

BWB



BUNDESWETTBEWERBSBEHÖRDE

Transaction value:

New provision in Austrian Cartel Act

Daniela Trampert

**Conference on Current Trends in
Competition**

25 October 2017

Current thresholds

Merger notification if

- **worldwide** total turnover $> € 300$ Mio
- **domestic** total turnover $> € 30$ Mio
- at least **2 companies** with worldwide turnover $> € 5$ Mio

Except

- only 1 company domestic turnover $> € 5$ Mio AND
- worldwide total turnover of other companies $< € 30$ Mio

Current thresholds (2)

Special provision for media mergers

- multiplication for thresholds on worldwide and domestic total turnover
 - media companies x 200
 - auxiliary media companies x 20
- still need to have at least 2 companies with worldwide turnover $> \text{€ } 5 \text{ Mio}$

Current thresholds (3)

Local nexus required

- notification only if (potential) effect on domestic market

New additional threshold

Background

- digital economy discussions in Austria
- fear of market dominant firms w/o prior control
- ➔ pioneer together with Germany in Europe

Amendment to Cartel Act in 2017

- new threshold for merger notification as of 1 November 2017 (§ 9 para 4 KartG)
- notification possible since 9 October 2017

Text of new provision

Mergers not falling under other thresholds are still to be notified if

- worldwide total turnover > € 300 mio
- domestic total turnover > € 15 mio
- **value of equivalent > € 200 mio**

AND

- **target company is active in Austria to a considerable extent**

Basic considerations

- focus on digital companies, but valid for all industries
 - worldwide turnover:
 - same threshold; 1 big company
 - domestic turnover:
 - half of usual threshold: capture cases with relevance for Austrian market
 - free services in digital market
-

Basic considerations (2)

- “equivalent”: € 200 Mio
 - smaller Austrian economy
- “active to a considerable extent”:
 - local nexus
- explanatory notes to law:
 - few explanations
 - explicitly mention German GWB: Orientation
- few notifications expected

Details: equivalent

“all assets and monetary value the seller receives from buyer, including liabilities taken over by buyer”:

- same wording as in Germany
- purchase price
- asset deals
- all other equivalent
- liabilities

Details:

active to considerable extent

- geographic allocation of turnover:
 - “according to location of customer/
where customer uses the product/service”
- considerable extent
 - “not only marginal activities”
 - company site/subsidiary of target in Austria?
 - commonly accepted measure in industry:
e.g. monthly active user, unique visits

Guidelines

- Joint guidelines of Austrian and German Competition Authority
 - Germany and Austria are pioneers in Europe
 - identical or very similar provisions
 - Austrian explanatory notes explicitly mention German provisions
- ➔ level playing field
- ➔ easy implementation for companies

Guidelines (2)

- Timeline
 - at the moment internal discussions
 - public consultation

NCA ready to discuss in case of questions

Guidelines (3): content

- “preliminary” as new questions will arise
- equivalent:
 - reference point for calculation: time of notification
 - companies should explain calculation
 - calculation in particular relevant where close to threshold
 - technical details on calculation: e.g. securities transaction

Guidelines (4): content

- active to considerable extent:
 - often difficult to measure by turnover (reason for new provision)
 - location of target: subsidiary?
 - location of current activity?
 - location of customer/use?
 - commonly accepted measures in industry
 - examples given

Outlook

- Public consultation of guidelines
- Competition authority ready to discuss cases

BWB



BUNDESWETTBEWERBSBEHÖRDE

Thank you for your attention!

daniela.trampert@bwb.gv.at



**Thank
You!!!**