[AT] Cartel Law Amendments

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Patrick M. Lissel
Sozietät Dr. Rehborn Rechtsanwälte, München

On 1 January 2006, a new Kartellgesetz (Cartel Act - KartG) and an amendment to the Wettbewerbsgesetz (Competition Act) entered into force in Austria. The new rules were introduced in response to European Council Regulation (EC) No. 1/2003 (OJ 2003 L 1/1), which came into force on 1 May 2004. In line with the EC Regulation, Austria has adopted the principle of a ban on cartels, together with a legal exception system. Special provisions for vertical competition restrictions have been abolished. In order to facilitate the exposure of cartels, a leniency programme has been introduced. Responsibility for applying Community law has also been defined.

The main amendments concern cartel law itself, particularly the provisions on cartels. The starting point here is the general ban on cartels enshrined in Art. 1 KartG. The rule forbids agreements between undertakings, decisions by associations of undertakings and concerted practices that are aimed at creating or actually cause an obstruction, restriction or distortion of competition. Such agreements and decisions are to be declared void. The new ban on cartels that restrict competition unilaterally goes beyond the provisions of the EC Regulation. The exceptions to the ban on cartels correspond with those set out in Art. 81.3 of the EC Treaty. So-called Bagatellkartelle (agreements of minor importance) are also excluded (Art. 2 KartG).

The rules on dominant market positions and concentration controls remain largely unchanged. The new examination criteria laid down in the EC Merger Control Regulation (VO (EG) Nr. 139/2004, ABl. 2004 L 24/1) have not been adopted. Mergers requiring notification must now be notified to the Bundeswettbewerbsbehörde (Federal Competition Agency) rather than the Kartellgericht (Cartel Court).They must be notified if the undertakings involved have an aggregate turnover of more than EUR 300 million worldwide and more than EUR 30 million domestically, and if at least two of them each achieve a worldwide turnover of more than EUR 5 million (Art. 9 KartG). The two lower thresholds have been raised slightly. A separate rule exists for so-called media concentrations.

In accordance with the EC rules, the Cartel Court must deal with violations of the Cartel Act and issue the necessary instructions to the undertakings and associations of undertakings concerned. It is now possible to declare

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commitments binding. The provisions on fines were largely adopted without amendment and the size of fines has been brought into line with the European rules. The possibility of imposing periodic penalty payments has also been introduced. A leniency programme has been created, based on the model used by the European Commission and other European Union member states. This enables the Federal Competition Agency to refuse a request to impose a fine if undertakings or associations of undertakings cease their involvement in a violation of the ban on cartels, inform the Federal Competition Agency about the violation and co-operate with it in order to clear up the matter in full.

The structure of the relevant institutions remains largely unchanged. With regard to the application of EC law, the Cartel Court is the competition authority responsible for issuing decisions in individual cases, within the meaning of EC Regulation No. 1/2003. The Bundeskartellanwalt (Federal Cartel Prosecutor) and the Federal Competition Agency are responsible for submitting claims. The Federal Cartel Prosecutor and the Federal Competition Agency are authorised to submit to the Commission and to the competition authorities of other member states binding declarations designed to assist the enforcement of European provisions on co-operation between the Commission and the competition authorities of the Member States.

Kartellgesetz 2005 - KartG 2005 - Bundesgesetz gegen Kartelle und andere Wettbewerbsbeschränkungen (BGBl I Nr 61/2005)

http://www.bwb.gv.at/BWB/Gesetze/Kartellgesetz/default.htm

Cartel Act, BGBl I Nr 61/2005

Wettbewerbsgesetz - WettbG - Bundesgesetz über die Einrichtung einer Bundeswettbewerbsbehörde (BGBl. I Nr. 62/2002 idF BGBl I Nr 62/2005)

http://www.bwb.gv.at/BWB/Gesetze/Wettbewerbsgesetz/default.htm

Competition Act, BGBl. I Nr. 62/2002 in the version of BGBl I Nr 62/2005

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