Monopolies Commission

# A Strong Federal Cartel Office

# 2026

## Competition of the Future

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# Legal notice

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DATE: October 2026

# Mandate

As an independent institution, the Monopolies Commission advises the Federal Government, the Bundestag and Bundesrat, public authorities and the public on competition policy, competition law and regulation, providing independent, accessible advice grounded in research.

Our mandate is to monitor and assess competition in Germany and draw on our findings to make recommendations for policy decisions. We analyse where competition works, where markets become unbalanced and where the policy or regulatory framework can be improved.

The Monopolies Commission submits its 85th special report to the Federal Government pursuant to section 44(1), fourth sentence, of the Competition Act (Gesetz gegen Wettbewerbsbeschränkungen – GWB). The report was prepared on the initiative of the Monopolies Commission and at the request of the Federal Ministry for Economic Affairs and Energy.

# Transparency

In preparing this special report, the Monopolies Commission conducted a written survey of competition authorities and received submissions from:

- Autoridade da Concorrência
- Autorità Garante della Concorrenza e del Mercato
- Belgische mededingingsautoriteit - Autorité belge de la Concurrence
- German Federal Cartel Office (Bundeskartellamt)
- Federal Competition Authority
- Comisión Nacional de los Mercados y la Competencia
- Competition and Markets Authority
- Directorate-General for Competition
- Secretariat of the Competition Commission

The members and staff of the Monopolies Commission held numerous discussions with the Federal Cartel Office (Bundeskartellamt), representatives of international authorities, associations and experts. The Monopolies Commission thanks all those involved for their contributions and information.

AI-assisted tools were used in selected parts of the preparation of this report to provide support, for example with language and editing and with the structuring of individual work processes. The analyses, assessments and recommendations were developed by the Monopolies Commission and its Secretariat. The Monopolies Commission alone bears responsibility for the entire content of the report.

Bonn, 14 October 2026

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The members of the Monopolies Commission are deeply grateful to all staff members. Responsibility for this report rests solely with the members of the Monopolies Commission.

**#TEAMCOMPETITION**

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# Executive summary

With this report, the Monopolies Commission seeks to contribute to the debate on effective institutions in a democratic state governed by the rule of law. The Federal Cartel Office (Bundeskartellamt) is a central institution within this framework. The economy and society are undergoing profound changes that can challenge, and at times even threaten, public institutions. On the one hand, external shocks can directly affect an independent institution such as the Federal Cartel Office in particular. Examples from abroad illustrate this: the dissolution of competition authorities is being discussed in parts of South America, and in June 2026 the US Supreme Court overturned the protection against dismissal enjoyed by members of the Federal Trade Commission, thereby weakening their independence. On the other hand, an institution must also be able to keep pace with change internally and adapt its working methods to new developments.

The analysis and recommendations in this report are therefore guided by three criteria:

**ADHERENCE TO FUNDAMENTAL VALUES** concerns the extent to which the authority remains firmly anchored in the democratic state governed by the rule of law despite its extensive powers. This rests on the interaction of several elements rather than a single safeguard: the authority's independence from political interference, accountability for its own powers through transparency, the duty to account for its actions and procedural rights, and its democratic legitimacy. The political independence of the Federal Cartel Office is the defining feature that makes the protection of competition in Germany possible in the first place. Safeguarding that independence, within this interplay of power and oversight, is a central concern of this report.

**OPENNESS TO CHANGE** concerns the authority's capacity to learn and adapt: can it learn from new insights and develop, rather than remain entrenched in familiar patterns? Can it enforce competition protection resolutely at a time when technological developments are changing markets ever more rapidly? This also involves dealing with unwelcome criticism. Any organisation readily accepts approval; its ability to learn is revealed by assessments it has not requested.

**EFFECTIVENESS** refers to the authority's substantive objective: successfully fulfilling its core task of protecting competition. The Federal Cartel Office already achieves this. It has performed its tasks to a high standard for decades and ranks among the leading competition authorities internationally. Effectiveness, however, is not a state that, once attained, is secured for ever; it must be sustained under changing conditions.

The three criteria stand alongside one another and run through all the sections that follow. They interact without being reducible to one another: an authority that does not learn will become less effective over time, and an authority that does not ensure accountability for its powers will lose the basis for exercising those powers at all.

The Monopolies Commission does not propose a fundamental restructuring of the authority. Proven features such as its narrowly defined remit, its political independence and the court-like working methods of the Decision Divisions should be retained. Instead, the report identifies specific areas where adjustments can better equip the authority for the future. In addition to the four topics addressed in the following summary, the report also examines the Federal Cartel Office's international integration.

## 1 – How can the Federal Cartel Office remain protected from political interference?

### STATUS QUO

Political independence is the defining feature of the Federal Cartel Office: it decides its cases solely on legal and substantive criteria, without instructions from outside. This practice has proved its worth, although it is not consistently safeguarded in law. Independence rests on several distinct building blocks – the definition of its tasks, legal protection against instructions, transparency in internal processes and the arrangements governing the conduct of office. Each can be developed in a targeted way to make the authority still more resilient to future pressures.

### ASSESSMENT

Effective protection of competition requires an independent authority. Independence alone is not enough, however: it must be balanced with democratic legitimacy and accountability, because any authority exercising extensive powers needs corresponding safeguards. Political independence is therefore not a condition that can simply be maximised: it redistributes decision-making powers, oversight and responsibility between political institutions and the authority, and each distribution entails its own trade-offs. The longer and more strongly a leadership shapes an authority's operating framework, the more important it becomes that this framework remains open to external scrutiny and is regularly renewed. This also strengthens the authority's resilience to external pressure and its openness to change.

## RECOMMENDATIONS

To protect the Federal Cartel Office from political interference and strengthen competition law enforcement in the long term, the Monopolies Commission proposes targeted adjustments:

- **A clear mandate:** The Federal Cartel Office should concentrate on enforcing competition law and take on additional tasks only where there are clear synergies with its core activity, because a limited remit offers fewer points of vulnerability.

- **Independent leadership:** The President should be selected through a transparent process involving a public advertisement and a clear profile of the required expertise, enshrined in the GWB. The term of office should be limited to around eight to twelve years, with no possibility of reappointment, so that the leadership is regularly renewed and remains open to external scrutiny. The bill for the 12th amendment to the GWB already provides for eight years, which the Monopolies Commission welcomes.

- **Legal safeguards:** The independence of the Decision Divisions – the Office's decision-making units, which are organised along court-like lines – should be expressly enshrined in law. Under this provision, decisions in individual cases would be taken independently and free from instructions from the leadership or other bodies. Constitutional entrenchment is unnecessary.

- **Public transparency:** The Federal Cartel Office should draw up, on its own responsibility, a publicly accessible list of priorities disclosing the criteria by which it selects cases. Its rules of procedure and schedule of responsibilities should be published. Its activity report should also present staffing and material resources in relation to its tasks, because adequate resources are a prerequisite for effective independence.

# 2 – How are independence and decision-making powers distributed within the authority?

## STATUS QUO

Within the Federal Cartel Office, the Decision Divisions decide cases independently on their merits, including independently of the authority's own leadership. This is unusual internationally and a defining feature of the German model. The arrangement works well in the great majority of proceedings because

responsibility is clearly assigned and those taking the decision know the case from their own investigation. However, all proceedings are decided by a panel of no more than three people, irrespective of the case's significance. The Federal Cartel Office has a single-head leadership structure. Its decisions may be challenged in court. Case selection, priorities in casework, investigative approaches, the discontinuation of proceedings and forms of action that do not result in appealable decisions are subject to no judicial review or only limited review. Transparency concerning these activities is relatively limited.

## ASSESSMENT

Wherever decision-making powers are exercised independently, the same question arises: who decides, and how is accountability for those powers ensured? This applies to the day-to-day work of the Decision Divisions just as much as to the authority's leadership. There is therefore an international debate about whether a competition authority is better led by a single head or a collegial body. A collegial body can bring together different professional perspectives and make capture more difficult, but tends to slow down decisions. The Monopolies Commission favours retaining the existing single-head model because the substantive decision-making powers lie with the Decision Divisions in any event. Instead, accountability should focus on the areas where it is most needed: case selection, particularly significant individual decisions, personnel interventions that may impair independence, and the authority's transparency and accountability for its practice.

## RECOMMENDATIONS

The Monopolies Commission addresses three points that specifically remedy existing weaknesses while retaining the authority's basic structure.

- **Broader participation in decision-making:** Proceedings of major significance, particularly under sections 19a and 32f(3) and (4) GWB, should be decided by an enlarged Decision Division comprising five people. This would include, for example, proceedings against digital companies of paramount significance for competition across markets. Its composition and case selection should be determined by an internal committee that has yet to be established. This committee should also participate in the exercise of far-reaching powers such as publishing the Office's list of priorities.

- **Protected case responsibilities:** Changes to responsibilities during ongoing proceedings, such as replacing rapporteurs, should be possible only for objective reasons and, where appropriate, require the consent of the internal

committee to be established. This would prevent cases from being reassigned for extraneous reasons.

- Transparency and openness to criticism: Significant decisions and Letters of the Chairman should be published promptly and in full. The Federal Cartel Office should respond visibly to reasoned criticism from the expert community and put institutional arrangements in place to ensure this.

## 3 – How can the Federal Cartel Office promote its openness to change?

### STATUS QUO

The Federal Cartel Office is regarded internationally as one of the best competition authorities. Yet precisely this long-standing success carries a risk: entrenched perspectives can become more firmly established without this being noticed internally. Decisions regularly involve only a small group of staff. The intensity of judicial review is low. Independent external expertise is rarely brought into proceedings. Independence provides protection, rightly, against consequences.

### ASSESSMENT

The academic literature describes a recurring pattern in successful organisations: past successes can encourage defensive ways of thinking that keep necessary criticism at bay. In the Monopolies Commission's view, openness to change means that an authority can incorporate new elements, embed learning institutionally and remain receptive to input from outside. Behavioural economic concepts such as confirmation bias (the tendency to seek only information that confirms existing beliefs) and the risk of regulatory capture (a gradual convergence of perceptions through years of contact with the same companies) are particularly relevant to competition authorities. Other authorities internationally make more deliberate use of external input.

### RECOMMENDATIONS

The Monopolies Commission proposes several building blocks that together feed a wider range of external and internal perspectives into the work of the Decision Divisions in a structured way, while preserving their decision-making authority.

- **The position of Chief Economist:** This position should be filled externally for a fixed term, following a public advertisement and through a selection committee involving external experts. The Chief Economist should be free from instructions on substantive matters and prepare an independent economic assessment in proceedings of fundamental significance, to be published after the proceedings have concluded. This would bring an independent economic perspective into proceedings. It would not confer a right to participate in taking the decision.

- **External input:** The Federal Cartel Office should establish a programme under which external experts from business, the legal profession, economic consultancies, academia or civil society work at the Office for a limited period. The Office should also conduct public consultations more frequently in proceedings of fundamental significance.

- **Systematic knowledge management:** Fixed rotation rules for staff in the Decision Divisions should promote exchanges between divisions. The existing case database should be expanded into a comprehensive knowledge management system accessible to all staff. Debriefings on major projects should become mandatory and be documented.

- **The position of Procedural Officer:** This new position should be filled externally for a fixed term. The person should be selected following a public advertisement and with the involvement of a selection committee. They would support the Decision Divisions on procedural rights and mediate in disputes with companies.

## 4 – How can the Federal Cartel Office protect competition in the digital age?

### STATUS QUO

The authority already devotes considerable substantive attention to markets shaped by digitalisation. It applies section 19a GWB in proceedings against major digital companies and, in the Facebook proceedings, decided one of the best-known cases concerning data-driven business models. However, it does not yet have a dedicated, systematic approach to monitoring innovation and technology as drivers of competition. The Federal Cartel Office has so far made only isolated use of digital tools in its internal working processes: the use of artificial intelligence to analyse large volumes of documents is still in its early stages, and

electronic case files are being planned. This data could also provide a basis for reviewing more systematically than before whether past decisions and forecasts were correct. The authority has not yet established such ex-post evaluation of its own decision-making practice. Proceedings are less structured than in other countries and involve numerous organisational tasks that often delay their swift conclusion.

## ASSESSMENT

Technological change operates on two levels: it changes how markets function, for example through network effects and data-driven business models. At the same time, it enables authorities to adopt new ways of working, such as using artificial intelligence to analyse large volumes of documents. International comparisons show that other competition authorities have already progressed further in this area. In 2018, the UK's Competition and Markets Authority (CMA) introduced a dedicated Data, Technology and Analytics unit and embedded it in its leadership through a new position, the Chief Data, Technology and Insight Officer. International experience with ex-post evaluations likewise shows that many competition authorities have conducted them in the recent past.

## RECOMMENDATIONS

The Monopolies Commission proposes a package of measures to integrate technological expertise more closely into casework, enable systematic learning from past decisions and accelerate proceedings in a targeted manner while preserving companies' procedural rights.

- **Technological expertise:** The Federal Cartel Office should build a data-driven competition monitoring system focused on innovation and technology and involve more staff with scientific or technical backgrounds for this purpose. The expertise in digital services, data analysis and emerging technologies that is currently dispersed should be brought together under a head of Monitoring, Innovation and Technology. This position should be filled externally for a fixed term through an open selection process.

- **Systematic ex-post evaluations:** Ex-post evaluations should in future be conducted regularly to review competition law decisions. The Federal Cartel Office, the Monopolies Commission and academic experts should discuss cases and methodology jointly. The findings should feed systematically back into the Federal Cartel Office's future casework.

- **Modernising proceedings:** The planned electronic case files and the use of AI applications should be supplemented by an electronic case portal. Proceedings should be given a clearer structure by narrowing the scope of the investigation at an early stage and setting milestones with deadlines. Lawyers-only access to the file should also be introduced in administrative competition proceedings, so that trade and business secrets no longer have to be redacted separately for each instance of access to the file.

# 1

# Introduction

# 1 Introduction

1 This report assesses the Federal Cartel Office (Bundeskartellamt) as an institution. In doing so, the Monopolies Commission seeks to contribute to the debate on effective institutions in a democratic state governed by the rule of law. This debate takes place against the backdrop of the immense transformation of the economy and society and developments that challenge, and at times even threaten, public institutions.

2 In recent years, books such as ‘Wie Demokratien sterben’ (Levitsky/Ziblatt, 2018), ‘Warum Nationen scheitern’ (Acemoglu/Robinson, 2013) and ‘Die verwundbare Demokratie’ (Steinbeis, 2024) have attracted considerable attention. From different perspectives, their authors describe how liberal democracies and the institutions that protect them cannot be taken for granted, but can gradually erode under conditions of political polarisation, distrust of institutions and populist mobilisation. This raises the question of what will become, in the long term, of achievements associated with concepts such as ‘liberal democracy’, the ‘free democratic basic order’ and the ‘social market economy’ (Franck/Peitz, 2026). A common feature of these authors' arguments is their emphasis on the role of institutions. Acemoglu and Robinson (2013) identify the design of institutions as ‘inclusive’ as central to the success of a state.

3 For a long time, competition authorities were not the focus of these discussions, although they are central institutions: alongside central banks and regulatory authorities, they define how the market economy operates. As the principal authority enforcing the Competition Act (GWB), the Federal Cartel Office safeguards freedom of competition and prevents practices that harm the economy and consumers. Historically shaped by the ideas of the Freiburg School, the Federal Cartel Office puts into practice the concept of a market economy in which economic power is not exercised without restraint but is subject to a rules-based competitive order. This concept does not stand alone: it forms part of a broader conception of the organisation of society in Germany. The Federal Cartel Office is thus a pillar of Germany's free and democratic constitutional state. If the Federal Cartel Office were to ‘fail’ in the sense used by Acemoglu and Robinson (2013), an essential element of Germany's economic and social model would be under threat. It is with good reason that the GWB is often described as the ‘Basic Law of the market economy’. In this respect, the position of the Federal Cartel Office is also significant for safeguarding freedom across generations: free competition should remain possible for future generations too.

4 The Federal Cartel Office does not protect competition in Germany alone. Every federal state has a competition authority responsible for cases confined to that state. Through its Directorate-General for Competition, the European Commission protects

competition in the European Union and frequently also deals with cases that have effects in Germany. Ideally, the Federal Ministry for Economic Affairs and Energy also sees protecting free competition as part of its remit. Market participants themselves enforce competition rules in court through private enforcement. In academia and civil society, individual organisations keep a watchful eye on competition and warn of adverse developments, including the Academic Society for Competition Law, the Studienvereinigung Kartellrecht, the Forschungsinstitut für Wirtschaftsverfassung und Wettbewerb and non-governmental organisations such as Rebalance Now and the Federation of German Consumer Organisations. Finally, the Monopolies Commission is tasked with safeguarding competition. Within this active community, however, the Federal Cartel Office plays the central role in enforcing competition law.

**5** The Federal Cartel Office is currently a strong institution. In the assessment of the Monopolies Commission and those with whom it has spoken, the Federal Cartel Office ranks among the leading competition authorities internationally. High positions in Global Competition Review rankings and academic analyses confirm this impression over a long period (Buccirossi u. a., 2011, p. 199; Global Competition Review, 2024). The Federal Cartel Office has established a strong reputation in Germany and abroad. Its staff are highly qualified and possess considerable sectoral expertise. The Office maintains close international contacts and plays a pioneering global role in many areas. This assessment is deliberately placed at the beginning of the report because it is the starting point for everything that follows. None of the following considerations overlooks the outstanding achievements, high professional qualifications and strong commitment of the Federal Cartel Office's staff. Where this report identifies institutional weaknesses, it concerns further improvements to structures, procedures and incentives, rather than an assessment of the performance of those working within the existing structures.

**6** Although the Federal Cartel Office is a strong institution, it should not be overlooked that even such an authority can be vulnerable. Zimmer (2026) captures the point: competition is too valuable a good to rely solely on responsibility being held by people whose independence is beyond doubt; institutional safeguards are particularly important when authorities come under pressure. In recent years, an alarming number of cautionary examples have accumulated in other countries. In several South American states, there are moves simply to dissolve the competition authority (Gutiérrez/Podszun, 2024). In the United Kingdom, the competition authority is expected to take economic growth into account (Department for Business & Trade, 2025; Reuters, 2025); following sustained criticism from the government, its chair, Marcus Bokkerink, resigned (The Guardian, 2025). In France, the President of the Autorité de la concurrence unexpectedly did not have her term renewed in 2021 while a politically contentious merger case was pending. In June 2026, the US Supreme Court overturned the

rules protecting members of the Federal Trade Commission from removal by the President, significantly weakening their institutional independence (Supreme Court of the United States, 2026); members of the Federal Trade Commission and the head of the Department of Justice's Antitrust Division had already been removed beforehand (for a detailed discussion of these cases, see Zimmer, 2026). Institutions need not be attacked directly. The gradual erosion of an authority's capacity to act is equally dangerous. This can occur through reductions in staffing and material resources; leaving leadership positions vacant or filling them with 'weak' individuals or people pursuing a particular agenda; progressively rolling back certain powers or making them harder to enforce, for example under the heading of 'cutting red tape' or 'deregulation'; political pressure, potentially combined with media campaigns; and undermining effectiveness through reporting obligations, bureaucratic requirements or supposedly minor changes to procedural law.

**7** Disruption affecting competition authorities need not originate solely in domestic politics. The question of how competition authorities are organised also arises against the backdrop of the current profound global changes:

- The economy, which is the subject of competition law regulation, is being transformed radically by the 'twin transformation': climate change requires industrial business models based on fossil fuels to be restructured. Digitalisation and the use of artificial intelligence are bringing major changes to all economic processes.
- Geoeconomic changes have shaken the successful model of free trade and Germany's traditionally strong exports. The international rules-based order, which is also important for competition law, appears to be disintegrating.
- A small number of companies have attained such powerful global positions that their market capitalisation, the funds they manage and their investment capacity appear overwhelming.
- According to reports, polarisation in society is also reflected in an increasingly abrasive tone in competition proceedings.

**8** The list could be extended. Against this background, the Federal Ministry for Economic Affairs and Energy took up an initiative of the Monopolies Commission and asked it to prepare a report addressing the following questions:

- Which organisational models offer advantages in terms of the efficiency and effectiveness of a competition authority's work?
- How can quality assurance for competition law decisions be improved?
- Which international best practices of other competition authorities might be relevant or transferable to Germany?
- What adjustments to the statutory framework would be necessary if governance were restructured (section 51 GWB)?

9 The Monopolies Commission has distilled this remit into two questions that determine the structure of this report and are answered in turn in ↗**Chapters 4** and **5**:

1. Is the independence of the Federal Cartel Office safeguarded institutionally in a way that can withstand a gradual or abrupt impairment of its work?
2. What else does the Federal Cartel Office need in order to continue performing its task to an outstanding standard in an uncertain future?

These questions are discussed because the Monopolies Commission wishes to ensure that competition continues to receive strong protection.

10 In the Monopolies Commission's view, the answers to both questions are closely linked to the defining feature of the Federal Cartel Office that is its most important institutional element: independence. Independence protects the authority from having its substantive decisions directed by extraneous political or other external influences and is thus a central prerequisite for its resilience. At the same time, independence transfers decision-making powers to the authority and therefore raises the question of how those powers are legitimised and made accountable within a democratic state governed by the rule of law.

11 A competition authority's fitness for the future is not, however, confined to its ability to withstand external interference. It must also be capable of adapting to lasting changes in its economic, technological and social environment. The report's two questions thus focus on three interrelated guiding ideas: **resilience** and **adaptability**, together with, as a fundamental governance requirement, **accountability for the powers associated with independence**. A competition authority's institutional design must combine these requirements and balance the inevitable tensions between them.

12 Although the Federal Cartel Office already meets these requirements to a high degree, further reflection on sound institutional design is therefore worthwhile. The ambition must be for the Federal Cartel Office to be particularly progressive and thereby set an example for other authorities, both nationally and internationally. Certain distinctive features, including its independence, its constructive contact with business and its manageable size coupled with considerable impact, enable the Federal Cartel Office to establish mechanisms that other authorities can adopt. This report thus also forms part of a broader debate currently conducted under the headings of administrative modernisation and the digitalisation of government. That debate is often narrowed to reducing regulation. In the Monopolies Commission's view, however, the key lies elsewhere: how quickly and reliably an administration works, and how well it learns, depend to a significant extent on how it is organised, how decisions are reached, how knowledge circulates and how results are reviewed. Institutional design is, in this

sense, the instrument of administrative modernisation. Parts of the current reform debate have already made this shift in perspective: they no longer ask only about individual substantive decisions but about the conditions under which the state acts.[1] For independent authorities, the question of their internal organisation arises with particular force: they are not subject to the political direction through which the actions of other administrative bodies can be corrected when necessary.

**13** The report also seeks to contribute by considering administrative modernisation in a specific and particularly demanding case. The Monopolies Commission takes seriously the fact that additional institutional elements entail costs and effort: proposals intended to strengthen accountability and openness must be designed leanly enough to preserve the authority's ability to operate. Where this cannot be achieved, the proposal is unsuitable.

**14** Methodologically, the Monopolies Commission took as its starting point a consideration to which it returns repeatedly below: if we had to establish a new, modern Federal Cartel Office today, free of all path dependencies, what would it look like? This question is not far-fetched. In the United Kingdom, the former Office of Fair Trading was dissolved under the Enterprise and Regulatory Reform Act 2013 and merged with the Competition Commission into a new body, the Competition and Markets Authority. The Monopolies Commission considers that many institutional design decisions taken when the GWB entered into force have proved correct over time. It therefore does not propose a fundamental restructuring of the Federal Cartel Office in this report. With today's knowledge, however, some institutional design choices can be made more consciously, connections can be identified, and certain paths that have emerged over decades of practice can be corrected.

**15** To date, questions about the institutional design of a competition authority, insofar as they are raised at all, have been answered either within the authority itself or in response to particular circumstances during the legislative process. There is no independent public discussion of these questions that is not prompted by a specific event. The academic literature on the subject is also limited and scarcely systematic. This report seeks to fill that gap. The Monopolies Commission expects a strong institution such as the Federal Cartel Office to regard this as a contribution to shaping its future capacity to act.

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[1] The Initiative für einen handlungsfähigen Staat expressly focused its work not on individual substantive questions but on the conditions for reforms to succeed, that is, the structures that must exist for policy to have any effect at all (Jäkel u. a., 2025). The Federal Government's Modernisation Agenda and the Federal Modernisation Agenda point in the same direction; the National Regulatory Control Council comments continuously on their implementation.

**16** The report is intended as an initial contribution to this debate. It makes proposals for institutional design at selected but critical points, which are also intended to stimulate further discussion.

# 2

# Foundations of a competition authority for the future

# 2 Foundations of a competition authority for the future

## 2.1 Requirements for competition enforcement in the future

17 ↗**Chapter 1** identified three guiding ideas for a competition authority equipped for the future: resilience and adaptability, together with, as a fundamental governance requirement, accountability for the powers needed to achieve them. The following section develops the institutional requirements for a competition authority of the future from these ideas.

18 Resilience, meaning an institution's stability before and after a shock, requires short-term pressures to be absorbed within the institution. Such pressures may arise from particularly controversial individual cases, such as the Facebook decision and the 50+1 proceedings in football, as well as from political or economic crises that give rise to new expectations of the authority at short notice. For a competition authority of the future, this requires institutional structures that respond to such exceptional situations with composure and with regard to the authority's long-term development. They must be able to withstand political interventionism driven by extraneous considerations or short-term concerns. The necessary independence of competition authorities must also be understood in this sense.

19 Resilience stands in some tension with adaptability. Lasting change calls for transformation rather than stability. Since the economy as the subject of competition law regulation is continually changing, and technological progress accelerates that change, a competition authority must also be able to develop its working methods and knowledge continuously. Mechanisms are therefore needed to bring new insights and impulses for change into the organisation systematically.

20 Accountability, in turn, stands in tension with the independence necessary for the authority's resilience. Shielding decision-makers from external influences also creates autonomous decision-making powers. In a democratic state governed by the rule of law, those powers must be legitimised and made accountable without negating the independence that is substantively required. This calls in particular for transparent appointment procedures based on professional qualifications, as well as effective mechanisms for accountability, scrutiny and oversight. Within the authority too, a balance must be struck between independent decision-making powers and countervailing powers of direction and oversight.

21 The changes in the surrounding environment described in ↗**Chapter 1** give concrete form to these three requirements, but do not each create separate institutional requirements. Digitalisation and technological change call for technical and economic expertise and the ability to adopt new instruments and working methods. Climate change and geoeconomic shifts require new markets, technologies and dependencies to be identified early, without subjecting competition assessments to political pressure to act. Dealing with globally powerful companies requires sufficient staff and analytical resources, alongside clear limits on the authority's powers of intervention grounded in the rule of law. Finally, a more polarised public debate increases the importance of institutional resilience, professional reputation and continuous engagement with the expert community. The different challenges thus repeatedly lead back to the same institutional capabilities: withstanding extraneous interference, remaining open to relevant changes and better insights, and ensuring effective accountability for the resulting decision-making powers.

## 2.2 Independence and accountability as a question of governance

22 Whether an authority can meet these requirements depends on its institutional design. The institutional design of a successful authority cannot sensibly be assessed by taking the status quo as the starting point. A better starting point is to ask what fundamental choices would be made today if a competition authority were to be established afresh, with decades of knowledge about the effects a particular design can have (see the introduction above, ↗**paragraph 14**). As will become clear, this open-minded approach does not lead to radical proposals. It does, however, help identify clearly a feature that decisively shapes the institutional design of competition authorities. That feature is independence.

23 Two dimensions must be distinguished. Political independence concerns protecting the authority and its decision-makers from political and other extraneous external interference. Internal independence concerns the distribution of decision-making powers within the authority, particularly the relationship between its leadership and the decision-makers responsible for individual cases.

24 There is broad consensus in competition law on political independence. Competition authorities should be able to decide their cases solely on legal and substantive criteria. Whatever specific objective is attributed to competition law – protecting the competitive process, freedom of economic action, or efficiency and consumer welfare – successful interference in individual decisions runs counter to each of these objectives (Zimmer, 2026). Every authority is, of course, required to take decisions in

accordance with the law. However, a particularly high degree of independence matters for competition enforcement because its long-term institutional remit can conflict with short-term political interests, and its decisions frequently concern economically powerful actors who may themselves exercise political influence. In this sense, the dictum attributed to Franz Böhm that competition has no lobby retains an institutional core to this day, because fighting for competition often means fighting the powerful, alone if necessary. Independence therefore protects not only against state interference but also, indirectly, against the capture of state decision-making processes by particular interests.

**25** This is independence in the narrower sense. The Monopolies Commission regards political independence as an achievement whose outstanding importance it does not question and which it has consistently supported since its own establishment. Political independence concerns more than the authority's immediate decisions. Equally important is the control retained by political institutions, for example over the leadership, including whether they can remove it in response to particular circumstances or decline to reappoint it. Their influence over the available resources or rules of procedure is also relevant.

**26** The distribution of responsibility for case decisions within an authority illustrates the design questions involved. Where this responsibility is decentralised to small, professionally specialised and independent units, as in the Federal Cartel Office, the advantages are closeness to the substance of the case and a clear allocation of responsibility. At the same time, similar cases may be assessed differently and individual units may drift apart. If the leadership is therefore given powers to ensure consistency, questions in turn arise about the limits and oversight of those powers. Every institutional arrangement thus redistributes decision-making powers, oversight and responsibility, creating its own advantages and disadvantages. Institutional design must balance these tensions. Internal independence therefore begins with the decision-making structures concerned within the authority.

**27** The concept of independence is thus used in two senses. This report therefore always specifies which is intended, distinguishing independence from political interference on the one hand and internal independence on the other. As early as 1955, the explanatory memorandum to the legislation called for a ‘requirement of the strictest independence’ for those acting within the Federal Cartel Office (Bundestag printed paper II/1158, p. 49). In substance, the internal dimension concerns protection against external intervention less than internal governance, namely the distribution of decision-making powers within the authority. Moreover, both forms of independence remain ineffective if the authority lacks the staff, material or technical resources to

perform its tasks in practice. Adequate resources are therefore always a material prerequisite for effective independence.

**28** A current development illustrates particularly clearly that independence cannot be taken for granted: in June 2026, the US Supreme Court overturned the long-standing rules protecting members of the Federal Trade Commission against removal, significantly weakening their institutional independence (Supreme Court of the United States, 2026; see the introduction, **↗paragraph 6**). In a democratic state governed by the rule of law, independent institutions exercising public powers must indeed be accountable. The decision is also a warning, however, because democratic accountability need not be equated with politically elected office-holders having the power to intervene in staffing at any time. Accountability to the sovereign people can instead be adequately ensured through a narrow mandate, transparency in the exercise of that mandate, a one-off selection of personnel, budget allocation, judicial review and other institutional links. Experience shows that such links to other institutions are even important for an authority's success: those without backing and advocates are often unable to prevail in practice.

**29** The need for such accountability has, first, a basis in democratic theory. A fundamental insight of liberal democracies is that public institutions must be designed so that divergent perspectives, expert criticism and external correction remain not merely possible but effective over time.[2] This applies particularly to competition authorities: institutions that are given extensive powers of intervention while also being shielded from direct political direction. Precisely because of their powers and independence, it is essential that the way they reach decisions remains open to criticism, learning and correction.

**30** Alongside this democratic rationale is a narrower organisational one. Research shows that successful and long-established organisations in particular can develop weaknesses that are especially difficult to discern from within. There is a tendency to avoid fundamental self-criticism, and patterns of interpretation become entrenched (see further **↗section 5.2.1**). For the governance of a strong competition authority, this means that openness and receptiveness to criticism cannot be assumed: they must be institutionally safeguarded, all the more so the more successful and independent an authority is.

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[2] John Rawls derived the insight that disagreement among reasonable people under conditions of freedom is the norm rather than a deficiency from the 'burdens of judgement' (Rawls, 1993, pp. 54 ff.); Isaiah Berlin gives the idea a sharper formulation in value theory, arguing that fundamental values can conflict without there being a binding hierarchy among them (Berlin, 2006). For institutional design, it follows that no single body can claim to hold the definitively correct perspective.

31 Independence and accountability thus become the central governance question. What matters is not extending independence as far as possible, but answering who should be independent of whom in respect of which decision, and through which mechanisms the resulting powers are legitimised, overseen and kept open to correction. A strong competition authority must remain impervious to attempts to direct its decisions on extraneous grounds while being receptive to reasons that challenge its previous decisions, assumptions or practices. Independence and institutionalised accountability are therefore not opposites. Properly designed, they jointly safeguard the authority's capacity to learn and its resilience, including against external pressures. When an authority's independence is challenged politically, the attack is usually directed not at independence itself but at its justification. Accountability removes the basis for that allegation. How specific design options should be weighed between resilience and openness cannot be decided in the abstract. The following section develops a common set of criteria for assessing them.

## 2.3 Criteria for institutional design

32 The analysis and recommendations in this report are guided by three criteria: effectiveness, openness to change and adherence to fundamental values. These criteria build on the requirements developed in the preceding sections, without each corresponding individually to one of them. Rather, they provide a framework for assessing the specific proposals for institutional design. Effectiveness refers to the substantive objective of a competition authority: successfully fulfilling its core task of protecting competition. Openness to change concerns its capacity to learn and adapt, particularly its openness to new insights, divergent perspectives and institutional correction. Adherence to fundamental values concerns democratic accountability and rule-of-law safeguards in the exercise of public powers. This includes, in particular, transparency, accountability, procedural rights and effective oversight. The accountability for powers emphasised in ↗Section 2.1 is thus reflected primarily in adherence to fun-

damental values. Insofar as a concentration of power can also impair pluralism, receptiveness to criticism and institutional learning, it is relevant to openness to change as well.

### Effectiveness

**Box 2.1: Effectiveness as a criterion for the quality of an authority's actions**

## EFFECTIVENESS

**Do the proposed measures strengthen the authority's ability to protect competition effectively and with an appropriate use of resources?**

This is the case where the authority can perform its task successfully. The Federal Cartel Office's core task is to protect competition. Measures must aim to protect competition still more effectively by using resources efficiently, improving the quality of decisions and checking whether objectives are achieved. Appropriate prioritisation and reasonable durations of proceedings are particularly important in this regard.

Directly quantifying the state of competition, however, is extremely demanding. It is even harder to establish how much a single authority contributes to its development. The effectiveness criterion can consequently be assessed by reference to output only to a limited extent. Assessment must therefore draw on different indicators of resource use, procedures, decision quality and, where ascertainable, the impact of the authority's actions.

**33** The work of competition authorities involves cases of steadily increasing complexity. Competition law decisions must increasingly take account of effects not only on the market directly concerned but also at upstream or downstream stages of the value chain. Ever more information and data flow through vertical relationships between companies. This increases dependencies between stages of the value chain. Examples include cases involving major digital companies such as Amazon, Apple, Google,

Facebook and Microsoft. Large companies also frequently have considerable financial and human resources, which can further increase the complexity of proceedings. These and other aspects mean that the demands on the effectiveness of competition authorities are generally high and will continue to grow.

## Openness to change

**34** Competition policy as a whole, and long-established competition authorities such as the Federal Cartel Office in particular, have faced continually changing conditions for much longer than just the recent past. In the face of new, more complex market structures and technological change, a central challenge is to question proven routines critically and avoid falling back on outdated patterns. A general openness to change is required. As already mentioned in the introduction, systems based on artificial intelligence, for example, are currently revolutionising the possibilities for processing information and generating content, and could in future support casework. Adopting such innovations, as well as other new insights such as research findings, at an early stage requires forward-looking adaptability in substance and process, and continuous updating of in-house knowledge. This calls for openness particularly to input from outside, and for channels through which that input can inform substantive work and process design. Equally important are mechanisms for reviewing and, where necessary, correcting existing assumptions and routines. Openness to change is demonstrated less by the response to welcome input than by the response to unwelcome input. Approval is readily accepted; an institution's capacity to learn is revealed by how it deals with assessments it has not requested and whose findings do not suit it. Why this criterion is particularly important for a long-successful authority such as the Federal Cartel Office is explored further in ↗**Section 5.2.1**.

### Box 2.2: Openness to change as a criterion for the quality of an authority's actions

## OPENNESS TO CHANGE

**Do the proposed measures strengthen the authority's capacity to learn and adapt?**

At a time of dramatic upheaval in the economy and society, it is particularly important that an authority is open to adapting to new developments and insights. When, on the one hand, the objectives of competition law come under pressure, for example from a stronger emphasis on industrial policy, and, on the other, the instruments used by authorities are renewed, for example through AI, institutional structures that can readily integrate innovations are helpful. This also includes the ability to review and, where necessary, correct existing assumptions and routines in the light of new insights or reasoned criticism.

### Adherence to fundamental values

**35** Finally, it is important that competition authorities are clearly and firmly bound by fundamental constitutional values, precisely because of their far-reaching independence and powers of intervention. Measures that strengthen adherence to these values through appropriate institutional structures can contribute to this, for example by ensuring a high degree of transparency and establishing accountability obligations. Procedural safeguards grounded in the rule of law and effective judicial review are further elements. Precisely because political independence limits direct opportunities for political direction, these other forms of democratic accountability and rule-of-law safeguards become more important. This is especially true at times when industrial policy narratives or polarising proceedings place the authority under particular pressure. Strong adherence to fundamental values can therefore also contribute to the resilience and legitimacy of an independent competition authority.

### Box 2.3: Adherence to fundamental values as a criterion for the quality of an authority's actions

## ADHERENCE TO FUNDAMENTAL VALUES

**Do the proposed measures strengthen the authority's adherence to the values of democracy and the rule of law?**

It goes without saying that an authority must respect the rule of law, procedural fairness and proportionality in its actions. Its democratic accountability must also be ensured. Yet an authority's institutional structures can strengthen adherence to constitutional values to a greater or lesser extent. This is particularly important for a politically independent authority, because direct opportunities for political direction are deliberately limited and the exercise of its public powers must therefore be subject to other mechanisms of legitimation and oversight. Such measures concern, in particular, procedures, the status of those acting, transparency, accountability obligations and submission to effective judicial review. At times when independent institutions or individual proceedings come under greater political or societal pressure, such adherence to fundamental values can also strengthen their resilience.

**36** The three criteria were not developed specifically for this report. They can also be found, albeit under different terms and with different emphases, in the international literature on the governance of competition and regulatory authorities (Kovacic/Hyman, 2012b; OECD, 2023; Ottow, 2015, pp. 98 ff.). This confirms their suitability as assessment criteria. What matters for this report is that they translate the requirements developed above into a common assessment framework for the specific design options.

**37** The criteria also fit within a broader understanding of modern public administration. Administrative reforms have supplemented the traditional standard of lawful action with requirements such as effectiveness, efficient and service-oriented performance of tasks, and the ability to learn and adapt (Bogumil/Jann, 2020, pp. 306 ff.). The Federal Government's modernisation agenda takes up these requirements, emphasising digitalisation, faster decisions, individual responsibility and a culture of experimentation and learning, among other things (Bundesregierung, 2025b). The pro-

posals in this report must therefore also be assessed in terms of whether their institutional benefits are proportionate to the additional effort required and whether they may simplify procedures elsewhere.

# 3

# Organisational structure of the Federal Cartel Office

# 3 Organisational structure of the Federal Cartel Office

**38** This chapter briefly outlines the Federal Cartel Office's current structure and tasks. It shows that the Office's basic structure has certain features that stand out in international comparison. The subsequent chapters build on the status quo presented here, examine specific questions in greater detail and propose targeted adjustments.

**39** The Federal Cartel Office is an independent higher federal authority within the portfolio of the Federal Ministry for Economic Affairs and Energy (section 51 GWB). It was established when the GWB entered into force, initially in the Columbiahaus at Berlin-Tempelhof Airport, where it remained until moving to Bonn in 1999.[3] Its statutory basis is section 48 GWB.

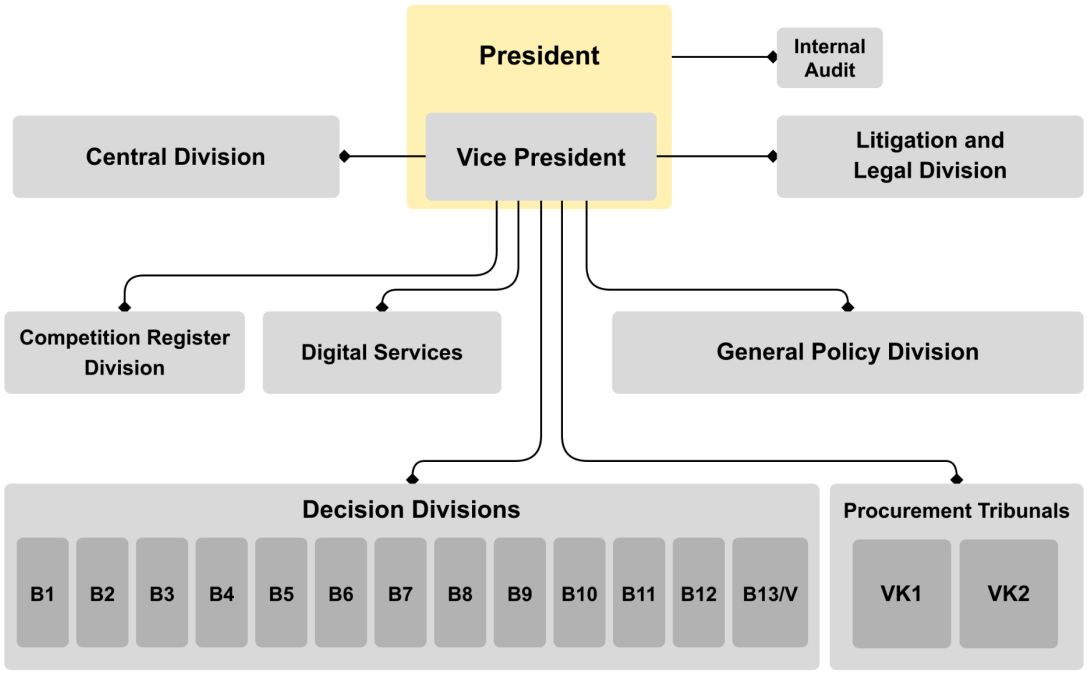
**40** According to the most recent figures, the Federal Cartel Office has 450.9 budgeted posts (Bundesregierung, 2025a, p. 207). Of these, 338.3 are for civil servants and 112.6 for employees. According to the 2026 budget, 21 of these budgeted posts were vacant (Bundesregierung, 2025a, p. 207). The actual number of posts to be filled is lower because of requirements to reduce staffing in the federal administration. The figures also include 13 employees of the Monopolies Commission. The decimal figures reflect part-time employment. In the current budget, the Federal Cartel Office's expenditure was put at around EUR 56 million and its revenue at around EUR 187 million. Revenue includes fines, with court costs offset (Bundesregierung, 2025a, pp. 171 f.). This revenue goes into the federal budget. The Federal Cartel Office is not financed from the fines it imposes. The total fines imposed each year fluctuate considerably, as illustrated by 2019 (EUR 848 million) and 2024 (EUR 24 million) (Bundeskartellamt, 2020, p. 34; Bundeskartellamt, 2025a, p. 36). The fees charged by the Office also generally go into the federal budget rather than financing the authority. However, 50 per cent of unplanned additional revenue may be used for certain additional expenditure, for example on staff (Bundesregierung, 2025a, p. 172).

**41** The Federal Cartel Office is organised with a single person at its head as President, who determines the allocation and conduct of the authority's business (section 51(2), second sentence, GWB) and represents it externally. ↗**Section 4.1.2** examines this position in detail. All organisational units of the Federal Cartel Office report to the President, although the Decision Divisions and Public Procurement Tribunals take

[3] A response by Federal Minister for Economic Affairs Ludwig Erhard to a minor interpellation by the SPD parliamentary group in the Bundestag provides information on the establishment of the Federal Cartel Office (Bundesminister für Wirtschaft, 1957).

their substantive decisions independently. The President is supported by a Vice President and may delegate some powers to them. According to the Federal Cartel Office's statements to the Monopolies Commission, this currently means in practice that the incumbent President frequently performs representative duties himself, while tasks relating to the Office's internal management are often delegated to the incumbent Vice President.

