

Federal Competition Act, as amended effective 10 September 2021 (complete version)¹

Full title

Federal Act on the Establishment of a Federal Competition Authority (Federal Competition Act - WettbG²)

Original Version: Federal Law Gazette I No. 62/2002 (NR: GP XXI RV 1005 AB 1047 p. 97. BR: 6612 AB 6618 p. 686.)

Amendments

Federal Law Gazette I No. 62/2005 (NR: GP XXII RV 942 AB 991 p. 112. BR: AB 7310 p. 723.)

Federal Law Gazette I No. 106/2006 (NR: GP XXII RV 1411 AB 1452 p. 150. BR: 7538 AB 7575 p. 735.)

[CELEX-No.: 32003 L0054, 32003L0055, 32004L0008, 32004 L0067]

Federal Law Gazette I No. 2/2008 (1. BVRBG) (NR: GP XXIII RV 314 AB 370 p. 41. BR: 7799 AB 7830 p. 751.)

Federal Law Gazette I No. 111/2010 (NR: GP XXIV RV 981 AB 1026 p. 90. BR: 8437 AB 8439 p. 792.) [CELEX-No.: 32010L0012]

Federal Law Gazette I No. 13/2013 (NR: GP XXIV RV 1804 AB 2035 p. 184. BR: AB 8847 p. 816.)

Federal Law Gazette I No. 129/2013 (NR: GP XXIV RV 2244 AB 2262 p. 200. BR: AB 8966 p. 820.)

Federal Law Gazette I No. 144/2015 (NR: GP XXV RV 821 AB 882 p. 104. BR: 9486 AB 9487 p. 848.)

Federal Law Gazette I No. 56/2017 (NR: GP XXV RV 1522 AB 1529 p. 173. BR: AB 9765 p. 866.)

[CELEX-No.: 32014L0104]

Federal Law Gazette I No. 32/2018 (NR: GP XXVI RV 65 AB 97 p. 21. BR: 9947 AB 9956 p. 879.)

[CELEX-No.: 32016L0680]

Federal Law Gazette I No. 57/2021 (NR: GP XXVII RV 409 AB 450 p. 64.)

Federal Law Gazette I No. 176/2021 (NR: GP XXVII RV 951 AB 976 p. 115. BR: 10689 AB 10702 p. 929.)

[CELEX-No.: 32019L0001]

Other text components

The National Council has adopted:

Text

Establishment of the Federal Competition Authority

§ 1. (1) A Federal Competition Authority shall be established at the Federal Ministry for Digital and Economic Affairs, whose aims shall be to

- a) ensure well-working competition by preventing distortions or restrictions of competition as defined in the Federal Cartel Act 2005,³ Federal Law Gazette I No. 61/2005, or in the European competition rules (§ 4 para. 1), in individual cases, and
- b) ensure the application of the Cartel Act 2005, Federal Law Gazette I No. 61/2005, in accordance with EU law and in connection with decisions of the regulatory authorities (§ 4 para. 2).

(2) The Federal Competition Authority shall be headed by the Director General for Competition. In the event of the Director General being unable to attend to his duties, he shall be substituted by the Head of Office, or in the event of the Head of Office being unable to attend, by his deputy. The General Director for Competition shall adopt rules of procedure, which shall particularly lay down more detailed provisions on the Head of Office's responsibilities.

¹ Translator's note: Only the German version of this Federal Act is authentic.

² Wettbewerbsgesetz.

³ Kartellgesetz 2005 (KartG 2005).

(3) The Director General for Competition and, in case of him being unable to attend, his deputy shall be independent and not bound by any instructions in performing the duties laid down in § 2.

(4) The Federal Minister for Digital and Economic Affairs shall have the right at any time – at the request of the Federal Competition Authority in writing – to inform herself about all matters of the management of the Federal Competition Authority. The Federal Competition Authority shall respond to the Federal Minister for Digital and Economic Affairs within an appropriate period of time and, on request, answer all inquiries made in this respect in writing, provided this does not jeopardise ongoing investigations or otherwise conflict with the independence of the Federal Competition Authority in the application of Art. 101 and Art. 102 Treaty on the Functioning of the European Union (TFEU) as provided for in Art. 4 Directive (EU) 2019/1 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market, OJ L 11 of 14 January 2019 p. 3. Inquiries concerning ongoing or forthcoming searches of premises shall not be covered by this right to information.

Duties of the Federal Competition Authority

§ 2. (1) In order to achieve its aims as laid down in § 1, the Federal Competition Authority shall be authorised to investigate and eliminate alleged or imminent distortions or restrictions of competition (§1), particularly by exercising the following powers:

1. to act as an official party in proceedings before the Cartel Court and the Supreme Cartel Court pursuant to § 40 Cartel Act 2005,
2. to apply European competition rules in Austria (§ 3),
3. to conduct a general inquiry into a specific business sector if circumstances suggest that competition may be restricted or distorted in such business sector,
4. to provide official assistance in competition matters to the Cartel Court, the Supreme Cartel Court, the courts and administrative authorities (including the Federal Minister for Digital and Economic Affairs, the regulatory authorities and the Federal Cartel Prosecutor) and to the competition authorities of other member states of the European Union or a state party to the Agreement on the European Economic Area, and
5. to conduct competition monitoring, in particular of the development of competition intensity in individual sectors of the economy or on markets relevant under competition law, and monitoring of commitments made pursuant to § 27 Cartel Act 2005.

(Note: Subparas. 6 to 9 repealed by Federal Law Gazette I No. 176/2021)

(Note: Subpara. 10 repealed by Art. 3 subpara. 3 Federal Law Gazette. I No. 57/2021)

(2) Furthermore, the Federal Competition Authority shall have the following powers:

1. to file applications pursuant to § 7 Federal Act on Improvement of Local Supply and Competitive Conditions,⁴ Federal Law Gazette No. 392/1977,
2. to file claims for cease-and-desist orders pursuant to § 14 para. 1 Federal Act against Unfair Competition 1984,⁵ Federal Law Gazette No. 448/1984, in which respect §§ 11 to 14 Competition Act shall not apply, and
3. to perform duties pursuant to § 6a Federal Act on the Austrian Broadcasting Corporation,⁶ Federal Law Gazette No. 379/1984.

