

Federal Competition Act, as amended on 21 September 2017 (complete version)¹

Full Title

Federal Act on the Establishment of a Federal Competition Authority (Federal Competition Act² - WettbG)
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.: 32014 L0104]

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 of Economy, Family and Youth, which shall have the aim to

- a) ensure well-working competition and in individual cases prevent distortions or restrictions of competition as defined in the Federal Cartel Act 2005³, Federal Law Gazette I No. 62/2005, or in the European competition rules (§ 4 para. 1), as well as
- b) apply the Cartel Act 2005, Federal Law Gazette I No. 62/2005, 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.

(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.

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

2) Wettbewerbsgesetz (WettbG)

3) Kartellgesetz 2005 (KartG 2005), BGBl. I Nr. 62/2005

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 § 49 Cartel Act 2005,
2. to apply European competition rules in Austria (§ 3),
3. to investigate 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, to the courts and administrative authorities including regulatory authorities as well as the Federal Cartel Prosecutor,
5. to give opinions on general issues of economic policy,
6. to file applications pursuant to § 7 para. 2 of the Federal Act on Improvement of Local Supply and Competitive Conditions⁴,
7. to file claims for cease-and-desist orders pursuant to § 14 para. 1 of the Federal Act against Unfair Competition 1984⁵, with §§ 11 to 14 of the Competition Act not being applied,
8. to conduct competition monitoring, particularly to assess competition intensity of individual business sectors or markets relevant under competition law,
9. to perform duties pursuant to § 6a of the Federal Act on the Austrian Broadcasting Corporation (ORF Act)⁶, Federal Law Gazette No. 379/1984, as well as
10. to perform duties pursuant to § 3 para. 1 subpara. 3 of the Cooperation of Consumer Protection Authorities Act⁷, Federal Law Gazette I No. 148/2006.

(2) The Federal Competition Authority shall be responsible for managing the Competition Commission (§ 16).

(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 of Economy, Family and Youth 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 Act⁸ on informing the media shall apply accordingly.

Competences in applying European Competition Rules

§ 3. (1) The Federal Competition Authority (§ 1) shall be the competent Austrian authority in charge of applying European competition rules (§ 4 para. 1), except when competences rest with the Federal Minister of Economy and Labour 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 No. L 1 of 04 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 under EU legislation to contribute to the adoption of regulations, directives or any other general-abstract instruments to implement Art. 101 to 106 TFEU shall be exercised by the Federal Minister of Economy, Family and Youth. In the event that such acts solely or

4) Bundesgesetz zur Verbesserung der Nahversorgung und der Wettbewerbsbedingungen (Nahversorgungsgesetz)

5) Bundesgesetz gegen den unlauteren Wettbewerb 1984 (UWG)

6) Bundesgesetz über den Österreichischen Rundfunk (ORF-Gesetz), BGBl. Nr. 379/1984

7) Bundesgesetz über die Zusammenarbeit von Behörden im Verbraucherschutz (Verbraucherbehörden-Kooperationsgesetz – VBKG), BGBl. I Nr. 148/2006

8) Staatsanwaltschaftsgesetz

primarily regard undertakings or associations of undertakings in the transport sector, actions shall be taken in agreement with the Minister of Transport, Innovation and Technology. The Federal Competition Authority and the Federal Cartel Prosecutor shall be granted the opportunity to give statements at any time.

(3) When performing his duties as set forth in para. 2, the Federal Minister of Economy and Labour may request the Federal Competition Authority to provide information.

Definitions

§ 4. (1) Within the meaning of this Federal Act, the European competition rules shall comprise Art. 101 to 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 43 TFEU. These are in particular:

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 No. 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 does not include proceedings pursuant to Art. 106 para. 3 TFEU, provided that their subject concerns matters of state monopolies in accordance with Section E subpara. 5, Federal Law Gazette No. 76/1986, Part 2 of the annex to § 2 of the Federal Ministries Act 1986⁹ as amended in Federal Law Gazette No. 78/1987.