**Figure 3.1: Structure of the Federal Cartel Office**




Source: Bundeskartellamt (2026b).

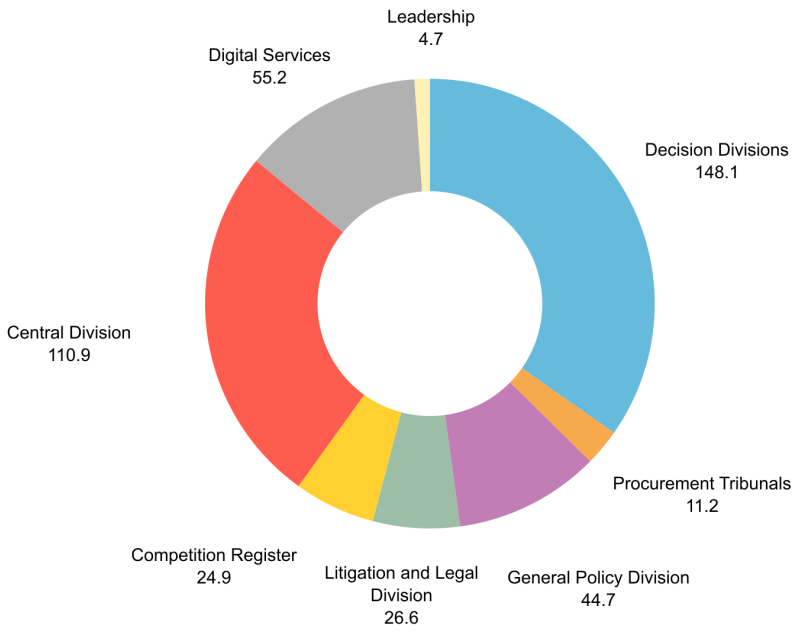
**42** The Decision Divisions have a distinctive role, examined in detail in particular in ↗**Section 4.2** of this report. These are the divisions that decide competition law cases (section 51(2), first sentence, GWB). They account for 148.1 of the Federal Cartel Office's 450.9 budgeted posts. Although they report organisationally to the authority's leadership, they take their substantive decisions in competition law cases independently. In taking those decisions, they are not bound by substantive instructions from either the authority's leadership or the ministry to which the competition authority is assigned (see further ↗**Section 4.1.3**).

**43** The Decision Divisions are currently organised as follows (Bundeskartellamt, 2026b). There are thirteen Decision Divisions. Most are each responsible for several economic sectors (B1–B9, B11 and B13). They decide on proposed mergers (sections 35 ff. GWB), cases involving abuse of market power (sections 19 ff. GWB and Article

102 of the Treaty on the Functioning of the European Union, TFEU) and anticompetitive agreements (section 1 GWB and Article 101 TFEU), and conduct sector inquiries (sections 32e and 32f GWB). Three of these divisions with sectoral responsibilities also perform additional tasks. Decision Division 8 is responsible for energy monitoring (section 48(3) GWB) and the Market Transparency Unit for Wholesale Electricity and Gas (sections 47a ff. GWB). It collects and analyses information from the electricity and gas markets and from electricity and gas exchanges. In recent years, Decision Division 11 has dealt with the prosecution of subsidy abuse in connection with the temporary price caps for electricity, pipeline natural gas and heat, which applied particularly in 2023 (Bundeskartellamt, 2025b). Decision Division 13 is responsible for consumer law sector inquiries (section 32e(6) GWB), the Market Transparency Unit for Fuels (section 47k GWB) and upstream fuel markets (section 29a GWB). The Market Transparency Unit for Fuels passes price data for Super E5, Super E10 and diesel to providers of consumer information services (Bundeskartellamt, 2021a, p. 44). Alongside the Decision Divisions responsible for specific economic sectors, two further Decision Divisions have cross-sector responsibility for prosecuting administrative offences relating to anticompetitive agreements (B10 and B12). There are also two Public Procurement Tribunals organised along similar lines to the Decision Divisions. They decide on complaints concerning federal procurement procedures and account for 11.2 of the Office's 450.9 budgeted posts. They too take their substantive decisions independently. In total, therefore, 159.3 budgeted posts, or around 36 per cent[4] of all the Office's budgeted posts, are assigned to divisions that take substantive decisions independently of the Office's leadership.

[4] The figure of 36 per cent is calculated from 159.3 budgeted posts out of 450.9 budgeted posts, less 13 posts allocated to the Monopolies Commission.

## Figure 3.2: Posts in the Federal Cartel Office's organisational areas as at April 2026




Sources: Information provided by the Federal Cartel Office to the Monopolies Commission.

Note: The information provided by the Federal Cartel Office is more recent than the Federal Government's 2026 budget (Bundesregierung, 2025a). Differences in the total number of staff are attributable to changes in the number of vacant budgeted posts.

**44** This structure makes the two dimensions distinguished in ↗**Section 2.2** immediately tangible. The authority's independence from political interference is reflected in the fact that its substantive decisions are not subject to instructions from the supervising ministry. The question of internal governance – the distribution of decision-making powers within the authority – is reflected, by contrast, in the special position of the Decision Divisions, which report organisationally to the leadership but remain free from its instructions when deciding cases. The approximately 36 per cent of budgeted posts mentioned above that are allocated to units taking independent substantive decisions give this internal dimension quantitative weight, while also showing its limits. It should be borne in mind that freedom from instructions applies only to decisions within the meaning of section 51(2), first sentence, GWB (for this concept, see ↗**paragraph 80**). Instructions to help the leadership prepare presentations or to participate in working groups, for example, would therefore be permissible. In terms of personnel, strictly speaking independence applies only to the chairs and rapporteurs in the Decision Divisions or Public Procurement Tribunals. Case officers, administrative staff and secretariats are not covered. At the same time, the ‘culture of independence’ has a strong wider influence, so that a high degree of autonomy is likely to exist in practice in these areas too.

**45** Both sides of the governance question are thus already reflected in the Federal Cartel Office's organisational arrangements. Protection against interference is unusually strong. At the same time, decision-making powers are distributed among numerous small, specialised units with only limited coordination between them. Together, these features form an arrangement whose strengths and weaknesses can be assessed only in conjunction.

**46** By contrast, the Federal Cartel Office's other divisions and units, and with certain limitations its Internal Audit unit (section 5(1) of the General Administrative Regulation on Internal Audit in the Federal Administration, VwV IR), are bound by substantive instructions at least from the authority's leadership. According to statements by the Office's staff, this is chiefly reflected in practice in their carrying out assignments for the leadership, such as preparing opinions on legislative amendments or presentations for specialist conferences. This does not affect the substantive independence of the authority as a whole from the economics ministry.

**47** The divisions bound by instructions from the authority's leadership include the General Policy Division. This division accounts for 44.7 of the Federal Cartel Office's 450.9 budgeted posts. Its units provide substantive support to both the leadership and the Decision Divisions, and represent the Office internationally, in dealings with the Federal Government and before the public (Bundeskartellamt, 2021a, p. 7).

**48** The Litigation and Legal Division, with 26.6 budgeted posts, likewise primarily provides substantive support to the leadership and Decision Divisions and represents the Office in court (Bundeskartellamt, 2021a, p. 7).[5] There is also a division responsible for maintaining the Competition Register under the Competition Register Act (WRegG). The register lists companies to which serious economic offences are attributable (Bundeskartellamt, 2021a, p. 43). Its purpose is to prevent such companies from benefiting from public contracts and concessions (Bundeskartellamt, 2021a, p. 43). The Digital Services Division manages IT infrastructure and also supports data analysis and the handling of forensic evidence. Finally, there is an Internal Audit staff unit dealing with compliance matters and process optimisation within the authority, and the Central Division, which is responsible for administrative tasks.

**49** It is striking that administrative tasks appear to tie up a relatively large number of staff. As **↗Table 3.1** shows, this stands out in international comparison. Changes in the Federal Cartel Office's organisation chart over the past 20 years reflect the increase in staff in administrative units. In 2007, the Office had a Central Division comprising two units, Z1 (Administration) and Z2 (Information) (Bundeskartellamt, 2007a,

[5] The division does not deal solely with legal tasks. It also houses Unit P2, Library and Coordination Tasks.

p. 260). By 2009, the Central Division had already been split into six units: ZB (Procurement), ZH (Budget and Organisation), ZP (Human Resources), ZW (Knowledge and Technology), ZS (Services) and Z-IT (Head of IT) (Bundeskartellamt, 2009, p. 210). The Central Division currently comprises five units (see **↗Figure 3.1**). In addition, there are three units in the Digital Services Division, which was separated from the Central Division in 2024 (Bundeskartellamt, 2024). It also seems likely that the tasks of the 'Library and Coordination' unit, which has existed since at least 2011 and is currently located in the Litigation and Legal Division, were previously performed in the Central Division (Bundeskartellamt, 2011a, p. 171). Overall, therefore, the original two units of the Central Division have become eight or even nine units over the past 20 years.

**50** The number of Decision Divisions and Public Procurement Tribunals has barely changed over the same period. In 2007, there were 12 Decision Divisions and three Public Procurement Tribunals (Bundeskartellamt, 2007a, p. 260). There are currently 13 Decision Divisions and two Public Procurement Tribunals (see **↗Figure 3.1**). The principal addition is the Competition Register Division, comprising three units. There has been no comparable subdivision in the General Policy Division (G) or Litigation and Legal Division (P). In 2007, Division G comprised six units (Bundeskartellamt, 2007a, p. 260); it now has seven (see **↗Figure 3.1**). It should be noted, however, that in 2007 the Press unit was separate, whereas it is now part of the General Policy Division. At the same time, the Special Unit for Combating Cartels was transferred from the General Policy Division to the Litigation and Legal Division. In total, therefore, one unit has been added. The picture is similar in the Litigation and Legal Division. In 2007, it was still an organisational unit without subdivisions (Bundeskartellamt, 2007a, p. 260). However, the two units 'Library and Coordination' and 'Special Unit for Combating Cartels' largely took over tasks from other divisions. In practice, subdivision has occurred only insofar as there are now two units responsible for litigation (see **↗Figure 3.1**).

**51** Overall, the Federal Cartel Office's number of budgeted posts has increased from 269 in 2007 to 450.9 (Bundesregierung, 2025a, p. 207; Deutscher Bundestag, 2006, p. 159). There is much to suggest that a significant part of this growth concerns tasks that were located in the Central Division's two units 20 years ago. Nevertheless, according to the Monopolies Commission's information, Divisions G and P have also grown considerably, if not in the number of units then in the number of staff per unit. Division D in particular has expanded substantially as digitalisation has progressed. The Decision Divisions and Public Procurement Tribunals, which perform the authority's core business, have also grown, but to a lesser extent. Their declining relative importance has been accompanied by growing importance of the divisions that do not enjoy independence from the authority's leadership. The Federal Cartel Office's staffing resources are examined in **↗Section 4.1.4**.

**Table 3.1: Staffing structures of competition authorities internationally**

| Country/authority | Traditional competition law tasks* | Administration | Other tasks |
|---|---|---|---|
| Federal Cartel Office | 56 % | 21 % | 23 % |
| Belgium | ~ 85 % | ~ 15 % | 0 % |
| Italy | ~ 40 % | ~ 18 % | ~ 42 % |
| Portugal | 60 % | 17.6 % | 22.4 % |
| Austria | ~ 70 % | 10 % | ~ 20 % |
| Switzerland | 50 % | 20 % | 30 % |
| Spain | 22.3 % | 17.6 % | 60.1 % |
| United Kingdom | 16.6 % | 11 % | 72.4 % |

* Merger control, abuse control and cartel prosecution.

Source: Survey of competition authorities.

52 For the considerations that follow, it is important to establish where economic analysis sits within the authority's structure. It is not assigned to a separate division but is located in the Economic Policy Unit within the General Policy Division. The head of this unit is the Office's 'Chief Economist'. Parts of the Digital Services Division support data analysis. ↗Section 5.3 returns to the question of the Federal Cartel Office's capacity for data-driven market monitoring and empirical analysis.

53 The structure described has evolved historically, and alternatives are possible. The literature identifies several design parameters through which a competition authority could be organised differently (Jenny, 2016; Kovacic/Hyman, 2012b).

- Political independence and accountability: The degree of a competition authority's independence depends on how its accountability obligations are designed. Structural, operational and financial accountability obligations stand in tension with independence.
- Areas of responsibility: Competition authorities can take on tasks in addition to their core function. Typical examples are consumer protection and sectoral regulation.

- Objectives: The objectives under which competition authorities operate can influence their prioritisation of cases and their choice between competition law instruments. Alongside protecting competition, objectives may include consumer welfare or economic growth, for example.
- Leadership structure: An authority's leadership can be structured in different ways. Typically, responsibility is entrusted either to a single individual or to a collegial body comprising several people.
- Location of case decision-making: Responsibility for a case is closely linked to the power to decide it. Internationally, there are therefore competition authorities in which case decisions are taken by the individual head, a leadership body or a court. At the Federal Cartel Office, independent Decision Divisions investigate and decide cases.
- Organisational structure: A competition authority's general structure also shapes its work. Systems in which divisions' responsibilities are segmented by economic sector, as at the Federal Cartel Office, have different strengths and challenges from systems in which teams are assembled for individual cases.
- Resource management: Competition authorities have limited resources. These are directed in particular through case prioritisation, the choice of working methods and staff selection.

54 For none of these design parameters is a clearly superior arrangement evident. The diversity of solutions found internationally confirms this. The following chapters therefore examine them individually and assess their specific design at the Federal Cartel Office against the three criteria of effectiveness, openness to change and adherence to fundamental values (↗Section 2.3).

55 The following chapters develop a connected argument in three stages. ↗Chapter 4 addresses decision-making rights, analysing how the Federal Cartel Office's independence can be safeguarded. ↗Chapter 5 then turns to the key foundations for decisions in a modern competition authority. It examines what foundations an authority whose independence is thus secured needs in order to continue meeting future requirements. ↗Chapter 6 finally considers how the Federal Cartel Office's excellent international connections can be used. It proposes a division of labour between competition authorities to create synergies and thereby further increase the Federal Cartel Office's effectiveness.

# 4

# Safeguarding independence

# 4 Safeguarding independence

56 This chapter answers the question: is the independence of the Federal Cartel Office safeguarded institutionally in a way that can withstand a gradual or abrupt impairment of its work? It thus concerns the authority's decision-making rights: who may decide, who may influence those decisions, and how both are safeguarded.

57 ↗Section 2.2 showed that the concept of independence describes two relationships that must be kept distinct. One concerns the authority's position vis-à-vis political institutions; the other concerns the distribution of decision-making powers within it. The question of how independence is safeguarded institutionally also raises the question of how accountability can provide checks on existing powers.

## 4.1 Independence from external political interference

58 Independence from political interference is the defining feature of the Federal Cartel Office. It means that the authority decides its cases solely on legal and substantive criteria, without being subject to instructions from its supervising ministry. This feature has evolved historically and is now common internationally. As already explained in ↗Section 2.2, however, independence cannot be taken for granted. Political independence results from several institutional arrangements that may individually appear inconspicuous and become effective only in combination.

### 4.1.1 A clear mandate

59 At first sight, defining a competition authority's responsibilities appears to be a question of expediency. Yet it directly affects its political and internal independence. Every additional task brings its own objectives, interest groups and political expectations. The broader the mandate, the more points at which expectations can be brought to bear on the authority, and the more difficult it becomes to maintain the protection of competition as the institution's core purpose. The reverse also holds, however: an authority whose remit is too narrow loses effectiveness and, with it, support. Where responsibilities are divided between several bodies, coordination costs arise and responsibility can be shifted elsewhere. In the worst case, the authority is unable to act on matters directly affecting competition.

60 The question of the appropriate remit cannot therefore be answered solely in terms of political independence. It is also a question of effectiveness and of whether an ad-

ditional task fits the Federal Cartel Office's core mandate. This depends to a significant extent on whether the task offers substantive synergies with the core mandate and whether alternative solutions are inferior. The following discussion therefore examines both aspects.

**61** The range of responsibilities of competition authorities differs between countries. A broad distinction can be drawn between authorities with a narrower remit, which have few or no responsibilities beyond enforcing competition law, and multi-function market authorities with a broader remit (Kovacic/Hyman, 2012b, p. 533), which are also responsible, for example, for consumer protection or specific sectoral regulation. The Monopolies Commission recommends retaining the Federal Cartel Office's relatively narrow mandate in future.

**62** The breadth of an institution's mandate should be distinguished from the question of the priorities guiding a competition authority's work. The two questions are nevertheless related: the broader an authority's portfolio of responsibilities, the greater the need, as a rule, for transparent management of conflicting objectives and the deployment of resources. Even with a narrow mandate, however, the question arises of the criteria by which cases are prioritised and the authority's successes assessed. At present, the Federal Cartel Office has no concrete, transparent agenda. On this issue, the Monopolies Commission notes that a public list of the authority's priorities could give its work greater consistency and make its achievements more measurable (see ↗**Section 4.3.2.2**).

**63** Some other areas of law enforcement overlap considerably with competition law and offer significant synergies. The standard examples in the literature are sector-specific regulatory laws, such as those enforced in Germany by the Federal Network Agency or the Federal Office for Agriculture and Food, and the enforcement of consumer rights (Jenny, 2016, pp. 8 ff.; Kovacic/Hyman, 2012b, p. 533; Ottow, 2015, pp. 31 ff.).

**64** The practical relevance of considering a broader range of responsibilities for competition authorities is illustrated, among other examples, by the Netherlands, where the competition authority (Nederlandse Mededingingsautoriteit), the consumer protection authority (Consumentenautoriteit) and the postal and telecommunications regulator (Onafhankelijke Post en Telecommunicatie Autoriteit) merged in 2013 (Lexology, 2013). The Austrian Federal Competition Authority also has numerous additional powers alongside competition law enforcement. These include powers to make applications and bring actions under the Unfair Competition Act (UWG) and within the scope of the P2B Regulation (Bundeswettbewerbsbehörde, o. J.). It also has a special role in protecting media plurality in merger control (Bundeswettbewerbsbehörde,

2026). Further examples can be found in countries such as Denmark, Finland, Poland, Spain and the United Kingdom (Competition and Markets Authority, o. J.a; Ottow, 2015, p. 33; Urząd Ochrony Konkurencji i Konsumentów, o. J.).

### Table 4.1: Additional responsibilities of competition authorities internationally

| Country/authority | Additional responsibilities |
|---|---|
| Federal Cartel Office | Review of federal public procurement procedures, Competition Register, Market Transparency Unit for Fuels, Market Transparency Unit for Electricity and Gas, (...)* |
| Belgium | Enforcement of the prohibition of abuse of economic dependence |
| Directorate-General for Competition | State aid control, Digital Markets Act (jointly with the Directorate-General for Communications Networks, Content and Technology), foreign subsidies control (jointly with the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs) |
| Italy | Consumer protection including unfair commercial practices, competition advocacy including opinions and recommendations to Parliament, conflicts of interest involving public office holders, (...)* |
| Austria | Unfair commercial practices, competition monitoring, (...)* |
| Portugal | Promoting competition ('competition advocacy'), (...)* |
| Switzerland | Supervision of compliance with the Internal Market Act, which targets rules of cantons and municipalities that restrict competition, (...)* |
| Spain | Unfair competition, sector-specific regulation (energy, postal services, telecommunications, transport, audiovisual media), (...)* |
| United Kingdom | Consumer protection, advice on subsidies, oversight of the internal market between the nations of the UK, (...)* |

* The authority concerned identified further responsibilities in the survey. This is a selection.

Source: Survey of competition authorities.

**65** An authority with broad responsibilities spanning several areas benefits from typical economies of scale. Internal administrative structures can be consolidated, realising synergies. Moreover, competition law, sector-specific regulatory law and consumer law often pursue similar objectives, and their respective instruments can complement one another accordingly. The objective of competition law of protecting competition, including, among other things, the variety of offerings available to consumers, is supported by consumer rights that ensure that the benefits of choosing from this

variety are not, for example, frustrated by lock-in strategies or undermined by deception (Fels/Ergas, 2014, p. 5; Monopolkommission, 2018, paragraphs 245 ff.). Bringing competition law enforcement and the protection of consumer rights together in one authority can create opportunities to combine insights and instruments from both areas (Fels/Ergas, 2014, p. 17; Podszun u. a., 2018, p. 276). Even where responsibilities are assigned to different divisions, coordination through channels within an authority can require considerably less effort than coordination between authorities (Kovacic/Hyman, 2012b, p. 533).

**66** Against this, authorities with a narrower remit tend to be able to act and present themselves more coherently (Kovacic/Hyman, 2012b, p. 533). Conflicting objectives may arise in individual cases between the various areas of responsibility of an authority with a broad remit spanning several areas. Such conflicts would have to be weighed up within the authority. By contrast, where responsibility for the overlapping tasks is distributed among several authorities, this automatically increases accountability, because decisions must be explained intelligibly not only to those affected and, in some cases, to courts, but also to another authority, or even coordinated with it (Monopolkommission, 2018, paragraph 950; Ottow, 2015, p. 132). This can improve the quality and acceptance of decisions.

**67** The nature of the responsibilities assumed alongside an authority's core work also matters. For competition authorities as politically independent institutions, it should be borne in mind that taking on responsibilities subject to ministerial instructions on substantive matters means that the authority's independence can no longer be guaranteed as a whole. Where responsibilities overlap, ministerial instructions may affect areas protected by political independence or, conversely, the authority may refuse to accept ministerial instructions on substantive matters by referring to areas in which it is politically independent. It should also be remembered that the number of potential occasions for political or public pressure increases with the number of areas of responsibility. If strong pressure arises in several areas simultaneously, this could increase the likelihood that substantive decisions are successfully influenced from outside. Another important aspect is that authorities with a narrower remit face no or less competition from other areas of responsibility in the allocation of staff, budgetary resources and administrative support (Kovacic/Hyman, 2012b, p. 532). This reduces the risk that, where resources are shared between several areas of an authority's work, important tasks that are less popular, prestigious or promising fall behind (Ottow, 2015, p. 134). A further argument for a narrow remit is that authorities with fewer responsibilities are easier to lead. Changes such as steps towards digitalisation tend to be easier to implement the fewer interdependencies arising from shared infrastructure between an authority's heterogeneous divisions need to be considered.

**68** In the network industries, namely telecommunications, postal services, railways and energy, where responsibilities for protecting competition overlap, Germany's Federal Network Agency has a broad mandate. This includes preventing potential abuses of market power from the outset or remedying them after the event. Sector-specific regulatory law often provides highly differentiated regulatory instruments to address the particular problems in these sectors, for example in market access. Transferring these responsibilities to the Federal Cartel Office would result either in a substantial expansion of the Office[6] or in a sharp reduction in the intensity of regulation. The latter would probably be impermissible on EU law grounds alone and, given that at least some of the infrastructure concerned constitutes natural monopolies, would also be impossible without considerable harm to competition. Finally, the Federal Network Agency possesses technical expertise in the relevant specialist fields which, at least in this form, could not readily be maintained within the Federal Cartel Office, since the latter must in principle cover all sectors of the economy.

**69** In practice, the question often arises of when intervention by the Federal Network Agency is appropriate and when the Federal Cartel Office should intervene (Monopolkommission, 2022, paragraphs 330 ff.). To coordinate the authorities, the specific regulatory laws impose duties to coordinate with the competition authorities: for certain determinations closely related to competition law and with far-reaching implications, such as market definition and the question of whether a dominant position exists, the Telecommunications Act (TKG) and the Postal Act (PostG), for example, provide that the determination may be made only with the Federal Cartel Office's consent (‘in agreement with’), section 197(1) TKG and section 85(1) PostG respectively. For other decisions, the Federal Cartel Office must at least be given an opportunity to comment in good time (section 197(2) and (3) TKG and section 85(1), final part, PostG respectively). Conversely, the Federal Cartel Office must give the Federal Network Agency an opportunity to comment when it conducts proceedings in the telecommunications or postal sectors (section 197(4) TKG and section 85(2) PostG respectively). In addition, both authorities are to work towards a uniform interpretation of the relevant Act that maintains its consistency with the GWB, and must inform each other of relevant observations and findings (section 197(5) TKG and section 85(3) PostG respectively). Section 58 of the Energy Industry Act (EnWG) contains similar provisions for the energy sector. Although overlapping responsibilities entail a risk that neither authority acts, this accordingly requires close coordination between them. In the Monopolies Commission's assessment, the exchanges between the Federal Cartel Office and the Federal Network Agency appear, on the whole, to function smoothly in current practice.

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[6] As at 1 January 2026, the Federal Network Agency's actual staff in full-time equivalents number 1,282.79 in telecommunications alone (Bundesregierung, 2026a, p. 2).

**70** The Monopolies Commission takes the view, in principle, that the Federal Cartel Office should remain an authority with a narrow remit because of its particular characteristics. The competitive order of the social market economy, whose continued existence the Federal Cartel Office safeguards through its work, is a core element of the German economic model. Given the importance of this task, it is appropriate for the responsible authority to be able to devote the vast majority of its human and material resources to it, without conflicting objectives or the need to consider other aspects.

**71** Sector-specific regulators maintain an ongoing relationship with the regulated companies and depend on the information they provide. Theory and empirical evidence show that this gives rise to a risk of 'regulatory capture' (Dal Bó, 2006; Duso, 2005). This describes a situation in which regulators are influenced by the companies they supervise and prolonged interaction between an authority and the companies concerned can lead to a shared understanding. A multi-function market authority responsible for both competition protection and regulation could therefore, over time, move closer to the interests of its industry than an authority that intervenes only across sectors and on a case-by-case basis. This weighs against combining regulatory responsibilities and competition enforcement in a single authority.

**72** Preserving independence in terms of resilience to political and public pressure also favours a narrow remit. This can ensure that pressure is substantial only in exceptional cases, rather than repeatedly across a wide range of activities. Resilience also develops through a lived culture of independence that instils the corresponding self-confidence. If staff work more frequently in areas subject to instructions, or an authority is dominated by staff who do not enjoy independence, the capacity to withstand pressure that independence sometimes requires may decline. This also supports maintaining the staffing structure (see ↗**Chapter 3**) so that a clear majority of staff always 'live' independence. Additional areas of activity should be taken on only if work in those areas is to be politically independent, as competition law decisions are, if their scale does not displace the core activity of enforcing competition law, and if they are closely related to that core activity. The Office would also need to be provided with sufficient additional resources. As long as this remains assured, the Office can protect competition effectively. For the Federal Cartel Office, however, gains in effectiveness derived solely from economies of scale could not outweigh the advantages of focus.

**73** This does not mean, in principle, that no additional responsibilities should be assigned to the Federal Cartel Office, particularly in the fields of sector-specific regulation and consumer protection. In its opinion on the 11th amendment to the GWB, the Monopolies Commission expressed openness to allowing the Federal Cartel Office to sanction infringements of consumer law where it has conducted a sector inquiry and individual legal action is not to be expected (Monopolkommission, 2023, pp. 14 f.).

Despite the high level of consumer protection, gaps may exist in Germany that are addressed neither by civil courts nor by public authorities, because there is no overarching administrative competence for consumer law enforcement (Podszun u. a., 2018, pp. 183 ff.). In its special report Wettbewerb in der Lebensmittellieferkette, the Monopolies Commission also recommended that compliance with the UTP rules[7] protecting against unfair competition in the food sector should be monitored by the Federal Cartel Office instead of the Federal Office for Agriculture and Food (Monopolkommission, 2025a, pp. 405 ff.). It reached this assessment particularly on grounds of effectiveness. UTP regulation and the prohibition of abuse under competition law overlap in their scope and use similar instruments. Enforcement of the UTP rules by a Decision Division of the Federal Cartel Office would have the advantage of minimising difficulties in drawing boundaries between the two regulatory regimes and parallel proceedings, thereby making administrative law enforcement more effective. Both areas would involve activities subject to independent decision-making.

**74** In future, new responsibilities should be assigned to the Federal Cartel Office only if three conditions are met: first, they should relate to the protection of competition. Second, their core activity should consist of taking independent decisions. Third, assigning them to the Federal Cartel Office should generate synergies or other efficiencies. In particular, this should ensure that the protection of competition is not diluted but, in the best case, strengthened.

## RECOMMENDATIONS

- The Federal Cartel Office should continue to avoid taking on too many additional responsibilities. Competition law enforcement should remain at the centre of its work. This should be reflected in the number of divisions and staff responsible for enforcing competition law.
- Any additional responsibilities taken on by the Federal Cartel Office should be covered by political independence and characterised by clearly identifiable synergies with its core work. One conceivable example would be to enable the Federal Cartel Office to sanction infringements of consumer law where it has conducted a sector inquiry and individual legal action is not to be expected.
- If other authorities (e.g. the Federal Network Agency) possess a high level of relevant technical expertise, this can be an argument for leaving these activities with, or assigning them to, those authorities. Otherwise, there would be a risk that decision-makers would not have direct access to that technical expertise. Such an approach requires close coordination between the authorities to ensure consistency

[7] Directive (EU) 2019/633 of 17 April 2019, the 'UTP Directive'.

in their approach to competition, although the relevant sectoral legislation generally already provides for this.

### 4.1.2 The authority's leadership and its scope for influence

**75** The leadership of the Federal Cartel Office is not involved in the actual decision-making process, which is entrusted to the Decision Divisions. Nevertheless, through organisational decisions, management of staff and resources, the setting of priorities, and its communication and cooperation practices, the leadership has a decisive influence on how the authority performs its tasks and is perceived by the public. The quality criterion of adherence to fundamental values developed in **↗Section 2.3** is highly relevant to the authority's leadership. The leadership represents the Office externally and has the important responsibility of resisting improper external interference and thereby demonstrating resilience. The significance of this task recently became apparent when fuel prices rose sharply in the course of the Iran war (Bild, 2026). Here, care must be taken to ensure that the authority can preserve its political independence. At the same time, the leadership, which in particular regulates the conduct and allocation of business, is responsible for identifying any necessary adjustments to the Office's internal structures and initiating them in good time. This addresses the criterion of openness to change. Finally, limiting power also matters for the authority's leadership as an expression of the criteria of openness to change and adherence to fundamental values. The leadership's power can derive from both formal and informal factors, which are examined more closely below. The leadership is thus a pivotal point for the central governance question in **↗Section 2.2**:[8] it determines how resilient the authority is to attempts to influence it and how receptive it remains to objections. Strong leadership can promote both at once; it can also strengthen one at the expense of the other.

**76** A strong competition authority needs strong leadership. Its task is to give the authority strategic direction, develop and modernise its organisation, deploy resources and staff responsibly and set priorities for the use of scarce funds, ensure coherence between the Decision Divisions through administrative principles and coordination, represent the Office in dealings with policymakers, courts and the public – including deciding on appeals – and defend its independence externally. This leadership responsibility reaches its limit where it would influence casework assigned to the Decision Divisions, which are independent within the authority. External political independence must therefore be balanced with the internal independence of decision-

[8] Those who pursue far-reaching changes from within public administration also find that such changes depend on support from the highest level of leadership; see, for example, the manifesto of the Initiative Verwaltungsrebellen (Initiative Verwaltungsrebellen, o. J.).

makers. The recommendations in this report do not call the role of the leadership into question. They concern how that role is exercised: transparently, with clear limits where it encounters decision-making in individual cases that is free from instructions, and subject to accountability mechanisms that make its power open to scrutiny.

#### 4.1.2.1 Role and impact

**77** The leadership of the Federal Cartel Office consists of a President and a Vice-President. The functions exercised by the leadership are varied and cannot be identified at a glance from a single central provision. Only section 51 GWB – and section 51a of the draft GWB proposed in the bill for a 12th amendment to the GWB – contains a small number of rather general statements concerning the office of President. Ultimately, therefore, incumbents can have a strong formative influence on the Office through their leadership. Further details of the President's role can be found in the rules of procedure, which are not, however, publicly available. Greater transparency should be created here (for details, see ↗**Section 4.3.1.3**). The rules of procedure are issued by the President – albeit only with the approval of the Federal Ministry for Economic Affairs and Energy – so the incumbent can also shape matters in this respect.

**78** The GWB contains provisions only for the office of President. Where the Vice-President acts, they are subject to the President's instructions in accordance with the traditional organisation of an authority. The President may delegate their tasks to the Vice-President. Where the tasks of the office of President are listed below, they may therefore in practice be performed by the Vice-President, who nevertheless acts subject to instructions. Details of the relationship between the two offices can be found in the rules of procedure, which are not publicly accessible. Since the 12th amendment to the GWB is in any event intended to regulate the office of President by statute in the new section 51a of the draft GWB, the opportunity should be taken to place the office of Vice-President on a statutory footing as well (↗**Section 4.3.1.1**).

**79** A superficial reading of the GWB's provisions suggests that the President has little power. The role of President of the Federal Cartel Office is strongly shaped by section 51(2) GWB. Its first sentence provides that the Federal Cartel Office's ‘decisions’ are taken by the Decision Divisions, formally imposing considerable limits on the President's power. The express statutory allocation of decision-making powers to the Decision Divisions, which are structured along judicial lines and, under section 51(3) GWB, take decisions in a panel consisting of a chair and two associate members (for details of decision-making, see ↗**Section 4.2.1**), makes clear that the President is, in principle, not authorised to interfere with the special procedural position of appointed members of a Decision Division, take over decisions or amend them (Schneider, 2022a, para. 16). The authority leadership's otherwise comprehensive power to issue

instructions is thus disapplied at the Federal Cartel Office in respect of decisions within the meaning of section 51(2), first sentence, GWB (on the independence of the Decision Divisions, see **↗Section 4.2**).

**80** Alongside the decisions mentioned in section 51(2), first sentence, GWB and assigned to the Decision Divisions, the authority acts in other ways. The circumstances in which a decision falls within a Decision Division's competence under the Act are not defined by statute, but must be established by interpreting each provision individually (Schneider, 2022a, para. 13; Stockmann/Picht, 2024a, para. 23). Decisions, generally referred to in practice as orders, include all sovereign measures regulating an individual case with external effect on third parties (Gröss, 2024a, para. 6). In addition to organisational decisions, other administrative action therefore remains with the President. This includes:[9]

- representing the authority externally, for example in dealings with the media and other decision-makers, before associations and companies, and at European and international level (see **↗Section 4.1.2**)
- a general power to issue instructions as head of the authority (see **↗Section 4.2.2**)
- a coordinating role in relation to organisational units that are not subject to instructions (see **↗Section 4.2.2**)
- regulating the allocation and conduct of business through rules of procedure requiring confirmation by the Federal Ministry for Economic Affairs and Energy, under section 51(2), second sentence, GWB (see **↗Section 4.3.1.3**)
- personnel policy and resourcing organisational units (see **↗Section 4.2.3**)
- establishing and publishing administrative principles,[10] which may bind the Federal Cartel Office through the general principle of equality, under section 32c(3) GWB (negative clearance), section 53(1), third sentence, GWB (general administrative principles), section 81d(4) GWB (guidelines on fines) and section 81h(3) GWB (leniency programme); on the tension with the independence of the Decision Divisions, see Schneider (2022c, paras. 3 f.)
- representing the Office in appeal proceedings and appeals on points of law
- making submissions in civil competition litigation under section 90 GWB
- arranging for notices to be published under section 27 GWB (publication of competition rules)[11] and section 43 GWB (e.g. initiation of the main examination proceedings and applications for ministerial authorisation)
- preparing the activity report under section 53 GWB

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9 See the overviews in Schneider (2022a, para. 6), Stockmann/Picht (2024a, para. 17) and Zorn (2022, para. 12).

10 For an overview of published administrative principles, see Jungermann (2022, para. 22).

11 The bill for a 12th amendment to the GWB provides for sections 24 to 27 GWB to be repealed.

- activities under Article 14 of Regulation (EC) No 1/2003 (the Competition Enforcement Regulation) (Advisory Committee)

**81** The way the authority presents itself externally does not directly affect decision-making, but shapes the expectations that guide its internal work. It is highly significant that the authority is generally represented externally by its leadership. This includes cooperation and exchanges with other authorities, for example within the European Competition Network (ECN) and the International Competition Network (ICN). The Federal Cartel Office's currently outstanding international reputation lends additional weight to its President. Conversely, however, this reputation could suffer if future leadership were to engage less actively than has been the case to date.

**82** Another aspect of representing the authority externally is appearing before the courts. The leadership is responsible for representing the Office in appeals and appeals on points of law concerning orders of the Federal Cartel Office. This is particularly significant because important cases are generally subject to judicial review. Cases decided by the Federal Court of Justice (BGH) are of particular interest, since, as a rule, only cases concerning a legal question of fundamental importance, or in which the development of the law or the safeguarding of consistent case law requires a BGH decision, qualify. Finally, the leadership of the Federal Cartel Office can exert influence in all legal disputes whose resolution depends wholly or partly on the application of competition law provisions: under section 90(1) GWB, the German court concerned informs the Federal Cartel Office of such disputes and the leadership may, if it considers this appropriate to safeguard the public interest, appoint a representative from among the members of the Federal Cartel Office who is authorised to submit written statements to the court, draw attention to facts and evidence, attend hearings, make submissions at them and put questions to parties, witnesses and experts (section 90(2) GWB).

**83** It is also significant that the leadership of the Federal Cartel Office regularly comments on legislative proposals in expert hearings, particularly on amendments to the GWB. In addition, at least in the past, staff of the authority have been seconded to the Federal Ministry for Economic Affairs and Energy for amendments to the GWB (Heinrich-Heine-Universität Düsseldorf, 2019). The authority's influence, and hence that of its leadership, particularly on legislative amendments, should therefore be regarded as considerable. Finally, the leadership can also exercise political influence behind the scenes through discussions in political circles, speaking at events and organising conferences, such as the International Conference on Competition.

**84** Beyond these effects of representing the authority externally, it can be assumed that staff also follow closely the way in which the leadership expresses itself in public

(for example in interviews). Many divisions are, in any event, involved in preparing the leadership for its external engagements. This is likely to influence the setting of priorities in the respective Decision Divisions, at least indirectly. Conversely, the Decision Divisions' casework also influences the Office's public presentation by the President, who must communicate decisions to the public and, where necessary, defend them against criticism. The authority's leadership thus provides important impetus for its work. The leadership's work has an impact on the cases taken up, the positions adopted, staff motivation, internal interactions, the working atmosphere and many other aspects that are enormously important both for 'independence in practice' and for substantive success.

#### 4.1.2.2 Selection and appointment of the authority's leadership

**85** Since its establishment in 1958, the Federal Cartel Office has been led by only a small number of Presidents; several incumbents held office for long periods and were able to leave a lasting mark on the authority's working methods and public profile (for an overview, see ↗**Table 4.5** below).

**86** The leadership of the authority is selected and appointed in accordance with the general principles of civil service law. In this respect, the new section 51a of the draft GWB proposed in the bill for a 12th amendment to the GWB does not change the existing legal position. The legal starting point for appointment is Article 60(1) of the Basic Law (GG), which provides that the Federal President appoints and dismisses federal civil servants unless they have delegated these powers to other authorities under paragraph 3. Such delegation has taken place for many civil servants, but not for those in salary scale B; see Article 1(1) of the Federal President's Order on the Appointment and Dismissal of Federal Civil Servants and Judges (Delegations-AO). These include the President, graded B8, and the Vice-President, graded B5.[12] The Federal President does not, however, select the civil servants personally, but receives nominations from the competent supreme federal authorities, i.e. the federal ministries, for example, under Article 1(2) Delegations-AO. The Federal Ministry for Economic Affairs and Energy is responsible for the leadership of the Federal Cartel Office, since the Office falls within its portfolio under section 51(1), second sentence, GWB. Under section 15(2) of the Federal Government's Rules of Procedure (GO-BReg), proposals to appoint civil servants receiving fixed salaries under the salary scales – which include salary scale B – must, in particular, be submitted for deliberation and decision. In addition to the President and Vice-President, this also applies to the heads of divisions.

[12] See (Festsetzung von Zusätzen zu den Grundamtsbezeichnungen; Rundschreiben zur Bundesbesoldungsordnung B (BBesO B)) and Annex I to the Federal Civil Servants' Remuneration Act (BBesG).

**87** Under section 8 of the Federal Civil Servants Act (BBG), vacancies must, as a rule, be advertised publicly. However, under section 8(1), third sentence, BBG, the Federal Government may provide for exceptions by statutory instrument. One such exception is laid down in section 4(2), point 1, of the Federal Career Regulation (BLV). Under this provision, the duty to advertise vacancies does not apply, in particular, to the heads of authorities directly subordinate to the federal ministries. Nevertheless, the future President should be selected through a process that is as transparent as possible, with a public advertisement and clear selection criteria, in line with the civil service principle in section 8 BBG.[13] Such a selection process strengthens the authority's political independence and resilience by making appointments based on political expediency more difficult. It also increases the transparency of decision-making and makes clear why the chosen person was selected in terms of suitability, qualifications and professional performance (see Article 33(2) GG, section 9 BBG). Other competition authorities abroad also advertise vacancies publicly.

**Table 4.2: Public advertisement of authority leadership positions**

| Country/authority | Public advertisement |
|---|---|
| Federal Cartel Office | no |
| Belgium | yes |
| Directorate-General for Competition | yes |
| Italy | yes |
| Austria | yes |
| Portugal | no |
| Switzerland | yes |
| Spain | no |
| United Kingdom | yes |

Source: Survey of competition authorities.

**88** The Basic Law does not name party affiliation as a selection criterion; rather, it is strictly merit-based. In terms of the criteria developed in ↗**Section 2.3**, advertising the position improves effectiveness by enabling a more targeted search for suitable candidates. At the same time, it strengthens adherence to fundamental values and

[13] One example is the selection procedure in Latvia (Latvian Public Service Media, 2025).

promotes the principle of the rule of law by increasing transparency and thus making state decisions more comprehensible. Another argument for advertising the position is that Article 4(4) of Directive (EU) 2019/1 (the ECN+ Directive) requires Member States to select the members of the decision-making bodies of national administrative competition authorities according to clear and transparent procedures laid down in advance in national law. Such a selection procedure should be prescribed by statute in the GWB so that the exception to the duty to advertise under section 8(1), third sentence, BBG in conjunction with section 4(2), point 1, BLV does not apply to the Federal Cartel Office.

**Box 4.1: Advertising the position: possible criteria for a competency profile**

## 7 CRITERIA FOR A COMPETENCY PROFILE

In the Monopolies Commission's view, the following criteria in particular could be included in a competency profile:

1. **Broad knowledge of economic policy**: This enables the consequences of the authority's decisions to be assessed.
2. **Experience in dealing with public authorities and government bodies:** This creates an awareness of political implications and enables independence to be upheld.
3. **Experience in leading medium-sized public or private institutions:** Leadership tasks account for a large share of the authority leadership's day-to-day work.
4. **(In-depth) knowledge of competition law and competition economics:** Since the leadership represents the Office externally, nationally and internationally, the authority's views carry greater weight if its leadership has considerable expertise and can participate actively in discussions.
5. **Ability to communicate with the media:** The authority's decisions must be communicated to the public.
6. **International experience:** The leadership must represent the authority internationally.
7. **Digital and AI competence:** The leadership must be able to assess how technological developments are changing the authority's working methods and take responsibility for the associated investment and organisational decisions.

Source: Discussions conducted by the Monopolies Commission and its own analysis.

**89** A clear competency profile should be developed in advance. It should be noted that such principles already apply to companies, for example. The German Corporate Governance Code recommends that the Supervisory Board decide in advance on the qualifications required of Management Board members (Principle 9). The discussions conducted by the Monopolies Commission with experts and stakeholders also addressed the competency profile on which a public advertisement should be based.

**RECOMMENDATIONS**

- The process for selecting the President should be conducted as transparently as possible. In particular, a public advertisement and a clear competency profile should set out how the person will be selected in terms of suitability, qualifications and professional performance. A duty to advertise the position publicly should be incorporated into the GWB.