(3) The Federal Competition Authority shall exercise its powers ex officio.

(4) The Federal Competition Authority shall publish a report on its activities in regular intervals, however at least annually. After hearing the Competition Commission, the Federal Minister for Digital and Economic Affairs shall promptly submit this report to the National Council. In addition, the Federal Competition Authority may also provide information about any proceedings of public interest, investigations of business sectors and competition monitoring it is involved in, keeping confidential any business and trade secrets. § 35b Public Prosecutors Act⁷ on informing the media shall apply accordingly.

(5) Undertakings and associations of undertakings may request that the Federal Competition Authority provide an informal assessment of facts that fall within the scope of § 1 or Part I Chapter 3 Cartel Act 2005 or Art. 101 (1) TFEU. Should the Federal Competition Authority come to the assessment that, in its opinion, there is no reason to conduct further investigations under its discretion to take up cases, it may communicate this to the undertaking or the association of undertakings, subject to any new information that may come to

⁴ Bundesgesetz zur Verbesserung der Nahversorgung und der Wettbewerbsbedingungen.

⁵ Bundesgesetz gegen den unlauteren Wettbewerb 1984 (UWG).

⁶ Bundesgesetz über den Österreichischen Rundfunk (ORF-G).

⁷ Staatsanwaltschaftsgesetz (StAG).

light. Furthermore, the Federal Competition Authority may issue general position statements on its exercise of the discretion it possesses in relation to its power to take up cases.

Competences in applying European Competition Rules

§ 3. (1) The Federal Competition Authority (§ 1) shall be the competent Austrian authority in charge of applying the European competition rules (§ 4 para. 1), except where competence rests with the Federal Minister for Digital and Economic Affairs or the courts, as set forth in para. 2. In particular it shall be responsible for supporting the European Commission as well as cooperating with the European Commission and the competition authorities of the member states in the cases specified in these legal provisions. The Federal Competition Authority may give statements to the Commission and the competition authorities of the member states which help the application of the provisions laid down in Council Regulation (EC) No. 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L 1 of 4 January 2003, p. 1; this particularly applies to the principles relating to the protection of applicants claiming the benefits of a leniency programme.

(2) Any powers of the member states as provided for under EU legislation to contribute to the adoption of regulations, directives or any other general-abstract instruments for the implementation of Art. 101 to Art. 106 TFEU shall be exercised by the Federal Minister for Digital and Economic Affairs. In the event that such acts solely or primarily regard undertakings or associations of undertakings in the transport sector, actions shall be taken in agreement with the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology. The Federal Competition Authority and the Federal Cartel Prosecutor shall be granted the opportunity to give statements at any time. Austria shall be represented on the Advisory Committee on concentrations provided for in Art. 19 (3) Council Regulation (EC) No. 139/2004 on the control of concentrations between undertakings (“EC Merger Regulation”), OJ L 24 of 29 January 2004 p. 1, by a representative of the Federal Minister for Digital and Economic Affairs together with the Federal Competition Authority. The Competition Commission shall be granted the opportunity to give statements in merger control proceedings of outstanding significance for economic policy in Austria.

(3) When performing her duties as set forth in para. 2, the Federal Minister for Digital and Economic Affairs may request the Federal Competition Authority to provide information.

(4) The Federal Competition Authority shall, at its own initiative, inform the European Commission in writing about its own applications to the Cartel Court for the enforcement of Art. 101 or Art. 102 TFEU and about its own formal investigative measures as provided for in Art. 11 (3) Regulation (EC) No. 1/2003 prior to their commencement or immediately after their initiation. Should an application intended to enforce Art. 101 or Art. 102 TFEU be filed with the Cartel Court by other parties, the Federal Competition Authority shall inform the European Commission on request made by the Cartel Court. In addition, the Federal Competition Authority shall report to the European Commission if an application of this kind to the Cartel Court has been finally dismissed.

(5) The Federal Competition Authority shall inform the European Competition Network of the issue of an interlocutory injunction in proceedings pursuant to Art. 101 or Art. 102 TFEU.

Definitions

§ 4. (1) Within the meaning of this Federal Act, the European competition rules shall comprise Art. 101 to Art. 106 TFEU as well as the regulations, directives and decisions adopted to implement these provisions and the competition rules adopted in compliance with Art. 42 and Art. 43 TFEU:

1. Council Regulation (EC) No. 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty,
2. Council Regulation (EC) No. 139/2004 on the control of concentrations between undertakings (“EC Merger Regulation”),
3. Regulation (EU) No. 261/2012 of the European Parliament and of the Council of 14 March 2012 amending Council Regulation (EC) No. 1234/2007 as regards contractual relations in the milk and milk products sector, OJ L 94 of 30 March 2012, p. 38.

(2) Regulators within the meaning of this Federal Act shall mean authorities established by Federal Act which are in charge of performing regulatory responsibilities in specific economic sectors.

Exceptions from the scope of application

§ 5. The scope of application of this Federal Act shall not include proceedings pursuant to Art. 106 (3) TFEU, in so far as these are concerned with matters relating to state monopolies pursuant to Section G

subpara. 5, Federal Law Gazette No. 76/1986, Part 2 of the Annex to § 2 Federal Ministries Act 1986⁸ as amended by Federal Law Gazette No. 30/2021.

Appointment of the Director General

§ 6. The Director General for Competition shall be appointed by the Federal President upon nomination by the Federal Government for a term of office of five years as set forth in § 141 Civil Servants Employment Act 1979,⁹ Federal Law Gazette No. 333/1979. Appointments may be renewed. The nomination by the Federal Government shall be preceded by a vacancy notice calling for general applications, which shall be published by the Federal Minister for Digital and Economic Affairs in compliance with the Advertising of Vacancies Act 1989,¹⁰ Federal Law Gazette No. 85/1989.

Requirements for appointment

§ 7. (1) In order to be eligible to be appointed Director General, a person shall

1. have adequate personal or professional qualifications to exercise the office,.
2. have obtained a university degree in Law or Economics, and
3. have acquired at least five years of professional experience in competition law.

(2) Persons who are entitled to pay for active service under the remuneration scheme of the Federal and provincial administrations shall not be appointed Director General. Neither may a person be appointed who was a member of the Federal Government or of a Provincial Government or a State Secretary at any time during the previous four years.

