

Market Power and Pricing in AI Markets: European, German and Belgian Competition Law Challenges¹

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摘要

隨著全球各地事業持續開發或導入人工智慧（AI）工具，歐洲競爭主管機關正迅速擴大此領域之執法活動。本文從實務出發，概述其中主要風險。

本文探討定價演算法及AI系統在促進競爭者間之協調、執行轉售價格之維持或協調時，如何可能依歐盟法引發重大競爭法責任。本文並說明，何以收購AI事業日益受到嚴格審查，即使相關交易未達傳統事業結合申報門檻亦然，以及新興審查機制如何使競爭主管機關得於交易完成後審查此類交易。此外，本文亦論及AI研發合作所衍生之競爭風險，以及影響範圍廣泛之德國數位競爭法制。對於在歐洲已有營運活動、擁有客戶或尋求投資標的之事業而言，前述發展已形成必須及早注意之法令遵循義務。歐洲競爭法

之執法環境正迅速演變，其影響範圍遠不限於歐洲事業。

本文

I. Introduction¹

The rapid adoption of artificial intelligence (AI) across industries is transforming competitive dynamics among both AI developers and its deployers. AI, as defined by the European Union's (EU) AI Act, refers to a “*machine-based system (…)* designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment, and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs”². As

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註1：The authors would like to thank Max L. Kaltenmaier for his valuable support.

註2：Art. 3 (1) Regulation (EU) 2024/1689.

companies increasingly integrate algorithms and AI systems into their operations, competition authorities are paying closer attention to the implications arising not only from the use of AI, but also from its development. This article examines the most significant resulting competition law risks from an EU, German, and Belgian perspective.

EU competition law is anchored in Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU), prohibiting anti-competitive agreements and concerted practices, and abusive unilateral conduct by dominant undertakings, respectively. It is enforced by the European Commission (EC), and interpreted by the Court of Justice of the European Union (CJEU). EU Member States' competition laws are largely harmonized with these provisions (and applicable EU Regulations) and apply to conduct affecting national markets. While Art. 101 and 102 TFEU serve as a minimum standard across the EU, Member States are not precluded from adopting stricter national laws prohibiting

unilateral conduct.³

On a policy level, the EU's broader digital agenda has increasingly been emphasizing technological, cloud, and data sovereignty. Both public⁴ and private⁵ initiatives are aimed at strengthening European technological capabilities, global competitiveness, and reducing dependencies on non-European providers. This effort extends to the implementation of antitrust rules as the recently published Draft Merger Guidelines highlight. As the EC emphasizes the necessity of scale in global markets,⁶ scale- or efficiency-enhancing transactions can be expected to be treated more favorably than in the past. This represents an evolution of the EC's enforcement practice, which, until recently, has more fundamentally rejected the notion of creating globally competitive European companies at the price of affecting intra-European competition.⁷ Noteworthy, the Draft Guidelines specifically point out the need to protect the resilience of EU businesses (as opposed to businesses active in the internal market),⁸

註3：Art. 3 (2) Regulation (EC) 1/2003.

註4：Such as *Gaia-X*, a multi-national public-private initiative aiming to establish a European data infrastructure, and the EC's *IPCEI-CIS* (Important Project of Common European Interest—Cloud Infrastructure and Services), a large-scale state-supported investment scheme.

註5：Such as the public policy initiative *Eurostack*, aiming to build and adopt a suite of digital infrastructures from connectivity to cloud computing, AI and digital platforms by bringing together, governance and funding for Europe-focused investments.

註6：EC, Draft Communication from the Commission, Guidelines on the assessment of mergers (hereafter, “2026 Draft Merger Guidelines”), paras. 12 and 15, available at: https://competition-policy.ec.europa.eu/document/download/46dde10f-85c1-4590-a3f4-2b71f85685ef_en?filename=Merger%20Guidelines%20-%20final%20for%20public%20consultation.pdf.

註7：See EC, Decision of 6 February 2019, Case M.8677—*Siemens/Alstom*.

註8：EC, 2026 Draft Merger Guidelines, para. 18.

mirroring a broader protectionist shift. This evolution on the competition law front mirrors, in the field of mergers, a concurrent trend at Member States level which is to protect Member States against acquisitions liable to affect national security through the enactment of Foreign Direct Investment legislations.

Against this backdrop, the following sections address four key areas in the space of European competition law and AI: Algorithmic pricing and AI-enabled collusion (II.), “killer acquisitions” across the AI value chain (III.), data pooling and AI R&D cooperation (IV.), and German extended abuse control (V.).