### 4.1.3 Legal safeguards for independence

**90** Under section 51(1), first sentence, GWB, the Federal Cartel Office is an 'independent higher federal authority' within the meaning of Article 87(3), first sentence, GG. It thus has its own administrative organisation and is not part of the ministerial administration. The Federal Cartel Office's organisational autonomy helps to separate the application of the law in individual cases from considerations of political expediency and to ensure competition enforcement guided by the law. Autonomy is not, however, automatically equivalent to freedom from instructions (Quellmalz, 2025a, para. 1). At the same time, the Federal Cartel Office falls within the portfolio of the Federal Ministry for Economic Affairs and Energy, section 51(1), second sentence, GWB. Under Article 65, second sentence, GG, it is therefore subject to the direction and responsibility of the Federal Minister for Economic Affairs. Section 52 GWB makes clear that the Minister may issue general instructions to the Federal Cartel Office. This refers to abstract, general administrative principles concerning enforcement practice, which must be distinguished from individual instructions in specific competition proceedings. In practice, general instructions have so far played only a minor role (Schneider, 2022b, paras. 3 and 5; Stockmann/Picht, 2024b, paras. 5 f.).[14] The Federal Ministry for Economic Affairs can also influence the Federal Cartel Office's activities insofar as the Office's rules of procedure require confirmation by the Ministry, section 51(2), second sentence, GWB (see also ↗**Section 4.3.1.3** below).

**91** Under section 51(2), first sentence, GWB, the actual decision-makers in the Federal Cartel Office are the Decision Divisions. The Act assigns decision-making powers directly to them, whereas the President merely regulates the allocation and conduct

[14] Schneider (2022b, para. 5) mentions only four general instructions, all several decades old: the instruction of 30 November 1972 on intensifying abuse supervision of resale price maintenance and recommendations (BAnz. No 231 of 30 November 1972), the instruction of 25 March 1976 on commitments in merger control proceedings (BAnz. No 66 of 3 April 1976), the instruction of 16 February 1978 on drawing up principles for efficiency-enhancing cooperation (BAnz. No 46 of 7 March 1978), and the instruction of 30 May 1980 on the treatment of foreign mergers (BAnz. No 103 of 7 June 1980).-

of business (see ↗**Section 4.1.2** above and ↗**Section 4.3.1.3** below). The Decision Divisions take decisions as collegiate bodies structured along judicial lines, with a chair and two associate members, section 51(3), first sentence, GWB.[15] Their members are liable to their public employer for a breach of official duty only in cases of intent, section 51(3), second sentence, GWB. Under section 51(4) GWB, chairs and associate members of the Decision Divisions must be civil servants appointed for life and qualified to hold judicial office or enter the higher administrative service.

**92** The statutory allocation of decision-making powers to the Decision Divisions presupposes that they exercise those powers independently and, in particular, act free from instructions in individual cases. Otherwise, the allocation of powers would appear superfluous. The independence of the Decision Divisions is not, however, expressly laid down in the GWB. By contrast, section 157(1) and (4), second sentence, GWB provides that the Federal Cartel Office's Public Procurement Tribunals and their members take decisions independently. In the absence of a corresponding provision for the Decision Divisions, their independence has to date derived only – but nonetheless – from the statutory allocation of powers and an inference from the converse of section 52 GWB.[16]

**93** Article 4 of the ECN+ Directive obliges Member States to ensure that national competition authorities enforce Articles 101 and 102 TFEU independently. Implementation of the ECN+ Directive has helped to strengthen the independence of competition authorities in many Member States (Europäische Kommission, 2024c, p. 4; Zimmer, 2026). In particular, the authorities' decision-makers must be able to perform their duties and exercise their powers ‘independently from political and other external influence’ (Article 4(2)(a) of the ECN+ Directive). Member States must also ensure that decision-makers ‘neither seek nor take any instructions from government or any other public or private entity’ (Article 4(2)(b), first part, of the ECN+ Directive). This is, however, ‘without prejudice to the right of a government of a Member State, where applicable, to issue general policy rules that are not related to sector inquiries or specific enforcement proceedings’ (Article 4(2)(b), second part, of the ECN+ Directive). Decision-makers must also ‘not be dismissed from such authorities for reasons related to the proper performance of their duties or to the proper exercise of their powers [...]’ (Article 4(3) of the ECN+ Directive).

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15 See already ↗**section 4.1.2**. See also (Bundesregierung, 1959, p. 2).

16 See also BVerwG, 7 C 34.17, 9 May 2019; Quellmalz (2025a, paras. 3 and 6; 2025b, para. 2); Schneider (2022a, paras. 16 f.; 2022b, para. 1); Wagner-von Papp (2026, p. 446); with qualifications, Bechtold/Bosch (2025, paras. 2 ff.: no power of the President of the Federal Cartel Office to issue instructions to the Decision Divisions, but a power of the ministry to issue even individual instructions to the Federal Cartel Office).

**94** Insofar as the GWB lacks corresponding requirements concerning the independence of the Federal Cartel Office's Decision Divisions, German law would at least have to be interpreted in conformity with the Directive (Gröss, 2024a, para. 29; Könen/Dogs, 2023, p. 134; Zorn, 2022, para. 9). General instructions of the kind provided for in German law by section 52 GWB are permissible in principle within the limits of Article 4(2)(b), second part, of the ECN+ Directive (Gröss, 2024b, para. 4; Ludwigs, 2020, p. 579). The ECN+ Directive is clearly stricter in relation to individual instructions. It is unclear, however, whether the Directive concerns only the relationship between the authority and the government (or other bodies), and thus political independence, or whether it also applies to the relationship between decision-makers and the authority's leadership, and thus regulates internal independence. There are good arguments for both interpretations. On the one hand, Article 4 of the ECN+ Directive refers to 'political and other external influence'. The Directive seeks to ensure or strengthen the operational independence of national competition authorities (recitals 17 and 18). It does not, however, prescribe how Member States should organise decision-making within their authorities. On the other hand, Article 4 of the ECN+ Directive does not consider the authority solely as a whole, but expressly refers to the 'staff and persons who take decisions'. Where national law assigns decisions to individual adjudicating bodies – as in section 51(2) GWB – it is those bodies that actually perform the operational work.

**95** Against this background, it would be desirable to expressly enshrine in the law the independence of decision-making in the Federal Cartel Office's Decision Divisions (Franck, 2024, p. 644; Könen/Dogs, 2023, p. 134; Ludwigs, 2020, pp. 580 f.; Quellmalz, 2025a, para. 2; Stockmann, 2008, pp. 143 ff.; Wagner-von Papp, 2026, p. 446; Zorn, 2022, para. 9). This should be done through a provision in section 51(2) GWB specifying that decisions in individual cases are taken independently and free from instructions from the leadership or other bodies. Nor can experience with past administrative practice be invoked to argue against the need for legislative action. It is true that the independence of the Decision Divisions, both from political actors and from the authority's leadership, has in practice largely remained unchallenged in the past.[17] Nevertheless, independence should not rest solely on an established administrative culture and restraint on the part of individuals. Otherwise, changes in political conditions or personnel could create an opening for influence over the Decision Divisions' decision-making. Moreover, the requirements of Article 4 of the ECN+ Directive apply only within the scope of Articles 101 and 102 TFEU, including the parallel application of national law (see Article 3 of the Competition Enforcement Regulation; Gröss, 2024a, para. 26), and not to the enforcement of exclusively national competition law or to merger control. The applicability of Articles 101 and 102 TFEU requires

[17] However, on the authority's leadership transferring a case handler in connection with the conduct of proceedings, see further ↗Box 4.2.

the conduct concerned to be capable of affecting trade between Member States. Although this effect-on-trade criterion tends to be interpreted broadly, there is therefore also a need in this respect to strengthen safeguards for the independence of the Decision Divisions in individual cases through a corresponding clarification in the GWB.

**96** A further question is whether the authority's independence needs to be enshrined in the constitution in order to be permissible at all under the principle of democracy laid down in Article 20(1) and (2) GG, which requires state power to be accountable to the will of the people. According to the case law of the Federal Constitutional Court (BVerfG), the principle of democracy does not preclude a limited modification of the way in which legitimacy is conferred where independent authorities are concerned. What matters is that a sufficient overall level of legitimacy is maintained. Assigning tasks to politically independent authorities is thus not constitutionally precluded, but requires particular substantive justification and remains restricted to justified exceptional cases. The BVerfG emphasises that tasks of political significance, in particular, must in principle not be removed from governmental responsibility and transferred to politically independent authorities. Whether an authority organised on a politically independent basis is constitutionally permissible therefore depends decisively on the specific features of the area of responsibility concerned (see BVerfG, 2 BvF 2/58, 27 April 1959, Bremer Personalvertretung; 2 BvR 1685/14, 2 BvR 2631/14, 30 July 2019, Europäische Bankenunion).

**97** These standards also shape the long-running debate on the political independence of the Federal Network Agency. The background is, in particular, Article 57(4) of Directive (EU) 2019/944 on the internal market for electricity and Article 8(1) of Directive (EU) 2018/1972 establishing the European Electronic Communications Code (the EECC Directive), which require national regulatory authorities to perform their regulatory tasks independently of political influence. The Court of Justice of the European Union (CJEU) has clarified these EU law requirements to mean that Member States must leave regulatory authorities free from ministerial influence in exercising the responsibilities assigned to them under EU law and, in particular, must not issue political directions for the exercise of those powers (C-718/18, 2 September 2021, Commission/Germany). Although the restriction of ministerial influence required by EU law is debated in the literature in relation to the principle of democracy, the prevailing view, as far as can be ascertained, ultimately regards it as constitutional, with any deficits in legitimacy to be compensated for by other mechanisms of legitimacy and control (see, for example, Wissenschaftliche Dienste des Deutschen Bundestages, 2024, with further references).

**98** Against this background, it must be borne in mind in relation to the Federal Cartel Office that the Decision Divisions primarily apply the competition law laid down by the

legislature to individual cases, rather than taking decisions that shape policy. Unlike administrative decisions involving considerable political discretion, their focus is thus on implementing legislation within the constraints of the law. Against this background, exercising the decision-making powers assigned to them by section 51(2) GWB free from instructions clearly falls within the limits drawn by the BVerfG for administration free from ministerial control. The fundamental decision to structure the Federal Cartel Office along judicial lines continues to have effect here. The comparison with chambers in courts of first instance is central to understanding the work of the Decision Divisions. Moreover, the Federal Ministry for Economic Affairs retains at least limited scope for influence through its power to issue general instructions and confirm the Federal Cartel Office's rules of procedure, which contributes to the democratic legitimacy of administrative action (see also Schneider, 2022b, para. 2). There is no need to enshrine the authority's political independence in the constitution.[18]

**99** Another opening for political decisions on competition law matters is ministerial authorisation. The instrument of ministerial authorisation under section 42 GWB sits in tension with the political independence of the Federal Cartel Office. On the one hand, precisely the separation between a substantive competition assessment and a political decision on public-interest grounds can help safeguard the Office's independence. On the other hand, section 42 GWB allows a single political office holder to replace a prohibition decision of the Federal Cartel Office with their own decision and permit the merger concerned nonetheless. The associated question of whether the existing arrangements sufficiently contain this tension and would also withstand a more politically instrumentalised exercise of the Minister's powers goes beyond the scope of this report, however, which is primarily concerned with the structures of the Federal Cartel Office itself.

## RECOMMENDATIONS

- The independence of the Federal Cartel Office's Decision Divisions in individual cases should be expressly enshrined in the law. This should be done through a provision in section 51(2) GWB specifying that decisions in individual cases are taken independently and free from instructions from the leadership or other bodies.
- There is no need to enshrine the authority's political independence in the constitution.

[18] See, however, Wagner-von Papp (2026, p. 446): 'In view of developments (in the US and also the UK), it is time to regulate the independence of the Federal Cartel Office and the Decision Divisions more explicitly and comprehensively, ideally enshrining it in the constitution (although that opportunity has probably already passed for lack of the necessary majorities).'

### 4.1.4 Adequate resources as a prerequisite for independence

**100** Legal guarantees safeguard an authority's independence only for as long as it has the means actually to perform its tasks. Public administration literature therefore emphasises that formal guarantees – a clearly defined legal status and far-reaching decision-making powers – are not sufficient on their own. Adequate funding and staffing must also be provided (Gilardi, 2008; Maggetti, 2007). Article 5 of the ECN+ Directive likewise obliges Member States to equip national competition authorities with a sufficient number of qualified staff and the financial, technical and technological resources necessary to perform their tasks effectively (paragraph 1). This applies in particular to their ability to conduct investigations under Articles 101 and 102 TFEU, adopt corresponding decisions and cooperate closely with other competition authorities within the ECN (paragraph 2, first sentence). In addition, the provision guarantees the authorities' budgetary independence by ensuring that – subject to national budgetary rules and procedures – they can spend their allocated funds independently (paragraph 3).

**101** The importance of providing an authority with adequate resources makes clear that this is an obvious avenue for interference. Those seeking to weaken an authority need not tamper with its powers: they can withdraw its funding, steer it through earmarked allocations or assign it new tasks without additional posts (Dreyer, 2013). For this reason, the introduction to this report placed reductions in staff and material resources first among the mechanisms by which institutions are gradually weakened (↗**paragraph 6**). The issue arises in both directions. An authority can be starved of resources; it can also tie up capacity whose original purpose no longer exists. Both impair its independence: resource deprivation does so directly, while retaining capacity for too long does so indirectly by undermining the credibility of its demands.

**102** The 11th amendment to the GWB illustrates the practical relevance of such a situation. For the permanent additional burdens on the Federal Cartel Office, the government bill estimated 14 posts in the higher service, 4.5 posts in the upper intermediate service and one post in the intermediate service, making 19.5 posts in total. These related in particular to faster and more numerous sector inquiries, new powers of intervention following sector inquiries, easier disgorgement of benefits and tasks associated with Regulation (EU) 2022/1925. The additional financial and staffing requirements were to be offset within departmental budget 09 (Deutscher Bundestag, 2023a, pp. 3 f.). According to information from the Federal Government, five new

budgeted posts were most recently provided in the 2025 budget, including for the 10th and 11th amendments to the GWB. The Federal Government itself notes that this falls short of the additional staffing requirement identified in the compliance costs of the 11th amendment to the GWB (Bundesregierung, 2026a, p. 2).

**103** This alone does not establish that the Federal Cartel Office is inadequately resourced overall: new tasks may partly replace existing activities, productivity gains may free up capacity, and staff may be redeployed within the Office. Assessing such developments is difficult for an inherent reason. According to the economic theory of bureaucracy, authorities have a self-interest in expanding their budgets and staffing levels (Niskanen, 1968). An authority will therefore generally describe a funding cut as impairing the performance of its tasks, even where it is a substantively justified adjustment. Conversely, deliberately starving an authority of resources can always be presented as budgetary discipline. From outside, the two are hard to distinguish. The difficulty of making this assessment does not, however, alter the fact that this avenue for undermining independence exists. It shows that a robust comparison of changes in tasks and resources is required.

**104** Restricting Parliament's ability to decide on the Federal Cartel Office's resources is not an option. The power of the purse is one of Parliament's central rights and performs a paramount function in conferring democratic legitimacy. Anyone assessing an authority's independence against the standards of liberal democracy, as this report does, cannot seek to safeguard it by curtailing one of democracy's fundamental procedures for conferring legitimacy. This is particularly true here: for an authority otherwise largely insulated from political direction, the parliamentary decision on its resources is one of the few remaining means of democratic accountability.

**105** Nor is financing the Federal Cartel Office from its own revenue an option. Although the literature argues that authorities with their own revenues enjoy greater political independence than those dependent on allocations (Pfeffer/Salancik, 1978), this reasoning does not hold for a competition authority. If the Federal Cartel Office were financed, for example, from the fines it imposed, it would acquire a financial self-interest in the outcome of its own proceedings. This would call into question the very impartiality on which its far-reaching independence is based, and the authority would itself require greater supervision. The Federal Cartel Office's revenues flow into the federal budget for good reason (see ↗**Chapter 3** above); this should remain the case.

**106** What remains is to create the greatest possible transparency and clarity. If legitimate adjustments and interventions that threaten independence are difficult to distinguish from outside, the key is to make developments visible in the first place and

require them to be explained. This applies in both directions. There is also a legal consideration. Article 5 of the ECN+ Directive obliges Member States to provide national competition authorities with sufficient human, financial and technical resources. It is currently impossible to assess whether this obligation is being met, because the information needed to do so is not available anywhere in a consolidated form. Regular reporting would therefore not merely be a matter of transparency, but a means of making compliance with an existing obligation under EU law open to scrutiny.

**107** An existing instrument offers a suitable means of doing this: the activity report under section 53 GWB. The Federal Cartel Office could use it to report regularly on changes in its staffing and material resources in relation to its tasks. This would include the number of budgeted posts and their distribution across areas of responsibility, the number of unfilled posts, and tasks newly assigned to the Office or substantially expanded by statute for which the additional resource requirements assumed during the legislative process have not been demonstrably reflected in additional posts. Article 5(4) of the ECN+ Directive in any event provides for national competition authorities to report regularly on their activities and resources to a governmental or parliamentary body. The reports must, in particular, contain information on the appointment and dismissal of members of the decision-making body, the resources allocated annually and changes from the previous year, and must be published.

**108** Such reporting would be informative only if it covered more than new burdens alone. It would also have to show where tasks had declined in importance, case numbers originally expected had not materialised, or staff had been deployed to other tasks. A calculation of staffing needs made when a task is introduced does not establish a permanent entitlement to posts for that task. Particularly over the longer term, market conditions, legal bases, case numbers and an authority's working methods can change considerably.

**109** An illustrative example is the supervision of abusive energy pricing under section 29 GWB. For the 2007 amendment on abusive pricing, a staffing requirement of nine budgeted posts in total was estimated for the Federal Cartel Office. This estimate covered all the new tasks under the amendment, encompassing supervision of abuse in both the energy and food sectors. Three of these budgeted posts were expressly allocated to stepping up action against abuse in the energy sector and had already been provided in the 2007 budget (Deutscher Bundestag, 2007, p. 2). On 2 January 2008, the Federal Cartel Office established a dedicated energy Decision Division, B10, initially with eight full-time posts, which was responsible, among other things, for enforcing section 29 GWB. According to the Office's own account, its establishment became possible after the Office received additional posts in connection with the amendment on abusive pricing (Bundesregierung, 2009, p. III). The division was thus built up using

existing staff in addition to the posts specifically provided for the energy sector. This organisational decision did not, however, endure. As early as 2011, B10 was converted entirely to cartel prosecution (Bundeskartellamt, 2011b). In the most recent activity report, the case statistics for 2023 and 2024 show no newly initiated proceedings under section 29 GWB (Bundeskartellamt, 2025a, pp. 177 f.). This does not mean that supervision of abuse in the energy sector has ceased. The activity report mentions, for example, several proceedings concerning price adjustment clauses used by district heating suppliers, and energy-related matters can be pursued under the general provisions on abuse (Bundeskartellamt, 2025a, p. 12, p. 145). The development does show, however, that the organisational and resource structure created at the time for particularly intensive application of a new provision cannot be perpetuated as an unchanging benchmark.

**110** The situation is similar for the market transparency units, but with an important qualification: the developments cannot be traced at all from the published documents. When they were introduced in 2012, 18 posts at the Federal Cartel Office were estimated for monitoring wholesale electricity and gas markets, and at least seven permanent full-time posts for the Market Transparency Unit for Fuels; further tasks and posts were added later. The activity reports do not reveal whether, and to what extent, this capacity is still used for the same tasks today. For electricity and gas market monitoring, for example, the Monopolies Commission was told of a small team considerably below the number of posts originally estimated. The number of staff responsible for the Market Transparency Unit for Fuels has varied and most recently increased again in the course of the public debate about high fuel prices. Information from the Federal Government also states that nine people worked for it in May 2026 – but with expressly acknowledged overlaps in their responsibilities and thus not directly comparable with the earlier calculations of full-time posts.

**111** These examples demonstrate two things. First, tasks and resources can diverge over time in both directions. New tasks are not always supported by the estimated posts, and capacity created for particular tasks does not always remain tied to them where their importance has declined. Second – and more significantly – both are difficult to establish from outside. Anyone seeking to determine today whether the Federal Cartel Office is adequately resourced for its tasks will find no robust basis in the published documents. The real problem is not one development or the other, but that they elude assessment. The vulnerability thus lies in the fact that resource deprivation which no one can substantiate is also something no one can prevent.

**112** It follows that the proposed reporting should include further information alongside new tasks and the posts lacking for them. A regularly updated comparison would

be useful, additionally bringing together the extra compliance costs identified in legislative materials, the additional posts actually provided, the current deployment of personnel (actual staff in full-time equivalents), and case numbers, ongoing proceedings or recurring monitoring tasks relating to the reporting years. Tasks that have declined in importance and significant redeployments of staff between areas of responsibility should also be identified. Correspondingly, for those deciding on resources, the following applies: where a new task is assigned to the Federal Cartel Office, the compliance costs identified during the legislative process should also be tracked. If subsequent allocations deviate from these or from medium-term financial planning, this should be made clear and explained. This leaves the power of the purse untouched and merely makes its exercise comprehensible.

**113** The activity report would thereby acquire a function extending beyond a description of enforcement practice: it would become the place where the authority accounts for the conditions under which it itself works. The same reasoning underlies another proposal in this report (↗**Section 4.3.2.5**).

**RECOMMENDATIONS**

- In its activity report under section 53 GWB, the Federal Cartel Office should regularly present, in a standard format, changes in its staffing and material resources in relation to its tasks. In particular, it should show the distribution of budgeted posts and actual staff deployment across the main areas of responsibility, unfilled posts, newly assigned or substantially expanded tasks including the additional compliance costs estimated for them in legislative materials, and tasks that have declined in importance or from which staff have been redeployed to other areas. Enshrining this in section 53 GWB would be possible, but not essential.
- When new tasks are assigned, the compliance costs identified during the legislative process should be tracked. If the allocation of resources deviates from these or from medium-term financial planning, this should be made clear and explained.

## 4.2 Internal independence

**114** Within the Federal Cartel Office, decisions are taken by the relevant Decision Division, which is free from instructions even from its own leadership, rather than by the leadership itself. This arrangement, unusual internationally, shapes the German model. It raises the question of independence a second time, now in a different context: freedom from instructions protects against extraneous considerations and creates responsibility. Two different forms of power thus coexist within the authority: the

Decision Divisions' power to decide individual cases and the President's leadership powers, which shape the conditions under which decisions are taken through organisation, staffing, resources and administrative principles. The discussion below first places the Federal Cartel Office's decision-making model in an international context and asks what price freedom from instructions carries. The next two sections show the instruments through which the leadership can nevertheless influence casework and how the independence of the Decision Divisions can be safeguarded against such influence.

### 4.2.1 The value and cost of freedom from instructions

**115** Different models of decision-making have developed in competition authorities internationally, depending on historical, institutional and political circumstances. They differ primarily in whether investigation and decision-making are separate and whether responsibilities are assigned by sector or by function, as ↗**Table 4.3** illustrates.

**Table 4.3: Decision-making models internationally**

| Country/authority | Separation of investigation and decision-making | Investigation divisions organised by sector |
|---|---|---|
| Federal Cartel Office | no | yes |
| Belgium | yes, in more complex cases | yes, but staff resources are distributed flexibly between sectors |
| Directorate-General for Competition | yes | partly, with a matrix structure |
| Italy | yes | yes |
| Austria | yes | yes |
| Portugal | yes | no |
| Switzerland | yes | yes |
| Spain | yes | yes |
| United Kingdom | partly | no |

Source: Survey of competition authorities.

**116** The organisation of decision-making powers at the Federal Cartel Office is modelled on that of courts. In courts, judges often decide in collegiate bodies specialising

in particular areas of law. At the Federal Cartel Office, Decision Divisions decide competition cases (section 51(2), first sentence, GWB). Under section 51(3) GWB, the Decision Divisions take decisions in a panel comprising a chair and two associate members. Decisions need not be unanimous; the majority principle applies.[19] Even where there is no unanimity, the collegiate body as a whole nevertheless stands behind its decisions (Zorn, 2022, para. 14).

**117** The Decision Divisions are predominantly organised according to responsibility for economic sectors. In this respect, the system resembles that in Austria, for example. There, however, the divisions conduct only the investigation, while the power to decide cases generally lies with a Cartel Court rather than the competition authority itself (see, for example, sections 12, 26 and 29 of the Cartel Act 2005; see also Podszun/Robertson, 2025, pp. 4 f.).

**118** Other competition authorities, such as the US Federal Trade Commission (FTC) and France's Autorité de la concurrence, are, by contrast, organised more along functional lines. Unlike organisation by economic sector, a functional structure links decision-making powers to functions. These functions follow the pillars of competition law: merger control, abuse control and cartel prosecution. Units are thus responsible, for example, for merger control decisions irrespective of the economic sector. Around a third of competition authorities in the European Union, such as France's Autorité de la concurrence and Italy's AGCM, also have a functional separation between units conducting investigations and units taking decisions (Brook/Cseres, 2021, p. 40).

**119** The organisational structures of different competition authorities often contain elements of both functional and sectoral organisation to varying degrees. The European Commission's Directorate-General for Competition (DG COMP), for example, has a matrix structure. Staff from five sectoral ‘Markets and Cases Directorates’ are combined with specialised instrument units (antitrust, mergers, state aid) to handle cases. There are also units specifically dedicated to cartel prosecution (COMP.G). A further distinctive feature at EU level is that substantive decisions are merely prepared by the Directorate-General for Competition but ultimately taken by the European Commission as a collegiate body (Article 250 TFEU). Elements of functional organisation also exist at the Federal Cartel Office, insofar as separate Decision Divisions (B10 and B12) are responsible across sectors for prosecuting administrative competition offences.

[19] Other staff of the Decision Divisions (other associate members, policy officers and case officers) deputise for those involved in taking decisions during absences or support them in extensive proceedings; see Stockmann/Picht (2024a, para. 21).

**120** The organisational forms described reflect the important elements of competition authority design identified in **↗Chapter 2**. The location of decision-making in individual cases and the organisational structure shape each authority, and the sheer variety of solutions found internationally shows that there is no single best solution. In terms of internal independence, the most significant feature of the German model is that investigation and decision-making are combined within sectoral Decision Divisions that are free from instructions. This arrangement effectively protects individual case decisions from extraneous influence, places responsibility on those who decide, and has enabled the depth of expertise on which much of the Office's reputation rests.

**121** The Decision Divisions' freedom from instructions nevertheless comes at a price. Since the divisions work largely autonomously, the coordination needed for a consistent competition policy is lacking. Similar conduct is assessed differently in different industries, and the application of the law develops in a fragmented way. One example is the different treatment of price-fixing in the energy industry and the transport sector, with neither a shared guiding approach nor a common analytical strategy underpinning it.

**122** There is also an element of chance in the selection of cases. This depends less on strategic priorities than on the division of responsibilities between Decision Divisions and the resources and expertise available within them, or the personal inclinations of individual decision-makers. The consequences are an uneven burden across industries and a setting of priorities that is predictable neither for the market nor for companies.

**123** Sectoral organisation exacerbates a further problem: the dependence of entire industries on particular individuals. Often, only a small number of staff have in-depth knowledge of an industry's structures, technologies and business models. If they move on or are absent, work on an entire subject area can falter. Conversely, industries with dedicated staff receive more attention, irrespective of their actual significance for competition. Lengthy responsibility for an industry also increases the risk of capture by that industry. Functionally organised authorities that assemble their case teams according to the proceedings concerned are less vulnerable to this dependence.

**124** The independence of the Decision Divisions, originally intended to protect against political influence, can thus also lead to internal fragmentation. Without coordinated priority-setting, competition oversight remains to some extent unpredictable. The Monopolies Commission nevertheless sees no reason in this to call freedom from instructions into question. Its value for the quality of decisions and for work within the

Office carries greater weight (see ↗**Section 5.1**); the Monopolies Commission therefore recommends expressly safeguarding it by statute (↗**Section 4.1.3**). The costs must be addressed where they arise: through coordination by the leadership that leaves decisions in individual cases unaffected, and through mechanisms that hold the Decision Divisions accountable for their decision-making powers (↗**Section 4.3.2**). The following sections explain the instruments available to the leadership for coordination and their limits.

### 4.2.2 Mechanisms of direction

**125** Alongside representing the authority externally (↗**Section 4.1.2.1**), the leadership's power to issue instructions is also significant. Although it is restricted insofar as the Decision Divisions' decision-making powers are concerned, this affects only 36 per cent of staff, and only in their casework (↗**Chapter 3**). The power to issue instructions is unrestricted in relation to organisational units not constituted as Decision Divisions. These include the following divisions and units (see also ↗**Figure 3.1**):

- General Policy Division (G): German and European Competition Law/ECN Coordination, Regulation and Competition, Economic Policy/Chief Economist, German and European Merger Control, International Competition Matters, Digital Economy, Press/Communications/Public Relations
- Litigation and Legal Division (P): Litigation and Legal 1, Library and Coordination Tasks, Litigation and Legal 3, and the Special Unit for Combating Cartels
- Central Division (Z): Budget and Procurement, Internal Services, Legal Affairs and Records Management, Human Resources, and Organisation
- Digital Services (D): Digital Applications, IT Operations, Information Security
- Internal Audit (IR)
- Competition Register (W): Registration and Information, Self-Cleaning and Public Procurement Law, Queries and Service

**126** Through the power to issue instructions to these organisational units, indirect influence can be exerted on the Decision Divisions: for example, the Chief Economist falls within the chain of command of the authority's leadership and the head of Division G when consulted on cases. Coordination between the Decision Divisions can also take place through the General Policy Division. Here too, the authority's leadership may have considerable scope for influence, depending on actual practice within the authority. Overall, the leadership's influence on the authority increases with the number of staff working in organisational units subject to instructions. The leadership exerts influence less through individual instructions than through the framework within which decisions are taken – through staff selection, staffing and other resources, the allocation of responsibilities, and internal and external communication. The proportion of people employed in the Decision Divisions or Public Procurement

Tribunals and thus free from instructions in relation to decisions is 36 per cent, only just over a third of all those employed by the Federal Cartel Office (see ↗**Chapter 3**). However, the Federal Cartel Office's 'culture of independence' is likely also to extend at least to staff in Divisions G and P.

**127** Below the level of formal instructions, staff can be influenced informally. This applies both to staff subject to instructions and to those free from them. For example, the leadership can hold discussions with staff and express its personal assessment of cases. In particularly important cases, it will regularly request updates if only to be able to conduct effective public communication. How, and how often, the leadership does so depends heavily on its personal approach to the role. In terms of frequency, this could range from briefings prompted solely by particular events (for example, a press enquiry) to weekly or even daily progress reports. In substance, the leadership might seek merely to encourage consistency with other decisions, prompt critical scrutiny of staff's own positions and motivate staff, or it might seek to steer decisions in individual cases according to its own preferences. Depending on its form, influence can thus have both positive and negative effects on staff and the authority.

**128** For organisational units that are in principle free from instructions in their decision-making, the President cannot issue formal instructions but, beyond exercising informal influence, can determine staffing and material resources and has a coordinating role. This is necessary to establish a degree of consistency in the authority's external actions and is reflected in the Act's provision that the Federal Cartel Office may establish administrative principles. Since these are merely internal administrative guidelines, which acquire external and binding effect only in individual cases through the principle of equality (Schneider, 2022c, para. 3), they do not constitute decisions within the meaning of section 51(2), first sentence, GWB (see ↗**paragraph 80**). The President is therefore, in principle, responsible for establishing them. Their binding effect sits in tension with the freedom from instructions and independence of the Decision Divisions and Public Procurement Tribunals and accordingly requires appropriate internal coordination (Schneider, 2022c, para. 3). This coordinating role, which by its nature must be exercised either by the leadership itself or by cross-cutting units subject to instructions, provides scope for direction.

**129** Consistency of decisions across the Decision Divisions is a legitimate objective. Whether using administrative principles approaches the boundary of impermissible direction depends crucially, however, on how those principles are developed: if they are established at short notice and with a specific case in mind, they invite the allegation of indirect instructions; if they are developed through an orderly process involving several bodies and, where appropriate, following public consultation, they serve coherence. To safeguard the Decision Divisions' independence in this respect too, a

body whose approval is required should be involved in establishing administrative principles (for its composition, see ↗**Section 4.2.3**).

### 4.2.3 Personnel policy as a means of influence

**130** Personnel policy also provides the leadership, in principle, with opportunities to influence the Decision Divisions. Independence in personnel matters therefore warrants particular attention (Ottow, 2015; Scholten, 2011).

**131** Dismissal of chairs and associate members is generally impermissible under civil service law alone, since they must be civil servants appointed for life (section 51(4) GWB). It is conceivable, however, that promotions may be withheld or staff reassigned to less interesting areas. In general, the leadership is indeed authorised to reassign chairs and associate members internally at any time (Schneider, 2022a, para. 16). Ultimately, this must not lead to the independence of the Decision Divisions being undermined: abusing these powers to manipulate decisions, or exercising them arbitrarily in disregard of the duty of care under civil service law, is regarded as unlawful (Schneider, 2022a, para. 16). In individual cases, however, exceeding the limits outlined here only very broadly is likely to be exceedingly difficult to prove. Personnel policy is therefore unavailable as an instrument for accountability for the substantive quality of decisions. On the resulting gap and proposals to close it, see ↗**Section 4.3.2**, in particular ↗**Section 4.3.2.3**. There have already been cases in the past that gave rise to speculation and raise the question of the limits of permissible personnel policy by the leadership (see ↗**Box 4.2**).

**132** From the perspective of competition authorities' resilience, a safeguard should be introduced here in future to remove any basis for speculation from the outset, strengthen the independence of the Decision Divisions and limit the leadership's power. It should be borne in mind that interventions in personnel matters may well serve legitimate purposes. They may, for example, be pro-competitive and seek to accelerate proceedings in order to halt developments harmful to competition more quickly. Restricting powers of reassignment and reallocation in an individual case may result in important proceedings being conducted inefficiently or, in the worst case, petering out. Personnel interventions may also, for example, serve coordination by preventing highly divergent approaches among the independent Decision Divisions. This may be required on grounds of equal treatment within the meaning of the general principle of equality. Some of these limits can already follow from general rules laid down in advance: the more reliably responsibilities change according to fixed rotation rules, the less scope remains for reassignments in individual cases and the less reason there is to speculate about their motives (↗**Section 5.2.4**). For these reasons,

personnel policy measures should remain possible in principle, but be subject to certain limits to address the potential risks set out below.

**133** Independence in personnel matters also encompasses the design of selection processes, particularly for leadership positions, already discussed in relation to the office of President in ↗**Section 4.1.2.2**. Clear requirements and a transparent assessment are necessary. Conducting recruitment, promotion and dismissal according to professional and transparent criteria prevents political appointments and safeguards independence and the necessary expertise.

**Box 4.2: Personnel policy as an opening for impermissible direction?**

## PERSONNEL POLICY AS AN OPENING FOR IMPERMISSIBLE DIRECTION?

In 2008, a personnel policy decision by the then President of the Federal Cartel Office attracted attention. It concerned two cases involving a new model for centralised marketing of the media rights to the Bundesliga football league and administrative offence proceedings concerning possible collusion in the search for sponsors. Following public criticism, particularly from the German Football Association (DFB), but also from the Federal Minister of the Interior, who was responsible for sport, the then President of the Federal Cartel Office transferred the rapporteur responsible for the proceedings to another division with immediate effect. The staff council subsequently accused the President of putting the Office's independence at risk, since the reassignment was being seen as a signal that the Office was yielding to public and political pressure. The then President disputed this account. Nevertheless, the incident was troubling, since any appearance of political capture of the Federal Cartel Office must be avoided.

Source: Stockmann, ZWeR 2008, 137.

**134** The rules of procedure should provide for cases to be allocated to rapporteurs by the heads of divisions in accordance with the schedule of responsibilities. A change of responsibility in ongoing proceedings, for example replacing the rapporteur or moving a case to another division, is permissible only on objective grounds and must be justified in writing. The parties to the proceedings must be informed of the change immediately. This continuity of responsibility is modelled on the principle of the judge designated by law. Its purpose is to prevent cases from being moved back and forth

for extraneous reasons. If the change originates with the authority's leadership and the chair of the responsible Decision Division objects, it requires the approval of an internal body yet to be established.

**135** It would be appropriate for this body to comprise various senior figures from within the Federal Cartel Office. These could include the President and Vice-President, the chairs of the Decision Divisions and the heads of the other divisions (D, G, P, W, Z), including a Chief Economist (see **↗Section 5.2.2**). The body's members should be able to decide independently, and a majority of members should suffice for a decision. Such a body might appear large and unwieldy. It should be borne in mind, however, that the Federal Cartel Office already holds a weekly meeting known as the conference of heads of divisions. At that meeting, the body with the composition described above could, among other things, take decisions on changes of responsibility.[20] If necessary, the rules of procedure could also provide for certain decisions to be delegated or subdelegated to a committee of this body. The participation of the authority's leadership in both the larger body and the smaller committee would present a manageable risk in terms of the use of personnel policy to interfere with the Decision Divisions' independence described above, and would in any event be a clear improvement on the current situation. The other members would act as a corrective, able to prevent such interventions by the leadership. The same body could be used to establish administrative principles (**↗Section 4.2.2**) and for other leadership tasks for which **↗Section 4.3** proposes a broader decision-making basis.

## RECOMMENDATION

- The rules of procedure should provide that a change of responsibility in ongoing proceedings, for example replacing the rapporteur, is permissible only on objective grounds and must be justified in writing. If the change originates with the authority's leadership and the chair of the responsible Decision Division objects, it requires the approval of an internal body yet to be established.
- The establishment of administrative principles by the President has a degree of binding effect and therefore sits in tension with the independence of the Decision Divisions. To safeguard their independence in this respect too, the aforementioned body should also be involved in the formalised establishment of administrative principles.

[20] On the body's responsibility for drawing up a list of the authority's strategic priorities and guidance on discretion to initiate proceedings, on the one hand, and for determining the composition and case selection of an enlarged Decision Division, on the other, see further **↗section 4.3.2.2** and **↗section 4.3.2.3** respectively.

## 4.3 Accountability mechanisms

**136** The preceding sections have developed safeguards to strengthen the political independence of the authority and its leadership, and the internal independence of the Decision Divisions. This raises the converse question. Those who exercise far-reaching powers of intervention while being insulated from political direction also escape the usual channels of accountability, both at leadership level and within the Decision Divisions. At both levels, the powers thus safeguarded therefore require accountability to replace the oversight that has been removed. ↗**Section 4.3.1** addresses this for the authority's leadership, and ↗**Section 4.3.2** for the decision-making panels within the Decision Divisions.

### 4.3.1 Accountability for the powers of the leadership

**137** The leadership of a competition authority is not elected directly by citizens, nor can they remove it if they dislike its priorities. This is intentional. It nevertheless creates a need for accountability that must be met. The Monopolies Commission therefore considers it necessary to strengthen political independence while also strengthening the accountability mechanisms that sustain it.

#### 4.3.1.1 Limits on terms of office

**138** To date, the GWB has contained no specific statutory provisions setting out the details of the office of President of the Federal Cartel Office – such as appointment to and departure from office. Such provisions are, however, envisaged for the 12th amendment to the GWB.[21] The position has always been different, for example, for the presidency of the Federal Network Agency: sections 3 and 4 of the Act on the Federal Network Agency (BEGTPG) regulate the status of the President and the two Vice-Presidents, in particular their leadership or representation of the authority and their public-law office-holding relationships, together with numerous other details. By contrast, the President of the Federal Cartel Office's office-holding relationship is, in principle, governed by the BBG. The same applies to the office of Vice-President. As part of the 12th amendment to the GWB, however, it is planned to classify the President as a civil servant appointed for a fixed term and introduce an eight-year term of office with no possibility of reappointment. This is to be set out in greater detail in a new section 51a of the draft GWB.

**139** The President of the Federal Cartel Office, like the Vice-President, has hitherto been appointed for life. Unlike the heads of other authorities – such as the Federal

[21] For a critical assessment of this new provision, see Zimmer (2026).

Criminal Police Office or the Federal Office for Information Security, section 54(2) BBG – the President cannot be retired at any time, since they are not classified as a political civil servant within the meaning of section 54 BBG. Looking abroad, Germany is the only country in the European Union where the head of the competition authority is appointed for an unlimited period (Bundesministerium für Wirtschaft und Energie, 2026, p. 45). The terms of office of some past Presidents of the Federal Cartel Office were considerably longer than those of their counterparts abroad.

**Table 4.4: Term limits at competition authorities: an international comparison**

| Country/authority | Length of term | Term limits |
|---|---|---|
| Federal Cartel Office* | unlimited | none |
| Belgium | 6 years | maximum of 2 terms |
| Directorate-General for Competition** | ~ 7 years | maximum of 1 term |
| Italy | 7 years | maximum of 1 term |
| Lithuania | 6 years | maximum of 2 terms |
| Netherlands | 7 years | maximum of 2 terms |
| Austria | 5 years | none |
| Portugal | 6 years | maximum of 1 term |
| Romania | 5 years | maximum of 2 terms |
| Switzerland | 4 years | maximum of 3 terms |
| Sweden | 6 years | maximum of 1 full term; extension by 3 years possible |
| Spain | 6 years | maximum of 1 term |
| Czechia | 6 years | maximum of 2 consecutive terms |
| United Kingdom | 5 years | none |

* The bill for the 12th amendment to the GWB provides for an eight-year term limit with no possibility of reappointment (see ↗**paragraph 138** above).

** There is no fixed term, but the European Commission has an internal 'mobility policy' for senior management. Under this policy, a move is considered after 5 years, and terms exceeding 7 years should be avoided; see Article 12(3) of the Commission Decision of 15 June 2016, C(2016) 3288 final.

Source: Information from competition authorities and Global Competition Review (2022); Global Competition Review (2023); Competition Council of the Republik of Lithuania (o. J.); Romanian Competition Council (o. J.); Office for the Protection of Competition of the Czech Republic (o. J.).

**Table 4.5: Terms of office of the Presidents of the Federal Cartel Office**

| Name | Duration | Period | Professional background | Previously |
|---|---|---|---|---|
| Dr. Eberhard Günther | ~ 18 years | 1958 – 1976 | Lawyer | Federal Ministry for Economic Affairs |
| Prof. Dr. Wolfgang Kartte | ~ 16 years | 1976 – 1992 | Lawyer | Federal Ministry for Economic Affairs |
| Dieter Wolf | ~ 7 years | 1992 – 1999 | Lawyer | Federal Ministry for Economic Affairs |
| Dr. Ulf Böge | ~ 7 years | 1999 – 2007 | Economist | Federal Ministry for Economic Affairs |
| Dr. Bernhard Heitzer | ~ 3 years | 2007 – 2009 | Economist | Federal Office for Economic Affairs and Export Control |
| Andreas Mundt | ~ 17 years | Since 2009 | Lawyer | Federal Cartel Office |

Source: Bundeskartellamt (2018).

**140** This comparison of the Federal Cartel Office with other authorities admittedly leaves out how decision-making takes place within the Office itself and how closely the leadership is involved in it. As explained in ↗**Section 4.2.1** and ↗**Chapter 3**, decisions in casework are taken in the Decision Divisions. Nevertheless, the leadership naturally has a considerable formative influence on an institution. The question of a term limit for the President is highly significant, because the role carries considerable importance beyond its formally rather administrative character. The significance of some mechanisms of influence should be regarded as increasing the longer an incumbent remains in office.

**141** A limit on the term of office has the advantage of conferring greater legitimacy. The authority's leadership is then appointed or confirmed more regularly by the democratically legitimised supreme federal bodies (the Federal President and the Federal Government; on appointment, see already ↗**Section 4.1.2.2**), thereby itself acquiring indirect democratic legitimacy. Regular renewal of democratic legitimacy becomes all the more important the stronger the role of the authority's leadership and the more difficult removal from office is. In the case of the Federal Cartel Office, the leadership's particularly strong position stems from the fact that its members are not political civil servants and can therefore be removed only within the narrow limits of civil service

law. Moreover, the longer the term of office, the greater the (international) visibility and the opportunity to draw on experience in pursuing long-term objectives.

