

Legal English for Business

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B. Sonstiges Wirtschaftsrecht

I. Kartellrecht

1. Fusionskontrolle

Kartellrecht

antitrust law

Due to its complexity and importance during any M&A transaction and/or joint venture creation, the executive board approved two more positions for the legal department in the area of antitrust law.

Als "Kartellrecht" werden hier die sich aus dem GWB sowie der EU-Fusionskontrollverordnung ergebenden Vorschriften verstanden, während der Begriff des Wettbewerbsrecht die Vorschriften des UWG umfasst. In der Praxis wird das Kartellrecht allerdings oftmals als Teil des "Wettbewerbsrechts" im weiteren Sinne verstanden. Vor diesem Hintergrund werden Kartellrechtsanmeldungen dann ohne weitere Differenzierung auch als "competition filings" bezeichnet.

kartellrechtliche Vorschriften

antitrust regulations

The German antitrust regulations are codified in the GWB, while the European ones are set out in the TFEU.

Kartellrechtsanmeldung

filing for antitrust clearance

We are hereby notifying you that the filing for antitrust clearance was made yesterday.

Anstelle von "antitrust clearance" wird in der Praxis häufig auch der Begriff "merger clearance" verwendet, obwohl der Begriff "merger clearance" streng genommen nur Verschmelzungen erfasst.

competition/antitrust filing

Much of the attached redline reflects mechanical changes to the draft of the SPA, such as the three-part consideration and the absence of any competition filings.

In der Praxis werden die Begriffe "competition filing" und "antitrust filing" nahezu synonym parallel verwendet. Dies ist vor dem Hintergrund zu erklären, dass das Kartellrecht oftmals als Teilbereich des Wettbewerbsrechts im weiteren Sinne verstanden wird..

Kartellrechtsverstoß

antitrust violation

Germany's Federal Cartel Office said it is scrutinizing ABC GmbH for potential antitrust violations.

Fusionskontrollverordnung (FKVO)

European Council Merger Regulation (ECMR)

The relevant thresholds that determine whether an undertaking has a Community dimension are set forth in the European Council Merger Regulation.

Im allgemeinen Sprachgebrauch wird die FKVO zumeist als "EU Merger Regulation" bezeichnet.

Zusammenschlussfreigabe

merger clearance

The only markets where both parties operate facilities, other than the U.S. in respect of which merger clearance has already been given, are in Spain and Portugal.

Zusammenschlusskontrolle

merger control

1. The importance of merger control planning has increased due to our past experience with deals that were frustrated through the intervention of antitrust authorities. 2. The creation of an equity joint venture involving ABC GmbH and XYZ GmbH is subject to merger control.

Anders als es die wörtliche Übersetzung suggeriert, wird der Begriff "merger control" nicht allein für Verschmelzungen, sondern umfassend für alle Erwerbsstatbestände verwendet.

fusionskontrollpflichtig

(to) be subject to merger/antitrust control

In light of the apparent concentration and that fact that both joint venture partners surpass all relevant thresholds, the transaction is subject to merger control.

fusionskontrollrechtlich

(to) be from a merger control perspective

From a merger control perspective, our antitrust colleagues will especially be looking at the veto rights granted to ABC GmbH in the Joint Venture Agreement.

Kartellbehörde

antitrust authority

We can already now say that an approval or clearance from the antitrust authorities will necessarily be a closing condition.

merger control authority

So far we are still waiting for clearance from the merger control authority.

regulator

The regulator issued a questionnaire to various market participants and is currently awaiting their feedback.

regulatory authority

Through the joint venture company, both ABC GmbH and XYZ GmbH intend to share revenues on selected routes. The deal still has to be approved by the regulatory authorities.

In den einzelnen Jurisdiktionen haben die jeweiligen Kartellbehörden unterschiedliche Bezeichnungen. Die hier genannten Begriffe sind allgemeiner Art und können somit zur Bezeichnung jeder Kartellbehörde verwendet werden, wobei der Begriff "merger control authority" in USA üblicherweise nicht verwendet wird. Ein weiterer anzutreffender Begriff ist "competition authority". Die Begriffe "regulator" und "regulatory authority" sind nicht notwendigerweise kartellrechtsspezifisch und können somit auch allgemein zur Bezeichnung jeder anderen Aufsichtsbehörde verwendet werden.

Bundeskartellamt

German Federal Competition Authority (Bundeskartellamt)

Even though the transaction may not have a community dimension, we must notify the German Federal Competition Authority (Bundeskartellamt).