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 1979¹⁰, 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 of Economy and Labour in compliance with the Advertising of Vacancies Act 1989¹¹, 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

⁹⁾ Bundesministerengesetz 1986, BGBl. Nr. 78/1987

¹⁰⁾ Beamtendienstrechtsgesetz 1979 (BDG 1979), BGBl. Nr. 333/1979

¹¹⁾ Ausschreibungsgesetz 1989, BGBl. Nr. 85/1989

activities of persons in the highest offices and other public officials as described in § 4 Incompatibility and Transparency Act 1983¹², Federal Law Gazette No. 330/1983.

(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.

(3) The official title pursuant to § 63 of the 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 of the Salaries Act¹³, 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 organization of business as well as 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 the internal operations. The staff assigned to the Competition Department of the Federal Ministry of Economy and Labour shall become staff of the Office of the Federal Competition Authority upon entry into force of this Federal Act.

(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

12) Bundesgesetz über die Transparenz und Unvereinbarkeiten für oberste Organe und sonstige öffentliche Funktionäre (Unvereinbarkeits- und Transparenz-Gesetz), BGBl. Nr. 330/1983

13) Gehaltsgesetz, BGBl. Nr. 54/1956

the head of 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 the Competition Department at the Federal Ministry for Economy and Labour shall become Head of Office upon entry into force of this Federal Act. 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 of the Federal Ministries Act 1986, Federal Law Gazette No. 76/1986, shall apply accordingly.

Cooperation with other authorities

§ 10. (1) To the extent required for performing the duties bestowed on the Federal Competition Authority and provided that no obligations under EU law require differently, the Federal Competition Authority shall be authorised, taking into account non-disclosure interests warranting protection according to the Federal Act Concerning the Protection of Personal Data 2000¹⁴, 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, 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. 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.

(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.

(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 of Transport, 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 to the Federal Cartel Prosecutor in two copies immediately upon receipt.

Notification Fees

§ 10a. (1) For notifications of merger (§ 9 Cartel Act 2005), a lump-sum fee of EUR 3,500 shall be paid. The Federal Competition Authority shall determine the admissible modalities of payment taking into account any existing technical and organizational 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.

14) Datenschutzgesetz 2000, BGBl. I Nr. 165/1999

(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 and 28 Cartel Act 2005, keeping confidential 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 Act¹⁵, Federal Law Gazette No. 51/1991. §§ 7, 9 to 16, 18 to 20, 45 paras. 1 and 2, 46 to 51, 54, 55, 74 para. 1, 75 paras. 1 and 2 as well as sections 4, 5 and 6 of Part I of the General Administrative Procedure Act shall apply.

(Note: paras. 3 to 7 repealed by Art. 2 subpara. 12, Federal Law Gazette I No. 56/2017)

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 and associations of undertakings 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) The owners of the 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 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 apply to the submission of business documents, enabling access to such documents that exist electronically, providing them upon request in a standard file format on data

15) Allgemeines Verwaltungsverfahrensgesetz (AVG), BGBl. Nr. 51/1991

media, and the permission to analyse business documents and make copies and extracts of such documents (para. 1 subpara. 2).

(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 1991¹⁶, 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) Who countering an administrative decision pursuant to para. 3 provides no, wrong, misleading or incomplete information, commits an administrative offence and shall be punished by the Federal Competition Authority with a fine of up to EUR 75,000. Who pursuant to para. 2 provides wrong or misleading information, commits an administrative offence that shall be punished with a fine of up to EUR 25,000. The Administrative Penal Act 1991¹⁷, Federal Law Gazette No. 52/1991 shall apply.