**142** Regular changes of leadership can provide fresh impetus. A new leadership can bring innovations into the authority. Limiting the term of office therefore strengthens the criterion of openness to change. Moreover, the Office's influence on the political process (e.g. through expert hearings in the Bundestag) argues in favour of regular new appointments. This regularly introduces new ideas and reduces resistance to changing existing rules. The bill for a 12th amendment to the GWB justifies the future time limit on the grounds that it creates an appropriate and comprehensible basis for the conduct of office, does not impair professional expertise, allows regular review of the conduct of office and ensures that the competition enforcement tasks prescribed by the relevant legislation are performed efficiently and independently (Bundesregierung, 2026b, p. 49).

**143** An argument against limiting the term of office is that political independence and resilience to political interference are reduced. Where reappointment is possible, an incumbent is likely to tend towards politically agreeable conduct towards the end of their term so as not to jeopardise reappointment. But even where reappointment is not possible, as envisaged in the bill for a 12th amendment to the GWB, political influence increases because political actors can influence the authority's leadership more regularly. Moreover, excessively short terms of office could cause clarity of strategic objectives and prioritisation to fluctuate more frequently, and reduce efficiency through the greater need for familiarisation. It is also conceivable that a President appointed long before reaching retirement age might orient their conduct towards possible future employers with a view to employment after their mandate ends.

**144** Any future classification as a political civil servant within the meaning of section 54 BBG would have to be firmly rejected. This would greatly weaken the authority's independence and resilience to political interference, even if decision-making remained with the Decision Divisions. Furthermore, this could conflict with the independence of competition authorities required under EU law (Article 4 of the ECN+ Directive). A look abroad and at other authorities, such as the Federal Network Agency and the Federal Court of Audit, and at the European Central Bank supports limiting the term of office and the possible number of reappointments. In those institutions, weighing adaptability and fitness for the future against political independence, clarity of objectives and efficiency has apparently generally resulted in a limit on the term of office.

**145** The decision to limit the term of office immediately raises the question of how that limit should be designed. To approach this issue, it seems helpful to look at comparable institutions that are likewise politically independent. One example of a term limit is the rule governing the President of the Federal Network Agency. The President also heads an authority led by a single individual, in which decision-making is frequently assigned to ruling chambers that closely resemble the Federal Cartel Office's Decision Divisions. The term of office is limited to two five-year terms. Other institutions with a high degree of political independence are the Federal Court of Audit, whose head is appointed for a single term of up to 12 years, and the European Central Bank, whose head is appointed for a single term of up to 8 years.

**Table 4.6: Term limits in independent institutions (examples)**

| Institution | Length of term of office | Term limit |
|---|---|---|
| Bundesbank | 5 to 8 years | unlimited |
| Federal Commissioner for Data Protection | 5 years | maximum of 2 terms |
| Federal Network Agency | 5 years | maximum of 2 terms |
| Federal Court of Audit | 12 years | maximum of 1 term |
| European Central Bank | 8 years | maximum of 1 term |
| Monopolies Commission | 4 years | unlimited |
| Independent Oversight Council (BND) | 12 years | maximum of 1 term |

Sources: Article 283(2) TFEU; section 4(1) BEGTPG; section 11(3) of the Federal Data Protection Act; section 3(2), second sentence, and section 5(1), fourth sentence, of the Federal Court of Audit Act; section 45(1) of the BND Act; section 7 of the Bundesbank Act; section 45(1) and (2) GWB.

**146** A total period of around 8 to 12 years can therefore serve as a useful benchmark for a term limit. Either a single term of 8 to 12 years or a term of 4 to 6 years with the possibility of one renewal would thus be conceivable. One argument for allowing a single renewal is that otherwise the choice cannot be corrected for a long period. An argument against this option is the increased scope for political influence over the competition authority's leadership if renewal depends on political approval. The question of duration and possible reappointment is closely linked to the role of the President: the greater the powers of the presidency, the shorter the term of office should be, and the more power is constrained – for instance by collegial leadership – the less problematic longer terms become.

**147** The bill provides for a limit of a single eight-year term (section 51a(1) of the draft GWB). The Monopolies Commission welcomes this change, which it considers appropriate and broadly in line with the considerations set out here. The Monopolies Commission welcomes the fact that the restriction to a single term is now to be included in the text of the law itself, rather than merely in the explanatory memorandum, as envisaged in the ministerial draft. The Monopolies Commission had already recommended this in its 2026 Biennial Report (Monopolkommission, 2026, paragraph 424).

**148** The debate over a cooling-off rule is also closely connected to the question of term limits. Such a rule requires office holders to notify the commencement of new professional activity within a specified period after leaving office. If an assessment finds that this could give rise to conflicts of interest with their previous activity, for example through knowledge of sensitive information, taking up the new activity may be prohibited. Where the presidency is constituted as a fixed-term civil service appointment, after leaving office the leadership is subject to the duty of confidentiality under section 67 BBG and the notification and authorisation requirements for taking up gainful activity or other employment outside the public service under section 105 BBG. If the civil service appointment ends on reaching the standard retirement age, the notification requirement generally expires three years after it ends; for other reasons for termination, it expires after five years. If, in the course of the legislative process, the presidency were instead to be constituted, for example, as a public-law office, care would have to be taken to ensure that these rules likewise apply.

**149** The question of whether the term of office should be limited in future also arises for the Vice-President. This becomes particularly relevant if the position is strengthened and the authority's leadership is organised on a collegial basis in future (↗**Section 4.3.1.2**). Essentially, the considerations already listed in relation to the President also apply. Since the 12th amendment to the GWB already envisages statutory regulation of the President's office in the new section 51a of the draft GWB, the opportunity should be taken to enshrine the Vice-President's office in law as well. A term limit, by contrast, seems less important if the office remains largely dependent on delegation by the President, as it is at present.

## RECOMMENDATIONS

- The President's term of office should be limited in future. Depending on the powers of the presidency in future, a maximum term of eight to twelve years would be appropriate. There should be no possibility of reappointment, in order to minimise political influence. The Monopolies Commission welcomes the eight-year term limit, without the possibility of reappointment, envisaged in the bill for a 12th amendment to the GWB.

#### 4.3.1.2 Broadening decision-making at leadership level

**150** There is international debate over whether decision-making in competition authorities is better undertaken by a single head (monocratic leadership) or a collective body (collegial leadership) (Jenny, 2016, pp. 27 f.; Kovacic/Hyman, 2012a, pp. 6 f.). In support of a collective body, Jenny (2016) argues that it offers the opportunity to bring together different forms of expertise (e.g. people with legal and economic expertise), which could confer greater legitimacy on decisions. It could also make regulatory capture more difficult. Finally, greater stability of decisions could be achieved, since replacing one member is less likely to lead to a complete change of direction. Recently, leaving positions unfilled has become a means of weakening institutions. For example, in August 2026 only two of the five commissioner positions at the US FTC were filled (Brown, 2026). Weakening an institution is easier under a single head than under a collective body. As arguments against a collective body, Jenny (2016) notes that the decision-making process can be slowed down, decisions may be less consistent owing to differences of opinion, and confidence in the institution may be lower if there is disagreement. Kovacic and Hyman (2012a) find that, in a global comparison, the majority of competition authorities provide for a collective body. They too identify broader expertise, greater resilience to capture and greater legitimacy as advantages of this system. The advantages cited for a single head are the ability to pursue a more coherent programme and take decisions more quickly. Furthermore, the appointment of an unqualified political supporter is said to be less likely because an individual bears greater accountability.

**Table 4.7: Leadership of the authority by a single head or a collective body**

| Country/authority | Leadership |
|---|---|
| Federal Cartel Office | Single head |
| Belgium | Collective body |
| Directorate-General for Competition | Single head |
| Italy | Collective body |
| Austria | Single head |
| Portugal | Collective body |
| Switzerland | Single head |

| | |
|---|---|
| Spain | Collective body |
| United Kingdom | Collective body |

Source: Survey of competition authorities.

**151** The argument applies only to a limited extent to the Federal Cartel Office, since it represents the special case of a mixed system: as is usual for German authorities, the Federal Cartel Office is currently headed by a single individual. Decisions are, however, taken by the Decision Divisions, which generally decide independently of the views of the authority's leadership. Within the Decision Divisions, decisions are taken collectively. Collegial leadership at the top of the authority could be established by adapting the Vice-President's office and introducing further deputies, as is the case, for example, at the Federal Network Agency, where two Vice-Presidents are appointed. Alternatively, the longest-serving or most recently appointed chair of a Decision Division could, for example, join the leadership to form a three-member body. Abroad, there are also models in which external, part-time members participate in decision-making alongside the full-time members of the collective body. One example is the French Autorité de la concurrence, where 12 additional members (e.g. from courts, universities and associations) serve alongside the President and four Vice-Presidents (Autorité de la concurrence, 2023).

**152** The question of whether the Federal Cartel Office would be better served by collegial leadership in future, and how this should be arranged in detail, must be answered in close connection with the President's remit. In particular, it would be necessary to clarify how tasks would be divided between the President and the collective body. Given the strong position of the Decision Divisions in deciding individual cases, the stronger arguments favour retaining a monocratic leadership structure in principle. For individual tasks, however, it may be appropriate to restrict the leadership's powers where these are considered particularly far-reaching or susceptible to abuse. In this respect, assigning individual tasks to an internal body would be a suitable option. This has already been developed in **↗Section 4.2.3** on personnel policy and in relation to drawing up administrative principles in **↗Section 4.2.2**, and will also be proposed for other tasks, namely drawing up a list of priorities setting out the authority's strategic priorities and guidance on its discretion to initiate proceedings (see **↗Section 4.3.2.2**), and determining the composition and jurisdiction of an enlarged Decision Division (see **↗Section 4.3.2.3**). This restraint does not mean that the question of how power is distributed at the top remains unanswered. It is simply answered elsewhere in this report: in particular through limiting the term of office (**↗Section 4.3.1.1**), publishing the rules of procedure (**↗Section 4.3.1.3**), restricting personnel policy interventions in ongoing proceedings (**↗Section 4.2.3**) and broadening the

range of professional voices within the Office (↗**Section 5.2**). Together, these proposals are intended to deliver what is expected of a collective body, namely plurality and mutual scrutiny, while preserving the coherence and capacity to act of a single head.

**153** Overall, the advantages of clear attribution of responsibility, organisational capacity to act and unified external representation favour retaining leadership of the authority by a single individual. The leadership's power should be constrained through targeted transparency, procedural safeguards and the independence of the Decision Divisions, rather than through an additional leadership body. The Vice-President's office should, however, at least be given a rudimentary statutory framework (↗**Section 4.3.1.1**).

**RECOMMENDATIONS**

- For individual powers considered particularly far-reaching or susceptible to abuse, consideration could be given to broadening decision-making to involve several people. The first category could include drawing up a list of priorities setting out the authority's strategic priorities and guidance on its discretion to initiate proceedings, and determining the composition and jurisdiction of an enlarged Decision Division. The second could include individual personnel policy decisions that may ultimately constitute interference with the independence of the Decision Divisions.
- This could take the form of decisions in such cases being taken by an internal body yet to be established, whose members act independently.

#### 4.3.1.3 Publication of rules of procedure, the schedule of responsibilities and meeting schedules

**154** Section 51(2), second sentence, GWB expressly assigns the President the task of regulating the allocation and conduct of business through rules of procedure. These require confirmation by the Federal Ministry for Economic Affairs and Energy. The allocation of business refers to the broad allocation of responsibilities, for example for particular sectors, among the Decision Divisions, while specific details are determined by subordinate management units (e.g. heads of division) (Schneider, 2022a, paras. 4, 6). The conduct of business encompasses the broad, abstract structures of the processes taking place within the Federal Cartel Office (Schneider, 2022a, para. 4).

**155** Unlike the rules of procedure of the Public Procurement Tribunals (section 158(1), fourth sentence, GWB), the Federal Cartel Office's general rules of procedure do not have to be published. This makes it more difficult for the specialist public to understand the organisational structures within the Federal Cartel Office. Only the rudimentary provisions of section 51 GWB are generally known. The Monopolies Commission therefore advocates publication of the rules of procedure (also supported by Stockmann/Picht (2024a, para. 35)). Publication strengthens scrutiny of the authority's actions and thus its legitimacy under the rule of law, and enables external questioning of its adaptability and fitness for the future. The Monopolies Commission sees no reasons against publication. The rules of procedure are also published in other countries.

**Table 4.8: Publication of the rules of procedure**

| Country/authority | Publication |
|---|---|
| Federal Cartel Office | no |
| Belgium | partly |
| Directorate-General for Competition | yes |
| Italy | yes |
| Austria | no |
| Portugal | yes |
| Switzerland | yes |
| Spain | yes |
| United Kingdom | yes |

Source: Survey of competition authorities.

**156** It is questionable whether constraining the leadership's power also requires a restriction on the President's authority to determine the rules of procedure and allocation of responsibilities. The literature, for example, calls for decisions on membership and jurisdiction within the authority to be transferred to an independently deciding body constituted along the lines of a court's presidium. This is intended to avoid any appearance that the schedule of responsibilities is used to influence the substance of decision-making by the Decision Divisions (Stockmann/Picht, 2024a, para. 33). An argument in favour of this proposal is that proceedings at the Federal Cartel Office were deliberately designed in principle to resemble judicial proceedings, and such a court-

inspired arrangement would therefore be only consistent. This would address the criterion of adherence to fundamental values in the sense of commitment to the rule of law. An argument against it is that the Federal Cartel Office is ultimately not a court and judicial review can still take place after case decisions. Moreover, the proposal could potentially create a noticeable amount of bureaucracy within the authority. Furthermore, unlike in individual matters of personnel policy, the President cannot determine the rules of procedure and schedule of responsibilities free from scrutiny, but requires confirmation by the Federal Ministry for Economic Affairs and Energy under section 51(2), second sentence, second half-sentence, GWB. No further restriction on the leadership's authority to determine the rules of procedure and schedule of responsibilities, beyond the requirement for ministerial approval, appears necessary.

**157** The situation is clearer with regard to the desirability of transparency concerning the leadership's diary. At the European Commission, all meetings that Commissioners hold with representatives of companies and associations, including the subjects discussed, are listed publicly in advance (Europäische Kommission, 2026c). Such transparency would also strengthen the Federal Cartel Office's adherence to fundamental values and bring benefits by building trust.

**RECOMMENDATIONS**

- To improve transparency concerning the Federal Cartel Office's internal processes, the rules of procedure and schedule of responsibilities should in future be published online. A corresponding passage should be added to section 51(2) GWB. No further restriction on the leadership's authority to determine the rules of procedure and schedule of responsibilities, beyond the requirement for ministerial approval, appears necessary.
- In addition, the meetings of the presidency should be listed in a publicly accessible calendar, as is already customary at the European Commission.

### 4.3.2 Accountability for decision-making powers

**158** The Decision Divisions decide on prohibitions, remedies and fines with significant economic implications, and do so free from instructions not only from political actors but also from their own authority's leadership. They are therefore outside the channels of accountability that would otherwise be taken for granted within an administration. Apart from possible subsequent judicial review, there is no body that could overturn a decision or even require additional reasons. The intensity of judicial review is low. This makes the mechanisms that take its place all the more important.

**159** The need for such mechanisms follows from a general insight of the economic theory of bureaucracy: authorities and their staff pursue interests of their own, above all reputation and career development, and these rarely coincide with society's interests (Niskanen, 1968). In the economy, the market provides the corrective. Companies that do not serve society's interests are eliminated, at least in the ideal model of perfect competition. In public administration, this external pressure is absent – 'such (perfectly competitive) markets are rare enough in the economy and much rarer in the world of politics' (North, 1992, p. 61). Inefficiencies can therefore become entrenched over long periods, and studies indicate that public administrations adopt innovative, sometimes risky solutions more slowly than the private sector, particularly in digitalisation (Bauer u. a., 2025; Davis u. a., 2025). Accountability must therefore be built into an authority's governance structures from the outset (Cooper/Kovacic, 2012a; Hyman/Kovacic, 2013).

**160** Apart from judicial review, the Federal Cartel Office's accountability mechanisms are weak in their effect. The Decision Divisions are not formally required to account for their decisions to the presidency, the ministry, the Bundestag or the public. The same applies to courts: the judiciary likewise does not account for its actions. That this is acceptable at all follows from the principle of limiting regulation through decentralised decisions in individual cases (Podszun, 2014): an individual judgment decides only a specific case, and its legally binding effect is confined to that case. If it is a mistaken decision, the limited effect means that, if necessary, it can be tolerated from an economy-wide perspective. Decisions of the Federal Cartel Office often have a much wider reach from the outset, quite apart from decisions such as those envisaged by section 32f GWB. Courts, of course, also occasionally take landmark decisions. However, there are significant differences in how the powers of the judiciary and the Federal Cartel Office are constrained: in the judiciary, investigation and decision-making are separate. The initiation, conduct and conclusion of proceedings are largely controlled by the parties. The proceedings themselves are clearly regulated. There is essentially only one form of action for deciding a case, namely a final decision (for example, a judgment). In that decision, the court must give a comprehensive account of its reasoning. There is a clear route to review by higher courts, the accessibility of which is repeatedly discussed. Further aspects of judicial organisation (e.g. the selection of judges) enhance legitimacy and ensure accountability for decision-making power. The Federal Cartel Office's powers are not constrained in the same way.

**161** This reveals a gap that is central to the analysis that follows. The very decision to take up a case (outside merger control) lies solely with the authority, not with those concerned. There is currently no channel of accountability within the authority for assessing whether the reasons for a decision hold up: no institutionalised second professional perspective is provided for, and the only effective means available to the

leadership, personnel policy, is precisely the one that should not be used to influence the substance of decisions. What remains is judicial review. It is effective but limited in practice. The following sections therefore discuss four mechanisms that can close this gap without affecting freedom from instructions in the decision itself: disclosure of the criteria for taking up cases, internal quality assurance, transparency of decisions towards the public and openness to professional criticism. These are preceded by an examination of judicial review itself, which shows the standard against which these mechanisms must be assessed. They are supplemented by proposals developed elsewhere in this report: the externally appointed Chief Economist (↗**Section 5.2.2**), the Procedural Officer (↗**Section 5.2.5**) and systematic ex-post evaluation (↗**Section 5.3.2**).

#### 4.3.2.1 Judicial review, its limits and incentives to avoid risk

**162** Judicial review is effective: where it applies, it is thorough, and the prospect of judicial review disciplines the authority in advance. Nevertheless, it cannot alone ensure accountability for decision-making power, for three reasons. First, it takes place subsequently, often years after the decision; in markets where structures rapidly become entrenched, correction then often comes too late. Second, it takes place only where appeals are lodged. Particularly where the authority concludes proceedings by agreement, judicial review frequently does not occur. Studies (see Podszun, 2021; Podszun/Overhoff, 2024; Podszun/Robertson, 2025) show that judicial review takes place in only a fraction of the cartel and abuse proceedings they examine. The incentives for companies to challenge merger control decisions in court are low owing to the considerable time pressure in M&A deals. Companies are therefore often willing to make concessions during discussions with the Federal Cartel Office; if in doubt, they withdraw the notification. Contested prohibitions are therefore rare, and judicial review of the authority's assessment correspondingly seldom takes place. Although third parties may in some circumstances challenge clearances, this is rare in practice – and rarely successful (see, for example, OLG Düsseldorf, VI-Kart 7/23 (V), 6 December 2023, Apothekenkundenzeitschriften). In cases involving fines, too, the incentive to seek judicial review can be very low where there is a risk that the courts will significantly increase the fine (Mäger/Achenbach, 2019). Third, the courts review the legality of a decision, but not the expediency of taking up a case. Whether a particular case was taken up in preference to other possible cases is subject to only very limited judicial review (on discretion to initiate proceedings, see BGH, KVZ 20/00, 6 March 2001, Fachklinik für Herzchirurgie; OLG Düsseldorf, VI-Kart 7/22 (V), 20 August 2025, Lufthansa Hauptsache; on the exceptional case in which discretion is reduced to zero, see OLG Düsseldorf, VI-Kart 1/09 (V), 16 September 2009, DFL-Vermarktungsrechte). Yet this very question of prioritisation helps determine the authority's impact on society.

**163** Judicial review is the only strong external mechanism for reviewing administrative decisions. This is particularly true where the authority's decisions are not subject to any further substantive or legal supervision, for example by a higher authority. This is the case at the Federal Cartel Office, where the Decision Divisions are also not subject to substantive instructions within the authority itself, a principle of internal independence that the Monopolies Commission expressly endorses. Nevertheless, there is a need for accountability for decisions with far-reaching implications, rather than leaving them solely to the three members of a Decision Division. Where judicial review is barely available even as a matter of law, particularly in relation to discretion to initiate proceedings, such accountability has so far largely been absent. This is questionable given the importance of that discretion. Where a decision is taken, it must be ensured that there is a genuine opportunity for review, both in law and in practice. Competition law needs improvement in this respect (see ↗**paragraphs 170 f.**). The system of judicial review as such is, however, outside the scope of this report. For the aspects considered here, it should be noted that the limited intensity of judicial review makes other mechanisms for ensuring accountability for decision-making power more important.

**164** The fact that judicial review takes place in only a very small proportion of cases does not diminish its formative effect on the authority. Its value as a safeguard under the rule of law stands in its own right and is not called into question by the following considerations. For incentives within the authority, however, what matters is less how often courts decide than the effect of a defeat; the low intensity of review may itself also partly result from these incentives. This is the starting point of institutional economics research on public authorities in general. It emphasises that organisations' efficiency is decisively shaped by their internal incentive structures. In public authorities, these incentive structures are often distorted: staff are sometimes assessed less by performance than by procedural guidelines, compliance and minimising risks. Accountability for decisions is often owed primarily to the courts. One of the most relevant risks from the staff's perspective is therefore a court overturning a decision. The decisive factor is less personal risk aversion than how responsibility is attributed. A defeat in court is a visible event that can be attributed to those who took the decision. By contrast, the costs of proceedings that are not initiated or not pursued to a decision fall on the general public, are hardly measurable and are attributed to no one. Given this distribution, restraint is the natural response to the incentives facing decision-makers (Bloch, 2011; Boukamel u. a., 2019; Kaur u. a., 2022; de Vries u. a., 2016).

**165** The literature also describes such a mechanism for competition authorities. Avdasheva, Golovanova and Katsoulacos (2019) model a reputation-maximising competition authority whose reputation increases with the success of its enforcement. On this account, there may be incentives to favour activities with a low probability of being overturned by a court and low investigation and litigation costs, even though a more

balanced selection of cases would increase welfare. The authors find empirical indications of this in decisions by the Russian competition authority. Budzinski and Haucap (2019) likewise point out that it is rational for competition authorities and their staff to select 'easy' standard cases that are likely to be won in court, and to pursue fewer 'innovative cases' that may be more likely to be lost in court. This can mean that economically problematic cases – that is, distortions of competition associated with high welfare losses – are not taken up or pursued where the outcome of proceedings is risky ex ante. A defeat in court could be seen as a failure of the competition authority.

**166** The discussions conducted by the Monopolies Commission gave the impression that the current incentive structures lead the Federal Cartel Office to place very strong emphasis on its accountability to the courts. It appears that legal risks are kept as low as possible and defeats in court avoided wherever possible. The discussions do not allow the extent to which this affects case selection to be determined. The Monopolies Commission nevertheless considers it very likely that there is an effect. The incentives act in the same direction on all those involved, there is no institutional counterweight to them within the authority, and the empirical literature on competition authorities describes the same pattern.

**167** The Monopolies Commission observes a tendency towards consensual conclusions to proceedings. Commitment decisions, settlements and informal conclusions to proceedings have become more important in recent years in administrative competition proceedings and proceedings concerning administrative competition offences, as they enable efficient conduct of proceedings while reducing the risk of disputes in court (see Podszun, 2021; Podszun/Overhoff, 2024). The approach described contributes to procedural economy. Budzinski and Kuchinke (2012) point out, however, that consensual solutions can also be attractive to a competition authority because they reduce procedural and reputational risks. At the same time, case pursuit is selective if it is predominantly geared towards confirmation by the courts. It should be expressly emphasised that this approach is generally well-founded in individual cases and natural from the perspective of those involved. It reflects careful conduct of office that conserves resources. The finding is directed not against casework, but against an incentive structure in which accountability to the courts is firmly embedded institutionally, while accountability for the societal significance of case selection scarcely is.

**168** The distortion operates at two levels. The first concerns selection: cases are more likely to be taken up where they are expected to withstand judicial scrutiny. The ability to withstand judicial scrutiny is rightly pursued as a quality. In institutional terms, however, it also describes the benchmark that guides selection, because there

is no equally firmly embedded benchmark for the societal significance of a case. At the second level, the distortion concerns the conclusion of proceedings: proceedings concluded with commitments or by settlement generally do not lead to judicial review and therefore do not lead to an attributable defeat. Both approaches are well-founded in individual cases and serve the efficient conduct of proceedings. Taken together, however, they may contribute to proceedings involving far-reaching legal questions also failing to reach judicial clarification. An orientation towards judicial review can thus indirectly weaken judicial review itself.

**169** This limits effectiveness and, in a certain sense, adherence to fundamental values as well. Effectiveness and adherence to fundamental values support attaching as much weight to the societal significance of cases as to successfully defending a decision in court. In socially significant cases involving high legal risk, failure should not be the sole benchmark for judging whether the decision to pursue proceedings was right in the first place, but can also be used as a source of learning for future proceedings involving risk.[22] What is needed is therefore not simply incentives to take more risks. Rather, the highly visible risk of a defeat in court must be prevented from systematically outweighing the less visible costs of failing to intervene. This requires the authority itself to make clear which proceedings it considers particularly important, rather than implicitly leaving this weighting to each individual Decision Division. Once the authority has stated that certain proceedings are particularly important to it, a defeat in those areas will no longer be attributed solely to the individual Decision Division, but understood as part of the authority's declared approach (see ↗**paragraph 186**). A learning culture can then emerge that increases the authority's effectiveness from society's perspective. The proposal developed here therefore does not presuppose that the distortion described has already had an effect in past practice. It addresses a feature of the institutional arrangements that persists even if the decisions in individual cases were each well-founded, and that would only take effect under less favourable conditions.

**170** This finding does not imply that judicial review should be scaled back. It is required by the rule of law and its disciplining effect is indispensable. An expansion of judicial review would be more desirable, so that this important voice in competition law discourse also shapes issues that have hitherto often gone without judicial discussion for years. The Monopolies Commission therefore expressly welcomes the

[22] The dispute over Booking.com's narrow best-price clauses shows that an interim defeat does not establish that the decision to pursue proceedings was wrong. The Federal Cartel Office pursued its 2015 prohibition after the Düsseldorf Higher Regional Court had overturned it; the Federal Court of Justice upheld it (KVR 54/20, 18 May 2021), and the Court of Justice followed this approach (CJEU, C-264/23, 19 September 2024). Whether the underlying competition assessment is persuasive in every respect is a separate question, on which the Monopolies Commission has expressed its view elsewhere (Monopolkommission, 2020, paragraphs 486 ff.).

proposal in the draft 12th amendment to the GWB to abolish the requirement for leave to appeal on points of law.

**171** Looking ahead, consideration should be given to expanding legal protection. This applies in particular to measures that result in legal protection hardly ever being sought in practice: settlements, commitment decisions, informal conclusions to proceedings and decisions not to initiate proceedings.

**172** This reveals a fundamental problem. The Federal Cartel Office reliably accounts for the legality of its challenged decisions because the courts review them. By contrast, it accounts only to a very limited extent for whether it takes up socially significant cases and pursues them with the necessary persistence, including where a consensual conclusion appears natural. Where only one of two requirements is strongly safeguarded institutionally, practice follows the better-safeguarded one. A correction therefore cannot consist in weakening judicial review, but only in embedding the second requirement just as reliably. The following mechanisms must be measured against that standard, beginning with disclosure of the criteria for selecting and pursuing cases and a willingness to conduct proceedings with an uncertain outcome.

#### 4.3.2.2 A list of priorities, guidance on the discretion to initiate proceedings and a declared willingness to take risks

**173** The decision on which matters to take up currently rests with the Decision Divisions and is taken without disclosed criteria. The Monopolies Commission proposes recording such criteria in a list of priorities and guidance on discretion to initiate proceedings, thereby declaring priorities for competition law enforcement. The power to draw up such a list of priorities itself requires accountability; both aspects are addressed below.

**174** Resource constraints mean that competition authorities cannot investigate every suspected instance of anticompetitive conduct, or investigate them all with the same intensity.[23] Targeted allocation of resources can accelerate proceedings and/or improve the quality of decisions in selected areas. If a competition authority acts on the basis of priorities, their influence on its work can accordingly take a variety of forms. In merger control, a list of priorities can in particular set analytical and strategic priorities without changing the statutory standards of review. In abuse control and cartel enforcement, it can also play a role in considerations on whether to initiate proceedings.

[23] The Federal Cartel Office usually informs complainants in an (informal) letter if, and why, a case is not taken up.

**175** In the United Kingdom, the government sets out a kind of agenda specifying the areas to which the national competition authorities' resources should be directed as a priority. For its annual plan for 2025/2026, for example, the CMA was instructed to focus on promoting growth and investment (Department for Business & Trade, 2025). The CMA is also expected to minimise uncertainty for those affected by its work (Department for Business & Trade, 2025).

**176** Politically prescribed agendas for competition authorities are relatively unusual internationally and are repeatedly the subject of critical debate. They are in tension with the political independence of the authority concerned (see already **↗Section 4.1.3**). Independence means both the absence of direct political instructions and separation from the particular interests of economic actors. Competition authorities' decisions often concern large companies, essential infrastructure and markets of considerable economy-wide relevance. They can have substantial economic effects and frequently touch upon industrial, regional or employment policy interests. In addition, companies affected by proceedings often have considerable economic resources and scope for political influence. In precisely such situations, there is a danger that short-term political considerations and the interests of individual market participants will influence the competition law assessment. Institutionally safeguarded independence strengthens consistent and predictable application of the law and the authorities' ability to act firmly against companies with market power.

**177** The Federal Cartel Office's mandate is to protect competition. Beyond this, there are no formalised political or statutory objectives. Political expectations of the Federal Cartel Office are rarely expressed and are not legally binding. In exceptional cases, de facto pressure to act may arise that the authority finds difficult to resist. This was most recently observed in the issue of fuel prices, when the Federal Cartel Office was sometimes explicitly called upon to take firm action, and thus to set a corresponding priority (Table.Briefings, 2026).

**178** The basic idea behind the objective of protecting competition is that competition generally increases total welfare and should therefore be protected wherever necessary. Despite this understandable rationale, protecting competition as an agenda has a certain arbitrariness. It lacks more detailed prioritisation. Any measure to safeguard competition can equally be regarded as a success, provided that enforcement succeeds. In theory, it is immaterial to what extent, for example, consumers, competitors, suppliers, employees or the environment benefit from the competition that has been safeguarded.

**179** EU law provides for an alternative to a politically prescribed agenda. In safeguarding the independence of national competition authorities, the ECN+ Directive

addresses the question of setting priorities in enforcing Articles 101 and 102 TFEU. Under Article 4(2)(b) of the ECN+ Directive, Member States may issue general policy rules to competition authorities. The selection of individual proceedings must, however, remain a matter for the competition authorities themselves. This also accords with the authorities' power under Article 4(5) of the ECN+ Directive to set their own priorities. Prioritisation enables competition authorities to use scarce resources to combat the most harmful conduct. Nevertheless, some national competition authorities, such as the ACM in the Netherlands, must give reasons when rejecting complaints or declining to pursue particular cases. In doing so, the Dutch ACM examines whether competition law enforcement would be effective, such that a socially desirable market outcome is likely to emerge in the short term (Autoriteit Consument & Markt, 2023). The European Commission likewise rejects a complaint within the meaning of Article 7(2) of the Competition Enforcement Regulation by means of a reasoned decision.

**Table 4.9: Agendas in competition authorities internationally**

| Country/authority | Agenda in place | Agenda public |
|---|---|---|
| Federal Cartel Office | no | - |
| Belgium | yes | yes |
| Directorate-General for Competition | yes | yes |
| Italy | no | - |
| Austria | no | - |
| Portugal | no | - |
| Switzerland | no | - |
| Spain | yes | yes |
| United Kingdom | yes | yes |

Source: Survey of competition authorities.

**180** The Federal Cartel Office as a whole, and the Decision Divisions in particular, generally have considerable scope to set their own priorities independently and establish an internal agenda (Podszun/Overhoff, 2024). Both administrative competition proceedings conducted ex officio (section 54(1) GWB in conjunction with section 22 of the Administrative Procedure Act, VwVfG) and proceedings concerning administrative competition offences (section 81 GWB in conjunction with section 47(1) of the Act

on Regulatory Offences, OWiG) are governed by the principle of discretionary prosecution. The Decision Divisions thus have discretion in selecting cases. According to a widely held view, section 76(5), first sentence, GWB means that the intensity of judicial review of the authority's exercise of discretion in administrative competition proceedings is greater than under general administrative law (Lembach, 2022, para. 66, with further references). The expediency of taking up a case is, however, subject to only very limited judicial review (see **↗paragraph 162**). In this respect, the Decision Divisions' actions are characterised by considerable independence both in law and in practice (see already **↗Section 4.1.3**).

**181** Particularly given the limited scope for judicial review, the question arises of an accountability mechanism that supports this aspect of independence. The Monopolies Commission considers that the Federal Cartel Office does not need a politically or statutorily prescribed objective or agenda. The mandate to protect competition is sufficient. Further requirements would pose too great a risk to the Office's political independence. Nevertheless, transparent prioritisation by the authority would serve adherence to fundamental values. In the Monopolies Commission's view, it would be helpful if the authority set its own priorities for its work and published them in the form of a list of priorities. There are international examples of this. In Ireland, the Competition and Consumer Protection Commission (CCPC) publishes a 'Strategy Statement' every three years (CCPC, 2023). It currently places particular emphasis on interventions where they matter most to consumers (CCPC, 2023, p. 5). In the Netherlands, the ACM works on the basis of its 'Jaarplan' (Autoriteit Consument & Markt, 2026). This currently sets priorities in the areas of the digital economy, sustainability, innovation and resilience (Autoriteit Consument & Markt, 2026).[24]

**182** The examples show that such criteria for setting priorities may include general objectives such as increasing consumer welfare, total welfare or sustainably improving competitive structures. The priorities set by the authority would also not have to apply conclusively for a particular period, as in Ireland or the Netherlands; they could instead be continually updated in the light of practical experience. In any event, they would offer an opportunity to understand the authority's work better.

**183** This is not always possible at present. It is barely apparent from outside how the Decision Divisions set priorities. In merger control proceedings, their scope is limited by the very fact that notified mergers must be reviewed within statutory deadlines. In abuse and cartel proceedings, by contrast, there is considerable discretion to initiate proceedings; outsiders have only limited insight into the criteria used to select poten-

[24] For further examples of competition authorities with an agenda, see Brook/Cseres (2021, pp. 20 ff.) and OECD (2026, pp. 11 f.).

tial cases. Here, activities should at least be broken down by individual Decision Division in the activity report. This would make it clearer which divisions face particularly heavy workloads and which sectors are particularly affected by competition problems. The Federal Cartel Office should subsequently draw up a public list of priorities reflecting this.

**184** This list could provide the basis for explaining why abuse and cartel cases are taken up. Based on the list of priorities, the societal significance of a case could be assessed qualitatively or, where possible, even estimated quantitatively. Matters falling within the strategic priority areas of the list could be given priority and the authority's resources directed accordingly.

**185** Beyond substantive priorities, a list of priorities can also serve a second purpose. Alongside the question of which matters to take up is the question of how persistently the authority pursues proceedings whose legal outcome is uncertain. ↗**Section 4.3.2.1** has shown why this question should not be left to the individual case: a defeat in court is visible and can be attributed to those who took the decision, while the costs of proceedings that are not initiated or not pursued to a decision fall diffusely on the general public and are attributed to no one. Unless the authority states which types of proceedings it regards as particularly important, willingness to conduct such proceedings is determined implicitly in each individual Decision Division, under incentives that encourage caution.[25]

**186** The list of priorities should therefore also make clear which types of proceedings and circumstances the authority considers particularly important. The purpose is not to quantify risks or attach a risk assessment to individual proceedings. Novel and structurally significant competition problems, for example, could qualify. Features that could be identified include a sufficiently well-founded economic theory of harm, the prospect of significant economy-wide effects, the likelihood that conventional instruments will be insufficient, and the suitability of the proceedings for bringing unresolved legal questions before the courts for clarification. Particular types of proceedings could, for example, be identified, such as those under section 19a and section 32f(3) and (4) GWB. By declaring such types of proceedings particularly important, the

[25] The first proceedings under section 32f(3) GWB, initiated by the Federal Cartel Office in March 2025 following its sector inquiry into refineries and fuel wholesaling, illustrate such decision situations. After the requests for information issued in those proceedings failed to withstand judicial scrutiny in key respects in interim proceedings, the authority faced a choice between continuing the proceedings with a narrower scope and suspending them pending further judicial clarification. According to the Federal Government, the proceedings are currently suspended (BT-Drs. 21/6169, pp. 3 f.). Whether this was correct in the individual case cannot be assessed from outside, and no claim is made here; the decision concerned a new instrument in an unsettled legal situation and was correspondingly difficult. It does show, however, that such balancing exercises are currently undertaken without a declared approach by the authority.

authority also signals its willingness to conduct proceedings with an uncertain outcome in those areas. This would also contribute to openness to change, since only judicial clarification of new questions defines the scope for future action. This does not involve prescribing the outcome of individual proceedings; decisions in individual cases remain with the competent Decision Division. The benefit lies in the attribution of responsibility: once the authority has stated that proceedings in certain areas are particularly important to it, a defeat in those areas is no longer solely the risk of the individual Decision Division, but an expression of the authority's declared approach. In the risk management of public organisations, this idea is known as 'risk appetite': the leadership determines at a strategic level which risks the organisation is willing to take to achieve its objectives, without prejudging individual decisions. [26] At the same time, it becomes possible to verify whether the authority actually follows this declared approach; this is precisely what makes the declaration an accountability mechanism.

**187** This public list of priorities is suitable as a means of accountability because external observers could discuss the priorities and their suggestions could be used to improve them. Legitimising prioritisation through public discourse would strengthen the Office's adherence to fundamental values.[27] The list of priorities would also give potential complainants additional guidance on which aspects are relevant to the Federal Cartel Office taking up their case. As explained above, the Federal Cartel Office's Decision Divisions generally have discretion in selecting which abuse and cartel cases to pursue. In particular, as part of their power to set priorities, they may refrain from taking up a case if other tasks appear more pressing. That decision, however, is solely a matter for the Decision Divisions.

**188** The list of priorities is thus also an example of how political independence and constraints on power are compatible. An authority that discloses the basis on which it sets its priorities thereby becomes less, rather than more, vulnerable to challenge: it can offer a sound response to allegations that its case selection is guided by irrelevant considerations (see **↗Section 2.2**).

**189** A somewhat further-reaching step would be to develop a cross-sector, data-driven competition monitoring system for the Federal Cartel Office (see also **↗Section 5.3.1.6**). Complementing a list of priorities that primarily sets abstract and strategic priorities, such monitoring would take observable market developments more strongly as its starting point and derive possible areas for examination from them. The

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[26] The UK's Orange Book defines risk appetite as the nature and extent of the principal risks an organisation is willing to take to achieve its objectives, and assigns responsibility for determining it to the leadership (HM Treasury, 2023, p. 12). On implementation in case selection criteria, see **↗paragraph 193**.

[27] For a fundamental discussion of this outward openness, see **↗Section 5.2**.

insights gained through competition monitoring could in particular be used to review and develop the Federal Cartel Office's strategic priorities continuously. New cross-sector developments and recurring competition problems could thus inform the setting of priorities at an early stage and help to adjust existing priorities or add new areas of action to the list.

**190** In addition to strategic priorities, the question arises of which discretionary considerations are decisive in deciding for or against initiating competition proceedings. The Federal Cartel Office could publish guidance on this. Guidelines on discretion to initiate proceedings differ from a list of strategic priorities in that the latter describes the authority's competition policy priorities and thematic focus, whereas the guidelines contain abstract, general criteria for selecting specific cases (see also Brook/Cseres, 2021, p. 43). The Federal Cartel Office already has general publications providing indications of how it exercises its discretion to initiate proceedings and which cases it prioritises: the so-called de minimis notice, the guidance on resale price maintenance in the food retail sector and the guidelines on cooperatives (Bundeskartellamt, 2007b; Bundeskartellamt, 2017, paras. 102 ff.; Bundeskartellamt, 2021b). However, these observations concern only individual, narrowly defined aspects of enforcement and are fairly brief.

**191** Exercising discretion requires an overall balancing of several criteria, which must be weighted and related to one another. This balancing exercise is complex and binary only in its outcome. The authority can either initiate proceedings or refrain from doing so. Both alternatives have significant effects that must be taken into account in exercising discretion. Initiating proceedings ties up substantial resources of both the authority and the companies concerned over what may be a period of several years. Depending on the subject matter and outcome of the proceedings, it can also result in far-reaching interventions in business activity, for example through the prohibition of conduct or the imposition of remedies (section 32(1) and (2) GWB). Conversely, a decision not to initiate proceedings is not without consequences either. Where anticompetitive conduct is not taken up, other market participants and consumers are exposed to the adverse effects of the infringement. Discretion to initiate proceedings therefore requires balancing the burdens and risks associated with both action and inaction. The binary structure of the decision does not reduce the complexity of the underlying exercise of discretion. Rather, careful balancing is required precisely because of the potentially long-term consequences of both alternatives. It therefore follows that the considerations governing the authority's discretion to initiate proceedings should be as transparent and comprehensible as possible (see also OECD, 2026, pp. 12 f., 17). Guidance on discretion to initiate proceedings would thus also be a means of accountability.

**192** In theory, there are numerous potential criteria to balance, but in competition law practice the selection narrows to a few recurring, particularly relevant criteria. Many competition authorities have recorded the criteria governing their case prioritisation and, in many instances, also published them, including the CMA (Competition and Markets Authority, 2023) and the ACM (Autoriteit Consument & Markt, 2023).[28] The Secretariat of the Swiss Competition Commission also discusses in detail, in an internal memorandum, the criteria for and against proceedings by the authority from the perspective of proportionality (WEKO, 2016). These include the nature and gravity of the restriction of competition. Established theories of harm could be decisive here. Research in competition economics shows, for example, that horizontal restrictions of competition and certain vertical restraints often impede competition more effectively than conglomerate restraints (Kerber/Schwalbe, 2020). Dynamic theories of harm should also be included in the assessment (Monopolkommission, 2025c). Cases that impede innovation should be taken up as a priority. In addition, it may matter which companies or consumer groups are affected by a restriction of competition. If a restriction has a comparatively large effect on the cost of living of lower- and middle-income groups, this may support prioritising such cases. Another criterion could be the duration and extent of the restriction of competition. A restriction should thus be investigated more closely if many market participants are involved and it is repeated or long-lasting.

**193** In cases outside the strategic priorities, particularly careful consideration could be given to whether action in the individual case is proportionate. In addition to the above considerations on harm to competition, greater weight could be attached here to the expected procedural effort, the commitment of the authority's human resources and the realistic possibility of obtaining legal protection before the civil courts. On proportionality grounds, it might then be more appropriate to refrain from pursuing a case and instead direct resources as a priority towards the focal areas in the list of priorities (see also WEKO, 2016). Conversely, for proceedings identified in the list of priorities as particularly important, the risk of litigation should not in itself be a reason to refrain from proceedings or conclude them prematurely by agreement. For the European Commission, Kreifels (2019) has shown that the criteria for initiating proceedings can be divided into four groups: impact-related criteria (in particular, a cross-border dimension, economy-wide relevance, especially for consumer welfare, and the number of those affected); sector prioritisation (the strategic relevance of particular sectors); efficiency-related criteria (the effort involved in, and probability of, establishing an infringement of competition law; previous action by national authorities); and institutional relevance (no alternative possibility of taking action before national

[28] For further examples, see Brook/Cseres (2021, pp. 44 ff.) and OECD (2026, p. 18).

courts or authorities). This classification also makes clear how the criteria should relate to one another: the greater the expected impact of proceedings, the less weight should be attached to the probability of success. The CMA's prioritisation principles likewise expressly allow a significant expected impact to justify greater risk (Competition and Markets Authority, 2023, para. 3.19).