Europäische Kommission

European Commission

1. The European Commission granted ABC GmbH only conditional merger clearance with regard to its intended transaction. 2. The major closing condition was clearance of the merger by the European Commission. 3. The European Commission cleared the merger yesterday.

Untersuchung

investigation

1. Even seemingly trivial matters, such as an accident on the company's premises, can trigger an investigation by the authorities. 2. Wherever there is an indication of anti-competitive actions, the authorities can launch a regulatory investigation.

Bußgeld

fine

1. A fine was imposed on ABC GmbH for its failure to meet the deadline. 2. ABC GmbH was fined for not complying with the authority's requests.

Wie in vielen anderen Fällen wird beim Begriff "fine" neben dem Substantiv häufig auch die Verbalform verwendet (wie hier im zweiten Beispiel).

Aufgreifschwelle (Umsatz)

(revenue/turnover) threshold

1. The involved legal entities had a combined revenue just above the relevant threshold. 2. Whether a notification to the antitrust authority is necessary typically depends on two factors, namely whether the transaction leads to a concentration and whether relevant revenue thresholds are exceeded.

Der Begriff "Aufgreifschwelle" wird hier im kartellrechtlichen Kontext verstanden. Die kartellrechtliche Anmeldepflicht richtet sich regelmäßig danach, ob ein Zusammenschluss vorliegt und wesentliche Aufgreifschwelle erreicht werden.

Zusammenschluss (i.S.d. § 37 Abs. 1 GWB und Art. 3 FKVO)

concentration

1. Unlike the European merger control, the German merger control provides four different scenarios in which a merger or acquisition is considered a concentration. 2. The German law definition of a concentration is broader than a concentration under the EMCR. 3. The concentration shall not be implemented before ABC GmbH has entered into a final and binding sale and purchase agreement for the sale of certain parts of the business.

Die kartellrechtliche Anmeldepflicht richtet sich in den verschiedensten Jurisdiktionen danach, ob ein Zusammenschluss vorliegt und ob wesentliche Aufgreifschwelle erreicht werden.

Verstoß gegen Vollzugsverbot*

gun jumping

Any transfer of shares before the transaction has been finally cleared would constitute illegal gun jumping.

↔ prohibition on anti-competitive agreements/practices (= Kartellverbot)

Anmeldung (eines Zusammenschlusses bei einer Kartellbehörde)

(premerger) notification

1. The premerger notification process is governed by the German GWB and the AEUV. 2. The EU Commission provides a standard form for premerger notifications.

filing (for merger clearance)

We are hereby notifying you that the filing for merger clearance was made yesterday.

Im Zusammenhang mit kartellrechtlichen Anmeldungen ist "notification" der geläufigere Begriff. Er wird auch in der Fusionskontrollverordnung verwendet und ist somit vorzugswürdig. Geht es um eine Kartellanmeldung in einer anderen Jurisdiktion außerhalb von Europa, kann aber für eine Anmeldung auch der Begriff "filing" verwendet werden.

Anmeldepflicht (eines Tatbestandes bei einer Kartellbehörde)*

premerger notification duty

1. The parties were at first not aware of their notification duty to the merger control authorities. 2. A

premerger notification duty exists if a transaction cumulatively constitutes a concentration and certain turnover thresholds are exceeded.

mandatory filing (obligation)

Given the size of ABC, Inc., we expect that a transaction will involve a mandatory filing in the United States.

"Notification" ist ein feststehender Begriff im Rahmen der Europäischen Fusionskontrolle und sollte in diesem Zusammenhang auch verwendet werden. Geht es um kartellrechtliche Anmeldeerfordernisse in anderen Jurisdiktionen, so kann allgemein auch der Begriff "mandatory filing" verwendet werden.

Eine Anmeldung ist erforderlich, wenn ein Zusammenschlusstatbestand vorliegt und Aufgreifschwellen erreicht sind.

Vorabprüfung

preliminary investigation

The authorities notified the company that they have commenced a preliminary investigation of the matter.

preliminary review

There is a preliminary review carried out by the authorities before we can submit the full-fledged application.

Vermögenserwerb (§ 37 Abs. 1 Nr. 1 GWB)

acquisition of assets

The transaction does not constitute an acquisition of assets within the meaning of Section 37 para. 1 Nr. 1 GWB as the purchase item are shares and not assets.

