

ICN MERGER NOTIFICATION AND PROCEDURES TEMPLATE

Merger Working Group

Austria

14 June 2021

IMPORTANT NOTE: This template is intended to provide background on ICN jurisdiction’s merger notification and review procedures.

Reading the template is not a substitute for consulting the referenced statutes and regulations.

[Please include, where applicable, any references to relevant statutory provisions, regulations, or policies as well as references to publicly accessible sources, if any.]¹

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| 1. Merger notification and review materials [references to publicly accessible sources (homepage address) and indication of the languages in which these materials are available] |
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Statutory Laws

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| A. Notification provisions | art. 7-10 of the Austrian Cartel Act 2005, amended 2019 (<i>Kartellgesetz 2005, KartG</i>) A courtesy translation of the Cartel Act can be found at https://www.bwb.gv.at/en/factual_information/legal_basis/ |
| B. Substantive merger review Provisions | art. 12-13 of the Austrian Cartel Act 2005, amended 2019 (<i>Kartellgesetz 2005, KartG</i>). |
| C. Implementing regulations | none |
| D. Notification forms or information requirements | Merger Notification Form (“Formblatt”), published by the Federal Competition Authority (Bundeswettbewerbsbehörde, BWB) on its homepage in German https://www.bwb.gv.at/zusammenschlusse/ |

¹ Editor’s note: all the comments in [square brackets] are intended to assist the agency when answering this template but will be removed once the completed template is made public.

Interpretative Guidelines and Notices

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| E. Guidance on Merger Notification Process [e.g., information on calculation of thresholds, etc.] | The Joint guidance by BWB and Bundeskartellamt on the transaction value threshold introduced in 2017 can be found at https://www.bwb.gv.at/fileadmin/user_upload/Downloads/standpunkte/2018-07_Guidance_Transaction_Value_Thresholds.pdf |
| F. Guidance on Substantive Assessment in Merger Review [Please include reference separately, if applicable] | none |
| G. Has your agency published guidelines or directives on notification of mergers involving specific sectors (e.g., digital economy)? [If affirmative, please provide references and languages available] | no |
| H. Other relevant notices, policy statements, interpretations, rules, or guidance on aspects of merger review or the agency's decision-making process | none |

2. Agency (or Agencies) responsible for merger enforcement.

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| A. Name of the Agency which reviews mergers. If there is more than one agency, please describe the allocation of responsibilities. | <p>Filings have to be made with the Federal Competition Authority (<i>Bundeswettbewerbsbehörde, "BWB"</i>) which are then forwarded to the Federal Cartel Prosecutor ("<i>FCP</i>", <i>Bundeskartellanwalt</i>).</p> <p>The BWB and the FCP, referred to as the "official parties" (<i>Amstparteien</i>), may apply for an in-depth investigation (second phase proceedings) before the Higher Regional Court of Vienna as Cartel Court (<i>Oberlandesgericht Wien als Kartellgericht</i>), which is the decision-making authority.</p> |
| B. Contact details of the agency [address and telephone including the country code, email, website address and languages available on the website] | <p><u>Cartel Court:</u> Schmerlingplatz 11, A-1016 Vienna, T: +43 1 521520, F: +43 1 52152-3790;</p> |

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| | <p>Federal Competition Authority ("BWB"): Radetzkystrasse 2, A-1030 Vienna, T: +43 1 24508-0, F: +43 1 587 4200, www.bwb.gv.at (website available in German and partly in English)</p> <p>Federal Cartel Prosecutor ("FCP"): Schmerlingplatz 11, A-1016 Vienna, T: +43 1 52152-3057, F: +43 1 52152-3690, https://www.justiz.gv.at/html/default/8ab4a8a422985de30122a92c3e89637f.de.html (website available in German)</p> |
| <p>C. Is agency staff available for jurisdiction/filing guidance? [If yes, please provide contact points for questions on merger filing requirements and/or consultations]</p> | <p>Yes, the BWB's staff as well as the FCP are available for pre-notification consultations. For BWB please use the e-mail-adress POST-Anmeldepflicht@bwb.gv.at; for the FCP see contact details above, item 2.B</p> |

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| <p>3. Covered transactions</p> | |
| <p>A. Thorough definition of potentially covered transactions [i.e., share acquisitions, asset acquisitions, mergers, de-mergers, consolidations, consortia, amalgamations, joint ventures or other forms of contractual relationships, such as partnerships and alliance agreements]</p> | <p>Under the definition of the Cartel Act (art 7) the following transactions or measures constitute a concentration:</p> <ul style="list-style-type: none"> • the acquisition of the whole or a substantial part of an undertaking, especially by merger or conversion; • the acquisition of rights in the business of another undertaking by means of operational lease or management agreements; • the direct or indirect acquisition of shares in an undertaking if the participation held after the acquisition is or exceeds 25 % or 50 %; • at least half of the management or members of the supervisory boards of two or more undertakings are identical (interlocking boards); • any other connection of undertakings which allows one undertaking to have a direct or indirect dominant influence over another undertaking; • the establishment of a joint venture that fulfills all functions of an independent economic entity on a lasting basis. |

