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The International Comparative Legal Guide to:

Merger Control 2013

9th Edition

A practical cross-border insight into merger control

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EDITORIAL

Welcome to the ninth edition of *The International Comparative Legal Guide to: Merger Control*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of merger control.

It is divided into two main sections:

Four general chapters. These are designed to provide readers with a comprehensive overview of key issues affecting merger control, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in merger control in 54 jurisdictions.

All chapters are written by leading merger control lawyers and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Nigel Parr and Ruth Sander of Ashurst LLP for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The International Comparative Legal Guide series is also available online at www.iclg.co.uk.

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1 Relevant Authorities and Legislation

1.1 Who is/are the relevant merger authority(ies)?

The relevant merger authorities in Austria are the Federal Competition Authority (*Bundeswettbewerbsbehörde* "FCA"), an independent administrative body assigned to the Federal Minister of Economics and Labour, the Federal Cartel Prosecutor (*Bundeskartellanwalt* "FCP", together with the FCA referred to as the "Official Parties"), who is assigned to the Federal Minister of Justice, and the Cartel Court (*Kartellgericht*).

The Official Parties assess notifications in phase I proceedings. Should a notification raise competition concerns, either Official Party may apply to the Cartel Court to open phase II proceedings. Decisions of the Cartel Court may be appealed before the Supreme Cartel Court (*Kartellobergericht*).

Finally, the Competition Commission (*Wettbewerbskommission*) is an advisory body that may give (non-binding) recommendations to the FCA whether or not to apply for an in-depth investigation of a notified merger.

1.2 What is the merger legislation?

The relevant merger legislation is the Cartel Act 2005 (*Kartellgesetz* "Cartel Act"), particularly part I chapter 3 of the Cartel Act. In addition to the Cartel Act, the Competition Act (*Wettbewerbsgesetz*) contains some relevant procedural rules.

Transactions that are notifiable in Austria may at the same time have Community Dimension pursuant to Article 1 of the EC Merger Control Regulation (Council Regulation No 139/2004; "ECMR"). Generally, the European Commission has sole jurisdiction to assess transactions with a Community Dimension. However, the Cartel Act contains specific rules on media mergers (see questions 2.4 and 4.1). In view of the exemption from the "one-stop-shop principle" pursuant to Article 21 (4) ECMR, media mergers might require a filing to both the European Commission and the FCA.

1.3 Is there any other relevant legislation for foreign mergers?

There is no other relevant legislation for foreign mergers.

1.4 Is there any other relevant legislation for mergers in particular sectors?

Merger rules for particular sectors are contained in the Cartel Act and sector specific regulation. The Cartel Act contains special provisions for mergers in the banking (see questions 2.1 and 3.2) and media (see questions 2.4 and 4.1) sectors.

Further, it is foreseen that regulatory authorities in the energy and telecommunication sectors may submit (*ex officio* or upon request by the Cartel Court) advisory opinions on notified transactions that affect the respective sector. In transactions affecting air transport, the Federal Minister for Transport, Innovation and Technology may submit statements. Finally, the Chamber of Commerce, the Chamber of Labour and the presidential conference of the Federal Chambers of Agriculture may also submit statements, if the transaction affects the relevant sector.

In addition to the Cartel Act, sector specific legislation applies, *inter alia*, to transactions in the energy and air carrier sector. In the banking, insurance and media sectors, the planned transaction has to be notified also to the sector-specific authority.

Furthermore, mergers between collecting societies do not fall within the ambit of the Cartel Act merger control. They have to be cleared by the respective regulatory authority.

2 Transactions Caught by Merger Control Legislation

2.1 Which types of transaction are caught - in particular, how is the concept of "control" defined?

Section 7 of the Cartel Act catches the following types of transactions:

- the acquisition of an undertaking or a major part thereof, especially by merger or transformation;
- the acquisition of rights in the business of another undertaking by management or lease agreement;
- the (direct or indirect) acquisition of shares, if thereby a shareholding of 25% or 50% is attained or exceeded;
- the establishment of interlocking directorships whereby at least half of the management or members of the supervisory boards of two or more undertakings are identical;
- any other concentration by which a controlling influence over another undertaking may be exercised; and
- the establishment of a full-function joint venture.