II. Algorithmic pricing and AI-enabled collusion

Pricing algorithms autonomously monitor and adjust a deployer's price in response to competitor pricing. Although not inherently unlawful, their use carries significant legal risks. Where an algorithm facilitates anti-competitive coordination or cooperation with competitors, whether by design or as a consequence of their deployment, the deploying company may incur liability under Art. 101 (1) TFEU and corresponding national rules. Art. 101 (1) TFEU prohibits coordination through anti-competitive

agreements and concerted practices (referring to coordinated behavior without an express anti-competitive agreement) in both horizontal (competitive) and vertical (supplier-distributor) relationships.

The growing use of AI systems and algorithmic tools makes digital markets susceptible to behavioral alignment between competitors, even in non-oligopolistic situations, due to their inherently transparent nature. By processing vast amounts of publicly available data and reacting in real time, algorithmic or AI-enabled systems can facilitate pricing alignment as a result of their rational, profit-oriented programming. While not illegal *per se*, parallel behavior increases the likelihood of heightened antitrust scrutiny.⁹

The EC's enforcement practice of Art. 101 TFEU in the digital sphere rests on two fundamental principles.¹⁰ First, pricing practices that are unlawful offline are equally likely to be unlawful online. Second, companies cannot escape liability by attributing their pricing conduct to algorithms. Like decisions taken by an employee or consultant, a firm remains responsible for algorithmic outputs within its “*direction or control*”¹¹. Companies may consequently face substantial fines if they fail to exercise due

註9：On the applicability of Art. 101 TFEU to implicit algorithmic collusion, see Calzolari, “The Misleading Consequences of Comparing Algorithmic and Tacit Collusion: Tackling Algorithmic Concerted Practices Under Art. 101 TFEU”, European Papers, (6) 2021, No. 2, pp. 1193 et. seq.

註10：EC, Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements, C(2023) 3445 (“Horizontal Guidelines”), para. 379.

註11：Ibid.

diligence when using automated tools to collect competitive intelligence or set competitive parameters. The following outlines the conditions under which European enforcers may find machine-enabled collusion (1.), hub-and-spoke agreements (2.) and anti-competitive resale price maintenance (RPM) (3.).

1. Machine-enabled collusion

Algorithms, and, by extension, AI models, may facilitate collusive agreements in three key scenarios.

First, algorithms may be deployed to operationalize an express collusive agreement, for example by implementing or monitoring pre-agreed prices, output, or allocated markets. In the UK Posters cases,¹² two competitors used pricing algorithms programmed to adjust prices in accordance with an existing anti-competitive agreement ensuring neither business undercut the prices of the other. In such cases, where the algorithm merely serves as a tool of implementation, the unlawfulness of the underlying agreement is unaffected by whether compliance is monitored manually or digitally.

In the second scenario, algorithms may be used to coordinate or align their deployers' (pricing) strategies without an express prior agreement. The EC has clarified that using coordination algorithms to set key competitive parameters generally constitutes a cartel ("collusion by code" ¹³), rendering it illegal irrespective of market conditions. The CJEU has further held that the joint use of an algorithm that applies pre-determined rebates can constitute a concerted practice.¹⁴ In these scenarios, competition authorities seek to prohibit coordination through algorithms. Such scenarios must be distinguished from the legally more ambiguous concepts of transparency achieved through AI tools, that remove uncertainty on competitor conducts, allowing for parallel behavior and tacit collusion. While the Commission is alluding to this in its Horizontal Guidelines¹⁵, such an extensive application of cartel rules has not yet been done. AI tools' technical capabilities must therefore generally be carefully scrutinized for potential (autonomous) collusion risks.

Finally, "black box" ¹⁶ AI systems could

註12 : CMA, Decision of 12 August 2016, Case 50223—*Online sales of posters and frames*.

註13 : EC, Horizontal Guidelines, C(2023) 3445, para. 379.

註14 : CJEU, Judgement of 21. January 2016, C-74/14—*Eturas*: Several travel agencies had licensed and used third-party software ("E-Turas") to offer travel packages on their respective websites using a standardized booking format. Using an electronic communication system, the managing director of E-Turas proposed to all participating travel agencies that the internet discount rate be reduced to a maximum of 3%.

註15 : EC, Horizontal Guidelines, C(2023) 3445, para. 379.

註16 : Black box AI refers to self-learning systems whose internal processes are unclear to its users and sometimes even its developers.

prospectively develop the capacity to autonomously conclude anti-competitive agreements.¹⁷ Where such systems are designed to operate on the basis of economic incentives, they may coordinate or agree on supra-competitive prices, particularly in oligopolistic markets where fewer competitive parameters apply. However, as self-learning technology becomes more widely adopted and increasingly capable of predicting market dynamics, similar outcomes may arise in markets with a larger number of competitors. While the likelihood of such a scenario remains unclear, companies should be mindful that liability under Art. 101 TFEU applies irrespective of whether anti-competitive agreements result from deliberate design or from software's autonomous decision-making.