**194** The Federal Cartel Office already uses the above criteria in its administrative practice and even mentions some of them in the publications referred to in **↗paragraph 190**. In the Monopolies Commission's view, however, it would be useful to record and explain them in general guidance on discretion to initiate proceedings. Publication of such guidance and a list of strategic priorities would make the societal significance of individual cases, and in aggregate the significance of the authority itself, more transparent, further serving adherence to fundamental values. It would also create incentives for the authority as a whole and the individual Decision Divisions to further increase their societal significance through corresponding case prioritisation. This would make it easier for both the Federal Cartel Office and external observers to assess afterwards whether objectives were actually achieved in individual cases. It can provide a basis for the ex-post evaluation discussed in **↗section 5.3.2**. For updating the list of priorities, it will also be important that the impact of the authority's own work can be measured considerably better in future. Structured procedural data could make it possible to test empirically whether the priorities set have been achieved and to adjust the list accordingly.

**195** It would be appropriate to assign the preparation of both the list of priorities and the guidance on discretion to initiate proceedings to the body already proposed in **↗paragraphs 134 f.**, or to a committee of that body (discussed in detail in **↗section 4.2.3**). Such publications would admittedly serve only to provide general professional guidance and transparency, without prejudging the exercise of discretion to initiate proceedings in individual cases. Nevertheless, it is natural that the publications should not be left solely to the authority's leadership but should be supported by several decision-makers. In particular, participation by the Decision Divisions appears important given their independence in selecting cases.[29] Even now, it is customary at the Federal Cartel Office to involve the Decision Divisions before publishing administrative principles.

**196** Publication and updating of the list of priorities and the guidance remain solely a matter for the Federal Cartel Office. Public discourse is intended to provide the authority with additional information, assessments and counterarguments, but creates

[29] See also Brook/Cseres (2021, p. 143 with footnote 169): "The Decision Divisions are also independent in selecting the cases they pursue. Hence, the Bundeskartellamt does not publish an agenda on a regular basis."

neither an agreement on objectives with external bodies nor an obligation to adopt particular priorities. The list of priorities thus strengthens accountability without restricting the authority's political independence. The overall manageable effort involved appears appropriate in view of the stronger accountability.

**RECOMMENDATIONS**

- The Federal Cartel Office should, on its own responsibility, draw up a publicly accessible list of priorities to guide its competition law work.
- In addition to substantive priorities, the list should identify the types of proceedings and circumstances to which the Federal Cartel Office attaches particular importance, for example proceedings under section 19a and section 32f(3) and (4) GWB. In doing so, it signals its willingness to conduct proceedings with uncertain outcomes, particularly in those areas.
- The authority's written decisions should refer to the list of priorities in their considerations on discretion to initiate proceedings and on competition law measures.
- The Federal Cartel Office should also publish guidance on the exercise of its discretion to initiate proceedings. This would be particularly relevant for cases outside the strategic priorities on the authority's list. Under the guidance, the greater the expected impact of proceedings, the less weight should be attached to their prospects of success.
- Both the list of priorities and the guidance should be prepared by an internal body yet to be established.

#### 4.3.2.3 Internal quality assurance and an enlarged Decision Division

**197** Who decides, and in what composition? These questions are fundamental to the processes and structures of a competition authority. They have already been touched upon in ↗**section 2.2**, and they are the first test of whether the openness to different perspectives described in the preceding section is institutionally embedded or depends on the initiative of those involved. At the Federal Cartel Office, the answer to the questions of who decides and in what composition is the same in all proceedings. Even decisions in proceedings whose economic and legal implications extend far beyond the sectors assigned to an individual Decision Division, for example proceedings under section 19a GWB, section 32f(3) and (4) GWB or merger cases of significant economy-wide importance (e.g. cases referred by the European Commission under the two-thirds rule), are essentially taken by three people. The composition of this three-member body follows from the schedule of responsibilities and the staffing situation at the time. There is no provision within the authority for an institutionalised

second perspective on the decision from outside the three-member body. The only review is conducted subsequently by the courts, and takes place only if appeals are lodged.

**198** This model has substantial advantages that should not be lightly abandoned. Responsibility for a case is clearly assigned, coordination costs are low, the decision-makers know the facts from their own investigations, and there is close professional familiarity with the economic sector concerned. A significant part of the speed and enforcement strength for which the Federal Cartel Office is internationally respected derives from this structure. It is therefore appropriate in principle for the great majority of proceedings, although measures must be taken to avoid excessive professional proximity, which can become problematic (see **↗section 5.2.3**).

**199** A small group of proceedings, however, has particular characteristics. Where a decision sets standards whose effects extend far beyond the individual case, whether for other markets, the interpretation of new instruments or the expectations of entire sectors, the number and diversity of the perspectives informing it are a mark of quality. In addition, these very proceedings regularly raise new legal questions and are therefore particularly dependent on coherence across the Decision Divisions. Here, the question of plurality in decision-making formulated in **↗section 2.2** applies directly: decision-making power in the Federal Cartel Office is widely distributed among different bodies, but in the individual case it is narrowly concentrated in a single body. In practice, potentially only one or two people take the pivotal decisions on whether to take up a case and how to define its scope.

**200** To enhance the legitimacy of decision-making in special cases, approaches involving differing degrees of intervention are conceivable (on the principle of cross-checking at the Federal Cartel Office, see Podszun/Rohner, 2023, pp. 21 f.). The least far-reaching is a second review: before being issued, the draft decision would be read critically by a Decision Division not involved in the case or by an internal review body with rotating membership and professional distance, without any change in decision-making competence. A model is provided by the review panels that the European Commission uses in significant cases to subject the evidence and economic reasoning to critical cross-checking before the decision. There is the 'Peer Review panel' in cartel and abuse proceedings (Europäische Kommission, 2011a, pp. 2 f.) and the 'Scrutiny panel' in merger control proceedings (Europäische Kommission, 2024e, paras. 195 ff.). Other mechanisms include legal review of a draft decision by the European Commission's Legal Service (Article 57 of Decision (EU) 2024/3080) and consultation of the Advisory Committee, composed of representatives of the Member States' competition authorities (Article 14 of the Competition Enforcement Regulation). Inter-

nal control mechanisms are also provided for at the CMA. The Case and Policy Committee (CPC), established under powers delegated by the authority's leadership, appoints and authorises the Case Decision Groups (CDGs) for proceedings under the Competition Act 1998. The CPC considers the CDGs' draft decisions and makes legal, economic or competition policy recommendations. The CPC has a broad professional and institutional composition, combining CMA leadership roles with the legal and economic expertise of the General Counsel and the Chief Economic Adviser, alongside other experienced representatives of the authority (see Competition and Markets Authority, 2026b).

**201** A more far-reaching approach is to establish mixed case teams in which staff from other Decision Divisions and the Economic Policy Unit are required to participate alongside the Decision Division responsible for the sector. This combines plurality of perspectives with the internal exchange of knowledge discussed in **↗section 5.2.4**. The most far-reaching proposal is Heike Schweitzer's suggestion of an enlarged Decision Division that would take decisions in proceedings of fundamental importance with an expanded membership (Deutscher Bundestag, 2023b, p. 24). The model is provided by enlarged judicial panels, which convene precisely when a question of fundamental importance needs to be clarified or a departure from the approach of another panel is intended (see, for example, section 132 of the Courts Constitution Act or section 11 of the Code of Administrative Court Procedure, VwGO). This idea is consistent with the Federal Cartel Office's deliberately court-like structure.

**202** The Monopolies Commission assesses these options against the three criteria in **↗section 2.3**. Effectiveness is not served by any model that noticeably slows proceedings or diffuses responsibility. This argues against changing the decision-making structure across the board and in favour of limiting broader involvement to a clearly defined, small group of proceedings. Introducing a legal review of the draft decision modelled on the European Commission's Legal Service therefore seems misguided. An additional legal review would delay proceedings and could lead to a more 'risk-averse' application of competition law. Advice from Division P can be sought on difficult legal questions even without institutionalising this. Every option mentioned serves openness to change, because it introduces a second perspective into the decision, one not shaped by the course of the case, and thus counters the risks of entrenchment and bias described in **↗sections 5.2.1** and **5.2.3**. It also serves adherence to fundamental values: the more far-reaching an intervention, the greater its need for legitimacy, and the less sufficient it is for the decision to be the sole responsibility of the same unit that also conducted the investigation.

**203** Divisions G and P already support the Federal Cartel Office's Decision Divisions in individual cases with their respective expertise. In complex proceedings, the Decision Division responsible for the decision is sometimes reinforced by staff from another Decision Division.

**204** The Monopolies Commission nevertheless considers it appropriate to provide for an institutionalised second perspective in proceedings of particular importance, such as those under section 19a and section 32f(3) and (4) GWB. The number of proceedings under these provisions is limited. To date, there have been five decisions establishing paramount significance for competition across markets (section 19a(1) GWB); in addition, five prohibition proceedings under section 19a(2) GWB have been concluded, four of them with a formal decision (see Bundeskartellamt, 2026c). The Federal Cartel Office has not yet taken a decision under section 32f(3) or (4) GWB; proceedings in the wholesale fuel sector are pending.

**205** In principle, all the above models are options for designing an institutionalised second perspective within the Federal Cartel Office. The Monopolies Commission recommends assigning the decision to an enlarged Decision Division composed of five people, which could include, for example, chairs of other Decision Divisions. In addition, an external Chief Economist should be entitled to contribute their economic expertise in an advisory capacity to proceedings of the enlarged Decision Division as well. The Chief Economist's assessment should be published (see ↗**section 5.2.2**). The model of an enlarged Decision Division would depart furthest from the Federal Cartel Office's existing practice of involving or coordinating with additional people outside the competent Decision Division in selected cases. At the same time, unlike the alternatives – mandatory cross-checking by another Decision Division and the mixed case team (matrix) – this model could not be implemented solely through the Federal Cartel Office's rules of procedure. Rather, it would require adjustment of the statutory provision on the Decision Divisions' competence, under which they take decisions in a composition of one chair and two associate members (section 51(3), first sentence, GWB).

**206** Under all models, the decision would be taken by the same unit that had conducted the investigations. Under the enlarged Decision Division model, however, strictly speaking no one would be brought in from outside the collective body also responsible for the decision. In this respect, the other two models appear to offer an advantage. It must be borne in mind, however, that the membership of the enlarged Decision Division would indeed differ from that of a 'normal' Decision Division. It can be assumed that the additional people would each bring a 'fresh pair of eyes', even if they were formally involved in the proceedings from the outset. Moreover, under the

current system, preparation of the decision is generally the responsibility of one associate member, exceptionally two (rapporteurs), and additional people who are not members of the collective body may contribute. Accordingly, not everyone involved in the decision is directly engaged in the investigations.

**207** A further substantial argument in favour of the enlarged Decision Division model is that it confers a correspondingly high degree of legitimacy on decisions in proceedings of particular importance (see Schweitzer and Podszun in the expert hearing on the 11th amendment to the GWB (Deutscher Bundestag, 2023b, pp. 24, 25 f.); for a critical view, see Mundt (Deutscher Bundestag, 2023b, p. 25)). Since those involved would not merely contribute to decision-making by cross-checking decisions, but would take the decisions themselves, they would also bear considerably greater personal responsibility. This is likely to contribute to greater care and quality in decision-making, since direct responsibility for the decision creates a stronger incentive for a well-founded and balanced assessment.

**208** A composition of five people appears appropriate for the enlarged Decision Division. This would place decision-making on a broader personnel basis without increasing the number of people involved in proceedings of particular importance beyond a manageable level or creating a disproportion to staffing in other major cases (discussed further below). The odd number of members would also allow a majority decision with at least three votes. The two members added to the regular Decision Division should hold prominent professional and institutional positions. Involving chairs of other Decision Divisions, for example, would be appropriate. Participation by the Chief Economist would also be conceivable in principle. However, the Monopolies Commission considers it more important to fill the Chief Economist position with an external expert for a fixed term (see further ↗**section 5.2.2**), whereas section 51(4) GWB requires members of the Decision Divisions to be civil servants appointed for life. Nor should this requirement be abandoned or altered without careful consideration. In particular, civil service law imposes strict conditions on dismissal. Article 4(3) of the ECN+ Directive also requires Member States to provide a high level of protection for decision-makers in national competition authorities (see König, 2017, p. 399; Ludwigs, 2020, p. 580).[30] Nevertheless, an external Chief Economist should be entitled to contribute their economic expertise in an advisory capacity to proceedings of the enlarged Decision Division as well.

**209** Where a case is assigned to the enlarged Decision Division, the particular importance and complexity of the proceedings should also be reflected in an appropriately sized case team. Greater staff capacity is needed to handle the proceedings

[30] See already ↗**Section 4.1.3**.

within a reasonable time frame and with the requisite substantive depth. This applies also, and in particular, given the substantial resources of individual companies and their advisers. The authority is unlikely to be able to create a 'level playing field' here; the conditions should nevertheless at least become more comparable.

**210** The enlarged Decision Division model should be introduced for proceedings under section 19a and section 32f(3) and (4) GWB and other cases of particular importance. These could include, for example, in-depth merger control proceedings, 'major' abuse proceedings or cases in which a new theory of harm is applied for the first time. Individual cases falling within the proposed strategic priorities of the authority and therefore deserving priority treatment (see already **↗Section 4.3.2.2)** could also, in principle, be decided by the enlarged Decision Division.

**211** Decisions on the above questions, namely the composition of the enlarged Decision Division in individual cases and the selection of other cases of particular importance, could be assigned to the body proposed in **↗paragraph 134**, or to a committee of that body. The diversity of perspectives represented on the body would ensure balanced decision-making.

**RECOMMENDATIONS**

- For proceedings of particular importance, especially those under section 19a and section 32f(3) and (4) GWB, section 51(3), first sentence, GWB should be supplemented to provide for decisions to be assigned to an enlarged Decision Division composed of five people. In addition, an external Chief Economist should be entitled to provide an assessment that must subsequently be published (see **↗Section 5.2.2**).
- Decisions on the composition of the enlarged Decision Division in individual cases and the selection of other cases of particular importance should be taken by an internal body yet to be established.

### 4.3.2.4 Publication of decisions

**212** Some channels through which the authority is accountable to the public should also be mentioned here. The Federal Cartel Office publishes selected decisions and selected case reports where a decision was unnecessary because potentially anti-competitive practices were voluntarily discontinued. The media, political actors and academia discuss and assess the authority's work on this basis. The authority's work is also assessed in the Monopolies Commission's reports. The public discourse out-

lined above shapes the authority's public image. This creates incentives to take decisions of high societal significance that are communicated through the media. However, not all decisions of the Federal Cartel Office are published (on the bill for the 12th amendment to the GWB, see below). The European Commission's publication practice is more comprehensive. Under Article 20(2) of Regulation (EC) 139/2004 (EU Merger Regulation) and Article 30(2) of the Competition Enforcement Regulation, it is required to publish a large proportion of its decisions in the Official Journal of the European Union. Publication includes the names of the parties and the main content of the decisions, under Article 20(2) of the EU Merger Regulation and Article 30(2) of the Competition Enforcement Regulation (see also Article 44 of the Digital Markets Act, Regulation (EU) 2022/1925, DMA). In addition to the summaries in the Official Journal, the European Commission publishes non-confidential versions of the decisions themselves on its website. It also publishes decisions for which there is no statutory publication requirement, such as decisions in preliminary merger control proceedings (Westermann, 2025, para. 6).

**213** In the Monopolies Commission's view, a first step towards strengthening accountability to the public should be for the Federal Cartel Office always to publish its significant decisions in future and provide publicly accessible information on subsequent appeal proceedings. Although the Federal Cartel Office already publishes some of its decisions, a statutory requirement is likely to expand this practice. The bill for a 12th amendment to the GWB already contains far-reaching requirements concerning publication of significant decisions. Sections 43(4) and 61(3), second sentence, of the draft GWB respectively provide for the Federal Cartel Office to publish numerous decisions in administrative proceedings on its website as well as announcing them in the Federal Gazette.[31] At present, there are only certain notification requirements for decisions imposing fines (section 53(5) GWB). In future, administrative decisions must be published in full unless important reasons within the meaning of section 56(2), first sentence, of the draft GWB preclude this (ensuring that the authority properly performs its tasks, protecting classified information, trade or business secrets, or other legitimate interests of the person concerned). The bill makes clear that publication is to take place irrespective of any pending appeal proceedings and that any exceptions are to be accommodated by redactions (Bundesregierung, 2026b, p. 55).

**214** The Monopolies Commission welcomes the proposed amendments. The publication requirements increase the transparency of the Federal Cartel Office's actions and improve scrutiny of its decisions. The Monopolies Commission has advocated

[31] Specifically: decisions under section 40(2) GWB (section 43(4) of the draft GWB); and decisions under section 19a(1) and (2), section 30(3), section 31b(3), sections 32 to 32f, section 34 and section 60 (section 61(3), second sentence, GWB; the explanatory memorandum excludes section 32c GWB, see (Bundesregierung, 2026b, p. 55).

stronger ex-post scrutiny for years, particularly in merger control (Monopolkommission, 2024, pp. 352 ff.).[32] The added value of publications on the Federal Cartel Office's website will, however, also depend on their timeliness. Sections 43(4) and 61(3), second sentence, of the draft GWB should clarify that the Federal Cartel Office is to 'publish the decision in full on its website without undue delay after it is issued' (Monopolkommission, 2026, paragraphs 420 ff.).

**215** Furthermore, the Decision Divisions' so-called Letters of the Chairman should always be published in future. These are generally letters in which, following an informal examination, the Federal Cartel Office informs companies of its competition law assessment of a proposal. This is most often used to communicate that the Office will refrain from initiating proceedings, under section 32c(2) GWB. At present, the Federal Cartel Office's Letters of the Chairman are mostly not published. This creates an information asymmetry regarding the Federal Cartel Office's application of the law. While those directly involved and their advisers learn of the competition authority's assessment, it often remains unknown to other market participants. This is particularly problematic for Letters of the Chairman concerning questions of importance beyond the individual case. The resulting selective dissemination of knowledge conflicts with the requirement for transparent and as uniform as possible application of competition law. Publication would also enable smaller market participants in particular to obtain information on the Federal Cartel Office's current application of the law without costly legal advice. At the same time, it could contribute to consistency in the authority's application of the law and enable courts, academics and market participants to scrutinise and assess its legal views more effectively. Publication should follow completion of the relevant examination and comprise an anonymised version of the full Letter of the Chairman with trade and business secrets removed. Given increasing digitalisation, preparing a non-confidential version is likely to involve little effort (see further ↗**Section 5.3.3.1**).

## RECOMMENDATIONS

- The requirements already contained in the bill for the 12th amendment to the GWB concerning publication of the Federal Cartel Office's significant decisions should be clarified to specify that decisions are published in full without undue delay after being issued.
- Letters of the Chairman should also be subject to a publication requirement, in anonymised form with trade and business secrets removed.

[32] On embedding an evaluation culture more firmly in the Federal Cartel Office, see further ↗**Section 5.3.2**.

#### 4.3.2.5 Legitimacy through public and expert debate

**216** Alongside judicial review, internal quality assurance and transparency, discourse among the specialist and general public also ensures accountability for decision-making power. Transparency is a prerequisite for this. Such discourse can advance the standards and fundamental ideas governing the application of competition law, particularly beyond the individual case. On the authority's part, this requires openness to discourse and the criticism that accompanies it.-

**217** This legitimising discourse takes place most directly within proceedings, when the companies concerned and their authorised representatives engage with the Decision Divisions over the ascertainment of the facts and their legal assessment. Engaging with objections is therefore the rule rather than the exception. However, it takes place predominantly within the proceedings and without an independent body: the Federal Cartel Office both investigates and decides, and external review is conducted solely by the courts. They examine the individual order; under the case law, review may also extend to its expediency. This route does not, however, answer whether the standards by which the authority decides beyond the individual case remain sound.

**218** This question is primarily the subject of discourse among the specialist public and the general public. It is sustained by lawyers, staff of companies and associations, judges, academics, other experts and institutions with a statutory mandate such as the Monopolies Commission. The controversy over fuel prices in 2026 was a particularly clear example of how criticism can compel the Federal Cartel Office to justify its view in discourse or change course. At best, discourse provides legitimising accountability and improves the quality of decisions and general standards. For quality assurance in particular, however, specialist public discourse may be more suitable than polemics in the general public. For an authority such as the Federal Cartel Office, this is nevertheless quite complex: strong independence may potentially make it impervious to objections, as its position is barely tested internally. Abandoning its own position becomes more difficult. Under current practice, moreover, it is generally the President who speaks in public and must explain decisions that they cannot personally influence.

**219** The Federal Cartel Office's independence therefore gives rise to a particular responsibility in dealing with criticism. Its decisions are not based on a political mandate and are not subject to substantive supervision; judicial review covers only some of them. Their legitimacy therefore rests substantially on their professional quality and the persuasiveness of the standards by which they are taken. These cannot merely be asserted; they must prove themselves through engagement with objections. The more

strongly the Office's independence is safeguarded, as the Monopolies Commission recommends, the greater the importance of this engagement.

**220** The Federal Cartel Office engages in specialist and public discourse in many ways, for example through intensive media work, attendance at events, discussions at conferences and organising its own events. By contrast, procedures through which external objections and expertise reach the authority institutionally are less developed. Unlike, for example, the UK competition authority, the Federal Cartel Office conducts virtually no public consultations in proceedings of fundamental importance. It has not yet established systematic ex-post evaluation of its decisions and is therefore among the competition authorities without such a practice (see **↗section 5.3.2**). External professional expertise is drawn upon only selectively and as the occasion arises; for example, external law firms are generally not engaged for representation in court, and legal or economic expert opinions are rarely commissioned externally for proceedings.[33] There is no regular institutionalised exchange on current developments of the kind that takes place, for example, in the Federal Network Agency's Scientific Working Group. The Chief Economist position, which could bring external economic perspectives into the authority, is filled internally. And the rules of procedure governing the conduct of business are not publicly available (see section 4.3.1.3), so neither they nor any shortcomings can be discussed externally. None of these findings is in itself a deficiency, and each has understandable reasons. Taken together, however, they mean that discourse's capacity to confer legitimacy and its potential to improve the quality of decisions remain unused.

**221** How this openness can be institutionally safeguarded is not yet settled. Three approaches are possible. The first starts with an external assessment of the Office's practice. This already exists in part: the Monopolies Commission regularly examines the Federal Cartel Office's practice in its Biennial Reports and can also investigate its structures and procedures as required. The most far-reaching step would be to supplement this with periodic external review of the authority's processes and structures, as internationally established through OECD and ICN peer reviews. This would offer the advantage of maximum independence, but would be costly and perceived as external control, making acceptance more difficult. A second approach starts within the proceedings themselves: specialist public discourse can be effective only if it is known which questions the authority is currently examining and there are reliable rules on when and how external assessments are sought. A third approach builds on the existing obligation to prepare an activity report under section 53 GWB.

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[33] There are very limited exceptions, for example official liability proceedings handled by external law firms, or empirical surveys for which relevant market research institutes were commissioned.

**222** In the Monopolies Commission's view, the existing external assessment should not be expanded by adding a further periodic review, but complemented by the second and third approaches, which can be combined. Within proceedings, the Federal Cartel Office should set out in guidelines when it conducts public consultations and how they are organised. This would give a reliable form to the recommendation for greater use of public consultations (↗**section 5.2.3**) and make it predictable for companies, lawyers, academics and other experts when their assessments are sought. The overviews of ongoing proceedings that the Federal Cartel Office already provides on its website for part of its activities are also helpful. They make it easier for outsiders to engage with proceedings and contribute objections or insights of their own, even if they are not directly consulted. It would be appropriate to extend these overviews to all ongoing investigations, unless disclosing proceedings would jeopardise the investigations, particularly in fine proceedings before investigative measures are completed. Independently of this, the Federal Cartel Office should obtain external legal and economic expertise more frequently than before and receive dedicated budgetary funding for this purpose. The legitimising effect of such expert opinions is limited because they are commissioned by the authority and address the questions it sets. However, by deciding to obtain external expertise, the authority itself demonstrates that it is exposing its view to scrutiny by third parties.

**223** In its activity report, the Federal Cartel Office should draw on developments that originate outside the authority and are therefore beyond its control, especially since entrenched views are unlikely to become apparent in self-reporting. The Monopolies Commission does not consider a balance sheet of the Office's own court proceedings suitable for this purpose: decisions and subsequent appeal proceedings will be publicly accessible in any event, and a comparison of successes and defeats could reinforce precisely the restraint described in ↗**section 4.3.2.1**. Two other starting points would be appropriate.

**224** First, the results of ex-post evaluations, once introduced. They show whether the economic assumptions on which decisions were based have proved sound in actual market developments. What matters is whether the authority draws conclusions from them: where nothing changes despite repeated critical findings, this is precisely the pattern described in ↗**section 5.2.1** as first-order learning. Second, a brief account prepared independently by the Procedural Officer (↗**section 5.2.5**) and appended to the activity report. The intention is not a comprehensive report, but a concise list of the principal points of conflict in the granting of procedural rights during the reporting period. The account can remain abstract and should not allow conclusions to be drawn about individual proceedings and parties, who themselves often have no interest in their circumstances becoming known. It makes visible where the Federal Cartel Office's conduct of proceedings has met with objections from the perspective of those

who actually deal with the authority in proceedings. This gives the authority reason to engage visibly with recurring points of conflict, without creating a significant additional reporting burden.

## RECOMMENDATIONS

- The Federal Cartel Office should visibly engage with reasoned criticism from the specialist public. To safeguard this openness institutionally, it should
  - set out in guidelines which proceedings involve public consultations and in what form;
  - obtain external legal and economic expertise more frequently;
  - include the results of ex-post evaluations in its activity report under section 53 GWB and append a concise overview, prepared independently by the Procedural Officer, of the main points of conflict in the granting of procedural rights.

# 5

# The Federal Cartel Office as an authority for the future

# 5 The Federal Cartel Office as an authority for the future

225 This chapter answers the second of the two questions guiding this report: beyond safeguarding its independence, what does the Federal Cartel Office need to continue fulfilling its task in an uncertain future? The focus thus shifts from decision-making rights to the foundations of decisions, that is, the knowledge on which decisions rest and the capabilities an authority needs for this purpose.

226 The analysis follows the sequence in which these foundations are formed. ↗**Section 5.1** first shows that independence not only needs to be protected, but itself contributes to the quality of decisions. ↗**Section 5.2** asks through which channels external knowledge and criticism enter the authority and have an effect there. ↗**Section 5.3** turns to the demands that technological change places on market observation, case selection, proceedings and subsequent review.

## 5.1 Sound decisions through independence

227 ↗**Chapter 4** has shown how the Federal Cartel Office's independence can be safeguarded against impairment. Independence is, however, not only a value that must be defended. It is also a prerequisite for the authority to take substantively strong decisions. Where authorities can act free from political pressure, their decisions are more likely to rest on sound analysis and have a long-term impact. Those who decide free from instructions decide free from irrelevant considerations and, at the same time, bear a responsibility that cannot be passed to a higher body. Both shape how work is done within the authority, whom it can attract and how decision-makers see themselves. This is why the following considerations on preparedness for the future begin here, rather than with technical equipment. It should be stated at the outset that the effects described below apply only to those who are entirely free from instructions in their decision-making, namely the chairs and rapporteurs of the Decision Divisions, rather than to the authority as a whole.

228 An authority's independence has a substantial effect on its ability to recruit and retain highly qualified specialists because it has a lasting influence on both institutional reputation and working conditions. From the perspective of public administration research, a high degree of financial and personnel autonomy signals that decisions are taken on professional criteria rather than short-term political instructions (Perry/Hondeghem, 2008).

**229** This signal makes the authority more attractive to applicants and staff seeking a high degree of professional autonomy and the opportunity to work on projects of societal relevance. (Perceived) independence is a central factor in talented individuals' decisions to apply for positions in the public sector (Carpenter u. a., 2012; OECD, 2021). Independence thus acts as a mark of quality that strengthens potential applicants' and staff members' confidence in the effectiveness of their work. This environment in turn fosters the intrinsic motivation of professionals seeking meaningful work (Carpenter u. a., 2012; OECD, 2021).

**230** This was also confirmed in the Monopolies Commission's discussions with staff of the Federal Cartel Office. The ability to exercise responsibility independently and freedom from extraneous considerations foster staff members' intrinsic motivation and thereby also improve the quality of decisions.

## 5.2 Knowledge – input – adaptation

### 5.2.1 The importance of adaptability

**231** The Federal Cartel Office enjoys a high reputation both in Germany and internationally. In the assessment of the Monopolies Commission and numerous experts with whom it has spoken, the Office is among the world's leading competition authorities. This is also regularly confirmed by high placings in the Global Competition Review rankings and in academic analyses (Buccirossi u. a., 2011, p. 199; Global Competition Review, 2024). The Office's high reputation rests on expertise built up over many years, a qualified workforce with in-depth sectoral knowledge, and active international cooperation. It plays a pioneering role in shaping competition rules, particularly in the digital sphere, and in handling complex cartel and abuse proceedings – a sign of institutional strength.

**232** A more extensive assessment would require the Federal Cartel Office's output – for example, the number of proceedings, sanctions and the finality of decisions – to be considered in relation to its budget, staffing and market conditions. Irrespective of the current assessment, a high reputation can change rapidly, particularly under public pressure. The fierce criticism of its handling of petrol prices has already offered a foretaste of how quickly confidence in an authority can be undermined. It remains to be seen whether the new leadership to be appointed will be able to meet these challenges with assurance.

**233** The Federal Cartel Office's strength lies not only in its past, but also in its ability continually to reflect on its own work, improve and adapt to changing requirements. Openness to change is one of the central criteria for a strong Federal Cartel Office of

the future (see ↗**section 2.3**). The literature in business administration and sociology shows that success can obscure the need for innovation. Particularly in successful and long-established organisations, adaptability must therefore be secured through institutional arrangements rather than taken for granted.

**234** The literature contains a whole range of theoretical concepts that describe, in broader terms, the particular challenges facing successful organisations. The phenomenon is described, for example, as the 'Icarus paradox' (Miller, 1992). Success leads to a greater focus on the strategies associated with that success (Miller, 1992, p. 26). This can restrict an organisation's learning, perception of the outside world and adaptability (Miller, 1992, p. 24).

**235** The widely cited concept of 'double-loop learning' also addresses the difficulty most organisations experience when fundamental, rather than merely gradual, adjustments are needed (Argyris, 1977). This affects old and successful organisations in particular. Chris Argyris argues that, over time, most organisations develop norms that impede the adjustment of other fundamental norms (Argyris, 1977, p. 116). This happens because adherence to routines reduces friction and risk. Narratives of success and self-affirmation not only make fundamental criticism unlikely, but tend to render it undiscussable (Argyris, 1990). When responsibility for failure is at issue, staff can point to their compliance with existing norms. Argyris expressly describes these mechanisms as obstacles to 'double-loop learning': learning that does not merely improve individual procedures incrementally, but addresses the organisation's fundamental processes and assumptions. According to Argyris, the friction resulting from a lack of 'double-loop learning' is often particularly striking in successful organisations, because success can conceal existing problems for a long time, and they only gain significance in less successful periods. The older an organisation is and the more successful it has been, the greater the likelihood that it has problems whose resolution is obstructed by norms (Argyris, 1977, p. 123).

**236** The concept of 'groupthink' can also be interpreted in terms of flexibility constrained by success. It examines political groups that make poor decisions, for example because they regard themselves as virtually infallible and invulnerable (Janis, 1972). The concept of 'competency traps' is comparable: organisations focus on successful procedures as they accumulate experience, and the extensive experience they have acquired makes it difficult for them to switch to new, superior procedures (Levitt/March, 1988, pp. 322 f.). The concept of 'threat rigidity' explicitly addresses how organisations respond under stress (Staw u. a., 1981). According to this concept, many organisations adopt an unfavourable strategy for taking in information in such situations. The intake of information is initially high in order to verify whether there really is a crisis, leading to information overload at the higher levels of the hierarchy

(Staw u. a., 1981, pp. 512 f.). Information intake then declines and control over decisions becomes more centralised, limiting the number of strategies the organisation considers for resolving the problem (Staw u. a., 1981, p. 513). It primarily falls back on old strategies familiar to its leaders at that time (Staw u. a., 1981, p. 519). Finally, information intake rises again when the decision taken needs to be justified (Staw u. a., 1981, p. 513). Particularly when fundamental changes trigger a crisis – Staw u. a. (1981) give permanent budget cuts in public organisations as an example – the limited existing portfolio of strategies available to a small leadership circle may not provide an adequate response (Staw u. a., 1981, pp. 519 f.).

**237** The theoretical approaches described have been, and continue to be, widely discussed in the literature, although they have been criticised on individual points.[34] Amason and Mooney (2008) and Sulphey (2020) also provide examples of how past successes can change decision-making processes in organisations, for example by fostering a defensive mindset aimed at protecting those successes. All the approaches mentioned share a recommendation that an organisation should open itself to new input in order to maintain its adaptability over the long term.

**238** Miller (1992) emphasises that much of the best information about whether an organisation may be affected by the 'Icarus paradox' lies outside the organisation (Miller, 1992, p. 32). He also recommends dedicated teams for renewal activities and continuous self-examination (Miller, 1992, pp. 31 f., 34). To achieve 'double-loop learning', Basten and Haamann (2018) recommend establishing a 'Chief Knowledge Officer' concerned with how knowledge is developed, brought into the organisation and used (Basten/Haamann, 2018, p. 8). They also propose, among other things, 'job rotations' and 'post-mortem evaluations', meaning regular moves by staff between departments and reviews of completed projects (Basten/Haamann, 2018, p. 7). Asch's findings are of interest in relation to the concept of 'groupthink' (Asch, 1952). In an experiment, he shows that a significant number of people choose obviously incorrect answers when these correspond to the group's answer. Self-confident, independent individuals are not affected by this (Asch, 1952, pp. 228 f.). More recent research likewise shows that groupthink remains a central risk for poor decisions in organisations, although several newer findings provide a more differentiated picture. Mannix and Neale (2005), for example, emphasise that functional and cognitive diversity within teams counters conformist thinking. Mojzisch u. a. (2025) show that stress and time pressure favour the emergence of groupthink.--

**239** Taken together, these findings suggest that deliberately promoting diversity, introducing structured opposing positions (devil's advocates), and reducing hierarchy

[34] See, for example, Auqui-Caceres and Furlan (2023) on 'double-loop learning', Rose (2011) on 'groupthink' and Mazzei u. a. (2025) on 'threat rigidity'.

and time pressure are crucial measures for effectively mitigating the risk of groupthink in a modern authority. Many comparable recommendations can also be found for the other concepts mentioned above and similar concepts. March (1991), for example, proposes maintaining a balance between ‘exploration’ and ‘exploitation’, that is, between exploring new possibilities and drawing on existing experience, by bringing in new ideas through new staff while existing staff maintain the quality achieved to date.--

**240** All these approaches to resolving the problem rest on the recognition that no single body can have the right perspective on complex economic circumstances permanently and on its own – an insight whose implications for democratic theory were explored in **↗section 2.2**. Niklas Luhmann offers a systematic approach to the internal organisational level. On this account, organisations reproduce themselves not primarily through individual decisions, but through decision premises, such as programmes, communication channels, staff selection and self-descriptions (Luhmann, 2000). For an authority with formally independent decision-making units, the category of self-description is particularly revealing. How an organisation presents itself – essentially through language, and particularly in its external communications – feeds back into the organisation and, as a premise, helps shape what counts internally as success and what is open to debate at all. An authority that has been successful for a long time and presents a unified image externally can thereby develop a shared interpretative framework. It must guard against the risk that this framework is no longer questioned sufficiently.

**241** A further mechanism stems directly from political independence. The readiness to defend itself that an authority needs against political intervention is an acquired institutional characteristic. Yet it carries a risk, because it does not automatically remain directed solely against the intervention it was acquired to resist. It can become generalised and then also operate against objections whose rejection cannot be justified by political independence. Where this happens, independence in decision-making becomes immunity of the decision's foundations from challenge.

### 5.2.2 The position of Chief Economist

**242** The position of Chief Economist could become an important element of adaptability in future. For this to happen, it would have to be fundamentally redesigned. At present, the position is filled internally by economists from within the authority. Chief Economist is the title of the head of the Economic Policy Unit, which forms part of the General Policy Division. This unit supports the Decision Divisions in their casework and the authority's leadership when they request such support (see **↗Chapter 3**). Beyond heading the unit, the position as currently designed includes representing the

Office's economic expertise externally and advising the leadership on economic matters.[35]

**243** This design is understandable in itself. It does, however, have one characteristic that merits attention in the light of the preceding section. A position filled from within the organisation and leading back into it can perform only a limited role as a counterweight. It is reasonable to assume that someone whose professional formation took place in the same units whose assessments they are to examine will generally share those units' assumptions. The position then serves more to confirm than to correct, reinforcing the patterns described in **↗section 5.2.1** rather than breaking them. There is also an aspect with external implications. Internationally, the title stands for up-to-date academic expertise. If it is conferred as part of normal career rotation within the Office, the position in its present form fails to meet expectations.

**244** The Monopolies Commission recommends a different design for the position in future. It should help open the Federal Cartel Office more fully to the outside world, with each incumbent bringing independent, fresh input into the Office. The starting point for these considerations is the design of the position at the European Commission. The European Commission's Directorate-General for Competition uses a model in which the Chief Economist plays an important role in casework that extends beyond support. The European Commission's system is fundamentally different in structure. Investigations are conducted by a case team within the Directorate-General for Competition. The final decision, however, is taken by the College of Commissioners (Article 250 TFEU), unless it has been delegated or subdelegated to the Commissioner for Competition or the Director-General for Competition (see Europäische Kommission, 2024d; Europäische Kommission, 2026d). In this system, the Chief Economist represents a parallel source of information alongside the case team itself. Independently of the case team's position, the Chief Economist can bring their own economic assessment into the internal decision-making process and also present it to the responsible Commissioner. When the decision is prepared, both the case team's assessment and that of the Chief Economist can then be taken into account.

**245** The position at the European Commission gains additional weight from the appointment of distinguished external economists for a fixed term. Appointing professors of economics has proved successful in this case. They embody expertise and political independence. Their careers after their term of office do not depend on the

[35] Information based on the schedule of responsibilities provided by the Federal Cartel Office to the Monopolies Commission.

goodwill of decision-makers within the authority (Albaek/Régibeau, 2023, p. 809). Rather, they may be keen to preserve their reputation among academic colleagues for the period after their term of office (Albaek/Régibeau, 2023, p. 809).

**Table 5.1: Chief Economists of the European Commission's Directorate-General for Competition**

| Term of office | Chief Economist | Country of origin | Position after leaving office* |
|---|---|---|---|
| 09/2003 – 08/2006 | Lars-Hendrik Röller | Germany | President of ESMT Berlin |
| 09/2006 – 05/2011 | Damien Neven | Belgium | Professor at the Graduate Institute Geneva |
| 05/2011 – 08/2013 | Kai-Uwe Kühn | Germany | Associate Professor at the University of Michigan |
| 09/2013 – 08/2016 | Massimo Motta | Italy | Professor at Universitat Pompeu Fabra |
| 09/2016 – 08/2019 | Tommaso Valletti | Italy | Professor at Imperial College London |
| 09/2019 – 07/2023 | Pierre Régibeau | Belgium | Honorary Professor at the University of Essex |
| 08/2023 – 12/2024 | Acting<br>Lluís Saurí-Romero | Spain | Deputy Chief Competition Economist, DG COMP, again from January 2025 |
| since 01/2025 | Emanuele Tarantino | Italy | |

*Selected positions

Source: Own research.

**246** The European Commission's model cannot be transferred directly to the Federal Cartel Office. As noted several times already, investigation and decision-making at the Federal Cartel Office are both in the hands of the Decision Divisions. There is no higher body with decision-making powers. Under these initial arrangements, an assessment by the Decision Division cannot stand alongside an assessment by a person entrusted with the role of Chief Economist. The Decision Division's assessment will always determine the decision itself unless the existing system is fundamentally restructured. This is solely a consequence of the legal structure. As explained in ↗section 4.3.2.3, the members of the Decision Divisions must be civil servants appointed for life under section 51(4) GWB. This requirement cannot simply be abandoned: it serves to protect decision-makers, as is also required by Article 4(3) of the ECN+ Directive. A Chief Economist appointed externally for a fixed term therefore cannot be a member of the Decision Division. Yet it is precisely external appointment that gives the position its

value as a counterweight. The question is therefore not how the position can participate in decision-making, but how it can carry weight without participating in the decision.

**247** In proceedings of fundamental significance, particularly under sections 19a and 32f(3) and (4) GWB, the Chief Economist should prepare their own economic assessment, make it available to the Decision Division in the proceedings, and publish it. The effect of this mechanism lies less in publication itself than in the expectation of publication. Ignoring a professionally substantiated opposing position would thereby remain possible, but would require justification. This gives the position precisely the weight it would otherwise lack without participation in the decision. A model for this arrangement can be found in the European Union's judicial system. The Advocates General at the Court of Justice do not participate in the decision; their Opinions are nevertheless published and often differ from the subsequent judgment. They are regarded as contributing to the quality and intelligibility of the case law, rather than as expressions of internal disagreement. This parallel is a natural one for an authority deliberately designed along judicial lines.

**248** The position of Chief Economist can also gain significance within the existing system by serving as an additional institutionalised internal accountability mechanism that constrains the Decision Divisions' decision-making powers arising from their political independence. The Chief Economist could be given the right to propose to the Decision Divisions cases they consider particularly relevant. Such proposals should be made publicly so that rejecting them requires justification. Furthermore, ↗**section 4.2.3** recommended that sensitive decisions on staff reassignments be taken by an internal committee, yet to be established, of which the Chief Economist would be a member. Here, the position can be used to constrain the powers of the authority's leadership.

**249** Beyond the powers already discussed, further functions could form part of a coherent set of responsibilities. These include methodological responsibility for ex-post evaluation (see ↗**section 5.3.2**). A person who identifies the economic assumptions underlying a decision is also the natural person to provide methodological guidance for subsequently testing those assumptions. The position of Chief Economist would also provide the institutional setting for exchanges with researchers and practitioners in data analysis.

**250** Two objections to a published assessment can be anticipated. First, it could affect the parties' right to be heard if it contains assessments on which those concerned have not had an opportunity to comment. Second, the authority speaks with one voice

in court. A differing assessment from within the authority could be used against it there.

**251** The first objection can be addressed in two ways. On the one hand, the assessment draws only on the facts that also form the basis of the decision. On the other, it is independent in its economic appraisal, including the theory of harm. It will also become part of the case file, so that the parties can comment on it before the Decision Division decides. Trade and business secrets must be redacted. This places the parties at no disadvantage beyond that arising from the decision, which would be published in any event.

**252** As regards the timing of publication, the Monopolies Commission proposes publishing the assessment no later than upon conclusion of the proceedings before the authority. The assessment would thus become public at the latest when the decision itself is being discussed in professional and academic circles. By contrast, linking publication to the final conclusion of appeal proceedings would be unsuitable, as this could in some circumstances delay publication for years and thereby diminish the value of the assessment.

**253** This leaves the possibility that the opposing party may draw on a published assessment in ongoing appeal proceedings. The Monopolies Commission considers this acceptable. The assessment concerns the economic appraisal; an authority's internal discussion of differing professional views before deciding is normal practice and not a defect. Above all, it serves the purpose of the proposal that the Decision Division must explain, both to professional and academic audiences and to a court, why it has not followed a professionally substantiated opposing position.

