Press release

Bundeskartellamt / Merger Control

Joint guidance on new transaction value threshold in German and Austrian merger control submitted for public consultation

Bonn, 14 May 2018: The Bundeskartellamt and the Austrian Federal Competition Authority have today submitted for public consultation a joint draft guidance paper on the application of the new transaction value threshold in merger control.

In recent months merger control thresholds in both Germany and Austria were supplemented with a threshold that is based on a purchase price criterion. Before, corporate mergers in both countries only had to be notified and examined if the turnover achieved by the companies concerned reached certain minimum thresholds. However, these purely turnover-based criteria sometimes failed to cover important mergers, especially in the digital economy. Facebook’s takeover of WhatsApp is a graphic example of cases where very high purchase prices are paid for companies which as yet have achieved little or hardly any turnover.

With the new thresholds, mergers will also have to be notified in Germany and Austria where the target company (still) only achieves a low turnover but where the economic or competitive significance of the merger is reflected in a high transaction value (in Germany more than 400 million euros - in Austria more than 200 million euros). In such acquisitions, the high purchase price is often indicative of an innovative business idea with great competitive market potential.

Andreas Mundt, President of the Bundeskartellamt: ”The guidance paper is intended to provide companies and legal experts with some assistance on how to interpret the new legal provisions. In view of the close integration between the German and Austrian economies, it is to be expected that a substantial number of mergers will have to be notified in both countries in accordance with the new provisions.”
Theodor Thanner, Director General of the Austrian Federal Competition Authority: "The transaction value thresholds are a key element in dealing with issues raised by digitalisation. The thresholds in Austria and Germany are similar in scope. In view of the close cooperation between our two authorities we therefore considered it appropriate to publish a joint guidance paper on how the respective laws should be interpreted. Using case examples, the paper explains how key criteria of the new provisions are to be applied and defined."

The draft guidance paper is available for download on the Bundeskartellamt's website. An English translation of the text is also available: Guidance on Transaction Value Thresholds for Mandatory Pre-merger Notification.

Comments on the draft guidance can be submitted until 8 June 2018.

E-mail replies should be sent to the following address:

konsultation@bundeskartellamt.bund.de

A publication of the comments is planned. Respondents are therefore requested to send an additional copy of their comments in which any business secrets have been blackened out.

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