(3) While in office, the Director General of the Federal Competition Authority must not pursue any additional activities which hinder him in performing his duties, could give rise to doubts as to his full impartiality or jeopardise other strong interests associated with his role; this particularly applies to the activities of persons in the highest offices and other public officials as described in § 4 Incompatibility and Transparency Act 1983,¹¹ Federal Law Gazette No. 330/1983. When the Director General's term of office ends, he may not concern himself with any enforcement proceedings which could give rise to conflicts of interest with his previous duties for one year subsequent to the end of his term of office.

(4) The Director General's term of office ends

1. upon expiry of his term of office, unless he is reappointed for another term,
2. upon termination of employment,
3. upon removal from office, or
4. when retiring or being retired.

(5) Upon request by the Federal Government the Director General shall be removed from his office by the Federal President in the event that he

1. has become guilty of serious misconduct of such nature or severity that continuing his official duties seriously prejudices the interests of his office,
2. requests so in writing, or
3. is unable to perform his duties as Director General due to his physical or mental constitution (incapacity to execute his functions) and he is unlikely to regain his capacity to execute his functions.

(6) Employment of the Director General shall terminate, at the latest, upon the expiry of the year in which he has completed his 70th year of life.

Provisions on employment and remuneration

§ 8. (1) Appointment as Director General shall give rise to a permanent employment relationship under public law with the Federal Government unless such an employment relationship existed previously.

(2) §§ 4 para. 1 subpara. 4 (requirements for appointment), 10 (provisional employment relationship), 11 and 12 (permanent employment relationship), §§ 24 to 35 (basic training), 38 (transfer), 39 to 41 (service assignment and change in employment), 41a (appeal), 75b (effects of parental leave on the job), 90 (report on provisional civil service employees), 138 (period of training) and 139 (duration of service and basic training) of the Civil Servants Employment Act 1979 shall not apply to the Director General.

⁸ Bundesministeriengesetz 1986 (BMG).

⁹ Beamtendienstrechtsgesetz 1979 (BDG 1979).

¹⁰ Ausschreibungsgesetz 1989 (AusG)

¹¹ Bundesgesetz über die Transparenz und Unvereinbarkeiten für oberste Organe und sonstige öffentliche Funktionäre (Unv-Transparenz-G).

(3) The official title pursuant to § 63 Civil Servants Employment Act shall be the title laid down in § 1 para 2.

(4) The Director General shall be entitled to a fixed salary of function group 9 of employment group A1 according to § 31 Salaries Act,¹² Federal Law Gazette No. 54/1956.

(5) Where the Civil Servants Employment Act 1979 assigns duties to the superior official or head of office, such duties shall be performed by the Director General. Otherwise, the Federal Minister of Economy and Labour shall be the competent administrative authority.

Office

§ 9. (1) The Director General and his deputy shall be administratively supported by their Office, for which the Director General shall issue internal rules laying down the organisation of business as well as the allocation of staff.

(2) The Office shall consist of a Head of Office, his deputy and the required number of other staff. The Office may be structured into departments. The Head of Office and, in the event of him being unable to attend to his duties, his deputy shall be responsible for managing its internal operations.

(3) When performing their duties, the employees of the Office shall be bound solely by the instructions of the Director General and, in the event of him being unable to attend to his duties, by the instructions of his deputy. If departments are established (para. 2), the employees shall also be bound by the instructions of the head of the department they are assigned to and, in the event of him being unable to attend to his duties, by those of the head of department's deputy.

(4) The Head of Office shall be entitled to a salary of employment group A1. In addition, he shall be entitled to the respective allowance of function group 6.

(5) In the interest of a speedy and expedient conduct of business, the Director General may, without prejudice to his responsibility, assign specific matters to individual employees to be performed autonomously. In doing so, special emphasis shall be laid on the importance of the particular subject matters. Matters authorised to be handled individually by a specific employee shall be decided and signed on behalf of the Director General. § 10 para. 3 Federal Ministries Act 1986, Federal Law Gazette No. 76/1986, shall apply accordingly.

Cooperation with other authorities

§ 10. (1) To the extent required to perform the duties assigned to the Federal Competition Authority and provided that no conflicting obligations exist under EU law, the Federal Competition Authority shall be authorised, subject to consideration of non-disclosure interests warranting protection according to the Federal Act concerning the Protection of Personal Data 2000,¹³ Federal Law Gazette I No. 165/1999, to provide all information and transmit documents to the Cartel Court, the Supreme Cartel Court, the Federal Cartel Prosecutor, the Competition Commission, the European Commission, the competition authorities of other member states of the European Union and the regulators, including their administrations, if required by the said bodies to perform their duties. It shall also be entitled to request information or statements from the Federal Cartel Prosecutor, the Competition Commission, the European Commission, the competition authorities of other member states of the European Union and the regulators, including their administrations. For this purpose, the Federal Competition Authority shall be authorised to provide all information and transmit documents that may be required to the above mentioned authorities in accordance with the provisions of the first sentence.

(1a) The criminal police, the public prosecutor's office and the courts shall be authorised to provide the Federal Competition Authority with all personal data obtained in accordance with the Code of Criminal Procedure,¹⁴ in particular by means of investigative measures pursuant to chapters 4 to 6 of Part 8, which are necessary for the prosecution of infringements of the Cartel Act 2005, Federal Law Gazette I No. 61/2005, and Art. 101 and Art. 102 TFEU.

(2) To the extent required to perform their duties, the Cartel Court and Supreme Cartel Court may request the Federal Competition Authority to provide information as well as give well-founded statements. The Federal Minister for Digital and Economic Affairs may request that the Federal Competition Authority deliver statements on general issues of competition policy. In addition, in the course of review procedures and the enforcement of competition law, the Federal Competition Authority may also deliver statements on issues of competition law and competition economics that relate to its jurisdiction.

¹² Gehaltsgesetz (GehG).

¹³ Datenschutzgesetz 2000 (DSG 2000).

¹⁴ Strafprozessordnung (StPO).

(3) To the extent required to perform its duties, the Federal Competition Authority may request information from the Federal Cartel Prosecutor and inspect the files of the Federal Cartel Prosecutor.