2. Algorithms as hub-and-spoke facilitators

Hub-and-spoke agreements are anticompetitive schemes where a central party (the “hub”) facilitates collusion between multiple competitors (the “spokes”). Where multiple competitors rely on the same algorithm to determine pricing, the

algorithm's provider may be characterized as the “hub” and the subscribing companies as the “spokes”, giving rise to potential liability under Art. 101 TFEU.¹⁸ Case law across jurisdictions illustrates this risk, particularly in platform markets: Various taxi and ride-sharing platforms have faced allegations of tacit horizontal price coordination arising from their reliance on a single algorithm to dynamically determine fares.¹⁹ Although only “Webtaxi” was ultimately found to have infringed competition law (and was nonetheless granted an individual exemption on efficiency grounds), these cases underscore the collusion risks inherent to the shared use of a common pricing algorithm.

However, the aforementioned risks do not preclude the general use of pricing algorithms. The CJEU has long established that Art. 101 (1) TFEU does not deprive companies of the right to “*adapt themselves intelligently to the existing and anticipated conduct of their competitors*”²⁰. Accordingly, deploying algorithms to monitor competitor prices in real time and adjust the deployer's prices accordingly is not illegal *per se*. Competitive intelligence gathering is generally

註17 : Schwalbe, “Algorithms, Machine Learning, and Collusion”, JCLE 2018, 568 (594): „[T]he question arises whether algorithms are able to communicate with each other or whether different algorithms might even be able to learn to communicate without being explicitly programmed, that is, without a common communication protocol “.

註18 : Zimmer in: Immenga/Mestmäcker (publishers), Wettbewerbsrecht (“Competition Law”), 7th Ed. 2025, Art. 101 TFEU.

註19 : Comisión Nacional de los Mercados y la Competencia (CNMC), Decision of 12 March 2025, S/0005/20—*Uber Cabify Bolt*; U. S. District Court Southern District of New York, Case 15 Civ. 9796—*Meyer v. Kalanick*; Conseil de la Concurrence, Decision of 8.6.2018, 2018-FO-01—*Webtaxi*.

註20 CJEU, Judgment of 16 December 1975, Joined Cases 40-48 et. al—*Suiker Unie*, para. 174.

regarded as pro-competitive, and a degree of information exchange will always be necessary to sustain commercial relationships. Nonetheless, companies should be aware that the deployment of pricing algorithms and similar tools increases market transparency significantly, thereby lowering strategic uncertainty and increasing the risk of coordinated alignment—especially where companies rely on a common tool.

3. Algorithmic enforcement of resale price maintenance (RPM)

Algorithms and AI tools are also deployed in vertical relationships to monitor and enforce resale pricing. While the use of software to assess retail pricing should, considered in isolation, not be an issue, the combination of the use of such software with retail pricing enforcement measures can give ground to infringements of competition law where a manufacturer or platform operator uses algorithmic price monitoring to detect retailers deviating from minimum resale prices, and intervenes to re-align those prices.²¹ The use of software to implement or enforce RPM does not, in such a case, alter its characterization as an

infringement; on the contrary, algorithmic monitoring renders such practices more systematic and more effective for their deployers.

In 2018, the EC fined four consumer electronics manufacturers a total of over EUR 111 million for enforcing minimum online resale prices, using software to monitor their implementation.²² The EC noted that the widespread use of pricing algorithms amplified the restrictive effects across online marketplaces.²³ Similarly, the Dutch Authority for Consumers and Markets (ACM) imposed a fine of over EUR 39 million on Samsung for systematically coordinating online television prices with retailers, monitoring them with so-called web crawlers.²⁴

In February 2026, the German Bundeskartellamt (Federal Cartel Authority or “FCA”) prohibited Amazon from applying algorithmic price control mechanisms on its German marketplace and ordered the disgorgement of EUR 59 million in economic benefits “*in a first step*” under Germany’s novel extended abuse control regime.²⁵ The authority found that Amazon used algorithms to cap seller prices, banning offers it deemed to be priced too

註21 : CJEU, Judgment of 29 June 2023, Case C-211/22—*Super Bock*, para. 38.

註22 : EC, Press release of 24 July 2018,

https://ec.europa.eu/commission/presscorner/detail/it/ip_18_4601 (accessed 20 April 2026).

註23 : EC, Decision of 24. July 2018, AT.40182—*Pioneer*, para. 155.

註24 : ACM, Press release of 29. September 2021,

<https://www.acm.nl/en/publications/acm-fines-samsung-over-39-million-euros-influencing-online-prices-television-sets> (accessed 20 April 2026).

註25 : FCA, Press release of 5. February 2026,

https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2026/26_02_05_Amazon.html (accessed 20 April 2026).

ambitiously from the prominently-placed “Buy Box” or entirely removing them from the market place.