(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.
 - a) are the first to submit information and evidence to the Federal Competition Authority which enable the Federal Competition Authority, suspecting an infringement of § 1 Cartel Act 2005 or Article 101 para. 1 TFEU, to immediately file a well-founded application pursuant to § 12 para. 1, or
 - b) are the first to submit any additional information and evidence, if the Federal Competition Authority has already obtained sufficient information and evidence from other sources to apply for a warrant to search premises, which enable the Federal Competition Authority to immediately file a well-founded application pursuant to § 36 para. 1a Cartel Act 2005 before the Cartel Court,
2. have terminated their participation in such infringements,
3. subsequently cooperate with the Federal Competition Authority genuinely, 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,
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. 1 (a) or (b).

¹⁶) Verwaltungsvollstreckungsgesetz 1991 (VVG), BGBl. Nr. 53/1991

¹⁷) Verwaltungsstrafgesetz 1991 (VStG), BGBl. Nr. 52/1991

(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 1 (a) or (b) if the other requirements (subparas. 2 to 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) The Federal Competition Authority shall lay down the practice applied in the implementation of para. 1 and 2 in a handbook in which it shall explain in which cases of § 1 Cartel Act 2005 and Art. 101 para. 1 TFEU investigation under the leniency programme is particularly beneficial, which information has to be submitted in any case to be able to request a search of premises, which obligations are associated with cooperation with the Federal Competition Authority, under which circumstances it may request to impose a reduced fine as well as the scope of such a reduction of fines. The handbook shall be published on the website of the Federal Competition Authority.

(4) If an undertaking or association of undertakings wishes to benefit from paras. 1 or 2, the Federal Competition Authority shall within a reasonable time make a non-binding statement as to whether it intends to apply these provisions. The Federal Competition Authority shall inform the Federal Cartel Prosecutor if it intends to request immunity from fine or a reduction of fines.

(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 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 para. 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 of the Code of Criminal Procedure¹⁸, 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.

Right to be heard

§ 13. (1) If the Federal Competition Authority intends to file an application to initiate proceedings pursuant to §§ 26, 27 or 28 Cartel Act 2005 and such application is preceded by investigations pursuant to §§ 11, 11a or 12 Competition Act, 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.

(2) If investigations pursuant to para. 1 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. 1, the opposing party shall be informed accordingly within an appropriate period of time.

Disclosure of evidence by the Federal Competition Authority in proceedings for damages

§ 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.

¹⁸⁾ Strafprozessordnung (StPO)

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.

Consultation of law enforcement officials

§ 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) The criminal police, the public prosecutor's office and the courts shall be authorised to provide personal data obtained in accordance with the Code of Criminal Procedure to the Federal Competition Authority which are relevant for performing its statutory duties, in particular enforcing the ban on cartels under § 1 Cartel Act 2005 and Art. 101 TFEU.

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 Federal Attorney's Office or to 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 Ministry of Economy and Labour, the Competition Commission may submit expert opinions on general competition issues and may give recommendations on notified mergers (§ 17). The body ordering the expert opinion shall set a reasonable period of time for submitting such expert opinion. Furthermore, the Commission shall submit, annually and by 1 October at the latest, to the Federal Competition Authority proposals on priorities in performing its duties for the next calendar year.

(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 from among its members.

(3) The members (substitute members) of the Commission shall be appointed by the Federal Minister of Economy and Labour 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 of Economy and Labour upon their own request, or upon request of the body that has 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 of Economy and Labour, after hearing the Commission, shall issue internal rules of procedure particularly regulating the election of the chairperson and his deputy, convening meetings, opinion-making and functions of the Commission in the General Assembly and in 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 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 of Economy and Labour. The Federal Minister of Economy and Labour 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 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 of Economy and Labour, depending on their respective sphere of competence, with regard to §§ 11 and 12, and
3. the Federal Minister of Economy and Labour with regard to its other provisions, and in agreement with the Federal Minister of Transport, 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 01 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 01 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 01 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 01 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 01 January 2014. § 11a para. 7 shall become ineffective as of 01 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.

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 01 July 2002.

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