(4) In the event that the aviation sector is affected, the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology shall be granted the opportunity to give a statement; if the media sector is affected, the Austrian Communications Authority KommAustria (Federal Law Gazette I No. 32/2001) shall be granted the opportunity to give a statement.

(5) If the Federal Competition Authority, for reasons including, but not limited to, modifications to the original merger project which ensure that the merger will be compatible with the Cartel Act, intends to

- a) declare that it will not file an application pursuant to § 11 of Cartel Act 2005, or
- b) withdraw an application filed pursuant to § 11 of Cartel Act 2005,

the Federal Competition Authority shall grant the Federal Cartel Prosecutor and – in the event that it has issued a recommendation pursuant to § 17 below – the Competition Commission the opportunity to give a statement.

(6) The Federal Competition Authority shall ensure that a notification of merger (§ 9 Cartel Act 2005), including its annexes, is forwarded immediately upon receipt to the Federal Cartel Prosecutor and, for the performance of her duties under the Investment Control Act,¹⁵ Federal Law Gazette I No. 87/2020, to the Federal Minister for Digital and Economic Affairs.

Notification Fees

§ 10a. (1) For notifications of merger (§ 9 Cartel Act 2005), a lump-sum fee of EUR 6,000 shall be paid. The Federal Competition Authority shall determine the admissible modalities of payment taking into account any existing technical and organisational requirements and shall publish them on its website. The Federal Competition Authority shall transfer one ninth of the levied notification fees to the Federal Minister of Justice once every six months, who shall collect the transferred amounts as judicial administration fees.

(2) The period for filing a request for examination (§ 11 para. 1 Cartel Act 2005) shall only start after due payment, at the earliest, however, upon receipt of notification. Evidence of due payment has to be submitted in the notification.

Publications

§ 10b. (1) The Federal Competition Authority shall comply with the disclosure requirements in merger proceedings pursuant to §§ 10 para. 3, 11 paras. 2 and 15 Cartel Act 2005 by means of publication on its website.

(2) The Federal Competition Authority shall publicise on its website that it or the Federal Cartel Prosecutor has filed an application pursuant to §§ 26, 27, 28, 28a and 29 Cartel Act 2005 with the Cartel Court, while maintaining the confidentiality of any trade and business secrets. The publication may contain the names of the affected undertaking or undertakings and a brief description of the type of the alleged infringement as well as the affected business sector.

(3) The Federal Competition Authority shall immediately publish on its website a final decision pursuant to §§ 26 to 29 Cartel Act 2005 quoting the case number. The publication may contain the names of the affected undertaking or undertakings and the affected business sector. In the event that it is found in a decision that an infringement of Art. 101 TFEU or § 1 Cartel Act 2005 has taken place, but no fine has been imposed due to proceedings by the Federal Competition Authority pursuant to § 11b para. 1 subpara. 1 (a), the publication, in case of leniency pursuant to § 37e para. 3 Cartel Act 2005, shall in any case contain the name of the undertaking as well as a reference to the leniency status. With such publication, the Federal Competition Authority definitely refrains from filing an application to impose a fine in this matter.

Investigations

§ 11. (1) In accordance with this Federal Act, the Federal Competition Authority may conduct all investigations necessary to perform its duties as laid down in this Federal Act. Any knowledge obtained within the scope of such investigations may be used only for the purpose pursued in the investigations, unless an authorisation for cooperation pursuant to § 10 para. 1 exists.

(2) The Federal Competition Authority shall be authorised to consult experts and call witnesses and other parties concerned, analogously applying the General Administrative Procedure Act,¹⁶ Federal Law Gazette No. 51/1991. §§ 7, 9 to 16, 18 to 20, 45 paras. 1 and 2, 46 to 51a, 54, 55, 74 para. 1, 75 paras. 1 and 2 as well as sections 4, 5 and 6 of Part I General Administrative Procedure Act shall apply.

¹⁵ Investitionskontrollgesetz (InvKG).

¹⁶ Allgemeines Verwaltungsverfahrensgesetz (AVG).

(3) The Federal Competition Authority shall be entitled to process all personal data which are required for the achievement of its aims pursuant to § 1 para. 1 and for the performance of its duties pursuant to § 2 paras. 1 and 2.

(4) No information shall be provided pursuant to Art. 15 Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 199 of 4 May 2016 p 1, (below: GDPR), in so far as this would conflict with the aims of the Federal Competition Authority pursuant to § 1 para. 1 or be detrimental to the performance of the duties assigned to the Federal Competition Authority pursuant to § 2 paras. 1 and 2.

(5) With regard to the processing of personal data, the right to object provided for in Art. 21 GDPR is to be restricted in so far as it is foreseeable that this right will make impossible or be seriously detrimental to the achievement of the aims set out in § 1 para. 1 and the performance of the duties set out in § 2 paras. 1 and 2 of this Federal Act, and the restriction is necessary and proportional. The data subject shall be informed of this in a suitable fashion.

Request of information and submission of documents

§ 11a. (1) To the extent required to perform its duties as laid down in this Federal Act, the Federal Competition Authority shall also be authorised:

1. to request information from undertakings, associations of undertakings and other natural persons and legal entities to be submitted within a reasonable period of time to be set from time to time,
2. to inspect and analyse any business documents which can be accessed in or by the undertaking, regardless of the format in which they are available, or to have such documents inspected and analysed by qualified experts as well as to make copies and extracts of these documents, and
3. to request in situ any information required to conduct investigations as well as request from all representatives or employees of the undertaking or the association of undertakings explanations on circumstances or documents which are related to the subject and purpose of the investigation.

(2) Undertakings and associations of undertakings and their representatives, or in the case of legal entities and partnerships with restricted legal capacity, their representatives authorised by law or by charter and other natural persons pursuant to para 1 subpara. 1 shall be obliged to provide the requested information (para. 1 subparas. 1 and 3), unless they risk criminal prosecution by doing so. The same shall also apply to the submission of business documents, steps taken in order to afford access to such documents that exist electronically, and upon request their provision in a standard file format on data media, and permission to analyse business documents and make copies and extracts of such documents (para. 1 subpara. 2). Undertakings or associations of undertakings shall ensure that their representatives within the meaning of the first sentence comply with these obligations and summons issued pursuant to § 19 General Administrative Procedure Act in proceedings under this Federal Act.