**254** These additional powers can, however, have their intended effect only if the Chief Economist enjoys a certain degree of autonomy within the authority. Only someone whose professional future does not depend on the organisation's goodwill will formulate a differing assessment even when it is to be published. As with Internal Audit, and as proposed for the position of Procedural Officer in the following ↗**section 5.2.5**, the Chief Economist must also be independent of the Office's leadership in substantive matters in order to be able to represent views that differ from the prevailing view within the organisation.

**255** It would also be necessary for the position to be held by someone who is not dependent on internal views and goodwill either before or after serving as Chief Economist. This can be ensured only through the transparent external appointment of specialists with the requisite expertise. The European Commission's model can serve as a blueprint here, with professors appointed to the position for a fixed term. It follows

that the selection should not be made solely within the Office. The position should be publicly advertised and accompanied by a published profile of the requirements, as this report also proposes for the authority's leadership. To make independence from the prevailing internal view effective in practice, the term of office should be fixed. No subsequent position within the Federal Cartel Office should be envisaged. Depending on the form of the Chief Economist's employment relationship, consideration would therefore also need to be given to a cooling-off rule, as the civil service provision in section 105 BBG may not apply.

**256** External professional expertise should be a mandatory part of the selection process, for example through a selection committee including academics alongside the authority's leadership. This procedure is modelled on academic appointment practice and would also be likely to increase willingness to apply for the position. Selection by the Federal Ministry for Economic Affairs and Energy, by contrast, does not appear appropriate: it would create an avenue for political intervention in a position whose value lies precisely in its professional independence.

**257** The composition of the Economic Policy Unit's team, which could continue to report to the Chief Economist, is also a decisive factor. To be able to introduce fresh ideas, a newly appointed external head of the unit should have scope to shape the composition of the team. This would be ensured if some positions in the Economic Policy Unit were filled on fixed-term contracts with no prospect of appointment to the civil service or conversion to a permanent contract.

**Table 5.2: Chief Economists at competition authorities internationally**

| Country/authority | Position exists | Appointed externally for a fixed term |
|---|---|---|
| Federal Cartel Office | yes | no |
| Belgium | yes | yes |
| Directorate-General for Competition | yes | yes |
| Italy | yes | no |
| Austria | no | no |
| Portugal | yes | no |
| Switzerland | yes | no |
| Spain | no | no |
| United Kingdom | yes | no |

Source: Survey of competition authorities.

**258** As regards alternative ways of designing the position, the main point is that appointing an external Chief Economist without additional substantive powers of their own would not be promising. The substance of the role must be attractive to academics. Simply heading the Economic Policy Unit, as at present, would in all likelihood be insufficient for this purpose. Additional powers are needed. The disadvantages of the proposed arrangements include the possibility of uncertainty and adjustment difficulties arising from regular changes of personnel, particularly during transitions. Inconsistencies in the authority's actions are also at least conceivable if new and previous incumbents bring differing views to the role.

**259** The two proposals – the enlarged Decision Division under ↗**section 4.3.2.3** and the published economic assessment – pursue the same objective by separate routes. One broadens the basis for decision-making within the authority; the other introduces a professionally independent external perspective and makes it open to scrutiny. They complement one another rather than serving as substitutes and, because they are institutionally independent of one another, either can be introduced even if the other is not implemented.

**RECOMMENDATIONS**

- The position of Chief Economist should be publicly advertised and filled externally for a fixed term. Selection should be undertaken by a selection committee, with the mandatory involvement of external professional expertise. No subsequent position within the Federal Cartel Office should be envisaged. To perform their independent functions, the Chief Economist should not be subject to instructions on substantive matters. Depending on the form of the Chief Economist's employment relationship, consideration would therefore also need to be given to a cooling-off rule, as the civil service provision in section 105 BBG may not apply.
- In proceedings of fundamental significance, particularly under sections 19a and 32f(3) and (4) GWB, the Chief Economist should prepare their own economic assessment, make it available to the Decision Division in the proceedings, and publish it no later than upon conclusion of the proceedings before the authority.
- Further functions should include: the right to propose particularly relevant cases publicly to the Decision Divisions; contributing economic expertise in an advisory capacity to proceedings before the enlarged Decision Division; methodological responsibility for ex-post evaluation; exchanges with researchers and practitioners in data analysis; and advisory involvement in drawing up the list of priorities.
- The position of Chief Economist would not carry a right to participate in deciding cases.

### 5.2.3 Input through secondments, revolving doors and consultations

**260** Behavioural economics research has long established the existence of systematic cognitive biases that affect human decision-making generally (Simon, 1982; Tversky/Kahneman, 1974). A central bias is confirmation bias. This describes the tendency to seek information that confirms existing beliefs while ignoring or discounting contradictory evidence. Such selective perception can lead to erroneous conclusions, particularly in complex decision-making situations. Cooper and Kovacic (2012a; 2012b) show that confirmation bias, among other biases, is also highly relevant to competition and regulatory authorities and can delay or obstruct adaptation to new market conditions.

**261** In the economy, market mechanisms can partly correct behavioural biases. Companies that act inefficiently or make poor decisions lose customers, capital or market share and are displaced by competitive alternatives. This market pressure provides a natural incentive to improve performance and adapt. Civil servants, by con-

trast, are not subject to this market discipline. They enjoy a guarantee of lifetime employment, which substantially weakens the direct consequences of poor decisions or inefficiency. There are no immediate feedback effects that reward or penalise performance and thereby shape it.

**262** Another well-known problem of public regulation, including competition enforcement, is the risk of 'regulatory capture'. This describes a situation in which regulatory authorities are influenced by the companies they oversee, as already explained by Stigler (1971) and analysed extensively in the modern literature (Dal Bó, 2006). The term does not imply an accusation of improper conduct. It refers to a gradual convergence of perceptions resulting from prolonged and professionally intensive engagement with the same companies and markets, which those involved typically do not themselves notice. Academic research shows that this is fostered, among other things, by many years of interaction between the authority and the companies concerned, and by the shared understanding that may result. In many cases, the interests of the companies concerned and those of competition authorities are likely to be fundamentally opposed (Wizemann, 2023). Nevertheless, the risk should not be underestimated. Regulatory capture can weaken competition enforcement, for example through excessively lenient sanctions or insufficient action against harmful conduct. Ultimately, the authority's effectiveness would be weakened. In the Monopolies Commission's view, this argues against combining regulation and competition enforcement in a single authority.

**263** Confirmation bias is closely linked to the criterion of openness to change. Christensen u. a. (2007) argue that the risk of these behavioural biases arising is particularly pronounced where the same department or staff can apply entrenched patterns within an economic sector for years without external criticism or internal review by other departments.

**264** The system of Decision Divisions therefore merits an ambivalent assessment in respect of potential behavioural biases. Undoubtedly, dealing with individual economic sectors over many years fosters in-depth expertise and enables comparatively swift decisions. On the other hand, increasing expertise and depth of sectoral knowledge also heighten the risk of bias and of belief in findings that market realities may have overtaken. The Federal Cartel Office addresses this by rotating responsibility for sectors. In practice, however, this does not always have its full effect and, by its nature, remains confined to the authority (discussed further in ↗**section 5.2.4**).

**265** A sectoral focus can also foster silo thinking, as described in organisational economics research (Vantaggiato u. a., 2021; de Waal/van den Berg, 2025). In general terms, this means that departments focus too heavily on their own area and neglect

issues spanning different areas. In the context of competition enforcement, Decision Divisions might therefore think too much in terms of the economic sectors for which they are responsible. They might tend to overstate the effects of a merger on 'their own' sector or define markets too narrowly. This problem can arise, for example, in relation to conglomerates. Mergers are allocated according to their principal focus, so it is conceivable that attention is directed more towards 'one's own' sector than towards others. Depending on the sector, it may also become difficult to assess its significance for the economy or the particular challenges it faces.

**266** Systems found internationally are sometimes designed to be less susceptible in this respect. Other authorities tend to be organised along functional lines, with new case teams assembled for each case, so that the risk of the biases mentioned appears lower. Successive cases are more likely to be handled by teams with different compositions. Team members who are new to a sector can bring a fresh perspective to the facts. Separating investigation and decision-making, as practised in some other authorities, can also help mitigate these biases. Where investigation and decision-making are separate, the investigating department focuses on establishing the facts objectively: collecting data, analysing market structures, or assessing contracts or business models. The decision-making department receives the results of the investigation in a structured, objective form, without the investigating department's interpretations or assumptions. This enables it to examine the evidence critically and reach a well-founded decision without intensive contact with the sector (OECD, 2005). The risk of confirmation bias is lower because a second, independent organisational unit examines the case (Ottow, 2015, p. 127).

**267** The Federal Cartel Office, too, has instruments that are to be welcomed. In addition to rotating responsibility for sectors, it has measures to increase openness to change through external contacts. These include holding several conferences at which competition law is discussed. The Office generally holds an annual meeting of the Working Group on Competition Law, aimed primarily at lawyers, and of the Working Group on Competition Economics, aimed primarily at economists (Bundeskartellamt, 2025a, p. 13). In addition, the International Conference on Competition and the Franco-German Competition Day take place every two years and are aimed at international experts (Bundeskartellamt, 2025a, pp. 14 f.). The Office also exchanges views with other competition authorities internationally through several organisations. At European level, this takes place through the European Competition Network, and at global level through the Organisation for Economic Co-operation and Development (OECD), UN Trade and Development (UNCTAD), the International Competition Network (ICN) and the G7 (Bundeskartellamt, 2025a, p. 14). Furthermore, according to the Office's statements to the Monopolies Commission, staff of the Federal Cartel Office attend academic conferences, and national and international experts

are invited to give talks at the authority on current issues. Staff are also continually presented with up-to-date facts and studies by those directly or indirectly involved in each case. Substantial feedback thus comes from the market in the course of casework. Finally, the Monopolies Commission regularly examines the Office's work in its reports.

**268** The question also arises whether the Federal Cartel Office should make greater use of public consultations in enforcing the law (see already **↗section 4.3.2.5**). The Federal Cartel Office already carries out what are known as market tests. The precise content of individual market tests is not published. In some cases, however, the authority provides information about their conduct. Market tests serve to establish facts relevant to a decision in a targeted manner and are typically directed at market participants with direct knowledge of the markets concerned. Their purposes include testing the suitability of commitments or remedies offered by the companies concerned. The legal basis for market tests is the authority's general investigative powers, particularly its right to require information from undertakings (section 59 GWB). Market tests are also an established investigative instrument at Union level. Under Article 27(4), first sentence, of the Competition Enforcement Regulation, the European Commission is even required, before adopting a decision favourable to the undertakings concerned (Article 9 or 10 of the Competition Enforcement Regulation), to publish a concise summary of the case and the main content of the commitments or proposed course of action. Interested third parties may then submit their observations, Article 27(4), second sentence, of the Competition Enforcement Regulation. Market tests must be distinguished from consultations concerning administrative guidance (guidelines, notices, etc.), on the one hand, and sector inquiries, on the other. Such consultations are also often public at the Federal Cartel Office (see section 32e(4), second sentence, GWB, on sector inquiries).

**269** More extensive consultation procedures apply to other authorities. Under sections 12(1), first sentence, and 14(2) TKG, for example, the Federal Network Agency regularly conducts public consultations before defining markets, analysing markets and issuing regulatory decisions. These requirements are based on Articles 23 and 24 of the EECC Directive, which provide for consultations with ‘interested parties’. Various opportunities for public consultation and participation are also provided for at the United Kingdom's CMA. These concern, in particular, market investigations and market studies under the Enterprise Act 2002, as well as proceedings under the digital markets regime introduced by the Digital Markets, Competition and Consumers Act 2024, for example when determining companies' Strategic Market Status (see Competition and Markets Authority, 2025b).

**270** An argument in favour of opening up Federal Cartel Office proceedings in this way is that public consultations increase the transparency of the authority's actions and thereby also strengthen its accountability. They allow additional insights to be incorporated into decision-making and can thus improve both the quality and the acceptance of the authority's decisions. One advantage of public consultations with a broader scope is that they give greater opportunity for the interests of those who are neither represented by well-organised associations familiar with competition law nor involved in proceedings to be heard.

**271** To a limited extent, the criterion of effectiveness weighs against more public consultations at the Federal Cartel Office. Public consultations can delay proceedings and increase the administrative workload. This would be in tension with efforts to speed up competition proceedings and make them more efficient (see further ↗**section 5.3.3**). Moreover, the additional insights gained from public consultations in competition law enforcement may be limited. Whereas market tests target information from market participants with direct knowledge of actual market conditions, general consultations can elicit a wider range of submissions whose relevance to the assessment of the specific facts is likely to vary. On the other hand, the possibilities for using AI to speed up the analysis of submissions have improved rapidly in recent years. Where an objection to using AI-based systems is that documents contain trade and business secrets, interested parties can be required to submit these separately where necessary and identify them clearly. In many cases, disclosing trade and business secrets will not be necessary to present arguments plausibly to the authority.

**272** Against this background, it appears appropriate for the Federal Cartel Office to make greater use of public consultations as a matter of principle. Public consultations could be considered particularly in proceedings of fundamental significance, for example within the scope of section 19a GWB (abusive conduct by undertakings of paramount significance for competition across markets) and section 32f(3) and (4) GWB.

**273** According to staff of the Federal Cartel Office, beyond market tests in individual proceedings, the General Policy Division and the Litigation and Legal Division in particular perform the function of passing on new insights, especially from academic research, to the Decision Divisions. Legal scholarship and economics are continually developing (Albaek/Régibeau, 2023, p. 813). Both divisions are internal departments staffed predominantly by people who have previously worked, among other places, in Decision Divisions. Their perspective on external information is therefore shaped in a similar way to that of the Decision Divisions.

**274** Overall, it is unclear for all the formats mentioned to what extent the knowledge conveyed actually feeds into the Decision Divisions' work. Academic literature, for example, is only rarely cited in decisions. In the Monopolies Commission's view, institutional channels through which external knowledge is internalised within the organisation are particularly lacking. At least for certain economic insights, the appointment of an external person with relevant expertise as Chief Economist, already recommended in ↗section 5.2.2, could make an important contribution.

**Table 5.3: Staff exchange programme**

| Country/authority | Programme exists |
|---|---|
| Federal Cartel Office | no |
| Belgium | no |
| Directorate-General for Competition | no |
| Italy | no |
| Austria | no |
| Portugal | no |
| Switzerland | no |
| Spain | no |
| United Kingdom | yes |

Source: Survey of competition authorities.

**275** It would also be desirable to create a general opportunity for external experts, for example from business or legal practice, to work at the authority, possibly for a fixed term, and thereby increase its openness to change. This would need to involve working for at least several months on tasks that are attractive in substance, particularly to competition lawyers and competition economists. The competition authority in the United Kingdom operates such a format for a period of six months (Competition and Markets Authority, 2025a). Once again, the advantage would be that these individuals could provide input directly from within the organisation. One hurdle might be ensuring that this type of work is financially attractive. However, the opportunity to gain first-hand experience of the Federal Cartel Office's work would probably be attractive in itself to some of the people concerned. Another hurdle is likely to be that people from business or legal practice would very probably have some degree of bias, particularly in the fields in which they have specific expertise. Confidence in such external experts'

adherence to confidentiality must also be considered. Finally, in transferring the CMA model to the Federal Cartel Office, it must be borne in mind that case handlers at other competition authorities merely prepare the decision, whereas at the Federal Cartel Office they also take, or participate in taking, the decision itself. These hurdles would have to be taken into account in designing the programme, selecting candidates and assigning tasks.-

**276** Beyond this involvement of external experts for fixed terms, consideration could be given to generally facilitating staff movements in the form of 'revolving doors' between public competition authorities and private actors (for example, corporations, commercial law firms and consultancies). It should be examined whether the career principle under civil service law or other civil service rules make 'revolving doors' excessively difficult, and whether exemptions or less restrictive arrangements are needed for certain authorities, such as the Federal Cartel Office, to allow more external input. Existing cooling-off rules should, however, be retained.

**RECOMMENDATIONS**

- The Federal Cartel Office should establish a programme enabling external experts, for example from business or legal practice, to work at the authority for a fixed term. The CMA's 'Secondment opportunities for competition and consumer lawyers' programme can serve as a model. Conversely, a programme under which Federal Cartel Office staff work for private-sector partners for a fixed term would also be conceivable. It should also be examined whether excessively rigid civil service rules unduly restrict staff movements in the form of 'revolving doors' between competition authorities and the private sector. Existing cooling-off rules should, however, be retained.
- The Federal Cartel Office should make greater use of public consultations, particularly in proceedings of fundamental significance, for example within the scope of section 19a GWB (abusive conduct by undertakings of paramount significance for competition across markets) and section 32f(3) and (4) GWB.

### 5.2.4 Knowledge management

**277** Alongside opening up to a broad exchange of external knowledge, the instruments for sharing knowledge internally also merit attention. The Federal Cartel Office's international standing owes a great deal to its staff's professional expertise and many years of experience in their respective economic sectors. Because each Decision Division works independently, the exchange of knowledge between them is particularly important.

**278** The Federal Cartel Office has developed a range of formats for this purpose. These include the weekly meeting of division heads, case presentations at lunchtime sessions ('brown bags'), at which, for example, major or particularly interesting proceedings are presented, and discussion rounds convened as needed. The Litigation and Legal Division and the General Policy Division also pool information from proceedings. Joint projects between Decision Divisions and the Economic Policy Unit conclude with a joint debriefing. Personal contacts and staff rotation provide further opportunities. The Monopolies Commission suggests institutionalising this exchange more firmly so that it depends less on opportunities arising and on the commitment of individuals.

**279** Rotation generally ensures a wide range of contacts within the Office. According to the Federal Cartel Office, it takes its lead from the Federal Government Directive concerning the Prevention of Corruption in the Federal Administration, under which staff in areas particularly vulnerable to corruption should, as a rule, not remain in the same assignment for more than five years (No. 4.2), while also using rotation to gain a fresh perspective on sectors and cases. However, according to the Federal Cartel Office's statements to the Monopolies Commission, staff sometimes take responsibility for an economic sector and its associated cases with them when moving to another Decision Division, or the staff working in an area follow when responsibility is transferred. There are often understandable practical reasons for this, such as continuity in ongoing proceedings. The result, however, can be that a person remains responsible for the same sector for many years, and rotation loses some of its effect in reducing inertia and strengthening exchanges between Decision Divisions.

**280** The Monopolies Commission therefore suggests enshrining rotation in the Office's own fixed rules and keeping exceptions as narrow as possible. The corruption prevention requirement provides a starting point, but serves a different purpose and allows extensions provided that the reasons are documented. Fixed rules of the Office would therefore primarily put existing practice on a lasting footing and also secure the objective of a fresh perspective through institutional arrangements. Ongoing proceedings could still be completed. This is consistent with the principle that responsibilities in ongoing proceedings should change only for an objective reason. However, when staff move or responsibility for sectors changes, responsibility for the sector and for new cases should, as a rule, not move with the staff concerned. Fixed rotation rules thus serve more than knowledge sharing alone. Because they are abstract and laid down in advance, they also safeguard internal independence: changes in responsibilities then follow a general rule rather than an individual personnel policy decision (↗**section 4.2.3**).

### Table 5.4: Rotation of staff responsibilities

| Country/authority | Rotation exists |
|---|---|
| Federal Cartel Office | yes |
| Belgium | yes |
| Directorate-General for Competition | yes |
| Italy | yes |
| Austria | no |
| Portugal | no |
| Switzerland | no |
| Spain | yes |
| United Kingdom | yes |

Source: Survey of competition authorities.

**281** At the same time, the knowledge built up by staff in the Decision Divisions should be retained. According to information available to the Monopolies Commission, the Federal Cartel Office uses a case database for internal knowledge management in merger control. Since 2024, the Monopolies Commission has been in close dialogue with the Federal Cartel Office on the further development of this database. There is scope for development both in the breadth of the data and in the depth of information. AI, which is due to be introduced at the Federal Cartel Office shortly, could also be used for its further development (↗**paragraph 369**). There are two different approaches to this. First, the case database could be designed as a central working platform in which the information needed for casework is recorded in a structured form. Decision documents could then be produced largely automatically on that basis. Alternatively, decision documents could be written and structured so that AI can extract the relevant information as reliably as possible and transfer it to the case database. This would require the information to be recorded to be presented in the documents in a form that is as structured, uniform and consistent over extended periods as possible.

**282** The Monopolies Commission sees greater potential in the first approach, because the information would then be generated in a structured form during casework,

without having to be extracted from documents retrospectively. In addition to the information recorded so far, it would be desirable for such a system to document, at a minimum, the competition considerations after proceedings have concluded, for example those concerning market definitions, market shares, major competitors and conduct that raises competition concerns.[36] This would also make the information transparent to staff in other Decision Divisions who need to consider comparable issues. This is particularly relevant for cross-cutting technologies, where information about one sector may also be relevant to others. To keep the effort involved low, this could build on the debriefings the Office already holds in important cases and for projects with the Economic Policy Unit. Such debriefings could become standard practice in larger proceedings and could be recorded for documentation purposes.

**Table 5.5: Case debriefings**

| Country/authority | Regular format |
|---|---|
| Federal Cartel Office | in important cases |
| Belgium | in important cases |
| Directorate-General for Competition | in important cases |
| Italy | no |
| Austria | in important cases |
| Portugal | always |
| Switzerland | in important cases |
| Spain | no |
| United Kingdom | always |

Source: Survey of competition authorities.

**283** Documentation appears particularly relevant in section 19a proceedings. To date, section 19a proceedings have been conducted by four different Decision Divisions (Microsoft and Meta by B6, Alphabet by B7, Amazon by B2, and Apple by B9). This has advantages, since each Decision Division has highly specific expertise in some of the sectors concerned. The essence of section 19a GWB, however, lies in

[36] In future, a well-maintained knowledge management tool could also be used to prepare internal decision documents for merger control decisions largely automatically. Such an approach is likely to offer considerable potential for saving time.

considering ‘paramount significance for competition across markets’. An exclusively sectoral approach reaches its limits here. Information on the competition assessment in one Decision Division is also relevant to other Decision Divisions. Overall, particularly in section 19a proceedings, there is much to be said for a functional form of organisation, that is, cooperation across Decision Divisions to capture aspects spanning different markets. This applies not only to section 19a proceedings but also where cross-cutting technologies play an important role. AI applications, for example, are becoming increasingly important as central cross-cutting technologies in many economic sectors, and effects across markets are correspondingly relevant in many cases. The Digital Economy Unit already supports the Decision Divisions with this development work.

**284** Documentation will require effort, although AI-based systems are likely to be able to reduce that effort considerably, for example when documenting project meetings. They can tag information automatically with keywords. A knowledge management system fed with the resulting information could be managed in substantive terms by the General Policy Division, while technical responsibility would lie with the head of Monitoring, Innovation and Technology (↗**section 5.3.1.3**). It should be available to all staff. Using such systems also creates a new task of structuring and oversight. AI-based knowledge management helps shape which information becomes visible in future proceedings and which does not. It thus operates as a decision premise within the meaning of ↗**section 5.2**. Clear rules are needed from the outset on data quality, the traceability of keyword tagging, access rights and regular review of the systems (on the use of AI applications in casework, see further ↗**paragraph 369**).

**Table 5.6: Knowledge management system**

| Country/authority | System exists |
|---|---|
| Federal Cartel Office | yes |
| Belgium | yes |
| Directorate-General for Competition | yes |
| Italy | yes |
| Austria | yes |
| Portugal | yes |
| Switzerland | yes |

| | |
|---|---|
| Spain | yes |
| United Kingdom | yes |

Source: Survey of competition authorities.

**285** Beyond knowledge management itself, the question arises as to how analytical and technological expertise spanning different fields should be embedded organisationally within a competition authority. For a time, the Federal Cartel Office had established a separate unit for data analysis. In January 2014, alongside the Economic Policy Unit (G3), Unit G3A, 'Data Collection and Econometrics', was established within the General Policy Division. At the same time, the role of Chief Economist was created to coordinate the work of both units. According to the Federal Cartel Office, this was intended to reflect the growing importance of data-driven analytical methods and facilitate their use in specific proceedings. The tasks of G3 and G3A were expressly regarded as complementary and served in particular to support the Decision Divisions in assessing individual cases and conducting sector inquiries (Bundeskartellamt, 2015). In subsequent restructuring, G3A was reintegrated into Unit G3 (Monopolkommission, 2022, paragraph 344). According to the Federal Cartel Office's statements to the Monopolies Commission, the separation between general competition economics analysis on the one hand, and econometric data analysis and the examination of expert reports submitted by parties based on such analysis on the other, had not proved successful for the comparatively small team. In cases where Decision Divisions involve the unit, they are typically supported by a team of two. For this form of support on individual cases, bringing the functions together is logical. The Monopolies Commission sees a need for a separate unit for a different reason. Data-driven analyses are becoming increasingly important beyond individual cases, for example for market monitoring, case selection and ex-post evaluation. A unit that also undertakes such analyses on its own initiative performs a different task from providing support at the request of Decision Divisions. This idea is taken up in ↗**section 5.3.1.3**.

**286** By contrast, a comparison with other competition authorities shows a tendency to institutionalise data analysis and technological expertise as a separate horizontal function. At the European Commission's Directorate-General for Competition, the recently established horizontal 'Data Analysis and Technology' unit, under the Chief Technology Officer, supports casework through, among other things, data analysis, digital investigations, market monitoring, digital forensics, eDiscovery and technical analysis of AI systems (Europäische Kommission, 2026e, p. 97). Its remit thus extends well beyond traditional econometric work. A comparable development can be found at the United Kingdom's Competition and Markets Authority (CMA). Data, technology and analytical expertise there is currently pooled in 'Data, Technology and Insights',

headed by a Chief Data, Technology and Insight Officer. This officer is part of the Senior Executive Team and is responsible across the authority for work on data, technology and analytics, including artificial intelligence. The proposal in ↗section 5.3.1.3 builds on this development.

**RECOMMENDATIONS**

- The Federal Cartel Office's case database should be developed into a comprehensive knowledge management system covering all relevant areas and providing all staff with key information on completed cases as needed. In addition, AI-assisted access to digital files could offer flexible access to existing information and thus usefully complement the structured case database.
- Rotation between Decision Divisions should be enshrined in fixed rules of the Office. As a rule, staff should not remain responsible for their previous sector after moving, even if that sector is transferred to another Decision Division; ongoing proceedings may be completed.
- The debriefings already customary in important cases should become standard practice in larger proceedings and should be documented.

### 5.2.5 Establishing the position of Procedural Officer

**287** As described, the Federal Cartel Office combines investigation and decision-making in the same individuals. This system, which gives individuals considerable power, may potentially lead to a narrowing of perspectives in particular proceedings or to procedural rights not being properly respected in individual cases. Establishing the position of Procedural Officer may provide a remedy. Some larger European competition authorities each have at least one such position:

- at the European Commission (‘Hearing Officer’; German-language title: ‘Anhörungsbeauftragter’),
- at the CMA (‘Procedural Officer’ in proceedings under the Competition Act 1998; ‘Procedural Complaints Adjudicator’ in proceedings under the Digital Markets, Competition and Consumers Act 2024),
- and at the Autorité de la concurrence (‘Conseiller Auditeur’).

**Table 5.7: Position of Hearing Officer/Procedural Officer**

| Country/authority | Hearing Officer/Procedural Officer (yes/no) | Decision-making powers of their own | Term of office |
|---|---|---|---|
| Federal Cartel Office | no | - | - |
| Belgium | no | - | - |
| European Commission | yes | yes | Unlimited |
| France | yes | no | 5 years (reappointment possible) |
| Italy | no | - | - |
| Austria | no | - | - |
| Portugal | no | - | - |
| Switzerland | no | - | - |
| Spain | no | - | - |
| United Kingdom | yes | yes | Unlimited |

Source: Own research and information from competition authorities, and Article R461-9 I Code de commerce.

#### 5.2.5.1 Tasks and design

288 Put simply, the Hearing Officer or Procedural Officer helps companies exercise their procedural rights effectively. They help ensure fair and impartial proceedings by mediating between companies and the authority in cases of conflict and by assisting, for example, with the exercise of the right to be heard and with access to the file. By safeguarding procedural integrity, the Hearing Officer or Procedural Officer also strengthens the legitimacy and acceptance of competition authorities' decisions. They also reduce the risk of confirmation bias (see already ↗**section 5.2.3**) and prevent an excessive concentration of power in individual decision-makers. In institutional terms, the Hearing Officer or Procedural Officer also performs a function for procedural matters comparable to that of a Chief Economist for economic matters (see already ↗**section 5.2.2**): they contribute to quality assurance within the authority's decision-making process.

289 The tasks and powers of Hearing Officers and Procedural Officers in the three authorities mentioned above – the European Commission, the CMA and the Autorité

de la concurrence – differ as follows (for institutional arrangements, see further **↗section 5.2.5.2**). The role of the European Commission's two Hearing Officers is comparatively strong. In addition to organising and conducting an oral hearing held in an individual case,[37] the Hearing Officers act as mediators between the Directorate-General (DG) for Competition and companies. In this capacity, the Hearing Officers can take decisions binding on the European Commission on matters including extensions of time limits for written submissions and the granting of access to the file (Article 4(2)(c), Article 7(3) and Article 8(4) of the Decision of the President of the Commission). Following the oral hearing, the Hearing Officers produce an interim report, and at the end of the proceedings a final report on the observance of procedural rights. The final report is submitted to the European Commission together with the Directorate-General for Competition's draft decision and is taken into account by the Commission in reaching its decision (Articles 16 and 17 of the Decision of the President of the Commission).

**290** The Procedural Officer in the United Kingdom, to whom companies may turn in the CMA's competition proceedings, is comparable to the European Commission's Hearing Officers. The Procedural Officer chairs the oral hearing and decides certain procedural matters, with those decisions being binding on case handlers in cartel and abuse proceedings, Rule 6(5), Rule 8 Competition Act 1998 (Competition and Markets Authority's Rules) Order 2014; see also (CMA, 2026a). Like the European Commission's Hearing Officers, the Procedural Officer produces a report on the oral hearing, Rule 6(6), (7) Competition Act 1998 (Competition and Markets Authority's Rules) Order 2014. In merger control proceedings and in market studies and market investigations under the Enterprise Act 2002, the Procedural Officer's remit is limited to confidentiality issues, on which, moreover, they can only make recommendations (Competition and Markets Authority, 2025c, paras. 12.51, 18.2, 18.6; Competition and Markets Authority, 2026c, para. 5.2).

**291** In keeping with the title, the role of the Conseiller Auditeur at the Autorité de la concurrence is, overall, more advisory. Companies may call on the Conseiller Auditeur in cases of conflict, but the office-holder may also act on their own initiative (Article R461-9 II Code de commerce). Unlike the European Commission and CMA models, the Conseiller Auditeur can only make recommendations and cannot take decisions. In a report to the President of the authority and, optionally, to the General Rapporteur, the Conseiller Auditeur comments on the conduct of the proceedings and

[37] See Article 14 of Implementing Regulation (EC) No 773/2004 and Article 15 of Implementing Regulation (EU) 2023/914 respectively; see also Articles 10 ff. of the Decision of the President of the European Commission on the function and terms of reference of the hearing officer in certain competition proceedings (Decision of the Commission President).

may also propose measures to improve companies' procedural rights (Article L461-4 and Article R461-9 II Code de commerce).

**292** The position of Procedural Officer at the Federal Cartel Office should be modelled more closely on the Autorité de la concurrence than on the European Commission or the Competition and Markets Authority. Oral hearings within the meaning of section 56(7), first sentence, GWB ('Verhandlungen') play only a minor role in the Federal Cartel Office's decision-making practice. In most cases, the right to be heard is exercised primarily in writing, while oral exchanges generally take place bilaterally and informally. There is thus currently little need for support in organising or conducting hearings. It remains to be seen whether and to what extent this might change in future if the 12th amendment to the GWB enhances the role of oral hearings (see further ↗**paragraph 376**). This could, if appropriate, create a field of activity for a Procedural Officer (see also Studienvereinigung Kartellrecht, 2026, para. 42). It is not possible under current law for a Procedural Officer also to take binding decisions in Federal Cartel Office proceedings, because section 51(2), first sentence, GWB vests sole decision-making power in the Decision Divisions. This power encompasses orders preparing and concluding proceedings (Stockmann/Picht, 2024a, para. 23; Zorn, 2022, para. 13; probably also Quellmalz, 2025a, para. 2: 'this means substantive decisions such as prohibition, interim orders, admission as an intervening party and requests for information').

**293** There is, however, likely to be scope to ease the workload of the Decision Divisions, for example in redacting trade and business secrets.[38] Admittedly, it must be borne in mind that third parties unfamiliar with the facts will have greater difficulty than the relevant case handlers in identifying trade and business secrets. However, redaction in accordance with the case handlers' instructions, or in close cooperation with them, would be conceivable. In future, digital tools could make it easier to identify trade and business secrets (see further ↗**section 5.3.3.1**). Federal Cartel Office administrative staff already assist case handlers in carrying out redactions. Section 56(6) GWB also offers the Decision Divisions some relief, although it does not exempt them from examining whether trade and business secrets are present. Under that provision, they can require companies to identify any trade and business secrets when filing written submissions and, if they nevertheless fail to do so, assume consent to disclosure.

**294** As at the three competition authorities mentioned above, the Procedural Officer at the Federal Cartel Office could also serve, in particular, as an easily accessible mediator in disputes over the granting of procedural rights (see also Studienvereinigung

[38] See, however, ↗**Section 5.3.3.3** on the proposal to introduce lawyers-only access to the file in administrative competition proceedings.

Kartellrecht, 2026, para. 42). Some companies do abuse their procedural rights to obstruct proceedings (see further ↗**Section 5.3.3**). This cannot, however, be generalised. Case law demonstrates that mediation between the Federal Cartel Office and companies can be productive. In a recent decision, for example, the Düsseldorf Higher Regional Court found 'that there had been considerable friction between defence counsel, the persons concerned and the Federal Cartel Office in the proceedings before the Office' (OLG Düsseldorf, V-6 Kart 2/21 (OWi), 5.3.2025, Fahrwerks-Aluminiumbauteile). It must also be borne in mind that, in addition to the parties to proceedings (including intervening parties, section 54(2) GWB), third parties also have certain rights (for example, to information from, or access to, parts of the file under section 56(5) GWB).[39] Intervening parties and third parties in particular often have an interest in especially rigorous scrutiny by the competition authority and could therefore also benefit from mediation by a Procedural Officer. More generally, establishing the position of Procedural Officer could help bring greater consistency to the handling of recurring issues across cases and Decision Divisions.

**295** Parties to proceedings and third parties should be able to involve the Procedural Officer if they consider that their procedural rights have been restricted. Third parties should also have to demonstrate a legitimate interest. The Procedural Officer should seek a timely resolution of the conflict. In doing so, they could – like the Conseiller Auditeur at the Autorité de la concurrence and, in some areas, the CMA's Procedural Officer – make 'mere' recommendations for the further conduct of proceedings. A Procedural Officer at the Federal Cartel Office could therefore undertake the following tasks:

- Supporting the Decision Divisions in granting procedural rights – particularly the right to be heard and the right of access to the file – for example by redacting trade and business secrets; and, in particular,
- Mediating between companies and Decision Divisions in disputes over procedural rights, for example concerning the scope, form and timing of hearings or access to the file.

[39] The bill for a 12th amendment to the GWB provides that, in future, access to the file by intervening third parties whose involvement in the disputed legal relationship does not require the decision to apply uniformly to them as well will be at the competition authority's discretion, under section 56b(1), second sentence, of the draft GWB. Referring to the Federal Court of Justice, the explanatory memorandum describes this as a statutory clarification (Bundesregierung, 2026b, pp. 52 f.; see BGH, KVB 69/23, 20 February 2024, Google Offenlegung). The Monopolies Commission considers that the rights of intervening third parties and other third parties should be strengthened rather than weakened, despite the effort involved (see further ↗**section 5.3.3**); see also Monopolkommission (2026, paragraph 416).

**296** In the Monopolies Commission's view, it is important that establishing the position of Procedural Officer should not make Federal Cartel Office proceedings excessively more formal. This applies both to the three 'traditional' pillars of competition law (merger control, abuse control and restrictive agreements) and to both procedural regimes (administrative proceedings and administrative offence proceedings). A Procedural Officer position along the lines outlined above, which would also ease the workload of the Decision Divisions and otherwise act as a mediator, is entirely compatible with this and could therefore, in principle, be involved in all the authority's competition proceedings. However, if proceedings become more polarised, as suggested in one of the report's opening propositions, a degree of formalisation and greater neutrality will also be unavoidable.

**297** Establishing the position of Procedural Officer would address the fact that the Decision Divisions both conduct investigations and take decisions. This gives them a strong position, including by international standards, which calls for an appropriate accountability mechanism. There is a risk that established perspectives become entrenched without external correction (see already ↗**Section 5.2.3**). At present, the conduct of proceedings by Decision Divisions is often open to review only to a limited extent. In many cases, competition authorities' decisions are not reviewed by the courts. Moreover, where appeals are lodged, court proceedings often require considerable effort and are lengthy (see Podszun, 2021; Podszun/Overhoff, 2024; Podszun/Robertson, 2025).[40] The Procedural Officer would provide an important additional corrective in this respect.

**298** The involvement of a Procedural Officer and the associated partial separation of the conduct of proceedings from decision-making would also have the advantage that concerns about a lack of objectivity in the former would have less of an impact on the latter. A Federal Cartel Office decision was recently set aside on grounds of an appearance of bias on the part of the staff involved in the decision (BGH, KVR 8/24, 3.12.2024, Lufthansa Eilverfahren; OLG Düsseldorf, VI-Kart 7/22 (V), 20.8.2025, Lufthansa Hauptsache; see also Franck, 2024). Both the Federal Court of Justice and the Düsseldorf Higher Regional Court based their decisions on procedural shortcomings in connection with the granting of access to the file. The courts had previously criticised the Federal Cartel Office's record-keeping (OLG Düsseldorf, V-6 Kart 6/17 (OWi), 2.10.2018, 'Wurstkartell').

[40] See already ↗**section 4.3.2.1.**

#### 5.2.5.2 Institutional arrangements

**299** Alongside the design of the Procedural Officer's tasks and powers, their place within the Federal Cartel Office's organisation is important. The role and the institutional design of the position must be congruent. The Procedural Officer's degree of independence and need for staffing support are therefore particularly significant.

**300** The institutional arrangements for the respective Hearing Officers and Procedural Officers differ at the three competition authorities already considered for comparison: the European Commission, the CMA and the Autorité de la concurrence. The European Commission currently has two Hearing Officers for competition proceedings. They do not form part of the Directorate-General for Competition but are attached, for administrative purposes, to the Commissioner responsible for competition (Article 2(2) of the Decision of the President of the Commission). The Commissioner is, in turn, a member of the College, which takes the European Commission's decisions under Article 250 TFEU. The Hearing Officers are appointed by the European Commission. Suspension of their mandate and their removal or transfer require a reasoned decision by the Commission (Article 2(2) of the Decision of the President of the Commission). The Hearing Officers have a team currently comprising eight staff, including six advisers (‘Advisors’) and two administrative staff (‘Assistants’) (Europäische Kommission, 2026a).

**301** The CMA's Procedural Officer and the Autorité de la concurrence's Conseiller Auditeur are employees of their respective authorities but do not form part of the teams responsible for casework. As at the European Commission – and unlike the Federal Cartel Office – investigation and decision-making at the CMA and the Autorité de la concurrence are already carried out by separate personnel. According to the Autorité de la concurrence's organisational chart, the Conseiller Auditeur also does not report to the authority's leadership (Autorité de la concurrence, 2026).

**302** The Procedural Officer is appointed by the authority itself (Competition and Markets Authority, 2026a), while the Conseiller Auditeur is appointed by ministerial order under Article L461-4 Code de commerce. Only persons qualified to hold judicial office or offering equivalent guarantees of independence and professional competence are eligible to serve as Conseiller Auditeur.[41] In performing their tasks, the Procedural Officer is supported by a CMA secretariat, and the Conseiller Auditeur by the Autorité de la concurrence's investigation services (Article R461-9 III Code de commerce). The Conseiller Auditeur is appointed for a five-year term, with one reappointment possible

[41] Article L461-4 Code de commerce: “[…] Un conseiller auditeur possédant la qualité de magistrat ou offrant des garanties d'indépendance et d'expertise équivalentes est nommé par arrêté du ministre chargé de l'économie après avis du collège. […].“

(Article R461-9 I Code de commerce). By contrast, the mandates of the European Commission's Hearing Officers and of the Procedural Officer are not limited in time (see already ↗**Table 5.7**). In all three authorities, the current Hearing Officers and Procedural Officers have held these roles for some time.[42]

**303** The European Commission's Hearing Officers are comparatively independent and well staffed, while the CMA's Procedural Officer and the Autorité de la concurrence's Conseiller Auditeur fall appreciably short of them in these respects. Considering the tasks and powers of the Hearing Officers and Procedural Officers, the organisation of decision-making, and the size of each authority, the position of Procedural Officer at the Federal Cartel Office could be modelled more closely on the latter two authorities.

**304** As regards independence, it is particularly important to bear in mind that the Monopolies Commission envisages only a supporting and mediating role for the Procedural Officer, with no decision-making powers of their own (see already ↗**paragraphs 292 et seq**.). Since decisions at the Federal Cartel Office are taken by the Decision Divisions, and Divisions G and P already support them in a variety of ways, it would be conceivable to place the Procedural Officer in one of those divisions and arrange regular rotation of the post-holder. However, staff of Divisions G and P are subject to instructions from the authority's leadership. This could restrict the internal independence of the Decision Divisions from that leadership. In addition, rotating the post-holder within the authority could mean that a person in their temporary role as Procedural Officer does not act neutrally but is too lenient towards their former or future colleagues at the Federal Cartel Office. There would then be a risk that companies' positions in disputes were not adequately considered and that any shortcomings in the treatment of procedural rights remained unaddressed.

**305** It would therefore be preferable to fill the position of Procedural Officer externally and for a fixed term. The appointee should be an experienced expert. The selection should be preceded by a public advertisement with a clear profile of the required expertise. Selection should be undertaken by a selection committee, with the mandatory involvement of external professional expertise (see the corresponding discussion of the Chief Economist position in ↗**Section 5.2.2**).

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[42] European Commission: (1) Dorothe Dalheimer, since March 2020, previously at the European Anti-Fraud Office and, before that, the Directorate-General for Competition; (2) Wouter Wils, since February 2025 and previously from September 2010 to May 2021, formerly a member of the European Commission's Legal Service. CMA: Frances Barr, April 2014, previously at the Office of Fair Trading, the CMA's predecessor authority. Autorité de la concurrence: Jean-Pierre Bonthoux, since May 2019, previously First Advocate General at the Cour d'appel de Paris. Information as at September 2026.

**306** Organisationally, the Procedural Officer could report directly to the authority's leadership. One possibility would be a staff function such as the existing Internal Audit function. The typical tasks of Internal Audit in a federal authority would correspond, at least in part, to the functions envisaged here for the Procedural Officer (see section 5 VwV IR). In any event, it would need to be made clear that the Procedural Officer is not subject to instructions on substantive matters, either from the ministry or from the authority's leadership (see also Studienvereinigung Kartellrecht, 2026, para. 42). To preserve the independence of the position and prevent a concentration of power, it would also be important to appoint the Procedural Officer for a specified period.

**307** Given the limited responsibilities, it would be sufficient to provide the Procedural Officer with modest staffing resources. Some work would certainly arise if support for the Decision Divisions, for example in redacting trade and business secrets for the purposes of access to the file, were taken seriously. Ultimately, however, this would entail little additional workload for the Federal Cartel Office, because the Decision Divisions would be relieved of the corresponding work and staff from another division could accordingly be assigned to the Procedural Officer.

**RECOMMENDATIONS**

- The Federal Cartel Office should establish the position of Procedural Officer to support the Decision Divisions in granting procedural rights and, in particular, to mediate in disputes between the Decision Divisions and companies.
- The position of Procedural Officer should be filled externally for a fixed term. The person should be selected by a selection committee following a public advertisement.
- The Procedural Officer should not be subject to substantive instructions and should receive a small staffing allocation.