For companies operating digital platforms or distribution networks, the Amazon decision underscores that algorithmic interference with pricing, whether as a platform provider or in a buy-sell relationship, will likely attract enforcement scrutiny across jurisdictions.

III. “Killer acquisitions” across the AI value chain

The AI sector presents a distinct set of competition law risks in the field of mergers and acquisitions, particularly with respect to so-called “killer” or “nascent” acquisitions—transactions in which an established company acquires a nascent or potential competitor to neutralize it as a future competitive threat. The AI value chain (often referred to as an AI “stack”²⁶) comprises several interdependent layers: semiconductor and chip design, cloud computing infrastructure, data, foundation model

development, and downstream application deployment.

A relatively small number of large technology companies are vertically integrated across multiple layers, controlling critical inputs, particularly cloud infrastructure, foundation model development and large-scale datasets—enabled, to a significant degree, by acquisitions and far-reaching partnerships with innovative AI companies.²⁷ Notably, such “hyperscalers” (who emerged as software companies) have started to invest heavily in in-house chip development,²⁸ potentially eliminating their final layer of economic dependence from third parties in the future. Such competition concerns are reinforced as incumbents may acquire smaller or nascent companies to foreclose access to essential resources at one layer of the stack, or to absorb innovative startups before they become competitive.²⁹

1. Acquisitions as abuses of dominance

Enforcement activity in recent years illustrates both the growing scrutiny and the jurisdictional challenges involved in catching so-called killer

註26：Cole Stryker (IBM), “What is an AI stack?” ,

<https://www.ibm.com/think/topics/ai-stack> (accessed 20 April 2026).

註27：Google already acquired DeepMind in 2014 and announced to invest up to USD 40 billion into Anthropic (Claude) in April 2026; Microsoft holds approx. 27 % of OpenAI (ChatGPT), a share valued at approx. USD 135 billion as of late 2025; Amazon holds a share in Anthropic (Claude) valued at USD 61 billion as of February 2026.

註28：Tom Warren (The Verge), “Microsoft’s latest AI chip goes head-to-head with Amazon and Google” , 26 January 2026, <https://www.theverge.com/news/867670/microsoft-maia-200-ai-chip-announcement> (accessed 20 April 2026).

註29：The EC addresses the latter phenomenon in its 2026 Draft Merger Guidelines, see paras. 175 et seq. (“loss of innovation competition”) and paras. 193 (“loss of potential competition”).

acquisitions. Notably, the CJEU confirmed in its 2023 *Towercast* ruling that national competition authorities may apply Art. 102 TFEU to review mergers that do not meet the jurisdictional thresholds *ex-post*.³⁰ While the bar for reviewing transaction under abuse of dominance rules remains high, EU Member States' competition authorities have ramped up application of the *Towercast* doctrine.

The Belgian Competition Authority (BCA) was first to act, opening an Art. 102 investigation in *Proximus/EDPnet* within days of *Towercast*, leading to the target's divestiture before a substantive decision was reached.³¹ In January 2025, the BCA extended the doctrine to Art. 101 TFEU in *Dossche Mills/Ceres*, a sub-threshold transaction that the parties subsequently abandoned.³² In November 2025, the BCA opened

proceedings under both Arts. 101 and 102 in *Live Nation/Pukkelpop*, at the request of the Belgian Minister for Economic Affairs.³³

In November 2025, the French competition authority issued its *Doctolib* decision, the first to impose a monetary sanction for a predatory below-threshold acquisition under Art. 102 TFEU. The fine totaled EUR 4.7 million—only EUR 50,000 of which was attributable to the acquisition itself, reflecting the authority's effort to account for the legal uncertainty that existed prior to *Towercast*.³⁴ In the Netherlands, the ACM initiated its first *Towercast*-based investigation in *Brink's/Ziemann* in March 2025;³⁵ the Dutch legislature subsequently repealed the provision in the Dutch competition act shielding concentrations from abuse of dominance review.³⁶

註30：CJEU, Judgment of 16 March 2023, Case C-449/21—*Towercast*, para. 41.

註31：BCA, Press release No. 51/2023, 6 November 2023, https://www.belgiancompetition.be/sites/default/files/content/download/files/20231106_Press_release_51_BCA.pdf.

註32：BCA, Press release No. 13/2025, 20 March 2025, https://www.belgiancompetition.be/sites/default/files/content/download/files/20250320_Press_release_13_BCA.pdf.

註33：BCA, Press release No. 43/2025, 12 November 2025, https://www.belgiancompetition.be/sites/default/files/content/download/files/20251112_Press_release_43_BCA.pdf.

