

GERMANY			
COMPETITION FRAMEWORK			
Competition Law	The “Gesetz gegen Wettbewerbsbeschränkungen” (“GWB”), translated to English as the “Act against restraints of Competition” (“ARC”) was enacted in 1957 and became effective on January 1, 1958.		
Competition Authority	The Bundeskartellamt started functioning on January 1, 1958. Website: http://www.bundeskartellamt.de/w/Englisch/index.php		
STATUS OF THE COMPETITION AUTHORITY			
Accountability			
Does the Competition Authority have obligations before the executive?	Yes	X	Obligations to report to the executive on on-going investigations upon request.
		√	The decisions of the Competition Authority may be vetoed by a ministry or by the executive branch.
		X	The Competition Authority has to report on an annual basis to the executive.
		Other obligations/comments: As the Bundeskartellamt is assigned to the Federal Ministry of Economics and Technology, the latter has the right to give general instructions, <i>see</i> section 52 of the ARC. Under ARC section 42(1), the Federal Minister of Economics and Technology might authorize a concentration prohibited by the Bundeskartellamt if the restraint of competition is outweighed by advantages to the economy as a whole, or if the concentration is justified by an overriding public interest.	
Does the Competition Authority have obligations before the legislature?	Yes	√	Obligation to publish an annual report on its activities.
		X	Obligation to stand before parliament and to respond to congressmen on an annual basis.
		X	Its activities are monitored by an independent auditor or by oversight committees.
		Other obligations/comments: According to ARC, section 53(1), the Bundeskartellamt has to present one report, but only every two years.	
Does the Competition Authority have obligations before the judiciary?	Yes	√	Decisions of the Competition Authority are subject to judicial review.
		Other obligations/comments: <i>See</i> ARC, sections 57(2) and 63.	
Independence			
Are the criteria for appointment and removal of the head/board members clear and transparent?	No		
Does the executive have powers to decide on specific cases based on public interest?	Yes	<i>See</i> ARC, section 42(1). Only on mergers disapproved by the NCA.	
Does the executive retain decision-making powers over the Competition Authority?	Yes	<i>See</i> ARC, section 42(1). Only on mergers disapproved by the NCA.	
Is the Competition Authority obliged to publish its reasoned decisions to ensure transparency?	Yes	<i>See</i> ARC, sections 43 and 62.	
Is there a provision of the national budget allocated by law to the Competition Authority to ensure its proper functioning?	Yes	Fiscal year budget for 2012: Approximately EUR 25 million. Its budget is managed as part of the budget of the Federal Ministry of Economics and Technology. However, it is managed as an independent item in the budget and it is approved by the parliament.	
Can the Competition Authority be financed by its own means (notification fees, fines, etc.)?	No	<i>See</i> ARC, section 82a(2). The fees and fines collected accrue to the Federal Cash Office (Bundeskasse).	
GOVERNANCE OF THE COMPETITION AUTHORITY			
Is the Competition Authority governed by a single chairman or by a collegiate body?	Chairman		
Are the heads appointed by a minister?	Yes		
Are the heads appointed by representatives of more than one government branch?	No		
Is there a fixed period during which removal is prohibited?	Yes	<i>See</i> ARC, section 51(4). The chairman is a civil servant appointed for life.	
Is the tenure of the heads renewable?	No		
Are the heads required to have certain minimum qualifications (degree in law or economics, age, experience)?	Yes	<i>See</i> ARC, section 51(4). He is required to have the same qualifications as a judge or a senior civil servant.	
ARCHITECTURE			
Is the Competition Authority a stand-alone agency with an independent physical location or is it part of a bigger entity such as a minister?	Stand-alone agency	<i>See</i> ARC, section 51(1). The Bundeskartellamt is an independent higher federal authority with its seat in Bonn. However, it is assigned to the Federal Ministry of Economics and Technology.	

POLICY-MAKING AGENTS -DIVERSIFICATION-			
How many agencies are responsible for competition enforcement?	Multiple agencies	According to ARC, section 48, the Federal Ministry of Economics and Technology, and the supreme Land authorities are also competent on competition issues. Also, the Monopolies Commission was created in 1973 to monitor concentration, report on mergers for which the parties have applied for ministerial authorization, and produce reports.	
What is the scope of the mandate on competition policy enforcement for each of the agencies?	The Bundeskartellamt	Horizontal agreements, vertical restraint, abuse of dominance, merger control, and the review of award procedures for public contracts (since 1999). The Bundeskartellamt is competent if the effect of the restrictive or discriminatory conduct or of a competition rule extends beyond the territory of a Land.	
	The land authorities	Horizontal agreements and vertical restraint. The Land authorities are competent if the effect of the restrictive or discriminatory conduct or of a competition rule is limited to the territory of a Land. As part of the process of merger control, the Land authority comments on the mergers occurring in their territory, but the decision is exclusive competence of the Bundeskartellamt.	
	Monopolkommission (“Monopolies Commission”)	It is in charge of evaluating the development of business concentration and making reports on that.	
Do sector regulators have competition policy enforcement mandate?	Regulatory Authority for Telecommunications and Post	Vertical restraint, abuse of dominance, and merger control. Coordinates with the Bundeskartellamt to apply the Telecommunications Law and the ARC.	
Have the Competition Authority and other agencies signed protocols or memoranda of understanding with sector regulators?	Telecommunications Regulator	No	
	Energy Regulator	No	
	Transport Regulator	No	
	Other	No	
POLICY DUTIES			
Does the Competition Authority have exclusive mandate on competition or multiple mandates?	Exclusive competition mandate	X	Concurrent consumer protection mandate.
		X	Concurrent IP mandate.
		Other mandates: Non.	
PORTFOLIO INSTRUMENTS			
Law Enforcement			
Does the Competition Authority have powers to investigate cartels?	Yes	<i>See</i> ARC, section 54(2)(1).	
Does the Competition Authority have powers to conduct dawn raids at premises?	Yes	<i>See</i> ARC, section 59.	
Can the Competition Authority investigate <i>ex officio</i> cases?	Yes	<i>See</i> ARC, section 54(1).	
Does the Competition Authority have powers to accept leniency applications?	Yes	<i>See</i> http://www.bundeskartellamt.de/wEnglisch/FurtherInfo/leniency.php	
Does the Competition Authority have powers to accept seek criminal punishment?	No		
Advocacy			
Can the Competition Authority issue opinions on draft legislation?	Yes	The opinions are not binding.	
Is the executive and/or the legislature obliged to request the opinion of the Competition Authority when drafting legislation that may impact competition?	No		
Rulemaking			
Can the Competition Authority issue guidelines or other type of secondary legislation?	Yes	√	Guidelines on the calculation of fines.
		√	Guidelines on merger control.
		√	Guidelines on the economic analysis of abuse of dominance cases.
Research & Reporting			
Can the Competition Authority carry out market studies?	Yes	<i>See</i> ARC, section 48(3).	
Can the Competition Authority report to the legislature on the results of market studies?	Yes		
DECISION-MAKING FUNCTIONS			
Aggregated Functions			
Does the Competition Authority make the decision to investigate and to prosecute cases?	Yes		

Does the Competition Authority make guilty findings?	Yes	
Does the Competition Authority impose punishments?	Yes	
Is there a single body that carries out the investigation and the guilty findings within the Competition Authority?	Yes	
Can the Competition Authority's decisions be appealed to a court?	Yes	
Disaggregated Functions—Prosecutorial Model		
Are there different authorities that make the decision to investigate and to prosecute cases?	No	
Are disputes presented for decision to a separate entity/tribunal?	No	