartellamt on its website shortly after the notification. Details of the notification are not published.</p>

<p>was made or the contents of the notification? If applicable, when is this disclosure made?</p>	
<p>B. Do notifying parties have access to the agency's file? If so, under what circumstances can the right of access be exercised?</p>	<p>Notifying parties have the right to access files. Draft decisions, documents which directly serve to prepare decisions and third parties' business secrets are, however, not subject to the right to access files. Files may be accessed at the Bundeskartellamt's premises. Usually, digital scans are sent out at the expense of the party requesting to access files.</p>
<p>C. Can third parties or other government agencies obtain access to notification materials and any other information provided by the parties (including confidential and non-confidential information)? If so, under what circumstances?</p>	<p>Third parties have the right to access files if they have been accepted as an intervening party to the proceedings in accordance with Section 54 (2) no. 3 GWB. Draft decisions, documents serving directly to prepare decisions and third parties' business secrets are not subject to the right to access files in this case either.</p> <p>Third parties which have not been admitted to the proceedings may be granted access <i>inter alia</i> to notification-related material on the basis of the German Freedom of Information Act, which provides a general claim to access "official information". This claim may only be rejected in exceptional cases. Again, draft decisions, documents serving directly to prepare decisions and business secrets are excluded.</p> <p>The Bundeskartellamt is entitled to exchange information with the cartel authorities of the German Länder, regulatory authorities (the Bundesnetzagentur), the Federal Commissioner for Data Protection and Freedom of Information [Bundesbeauftragte für den Datenschutz und die Informationsfreiheit] and the Land commissioners for data protection [Landesbeauftragte für Datenschutz] as well as the competent authorities within the meaning of Section 2 of the German EU Consumer Protection Enforcement Act [EU-Verbraucherschutzdurchsetzungsgesetz]. Those authorities may exchange among themselves information including <i>inter alia</i> business secrets, to the extent necessary for the performance of their respective functions, and use it in their proceedings (Section 50f (1) GWB).</p> <p>The Bundeskartellamt may also exchange non-confidential information with certain other national authorities, e.g. the Federal Financial Supervisory Authority (Section 50f (2) GWB).</p>

<p>D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe.</p>	<p>The fact as such that a notification has been made cannot be treated confidentially. Business secrets are treated confidentially, cf. questions 15 B and C.</p>
<p>E. Can the agency deny a party's claim that certain information contained in notification materials is confidential? Are there procedures to challenge a decision that information is not confidential? If so, please describe.</p>	<p>The Bundeskartellamt is obliged to keep business secrets confidential. The disclosure of business secrets can also constitute a criminal offence. If the Bundeskartellamt and the merging parties hold different views on the confidential nature of certain information, the merging parties can challenge the Bundeskartellamt's assessment in court.</p>
<p>F. Does the agency have procedures to provide public and non-public versions of agency orders, decisions, and court filings? If so, what steps are taken to prevent or limit public disclosure of information designated as confidential that is contained in these documents?</p>	<p>The Bundeskartellamt publishes non-confidential versions of its decisions. In advance of publishing a decision, confidential information and business secrets are removed. The Bundeskartellamt requires the parties to provide a non-confidential version of all their submissions to the Bundeskartellamt. Furthermore, they are given the opportunity to provide a non-confidential version of the decision. In addition, the Bundeskartellamt issues press releases and case summaries of interesting merger control decisions (decisions concluding an initial examination phase as well as decisions concluding in-depth investigations) which neither contain confidential information nor business secrets.</p>

16. Transparency	
A. Does the agency publish an annual report with information about mergers? Please provide the web address if available.	<p>Yes.</p> <p>The Bundeskartellamt publishes both concise annual reports and more comprehensive biannual activity reports: https://www.bundeskartellamt.de/EN/AboutUs/Publications/Annual_Report/annual_report_node.html https://www.bundeskartellamt.de/EN/AboutUs/Publications/Activityreports/activityreports_node.html</p>
B. Does the agency publish press releases related to merger policy or investigations/reviews? If so, how can these be accessed (if available online, please provide a link)? How often are they published (e.g., for each decision)?	<p>Yes. Press releases can be found on the Bundeskartellamt's webpage. They are published for each decision concluding in-depth investigations as well as for particularly interesting decisions concluding the initial examination phase.</p>
C. Does the agency publish decisions on why it challenged, blocked, or cleared a transaction? If available online, provide a link. If not available online, describe how one can obtain a copy of decisions.	<p>Yes. Press releases can be found on the Bundeskartellamt's webpage. They are published for each decision concluding in-depth investigations as well as for particularly interesting decisions concluding the initial examination phase. https://www.bundeskartellamt.de/EN/Home/home_node.html</p> <p>The Bundeskartellamt usually publishes case summaries on important first phase investigations or describes them in its biannual activity reports.</p>
E. Does the agency publish statistics or the number of annual notifications received, clearances, prohibitions, etc.? [if	<p>Yes.</p> <p>https://www.bundeskartellamt.de/EN/AboutUs/Publications/Annual_Report/annual_report_node.html</p>