## 5.3 Protecting competition in the digital age

### 5.3.1 Innovation as the third pillar of competition protection

#### 5.3.1.1 Law – Econ – Tech as pillars

**308** The application of competition law has hitherto been understood primarily as an interplay between law and economics. However, the protection of competition rests on three pillars:

- Law provides the framework for safeguarding freedom, from which the protection of competition follows as a safeguard for freedom of entrepreneurial action and economic decision-making. Law supplies the instruments for the exercise of public powers, for example through authorities' powers, while also setting limits on those instruments.
- Economics justifies interventions on the basis of concepts of welfare. It provides a deep understanding of the idea of competition, analyses the effectiveness of action and offers insights into how measures should be directed.
- Technology, as the third pillar, creates continual dynamic change and forms part of the concept of competition. Wherever technological developments occur, the competitive situation automatically changes. Technological progress enables and requires new forms of intervention and continuously improving analysis.

**309** The Monopolies Commission is convinced that if a public institution were established today to protect and promote competition, it would have a strong focus on technology. This would be reflected both in its conception of competition protection and in its institutional design. Such an authority would be built on three pillars: Law – Econ – Tech. The application of the law and the economic analysis underpinning it would be complemented by data-driven competition monitoring using new technologies.

**310** This is already partly reflected in the Federal Cartel Office's current practice: sector inquiries and the 'New Competition Tool' in section 32f GWB, the Market Transparency Units, the Competition Register with its extensive digital processing, and the use of modern digital tools in cartel prosecution already promote data-driven digital enforcement. Procurement screening, which is to be introduced by the 12th amendment to the GWB (section 32h of the draft GWB), also moves in this direction. The Monopolies Commission proposes further strengthening the technological approach to protecting competition.

#### 5.3.1.2 Stimulating competition through innovation

**311** The close relationship between protecting competition and promoting innovation is recognised, for example, in section 2 GWB and Article 101(3) TFEU, which take technical and economic progress into account when assessing restrictions of competition. The objective of innovation also runs through other competition law provisions,[43] case law and the economic theory of competition, at least since Nikolai Kondratieff's conjecture that capitalist systems are subject to long, innovation-driven growth cycles and Joseph Schumpeter's description of 'creative destruction' as the

[43] In 2022, promoting innovation was expressly included as a protected objective in Article 1 of China's Anti-Monopoly Law.

core of capitalism. Competition promotes innovation particularly by prompting companies exposed to competition to keep bringing new developments to the market. Competitive pressure ensures that the benefits of innovation are passed on to consumers.

**312** Technological breakthroughs in particular have repeatedly produced new competitive constellations: the smartphone disrupted what was then an established mobile phone sector. Streaming technology made video rental obsolete and led to enormous competitive changes in television entertainment. Alternatives to the internal combustion engine are currently transforming the car market. It may be noted in passing that, because current competition law frequently bases decisions on narrowly defined markets, it often struggles to capture such new phenomena with effects across markets.

**313** These examples also show that innovation can shake up stagnant markets or entrenched monopolistic or oligopolistic structures where the application of traditional competition law, and thus a revival of competition induced by regulation, no longer takes effect. The less contestable markets are, and the higher the barriers to entry, the more important it becomes to keep paths to innovation open. The European Commission recognised this in the agrochemical mergers of 2016/2017. In markets shaped by digitalisation, in the energy industry or in the waste management sector, it is quite conceivable that regulatory efforts to increase competition may advance only incrementally, while technological developments can suddenly have substantial effects.

**314** The insight that innovation can lead to greater competition and is the most effective mechanism for breaking up entrenched structures is of paramount importance, particularly in highly concentrated markets such as the digital economy. Moreover, the economic importance of innovation has become a key issue for Europe, at the latest since the Draghi report. The close relationship between competition and innovation suggests that competition authorities should also reflect this insight in their institutional arrangements. The Federal Cartel Office should therefore pay greater attention to this aspect of competition in future.

**315** If innovation can restore competition in highly concentrated sectors, this should be reflected in competition protection. The Monopolies Commission supports the Federal Cartel Office placing greater emphasis on promoting innovation. Breaking down barriers to entry, keeping paths to innovation open, enabling start-ups to grow and disseminating new insights, particularly in highly concentrated sectors, should also be reflected in the setting of priorities (for the preparation of the list of priorities, see ↗**Section 4.3.2.2**).

**316** Institutionally, this means that technological expertise within the Federal Cartel Office should be strengthened. The Monopolies Commission recommends four measures: appointing a head of Monitoring, Innovation and Technology; designating coordinators ('innovation scouts') in the Decision Divisions; integrating colleagues with technological expertise more closely into case teams; and building a data-driven competition monitoring system.

#### 5.3.1.3 Appointing a head of Monitoring, Innovation and Technology

**317** A head of Monitoring, Innovation and Technology should be appointed to keep track of major technological trends and developments in innovation across sectors. The purpose of the position is, in particular, to identify new technological opportunities for more effective enforcement and make them available to the Federal Cartel Office. International examples exist. The UK's CMA has a Chief Data, Technology and Insight Officer.[44] This role is responsible not only for IT infrastructure, IT applications and the provision of data analysis tools and methods within the authority. Its core tasks also include analysing emerging technologies and how they shape markets (Competition and Markets Authority, o. J.b). The European Commission has a Chief Technology Officer, whose responsibilities specifically include providing data analysis tools and methods and analysing emerging technologies and how they shape markets (Europäische Kommission, 2024a, p. 2). The two models differ in the design of the position. At the European Commission, the Chief Technology Officer position, like that of Chief Economist, was advertised as a temporary agent post and filled by a university professor. At the CMA, by contrast, it is a regular Senior Civil Service leadership position, forming part of the senior management team and filled through the usual selection process; the incumbent has a mixed background in academia, regulation and consultancy.

**318** A comparison between the Federal Cartel Office and the CMA reveals that many tasks of the Chief Data, Technology and Insight Officer are currently performed by the Digital Services Division. These include managing IT infrastructure, IT applications and IT forensics and providing data analysis tools. In addition, the Federal Cartel Office's General Policy Division has had a Digital Economy Unit since 2019. It manages conceptual projects in the digital economy and supports the Decision Divisions in their digital proceedings (Bundeskartellamt, 2020). The Economic Policy Unit, also located in the General Policy Division, supports the Decision Divisions in data analysis. While the CMA therefore brings these capabilities together in a broadly configured IT department under the Chief Data, Technology and Insight Officer, the Federal Cartel Office's

[44] The current office holder is Karen Croxson (Competition and Markets Authority, o. J.b).

Digital Services Division has a narrower remit and operates alongside other relevant organisational units. A comparison with the Directorate-General for Competition likewise shows that capabilities concentrated there are distributed across different organisational units at the Federal Cartel Office.

**319** The Monopolies Commission considers it appropriate to bring the currently dispersed capabilities in digital services, including IT forensics, data analysis methods and tools, data analysis and monitoring technological developments together under a head of Monitoring, Innovation and Technology. Their task would be to take up technological ideas and ensure that they are actually implemented within the Office. Digital and innovation capacity should be visibly strengthened at a central level. Above all, the person should introduce new tools for better enforcement while also interpreting technology trends for the Office. Two requirements follow that initially stand in tension. On the one hand, the position must be able to exercise binding direction across organisational units that have hitherto been managed separately. Otherwise, there is a risk that ideas will be formulated but dissipate between the units involved, or that the units will block one another. On the other hand, it should not become another division alongside the existing ones, with its head absorbed by operational and administrative tasks. It does not require substantive independence from the authority's leadership. On the contrary, its ability to secure implementation rests precisely on acting with the President's backing.

**320** Conventional organisational forms each meet only half of these requirements. A divisional head has powers to issue instructions, but this places the position within line management and burdens it with responsibility for day-to-day IT operations and information security. A staff position reports directly to the authority's leadership but, as conventionally understood, has no power to issue instructions to line management. Administrative practice does, however, include intermediate forms in which a function reporting directly to the leadership has authority-wide rights of involvement and direction without managing the other organisational units. The best-known example is the budget officer, who should report directly to the head of the authority and must be involved in all measures of financial significance (section 9(1) and (2) of the Federal Budget Code, BHO). A comparable arrangement for data exists at the Deutsche Bundesbank. There, the Chief Data Officer reports directly to the President, while the incumbent also heads the Directorate General Data and Statistics (Deutsche Bundesbank, 2026).

**321** The Monopolies Commission proposes designing the position on this model as a staff position with powers of direction. It should report directly to the President, who would remain its superior. The position should have its own unit, bringing together all aspects of data analysis, IT forensics and technology monitoring and establishing the

data-driven competition monitoring system (↗**Section 5.3.1.6**). Econometric analysis may remain with the Economic Policy Unit in individual cases. The staff position would provide advice, data, tools and infrastructure for this purpose. The other relevant organisational units, particularly the Digital Services Division, would remain within line management. The rules of procedure should give the position the following powers in relation to them:

- lead responsibility for an authority-wide data and technology strategy that the President brings into force with binding effect for all organisational units;
- a requirement for its approval of IT and data projects and procurement of strategic significance, including the introduction of AI applications;
- management of its own budget for innovation and technology projects;
- and the power to issue substantive instructions limited to these matters, particularly concerning the prioritisation of development projects and the definition of common standards and tools. This power would, of course, exclude decisions on cases in the Decision Divisions.

**322** Supervision of staff would remain with the respective divisional heads. If no agreement were reached, the President would decide. The position would also have the right to report directly to the President and participate in meetings of divisional heads.

**323** No legislative amendment is required for this. The President determines the allocation and conduct of business through the rules of procedure (section 51(2) GWB) and may, within that framework, delegate their own powers of direction in defined substantive areas to a position reporting directly to them.[45] Because these powers derive from a decision of the authority's leadership and can also be withdrawn by it, they should be expressly set out in the rules of procedure and published with them (↗**Section 4.3.1.3**). The position should be filled externally for a fixed term, to bring knowledge from a rapidly changing field into the Office and renew it at regular intervals. Since the position is intended to implement technological ideas, it would entail neither freedom from substantive instructions nor a right to publish independent assessments. Public service pay structures may prevent the appointment of someone with proven expertise; flexibility should be created to address this. The European Commission illustrates the difficulties that may arise in filling such a position: the corresponding post remained vacant for years before an appointment was made in 2025 (John, 2025).[46]

[45] The rules of procedure require confirmation by the Federal Ministry for Economic Affairs.

[46] The current office holder is Yves-Alexandre de Montjoye (Europäische Kommission, 2025).

**324** Keeping pace with technological development cannot, however, be secured permanently through a central leadership function alone. Technological and innovation expertise should also be embedded in the Decision Divisions themselves. Both decentralised coordinators and rapporteurs with technological expertise would be suitable for this. In addition, the instruments discussed in ↗**Section 5.2.3** – secondments and exchanges with researchers – are available and particularly appropriate in the technological field. The head of Monitoring, Innovation and Technology would be the point at which these inputs are brought together, assessed and translated into casework.

**RECOMMENDATIONS**

- The Federal Cartel Office should appoint a head of Monitoring, Innovation and Technology to direct, across the authority, the responsibilities for digital services, data analysis methods and tools, data analysis and monitoring technological developments that are currently distributed among several organisational units. The purpose of the position is, in particular, to identify new technological opportunities for more effective enforcement and make them available to the Federal Cartel Office.
- The position should report directly to the President as a staff position and head its own unit for data analysis, IT forensics, technology monitoring and competition monitoring. In relation to the other relevant organisational units, the rules of procedure should give it lead responsibility for a binding data and technology strategy, require its approval for strategic IT and data projects, allocate it a separate innovation budget and grant it substantively limited powers to issue instructions.
- The position should be filled by an external person for a fixed term through an open selection process based on a published profile of the requirements. Unlike the Chief Economist, the position would not be free from substantive instructions. The necessary flexibility in remuneration rules should be created to enable an external appointment.

#### 5.3.1.4 Appointing coordinators for Monitoring, Innovation and Technology

**325** The Monopolies Commission recommends designating a coordinator for Monitoring, Innovation and Technology in each Decision Division organised by sector. These specialists should be responsible for keeping track of major technological trends and developments in innovation within and around the relevant sectors. The coordinators should serve as points of contact for the head of Monitoring, Innovation and Technology and also for the Chief Economist. The aim is to collect and organise

knowledge about technology and innovation systematically and distribute it throughout the authority, particularly through the head of Monitoring, Innovation and Technology. Case handlers in the Decision Divisions can often assess sectoral developments in individual cases. However, they cannot all simultaneously assess comprehensive knowledge of technology cycles, developments in other markets, new scientific findings or opportunities for synergies with other markets. Appointing such coordinators ('innovation scouts') sends a signal that innovation and technology, as central aspects of competition protection, should genuinely become part of casework.

#### 5.3.1.5 Integrating rapporteurs with technological expertise

**326** Tech as the third pillar of competition protection may also lead to changes in recruitment criteria. It would be useful to bring into the Decision Divisions and case teams decision-makers with scientific or technological knowledge gained, for example, by studying engineering, data science, the natural sciences or related fields. They would acquire the necessary legal and economic grounding on the job. The panel structure of the Decision Divisions means that not every rapporteur needs to possess every skill: casework then becomes genuine teamwork. Specialist expertise based on a more detailed knowledge of R&D developments would add substantially to perspectives on competition.

**RECOMMENDATIONS**

- The Federal Cartel Office would also benefit from recruiting more people with scientific or technical backgrounds to its Decision Divisions. They could serve as points of contact for the head of Monitoring, Innovation and Technology. The aim would be, also involving the Chief Economist's team, to develop strategic future scenarios, identify barriers to market entry and detect the blocking of innovation potential.

#### 5.3.1.6 Building a data-driven competition monitoring system

**327** The minor staffing changes described – appointing a head of Monitoring, Innovation and Technology, appointing coordinators for Monitoring, Innovation and Technology, and recruiting staff with technological expertise – would contribute to a larger project. The Federal Cartel Office should introduce a data-driven competition monitoring system. This would be an observatory continuously assessing the state of competition in different sectors. The application of competition law would become considerably more data-driven. This would be reflected not only in individual cases but also in case selection and ex-post evaluation. The Monopolies Commission considers that such

screening has the potential to strengthen competition protection substantially, particularly in areas where there are currently ‘blind spots’, meaning competition problems that go entirely unnoticed.

**328** Cross-sector competition monitoring could bring together continuously available indicators, data and other market information, analyse them quantitatively and interpret them qualitatively to identify emerging competitive developments. Examining different sectors centrally could generate additional insights: developments that do not yet appear unusual within a single market could become visible as part of a wider pattern if similar changes occur simultaneously in other sectors. This might concern new forms of foreclosure, parallel changes in business models or recurring strategies of companies with market power. In this sense, a data-driven competition radar could also incorporate elements of ‘strategic foresight’ and perform an early-warning function, drawing attention to sectors where competition is already impaired or where concentrations of power and other adverse developments threaten, even if these areas have not yet attracted the Federal Cartel Office's attention. Such blind spots can arise, for example, where a sector has no complainants. Monitoring could give the Decision Divisions additional indications of where a more detailed examination appears particularly promising, where early intervention could protect competitive potential and where priorities in case selection should be set.

**329** In combination with sector-specific insights from the Decision Divisions, monitoring would also provide the basis for stronger ‘competition advocacy’. This ‘advocacy for competition’ is understood in particular as drawing attention to restrictions of competition imposed by the state, such as regulatory barriers to entry or distortions of competition caused by particular requirements. The Monopolies Commission already performs this form of competition advocacy in Germany, but it could be expanded considerably. The Federal Cartel Office could contribute by issuing opinions on the competitive effects of legislation or legislative proposals, as it already does to some extent, which the institutions addressed, such as the lead ministry, would have to consider.

**330** The Monopolies Commission has not yet worked out in detail how such monitoring should be established. In particular, comprehensive surveillance of companies and bureaucratic data collection should be avoided. Nevertheless, there are now many potential sources of information, meaning that the relatively haphazard approach to competition intervention practised to date, without checks on effectiveness, is no longer appropriate. Systematically analysing competition indicators and orienting competition law enforcement towards data offer an enormous opportunity for protecting competition in the future. AI also provides the instruments for this.

**331** The following rules should govern the establishment of such a unit. It should primarily draw on data already available, particularly data already held by public bodies. Risk indicators could be monitored, such as concentration ratios, the HHI, simultaneous price adjustments, anomalies in patent registers or financial markets, high barriers to entry, sequences of acquisitions and strong vertical integration. More intensive competition analysis should take place only when thresholds to be defined in greater detail are met, for example when complaints increase, certain limits are exceeded, proceedings have been conducted in other jurisdictions or a data-driven competition early-warning system is triggered. Any data it collects itself must be limited to what is necessary and proportionate (data minimisation). Algorithmic analysis must always be accompanied by transparency and human oversight. The competition authority's previous measures could also be fed into the system. Among other things, this would make visible the sectors in which competition authorities are particularly active and those in which they are not. Establishing the unit nevertheless requires resources. The Federal Cartel Office needs its own staff with data expertise and a budget for data that are not publicly available and can only be procured commercially.

**332** In keeping with the Law – Econ – Tech approach pursued here, the data, indicators and thresholds would need to be defined not only by reference to traditional economic benchmarks for competition, but particularly with regard to barriers to innovation and market conditions conducive to innovation. This form of competition monitoring would therefore need to give particular support to emerging markets and competitive potential, research trends and start-up ecosystems. This work includes scenario analyses of future developments and ex-post analyses (discussed immediately below). Close cooperation with academia and institutions such as the Commission of Experts for Research and Innovation (EFI), the Federal Agency for Disruptive Innovation (SPRIND) and, of course, the Monopolies Commission can further illuminate the links between competition and innovation and lead to more coordinated competition and innovation policy.

## RECOMMENDATIONS

- The Federal Cartel Office should establish a data-driven competition monitoring system, with a particular focus on innovation and technology as drivers of competition.

### 5.3.2 Ex-post evaluations for a data-driven competition authority that learns from experience

**333** Adaptability is crucial to the long-term effectiveness of competition authorities (see the earlier discussion in **↗Section 5.2**). The first step is to recognise where adaptation is needed. Ex-post evaluations are an indispensable instrument for this. They enable robust insights for future proceedings to be gained from completed decisions. They connect past enforcement decisions, actual market developments and future casework. Evaluation is thus the instrument through which an authority makes the premises underlying its own decisions open to scrutiny.[47] This presents a particular challenge for the Federal Cartel Office: its own decision-making practice is reviewed not in response to objections from a court, a party to proceedings or academia, but against the actual development of the market.

**334** The authority's strategic priorities can guide the selection of cases for ex-post evaluation (see **↗Section 4.3.2.2**). A list of priorities may prioritise particular sectors, conduct or competition policy objectives, thereby indicating which completed proceedings appear especially relevant for an in-depth retrospective examination. In addition, data-driven competition monitoring can identify markets or developments suitable for ex-post evaluation (see **↗Section 5.3.1.6**). The connection also works in the opposite direction. Ex-post evaluations provide insights into the actual effects of an authority's decisions. These insights may extend beyond the individual case and specific evaluation question. Where recurring mechanisms, underestimated competition problems or limits to existing priorities emerge, the findings can feed back into competition monitoring and inform updates to the strategic list of priorities.

#### 5.3.2.1 Learning as a task of a successful competition authority

**335** An authority's decision begins with careful preparation. For a competition authority, this includes systematically gathering information, analysing available data and conducting various legal and economic analyses. Economic theories, empirical findings and sector-specific characteristics are brought together. On this basis, the authority assesses the current situation, makes assumptions about future developments in the markets concerned, for example in merger control proceedings, weighs arguments and estimates the possible effects of its decision. It then takes its decision (Oschmann, 2024).

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[47] On the basis of more than 120 evaluations since 2013, around 40 practical checks and a survey of 60 legislative drafters in the federal ministries, the National Regulatory Control Council has shown that, although evaluations are provided for in federal administration, their benefits for subsequent practice have not yet been fully realised (Nationaler Normenkontrollrat, 2026).

**336** An authority learns at several levels of the decision-making process. In principle, insights gained in proceedings expand its knowledge of markets, business models, economic relationships and the application of competition law instruments. This knowledge can be developed through different forms of exchange and made usable in later proceedings. These include internal and external workshops and seminars, exchanges between Decision Divisions, discussions with parties to proceedings and market participants, and participation in academic and professional conferences. External input is another source, for example through exchanges with other competition authorities and academia, or through the Monopolies Commission's assessment of the Office's practice.

**337** An authority's learning can also focus directly on its own decisions and their actual effects. For this, it must make its decisions open to retrospective scrutiny and establish how they actually affected markets. The questions are whether assumptions and forecasts accurately reflected actual developments, whether the instruments chosen were effective and whether internal processes can be improved to enhance decision quality. When the findings feed into future proceedings, a cycle emerges linking preparation, decision, effects and subsequent decisions. Without this cycle, decisions may be based on careful analysis, but the connection to their actual effects is missing.

#### 5.3.2.2 Ex-post evaluations as a learning tool

**338** Ex-post evaluations are particularly well suited to institutional learning. They confront the authority with the effects of its work.[48] This can generate impetus for necessary adjustments (see ↗**Section 5.2**). In competition policy, ex-post evaluations can be used in merger control, in abuse control and cartel enforcement measures, and in measures not dependent on an infringement under section 32f(3) and (4) GWB. Such

[48] The Federal Cartel Office's sector-based Decision Divisions repeatedly handle proceedings in the same markets and thereby acquire extensive sector-specific knowledge. This experience can help to identify market developments early, select suitable cases for evaluation and interpret empirical findings appropriately. Repeated casework cannot, however, replace ex-post evaluations. Although continuous engagement with a market provides important insights into changes in market conditions, it generally does not in itself allow reliable conclusions as to whether those changes are attributable to a specific decision by the authority or to other factors, such as general market trends, macroeconomic developments or external events.

evaluations use data to examine actual developments in the markets concerned following an authority's decision and compare them with the assumptions and expectations underlying that decision.[49]

**339** In merger control, ex-post evaluations can serve various functions. Procompetitive mergers may be prohibited erroneously, while anticompetitive mergers may be cleared erroneously. Evaluations make such errors easier to observe and, taken together, enable the effectiveness of merger control to be assessed (Duso u. a., 2011). Evaluations can also reveal effects of mergers beyond price changes that the authority may not always anticipate sufficiently. These may concern, for example, product variety (Argentesi u. a., 2021), quality (Chen/Gayle, 2019), costs (Engberg u. a., 2004) and innovation (Ornaghi, 2009).

**340** Ex-post evaluations can also assess the effectiveness of conditions and obligations in merger control proceedings and prohibitions in abuse proceedings. They can examine whether behavioural or structural remedies actually achieved their intended objectives and whether other measures might have been more effective (e.g. Friberg/Romahn, 2015; Lagos, 2018). Ex-post evaluations in merger control can also contribute to the development of ex-ante assessment tools (Garmon, 2017). They may further indicate which mechanisms should be examined in future merger control assessments (Oschmann, 2025).

**341** In abuse control, ex-post evaluations can provide important insights into the actual effectiveness of an authority's measures (Duso u. a., 2020). They can assess, for example, whether ending the abuse actually improved competitive conditions or whether the company concerned is circumventing the authority's order through evasive strategies. In cartel prosecution, an evaluation could assess whether ending an anticompetitive agreement restored competition on a lasting basis. One possible indicator would be whether prices returned to a competitive level after the cartel ended or remained excessive. The benefits of ex-post evaluations are also evident for decisions under section 32f(3) and (4) GWB that do not depend on an infringement. Evaluations could examine, for example, whether the measures ordered actually alleviated structural competition problems and whether unintended effects occurred.

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[49] This should be distinguished from the Monopolies Commission's statutory assessment of competition law decision-making practice under section 44(1) GWB. As an external and independent assessment, this covers in particular the Federal Cartel Office's administrative practice and competition law case law. The ex-post evaluations considered here go further by using empirical data to examine actual developments in the markets concerned following a specific decision by the authority and comparing them with the assumptions and expectations underlying the decision when it was taken.

342 In the discussions held by the Monopolies Commission in preparing this special report, the great majority of participants favoured robust evaluation studies and regarded them as an important foundation for the further development of competition law.

#### 5.3.2.3 Evaluating enforcement practice using a broad evidence base

343 In addition to evaluating one or more decisions, enforcement practice itself can be subjected to systematic analysis. This can examine the factors shaping a competition authority's decision-making practice. In a sense, this corresponds to Argyris's (1977) 'double-loop learning' approach described in ↗Section 5.2.1.

344 In merger control, such evaluations can examine, for example, which characteristics increase the likelihood of a prohibition or the opening of an in-depth investigation (Affeldt u. a., 2021). This could enable consistency in enforcement practice between the Decision Divisions to be assessed. It could also be informative to examine whether comparable cases are treated similarly in different divisions. This might reveal differences in market definition, depth of examination or economic analysis. Institutional changes can also be examined in this way (Duso u. a., 2013). For example, analysis could explore how a reallocation of responsibilities, greater involvement of economic expertise or changes in staffing affect the depth of examination, the duration of proceedings and decision-making practice. These studies could extend beyond merger control. This type of evaluation requires a different data basis from the evaluation of the effects of individual decisions (see ↗Section 5.2.4).

#### 5.3.2.4 International practice in ex-post evaluation

345 Many competition authorities already use ex-post evaluations as part of institutional learning, particularly in merger control. A report by the ICN Merger Working Group shows that 17 of the 35 competition authorities responding had conducted or commissioned ex-post merger evaluations in the ten years preceding the survey. They include the European Commission and competition authorities from Brazil, Finland, Israel, Italy, Japan, Austria, Sweden, the United Kingdom and the United States. Evaluations by these authorities covered, in some cases, all mergers reviewed within a period; in others, particular sectors or categories of cases; and in others, individual mergers. Sector- or case-group analyses and individual evaluations are particularly common, because examining all mergers requires substantial data and resources (International Competition Network, 2022).

**346** Internationally, ex-post evaluations are conducted by competition authority staff, external experts from academia, research institutes or economic consultancies, or teams whose members come from different backgrounds.[50] Competition authority staff usually have more straightforward access to confidential case files and to unwritten background knowledge about the original decision. Insights gained by a team of authority staff remain within the authority and strengthen the expertise of the staff involved. Arguments against teams made up of authority staff include the risk of institutional bias, workload and a lack of specialist methodological knowledge. The risk of bias increases further if members of the evaluation team were involved in the decision being examined (OECD, 2016).

**347** External experts bring specialised methodological knowledge and a more independent perspective. Commissioning them, however, entails additional costs and complicates both the use of confidential information and the lasting integration of findings within the authority. Mixed teams, or teams of competition authority staff advised by external academics, can combine access to the authority's case knowledge and direct learning with external methodological expertise and independence (OECD, 2016).

**348** ↗**Table 5.8** shows that ex-post evaluations are so far embedded institutionally to differing degrees among the European competition authorities surveyed. While the authorities in Italy, Austria, Spain and the United Kingdom have already conducted ex-post evaluations, this has not yet been the case in Belgium, Portugal or Switzerland, or at the Federal Cartel Office. It is also striking that, except in Spain, authorities conducting ex-post evaluations involve external experts.

[50] Evaluations of competition law decisions sometimes arise solely from general academic interest. They provide new empirical insights into the effects of competition interventions. The ex-post evaluations of the German merger control proceedings Edeka/Plus (B2-333/07, 30 June 2008) and EG Group/OMV (B8-77/21, 10 February 2022) are among the few studies initiated purely by academics, independently of commissions from authorities or other commissioned research (Oschmann, 2025; Rickert u. a., 2021).

**Table 5.8: Ex-post evaluations by competition authorities internationally**

| Country/authority | Evaluation conducted | Involvement of external experts |
|---|---|---|
| Federal Cartel Office | no | - |
| Belgium | no | - |
| Directorate-General for Competition | yes | yes |
| Italy | yes | yes |
| Austria | yes | yes |
| Portugal | no | - |
| Switzerland | no | - |
| Spain | yes | no |
| United Kingdom | yes | yes |

Source: Survey of competition authorities.

#### 5.3.2.5 Options for institutional arrangements in Germany

**349** Regular, robust ex-post evaluations require the necessary legal, staffing and material resources. Irrespective of whether evaluations are conducted by the Federal Cartel Office, the Monopolies Commission or external academic or expert bodies, this concerns three points in particular. First, a sufficient legal basis is needed to permit access to the case data required for evaluation purposes. Access should be available to both public institutions and external researchers, subject to appropriate confidentiality and data protection safeguards, for example following the model of existing research data centres. Second, sufficient staff capacity with specific economic and empirical evaluation expertise must be available. Third, adequate funding is needed to purchase external market and company data, because robust ex-post evaluations frequently depend on data that cannot be obtained from the case files themselves. Without these three prerequisites, regular ex-post evaluation of competition authorities' decisions can be implemented only to a limited extent, irrespective of the institutional model chosen.

**350** A distinctive feature of Germany's institutional starting point, in international comparison, is that the Monopolies Commission already exists as a politically independent institution that assesses the Federal Cartel Office's practice under section 44(1), first sentence, GWB. This statutory task is substantively close to ex-post evaluation. Through quantitative evaluation studies, the Monopolies Commission could play an important role, for example by formulating evaluation questions, critically examining case selection and methodology, involving external expertise and incorporating findings into its reports.

**351** Through its operational casework, the Federal Cartel Office has an inevitable advantage in information and knowledge about enforcement practice. It is therefore particularly well placed to assess which decisions are suitable for ex-post evaluation, for example because novel theories of harm were examined in the original proceedings. The Economic Policy Unit or the Chief Economist could take a leading role within the authority. A particular argument for the latter is that the position sits at the interface between economic expertise, casework and the authority's leadership, making it well suited to feeding findings from ex-post evaluations back into the authority's ongoing decision-making practice. At the same time, the Chief Economist's substantive independence could help ensure that potentially critical cases are also selected for evaluation, that critical findings are taken up within the authority and that they are considered in future proceedings. In this way, the position could also strengthen the credibility and independence of the entire evaluation process.

**352** However, cases should not be selected solely by the authority whose decisions are being evaluated. The Monopolies Commission brings a politically independent institutional perspective, while academic institutions offer methodological expertise and experience of empirical evaluation. The Federal Cartel Office, the Monopolies Commission and academic experts should therefore regularly discuss potential evaluation projects jointly. These discussions should cover case selection, evaluation questions, data availability and feasibility in terms of methodology and resources.

**353** If staffing resources are available, the Federal Cartel Office could conduct evaluations on its own initiative. Such internal arrangements, however, require an independent counterweight. As shown in ↗**Section 5.2.1**, long-successful organisations in particular face the risk that established assumptions and interpretative patterns will be perpetuated if review and assessment take place entirely within the same organisation. Ex-post evaluations should therefore regularly be accompanied by external academic or specialist expertise. In addition, both the Federal Cartel Office and the Federal Ministry for Economic Affairs and Energy should be able to commission academic institutions, independent experts or economic consultancies to carry out entire evaluation projects.

**354** Ex-post evaluations should become a regular part of learning by competition authorities. Under current conditions, no single model is recommended for conducting them. Responsibility and design should be determined by the questions to be examined and the available capacity.

**355** A crucial condition for successful learning is that an ex-post evaluation can have an effect only if its findings are noticed, discussed and taken into account in future decisions within the authority. Findings should be discussed with the Decision Divisions in workshops and training sessions and documented in a knowledge management system accessible throughout the authority. Where evaluations reveal methodological or procedural weaknesses, the authority's guidelines must be adjusted accordingly.

**RECOMMENDATIONS**

- The selection and preparation of ex-post evaluations should be organised cooperatively. The Federal Cartel Office, the Monopolies Commission and academic experts should regularly discuss suitable cases, evaluation questions, data availability and methodology jointly.
- Ex-post evaluations should be conducted considerably more frequently in future, with flexible arrangements for their implementation. Depending on the questions and capacity, the Federal Cartel Office, the Monopolies Commission, external experts or mixed teams should be able to conduct evaluations. Adequate staffing and material resources are required for this.
- Institutional arrangements should ensure that evaluation findings feed back into the Federal Cartel Office's practice. The Federal Cartel Office should designate a central point of responsibility for this and disseminate findings within the authority.

### 5.3.3 Modernising proceedings

**356** Competition proceedings require an appropriate balance between the interests of the authority and those of companies. An effective competition authority capable of robust enforcement is a central prerequisite for functioning competition protection. The Federal Cartel Office conducts numerous merger control, abuse and cartel proceedings that may result in far-reaching remedies and high fines. Its investigative and decision-making powers must be exercised effectively and efficiently, and proceedings must remain manageable.

**357** Even the best decision, viewed in isolation, is of no use if it comes too late because competition has suffered further, potentially irreversible, harm in the meantime. The duration of proceedings has become a real problem for meaningful enforcement and effective regulation, not only in competition law. This applies first at Union level, where the Intel case is symptomatic of excessively lengthy abuse proceedings. The case dates back to a complaint by an Intel competitor in 2000. The European Commission did not adopt a decision imposing a fine on Intel until 2009, and the case remains pending before the Union courts and is still not final, 26 and 17 years later respectively (see most recently General Court, T-1129/23, 10 December 2025, Intel Corporation; a further appeal has been lodged with the Court of Justice, C-143/26 P). Abuse proceedings against major digital companies also frequently take too long. The EU legislature responded by introducing the DMA.

**358** Competition law enforcement in Germany likewise suffers from lengthy proceedings. The Federal Cartel Office's 50+1 proceedings concerning the DFL provide an example of a case that made little progress for many years. The case originated in 2018 and was concluded only recently: the Office discontinued the proceedings by means of a Letter of the Chairman, without issuing a formal order (BKartA, B6-37/18, 12 August 2026). The press wholesale distribution proceedings were also concluded after almost two years solely by a Letter of the Chairman (BKartA, V-54/22, 10 February 2026). The Federal Cartel Office tolerated the conduct without, despite the relatively long proceedings, having completed a definitive competition law assessment (see Düsseldorf Higher Regional Court, VI-Kart 5/26 (V), 30 July 2026; Kühling, 2026).

**359** The length of proceedings cannot be attributed solely to the Federal Cartel Office. The volume of proceedings is impressive, the facts are complex, and some companies defend themselves with exceptionally extensive resources. Moreover, not only proceedings before the authority but often also subsequent court proceedings take considerable time. For example, the proceedings to establish Amazon's paramount significance for competition across markets were considerably shorter at the Federal Cartel Office than the subsequent appeal proceedings, even though the legislature limited judicial jurisdiction here to the Federal Court of Justice under section 73(5) GWB (BGH, KVB 56/22, 23 April 2024; BKartA, B2-55/21, 5 July 2022).

**360** German competition law guarantees a high level of procedural rights for companies affected by competition authorities' measures. These include the rights to be heard and to access the file (in administrative competition proceedings: section 56 GWB; in administrative offence proceedings: section 46(1) of the Act on Regulatory Offences, OWiG, in conjunction with sections 147, 406e and 475 of the Code of Criminal Procedure, StPO, and sections 49 and 55 OWiG). In future, the Procedural Officer

could help ensure that the Decision Divisions grant procedural rights more consistently (see the earlier discussion in **↗Section 5.2.5**).

**361** In many cases, third parties initiate competition authorities' investigations by providing information about suspected infringements, or make a substantial contribution to the progress of proceedings, sometimes as interveners. Their contribution should also be reflected in the design of their procedural status; their rights should therefore be strengthened rather than weakened.

**362** Alongside companies' ability to exercise their procedural rights effectively, there is an interest in efficient case management. Granting procedural rights can require considerable effort from the Decision Divisions. Staff spend a great deal of time on organisational tasks, time that could otherwise be used for the competition assessment of the facts or work on other cases. Such tasks include reviewing other companies' trade and business secrets for the purposes of access to the file (see section 56(4), first sentence, GWB). It is particularly problematic when companies abuse their otherwise legitimate procedural rights in individual cases by deliberately deploying strategies to overload the authority. This includes ‘spamming the regulator’, meaning the provision of barely manageable volumes of data (see Monopolkommission, 2025c, p. 3).

**363** The instruments discussed below – digitalisation, procedural structure and models of access to the file – are pragmatic. They address individual features of proceedings and are comparatively easy to implement. The Monopolies Commission considers them useful and effective because they would increase the authority's effectiveness. It nevertheless recognises that these measures may fail to address a deeper cause unless that cause is also identified.

**364** Administrative proceedings in Germany are designed to a large extent to guard against error. Facts are investigated comprehensively, decisions are coordinated repeatedly, and formulations are checked to ensure they can withstand judicial review in every respect. There are good reasons for this care: it protects those affected, ensures equal treatment and is the counterpart of a state governed by the rule of law that keeps all state action open to review. It nevertheless has a price that was underestimated for a long time. Where completeness takes precedence over speed, time is not treated as a quality dimension in its own right, although a competition law decision that comes too late misses its purpose just as much as a substantively flawed one. This is reinforced by structural features that cannot be changed at short notice: career and civil service law, coordination procedures between units and levels, and incentives under which a visible mistake weighs more heavily than an opportunity silently forgone (see the earlier discussion in **↗Section 4.3.2.2**). This finding is shared outside

competition law: the Initiative für einen handlungsfähigen Staat identifies a pronounced tendency among federal authorities to guard against error, 'silo and departmental thinking', high expectations of perfection and insufficient willingness to take responsibility (Jäkel u. a., 2025, p. 51).

#### 5.3.3.1 Greater digitalisation of case management

**365** Some of these difficulties can be addressed through greater digitalisation of case management. The bill for the 12th amendment to the GWB proposes adjustments to advance the digitalisation of competition authorities' proceedings. In particular, a dedicated internet platform is to be available for merger notifications and post-completion notifications from 2028 (section 39(1) in conjunction with section 187(15) of the draft GWB).[51] The rules on electronic service are also being modernised (sections 59(5), 61(1), second and third sentences, 82c and 86a(2) of the draft GWB). Digitalisation is an important pillar of the bill's overall objective of making competition authorities' proceedings faster and more efficient (Bundesregierung, 2026b, pp. 1, 2, 20).

**366** These proposed adjustments are expressly welcomed (Monopolkommission, 2026, paragraphs 420 ff., on the ministerial draft). Nevertheless, they are confined to individual procedural steps and remain far removed from end-to-end digital case management. Introducing a modern electronic case portal accessible to companies as well as the Federal Cartel Office in all competition proceedings would be particularly useful. An internet platform for submitting merger notifications and post-completion notifications, as envisaged in the bill, is a first step in this direction. A case portal would facilitate file management and communication and increase transparency for the parties. Documents could, for example, be exchanged and access to the file granted quickly and securely.-

**367** Formal electronic communication with the Federal Cartel Office currently takes place through emails bearing a qualified electronic signature or the special electronic mailbox for public authorities (Bundeskartellamt, 2026a; see also section 39(1), second sentence, no. 2 GWB for merger notifications). The Federal Cartel Office makes larger files available for companies to download from servers operated by the Federal Information Technology Centre (ITZ Bund, the Federal Government's central IT service provider). Requests for information from the Office can also be answered through an

[51] The online platform is already mentioned in section 39(1), second sentence, point 3, GWB. Its use is not yet compulsory, however. Indeed, it is currently unavailable for merger notifications to the Federal Cartel Office. This also applies to the possibility of legally valid notification by email (section 39(1), second sentence, point 1, GWB, former version), which was removed by an amendment under the Act to Reduce Bureaucracy in the Remit of the Federal Ministry of the Interior of 3 July 2026; see Bundeskartellamt (2026a).

internet platform, as provided for in section 59(1), seventh sentence, second half-sentence, GWB. A corresponding platform is available in EU competition proceedings for responding to the European Commission's requests for information (electronic Request for Information, eRFI; see Europäische Kommission, 2026b). The eRFI platform is tailored specifically to the needs of a competition authority and offers additional functions. Overall, the Federal Cartel Office's existing communication and document exchange solutions match neither the functionality nor the user-friendliness of a modern internet platform.

**368** The case portal must be technically reliable and legally secure.[52] Developing or using common basic components of the federal administration, supplemented by specific specialist functions, or adopting a solution already used abroad appears more appropriate than introducing a stand-alone product for the Federal Cartel Office. The Federal Government's digitalisation strategy relies on common basic services, open standards and interoperable interfaces (the 'Deutschland-Stack'; see Wildberger, 2025). Such a modular approach could exploit synergies while meeting the particular requirements of competition authorities' proceedings. The case portal should therefore be understood as the long-term model for end-to-end digital case management by competition authorities, rather than merely a possible supplement to individual digital procedural steps.

**369** File management is already electronic in parts of the Federal Cartel Office, for example for the Competition Register. Electronic case files differ from the case portal mentioned above in that they form the authority's internal basis for fully digital file management without giving parties direct access to the file. Electronic file management is now available throughout the judiciary, albeit with the usual difficulties of transition and adaptation. Its basis was the Act of 5 July 2017 introducing electronic files in the judiciary and further promoting electronic legal communication. This Act supplemented the various procedural codes – the StPO, Code of Administrative Court Procedure and Code of Civil Procedure, among others – with provisions on electronic file management, and required the Federation and the Länder to introduce electronic court files by 1 January 2026 at the latest. The Federal Cartel Office is also using a solution modelled on the judiciary for its electronic case files. Such files are to be introduced shortly in competition law enforcement proceedings too. This is expected to facilitate file management and improve the reliability and traceability of procedural

[52] The Federal Court of Audit previously found that the Federal Cartel Office had failed to remedy known IT security deficiencies over a period of ten years (Bundesrechnungshof, 2021).

documentation (for deficiencies in file management in casework, see the earlier discussion in ↗paragraph 298).[53]

**370** The Federal Cartel Office is also advancing the use of AI applications. Competition proceedings regularly involve very large volumes of documents, whose analysis absorbs a substantial share of the authority's capacity. AI applications can, for example, accelerate searches through extensive files, the identification of relevant documents and the processing and presentation of information, without replacing economic and legal assessment. They also offer the possibility of automatically identifying and redacting trade and business secrets, for example in preparation for access to the file or the publication of decisions. Such systems are already being used or tested by other competition authorities, including the CMA (see Nichols, 2020; see also Cunha Rodrigues, 2026), and can significantly increase procedural efficiency. These uses also demonstrate the great importance of data security and confidentiality. The ITZ Bund, which has an important role in implementing the digitalisation strategy (Bundesministerium für Digitales und Staatsmodernisierung, 2025), has therefore developed its own AI platform for the federal administration, KIPITZ (Informationstechnikzentrum Bund, 2026). This software is now available to the Federal Cartel Office and is to be deployed there shortly. Responsibility for AI applications should lie with the head of Monitoring, Innovation and Technology (↗Section 5.3.1.3).

## RECOMMENDATIONS

- In the Monopolies Commission's view, the planned introduction of an electronic case file and the use of specific AI applications are important steps towards further digitalisation of the Federal Cartel Office's case management.
- AI applications should be used systematically in casework, for example to analyse large volumes of documents and redact trade and business secrets. Responsibility for this should lie with the head of Monitoring, Innovation and Technology.
- A scalable electronic portal for competition proceedings should be introduced in stages. Matters to be examined in advance include, in particular, its technical design, the use of shared basic components of the federal administration, a suitable phased implementation plan and the resources required.

[53] The legislature already anticipated the introduction of electronic files years ago. Section 56(3), second sentence, GWB thus provides for access to the file to be granted through printouts of the relevant parts; see also Bundesregierung (2020, p. 111).

#### 5.3.3.2 Giving proceedings a clearer structure through milestones and deadlines

**371** There are various complementary approaches to speeding up competition authorities' proceedings and making them more efficient. In many straightforward cases, particularly merger control cases, the limited degree of formality in the Federal Cartel Office's proceedings is indeed an advantage. In complex cartel and abuse cases, however, proceedings could be given a clearer structure. In a policy brief on EU competition law, the Monopolies Commission has already considered adjustments to the European Commission's cartel and abuse proceedings. It proposed introducing procedural deadlines with milestones and directing Commission proceedings at an early stage towards a small number of clearly structured rounds of written submissions and oral hearings. This would ensure that proceedings are structured from the outset, the issues are narrowed down in stages, priorities are set, transparency for the companies concerned is increased and proceedings as a whole are accelerated (Monopolkommission, 2025c, pp. 2 f.).

