



New Guidelines on the German Competition Register – Q&A

The German competition regulator Bundeskartellamt has published guidelines and a practical guide on the new German Competition Register for Public Procurement. We provide answers to the key questions:

What is the Competition Register?

Companies that have committed certain economic offences, e.g., infringements of competition law, can or have to be excluded from public tenders under certain circumstances. The Competition Register makes information on such companies available to public contracting authorities. The Register is run by the Bundeskartellamt.

For how long are entries kept in the Register?

Depending on the offence, entries are kept in the Register for three (cartel offences) or five (e.g., fraud, money laundering, tax evasion) years.

Do public contracting authorities always use the Register?

From a certain tender volume (generally from EUR 30,000), public contracting authorities are obliged to check the Competition Register before awarding a tender.

Can a company be deleted from the Register prematurely?

Yes, when the company has shown to the Bundeskartellamt that it has undergone the so-called “self-cleaning” process.

What is the purpose of the Bundeskartellamt’s guidelines?

The guidelines summarise the steps necessary for a premature deletion from the Competition Register.

Which are the key items for a deletion from the Register?

In its guidelines, the Bundeskartellamt focusses on three items (in line with the underlying provision in German competition law): damage compensation, establishment of facts, and compliance measures.

Damage compensation

The demand for damage compensation causes the most problems in practice. To be deleted from the Register, a company must have either compensated “obvious” damages or must have committed to compensate for such damages. In case there are doubts regarding the reason for or the amount of damages, companies must demonstrate to the Bundeskartellamt that they are contributing to clarifying the damages and



are complying with their obligation to compensate for the damages.

What this means in practice: Companies which would like to be deleted from the Register will hardly be able to undergo lengthy litigation as defendants. Rather, such companies are under pressure to settle disputes with potential claimants.

Establishment of fact

Companies seeking deletion from the Register are obliged to actively cooperate with the authorities. The Bundeskartellamt considers a settlement of proceedings as an indication that a company is willing to cooperate. The same applies when a fine is reduced because of an immunity application or another form of leniency application.

What this means in practice: Companies appealing a fining decision of the Bundeskartellamt will hardly be deleted from the Competition Register. Companies considering whether to appeal a fining decision will have to take this into account going forward.

Compliance measures

Companies are required to introduce compliance measures which can be considered an “appropriate response” to the

respective misconduct. A company-specific risk assessment is a precondition. This does not necessarily mean that a Compliance-Management-System needs to be introduced. However, merely standardised measures are not sufficient. In addition, measures regarding the employees involved in the misconduct might be required.

What this means in practice: Bespoke compliance measures based on a risk assessment tailored to the individual company will become more important than ever.

What is the purpose of the Bundeskartellamt’s practical guide?

The practical guide specifies the practical requirements for the actual application for a premature deletion from the Competition Register and provides additional detail on certain items in the guidelines.

What does the timeline for the Register look like?

From 1 December 2021, public contracting authorities are able to request information from the Competition Register. From 1 June 2022, requesting such information will become a requirement when the applicable tender volume thresholds are exceeded.

Ihre Ansprechpartner



Dr. Timo Angerbauer
Partner

T +49 (0) 211 822 68 28 5
E timo.angerbauer@rocan.eu



Paul Drößler
Partner

T +49 (0) 211 822 68 28 3
E paul.droessler@rocan.eu



Dr. Tobias Pukropski
Partner

T +49 (0) 211 822 68 28 4
E tobias.pukropski@rocan.eu