Furthermore, the conclusion of certain agreements between banks (as defined in the Banking Act) also constitutes a concentration pursuant to the Cartel Act.

However, intra-group transactions are not caught by the Cartel Act.

The Cartel Act does not provide for a definition of control. In

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practice, one may refer to the notion of control under EC merger rules. Hence, an undertaking has control over another undertaking, if it has influence on decisions concerning management, budget, business plan or strategically significant investments. According to the Austrian Supreme Cartel Court, it is decisive whether or not an undertaking may enforce its own competitive interests when it comes to decisions regarding the competitive market position of the other undertaking.

2.2 Can the acquisition of a minority shareholding amount to a "merger"?

Yes, the Cartel Act catches any (direct or indirect) acquisition of a shareholding of 25% or more in another undertaking, regardless of whether or not control is conferred by the transaction. Therefore only the acquisition of a non-controlling interest of less than 25%, by which no atypical rights are conferred, does not constitute a merger.

However, please note that the 25% threshold may also be triggered if only 25% of the voting rights are acquired or similar rights to those of a 25% shareholder.

2.3 Are joint ventures subject to merger control?

In line with Article 3 ECMR the creation of a full function joint venture is subject to merger control. Austrian merger control rules catch both concentrative and cooperative full function joint ventures.

The concept of full functionality corresponds with EC merger rules: a joint venture is deemed to be full function if it will perform on a lasting basis, all functions of an independent economic entity, i.e. it has to possess sufficient resources, it has to be established permanently and must not only fulfil auxiliary functions for, or depend on, the business relations to its founders.

However, the creation of a non-full function joint venture could nevertheless constitute a notifiable transaction if the assets contributed to the joint venture are considered (substantial parts of) undertakings. In this case, the transaction would qualify as a concentration within the meaning of the Austrian merger control regime since each mother company of the joint venture acquires shares in/control over an undertaking previously solely owned/controlled by the other mother company.

2.4 What are the jurisdictional thresholds for application of merger control?

A concentration has to be notified to the FCA if the following accumulative thresholds are fulfilled (based on the revenues of the last business year):

1. the combined worldwide turnover of all undertakings concerned exceeds EUR 300 million;
2. the combined Austrian turnover of all undertakings concerned exceeds EUR 30 million; and
3. the individual worldwide turnover of each of at least two of the undertakings concerned exceeds EUR 5 million.

However, even if the above thresholds are satisfied, no obligation to notify exists if:

- the Austrian turnover of only one of the undertakings concerned exceeds EUR 5 million; and
- the combined worldwide turnover of all other undertakings concerned does not exceed EUR 30 million.

For calculating the turnover thresholds, the revenues of all entities that are linked with an undertaking concerned as defined in Section 7 of the Cartel Act must be attributed, i.e. also the turnover of a 25% subsidiary must be attributed fully. Indirect shareholdings only have to be considered, if the direct subsidiary (of at least 25%) holds a controlling interest in the indirect subsidiary. Revenues of the seller shall be disregarded (unless the seller remains linked with the target undertaking as defined in Section 7 Cartel Act). Furthermore, specific provisions for the calculation of turnover apply for mergers in the banking, insurance and media sectors. As regards "media mergers" (i.e. mergers involving two undertakings that are – or hold a share of at least 25% in – either a media undertaking, a media service, or a media support undertaking), the Cartel Act stipulates that, with regard to the first and second turnover thresholds mentioned above, the turnover of media undertakings and media service undertakings has to be multiplied by 200, whereas the revenues of media support undertakings have to be multiplied by 20.

2.5 Does merger control apply in the absence of a substantive overlap?

Merger control also applies in the absence of a substantive overlap.