applicable, please provide a link for these figures]	
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17. Cooperation	
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A. Is the agency able to exchange information or documents with international counterparts?	<p>The Bundeskartellamt may exchange non-confidential information with foreign competition authorities provided the applicable requirements are met (Section 50e (2) GWB). In merger cases information can only be exchanged if the party that has provided the information has given prior consent. It encourages merging parties to provide waivers to enable the Bundeskartellamt to cooperate closely with competition authorities that review the same merger (see also question 17 C).</p> <p>The Bundeskartellamt is also a member of the EU Merger Working Group (MWG). The MWG consists of representatives of the European Commission and the national competition authorities of the European Union and the European Economic Area. The objective of the MWG is to foster increased consistency, convergence and cooperation among EU merger jurisdictions. For more information on cooperation in merger cases see the Best practices on cooperation between EU National Competition Authorities in merger review (November 2011), available online:</p> <p>https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Others/BestPractices-EUmergerWorkingGroup.pdf?__blob=publicationFile&v=2</p>
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B. Is the agency or government a party to any agreements that permit the exchange of information with foreign competition authorities? If so, with which foreign authorities? Are the agreements publicly available?	<p>Agreements that permit or facilitate the exchange of non-confidential information include e.g.:</p> <p>(1) the decision made at the European Competition Authorities' (ECA) meeting on 20 April 2001 to exchange basic non-confidential information on notified merger cases,</p> <p>https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Others/ECA_procedures_Guide_exchange_information_%20mergers.pdf?__blob=publicationFile&v=7</p> <p>(2) Recommendation of the OECD Council concerning International Co-operation on Competition Investigations and Proceedings as approved by Council on 16 September 2014 [C(2014)108]</p> <p>https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Others/OECD_Recommendation.pdf?__blob=publicationFile&v=4</p> <p>and</p>
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	<p>(3) bilateral agreements with Austria http://www.gesetze-im-internet.de/bundesrecht/ahivwvtrautg/gesamt.pdf, France http://www.bmjv.de/SharedDocs/Downloads/DE/rivast_dokumente/Frankreich.pdf?__blob=publicationFile and the USA. http://www.bgbl.de/banzxaver/bgbl/start.xav?start=%2F%2F*[%40attr_id%3D%27bgbl207s0127.pdf%27]#_bgbl_%2F%2F*[%40attr_id%3D%27bgbl207s1618.pdf%27]_1430208905236</p>
<p>C. Does the agency need consent from the parties who submitted confidential information to share such information with foreign competition authorities? If the agency has a model waiver, please provide a link to it here, or state whether the agency accepts the ICN's model waiver of confidentiality in merger investigations form.</p>	<p>The Bundeskartellamt may exchange non-confidential information with foreign competition authorities. The Bundeskartellamt may, however, not exchange confidential information with foreign competition authorities unless the parties grant a confidentiality waiver (Section 50e (2) GWB). The ICN's model waiver of confidentiality is accepted.</p>
<p>D. Is the agency able to exchange information or documents with other domestic regulators?</p>	<p>Yes, see question 15 C above.</p>