Kontrollerwerb (§ 37 Abs. 1 Nr. 2 GWB)

acquisition of control

Since ABC GmbH will only acquire a minority stake and does not have any extraordinary veto rights, the transaction does not constitute an acquisition of control within the meaning of Section 37 para. 1 Nr. 2 GWB.

Anteilerwerb (§ 37 Abs. 1 Nr. 3 GWB)

acquisition of shares

The conditions of an acquisition of shares within the meaning of Section 37 para. 1 Nr. 3 GWB are not met given that ABC GmbH intends to acquire less than 25% of the outstanding common shares.

Einfluss, wettbewerblich erheblicher Einfluss (§ 37 Abs. 1 Nr. 3 GWB)

material competitive influence

1. For purposes of antitrust law, the condition of a "material competitive influence" is only met if ABC GmbH, being the target, can no longer act independently on the market due to the acquiring entity's power to exert influence on ABC GmbH. 2. ABC GmbH acquired sole control over the target, so that the condition of a "material competitive influence" was also met.

bestimmender Einfluss, Art. 3 (2) FKVO

decisive influence

In order to have control within the means of Art. 3 (2) of the European Merger Control Regulation, it is required to have the "possibility of exercising decisive influence" on an undertaking.

Vollfunktionsunternehmen*

full-function undertaking

For the purpose of our antitrust assessment, we are assuming that the joint venture company is a full-function undertaking, meaning that it operates independently on the market and has sufficient resources to perform its operations on a long-term basis.

gemeinschaftsweite Bedeutung

(to) have a Community dimension

We will require a spread sheet from both companies detailing their respective revenues on a country-by-country basis in order to be in a position to determine whether the concentration has a Community dimension.

Sofern im Zusammenhang mit der Europäischen Gemeinschaft verwendet, wird der Begriff "Community" regelmäßig groß geschrieben.

Schwellenwert

threshold

1. EUR 50k is the threshold that ABC GmbH must meet in order to have a claim under the agreement. 2. Depending on the applicable threshold, proposed mergers are reviewed by either German authorities or by the European Commission.

Kartellverbot (Verbot wettbewerbsbeschränkender Vereinbarungen i.S.d. § 1 GWB, Art. 101 AEUV)

prohibition on anti-competitive agreements

Our sales department asked the colleagues from the legal team for guidance to better understand the prohibition on anti-competitive agreements.

prohibition on restrictive agreements/practices

1. The regulations in place state a clear prohibition of restrictive agreements. 2. The prohibition on restrictive practices applies to agreements which negatively affect trade between member states of the EU and which are hence considered as incompatible with the internal market.

prohibition on restricting competition

The regulations in place state a clear prohibition on restricting competition.

Missbrauch einer marktbeherrschenden Stellung (beherrschende Marktstellung missbrauchen) (§§ 18 ff. GWB)

(to) abuse one's dominant market position

The European Commission started to investigate whether ABC GmbH had abused its dominant market position.

Ebenso kann auch der Nominalstil "abuse of one's dominant market position" verwendet werden, wenngleich der Verbalstil zu bevorzugen ist.

(to) illegally exploit one's dominant market position

ABC GmbH is accused of having exploited its dominant market position.

Der Begriff "(to) exploit" für sich allein impliziert noch keinen Missbrauch, sondern lediglich ein (ggf. rechtmäßiges) Ausnutzen. Aus diesem Grunde wird hier "(to) illegally exploit" verwendet.

Ebenso kann auch der Nominalstil "illegal exploitation of one's dominant market position" verwendet werden, wenngleich der Verbalstil zu bevorzugen ist.

2. Textbausteine

Fusionskontrolle

merger control

"Dear [name of recipient],
Happy to provide a quick overview of the merger control mechanisms – which are sometimes referred to as "anti-trust-mechanisms" in the U.S. – that apply in Germany.
At the outset, merger control in Germany is governed by two regimes. On the one hand, there is the merger control under German law. This is regulated in a statute abbreviated as "GWB" and states the German "Bundeskartellamt" as the competent regulatory authority. On the other hand, there is the European merger control. Its rules are set out in the EC Merger Regulation

(Regulation 139/2004, commonly abbreviated ECMR) and determine the European Commission as the competent authority. In consequence, the first question we always face is to determine which of the two regimes apply and which authority we need to approach. This requires a case-by-case analysis, whereas in broad terms one can say any large transaction involving an entity of a corporate group with an annual worldwide revenue in excess of EUR 5 billion typically places the transaction on the EU level.