2.6 In what circumstances is it likely that transactions between parties outside Austria ("foreign to foreign") transactions) would be caught by your merger control legislation?

The Cartel Act only applies to agreements and practices that may impact the Austrian market. Hence, a transaction, despite meeting the turnover thresholds, does not require notification if it has no domestic effect, i.e. generally if the target is not active in Austria (or a larger market that Austria is a part of) and the transaction is also not apt to enhance the acquirer's market position in Austria (or a larger market that Austria is a part of).

So far, the Cartel Court has been rather negligent to decline a notification obligation for lack of domestic effects. However, with regard to the acquisition of a Czech and a Slovakian savings bank with purely local businesses by the Austrian Erste Bank, the Supreme Cartel Court overturned the decision of the Cartel Court by ruling that a strengthening of resources, such as an increase of financial power of Erste Bank in Austria, alone would not suffice in order to establish an effect on the Austrian market, if the target undertaking is active in a different limited geographic market (not including Austria) and has no turnover in Austria.

2.7 Please describe any mechanisms whereby the operation of the jurisdictional thresholds may be overridden by other provisions.

In addition to transactions that are not deemed concentrations pursuant to the Cartel Act, the operation of the jurisdictional thresholds may be overridden by the application of the effects doctrine (see question 2.6 above), and the one-stop-shop under the ECMR (see question 1.2 above).

2.8 Where a merger takes place in stages, what principles are applied in order to identify whether the various stages constitute a single transaction or a series of transactions?

There is no Austrian provision similar to Article 5 (2) ECMR. However, several concentrations that are part of the same project and are therefore economically linked may be notified in one "joint" filing, even if the various transactions amount to different types of concentrations.

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3 Notification and its Impact on the Transaction Timetable

3.1 Where the jurisdictional thresholds are met, is notification compulsory and is there a deadline for notification?

Concentrations that meet the turnover thresholds must be notified to the FCA (unless the transaction has Community Dimension pursuant to Article 1 ECMR; see also question 1.2 above). There is no formal filing deadline; however, a transaction must not be implemented prior to obtaining clearance.

3.2 Please describe any exceptions where, even though the jurisdictional thresholds are met, clearance is not required.

With regard to the banking sector, the Cartel Act excludes certain transactions from the applicability of the merger control provisions irrespective of whether the turnover thresholds are met, if an interest in an undertaking is acquired:

i) by a bank for the sole purpose of reselling the interest acquired;

ii) by a bank for the sole purpose of restructuring the undertaking in which the interest is acquired or serving as a guarantee for a claim against the respective undertaking; or

iii) for the sole purpose of managing and commercialising the interest acquired (investment fund or financing of capital business).

In such a scenario, the acquirer is restricted in the use of his voting rights. In case of i) or ii), the acquirer has to resell the interest acquired within one year or after the restructuring has been accomplished or after the purpose of the guarantee has ceased to exist respectively.

For other exceptions by which the operation of the jurisdictional thresholds is overridden, see question 2.7 above.

3.3 Where a merger technically requires notification and clearance, what are the risks of not filing? Are there any formal sanctions?

Companies must not implement a transaction prior to obtaining formal clearance. Possible sanctions for the infringement of this suspension clause are twofold: first, the underlying agreements/acts are null and void; and second, the undertakings may be fined up to 10% of the worldwide annual turnover (by the Cartel Court upon application of the Official Parties). Non-compliance with remedies imposed on the parties is tantamount to breaching the suspension clause and may lead to similar fines. (See also question 5.6.)