註34：The majority of the fine was imposed for more traditional exclusionary conduct, including imposing exclusivity clauses and tying two products, see Autorité de la Concurrence, Press release of 6 November 2025, <https://www.autoritedelaconcurrence.fr/en/article/autorite-fines-doctolib-eu4665000-abusing-its-dominant-position-online-medical-appointment> (accessed 20 April 2026).

註35：Authority for Consumer & Markets, Press release of 7 March 2025, <https://www.acm.nl/en/publications/acm-launches-investigation-acquisition-cash-transit-company-ziemann-rival-company-brinks> (accessed 20 April 2026).

註36：Concurrences, Bulletin of 15 August 2025, <https://www.concurrences.com/fr/bulletin/news-issues/august-2025/the-dutch-government-amends-the-competition-act-to-permit-the-competition> (accessed 20 April 2026).

Germany's Federal Cartel Office (“FCO”) has not yet applied *Towercast*. Although it considered it, the authority ultimately left the issue unresolved, concluding that independent competitive forces would prevail in the reviewed case.³⁷

Companies engaging in transactions within the EU should therefore remain mindful of potential antitrust scrutiny under abuse of dominance rules, even where merger control thresholds are not met, particularly in transactions involving high market shares or high transaction values. The Belgian *Live Nation/Pukkelpop* case also illustrates the growing role of political considerations in transaction review. This development may become increasingly significant as the EU and its Member States place greater emphasis on industrial policy and the development of domestic AI capabilities, potentially to the detriment of independent competition enforcement.

2. The emergence of transaction value-based thresholds

In addition to the mechanisms outlined above (under 1.) and below (under 3.) for capturing

transactions outside turnover-based thresholds, Germany and Austria have introduced transaction value-based merger control thresholds specifically designed to catch high-value acquisitions of companies with limited turnover but significant competitive potential.

A transaction is notifiable under these thresholds if the transaction value surpasses EUR 400 m. (Germany) and EUR 200 m. (Austria) and the target has “substantive domestic operations” in the respective jurisdiction. Both thresholds were introduced in 2017, prompted by the need to catch cases that escaped merger control owing to the target's negligible turnover —particularly against the backdrop of advancing digitalization.³⁸ The two authorities have published joint guidance on the interpretation of the thresholds,³⁹ and the German Federal Court of Justice confirmed in its 2025 *Meta/Kustomer* ruling that the “substantial domestic operations” criterion must be interpreted broadly, encompassing, among other factors, indirect activities such as the processing of German end-user data even where the target's direct customers are located abroad—even absent of a contractual relationship.⁴⁰ This generally set

註37 : FCA, Tätigkeitsbericht 2023/2024 (“Activity Report 2023/2024”), p. 99, available as parliamentary document of 2. September 2025, Drucksache 21/1400 at: <https://dserver.bundestag.de/btd/21/014/2101400.pdf>.

註38 : Deutscher Bundestag (German lower house of parliament), Drucksache 19/26136, p. 3, available at: <https://dserver.bundestag.de/btd/19/261/1926136.pdf> (in German).

註39 : Bundeskartellamt and Wettbewerbsbehörde, Guidance on Transaction Value Thresholds, 14 May 2018, https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Leitfaden/Leitfaden_Transaktionsschwelle_Draft.pdf?__blob=publicationFile&v=1 (accessed 20 April 2026).

註40 : Bundesgerichtshof, Decision of 17. June 2025, KVR 77/22—*Meta/Kustomer*, para. 41.

a low jurisdictional threshold, resulting in legal uncertainty for dealmakers.

In June 2026, the German Federal Ministry for Economic Affairs and Energy published a proposal for the 12th amendment of the German Act Against Restraints of Competition (“ARC”).⁴¹ Among other things, the proposal envisages increasing the three cumulative turnover-based notification thresholds—combined worldwide turnover, and the two individual domestic turnover thresholds —by 50%, 50% and approx. 14%, respectively. While this change will likely reduce the absolute number of notifications, the draft bill seeks to balance a lower regulatory burden for companies with the need to close existing jurisdictional gaps. It aims to achieve this goal by extending the “substantive domestic operations” requirement to the target's potential future activities, thereby significantly expanding the jurisdictional scope of German merger control. The ministry specifically cites the “significant disruptive potential” of digital

business models where a roll-out is planned but not yet implemented, referring to *Microsoft/OpenAI* and *Microsoft/Inflection* as examples where an appropriate review could not be performed due to jurisdictional limitations.⁴²

Reception of these changes has been mixed. Practitioners have raised concerns about potential jurisdictional overreach and further uncertainty in jurisdictional assessments stemming from ambiguities in targets' expansion strategies.⁴³ Conversely, the FCO pointed out the risk of regulatory blind spots due to disproportionately high increases of the jurisdictional thresholds.⁴⁴ Following industry consultation, a ministry representative announced that the temporal criterion may be refined further by introducing a fixed period within which the target must intend to establish operations in Germany.⁴⁵

Moreover, the draft proposes an obligatory “phase 0” review stage for transactions passing the transaction value threshold, implementing a preliminary review

註41 : Federal Ministry for Economic Affairs and Energy, Draft 12th Amendment to the German Act against Restraints of Competition (“ARC Draft Amendment”) (in German), <https://www.bundeswirtschaftsministerium.de/Redaktion/DE/Downloads/Gesetz/2026/20260529-entwurf-eines-zwoelften-gesetzes-zur-aenderung-des-gesetzes-gegen-wettbewerbsbeschaenkungen.pdf>.