The thresholds that trigger competency of the German Bundeskartellamt are significantly lower. As a general rule, German law governs unless the threshold amounts of the ECMR are exceeded. While the EU competence takes precedence, there are also various possibilities for each authority to defer a matter to the other institution respectively.

Under both regimes, an intended transaction is subject to merger control if it constitutes (i) a "concentration" within the meaning of the respective regime and (ii) the stated thresholds are surpassed. The "concentration"-tests under each regime are somewhat similar. They are generally met if one or more parties directly or indirectly acquire(s) control (or at least significant influence) over another entity, either through the acquisition of assets or acquisition of shares.

[...]

Please let me know if we should schedule a call with our antitrust experts to discuss details or any questions you may have."

Anmeldepflicht premerger notification duty

"Dear [name or recipient],

Happy to give you a brief and general overview of the preconditions for when there is a premerger notification duty under German, and European law. Both regimes provide for a similar two-prong test. On the one hand, the transaction must constitute a "concentration" within the meaning of the respective regime. On the other hand, the involved parties' individual and combined annual turnover must surpass specific thresholds.

The "concentration" tests under each regime are somewhat similar. They are generally met if one or more parties directly or indirectly acquire control (or at least significant influence) over another entity, either through the acquisition of assets or the acquisition of shares.

With regards to the thresholds, one can say that German law governs unless the threshold amounts of the EU Merger Regulation are exceeded. As a rule of thumb, a transaction in which the parties have a combined worldwide annual revenue of more than EUR 500m is potentially subject to German merger control if further individual thresholds of the involved parties are also met. If the combined worldwide annual revenue exceeds EUR 5 billion, then the transaction is potentially subject to EU merger control. Here again, there are further individual thresholds of the involved parties that must be met. The two procedures are mutually exclusive, i.e. only one regime can apply at a given time and EU law takes precedence in the case where it applies. Again, this is just to give you a general idea of the overall setting. Once the transaction becomes more concrete, we would need to look at the transaction structure and the thresholds in more detail. [...]

Please let me know if we should schedule a call with our antitrust experts to discuss details or any questions you may have."

Verstoß gegen Vollzugsverbot gun-jumping

"Dear [name of recipient],

Happy to quickly give you a high-level explanation of the legal use of the term "gun-jumping" in an antitrust-related context. In short, a party is "jumping the gun" if it implements a transaction before it is legally allowed to do so. In other words, the parties may work on preparatory measures, but must not carry out or realize any commercial/legal/operational steps based on the planned future of the merger.

The gun-jumping prohibition applies to every corporate transaction that requires a premerger notification under either German law (Sect. 41 para. 1 GWB) or European law (Art. 7 of the EC Merger Regulation). Such premerger notification is required when a transaction constitutes a "concentration" and the involved parties' individual and combined annual turnover surpasses specific thresholds.

Any such transaction may not be consummated before either of the following have occurred:

(i) the antitrust authorities have within a specific time period beginning on the filing date of the premerger notification neither cleared nor prohibited the transaction, or (ii) the antitrust

authorities have granted merger clearance. The period of time mentioned under (i) varies depending on the individual circumstances and on whether the transaction is subject to European or German merger control.

Any gun jumping has two major consequences, which can be very harmful: A party can be severely fined with up to 10% of a company's total annual revenue. In addition, the implemented transaction is voided as a matter of law. [...]

Please let me know if we should schedule a call with our antitrust experts to discuss details or any questions you may have."

Vollfunktionsunternehmen full function joint venture

"Dear [name of recipient],

Happy to briefly explain the term "full function joint venture" under EU law as it was brought up in the discussion today.

A joint venture is subject to European merger control if it qualifies as a so-called "full function joint venture" under the EC Merger Regulation. This means that it is performing on a lasting basis all the functions of an autonomous economic entity. Usually, the following criteria are used to determine whether there is a "full function": First, does the joint venture have sufficient resources to operate independently in a market? Second, will it not only fulfil one specific function within the parent company's business activities, but alternately does it have its own access to or presence in the market and can it act independently as a supplier or a purchaser? Third, is it set up permanently or at least for a longer period of time? Only if these criteria are met does the undertaking qualify as a full-function joint venture. [...]

We can further discuss this with one of our antitrust specialists if you like. Please let me know."