When assessing the amount of fine, the Cartel Court will, in particular, take into account the severity and duration of the infringement, the enrichment achieved by the infringement, the degree of fault and the economic capacity of the undertaking. So far, the highest fine imposed by the Cartel Court for an infringement of the suspension clause amounted to EUR 1.5 million. In another case, the Cartel Court, however, imposed only a symbolic fine of EUR 5,000 for a breach of the suspension clause, as the undertaking in question filed the acquisition retrospectively on its own initiative. Further grounds for the low amount of fine were (i) a minor degree of fault, as the transaction was focussed on Germany and therefore, the obligation to notify in Austria, was – according to the Cartel Court – less obvious as in a purely Austrian case, (ii) the fact that the belated notification had no negative impact on competition (in particular, no enrichment of the purchasing undertaking was claimed), and (iii) that the transaction did not lead to competition concerns. However, there is no established practice of the authorities yet as regards the amount of fine to be imposed for gun-jumping. Another case currently pending before the Supreme Cartel Court, where the parties filed retrospectively on their own account, is expected to bring further clarifications.

For the sake of completeness, please note that a fine of up to 1% of the worldwide annual turnover may be imposed, if:

i) (in cases as described under question 3.2 above) an acquirer does not comply with an order of the court not to execute its voting rights or to resell the shares acquired;

ii) incorrect or misleading information was given in a notification; or

iii) an undertaking does not comply with an order of the court to provide information or to submit documents.

3.4 Is it possible to carve out local completion of a merger to avoid delaying global completion?

There is no provision or Court ruling on the permissibility of carve-out mechanisms. On the one hand, any action by which the transaction is implemented in the sense of the Cartel Act (see question 3.7 below) constitutes an infringement of the suspension clause (see question 3.3 above). On the other hand, the Cartel Act only applies to facts that may have an impact on the Austrian market. In view of this, carving out the Austrian part of the transaction should be possible.

3.5 At what stage in the transaction timetable can the notification be filed?

A notification may be filed as soon as the undertakings concerned can demonstrate their intention to enter into the ultimate transaction agreements and close the transaction in the foreseeable future (e.g. by means of a Memorandum of Understanding or a Letter of Intention).

3.6 What is the timeframe for scrutiny of the merger by the merger authority? What are the main stages in the regulatory process? Can the timeframe be suspended by the authority?

The Official Parties have four weeks upon submission of a notification (provided that the filing fee has been paid in due form; see question 3.10 below) to assess the transaction and decide whether to open phase II proceedings before the Cartel Court (by applying for an in-depth investigation).

A transaction is cleared in phase I if the statutory four-week period expires and neither of the Official Parties has lodged an appeal for phase II proceedings (the Official Parties have to issue a declarative clearance notice to confirm that no application has been lodged). In addition, a transaction is also cleared if both Official Parties waive their right to apply for an in-depth investigation. However, the Official Parties are rather reluctant to grant “early clearance”. According to a Notice of the FCA, it will – generally – only waive its right after two weeks and three days following publication of the transaction on the FCA’s website (which will usually occur on the day of submission or the next working day) and only if it safeguarded that the transaction does not raise competition concerns.

Phase II proceedings must be completed within five months after the Official Parties have requested an in-depth investigation by the Cartel Court. A transaction is cleared in phase II if either of the

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Official Party(ies) withdraw(s) the application for phase II proceedings or the Cartel Court clears the transaction (with our without conditions).

Neither merger authority can expand the timeframe – there is no stop-the-clock mechanism. Therefore, if the Official Parties need to expand the timeframe of the phase I proceeding (for instance, since they have not been provided with the additional information required in an information request) they will request an in-depth proceeding before the Cartel Court in order to have more time to assess the case. If subsequently, they come to the conclusion that the transaction does not raise concerns, they would withdraw their application.

3.7 Is there any prohibition on completing the transaction before clearance is received or any compulsory waiting period has ended? What are the risks in completing before clearance is received?

Transactions must not be consummated prior to obtaining formal clearance. Infringements of the suspension clause may lead to fines of up to 10% of the worldwide turnover of the infringing undertaking and nullity of the implementing measures (see question 3.3 above). However, we note that the meaning of "implementation" has not been clarified ultimately by the Cartel Act or the Cartel Court. One ruling suggests, however, that the mere acquisition of shares and/or voting rights without the acquirer exercising any controlling influence does not amount to an unlawful implementation of the transaction. Again, this question has not been clarified yet.