18.Sanctions/penalties

<p>A. What are the sanctions/penalties for:</p> <ul style="list-style-type: none"> i) failure to file a notification; ii) incorrect/misleading information in a notification; iii) failure to comply with information requests; iv) failure to observe a waiting period/suspension obligation; v) breach of interim measures; vi) failure to observe or delay in implementation of remedies; vii) implementation of transaction despite the prohibition from the agency? 	<p>Failure to file a notification, failure to observe a waiting period and implementation of a concentration despite a prohibition decision are violations of the prohibition of putting a concentration into effect under Section 41 (1) Sentence 1 of the GWB. A violation can be punished by imposing a fine of up to 1 million Euros (Section 81c GWB). In excess of this amount a violation can be punished by a fine up to 10 % of the turnover of the undertaking concerned, Section 81 (2) GWB.</p> <p>A concentration, which has been put into effect in violation of the prohibition to do so and which fulfils the conditions for prohibition under Section 36 (1) shall be dissolved (Section 41 (3) GWB).</p> <p>Acting contrary to an enforceable obligation that was part of the clearance decision or the breach of interim measures (Section 32a GWB) can be punished by imposing a fine of up to 1 million Euros. In excess of this amount a violation can be punished by a fine up to 10 % of the turnover of the undertaking concerned (Section 81 (2) no. 2 lit. a and no. 5, Section 81c GWB).</p> <p>If a concentration is not notified correctly or completely, a fine of up to 100,000 Euros can be imposed (Section 81 (2) no. 3 and (4) sentence 5 GWB).</p> <p>In addition, a clearance decision may be revoked or modified if it is based on incorrect information, has been obtained by means of deceit or if the undertakings concerned do not comply with an obligation attached to the clearance (Section 40 (3a) GWB).</p>
<p>B. Which party/ies (including natural persons) are potentially liable for each of A(i)-(vii)?</p>	<p>Fines can be imposed on all persons or parties who put a merger into effect or participate in putting a merger into effect without prior notification and clearance, e.g. the owners, legal representatives or managers of the participating undertakings and the participating undertakings themselves. The same applies if a concentration is not notified correctly or completely or if an enforceable obligation that was part of the clearance decision is not complied with.</p>

<p>C. Can the agency impose/order these sanctions/penalties directly, or is it required to bring judicial action against the infringing party? If the latter, please describe the procedure and indicate how long this procedure can take.</p>	<p>The Bundeskartellamt can impose these sanctions directly. The sanctions are subject to judicial review.</p>
<p>D. Are there any recent or significant fining decisions?</p>	<p>The Bundeskartellamt has imposed a fine of 90,000 Euros on an individual person for the incomplete notification of an acquisition of a slaughtering company. The notification did not contain information about this person's share in a major sausage manufacturer, which was essential for the competitive assessment of the case.</p> <p>The press release is available online: http://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2013/15_01_2013_T%C3%B6nnies-Bu%C3%9Fgeld.html?nn=3591568.</p> <p>A fine of 4,5 million Euro was imposed on an undertaking (Mars) for failure to observe the waiting period. Mars implemented a merger during the Bundeskartellamt's in-depth investigation. Mars notified its intended acquisition of Nutro Products in the USA, Germany and Austria. After the merger had been cleared by the US authorities and during the ongoing investigation by the German and Austrian authorities, Mars acquired the majority of shares in Nutro Products. By acquiring Nutro's trademark rights and production sites, Mars took possession of all the assets necessary to enable it to compete successfully. These were also the essential elements of competition potential behind Nutro's share of the domestic market. Only the distribution rights for Nutro products in Germany and Austria had initially been transferred to a company belonging to the seller.</p> <p>The press release is available online: http://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2008/15_12_2008_Mars_Vollzugsverbot.html</p> <p>In 2016 the Bundeskartellamt has imposed a fine of 90,000 Euros on a company, because its notification did not at all correctly reflect the market situation. The notification did not only contain incomplete information on further possibilities of the</p>

	<p>company to exert influence on another affiliated company, but also false sales figures, which were essential for the competitive assessment of the case.</p> <p>The press release is available online:</p> <p>https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2016/07_01_2016_Bongrain.html?nn=3591568</p>
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19. Independence	
<p>A. Is there possibility for any ministry or a cabinet of ministries to abrogate, challenge or change merger decisions issued by the agency or by a court? If yes, to which merger decisions does this apply (e.g., any decision, prohibitions, clearances, remedies)?</p>	<p>Yes. The Federal Minister for Economic Affairs and Energy can authorise a concentration prohibited by the Bundeskartellamt under certain conditions (Section 42 (1) GWB), see question 19 B.</p>
<p>B. What are the grounds for such ministerial intervention?</p>	<p>The Federal Minister for Economic Affairs and Energy will, upon application, authorise a concentration prohibited by the Bundeskartellamt if, in a specific case, the restraint of competition is outweighed by advantages to the economy as a whole following from the concentration, or if the concentration is justified by an overriding public interest. In this context the competitiveness of the participating undertakings in markets outside the scope of application of this Act shall also be taken into account. Authorisation may be granted only if the scope of the restraint of competition does not jeopardize the market economy system (Section 42 (1) GWB).</p>