II. Umwandlungsrecht

1. Grundbegriffe

Umwandlung (*Umstrukturierung*)

(corporate) reorganization

1. The project team analyzed the benefits of the various options of a corporate reorganization that are available under German law. 2. The reorganization consists of various mergers and solvent liquidations of ABC GmbH's European subsidiaries.

Der Begriff Umwandlung wird hier als Sammelbegriff für jede Maßnahme nach dem UmwG verstanden. Im allgemeinen Sprachgebrauch wird "Umwandlung" häufig auch mit dem Formwechsel gleichgesetzt, für welchen allerdings dann der Begriff "conversion" die passende Übersetzung darstellt.

↔ corporate restructuring (= Sanierung)

↔ conversion (= Formwechsel)

Umwandlungsgesetz (UmwG)

(German) Corporate Reorganization Act (UmwG)

The German Corporate Reorganization Act (UmwG) is a federal statute that regulates corporate mergers, conversions and different variations of corporate reorganization, e.g. spin-offs (Abspaltungen).

Möglich ist letztlich auch eine Umschreibung, bspw. "the German statute dealing with corporate reorganizations". Nicht zu empfehlen ist hingegen die häufig anzutreffende Übersetzung "Transformation Act", da hierdurch nicht deutlich wird, dass es um gesellschaftsrechtliche Umwandlungen geht. Zudem ist der Begriff "reorganization" in diesem Kontext geläufiger.

Umwandlungsrecht*

law dealing with corporate reorganizations

Same as probate law, the German law dealing with corporate reorganizations is guided by the principle of universal succession.

↔ (German) Corporate Reorganization Act (UmwG) (= Umwandlungsgesetz)

Gesamtrechtsnachfolge (*Universalsukzession*)

universal succession (*Gesamtrechtsnachfolge*)

1. Same as probate law, the German law dealing with corporate reorganizations (UmwG) is guided by the principle of universal succession (*Gesamtrechtsnachfolge*). 2. The internal reorganization of ABC Group was implemented by various means under the German Corporate Reorganization Act (UmwG), primarily to avail itself of the principle of universal succession (*Gesamtrechtsnachfolge*), which applies as a matter of law.

Soweit ersichtlich, gibt es im Englischen kein vollständig zutreffendes Pendant zum Begriff der Gesamtrechtsnachfolge. Der Begriff "succession" suggeriert in den common law Jurisdiktionen nämlich regelmäßig allein die aufgrund erbrechtlicher Vorschriften eingeleitete Rechtsnachfolge. Aus diesem Grunde wird empfohlen, den deutschen Begriff stets in Klammern hinzuzufügen und ggf. zu erläutern.

↔ singular succession (= Einzelrechtsnachfolge)

Rechtsträger (i.S.d. UmwG)

legal entity

The legal entity that is spun-off (*Ausgliederung*) will then be a wholly owned subsidiary of the transferring entity.

übertragender Rechtsträger (*übertragende Gesellschaft*)

transferring legal entity

As a result of the spin-off (*Abspaltung*), the transferring legal entity's shareholder received an equivalent percentage of ownership in the transferee.

transferor

In the recent split-up (*Aufspaltung*), ABC GmbH was the transferor whose assets and liabilities were transferred to ABC 1 GmbH and ABC 2 GmbH, respectively.

↔ acquiring (legal) entity (= *aufnehmender Rechtsträger*)

aufnehmender Rechtsträger (*übernehmender Rechtsträger; aufnehmende Gesellschaft; übernehmende Gesellschaft*)

acquiring legal entity

1. ABC GmbH was split up, whereas its assets and liabilities were assumed by ABC 1 GmbH and ABC 2 GmbH as the acquiring entities. 2. The acquiring entity will be a shelf company that ABC GmbH has yet to purchase.

transferee

The transferee did not only assume the assets, but also the liabilities as a result of the merger.

↔ transferring legal entity, transferor (= *übertragender Rechtsträger*)

surviving entity

The surviving entity will by operation of law assume all obligations of the transferring entity.

Der Begriff "surviving entity" sollte nur im Zusammenhang mit einer Verschmelzung verwendet werden, da bspw. bei einer Abspaltung der übertragende Rechtsträger ebenfalls "überlebt".

↔ transferring legal entity, transferor (= *übertragender Rechtsträger*)

2. Verschmelzung

Verschmelzung

merger

ABC GmbH agreed to procure the merger of the two entities with retroactive effect as of December 31, 2021.