3.8 Where notification is required, is there a prescribed format?

The Cartel Act only requires that, in the notification, accurate and complete information must be provided with regard to all facts by which a market dominant position may be established or enhanced; these facts are, in particular, the structure of ownership, the turnover on the relevant markets and the respective market shares of each undertaking concerned, as well as information regarding the general structure of the market. However, the Official Parties have published a Form Notification which undertakings are well-advised to adhere to. Should the Official Parties find that the submitted information does not suffice to assess the transaction, they usually apply for an in-depth investigation to gain time for the assessment, as requests for information do not prolong the statutory four-week period (see question 3.6 above).

3.9 Is there a short form or accelerated procedure for any types of mergers? Are there any informal ways in which the clearance timetable can be speeded up?

If there are no affected markets in the meaning of the Form Notification published by the FCA and the FCP, not all sections of the Form have to be completed.

An "affected market" is a market where:

- the transaction leads to or enhances a market dominant position (the Cartel Act provides for a presumption of market dominance if the following market shares are achieved: (i) a market share exceeding 30%; (ii) a market share exceeding 5%, if no more than two competitors are active on the same market; or (iii) a market share exceeding 5%, if the undertaking concerned is one of the four largest undertakings on the relevant market, which together account for a market share exceeding 80%);
- the activities of the parties involved overlap and the parties account for a combined market share of at least 15%; or
- the undertakings involved are active on markets up-or downstream of each other and a market share of 25% is achieved.

The only way of obtaining early clearance is by way of applying to the Official Parties to waive their right to request phase II proceedings (see question 3.6). There are no informal ways to speed up the process.

3.10 Who is responsible for making the notification and are there any filing fees?

Every undertaking concerned is entitled to file the notification. In addition, the seller is generally deemed to be entitled to submit a filing.

The filing fee is EUR 1,500 and has to be paid in cash to a specific account of the FCA. The original deposit slip has to be submitted with the filing in order to trigger the statutory four-week waiting period.

Should phase II proceedings be opened, the Cartel Court may impose a (additional) lump sum on the undertakings concerned of up to EUR 30,000. When assessing the costs, the court will take into consideration the politico-economic significance of the proceeding, its complexity, the economic capacity of the payer and to what extent the payer gave reason for the official acts. No additional fees have to be paid for proceedings before the Supreme Cartel Court (i.e. if a decision of the Cartel Court is challenged).

3.11 What impact, if any, do rules governing a public offer for a listed business have on the merger control clearance process in such cases?

The Austrian merger control regime does not provide for special rules for transactions concerning a public offer.

3.12 Will the notification be published?

After submission, the FCA will (usually still on the same day or otherwise on the next working day) publish a short statement on the filing of the notification on its website stating the parties to the concentration, the intended transaction and the affected industry. The publication of this statement triggers the two-week period for third parties to submit comments on the intended concentration (see question 4.4 below).

4 Substantive Assessment of the Merger and Outcome of the Process

4.1 What is the substantive test against which a merger will be assessed?

A merger has to be prohibited by the Cartel Court if it is expected to lead to the creation or strengthening of a market dominant position. An undertaking is dominant in the meaning of the Cartel Act if it can act on the market largely independently of other market participants. However, the Austrian Cartel Act contains a refutable presumption of market dominance if certain market share thresholds are met (see question 3.9 above).

The Cartel Act foresees that a media merger (see question 2.4) shall be assessed not only against its compatibility with competition rules, but also against the likelihood of the transaction adversely affecting media plurality in Austria.

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4.2 To what extent are efficiency considerations taken into account?

The Cartel Act explicitly foresees that – even if the transaction creates or strengthens a market dominant position – it has to be cleared if (i) its efficiencies outweigh its detrimental effects, or (ii) the merger is economically justified and essential for the international competitiveness of the undertakings concerned. Accordingly, the notification form published by the FCA also asks for such efficiencies in its section 7.