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| B. What is the geographic scope of transactions covered? | |
| | The merger has to affect the domestic market, irrespective of whether it is carried out domestically or abroad (art 24; “Inlandsauswirkung”). |
| C. If change of control is a determining factor, how is control defined and interpreted in practice? | |
| | The Cartel Act itself does not provide a precise definition of control. Under the Cartel Act, any transaction pursuant to which an undertaking obtains a controlling influence, directly or indirectly, over another undertaking, is deemed to be a merger or concentration. The term "controlling influence" is open to interpretation. Therefore, any factual, economic or legal measures which enable to participate significantly in the governance of an undertaking, may constitute a controlling influence. The notion of "control" under the EC Merger Regulation provides certain guidance. |
| D. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels? Are acquisitions of assets ever covered? If so, do the assets have to form a free-standing business or can the combination of the assets with the business of the acquirer be considered in order to have jurisdiction? Does the authority have jurisdiction over “bare” asset purchases, e.g. where the assets purchased do not relate to the acquirer’s existing business? | |
| | Yes, see answer 3.A above. |
| 4. Thresholds for notification | |
| A. What are the general thresholds for notification? [If the thresholds are subject to adjustment, state on what basis and how frequently (e.g., for inflation, annually)] | <p>A pre-merger notification must be made if in the last fiscal year before the transaction the combined aggregate turnover of the undertakings concerned (e.g. buyer and target company, merging companies) was</p> <ul style="list-style-type: none"> • on the worldwide market: at least EUR 300 million; • on the Austrian market: at least EUR 30 million; and if • at least two of the entrepreneurs or undertakings concerned each had an annual turnover of EUR 5 million on the worldwide market. |

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| | <p>Even where these thresholds are met, notification is not required if:</p> <ul style="list-style-type: none"> • only one of the undertakings concerned achieved, on the Austrian market, a turnover exceeding EUR 5 million; and • the combined aggregate worldwide turnover of the other undertakings concerned does not exceed EUR 30 million. <p>In applying the first two turnover thresholds (but not the third threshold) the turnovers of media undertakings must be multiplied by a factor of 200, for media support undertakings by a factor of 20.</p> <p>In addition mergers have to be notified if</p> <ul style="list-style-type: none"> • the undertakings concerned achieved an aggregate worldwide turnover of more than EUR 300 million in the last business year preceding the transaction, • the undertakings concerned achieved an aggregate domestic turnover of more than EUR 15 million in the last business year preceding the transaction, • the value of the transaction is more than EUR 200 million, and • the undertaking to be acquired is active to a large extent on the domestic market. <p>A joint guidance on this transaction value threshold is published at https://www.bwb.gv.at/fileadmin/user_upload/Downloads/standpunkte/2018-07_Guidance_Transaction_Value_Thresholds.pdf.</p> <p>All other mergers not fulfilling the pre-merger thresholds set forth above do not require a filing. Mergers falling within the jurisdiction of the European Commission are not subject to Austrian merger control either (one-stop-shop principle).</p> |
| <p>B. To which entities do the merger notification thresholds apply, i.e., which entities are included in determining relevant undertakings/firms for threshold purposes? If based on control, how is control determined?</p> | <p>The undertakings concerned for threshold purposes are, in any event, the acquirer and the target as well as all entities that are affiliated; the seller only qualifies as "undertaking concerned" if he continues to hold an interest in the target of more than 25% or remains otherwise connected according to Art 7 Cartel Act (see 3.A).</p> |

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| <p>C. How is the nexus to the jurisdiction determined (e.g., sales or assets in the jurisdiction)? If based on an “effects doctrine”, please describe how this is applied in practice. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?”</p> | <p>The merger has to affect the domestic market, irrespective of whether it is carried out domestically or abroad (art 24 Cartel Act; “Inlandsauswirkung”). Foreign-to-foreign mergers are therefore subject to Austrian merger control if they have an actual or potential effect on the Austrian market. The BWB is ready to discuss borderline cases with the parties in case of doubt.</p> <p>The location of the customer is relevant to allocate sales geographically.</p> |
| <p>D. Can a single party trigger the notification threshold (e.g., one party’s sales, assets, or market share)?</p> | <p>No, see answer 4.A. above.</p> |
| <p>E. Are any sectors excluded from notification requirements? If so, which sectors? To what period(s) of time do the thresholds relate (e.g., most recent calendar year, fiscal year; for assets-based tests, calendar year-end, fiscal year-end, other)?</p> | <p>The Cartel Act contains an exemption concerning the banking business:</p> <p>The merger control rules do not apply if a bank acquires shares in an undertaking temporarily for the purpose of (i) reselling them, (ii) securing the bank's claims against the undertaking, or (iii) redevelopment of the financial soundness of a company.</p> <p>If such concentration would normally require a pre-merger notification, the acquirer of the shares:</p> <ul style="list-style-type: none"> • shall not exercise voting rights in respect to the shares in question for the purpose of determining the competitive behavior of that undertaking; and • shall exercise voting rights only for the purpose of preserving the full value of the investment and of preparing the disposal of all or parts of the shares of the undertaking or the disposal of the entirety or of parts of the business or its assets; any such disposal must take place within one year of the date of acquisition and the completion of the reorganization/securing purpose respectively. <p>If such acquirer does not comply with these obligations, the Cartel Court shall – upon prior warning – submit a decision to terminate such infringement.</p> <p>The thresholds relate to the last fiscal year prior to the concentration.</p> |