註42 : ARC Draft Amendment, p. 35.

註43 : Werner, Wilcock, „ Germany's 12th GWB Amendment: A Paradigm Shift for Merger Control or Just Catching Up? “, Kluwer Competition Law Blog, 23 June 2026, <https://legalblogs.wolterskluwer.com/competition-blog/germanys-12th-gwb-amendment-a-paradigm-shift-for-merger-control-or-just-catching-up/>.

註44 : FCO, “Statement by the Federal Cartel Office on the Draft Bill “ (in German), p. 4, https://www.bundeskartellamt.de/SharedDocs/Publikation/DE/Stellungnahmen/Referentenentwurf_12_GWB_Novelle.pdf?__blob=publicationFile&v=2.

註45 : Thorsten Käseberg (German Federal Ministry for Economic Affairs and Energy) in: “Bei Anruf Wettbewerb” (Podcast), 27 June 2026, Heinrich-Heine-University Düsseldorf, at minute 18:10.

stage before formal filing. The transaction would be automatically cleared if the FCO can “obviously rule out” detrimental effects on competition.⁴⁶ The ministry seeks to reduce the administrative burden on the FCO associated with potential precautionary notifications, as well as the bureaucratic burden on companies. It remains to be seen whether the FCO will develop a case practice that achieves these objectives or whether the tool will simply introduce an additional two-week delay for any deal that triggers the transaction value threshold.

For companies active along the AI value chain, where targets frequently derive their competitive significance from data assets and user bases, these transaction value thresholds—particularly in light of the *Meta/Kustomer* landmark ruling and the anticipated amendments to the German ARC—create a meaningful risk of regulatory scrutiny and increased deal uncertainty.

3. Below-threshold call-in powers

Following the CJEU's judgment in *Illumina/Grail*, which held that Member States cannot refer mergers to the Commission where national merger control thresholds are not met, several EU Member States have introduced (e.g., Denmark,

Ireland, Italy, Sweden) or are considering (e.g., Belgium, The Netherlands, France, Portugal) national call-in powers to review sub-threshold transactions. Together with the DMA's notification obligations (see, Art. 14), these mechanisms create an additional layer of scrutiny for AI-related transactions that fall below traditional merger notification thresholds. These call-in regimes afford national competition authorities considerable discretion, and it remains unclear whether enforcers will implement additional guardrails to mitigate the resulting lack of legal certainty—such as the European Competition Network's (ECN) recent recommendation to limit call-in regimes' territorial (“material”) and temporal scope.⁴⁷

IV. AI R&D cooperation

The collaborative research and development (“R&D”) of AI systems raises distinct legal risks under Art. 101 TFEU.

While the R&D Block Exemption Regulation⁴⁸ provides a safe harbor for R&D agreements between competitors under restrictive conditions, two risks merit particular attention. First, joint development may produce product

註46：ARC Draft Amendment, p. 38.

註47：ECN, Joint Statement by the ECN on the Implementation of Merger Call-In Mechanisms, 23 June 2026, paras 9 f., available at: https://competition-policy.ec.europa.eu/document/download/211087d8-fbb2-4090-9937-b6f6a19d059f_en?filename=ECN_Joint_Statement_on_Merger_Call-in_Mechanisms_23062026.pdf.

註48：Commission Regulation (EU) 2023/1066 of 1 June 2023.

homogenization: where competitors train models on shared datasets or common architectures, the resulting products may converge, reducing differentiation and consumer choice. This may negatively affect the EC's assessment of the R&D agreement's competitive effects. Second, R&D cooperation may facilitate broader competitive alignment where the exchange of information between the parties extends beyond what is strictly necessary, giving rise to collusion risks.

Companies considering joint AI development should accordingly ensure that information-sharing is confined to what is objectively necessary for the stated purpose, that appropriate access restrictions and clean-team arrangements are in place, and that the cooperation does not serve as a vehicle for aligning competitive strategies beyond the scope of the project.