4.3 Are non-competition issues taken into account in assessing the merger?

Non-compete clauses are not assessed by the Official Parties in the merger process. It is the parties' responsibility to self-assess whether a non-compete is indeed ancillary. When looking at the permissibility of non-compete covenants, the EU benchmark (which in principle allows for a two-year non-compete imposed on the seller of a business, and a three-year non-compete if know-how is transferred together with the divested business) should also be considered under Austrian law.

4.4 What is the scope for the involvement of third parties (or complainants) in the regulatory scrutiny process?

Within two weeks upon publication of the filing on the website of the FCA, any third party whose legal or economic interests are affected by the transaction may submit a written statement to the FCA and/or the FCP. However, the intervenient has no right to a specific treatment of its statement.

Within four weeks upon the publication of the fact that phase II proceedings have been initiated before the Cartel Court, undertakings could submit written statements to the Cartel Court. However, during the Court proceedings, interveners have no right to a specific treatment of their statements and no standing as a party to the proceedings.

With regard to the involvement of the relevant regulatory authorities and chambers, see question 1.4 above.

4.5 What information gathering powers does the regulator enjoy in relation to the scrutiny of a merger?

Generally, the FCA is vested with all the investigative powers that are necessary in order to fulfil its duties. In particular, the FCA may ask undertakings to provide all necessary information, as well as review and copy relevant documents. In practice, the FCA sends information requests to the undertakings concerned, as well as other market participants, i.e. competitors, suppliers and/or customers.

Furthermore, the FCA also has the right to conduct a dawn raid, if it suspects an infringement of the prohibition to implement a merger before clearance.

4.6 During the regulatory process, what provision is there for the protection of commercially sensitive information?

When submitting a notification, a non-confidential version of the filing has to be provided. Generally, the FCA does not grant access to its file. However, the FCA may forward a non-confidential version of submissions to third parties for their comments.

With regard to proceedings before the Cartel Court, the Cartel Act provides for the protection of business secrets: third parties may only access the file of the Court if all parties to the proceeding agree.

5 The End of the Process: Remedies, Appeals and Enforcement

5.1 How does the regulatory process end?

Phase I proceedings may end by (i) time lapse, if neither Official Party has applied for an in-depth investigation or withdrew their respective application(s) within the period of four weeks, or (ii) issuance of a waiver by the Official Parties (see also question 3.6 above).

Phase II proceedings before the Cartel Court end by (i) the Official Parties withdrawing the application for an in-depth investigation, (ii) the Cartel Court rejecting the application of the Official Parties, as the merger was not notifiable, (iii) the Cartel Court declaring the merger not compatible with merger control rules, or (iv) the Cartel Court clearing the notified transaction (subject to conditions or unconditionally). Decisions of the Cartel Court may be appealed before the Supreme Cartel Court.

In addition, the proceedings also end if the parties withdraw their notification.

5.2 Where competition problems are identified, is it possible to negotiate "remedies" which are acceptable to the parties?

The Cartel Act expressly foresees the possibility of the undertakings concerned with the Official Parties on acceptable remedies, in both phase I and phase II proceedings. Also, the Cartel Court may clear a transaction subject to restrictions or conditions.

5.3 To what extent have remedies been imposed in foreign-to-foreign mergers?

As far as can be gathered from the information publicly available, there have been two cases relating to foreign-to-foreign transactions, where the undertakings involved agreed on commitments with the FCA in order to avoid phase II proceedings before the Cartel Court. However, from the limited information available, it may not be excluded that also in these two cases, Austrian subsidiaries have been involved.

5.4 At what stage in the process can the negotiation of remedies be commenced? Please describe any relevant procedural steps and deadlines.