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| <p>F. Are there special threshold calculations for specific sectors (e.g., banking, airlines, media, digital markets) or specific types of transactions (e.g., joint ventures, partnerships, financial investments)? If yes, for which sectors and types of transactions?</p> | <p>Yes, there are special threshold calculations for concentrations in the media sector (<i>Medienzusammenschlüsse</i>) as defined in art 8 of the Cartel Act (see answer 4.A above). Special turnover calculation rules for credit institutions are laid down in art 22 Cartel Act (very similar to the EC Merger Regulation rules, art 5 para 3 ECMR).</p> |
| <p>G. Are there special rules or exceptions/exemptions regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign (foreign-to-foreign transactions)? [Describe the methodology for identifying and calculating any values necessary to determine if notification is required, including the value of the transaction, the relevant sales or turnover, and/or the relevant assets]</p> | <p>No, see answer 4.C above.</p> |
| <p>H. Does the agency have the authority to review transactions that fall below the thresholds or otherwise do not meet notification requirements? If so, what is the procedure to initiate a review? [Describe methodology for calculating exchange rates]</p> | <p>No.</p> |
| <p>I. Are current notification criteria catching relevant transactions related to digital markets?</p> | <p>A transaction value threshold was introduced in 2017 in order to also catch relevant transactions in digital markets.</p> |

Calculation Guidance and related issues

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| <p>J. If thresholds are based on any of the following values, please describe how they are identified and calculated to determine if notification is required:</p> <ul style="list-style-type: none"> i) the value of the transaction; ii) the relevant sales or turnover; iii) the relevant assets; iv) market shares; | <p>Jurisdiction is determined on the basis of turnover (sales) or the value of transaction.</p> <p>Turnover is defined as the consolidated total sales (revenues) in the last business year of each undertaking participating in the merger (excluding intra-group sales). There is no distinction between turnover generated by products and services. Intra-group turnovers are consolidated (see 4.K).</p> |
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| <p>v) other (please describe).</p> | <p>The thresholds for mergers involving banks are not determined on the basis of turnover figures, but on the basis of the sum of interest and similar revenues, proceeds from shares and participations, commission. As regards insurance companies, the thresholds are determined on the basis of premiums.</p> <p>The calculation of the value of transaction is described in detail in the joint guidance published at https://www.bwb.gv.at/fileadmin/user_upload/Downloads/standpunkte/2018-07_Guidance_Transaction_Value_Thresholds.pdf</p> |
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| <p>K. Which entities are included in determining relevant investment funds for threshold purposes? If based on control, is the definition of control in these cases any different from the definition of control in general (question 3C)? If yes, how?</p> | <p>The same general rules apply to investment funds: The undertakings concerned for threshold purposes are the acquirer and the target as well as all entities that are affiliated according to Art 7 Cartel Act; the seller only qualifies as "undertaking concerned" if he continues to hold an interest in the target of more than 25% or is otherwise connected according to Art 7 Cartel Act.</p> <p>For the purpose of calculating group turnover, a group is essentially considered to include all companies that are connected in one of the ways that give rise to a concentration (see item 3.A above). In principle, upstream and downstream affiliated companies must both be taken into account. The above definition of a group is rather broad since, in particular, a 25% shareholding is sufficient to have a company included. This assessment may be difficult and needs to be made on a case by-case basis.</p> |
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| <p>L. In case an investment fund is part of a transaction, are its controllers required to present turnover information related to other funds under same manager (general partner) control? Are those other funds considered as part of the transaction for turnover purposes?</p> | <p>The same general rules apply to investment funds (see 4.K).</p> |
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| <p>M. Describe the methodology applied for currency conversion [e.g. which exchange rates are used].</p> | <p>There is no explicit statutory rule on how exchange rates are to be calculated.</p> |
| <p>5. Pre-notification</p> | |