Similarly, data pooling, the practice of aggregating datasets with competitors, may reduce strategic uncertainty and facilitate coordination. Although the EC's Horizontal Guidelines recognize that it can promote innovation,⁴⁹ companies are best advised to engage in data pooling with appropriate safeguards in place.

V. German extended abuse control and AI

Germany's extended abuse control regime constitutes one of the most expansive national frameworks for regulating large digital companies. Although initially designed to address entrenched market power in platform economies, its flexible design allows for application to AI markets.

AI agents are considered particularly prone to network effects in (potential) customer mediation contexts, where competitive advantage may increasingly result from network size rather than technological differentiation.⁵⁰ Additionally, large digital companies have been described as pursuing “platform envelopment” strategies, expanding across markets by integrating complementary services in their broader ecosystems.⁵¹ As AI agents are increasingly integrated or bundled with their providers' core products, concentration dynamics similar to those observed in platform economies may arise.

While such developments have already attracted the attention of traditional antitrust enforcement,⁵² Germany's extended abuse control regime specifically enables the FCA to address

註49 : EC, Horizontal Guidelines, C(2023) 3445, para. 418.

註50 : Agranat and Gal, “Fueling Concentration: AI Agents and Network Effects”, Network Law Review (Spring 2025), <https://www.networklawreview.org/ai-agents-network-effects/> (accessed 20 April 2026).

註51 : Condorelli and Padilla, “Harnessing Platform Envelopment in the Digital World”, 16(2) JCLE (2020), p. 143 et. seq.

註52 : Meta is currently under investigation for allegedly excluding AI competitors from WhatsApp, see EC, Press release of 15 April 2026, Case AT.41034, https://ec.europa.eu/commission/presscorner/detail/es/ip_26_805 (accessed 20 April 2026).

competition concerns arising from digital ecosystems operated by designated companies.⁵³

1. Sec. 19a GWB: Scope and application

Section 19a GWB introduced an *ex-ante* mechanism that enables the FCO to identify and regulate undertakings whose strategic positioning allows them to exert significant influence across multiple markets.

a. Undertakings of paramount significance for competition across markets

Section 19a GWB relies on a two-step procedure targeting large digital companies deemed to have “paramount significance for competition across markets”. In contrast to the designation model under the Digital Markets Act (DMA), which identifies core platform services, Section 19a (1) empowers the FCO to designate undertakings as such. This firm-level designation entails a broader scope, allowing the authority to address a range of practices across multiple markets once the threshold status is established.

Following designation, the FCO may prohibit specific forms of conduct listed in Section 19a (2) GWB, drawing on abuse of dominance theories of harm, including self-preferencing, tying and bundling, as well as restrictions on

interoperability. However, the designated company may demonstrate an objective justification for its conduct, for which it carries the burden of proof, under Sec. 19a (2) Sentence 2 GWB.

Apart from the decision delivered in the *Amazon Price Control* case (see Section II 3.), the FCA has concluded three substantive proceedings against Alphabet and is currently investigating Amazon's alleged “brandgating” tactics as well as Apple's “App-Tracking-Transparency-Framework” (ATTF).⁵⁴

b. Relevance to AI services

Although AI products have not yet been directly targeted, all designated companies are leading deployers of the technology. The absence of AI-specific enforcement therefore likely reflects the nascency of generative AI markets and of their integration into the broader ecosystems.

Prospectively, Section 19a GWB is likely to be applied to AI services, particularly large language models (LLMs) embedded in search engines, operating systems, office software, or communication platforms. Prospective conduct, such as self-preferencing in AI-generated results, particularly favoring affiliated services in response outputs,⁵⁵ or discriminatory access to

註53 : On the underlying rationale of Section 19a GWB: Deutscher Bundestag, Drucksache 19/23492, p. 73, available at:

<https://dserver.bundestag.de/btd/19/234/1923492.pdf> (in German).

註54 : The FCA has designated Alphabet (Google), Amazon, Apple, Meta (Facebook) and Microsoft as of April 2026. An overview in English of all proceedings is available at:

https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Downloads/List_proceedings_digital_companies.pdf?__blob=publicationFile&v=20 (accessed 20 April 2026).

註55 : The definitive case for self-preferencing in ranking was *Google (Shopping)*, in which the EC fined Google EUR 2.4 billion for favoring its proprietary shopping comparison service in its

model capabilities, and tying practices⁵⁶ may fall within the section's scope.

c. Distinction from the DMA

Section 19a GWB and the DMA are designed to function complementarily, with enforcement of the DMA exclusively assigned to the EC. However, much of the conduct targeted by Section 19a is also covered by Articles 5-7 DMA. As with abuse of dominance rules, Section 19a GWB thus serves as a national tool for addressing conduct beyond the scope of EU law. The German regime may thus act as a regulatory “first mover,” particularly in emerging areas such as AI, as Sec. 19a offers greater flexibility by design.⁵⁷ Nevertheless, the FCA cooperates closely with the EC when enforcing Section 19a in practice.⁵⁸

2. Sec. 32f (3) and (4) GWB and the risk of no-fault (structural) remedies

Section 32f (3) Sentence 1 GWB substantially

expands the FCO's remedial powers following sector inquiries. Where the authority identifies a “significant and continuous disruption of competition,” it may impose behavioral or (non-divestiture) structural remedies without establishing a competition law infringement (“no-fault remedies”).

