Germany Proposes New Merger Control Threshold to Eliminate Need for Pre-Closing Approval for Deals with Minimal Nexus to Germany

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The German Ministry of Economics recently proposed amendments to the German competition law that would eliminate the need for a pre-closing filing and observation of the one-month waiting period for transactions that raise little or no competitive concern, which are presently notifiable. The proposed amendments would introduce a new German turnover threshold in the amount of €5 million (approx. $7.4 million), to be met by one of the parties to the proposed transaction (i.e., either the buying group or the target), in addition to the existing €25 million (approx. $37.2 million) German turnover threshold to be met by the other party to the transaction.

Presently, the German turnover thresholds are met if the parties' (the buying group and target) combined worldwide sales in the last calendar year exceeded €500 million (approx. $745 million) and if any of the parties achieved German sales in excess of €25 million. Accordingly, buyers who meet the €25 million threshold in Germany need to file and wait one month (or sometimes less, if the transaction is cleared more quickly) to close if the target has *any* sales to customers invoiced in Germany, even if the transaction raises no substantive antitrust concerns. This administrative burden can put buyers meeting the €25 million German sales threshold at a disadvantage when negotiating with a seller that has put its business up for auction, desires to close quickly, and that can select a buyer too small to require a German filing and approval.

The German antitrust authority has not yet commented publicly on the proposed amendment, and it remains unclear whether this proposed change will be adopted.

For more information about the issues discussed in this LawFlash, please contact Dr. Jürgen Beninca, who is a member of the Antitrust Practice Group:

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