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| A. If applicable, please describe the pre-notification procedure and whether it can be mandatory or not [e.g., time limits, type of guidance given, etc.]. | Pre-notification consultation is not mandatory. It is however recommended in cases where the case is complex and/or competition concerns are expected. |
| B. If applicable, what information or documents are the parties required to submit to the agency during pre-notification? | All information necessary to evaluate the merger is required also in pre-notification. |

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| 6. Notification requirements and timing of notification | |
| A. Is notification mandatory? [Please describe if notification is mandatory in pre-notification phase, post-merger or voluntary] | Yes, notification is mandatory pre-merger. |
| B. If parties can make a voluntary merger filing when may they do so? | N/A |
| C. What is the earliest that a transaction can be notified (e.g., is a definitive agreement required; if so, when is an agreement considered definitive?) | A transaction can be notified even if the parties have not signed an agreement yet. The notification of a mere concentration plan (embracing the exact structure of the envisaged transaction) is sufficient provided that the parties thereto prove their sincere intent to effect the concentration in the near future. |
| D. When must notification be made? If there is a triggering event, describe the triggering event (e.g., definitive agreement) and the deadline following the event. Do the deadline and triggering event depend on the structure of the transaction? Are there special rules for public takeover bids? | <p>There is no deadline for notification. The merger, however, must not be implemented before clearance is granted ("standstill obligation").</p> <p>Takeovers in Austria are regulated by the Austrian Takeover Act (<i>Übernahmegesetz</i>, the "TOA"). A "Takeover Commission" (<i>Übernahmekommission</i>) supervises compliance with the TOA; the commission has exclusive jurisdiction over all matters regulated in the TOA. The fundamental principle of the TOA is that shareholders of the same class should receive equal treatment from the bidder. For the TOA to apply, the corporate seat of the target company must be in Austria and the securities issued by it must be listed on an Austrian stock exchange on the official or semi-official market. If the acquisition of shares</p> |

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| | exceeds the thresholds for pre-merger filing within the course of a public takeover procedure, the acquisition must be made under the condition precedent of clearance being granted. |
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| E. If there is a notification deadline, can parties request an extension for the notification deadline? If yes, please describe the procedure and whether there is a maximum length of time for the extension. | N/A. There is no deadline for notification. |

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| 7. Simplified Procedures | |
| A. Describe any special procedures for notifying transactions that do not raise competition concerns (e.g., short form, simplified procedures, advanced ruling certificates, discretion to waive certain information requirements, etc.). | <p>A so-called "short form-notification" can be made if there is no market "affected" within the meaning of art 5 of the Merger Notification Form published by the BWB. This is the case if none of the following conditions is fulfilled:</p> <ul style="list-style-type: none"> i) the merger leads to the creation or strengthening of a market dominant position of the parties ii) two or more concerned companies are active on the same relevant product market and the combined market share is or exceeds 15 % (horizontal relationship) iii) two or more concerned companies are active on different relevant product markets which are however linked upstream or downstream and the combined market share is or exceeds 25 % (vertical relationship) <p>The official parties (the FCA and the Federal Cartel Prosecutor) may even before the end of the statutory 4-week review period waive their right to apply for an in-depth (second phase) investigation in cases that do not raise competition concerns. However, the statutory parties require the parties to provide sound reasoning as to why the matter is of urgency, and there is no right for the parties to obtain such a waiver.</p> |

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| B. Describe the criteria adopted to consider a transaction under the simplified procedure. | A simplified procedure as such does not exist in Austria. Only a short-form notification can be made in certain circumstances (see 7.A). |
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| 8. Information and documents to be submitted with a notification | |
| A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents, internal documents). | <p>The Merger Notification Form published by the BWB summarises the necessary documents in point 10. Inter alia, the following documents have to be submitted:</p> <ul style="list-style-type: none"> • organization charts and/or diagrams that show the ownership structure before and after the merger; • annual reports, annual financial statements of the undertakings concerned for the last completed financial year; • copies of analysis, reports, studies, statistics etc. on which market definition is based; • documents on which the total volume of the market is based; • list of 5 most important competitors and of 5 most important suppliers and customers; • in certain cases the most important internal documents. |
| B. Is there a distinction between tangible and intangible (e.g., customer portfolio, data on consumers, etc.) assets in the description of the transaction? [In respect to digital markets, state if the agency considers the amount of user data the companies have, and which will be passed on in the transaction] | No. |
| C. Are documents proving the efficiencies of the transaction required? [If applicable, please provide the type of documents normally required] | In case companies bring forward efficiency arguments, respective documents are required. |
| D. What information is required in case the target company is experiencing financial insolvency? | Point 5.12. of the notification form describes in detail the information required. |