(3) The provision of information and submission of documents pursuant to para. 1 may also be ordered by means of an administrative decision in accordance with the General Administrative Procedure Act. An appeal against this administrative decision shall not have any suspensive effect. Upon application, a suspensive effect shall be granted by the authority handling the appeal within two weeks from filing the appeal if this is justified considering all interests concerned.

(4) The Federal Competition Authority shall be responsible for enforcing any administrative decisions it issues, except for decisions on administrative penalties. The Administrative Enforcement Act 1991,¹⁷ Federal Law Gazette No. 53/1991, shall apply, provided that the sanction pursuant to § 5 para. 3 Administrative Enforcement Act for every day of delay starting from the date specified in the administrative decision does not exceed the maximum amount of 5% of the average daily turnover of the preceding business year.

(5) The Federal Competition Authority shall impose fines on undertakings and associations of undertakings if the undertaking itself or persons who have acted alone or as part of an organ of the legal entity and hold management positions within the legal entity on the basis of

1. their authorisation to represent the legal entity,
2. their power to take decisions on behalf of the legal entity, or
3. the power of supervision they hold within the legal entity

have intentionally or negligently made incorrect or misleading statements in information provided pursuant to para. 2 or, contrary to a decision issued pursuant to para. 3, have intentionally or negligently failed to provide information, provided incorrect, misleading or incomplete information or failed to provide

¹⁷ Verwaltungsvollstreckungsgesetz 1991 (VVG).

information in a timely fashion. The maximum amount of the fine shall be 0.5% of their total turnover in the preceding business year for infringements relating to requests for information pursuant to para. 2 and 1% of their total turnover in the preceding business year for infringements of decisions issued pursuant to para. 3. Undertakings and associations of undertakings which fail to ensure pursuant to para. 2 that their representatives within the meaning of para. 2 comply with a summons issued pursuant to § 19 General Administrative Procedure Act in proceedings under this Federal Act are also to be punished with a fine of a maximum of 1% of their total turnover in the preceding business year.

(6) Appealing against administrative decisions issued by the Federal Competition Authority pursuant to paras. 3 to 5 shall be permissible by submitting a complaint to the Federal Administrative Court.

(Note: Para. 7 repealed by Federal Law Gazette I No. 129/2013)

(8) In the event that the provision of information or submission of documents is required for the purpose of an investigation pursuant § 2 para. 1 subpara. 3, application of para. 3 has to be preceded in any case by a request pursuant to para. 2.

(9) Competition monitoring pursuant to § 2 para. 1 subpara. 8 shall be based solely on publicly available data.

Leniency

§ 11b. (1) The Federal Competition Authority may refrain from requesting the imposition of a fine on undertakings or associations of undertakings which

1. have terminated their participation in the infringement unless, exercising its reasonable judgement, the Federal Competition Authority is of the opinion that the continuation of the infringement is necessary in order to preserve the integrity of its investigation,
2. subsequently cooperate with the Federal Competition Authority truthfully, promptly and without restrictions to fully clarify all aspects of the case as well as submit all evidence of the suspected infringement which is in their possession or available to them and, at least until the Federal Competition Authority has informed the undertakings or associations of undertakings involved in the infringement of the results of the investigations pursuant to § 13 para. 2, disclose neither the fact nor the substance of the request to proceed in accordance with this provision, except where otherwise agreed with the Federal Competition Authority,
3. a) are the first to submit information and evidence to the Federal Competition Authority which enable it to immediately file a well-founded application pursuant to § 12 para. 1 concerning a suspected infringement of § 1 Cartel Act 2005 or Art. 101 (1) TFEU, or
b) are the first to submit any additional information and evidence to the Federal Competition Authority which, if it has already obtained sufficient information and evidence from other sources to apply for a warrant to search premises, enable it to immediately file a well-founded application pursuant to § 36 para. 1a Cartel Act 2005 with the Cartel Court,
4. have not coerced any other undertakings or associations of undertakings to participate in the infringement.

In the event that the Federal Competition Authority files an application to impose a fine on at least one participant in an infringement of § 1 Cartel Act 2005 or Art. 101 TFEU, it files an application for a finding pursuant to § 28 para. 1a Cartel Act 2005 against the undertaking for which the Federal Competition Authority refrains from requesting the imposition of a fine pursuant to para. 1 subpara. 3 (a) or (b).

(2) The Federal Competition authority may request to impose a reduced fine on undertakings or associations of undertakings which do not meet the requirements laid down in para. 1 subpara 3 (a) or (b) if the other requirements (subparas. 1, 2 and 4) are met. In order to qualify for a reduced fine, information and evidence on the suspected infringement shall be submitted to the Federal Competition Authority which represent a significant added value with respect to the information and evidence already in the possession of the Federal Competition Authority. When determining the scope of reduction, the time at which additional information and evidence are presented as well as the scope of the added value with respect to already available information shall be taken into account.

(3) If an undertaking or association of undertakings wishes to benefit from paras. 1 or 2, the Federal Competition Authority shall within a reasonable time announce in a non-binding written statement whether it intends to apply these provisions. Should the Federal Competition Authority not regard the preconditions for the complete remission of the fine as having been satisfied, the request made pursuant to para. 1 is to be deemed to be a request for the fine to be reduced pursuant to para. 2. The Federal Competition Authority shall inform the Federal Cartel Prosecutor if it intends to request immunity from fine or a reduction of fines.

(4) More detailed provisions on the application of paras. 1 to 3, in particular provisions on markers and summary applications, may be issued in accordance with Directive (EU) 2019/1, after the Federal Competition Authority, the Federal Cartel Prosecutor and the Competition Commission have been heard, in the form of a regulation of the Federal Minister for Digital and Economic Affairs.

(5) Information received from the network of competition authorities as a result of a leniency application shall not be used as a basis for filing an application to impose a fine. The power of the Federal Competition Authority to initiate investigations due to information obtained from other sources but the network of competition authorities and to file applications to impose fines based on the results of its investigations shall not be affected.

(6) The Federal Competition Authority may establish an internet-based whistleblower system which allows to anonymously provide well-founded information on possible infringements of competition rules according to § 37b Cartel Act 2005.