The FCO retains discretion both to impose remedies and to select their form. Section 32f (3) Sentence 2 provides a non-exhaustive list of behavioral measures, including data access obligations, contractual requirements, restrictions on information disclosure, and the implementation of information barriers. Although subsidiary to other enforcement tools, this mechanism creates additional risk for companies across the AI value chain. For example, where a sector inquiry identifies systemic entry barriers in AI foundation models, the FCO could impose data access obligations to restore competitive conditions.

search engine's ranking, see EC, Press release of 27 June 2017, https://ec.europa.eu/commission/presscorner/detail/ro/memo_17_1785 (accessed 20 April 2026). In other cases, fee-paying products or services were rank promoted in non-transparent or discriminatory manners, see OECD, “Algorithmic Competition” , roundtable background note (2023), p. 23, https://www.oecd.org/content/dam/oecd/en/publications/reports/2023/05/algorithmic-competition_2be02d00/cb3b2075-en.pdf.

註56 : For a universally-applicable description of potential and present AI-hardware tying conduct, and an analysis under US antitrust law, see Hiatt, “The Potential Antitrust Implications of Tying Hardware with AI” , The University of Chicago Business Law Review (Online Edition '25), <https://businesslawreview.uchicago.edu/online-archive/potential-antitrust-implications-tying-hardware-ai> (accessed 20 April 2026).

註57 : Deutscher Bundestag, Drucksache 19/25868, p. 9 and 113, available at: <https://dserver.bundestag.de/btd/19/258/1925868.pdf> (in German).

註58 : FCA, Proceedings against Alphabet/Google, https://www.bundeskartellamt.de/EN/Digital_economy/proceedings_against_large_digital_companies/Alphabet_Google/Alphabet_Google_node.html (accessed 20 April 2026)

Sec. 32f (4) goes further by allowing divestitures as a measure of last resort, either following a sector inquiry or in relation to companies designated under Sec. 19a GWB.⁵⁹ Unlike remedies under Section 32f (3), divestitures must at least significantly reduce or eliminate the distortion of competition, reflecting their invasive nature and the principle of proportionality.⁶⁰

For companies across the AI stack, this creates a novel regulatory risk: intervention may be based on market structure alone, without requiring specific conduct or prior designation (e.g., under Section 19a). While this enables flexible enforcement, it increases legal uncertainty. Although the sections' practical application remains limited,⁶¹ greater scrutiny of market structures may be expected.

VI. Conclusion

The rapid integration of AI into commercial decision-making is also reshaping the competition law framework governing them. While established principles under Articles 101

and 102 TFEU remain fully applicable to AI-enabled conduct, enforcement is evolving quickly in response to technological developments. Companies must therefore assess competition law risks across the entire AI value chain—from algorithm design and AI collaboration to acquisitions, platform strategies and deployment.

At the same time, the regulatory landscape is becoming increasingly dynamic and, in some respects, less predictable. The expansion of transaction value thresholds, the emergence of national call-in powers, the post-*Towercast* application of abuse of dominance rules to below-threshold acquisitions, and Germany's far-reaching intervention powers illustrate a broader shift towards earlier, more flexible, and sometimes even politically motivated enforcement. Rather than converging, national regimes are often developing in parallel, creating additional complexity for businesses operating across jurisdictions. For companies developing, acquiring or deploying AI systems, antitrust compliance requires continuous monitoring of a rapidly evolving European enforcement landscape.

註59 : On Sec. 32f (4) as an *ultima ratio* enforcement tool, see Deutscher Bundestag, Drucksache 20/6824, p. 17 and 29, available at:

<https://dserver.bundestag.de/btd/20/068/2006824.pdf> (in German).

註60 : *Kühling and Engelbracht* in: Immenga/Mestmäcker (publishers), Wettbewerbsrecht (“Competition Law”), 7th Ed. 2025, GWB § 32f, para. 53.

註61 : To date, the FCO has applied Section 32f (3) GWB only in the wholesale fuel market. If it confirms a significant and continuous disruption of competition that market, it may consider imposing measures, see FCO, Press release, 6. March 2025, available at:

https://www.bundeskartellamt.de/SharedDocs/Meldung/DE/Pressemitteilungen/2025/03_06_2025_Verfahren_32f.html (in German).