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| E. Is there a specific procedure for obtaining information from target companies in the case of hostile/ unsolicited bids? | No. |
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| F. Are there any document legalization requirements (e.g., notarization or apostille)? What documents must be legalized? | No. |
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| G. What are the agency's rules and practice regarding exemptions from information requirements (e.g., information submitted or document legalization) for transactions in which the acquiring and acquired parties are foreign (foreign-to-foreign transaction)? | In certain cases a short-form notification is sufficient (see 7.A). |
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| H. Can the agency require third parties to submit information during the review process? Can third parties voluntarily submit information or otherwise contact the agency to intervene? | Yes, the BWB can send an information request to third parties (Art 11a Competition Act). Third parties can also submit voluntarily information to the agency within 14 days of publication of the merger notification on the website of the BWB (Art 10 (4) Cartel Act). |
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| I. Are parties allowed to submit information beyond what is required in the initial filing voluntarily (e.g., to help narrow or resolve potential competitive concerns)? | Yes. |
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| J. Are there different forms for different types of transactions or sectors? | No. |
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| K. With respect to investment funds: i) Is it requested that an investment fund taking part in a transaction provide a statement that its controllers do | General rules apply also to investment funds. |

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| <p>not manage any other investment funds in the same relevant market?</p> <p>ii) Should an investment fund be controlled by an entity that is also responsible for other funds in the same relevant market, are such funds considered part of the transaction? Is it requested that the controlling entity provide market information (e.g., market share) related to the other funds it manages and which are in the same relevant market?</p> <p>iii) Should there be no classic concentration, is there any sort of exemption regarding presenting certain information requested in the form?</p> | |
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| 9. Translation | |
| A. In what language(s) can the notification forms be submitted? | German. |
| B. Describe any requirements to submit translations of documents: <ul style="list-style-type: none"> i) with the initial notification; and ii) later in response to requests for information. In addition: <ul style="list-style-type: none"> iii) what are the categories or types of documents for which translation is required; iv) what are the requirements for certification of the translation; v) which language(s) is/are accepted; and | There is no explicit statutory rule on the submission of translations of documents with the initial notification or later in response to requests for information. This issue should be solved on a case-by-case basis with the statutory parties (BWB, FCP). English documents will usually be accepted without translation. |

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| vi) are summaries or excerpts accepted in lieu of complete translations and in which languages are summaries accepted? | |
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| 10. Review Periods | |
| A. Describe any applicable review periods following notification. | The official parties need to decide in phase 1 - which lasts four weeks - whether they clear the merger or whether they refer it to the Cartel Court for an in-depth review (phase 2). Upon the request of the parties this phase can be extended by two weeks. Phase 2 lasts five months after an application for examination has been filed with the Cartel Court by the official parties. Upon the request of the parties phase II can be extended by one more month. |
| B. Are there different rules for public tenders (e.g., open market stock purchases or hostile bids)? | See 6.D above. |
| C. What are the procedures for an extension of the review periods, if any? Do requests for additional information suspend or re-start the review period? | At the request of parties, review periods can be extended by a specific time (see 10.A above). Request for additional information does not suspend or re-start the review period (no stop-the-clock provision). |
| D. Is there a statutory or other maximum duration for extensions? | Yes, see 10.A above |
| E. Does the agency have the authority to suspend review periods? Does suspending a review period require the parties' consent? | No. |
| F. What are the time periods for accelerated review of non-problematic transactions, if any? | The official parties (BWB and FCP) may waive their right to apply for an in-depth (Phase 2) investigation in cases that do not raise competition concerns (see 7.A). |

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| | The parties have to apply for such a waiver, which is only granted after a 2-week period (plus three days for mailing) during which third parties may submit their observations. This 2-week period runs from the date of publication of the notification on the BWB's website. |
| G. If remedies are offered, do they impact the timing of the review? | No. |

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| 11. Waiting periods / suspension obligations | |
| A. Describe any waiting periods/suspension obligations following notification (e.g., full suspension from implementation, restrictions on adopting specific measures) during any initial review period and/or further review period. | Any merger falling under the Austrian merger control regime will be legally void and prohibited and must not be implemented until it has been cleared. |
| B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances? | Any closing which is subject to merger clearance in Austria will be void under Austrian law prior to clearance. There is no possibility of requesting derogation from the suspension requirement. |
| C. Are the applicable waiting periods/suspension obligations limited to aspects of the transaction that occur within the agency's jurisdiction (e.g., acquisition or merger of local undertakings/business units)? If not, to what extent can the parties implement the transaction outside the agency's jurisdiction prior to clearance (e.g., through derogation from suspension, hold separate arrangements)? | The Cartel Act does not explicitly extend the waiting periods to aspects of the transaction that occur outside of the territory of Austria. However, a closing outside of Austria is only possible if the closing with respect to Austria can be separated from the closing for the other jurisdictions. |
| D. Are parties allowed to close the transaction if no decision is issued within the statutory period? | The parties may close the transaction if neither of the official parties has requested an in-depth review within the four-week period (Phase 1) or if the Cartel Court has not reached a decision within the five-month period. |