**372** Unlike merger control, cartel and abuse proceedings are not currently subject to general statutory deadlines for completion. This sometimes results in lengthy, opaque proceedings and can create considerable legal uncertainty for the companies concerned and for third parties. Delays and lengthy proceedings are not confined to complex abuse cases. Other cases, too, are sometimes allowed to drag on for years (on the 50+1 proceedings, see already ↗**paragraph 358**). A clearer structure for proceedings and active case management could provide a remedy. This is also relevant because, when applying Articles 101 and 102 TFEU, national competition authorities are required under Article 3(3), first sentence, of the ECN+ Directive to conduct their proceedings within a reasonable timeframe.

**373** An important means of speeding up and streamlining cartel and abuse proceedings before the authority is to give them a clearer structure, particularly at the early stage. This concerns the period following the opening of proceedings, which generally ends when the Federal Cartel Office communicates its preliminary legal assessment to the companies (in what is known as an ‘Abmahnschreiben’, or statement of objections; see Quellmalz, 2025c, para. 2) and gives them an opportunity to comment under section 56(1) GWB. Particularly at the start of proceedings, investigations are often characterised by the parallel examination of different factual and legal aspects. This is understandable given that the facts may not yet be sufficiently established at an early stage and that competition cases are complex. There is, however, a risk that investigations gradually extend to ever more individual issues that play no major part in the overall picture and are sometimes dropped again. The proceedings thereby lose their focus, progress is delayed, and the companies concerned remain unclear for a

prolonged period about which specific allegation is ultimately the subject of the proceedings and how the proceedings are progressing.

**374** Against this background, the Federal Cartel Office should define the scope of the proceedings as early as possible. This does not, of course, require a final legal assessment. Rather, it means determining promptly after proceedings begin which form or forms of conduct they will focus on. The crucial point is that the authority deliberately limits the scope of the investigation and consistently aligns its further inquiries with that scope. The Federal Cartel Office should identify only those sets of facts that capture the essence of the potential competition infringement and are decisive for effective enforcement. Greater prioritisation of the essential aspects would lead to more efficient use of the authority's resources and greater transparency.

**375** The proposed structure inevitably means that some allegations of lesser importance, or allegations that become known only later, will no longer be addressed in the ongoing proceedings. This would, however, have to be accepted in the interests of more efficient enforcement. Otherwise, there is a risk that every new detail expands the scope of the proceedings and thereby delays their conclusion as a whole. Naturally, the Federal Cartel Office must retain the ability to respond to serious infringements or material facts that become known only later.

**376** Defining the scope of the investigation at an early stage also serves legal certainty for the companies concerned. The Federal Cartel Office should communicate to companies at an early stage which conduct is the subject of the proceedings and which factual and legal issues the further investigation will focus on. This can take the form of an ‘early’ public oral hearing, as is already provided for in proceedings under section 32f(3) and (4) GWB (section 56(7), third and fifth sentences, GWB). In any event, the bill for a 12th amendment to the GWB appears to envisage enhancing the role of oral hearings by making them ‘less bureaucratic, more flexible and more participatory’ (Bundesregierung, 2026b, p. 51). Care would, however, need to be taken to ensure that defining the scope of the investigation early does not create room for ‘deals’ over the allegations in factual and legal terms. Deciding the subject matter of the proceedings remains the sole responsibility of the Federal Cartel Office and must be guided by the priorities of effective enforcement.

**377** Defining the scope of the investigation at an early stage could be accompanied by the introduction of a statutory deadline for the phase between opening proceedings and communicating the preliminary legal assessment. If practical experience with such a deadline were positive, a deadline could also be introduced for the remaining proceedings up to adoption of the final decision. A deadline appears less important at

that stage, however, since this phase is often shorter and depends more heavily on how the companies respond to the Federal Cartel Office's allegations.

**378** Deadlines in competition enforcement are no longer unusual even beyond merger control. With the DMA, the EU legislature has created a means of accelerating the protection of competition in the digital sphere. Alongside a simplified determination of the entities subject to the rules and clearly specified obligations as to conduct, procedural deadlines under the DMA contribute to this. The DMA lays down specific deadlines for various procedural steps, for example for designating a gatekeeper (Article 3(4) DMA: 45 working days), specifying measures to ensure compliance with obligations (Article 8(2), second subparagraph, and (5) DMA: in principle, six months, or three months for the preliminary assessment), and adopting a non-compliance decision (Article 29(2) DMA: twelve months).

**379** The GWB also contains individual deadline provisions. Under section 32e(3) GWB, the Federal Cartel Office is to complete a sector inquiry within 18 months of its launch. Measures following a sector inquiry that do not depend on an infringement are likewise to be adopted within 18 months, section 32f(7) GWB. The Federal Cartel Office is to decide within six months on an application for a decision that there are no grounds for action (section 32c(4) GWB).

**380** All the deadlines mentioned above are designed as target deadlines to guide proceedings, rather than as deadlines whose expiry precludes further action. The European Commission or the Federal Cartel Office therefore remains empowered to adopt the relevant decision after the deadline has expired. The Court of Justice takes a critical view of rigid procedural deadlines that rule out consideration of the specific circumstances of the individual case.[54] Rigid deadlines create a risk that proceedings have to be concluded prematurely or the authority's resources reallocated at the expense of other cases. This applies particularly in view of competition for resources with merger control proceedings subject to deadlines. In addition, the companies concerned could obstruct proceedings by failing to cooperate to such an extent that the Federal Cartel Office would be unable to take any decision at all because the deadline had been exceeded.[55] Unlike a deadline whose expiry precludes further action, a target deadline may be exceeded. However, exceeding it is permissible only

[54] CJEU, C-511/23, 30 January 2025, Caronte & Tourist – on the incompatibility with EU law of a national provision requiring the competition authority to initiate an investigation within 90 days of becoming aware of the conduct, failing which proceedings are barred. See also CJEU, C-491/24, 18 December 2025, Apple und Amazon.

[55] For the national competition authorities' generally rather sceptical feedback on the idea of introducing deadlines in EU competition proceedings, see Europäische Kommission (2024b, p. 134).

exceptionally and must be well justified. The Court of Justice considers deadlines designed in this way to be permissible in principle, although not required by EU law.[56] It emphasises that reasonable procedural deadlines are set in the interests of both the undertakings concerned and the national competition authorities (EuGH, C-511/23, 30.1.2025, Caronte & Tourist).

**381** There are currently proposals in Switzerland to introduce a target deadline for the investigation phase only. In May 2026, the Swiss Government, the Federal Council, adopted a bill to reform the competition authorities (Schweizerischer Bundesrat, 2026). Among other things, the bill provides that the Secretariat of the Swiss Competition Commission (WEKO) must inform the companies concerned of the preliminary findings no later than twelve months after opening an investigation, Article 28a(1) of the draft Cartel Act. Under Article 28a(1) of the draft Cartel Act, the deadline may be extended by no more than one year for a particularly complex or extensive investigation and, under Article 28a(1) of the draft Cartel Act, it starts running afresh if the investigation is extended to additional subject matters. The deadline provisions are intended primarily to strengthen parties' rights (Schweizerischer Bundesrat, 2026).

**382** In the United Kingdom, there are no statutory deadlines for proceedings under the Competition Act 1998, which concerns restrictive agreements and abuses of market power. Nevertheless, the CMA's conduct of proceedings is highly structured and geared towards transparency and efficiency. The CMA's approach is set out in general guidance applying across proceedings, supplemented by specific guidance for proceedings under the Competition Act 1998 (Competition and Markets Authority, 2024; Competition and Markets Authority, 2026c). Under this approach, the parties concerned are given a case-specific timetable, among other things, in a 'notice of investigation' (Competition and Markets Authority, 2024, para. 3.7; Competition and Markets Authority, 2026c, para. 5.2). Progress is reviewed regularly as proceedings continue, and the timetable is updated as necessary (Competition and Markets Authority, 2024, para. 3.10; Competition and Markets Authority, 2026c, para. 5.6). In proceedings under the Competition Act 1998, the timetable initially structures, in particular, the investigation phase up to the decision on whether to issue a statement of objections, and is then supplemented with the subsequent procedural steps (Competition and Markets Authority, 2026c, para. 5.6 with fn. 24). The timetable is not one of the elements of a 'notice of investigation' expressly provided for in section 25A Competition Act 1998.

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[56] CJEU, C-588/24, 15 January 2026, Imballaggi Piemontesi – on the compatibility with EU law of a national provision allowing the competition authority to extend the originally set deadline for completing investigations on objective grounds, provided that reasons are given for the extension, it is subject to judicial review and the overall duration of the proceedings remains reasonable.

**383** Italian law provides in Article 14(1), first sentence, of Law No 287/90 that the AGCM must conduct cartel and abuse proceedings within a reasonable time ('in tempi ragionevoli'). In its decision to open proceedings, the AGCM informs the parties, among other things, of a deadline for their conclusion (Article 14(1), first sentence, of Law No 287/90 in conjunction with Article 6(3) of Presidential Decree No 217/98). As proceedings progress, the AGCM may set additional deadlines for individual milestones, such as the statement of objections. The statement of objections itself, in turn, specifies a deadline for completing the investigation, Article 14(2), first sentence, of Presidential Decree No 217/98. The deadlines may be extended.[57]

**384** In the Monopolies Commission's view, how the proposed adjustments to the structure of Federal Cartel Office proceedings are implemented – through statutory requirements or enabling provisions, or on the authority's own initiative – is in principle of secondary importance. The CMA's approach is based essentially on the authority's self-discipline. Italian law requires the AGCM to communicate a procedural deadline, but leaves the authority to determine its duration. For the Federal Cartel Office, statutory requirements, including deadlines, appear preferable. They would make the requirements for the structure and duration of proceedings identified above binding. This would ensure greater legal certainty and prevent the acceleration of proceedings from depending solely on administrative practice. It would also be important because the independent Decision Divisions are responsible for conducting proceedings at the Federal Cartel Office, so a uniform procedural practice cannot readily be ensured through internal requirements. Moreover, as explained, individual deadline provisions are already familiar to German competition law.

**385** A further means of speeding up administrative competition proceedings and increasing their efficiency could be to limit the length of written submissions in court proceedings.[58] Competition law disputes generally involve complex issues, whose treatment requires some space in both factual and legal terms. However, limiting the length of submissions would compel the parties to focus their arguments on the factual and legal issues material to the decision. This would also create incentives to structure submissions more clearly and avoid repetition. Concentrating on the essentials is one of the Monopolies Commission's proposals for accelerating competition proceedings mentioned in ↗**paragraph 371** (see also Niemeyer, 2025).

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[57] See already footnote 56.

[58] In judicial proceedings concerning administrative competition offences, the problem of excessively long written submissions is likely to arise to a lesser extent than in judicial administrative competition proceedings, if only because of the principles of oral proceedings and immediacy applicable there (section 71(1) OWiG in conjunction with sections 226 ff., 250 and 261 StPO). Since fact-finding in fine proceedings centres on the main hearing, written submissions play a less central role overall.

**386** Limits on the length of written submissions are not confined to the Rules of Procedure of the General Court of the European Union (Article 201(2), second sentence, and Article 206(2), second sentence; see also the Practice Rules for the Implementation of the Rules of Procedure of the General Court, paras. 156 et seq.). Other jurisdictions also impose requirements on written submissions, in various forms (see Kahl, 2026). The German Judges Association has likewise advocated the possibility of limiting the length of written submissions in civil proceedings (Deutscher Richterbund, 2022, pp. 26 f.). Although the German Jurists Forum rejected a corresponding recommendation for civil proceedings (Deutscher Juristentag, 2024, p. 10), it adopted one for proceedings concerning business law (Deutscher Juristentag, 2022, p. 23).

**387** Introducing a limit on the length of written submissions in judicial proceedings concerning administrative competition cases therefore appears a natural step. However, as court proceedings fall outside the scope of this report, the Monopolies Commission refrains from making a corresponding recommendation. An argument against limiting written submissions in proceedings before the authority is that these serve to establish the facts and assess them legally for the first time. Both the Federal Cartel Office and the companies must be able to set out their positions comprehensively at this stage. Arguments in court proceedings, by contrast, can generally build on the proceedings before the authority, making repetition easier to avoid and length requirements easier to justify.

**RECOMMENDATIONS**

- Proceedings before the competition authority should be given a clearer structure. As a first step, the scope of the investigation should be defined at an early stage.
- The course of proceedings should also be guided by active, forward-looking case management and milestones with deadlines. In particular, a target deadline could be considered for the investigation phase, that is, up to the issue of a preliminary competition assessment.

#### 5.3.3.3 Introducing lawyers-only access to the file in administrative competition proceedings

**388** Specifically in relation to access to the file, consideration could be given to introducing lawyers-only access to the file in administrative proceedings, both for parties to the proceedings (including intervening parties, section 54(2) GWB) and for third parties. This would have the advantage of removing the need to redact other companies' trade and business secrets for the purposes of access to the file. The need for such a

provision could arise in particular from the current absence of suitable digital solutions that would enable the Federal Cartel Office to produce, reliably and promptly, versions of files with trade and business secrets removed at a manageable level of effort. Introducing lawyers-only access to the file could increase the efficiency of administrative competition proceedings and thereby ultimately improve the authority's effectiveness (on this criterion, see ↗**Section 2.3**).

**389** In competition proceedings concerning administrative offences, access to the file is generally already exercised by defence counsel (section 46(1) OWiG in conjunction with section 147(1) StPO), rather than by the person concerned or secondary party concerned themselves (section 49 OWiG) (Klusmann, 2026, paras. 66, 74). Defence counsel may provide their client with information from the files but must then ensure that trade and business secrets are protected (see BGH, KRB 59/07, 04.10.2007, Akteneinsichtsgesuch; Krauß/Cannevel, 2024, para. 82). Moreover, third parties' right of access to the file is more limited overall than that of the person concerned or secondary party concerned, or their defence counsel. Under section 89c(5) GWB, for example, injured parties intending to use access to the file to pursue damages claims may at most inspect individual parts of the file. Overall, the competition authority therefore needs to redact trade and business secrets for the purposes of access to the file to a lesser extent in administrative offence proceedings than in administrative proceedings.

**390** However, granting lawyers full access to the file in administrative competition proceedings can create undesirable incentives. In administrative proceedings, the Federal Cartel Office is particularly dependent on cooperation from intervening parties and third parties, especially in responding to requests for information under section 59 GWB. For this purpose, the Office may use informal information requests, to which responses are voluntary, and formal information orders (Wirtz, 2024, paras. 3 f.). This often brings numerous trade and business secrets into the case file. Whereas investigations in administrative offence proceedings generally focus on proving a restrictive agreement, administrative proceedings focus more on assessing the (potential) effects of the conduct in question on competition. Information on market conditions, such as market shares, competitive relationships and business strategies, including information provided by third parties, is particularly important for this purpose. Compared with administrative offence proceedings, the case file in administrative proceedings therefore typically contains a larger volume of confidential information from other companies. It is plausible that companies' willingness to respond to information requests could be impaired if they had to fear that their sensitive data would become accessible to other market participants, particularly competitors, through access to the file. Such a deterrent effect could impair the effectiveness of the authority's fact-finding in administrative proceedings.

**391** However, an argument in favour of introducing lawyers-only access to the file in administrative competition proceedings is that companies are required under section 59(1), first and second sentences, (2), and (5), first sentence, GWB to comply with the Federal Cartel Office's formal information orders. Breach of this obligation is punishable by a fine under section 81(2), point 6, GWB. Cooperation by intervening parties and third parties is thus legally enforceable and does not depend solely on their willingness to cooperate voluntarily. Lawyers could also be expressly prohibited from passing on to their clients file contents containing other companies' confidential information. Comparable conflicts of interest already arise in competition proceedings concerning administrative offences without, as far as can be seen, giving rise to fundamental practical problems (see already **↗paragraph 388**). In any event, it is questionable to what extent lawyers have an incentive to pass on information to their clients that might benefit the company in its operational business but would scarcely improve its procedural position vis-à-vis the Federal Cartel Office. Against this background, the risk of uncontrolled disclosure of trade and business secrets appears, at any rate, considerably limited. It must also be borne in mind that trade and business secrets do not enjoy absolute protection in administrative competition proceedings. Section 30 VwVfG refers in this regard to a right not to have secrets disclosed 'without authorisation', while section 56(4), first sentence, GWB requires that refusal of access to the file be necessary for an important reason. Accordingly, the competition authority may disclose trade and business secrets where this is proportionate, that is, where the interest in confidentiality must give way in the individual case to other important interests, such as advancing the investigation (BGH, KVB 69/23, 20.2.2024, Google - Offenlegung; see also BGH, KVB 56/22, 23.4.2024, Amazon - Überragende marktübergreifende Bedeutung für den Wettbewerb; KVB 61/23, 26.5.2025, Apple - Anhörungsrüge; see already **↗paragraph 271**; on the concept of trade and business secrets, see BVerwG, 10 C 2.24, 30.4.2025, Auswertungsvermerke).

**392** Arrangements using 'confidentiality rings', as provided for in EU competition proceedings, are also conceivable. Unlike German law, EU competition law does not draw a fundamental distinction between administrative proceedings and administrative offence proceedings. Nor does EU competition law provide for lawyers-only access to the file. The European Commission does, however, make two instruments available to minimise the effort involved in redacting trade and business secrets or to ensure access to confidential information (Europäische Kommission, 2011b, paras. 95 et seq.).[59] First, there is a procedure in which the companies involved – the company seeking access to the file and the company asserting the protection of its trade and business secrets – agree, under the supervision of the Directorate-General

[59] On digital solutions, see already section 5.3.3.1.↗

for Competition, on access by a specified group of persons. In addition to external advisers, this may in principle include individuals belonging to the company entitled to the information, provided they are as far removed as possible from operational business. Second, inspection in a dedicated data room is possible. This procedure is available primarily for inspecting quantitative data for econometric analyses. Inspection may be carried out only by external advisers, that is, legal and economic advisers, under the supervision of a Commission official.

**393** Compared with such arrangements for individual cases, however, introducing lawyers-only access to the file appears preferable where the primary aim is to reduce the authority's workload in handling trade and business secrets. Even with confidentiality rings, the information requiring protection must first be identified and delimited before the persons entitled to access particular items and the arrangements for inspection can be determined. Lawyers-only access to the file would make it possible to dispense with precisely those steps by transmitting the complete, unredacted file to the lawyers representing parties to the proceedings or third parties.

## RECOMMENDATIONS

- The option of lawyers-only access to the file should be introduced in administrative competition proceedings.

# 6

# The Federal Cartel Office in Europe and worldwide

# 6 The Federal Cartel Office in Europe and worldwide

**394** The Federal Cartel Office has been embedded in the European and international context since its establishment in 1958. At the same time, as markets have globalised, competition law has become a field of law spanning national borders. Many cases concern several jurisdictions. Well-functioning mechanisms have been established for this within the EU, particularly the European Competition Network (ECN). Internationally, a relationship of trust and solidarity among competition authorities is growing, above all through cooperation within the International Competition Network (ICN), the OECD and the G7.

## 6.1 The territorial limits of state powers versus economic globalisation

**395** An international competition law regime has not become established. It was once well within reach, for example at the famous Bretton Woods conference, with the Havana Charter (1947), or during negotiations on the so-called Singapore Issues in the World Trade Organization (1996). Academics proposed the Draft International Antitrust Code (1993). All these plans failed and now seem utopian.

**396** The Federal Cartel Office plays an outstanding role both within the EU and internationally. President Andreas Mundt chaired and made a decisive contribution to developing the ICN from 2013 to 2025; the International Conference on Competition in Berlin, organised by the Office, is a hallmark event and an extremely important forum; and within the EU, the Federal Cartel Office is regarded as a leading national authority.

**397** There is a discrepancy between the territorial limits on the authority's sovereign powers – the Federal Cartel Office has jurisdiction only within the scope of the GWB (section 185(2) GWB) – and companies' cross-border activities. The Monopolies Commission considers that the Federal Cartel Office's European networks and international orientation must be maintained and, wherever possible, expanded. This requires retaining the relevant organisational units that build networks at European level and maintain international contacts. A budget for organising and attending conferences must also be available.

**398** The diversity of competition authorities worldwide offers an opportunity that would not arise under a binding international competition law regime, that is, with the

establishment of a ‘world competition authority’.[60] Competition between the world's competition regimes produces ever more new solutions and mutual learning. Particularly among competition authorities within the EU, there sometimes appears to be healthy mutual encouragement to perform well. The impetus provided by developments in other countries is also visible in this report of the Monopolies Commission. This is a strength of the pluralistic, multilevel enforcement system.

## 6.2 The Federal Cartel Office in the EU

**399** Within the EU, the interaction between the national authority and European competition enforcement has undergone considerable changes that have substantially reduced national decision-making powers. Since 1990, the European Commission has had its own merger control regime, with the result that the largest acquisitions are examined in Brussels. The Competition Enforcement Regulation regulated the relationship between European and national law, clarified the primacy of European law and empowered national authorities to enforce it, while at the same time also requiring them to accept a degree of subordination to the European Commission. German competition law was comprehensively aligned with European competition law in 2005. Cooperation in Europe became so strong, particularly through the Treaty of Lisbon (2009), that economic and competition policy are now more the domain of EU than of national institutions. The Directorate-General for Competition holds at least the position of a ‘primus inter pares’. It is impossible to avoid the conclusion that today's most significant cases tend to be handled in Brussels rather than Bonn.

**400** Within the European Union, interaction with the other authorities, particularly the Directorate-General for Competition, should also guide case selection. This does not always proceed without friction at present, for example where national authorities conduct proceedings against digital gatekeepers that might more sensibly be handled by the European Commission (see AGCM, A528, 30.11.2021, FBA Amazon; EU-Kommission, AT.40462/AT.40703, 20.12.2022, Amazon Marketplace/Amazon Buy Box).

**401** Against this background, three principles can guide interaction in Europe. First, the Federal Cartel Office should always be ready to act as an effective backstop if enforcement in Brussels falters. Because the European Commission takes decisions as a political authority, changing priorities or politically motivated interventions can lead to a decline in the quality and quantity of European enforcement. This risk arose recently in connection with the enforcement of measures against US corporations (EU-Kommission, AT.40670, 5.9.2025 – Google - Adtech and Data-related practices; see

[60] For the academic discussion of different models of international governance, see, for example, Bätge (2009), Baetge (2009), Budzinski (2008), Klauß (2008), Podszun (2003), Reimers (2007), Uhsler (2026).

Monopolkommission, 2025b). Second, as long as enforcement in Brussels functions, the Federal Cartel Office can concentrate on more experimental, bolder proceedings. This can allow new aspects of competition protection to be tested. The Office then takes on a pioneering role, as it has already done, for example, in implementing section 19a GWB. Third, the Office should deliberately address matters that the European Commission does not consider from a competition perspective but that nevertheless have substantial effects on the economy. This applies, for example, where the European Commission lacks jurisdiction.[61] In its practice in recent years, the Federal Cartel Office has already performed all three roles.

## 6.3 The Federal Cartel Office internationally

**402** The Federal Cartel Office already plays a key international role, for example as a 'thought leader' in debate, through training programmes with jurisdictions where competition law is relatively new, and through its work in the ICN and other forums. Cooperation agreements exist with the United States, dating from 1976, and Switzerland, dating from 2023. In sections 50a to 50e GWB, the legislature has created a basis for cooperation within the European network.

**403** International links are important, particularly with authorities that have only recently begun operating or that work under difficult conditions. International exchange is not a one-way process: it repeatedly provides input that strengthens the Federal Cartel Office's openness and capacity to adapt. The introduction of procurement screening, which already works in other countries, offers an example of this.

**404** International cooperation could possibly be expanded further. The aim could be an international division of labour along the lines envisaged, but not yet fully realised, in the European Competition Network. It cannot be efficient for a major international merger to have to be examined in parallel by a large number of competition authorities around the world. Similarly, while Italy, France, Germany and the United Kingdom addressing powerful digital gatekeepers alongside the European Commission adds some value, it also stretches those authorities to their limits. For smaller authorities, opening proceedings against a company such as Alphabet is simply inconceivable. Moreover, the competition issues raised by a company such as Microsoft may differ only marginally between Germany, South Korea, Colombia and Türkiye. In such situations, consideration should be given to designating a lead agency to conduct the case

[61] Mergers below the thresholds or without a change of control within the meaning of European law, situations of dependence without dominance, and restrictions of competition without a cross-border dimension, for example in regional markets.

also on behalf of the other countries, or to assembling international case teams that investigate and decide cooperatively (for further discussion: Podszun, 2016).

**405** For example, Italy, France and Germany could agree on which authority investigates which gatekeeper and thereby pool their resources. In a joint working group, representatives of authorities from the EU, the Philippines, Canada and South Africa could jointly design and conduct abuse proceedings in the field of AI. They would support each other's investigations, and the results could be recognised mutually. In merger cases, a lead authority could announce its willingness to take the lead, with other jurisdictions able to join. The Federal Cartel Office could act free of charge for developing countries, while compensation might be provided for work on behalf of authorities from other states. The idea behind such proposals is to reduce international transaction costs for companies and authorities and, through a kind of bottom-up approach, circumvent the sovereignty trap in international law. The necessary conditions would have to be created in national law. In particular, the so-called 'middle powers', which have a continuing interest in the constitutionalisation of international relations, could cooperate efficiently in this way.

## RECOMMENDATIONS

- The Federal Cartel Office should maintain and intensify its international orientation. The relevant organisational units and sufficient resources should be provided for this purpose.
- The Federal Cartel Office should be given the ability to refer competition cases affecting its territory to authorities in other states for investigation and decision. At the same time, it should be enabled to investigate and decide cases for other territories at the request of the relevant competition authorities.

# 7

# Overview and recommendations at a glance

# 7 Overview and recommendations at a glance

**406** This chapter brings together all the recommendations in this report. The detailed reasoning and the legal, economic and organisational assessment of each recommendation can be found in the relevant sections of the report.

**407** Before setting out the individual recommendations, the strands running through this report should be brought together. The starting point was the questions developed in ↗**Chapter 1**:

1. Is the Federal Cartel Office's independence secured through institutional arrangements in a way that can withstand gradual or abrupt impairment of its work?
2. What else does the Federal Cartel Office need in order to continue fulfilling its task under the conditions of an uncertain future?

**408** These questions were further differentiated in ↗**Chapter 2** and translated into requirements for a competition authority for the future and criteria for assessing design options. The examination of the Federal Cartel Office in ↗**Chapters 3** to ↗**6** suggests the following answers to the two initial questions:

**409** First: the independence of the Federal Cartel Office is fundamentally strong and has proved its worth. The Federal Cartel Office is a central, effective institution in a democratic state governed by the rule of law. Its success in performing its tasks over many years and its outstanding international reputation are due not only to its design but also to the professional quality and dedication of those who work there under the protection of that independence. The Office's independence is already, in principle, well protected against overt interference; it is nevertheless vulnerable to subtler forms of impairment. It depends on points that, considered individually, appear less significant: the duration and nature of leadership at the top, personnel decisions that can affect ongoing proceedings, the provision of sufficient resources by political actors, and the fact that the authority's internal arrangements cannot be scrutinised from outside. International developments showing how vulnerable even established competition authorities are add a further consideration: an independent authority is rarely attacked for its independence itself, but rather for the justification for that independence. The typical accusation is that it takes decisions without a mandate and without oversight. Legal safeguards offer protection only to the extent that the authority also continually makes clear the standards by which it selects cases, how its decisions fare

before the courts and how it responds to objections. Accountability and transparency are therefore not a price paid for independence; they are its most effective protection.

**410** Second: the Office does not need fundamental reinvention for the future. What it needs is the capacity to correct itself, for example through institutionalised learning processes, robust economic and technological expertise, systematic review of its decisions after the event, and proceedings that can keep pace with markets. This capacity also addresses a side effect of extensive independence and great success: an authority developing its own standards and becoming settled in them. The less intensive the external scrutiny of the exercise of power, the more dangerous this development can become. What matters, therefore, is whether an established line of decision-making can be reconsidered at all. In this respect, it is important to retain judicial review and take on board other external input.

**411** This calls for targeted adjustments, rather than a new model. The Monopolies Commission recommends safeguarding the independence of the Federal Cartel Office and of decision-making within its Decision Divisions. This concerns both independence from political actors and internal independence within the Office. In a democratic state governed by the rule of law, such independence can, of course, be granted only if it is subject to accountability and transparency. At the same time, its side effects must be balanced: decisions may lack coherence across the authority and resources may not be deployed where they have the greatest effect on the economy as a whole. The recommendations in this report address both.

**412** An assessment with which this report began has been confirmed by the analysis: the Federal Cartel Office has been among the leading competition authorities over a long period. Behind this lies work that rarely becomes visible. This includes meticulous casework and difficult proceedings such as uncovering collusion in the basic materials and construction industries, practised in secret for years and requiring lengthy investigations whose outcome is uncertain at the outset. Different in nature, but equally telling, is the establishment of the Competition Register, which the authority has operated since 2021. The Monopolies Commission's findings on further development concern structures that continue to exert their effects even under the most conscientious leadership, rather than the handling of cases. It has outlined how proven arrangements can be developed further in future so as to preserve the basis of past success and address the risk of retaining practices that are no longer appropriate to the times. A sense of proportion is needed here: independent decision-making within the Federal Cartel Office is indeed at the core of competition law enforcement. However, only around a third of its staff are in positions involving such decisions at all. In other respects, the Federal Cartel Office is an administrative authority which, like others, is organised hierarchically and encounters the typical features of administrative

work. Potential for the future remains, in particular, in digitalisation and the modernisation of proceedings.

**413** Competition law enforcement faces economic, technological, social and geopolitical upheavals to which a competition authority cannot respond with the routines of the past. The use of artificial intelligence is merely the most visible requirement. Innovation is becoming a key concept for competition and competition enforcement. The continuous renewal brought about by competition is also a requirement for the institutions that protect it.

**414** The Monopolies Commission derives the following recommendations from these findings. They are grouped into five subject areas and numbered consecutively:

- Protecting independence from political interference
- Safeguarding internal independence
- Promoting openness to change
- Protecting competition in the digital age
- Strengthening international networks

## PROTECTING INDEPENDENCE FROM POLITICAL INTERFERENCE

### ... THROUGH A CLEAR MANDATE

**1** The Federal Cartel Office should continue to avoid taking on too many additional responsibilities. Competition law enforcement should remain at the centre of its work. This should be reflected in the number of divisions and staff responsible for enforcing competition law. ↗Section 4.1.1

**2** Any additional responsibilities taken on by the Federal Cartel Office should be covered by political independence and characterised by clearly identifiable synergies with its core work. One conceivable example would be to enable the Federal Cartel Office to sanction infringements of consumer law where it has conducted a sector inquiry and individual legal action is not to be expected. ↗Section 4.1.1

**3** If other authorities (e.g. the Federal Network Agency) possess a high level of relevant technical expertise, this can be an argument for leaving these activities with, or assigning them to, those authorities. Otherwise, there would be a risk that decision-makers would not have direct access to that technical expertise. Such an approach requires close coordination between the authorities to

ensure consistency in their approach to competition, although the relevant sectoral legislation generally already provides for this. ↗Section 4.1.1

## ... THROUGH INDEPENDENT LEADERSHIP

**4** The process for selecting the President should be conducted as transparently as possible. In particular, a public advertisement and a clear competency profile should set out how the person will be selected in terms of suitability, qualifications and professional performance. A duty to advertise the position publicly should be incorporated into the GWB. ↗Section 4.1.2.2

**5** The President's term of office should be limited in future. Depending on the future extent of the President's powers, a maximum term of around eight to twelve years would be appropriate. There should be no possibility of reappointment, in order to minimise political influence. The Monopolies Commission welcomes the eight-year term limit with no possibility of reappointment proposed in the bill for a 12th amendment to the GWB. ↗Section 4.3.1.1

## ... THROUGH STATUTORY SAFEGUARDS

**6** The independence of the Federal Cartel Office's Decision Divisions in individual cases should be expressly enshrined in the law. This should be done through a provision in section 51(2) GWB specifying that decisions in individual cases are taken independently and free from instructions from the leadership or other bodies. There is no need to enshrine the authority's political independence in the constitution. ↗Section 4.1.3

## ... THROUGH PUBLIC TRANSPARENCY

**7** The Federal Cartel Office should draw up, on its own responsibility, a publicly accessible list of priorities to guide its competition law work. Beyond substantive priorities, the list should also identify the types of proceedings and circumstances to which the Federal Cartel Office attaches particular importance, such as proceedings under section 19a and section 32f(3) and (4) GWB. In doing so, it signals its willingness to pursue proceedings with uncertain outcomes, particularly in these areas. The authority's written decisions should refer to the list of priorities in their reasoning on the discretion to initiate proceedings and on competition law measures. ↗Section 4.3.2.2

**8** The Federal Cartel Office should also publish guidance on the exercise of its discretion to initiate proceedings. This would be particularly relevant to cases outside the strategic priorities on the authority's list. The guidance should give

less weight to the prospects of success of proceedings the greater their expected impact. Both the list of priorities and the guidance should be developed by an internal body yet to be established. ↗Section 4.3.2.2

**9** In its activity report under section 53 GWB, the Federal Cartel Office should regularly present, in a standard format, changes in its staffing and material resources in relation to its tasks. In particular, it should show the distribution of budgeted posts and actual staff deployment across the main areas of responsibility, unfilled posts, newly assigned or substantially expanded tasks including the additional compliance costs estimated for them in legislative materials, and tasks that have declined in importance or from which staff have been redeployed to other areas. Enshrining this in section 53 GWB would be possible, but not essential. When new tasks are assigned, the compliance costs identified during the legislative process should be tracked. If the allocation of resources deviates from these or from medium-term financial planning, this should be made clear and explained. ↗Section 4.1.4

**10** To improve transparency about the Federal Cartel Office's internal processes, its rules of procedure and schedule of responsibilities should in future be published online. A corresponding passage should be added to section 51(2) GWB. A further restriction on the leadership's power to establish the rules of procedure and schedule of responsibilities, beyond the requirement for ministerial approval, does not appear necessary. ↗Section 4.3.1.3

**11** In addition, meetings of the presidency should be recorded in a publicly accessible calendar, as is already customary at the European Commission. ↗Section 4.3.1.3

## SAFEGUARDING INTERNAL INDEPENDENCE

### ... THROUGH BROADER PARTICIPATION IN DECISION-MAKING

**12** For individual powers regarded as particularly far-reaching or vulnerable to abuse, consideration could be given to broadening decision-making to involve several people. The first category could include developing a list of strategic priorities for the authority and guidance on the discretion to initiate proceedings, and determining the composition and responsibilities of an enlarged Decision Division; the second could include individual personnel policy decisions that may ultimately interfere with the independence of the Decision Divisions.

This could be achieved by having the decision in such cases taken by an internal body yet to be established, whose members act independently. ↗Section 4.3.1.2

**13** For proceedings of particular importance, especially those under section 19a and section 32f(3) and (4) GWB, section 51(3), first sentence, GWB should be supplemented to assign the decision to an enlarged Decision Division comprising five people. An external Chief Economist should also be entitled to provide an assessment, which must subsequently be published. Decisions on the composition of the enlarged Decision Division in individual cases and on the selection of other cases of particular importance should be taken by an internal body yet to be established. ↗Section 4.3.2.3

## ... THROUGH SAFEGUARDS FOR CASE RESPONSIBILITIES

**14** The rules of procedure should provide that a change of responsibility in ongoing proceedings, for example replacing the rapporteur, is permissible only on objective grounds and must be justified in writing. If the change originates with the authority's leadership and the chair of the responsible Decision Division objects, it requires the approval of an internal body yet to be established. The establishment of administrative principles by the President has a degree of binding effect and therefore sits in tension with the independence of the Decision Divisions. To forestall possible criticism of impermissible direction, the aforementioned body should also be involved in the formalised establishment of administrative principles. ↗Section 4.2.3 and ↗Section 4.2.2

## ... THROUGH TRANSPARENCY AND OPENNESS TO CRITICISM

**15** The requirements already included in the bill for the 12th amendment to the GWB to publish significant decisions of the Federal Cartel Office should be clarified to ensure publication in full without undue delay after the decision is issued. Letters of the Chairman should also be subject to a publication requirement, in anonymised form and with trade and business secrets removed. ↗Section 4.3.2.4

**16** The Federal Cartel Office should visibly engage with reasoned criticism from the expert community. To safeguard this openness institutionally, it should

- lay down in guidelines the proceedings in which it conducts public consultations and the form these take;
- seek external legal and economic expertise more frequently;

- include the results of ex-post evaluations in its activity report under section 53 GWB and append a brief overview, written independently by the Procedural Officer, of the main points of conflict in granting procedural rights. ↗Section 4.3.2.5

## Promoting openness to change

### ... THROUGH THE POSITION OF CHIEF ECONOMIST

**17** The position of Chief Economist should be advertised publicly and filled externally for a fixed term. Selection should be carried out by a selection committee, with mandatory involvement of external professional expertise. Subsequent employment at the Federal Cartel Office should not be provided for. In performing their independent functions, the Chief Economist should be free from instructions on substantive matters. Depending on how the Chief Economist's employment relationship is structured, a cooling-off provision should therefore also be considered, since the civil service provision in section 105 BBG may not apply. ↗Section 5.2.2

**18** In proceedings of fundamental importance, particularly under section 19a and section 32f(3) and (4) GWB, the Chief Economist should prepare their own economic assessment, make it available to the Decision Division during the proceedings, and publish it no later than after the authority's proceedings have concluded. ↗Section 5.2.2

**19** Further functions should include: the right to propose particularly relevant cases publicly to the Decision Divisions; providing economic expertise in an advisory capacity in proceedings before the enlarged Decision Division; methodological responsibility for ex-post evaluation; exchanges with researchers and data analysis practitioners; and an advisory role in drawing up the list of priorities. The position of Chief Economist does not entail a role in deciding cases. ↗Section 5.2.2

### ... THROUGH EXTERNAL INPUT

**20** The Federal Cartel Office should establish a programme enabling external experts, for example from business or the legal profession, to work at the authority for a fixed period. The CMA's ‘Secondment opportunities for competition and consumer lawyers’ programme could serve as a model. A reverse programme, under which Federal Cartel Office staff work for cooperation partners

in the private sector for a fixed period, is also conceivable. In addition, consideration should be given to whether overly rigid civil service rules unduly restrict staff movements between competition authorities and the private sector through 'revolving doors'. Existing cooling-off provisions should, however, be retained. ↗Section 5.2.3

**21** The Federal Cartel Office should make greater use of public consultations, particularly in proceedings of fundamental importance, such as those within the scope of section 19a GWB (abusive conduct by undertakings of paramount significance for competition across markets) and section 32f(3) and (4) GWB. ↗Section 5.2.3

## ... THROUGH SYSTEMATIC KNOWLEDGE MANAGEMENT

**22** The Federal Cartel Office's case database should be developed into a comprehensive knowledge management system covering all relevant areas and providing all staff with key information on completed cases on demand. In addition, AI-assisted access to digital files can enable flexible access to existing information and thus usefully complement the structured case database. ↗Section 5.2.4

**23** Rotation between the Decision Divisions should be enshrined in fixed rules of the Office. As a rule, staff should not remain responsible for their previous sector after moving, even if that sector is transferred to another Decision Division; ongoing proceedings may be completed. ↗Section 5.2.4

**24** The debriefing meetings already customary in important cases should become standard practice for larger proceedings and should be documented. ↗Section 5.2.4

## ... THROUGH A PROCEDURAL OFFICER

**25** The position of Procedural Officer should be established within the Federal Cartel Office to support the Decision Divisions in granting procedural rights and, in particular, to mediate in conflicts between the Decision Divisions and companies. ↗Section 5.2.5.1

**26** The position of Procedural Officer should be filled externally for a fixed term. The person should be selected by a selection committee following a public advertisement. The Procedural Officer should not be subject to instructions on substantive matters and should receive a small allocation of staff resources. ↗Section 5.2.5.2

## Protecting competition in the digital age

### ... THROUGH TECHNOLOGICAL EXPERTISE

**27** The Federal Cartel Office should appoint a head of Monitoring, Innovation and Technology to direct, across the authority, the responsibilities for digital services, data analysis methods and tools, data analysis and the monitoring of technological developments that are currently distributed among several organisational units. The position's purpose is, in particular, to identify new technological opportunities for more effective law enforcement and make them usable by the Federal Cartel Office. ↗Section 5.3.1.3

**28** The position should be established as a staff function reporting directly to the President and should lead a dedicated unit for data analysis, IT forensics, technology monitoring and competition monitoring. In relation to the other relevant organisational units, the rules of procedure should give the position the lead responsibility for a binding data and technology strategy, require its approval for strategic IT and data projects, and equip it with its own innovation budget and a power to issue instructions on substantive matters within a defined remit. ↗Section 5.3.1.3

**29** The position should be filled for a fixed term by an external candidate through an open selection process based on a published requirements profile. Unlike the Chief Economist, the holder would not be free from instructions on substantive matters. The necessary flexibility in remuneration rules should be created to enable an external appointment. ↗Section 5.3.1.3

**30** The Federal Cartel Office should build a data-driven competition monitoring system, focusing on innovation and technology as drivers of competition. Appropriate resources must be provided for this. ↗Section 5.3.1.6

**31** The Federal Cartel Office would also benefit from recruiting more people with scientific or technical backgrounds into the Decision Divisions. They could serve as points of contact for the head of Monitoring, Innovation and Technology. The aim would be to develop strategic future scenarios, identify barriers to market entry and detect the blocking of innovation potential, also involving the Chief Economist's team. ↗Section 5.3.1.5

## ... THROUGH SYSTEMATIC EX-POST EVALUATIONS

**32** The selection and preparation of ex-post evaluations should be organised co-operatively. The Federal Cartel Office, the Monopolies Commission and academic experts should regularly discuss suitable cases, evaluation questions, data availability and methodology together. ↗Section 5.3.2.5

**33** Ex-post evaluations should be conducted significantly more frequently in future, with flexibility in how they are carried out. Depending on the question and available capacity, the Federal Cartel Office, the Monopolies Commission, external experts or mixed teams should be able to conduct evaluations. Sufficient staff and material resources are required for this. ↗Section 5.3.2.5

**34** The process of feeding evaluation findings back into the Federal Cartel Office's practice should be institutionally safeguarded. The Federal Cartel Office should designate a central point of responsibility for this and disseminate findings within the authority. ↗Section 5.3.2.5

## ... THROUGH MODERNISING PROCEEDINGS

**35** In the Monopolies Commission's view, the planned introduction of electronic case files and the use of specific AI applications are important steps towards further digitalisation of the Federal Cartel Office's case management. ↗Section 5.3.3.1

**36** AI applications should be used systematically in casework, for example to analyse large volumes of documents and redact trade and business secrets. Responsibility for this should lie with the head of Monitoring, Innovation and Technology. ↗Section 5.3.3.1

**37** A scalable electronic portal for competition authority proceedings should be introduced in stages. In particular, the technical design, the use of shared basic components of the federal administration, a suitable phased plan and resource requirements should be examined in advance. ↗Section 5.3.3.1

**38** Competition authority proceedings should be given a clearer structure. To this end, the subject of the investigation should first be narrowed down at an early stage. The course of proceedings should also be managed through milestones with deadlines. In particular, a target deadline for the investigative phase, i.e. up to the issue of a preliminary competition assessment, could be considered. ↗Section 5.3.3.2

**39** The option of lawyers-only access to the file should be introduced in administrative competition proceedings. ↗Section 5.3.3.3

## STRENGTHENING INTERNATIONAL NETWORKS

**40** The Federal Cartel Office should maintain and intensify its international focus. Appropriate organisational units and sufficient resources should be maintained for this purpose. ↗**Section 6.3**

**41** The Federal Cartel Office should be given the option of referring competition cases affecting its territory to authorities in other countries for investigation and decision. At the same time, it should be enabled, at the request of other competition authorities, to conduct investigations and take decisions for their territories. ↗**Section 6.3**

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