

DUTIES OF THE BAVARIAN COMPETITION AUTHORITY

Pursuant to the act on restraints of competition, the tasks of the state anti-trust authority (German abbreviation GWB) include especially:

The implementation of the ban on cartels

The competition authority is responsible for the implementation of the ban on cartels (§ 1 GWB). Basically, the following are forbidden: agreements between undertakings, decisions by associations of undertakings and concerted practices that have the elimination, restriction or distortion of competition as their object or effect.

A use case, however, that in the event of the simultaneous realisation of facts constituting an offence that falls under the jurisdiction of the public prosecutor's office, is when, as part of the process involved, undertakings come to a prior agreement on the level of the bids to be submitted. The aim of those who take part in a procedure of this nature is to determine in advance which undertaking is to receive the contract and at what tender price. Anti-competitive agreements occur even outside a public invitation to tender. These agreements deal mainly with the prices demanded by the opposite side of the market. Other factors, however, such as the locations of the activities, production quantities or similar, can be the subject of anti-competition agreements.

Legal action may be taken against violations of § 1 GWB by the competition authorities or, if this involves the simultaneous commission of a crime, may be prosecuted as administrative offences by the public prosecutor's office and fines of up to one million Euros may be imposed. In this case, the legal action is taken against the undertakings involved and against the persons that have acted for them. In the case of undertakings, the fine may not exceed 10 % of the annual turnover in the previous business year.

Violations of § 1 GWB are difficult to detect and prove, so insider knowledge becomes very important when it comes to prosecution by the antitrust authorities. It is possible to inform the Federal Cartel Office anonymously via its whistleblower system. You can find information about the leniency programme or chief-witness regulation [here](#) PDF (112 KB).

Links

[Bundeskartellamt reporting system](#)

[Wettbewerbszentrale - Institution of the economy for fair competition](#)

Cooperations

Not every form of cooperation between undertakings is forbidden under antitrust law. There are, for example, agreements that are exempted under § 2 GWB. This allows a form of cooperation that restricts competition, if, while allowing consumers a fair share of the profit arising, it contributes to an improvement in the production or distribution of products or the promotion of technical or economic progress without imposing on the undertakings involved indispensable restrictions or affording such undertakings the possibility of eliminating competition with respect to a substantial part of the products concerned. So-called hardcore clauses, such as agreements on prices and quotas always need to be assessed critically.

There is a special ruling that applies in German competition law for cartels of small and medium-sized enterprises: § 3 Abs. (Para.) 1 GWB permits the conclusion of restrictive agreements between enterprises, provided the cooperation agreement:

- serves to rationalise economic activities,
- does not critically impair competition in the market and
- serves to improve the competitiveness of small and medium-sized enterprises.

Subject to these conditions, the law considers that cooperation is permitted under competition law. It is not necessary to register cooperations with the competition authorities. In most cases, it is not easy to estimate the level of conformity under antitrust law, so it is recommended that legal advice be sought.

Control of abusive practices

According to §§ 18 ff. GWB the Bavarian competition authority is responsible for the control of abusive practices in the case of undertakings with market dominance or strength. These undertakings must not abuse their market position, for example, to demand excessively high prices.

An undertaking is market-dominant, if it has no competitors in the market in question, is not exposed to any considerable competition or, in relation to its competitors, has a paramount market position. From a market share of at least 40% it is assumed that the undertaking has a market-dominant position. Market-dominant undertakings are not permitted to unduly impede other undertakings, to treat them differently from undertakings of the same type without any objective justification or to demand payment that would not arise in cases of effective competition.

Undertakings in a position of market strength, on which small

medium-sized enterprises are dependent, are forbidden by the GWB to conduct themselves in certain ways. Basically, they are subject to the same rules as market-dominant undertakings. In particular, they are forbidden to unduly impede undertakings that are dependent on them or to demand that they grant them advantages without any objective justification. A case of undue impediment, for example, occurs, if an undertaking in a position of market strength demands higher prices for the supply of goods than it does itself in the distribution market (margin squeeze) or sells food below cost price.

Regardless of their market position, the boycott prohibition applies to all undertakings. This forbids them to require that other undertakings refuse to supply or purchase with respect to third undertakings.

Under the act on unfair competition (Gesetz gegen den unlauteren Wettbewerb - UWG), competition and other authorities have no competences. The UWG relates purely to civil law; disputes are to be decided solely and with binding effect by the civil courts. Information is provided by consumer protection bodies or trade associations.