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| E. Describe any provisions or procedures available to the enforcement agency, the parties and/or third parties to extend the waiting period/suspension obligation. | There are no such provisions or procedures. |
| F. Describe any procedures for obtaining early termination of the applicable waiting period/suspension obligation, and the criteria and timetable for deciding whether to grant early termination. | See 10.F |
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| G. Describe any provisions or procedures allowing the parties to close the transaction at their own risk before waiting periods expire or clearance is granted (e.g., allowing the transaction to close if no "irreversible measures" are taken). | There are no such provisions or procedures. Any closing which is subject to merger clearance in Austria will be void under Austrian law prior to clearance. |

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| 12. Responsibility for notification / representation | |
| A. Who is responsible for notifying – the acquiring company(ies), acquired company(ies), or both? Does each party have to make its own filing? | Each undertaking involved in the concentration is entitled to file for clearance with the BWB. Joint notification is permitted, but is not a requirement. Normally the acquirer files the notification. |
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| B. Do different rules apply to public tenders (e.g., open market stock purchases or hostile bids)? | No. |
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| C. Are there any rules as to who can represent the notifying parties (e.g., must a lawyer representing the parties be a member of a local bar)? | Generally the notifying parties can be represented by any person of full age. However, a lawyer representing the parties must be registered with the local bar; if that is not the case the lawyer violates the rules on professional conduct laid down in the Lawyers' Code (<i>Rechtsanwaltsordnung</i>). |
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| <p>D. How does the validity of the representation need to be attested (e.g., power of attorney)? Are there special rules for foreign representatives or firms? Must a power of attorney be notarized, legalized, or apostilled?</p> | <p>Only persons who are not lawyers and want to represent the notifying parties need to produce a written power of attorney. This power of attorney does normally not need to be notarized, legalized or apostilled; however, if the BWB has doubts as to the genuineness of the power of attorney, it may order the party to provide a notarization or legalization of the signature.</p> |
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| <p>13. Filing fees</p> | |
| <p>A. Are any filing fees assessed for notification? If so, in what amount and how is the amount determined (e.g., flat fee, fees for services, tiered fees based on complexity, tiered fees based on size of transaction)? [Please provide the amount in local currency and in USD as of December 31st, 2020]</p> | <p>The filing fee in Phase 1 is EUR 3,500.</p> <p>In Phase 2 proceedings, court fees are fixed by the Cartel Court in each case at the end of the proceedings. The ceiling lies at EUR 34,000, depending on the economic importance of the merger, the complexity of the proceedings and the workload for the Cartel Court.</p> |
| <p>B. Who is responsible for payment?</p> | <p>The notifying party or parties are responsible for payment.</p> |
| <p>C. When is payment required?</p> | <p>In Phase 1 proceedings, the payment has to be made at the time of notification.</p> <p>In Phase 2 proceedings, payment has to be made after the proceedings have been finished and the payment order has been received (the court decision fixing the costs can be appealed before the payment order is served on the notifying party).</p> |
| <p>D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?</p> | <p>In Phase 1, payment must be made to an specific account and the original payment slip presented to the BWB.</p> <p>With regard to court fees, these are usually transferred to the Cartel Court's bank account after the proceedings have been closed.</p> |

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| <p>14. Process for substantive analysis and decisions [Please give a brief summary and provide information on relevant Guidance papers]</p> |
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| <p>A. What are the key procedural stages in the substantive assessment (e.g., screening mergers, consulting third parties)?</p> | <p>BWB and FCP investigate the merger in Phase I and can file an application for in-depth review with the Cartel Court, thus opening Phase II. The Cartel Court is the decision making body. Depending on the competition concerns raised BWB and FCP might e.g. ask market participants for information, run econometric analysis and the like.</p> |
| <p>B. What merger test does the agency apply (e.g., dominance test or substantial lessening of competition test)?</p> | <p>Dominance test</p> |
| <p>C. What theories of harm does the agency consider in practice?</p> | <p>All relevant theories of harm are considered.</p> |
| <p>D. What are the key stages in the substantive analysis? Does this differ depending on the type of transaction (e.g., joint venture)?</p> | <p>See 14.A. No differences apply depending on the type of transaction.</p> |
| <p>E. Are non-competition issues ever considered (in practice or by law) by the agency? If so, can they override or displace a finding based on competition issues?</p> | <p>A media merger might also be prohibited if media diversity is affected.</p> |
| <p>F. What are the possible outcomes of the review (e.g., unconditional/conditional clearance, prohibition, etc.)?</p> | <p>A merger might be cleared with or without remedies or prohibited.</p> |
| <p>G. What types of remedies does the agency accept? Is there a preference on any particular type of remedies? How is the process initiated and conducted?</p> | <p>All remedies that solve competition concerns are considered. There is no formal procedure stipulated in the law. Usually parties propose remedies which might then be market tested.</p> |