Search of premises

§ 12. (1) Where there is reasonable suspicion that an infringement of §§ 1, 5 or 17 Cartel Act 2005 or Art. 101 or Art. 102 TFEU exists and where this is necessary to obtain information from business documents, the Cartel Court shall order, upon application by the Federal Competition Authority, that the premises be searched.

(2) Upon application by the Federal Competition Authority, the Cartel Court shall also order premises to be searched based on an investigation decision issued by the European Commission on the suspicion of an infringement of competition rules. The original or a sworn copy of the investigation decision shall be annexed to the application. Apart from checking the authenticity of the investigation decision issued by the European Commission, the Cartel Court shall only check whether the intended search of premises might be arbitrary or unreasonable, considering the subject of the investigation. In case of investigations according to Art. 21 Council Regulation (EC) No. 1/2003, the search warrant pursuant to the first sentence shall also be deemed to be a permission as specified in Art. 21 (3) (first sentence) of the quoted Regulation.

(3) The search of premises shall be ordered upon decision of the presiding judge in non-contentious proceedings. The only legal remedy available against such a decision is appeal; this shall not have any suspensive effect. The Federal Competition Authority shall be authorised to carry out the search and shall immediately or at least within 24 hours transmit the search warrant to the persons specified in § 11a para. 2.

(4) The search of premises shall be carried out causing as little sensation, nuisance or disturbance as possible limiting any inconveniences to an unavoidable extent. The property and personal rights of the one whose premises are searched (party concerned) shall be protected as far as possible. The Federal Competition Authority shall keep records of the search and inform the Cartel Court thereof. The party concerned has the right to be present during the search and to call a person of his confidence. During a search, the Federal Competition Authority shall exercise its powers pursuant to § 11a para. 1 subparas. 2 and 3. While conducting a search, the Federal Competition Authority shall be authorised to seal premises to the necessary extent and to seize evidence to such extent as to guarantee the success of investigations.

(5) Shortly before conducting a search ordered under para 1, the party concerned (para. 4) shall be questioned on the prerequisites of the search, unless there is an imminent danger jeopardising the success of the investigation. In the event that during the inspection of business documents, regardless of their format, the party concerned refuses to have certain individually specified documents inspected or seized referring to legally granted secrecy or to his right to refuse to give evidence in accordance with § 157 para. 1 subparas. 2 to 5 Code of Criminal Procedure,¹⁸ such business documents shall be appropriately secured against unauthorised inspection or modification and shall be presented to the Cartel Court; they must not be inspected beforehand. The Cartel Court shall inspect the documents and rule, by decision of the presiding judge, whether and to which extent these documents may be inspected and copied fully or in part or whether they are to be returned to the party concerned (para. 4). The only legal remedy available against such decision is appeal.

(6) If specifying individual documents during a search is not possible as this would delay the search in a disproportionate way, the party concerned (para. 4) may request to have certain categories of documents secured in an appropriate way against unauthorised inspection and have them deposited with the Federal Competition Authority separately from the investigation files. The party concerned (para. 4) shall be requested by the Federal Competition Authority to individually specify the documents within a period of time to be set by the Federal Competition Authority of at least two weeks. For this purpose the party concerned shall be entitled to inspect the deposited documents. If the party concerned fails to specify the individual documents within the set period of time, these documents shall become integral part of the

investigation files of the Federal Competition Authority. Regarding individually specified documents, para. 5 shall apply.

Safeguarding of fundamental rights

§ 13. (1) In the exercise of its powers, in particular when conducting investigations pursuant to §§ 11 and 11a and when conducting searches of premises pursuant to § 12, the Federal Competition Authority shall be obliged to ensure that the fundamental rights upheld in Austria, including the Charter of Fundamental Rights of the European Union, OJ C 326 of 26 October 2012 p. 391, and the general principles of EU law, are observed. This shall mean, in particular, that the principles of proportionality and appropriateness and undertakings' rights of defence are safeguarded, and that investigations are conducted within an appropriate period of time.

(2) If the Federal Competition Authority intends to file an application to initiate cartel proceedings pursuant to §§ 26, 27, 28, 28a or 29 Cartel Act 2005 and such application is preceded by investigations pursuant to §§ 11, 11a or 12, the opposing party shall be given the opportunity to be informed of the results of the investigations and to take a position on them within a reasonable period of time in order to safeguard its right to be heard.

(3) If investigations pursuant to para. 2 regarding an application to be filed by the Federal Competition Authority do not give reason to the Federal Competition Authority to file such an application pursuant to para. 2, the opposing party shall be informed accordingly within an appropriate period of time.

Disclosure of evidence by the Federal Competition Authority

§ 13a. (1) Only upon order by the national courts and only after terminating proceedings on infringements of competition law either by decision or in another way, may the Federal Competition Authority disclose the following categories of evidence:

1. information compiled by a natural or legal person specifically for proceedings before the competition authority,
2. information it has compiled and transmitted to the parties in the course of its investigations,
3. settlement submissions that have been withdrawn.

With the first official investigative measures taken by the Federal Competition Authority to proceed against an undertaking or association of undertakings, the proceedings shall be deemed as initiated.

(2) The Federal Competition Authority shall disclose evidence contained in its files only upon order of a national court if such evidence cannot be obtained by another party or a third party with reasonable effort. Internal documents of the Federal Competition Authority and the correspondence between competition authorities as well as between competition authorities and law enforcement authorities shall not be disclosed at any time.

(3) The Federal Competition Authority shall not disclose any leniency submissions or settlement submissions at any time.

Cooperation of the Federal Competition Authority in proceedings for damages

§ 13b. The Federal Competition Authority may upon request by a national court give a statement in proceedings for damages pursuant to §§ 37a ff Cartel Act 2005 if the Federal Competition Authority deems such a statement appropriate.

Official assistance

§ 14. (1) Law enforcement officials shall assist the Federal Competition Authority upon the latter's request in securing investigations and searches of premises (§§ 11a and 12) within the scope of their legal sphere of action.

(2) During a search conducted by the Federal Competition Authority the assisting law enforcement officials shall also be authorised to support the Federal Competition Authority in securing documents electronically.