Remedies can be suggested at any stage during the merger control proceedings as there are no formal deadlines for their submission. If competition concerns are expected, the notifying parties are well-advised to submit commitment proposals already in phase I (even together with the merger notification) in order to avoid that the Official Parties file an application for an in-depth investigation.

5.5 If a divestment remedy is required, does the merger authority have a standard approach to the terms and conditions to be applied to the divestment?

There is no official statement of the Official Parties with regard to terms and conditions to be applied to divestments, as remedies are set individually in each case.

5.6 Can the parties complete the merger before the remedies have been complied with?

Non-compliance with commitments is tantamount to a breach of the

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suspension clause, i.e. it may entail fines and the respective acts are exposed to nullity. It therefore depends on the wording of the remedy, whether it is allowed to close the transaction prior to complying with the undertaken commitment.

5.7 How are any negotiated remedies enforced?

Non-compliance with remedies is tantamount to a breach of the suspension clause (see also question 3.3 above). Furthermore, the Cartel Court may (upon application of the Official Parties, of the regulatory authorities, of the Chambers of Commerce, Labour or Agriculture or of any undertaking having a legal or economic interest in the proceeding) impose subsequent measures or hand-down an order to stop the non-adherence to the remedies imposed.

Finally, penalties amounting to 5% of the average daily turnover in the preceding business year may be imposed for each day of infringement.

Currently, the FCA investigates all cases since 2002 (51 merger control and 4 antitrust cases), which involved decisions on remedies. For this purpose, the FCA sends out questionnaires to undertakings concerned in order to assess the level of compliance and the effectiveness of the restrictions and conditions imposed. The investigation is still ongoing and its completion date is not foreseeable for the time being.

5.8 Will a clearance decision cover ancillary restrictions?

The Cartel Court is believed to follow the EC Notice on ancillary restraints, i.e. anti-competitive provisions that are pivotal for the success of the concentration and are proportionally covered by the clearance decision.

5.9 Can a decision on merger clearance be appealed?

A clearance decision may be appealed before the Supreme Cartel Court which has two months to decide on the appeal.

5.10 What is the time limit for any appeal?

The ruling of the Cartel Court may be appealed within four weeks upon receipt of the decision.

5.11 Is there a time limit for enforcement of merger control legislation?

A fine may only be imposed by the Cartel Court if either of the Official Parties has applied for fines within five years from the day the infringement has been terminated.

6 Miscellaneous

6.1 To what extent does the merger authority in Austria liaise with those in other jurisdictions?

The FCA is entitled to provide the European Commission and the competition authorities of other EC Member States with all information and documents required for the fulfilment of their duties. *Vice versa*, the FCA may also ask for the provision of such information and documents.

As the FCA is a member of the European and the International Competition Network, the FCA cooperates closely with all other members of the networks. Furthermore, the FCA is part of the Marchfeld Forum, a platform for Central and Eastern European competition authorities; it attends the annual meetings of the European Competition Authorities (ECA) and it recently joined the Central European Competition Initiative (CECI), a platform for information exchange between Central European competition authorities.

6.2 Are there any proposals for reform of the merger control regime in Austria?

The entering into force of an amendment to the Cartel Act and the Competition Act is envisaged for 1 January 2013. According to the draft available (which, however, still remains to be adopted), the most significant amendment to the merger control regime is an intended introduction of a possibility to extend the deadlines for phase I and phase II proceedings. Subject to a respective application of the notifying undertaking, the four-week period (phase I) will be extended to six weeks (such an application may be reasonable to grant the authorities more time for their assessment in order to avoid phase II proceedings). Further, phase II proceedings will – subject to a respective application by the notifying party – be extended to six (instead of five) months (this amendment shall give the parties more time to negotiate with the court whether remedies could solve possible competition concerns).

Other intended changes relate to the abolition of the qualification of the conclusion of certain agreements between banks as a notifiable concentration and a remote increase in the fees for phase II proceedings.

6.3 Please identify the date as at which your answers are up to date.

Our answers are up to date as of September 2012.

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