15. Confidentiality

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| <p>A. To what extent, if any, does the agency make public the fact that a premerger notification filing was made or the contents of the notification? If applicable, when is this disclosure made?</p> | <p>The BWB publishes a summary of the notification filing on its website immediately after its submission.</p> |
| <p>B. Do notifying parties have access to the agency's file? If so, under what circumstances can the right of access be exercised?</p> | <p>The notifying parties do not have access to the file of the BWB or the FCP. In case of Phase 2 proceedings the notifying parties however have access to the Cartel Court's file.</p> |
| <p>C. Can third parties or other government agencies obtain access to notification materials and any other information provided by the parties (including confidential and non-confidential information)? If so, under what circumstances?</p> | <p>Third parties will not have the right to obtain access to any notification materials other than the summary of the filing available on the FCA's website. However, governmental agencies may also request the Cartel Court to provide administrative assistance (Amtshilfe) under art 22 of the Austrian Federal Constitution (Bundesverfassungsgesetz), in which case they might be able to obtain access to notification materials.</p> |
| <p>D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe.</p> | <p>It is not possible to request confidential treatment of the fact that a merger has been notified. Notification materials however remain confidential. The only exceptions include a short summary on the BWB's website as well as the transmission to the second official party, the Federal Cartel Prosecutor, and upon request to the BWB's advisory body "Competition Commission" and the regulators.</p> |
| <p>E. Can the agency deny a party's claim that certain information contained in notification materials is confidential? Are there procedures to challenge a decision that information is not confidential? If so, please describe.</p> | <p>The BWB only publishes a short summary of the notification. In principle, it is up to the agency to decide which information is confidential. Usually it will however respect the arguments by the parties. The Cartel Court asks the parties to make clear which information is considered confidential before it publishes a non-confidential version of the decision. In principle, it is up to the Cartel Court to decide which information is confidential. Usually it will however respect the arguments by the parties.</p> |

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| <p>F. Does the agency have procedures to provide public and non-public versions of agency orders, decisions, and court filings? If so, what steps are taken to prevent or limit public disclosure of information designated as confidential that is contained in these documents?</p> | <p>See 15.E.</p> |
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| <p>16. Transparency</p> | |
| <p>A. Does the agency publish an annual report with information about mergers? Please provide the web address if available.</p> | <p>Yes. The website is http://www.bwb.gv.at/</p> |
| <p>B. Does the agency publish press releases related to merger policy or investigations/reviews? If so, how can these be accessed (if available online, please provide a link)? How often are they published (e.g., for each decision)?</p> | <p>Yes. They are published on the BWB's website.</p> |
| <p>C. Does the agency publish decisions on why it challenged, blocked, or cleared a transaction? If available online, provide a link. If not available online, describe how one can obtain a copy of decisions.</p> | <p>The request for in-depth review, i.e. opening phase II, made by the statutory parties will be published on the BWB's website. Rulings by the Cartel Court prohibiting or clearing a merger with conditions will also be published on the BWB's website. A non-confidential version is published in the Legal Information System of the Republic of Austria (https://www.ris.bka.gv.at).</p> |
| <p>E. Does the agency publish statistics or the number of annual notifications received, clearances, prohibitions, etc.? [if applicable, please provide a link for these figures]</p> | <p>Yes, these statistics are contained in the annual report of the BWB, which is published on the website.</p> |

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| <p>17. Cooperation</p> | |
| <p>A. Is the agency able to exchange information or documents with international counterparts?</p> | <p>Without waiver the BWB cannot exchange confidential information.</p> |

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| <p>B. Is the agency or government a party to any agreements that permit the exchange of information with foreign competition authorities? If so, with which foreign authorities? Are the agreements publicly available?</p> | <p>No. See 17.A. There are no agreements that permit the exchange of information with foreign competition authorities in relation to merger control proceedings. The authority always works with waivers.</p> |
| <p>C. Does the agency need consent from the parties who submitted confidential information to share such information with foreign competition authorities? If the agency has a model waiver, please provide a link to it here, or state whether the agency accepts the ICN's model waiver of confidentiality in merger investigations form.</p> | <p>Yes, see 17.A. A model waiver is contained in the notification form, annex 2, published by the BWB on its website.</p> |
| <p>D. Is the agency able to exchange information or documents with other domestic regulators?</p> | <p>To the extent required to perform the responsibilities conferred upon it and provided that no obligations under Community law run counter to it, the BWB is authorised, with due regard to non-disclosure interests warranting protection within the meaning of the 2000 Data Protection Act (<i>Datenschutzgesetz</i>), Federal Law Gazette I no. 165/1999, to provide any and all information and furnish documentation to the the regulators (art 10 Competition Act).</p> |