(3) If the Federal Competition Authority conducts a search of premises (§ 12) or interview (§ 11 para. 2) on behalf of and at the expense of a competition authority of another member state of the European Union or a state party to the Agreement on the European Economic Area (requesting competition authority) pursuant to Art. 22 Regulation (EC) No. 1/2003, the staff and other accompanying personnel who have been authorised or nominated by the requesting competition authority may, under the supervision of the staff of the Federal Competition Authority, be present during the search of premises or interview and assist the staff of the Federal Competition Authority during the search of premises or interview.

(4) Exercising its powers pursuant to §§ 11, 11a and 12, the Federal Competition Authority may review, on behalf of and at the expense of the requesting competition authority, whether undertakings or associations of undertakings have failed to comply with investigative measures and decisions concerning the finding or termination of infringements, decisions concerning commitments or interlocutory injunctions obtained by the requesting competition authority. The Federal Competition Authority may also request that a competition authority of another member state of the European Union or a state party to the Agreement on the European Economic Area carry out a review of this kind.

(5) The Federal Competition Authority may demand that, within the framework of official assistance pursuant to paras. 3 and 4 or § 14a, the requesting competition authority bear in full any justifiable costs which are incurred. The payments made by the requesting competition authority may then be deducted from these costs. Should the Federal Competition Authority have addressed a request to an authority and should it then receive a request from the requested authority for the reimbursement of the costs of the action taken by that authority pursuant to paras. 3 and 4 and § 14a, it shall reimburse the costs incurred as a result, in so far as they are justifiable. These costs shall be met from the operating expenditure of the Federal Competition Authority.

Notification of documents and enforcement in the European Competition Network

§ 14a. (1) At the request of a competition authority in the European Competition Network, the Federal Competition Authority shall notify the following documents in Austria pursuant to the provisions of the Service of Documents Act,¹⁸ Federal Law Gazette No. 200/1982:

1. any preliminary objections to the alleged infringement of Art. 101 or 102 TFEU and any decisions applying those Articles,
2. any other procedural act adopted in the context of enforcement proceedings which should be notified in accordance with national law; and
3. any other relevant documents related to the application of Art. 101 or 102 TFEU.

(2) The Federal Competition Authority may request that other national authorities of a member state of the European Union or a state party to the Agreement on the European Economic Area (requested authority) notify documents of the kinds detailed in para. 1.

(3) If the enforcement of a final decision of the Federal Competition Authority pursuant to § 11a para. 4 or 5 has remained unsuccessful or has no prospect of success given that the undertaking or the association of undertakings does not hold sufficient assets in Austria, the Federal Competition Authority may request that other national authorities of a member state of the European Union or a state party to the Agreement on the European Economic Area (requested authority) enforce these decisions, if it is expected that the fine or periodic penalty payment can be recovered there.

(4) Should a request to be addressed to the Cartel Court be submitted to the Federal Competition Authority, the Federal Competition Authority shall forward it ex officio to the Cartel Court.

(5) More detailed provisions on the implementation of paras. 1 to 4 may be issued, after the Federal Competition Authority has been heard, in the form of a regulation of the Federal Minister for Digital and Economic Affairs.

Representation

§ 15. (1) In performing its duties as laid down in this Federal Act, the Federal Competition Authority shall be authorised to represent itself before all authorities and courts, except when legal representation by a lawyer is legally required.

(2) The Federal Competition Authority may entrust its representation to the Finanzprokurator (Lawyer and Legal Advisor of the Federal Republic of Austria) or a lawyer.

Competition Commission

§ 16. (1) A Competition Commission (Commission) shall be established as an advisory body at the Federal Competition Authority. On behalf of the Federal Competition Authority or of the Federal Minister for Digital and Economic Affairs, the Commission shall submit expert opinions on general competition issues and may give recommendations on notified mergers (§ 17). The body that requests an expert opinion shall set a reasonable period of time for its submission. Furthermore, the Commission shall submit, annually and by 1 October at the latest, to the Federal Competition Authority proposals concerning priorities for the performance of its duties in the next calendar year. The Federal Competition Authority shall be obliged to provide the Commission with all the information required for the performance of its duties.

¹⁸ Zustellgesetz (ZustG).

(2) The Commission shall consist of eight members who are required to have special knowledge of and experience in the fields of economics, business administration, social policy, technology and economic law. A substitute member shall be appointed for each member. Who is an expert lay judge before the Cartel Court or Supreme Cartel Court cannot be a member (substitute member) of the Commission. The Commission shall elect a chairperson and secretary from among its members.

(3) The members (substitute members) of the Commission shall be appointed by the Federal Minister for Digital and Economic Affairs for a term of four years. If a member's (substitute member's) term ends prematurely, a new member (substitute member) shall be appointed for the remaining term of office. One member (substitute member) each shall be appointed upon nomination by the Austrian Economic Chamber, by the Federal Chamber of Labour, the Austrian Confederation of Trade Unions as well as the Standing Committee of the Presidents of the Austrian Chambers of Agriculture. Appointments may be renewed.

(4) The members (substitute members) shall be removed from office by the Federal Minister for Digital and Economic Affairs upon their own request, or upon request of the body that proposed them for office. Otherwise § 7 para. 5 shall accordingly apply to the removal from office of Commission members (substitute members).

(5) The members of the Commission shall not be bound by any instructions when performing their duties and shall be bound by official secrecy.

(6) The Federal Minister for Digital and Economic Affairs shall, after hearing the Commission, issue internal rules of procedure particularly regulating the election of the chairperson and his deputy, the convening of meetings, decision-making and the conduct of the Commission's business in its General Assembly and committees. Decisions by the Commission shall be taken by majority of votes; in case of a tie, the vote of the chairperson shall decide. Meetings shall be convened by the chairperson, who shall convene the Commission upon request by two or more of its members. In matters of merger control (§ 17), any member may request that the Competition Commission be convened. In such event, the chairperson shall convene a meeting to be held within a week. Upon request of a Commission member, the Commission shall give a written recommendation to the Federal Competition Authority on whether or not to file a request for examination of a notified merger. The Director General for Competition, his deputy or an employee of the Federal Competition Authority nominated by the Director General to represent him shall upon request of the Commission have the right to attend the meetings, but shall not be eligible to vote.