<p>C. Please provide any description or guidance regarding the ministerial intervention process and procedures [If applicable]</p>	<p>The application shall be submitted in writing to the Federal Ministry for Economic Affairs and Energy within a period of one month from service of the prohibition. If the prohibition is appealed, the period shall run from the date when the prohibition becomes final (Section 42 (3) GWB).</p> <p>The Federal Minister for Economic Affairs and Energy should decide on the application within four months. Prior to the decision, an opinion of the Monopolies Commission shall be obtained and a public hearing shall be carried out. (Section 42 (4) GWB; Section 56 (7) sentence 3 GWB).</p>
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<p>20. Administrative and judicial processes/review</p>	
<p>A. Describe the timetable for judicial and administrative review related to merger transactions.</p>	<p>All parties participating in the merger control proceedings, i.e. also third parties admitted to the proceedings, may appeal against the Bundeskartellamt's clearance or prohibition decisions to the Düsseldorf Higher Regional Court within one month from service of the decision (for more details see Section 63 ff. and Section 73 ff. of the GWB). An appeal to the Düsseldorf Higher Regional Court may also be based upon new facts and evidence.</p> <p>Under certain preconditions appeals on points of law against decisions of the Higher Regional Court (OLG Düsseldorf) can be lodged with the Federal Court of Justice (Bundesgerichtshof). This appeal shall be filed within one month from the service of the decision of the Düsseldorf Higher Regional Court. The Federal Court of Justice only examines whether the decision of the Düsseldorf Higher Regional Court is based on a violation of the law.</p> <p>A concentration prohibited by the Bundeskartellamt may, upon application, be authorised by the Minister of Economic Affairs and Energy if, in a specific case, the restraint of competition concerned is outweighed by advantages to the economy as a whole or if the concentration is justified by an overriding public interest. This application shall be submitted within one month from the service of the prohibition. If the prohibition is appealed, the application shall be submitted within one month from the date when the prohibition becomes final (Section 42 GWB), for details see questions 19 A to 19 C.</p>
<p>B. Describe the procedures for protecting confidential information used in judicial proceedings or in an appeal/review of an agency decision.</p>	<p>The appellant and the Bundeskartellamt may access the court files. Access to the files of the Bundeskartellamt shall be allowed by the appellate court only with the consent of the Bundeskartellamt which shall refuse to consent to access to its records if this is necessary to protect business secrets. If confidentiality of certain facts or evidence has been demanded to protect operating or business secrets, the court may order, under certain conditions defined in the GWB (Section 70 (2)) and after hearing the person affected by such disclosure, the disclosure of those particular facts or evidence. This would be considered only in exceptional cases.</p>

	Unlike the appellants, the persons and associations of persons that have been admitted to the proceedings by the Bundeskartellamt have no originary claim to access files. However, the court has discretion to grant them access to the files to the same extent as appellants, after consultation of the authorities which kept the files before (cf. section 70(3) GWB).
C. Are there any limitations on the time during which an appeal may be filed?	Within one month from service of the decision, see question 20 A above.

21. Additional filings	
A. Are any additional filings/clearances required for some types of transactions (e.g., sectoral or securities regulators or national security or foreign investment review)?	Mergers affecting the television sector must be additionally notified to the Commission on Concentration in the Media ("Kommission zur Ermittlung der Konzentration im Medienbereich", "KEK"). The task of this Commission is to ensure diversity of opinion in the television sector. More details on the KEK's tasks and activities are available at http://www.kek-online.de .

22. Closing Deadlines	
A. When a transaction is cleared or approved, is there a time period within which the parties must close for it to remain authorized? If yes, can the parties obtain an extension of the deadline to close?	There is no time limit for putting a merger into effect. However, clearance decisions are only effective until the end of the Bundeskartellamt's prognosis period which normally covers a maximum of three to five years.

22. Post Merger review of transactions

<p>A. Can the agency reopen an investigation of a transaction that it previously cleared or allowed to proceed with conditions? If so, are there any limitations, including a time limit on this authority?</p>	<p>The Bundeskartellamt cannot normally reopen an investigation of a transaction that it previously cleared. However, the Bundeskartellamt can reopen an investigation, if, for example, obligations contained in the clearance decision are not met, if the clearance decision was based on false information, or if the clearance decision was obtained through other malicious action. In such cases, there is no time limit for reopening the investigation.</p>
<p>B. Does the agency publish studies regarding ex-post analysis of reportable transactions which have been cleared by the agency? Are these studies publicly available? How does the agency obtain data for carrying out these studies?</p>	<p>No.</p>