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| <p>18.Sanctions/penalties</p> | |
| <p>A. What are the sanctions/penalties for: i) failure to file a notification; ii) incorrect/misleading information in a notification; iii) failure to comply with information requests; iv) failure to observe a waiting period/suspension obligation; v) breach of interim measures; vi) failure to observe or delay in implementation of remedies;</p> | <p>The Cartel Act prohibits closing before clearance in the case of mergers subject to merger notification. Until clearance, the merger is void (which means that it does not create any obligations for the parties), prohibited, and subject to fines. Unauthorized implementation of a merger that requires merger notification is subject to fines of up to 10 per cent of the combined worldwide turnover in the last business year of the undertakings involved.</p> <p>The filing of incorrect or incomplete merger notifications is subject to fines of up to 1 per cent of the combined worldwide turnover in the last business year of the undertakings involved.</p> |

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| vii) implementation of transaction despite the prohibition from the agency? | The amount of the fine depends amongst others on the severity of the infringement of the Cartel Act. |
| B. Which party/ies (including natural persons) are potentially liable for each of A(i)-(vii)? | Any undertaking that consummates a concentration before clearance is potentially liable. |
| C. Can the agency impose/order these sanctions/penalties directly, or is it required to bring judicial action against the infringing party? If the latter, please describe the procedure and indicate how long this procedure can take. | The official parties are required to bring proceedings before the Cartel Court in order to request that sanctions be imposed. The duration of the procedure may vary, but should take a few months. |
| D. Are there any recent or significant fining decisions? | Yes. For a full list see https://www.bwb.gv.at/en/factual_information/fines/ |

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| 19. Independence | |
| A. Is there possibility for any ministry or a cabinet of ministries to abrogate, challenge or change merger decisions issued by the agency or by a court? If yes, to which merger decisions does this apply (e.g., any decision, prohibitions, clearances, remedies)? | No. |
| B. What are the grounds for such ministerial intervention? | N/A |
| C. Please provide any description or guidance regarding the ministerial intervention process and procedures [If applicable] | N/A |

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| 20. Administrative and judicial processes/review |
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| A. Describe the timetable for judicial and administrative review related to merger transactions. | Decisions of the Cartel Court are subject to appeal by the official parties and all notifying parties within 4 weeks from service of the decision. The appeal is heard by the Supreme Court as Supreme Cartel Court (<i>Oberster Gerichtshof als Kartellobergericht</i>). |
| B. Describe the procedures for protecting confidential information used in judicial proceedings or in an appeal/review of an agency decision. | See 15. |
| C. Are there any limitations on the time during which an appeal may be filed? | See 20.A |

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| 21. Additional filings | |
| A. Are any additional filings/clearances required for some types of transactions (e.g., sectoral or securities regulators or national security or foreign investment review)? | Acquisitions or sales of banks and insurance companies may require additional approval from the Austrian Financial Market Authority (FMA, Finanzmarktaufsicht). Telecom and certain medial companies may also require special approvals from their respective regulators (E-control, Austrian Regulatory Authority for Broadcasting and Telecommunication etc.). Transactions involving companies listed on the Vienna Stock Exchange may require notification to the Vienna Stock Exchange, as well as a public announcement, concerning the number of shares acquired or sold. Media concentrations are also reviewed by the official parties with respect to their effect on the plurality of the media in Austria (on the basis of the "normal" merger control notification; chapter 9 of the Standard Notification Form deals with these issues). A media concentration must be notified to the BWB even if the same concentration is subject to a filing with the European Commission (as long as the Austrian thresholds for media concentrations are exceeded see answer 4.A above). |

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| 22. Closing Deadlines | |
| A. When a transaction is cleared or approved, is there a time period within which the parties must close for it to remain | There is no such time period explicitly laid down in the Cartel Act. |

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| authorized? If yes, can the parties obtain an extension of the deadline to close? | |
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| 22. Post Merger review of transactions | |
| <p>A. Can the agency reopen an investigation of a transaction that it previously cleared or allowed to proceed with conditions? If so, are there any limitations, including a time limit on this authority?</p> | <p>Upon request by the official parties, the Cartel Court may examine a previously cleared merger in cases where the decision was based on wrong information supplied by the concerned parties and in cases of non-compliance of remedies.</p> <p>A fine can only be imposed if the application for a fine was filed no more than five years after the infringement ended. This limitation period is interrupted if the BWB notifies action aimed at the investigation or prosecution of the infringement to at least one of the undertakings participating in the infringement. However, the limitation period expires no later than ten years from termination of such infringement.</p> |
| <p>B. Does the agency publish studies regarding ex-post analysis of reportable transactions which have been cleared by the agency? Are these studies publicly available? How does the agency obtain data for carrying out these studies?</p> | <p>BWB has only carried out ex-post studies in very rare cases due to limited human resources. In these cases, studies are published on the BWB's website.</p> |