



Company Law

State Aid Monitoring: The Role of the WEKO Secretariat ***Remains Unclear***

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At a glance

- The WAK-S wants to transfer the oversight of state aid to an independent state aid commission.
- This would separate the decision-making bodies from WEKO, but the secretariat would remain the same.
- This makes the institutional reform of the competition authorities even more urgent.

The WAK-S advocates transferring the oversight of state aid to an independent state aid commission. Its members should not be part of the WEKO and should be appointed separately by the Federal Council. Only the secretariat should be jointly managed.

Separate committees, shared secretariat

The decision follows a reasonable principle: Those who decide on state aid should be specifically appointed and authorized to do so. However, the institutional separation ends at the secretariat. In the future, the same agency will support two separate commissions. This makes one question—which has long remained unresolved in antitrust law—even more pressing: What role should the secretariat play when it investigates cases, files motions, and simultaneously participates in the preparation of decisions?

This is precisely where a structural imbalance exists. A part-time commission is pitted against a secretariat with approximately 70 full-time positions and a significant advantage in terms of knowledge and information. Without a clear separation of roles, there is a risk that proceedings will effectively be shaped by the investigative apparatus.

Antitrust reform must address the real issues

The upcoming reform of the institutions under the Antitrust Act must therefore establish a clear separation between investigations and decision-making. The Secretariat should conduct investigations and file motions, but should neither participate in decision-making deliberations nor draft decisions. At the same time, WEKO needs its own expert resources and independent support.

Effective judicial review is equally important. Antitrust sanctions are subject to the guarantees of Article 6 of the ECHR. These guarantees require that decisions be subject to comprehensive review. Today, such oversight is largely lacking. That is why a specialized body is needed to review WEKO decisions in a professional and timely manner.

The decision by the WAK-S demonstrates the importance Parliament attaches to a clear institutional framework. At the same time, it makes it clear that the separation of decision-making bodies alone is not sufficient. As long as the

Competition Commission (WEKO) and the State Aid Commission rely on the same secretariat, existing deficiencies in the rule of law will persist and may even be carried over into a new system. The reform of antitrust institutions must therefore limit the secretariat's scope of authority and ensure effective judicial oversight.



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