

CLIENT ALERT

Germany introduces second domestic turnover threshold for merger control

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On 13 February 2009, the German legislator approved an amendment to the Act against Restraints of Competition ("ARC") that will significantly reduce the need for merger control filings and observation of the statutory waiting period for transactions with focus outside Germany.

Presently, the German turnover thresholds are met if the parties' combined worldwide turnover in the last calendar year exceeds € 500 million (approx. US\$ 735 million) and if any of the parties achieves sales in Germany in excess of € 25 million (approx. US\$ 36.7 million). Accordingly, Germany has been one of the few countries in the world where the filing thresholds could be triggered by one of the parties, e.g. the acquiring group alone. Furthermore, the extensive interpretation of the required 'effects on competition in Germany' has hitherto put a significant administrative burden on many companies meeting the abovementioned thresholds.

Under the new regime two parties to a transaction must have sales of at least € 5 million (approx. US\$ 7.35 million) in Germany. It is expected that the introduction of the second domestic sales threshold will significantly reduce the number of transactions that have to be filed with the Bundeskartellamt ("FCO") in Germany. In particular foreign-to-foreign transactions or German purchasers acquiring foreign companies with little business in Germany will in the future be exempted from filing requirements.

The amendment is expected to enter into force in early March after signature by the German president and publication in the official journal. In the interim, companies involved in transactions where the second threshold is not met, may want to consider postponing their closing until the amendment enters into force in order to avoid a German merger filing.

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