(7) The Commission members shall receive a reasonable lump-sum compensation, which shall be calculated taking into account the number and duration of meetings, travel expenses as well as time input. Such compensation shall be determined by the Federal Minister for Digital and Economic Affairs. The Federal Minister for Digital and Economic Affairs shall provide the Commission with the necessary funds.

Contribution of the Competition Commission to matters of merger control

§ 17. (1) The Competition Commission shall be authorised to give the Federal Competition Authority a well-founded written recommendation on notified mergers on whether or not to file a request for examination of a notified merger. Such recommendation shall be received by the Federal Competition Authority no later than one week prior to the deadline set for filing such a request for examination.

(2) In order to perform its duties within the scope of merger control, each member of the Competition Commission shall, upon request, be granted the right to inspect the notification documents and, upon request, be provided with copies of such documents.

(3) The Federal Competition Authority shall be entitled to grant the Competition Commission the opportunity to give a recommendation pursuant to para. 1.

(4) In the event that the Federal Competition Authority fails to file a request for examination pursuant to para. 1 in spite of a recommendation to the contrary submitted by the Commission in due time, the Commission shall be informed as soon as possible about the relevant reasons for not filing such a request. Such reasons as well as the recommendation by the Competition Commission shall be published on the website of the Federal Competition Authority promptly upon expiry of the examination period, while duly observing legal secrecy obligations.

(5) The recommendation of the Commission, including information on the reasons of the Federal Competition Authority as described in para. 4, shall be included in the report pursuant to § 2 para. 4, duly observing legal secrecy obligations.

(6) Without prejudice to other legal secrecy obligations, any knowledge obtained in applying § 17 shall be used solely for the purpose of issuing a recommendation pursuant to para. 1.

Linguistic non-discrimination

§ 18. Where this Federal Act uses only the male or female form of person-related expressions, it shall apply to females and males equally. When applied to specific individuals, the gender-specific form shall be used.

References

§ 19. When this Federal Act refers to provisions of other federal acts and unless otherwise provided, such reference shall apply to the respective federal act as amended.

Enforcement

§ 20. (1) This Federal Act shall be enforced by

1. the Federal Minister of the Interior with regard to § 14,
2. the Federal Minister of Justice and the Federal Minister for Digital and Economic Affairs, in accordance with their respective spheres of competence, with regard to §§ 11 and 12, and
3. the Federal Minister for Digital and Economic Affairs with regard to its other provisions, and in agreement with the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology with regard to § 3 para. 2.

(2) Unless otherwise provided in this Federal Act, the Federal Competition Authority shall be the final instance to decide in those cases in which it is responsible for issuing official decisions, and its decisions shall not be subject to annulment or modification by administrative proceedings.

Entry into force

§ 21. (1) This Federal Act as amended by Federal Law Gazette I No. 62/2005 shall enter into force as of 1 January 2006.

(2) This Federal Act as amended by Federal Law Gazette I No. 106/2006 shall enter into force on the day following its publication.

(3) § 11 paras. 3 to 5 shall also apply to matters committed prior to 1 January 2006 and giving reasons to suspect an infringement of § 18 Cartel Act 1988, Federal Law Gazette No. 600/1988.

(4) A search of premises pursuant to § 12 para. 1 shall also be ordered in case of a well-founded suspicion of an infringement of §§ 18 and 35 Cartel Act 1988, Federal Law Gazette No. 600/1988, which concerns circumstances that occurred prior to 1 January 2006.

(5) § 1 para. 1 and § 1 para. 1 (b), § 2 para. 1 subparas. 6 to 8, § 2 para. 4, § 3 para. 2, § 4 para. 1 and § 4 para. 1 subpara. 3, § 5, § 10 para. 1, § 10b paras. 1 and 2, § 11 paras. 3 to 7, § 11a paras. 1 subpara. 3, § 11a paras. 3 to 9, § 12 para. 1, § 12 paras. 4 to 6, § 14 paras. 1 to 3, § 16 para. 2, § 17 para. 1, § 20 para. 2, the heading of § 21 and § 21 paras. 3 to 5 as amended by Federal Law Gazette I No. 13/2013 shall enter into force as of 1 March 2013.

(6) § 11a para. 3 and § 11a para. 6 as amended by Federal Law Gazette I No. 129/2013 shall enter into force as of 1 January 2014. § 11a para. 7 shall become ineffective as of 1 January 2014.

(7) § 13 para. 2 as amended by Federal Law Gazette I No. 56/2017 shall apply to all proceedings initiated after entry into force of this Federal Act.

(8) § 10 paras. 1 and 1a and § 11 paras. 3 to 5 as amended by the Data Protection Adaptation Act 2018,¹⁹ Federal Law Gazette I No. 32/2018, shall enter into force as of 25 May 2018; § 14 para. 3 shall become ineffective simultaneously.

(9) § 2 para. 1 subparas. 8 and 9 as amended by Federal Law Gazette I No. 57/2021 shall enter into force on the day following their publication in the Federal Law Gazette; § 2 para. 1 subpara 10 shall become ineffective simultaneously.

(10) § 10 para. 6 as amended by Federal Law Gazette I No. 176/2021 shall apply to mergers which are notified after this Federal Act has entered into force. § 10a para. 1 as amended by Federal Law Gazette I No. 176/2021 shall apply to mergers which are notified after 31 December 2021. § 11a para. 5 as amended by Federal Law Gazette I No. 176/2021 shall apply to infringements which are committed after this Federal Act enters into force. § 11b para. 3 as amended by Federal Law Gazette I No. 176/2021 shall apply to leniency applications which are submitted after this Federal Act enters into force. Otherwise, this Federal Act as amended by Federal Law Gazette I No. 176/2021 shall enter into force on the day following its publication.

¹⁹ Materien-Datenschutz-Anpassungsgesetz 2018.

Article V

Entry into force and transitional provisions

(Note: Para. 1 deemed to be no longer effective by Art. 2 § 2 para. 1 subpara. 25 and para. 2 subpara. 79, Federal Law Gazette I No. 2/2008)

(2) Regulations based on this Federal Act may be issued as of the day following its publication, and administrative acts on individual cases, including particularly appointments, may be performed as of that day, but shall not become effective prior to 1 July 2002.

(Note: Paras. 3 to 7 refer to other legal provisions)