



**FEDERAL
COMPETITION
AUTHORITY**
Fairness matters!

Recent competition law developments in Austria

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Overview



- I. New Whistleblower Contact Point**
- II. New Dawn Raid Guidance**
- III. Additional Merger Transaction Test**
- IV. Conclusion & Outlook**

I. New Whistleblower Contact Point



English (en)



We want to do what is right

Our company strives to maintain a transparent business climate and high business ethics. We value the safety and respect of everyone affected by our business. You have a vital role in our success.

When can I use the Whistleblowing service?

Whistleblowing can be used to inform about a concern about something that is not in line with our values and ethical code, and that may seriously affect our organisation or a person's life or health.

For workplace-related issues and complaints, we ask you to please contact your supervisor or manager.

Your message will be securely handled

The whistleblowing service is provided by an external partner WhistleB, Whistleblowing Centre, to ensure anonymity. The communication channel is encrypted and password-protected.

All messages will be processed in confidence.

How do I submit an anonymous message?

You do not need proof of your suspicions, but all messages must be made in good faith.

Your message is submitted easily and securely by following the instructions in the form. After having sent your message you will receive an ID and a password on the screen. Save these in a secure manner. You will remain anonymous throughout this dialogue.

Within 10 calendar days, we may post a response or follow-up question for you.

[Create message »](#)

[Follow up](#)

Thank you for your contribution.

**Whistleblower
system will be
integrated into the
new homepage**

I. New Whistleblower Contact Point



How the system works

- Whistleblower reports destructive behaviour according to the desired focal points
- via encrypted connection
- Notice is located on servers in an external datacentre
- Note processor receives the message over also encrypted connection
- Anonymous dialogue between whistleblowers and arranger possible

Benefits for the FCA

- Structured information flow
- Keeping communication with whistleblowers under secure protection of anonymity
- Through external communication of the whistleblowing platform
- Leads to strengthen public confidence of the FCA

II. New Guidance on dawn raids

The Guidance on dawn raids contains the conduct of search, collection of electronic data and the end of a search.



The Guidance describes:

- Start, conduct, end of a dawn raid
- Rights and obligations of the company and its employees
- Rights and obligations of the FCA

The aim is to improve legal certainty and transparency for affected companies and their employees.

The Guidance includes:

- Current legal situation
- Current jurisprudence of the cartel court and the supreme cartel court
- National and European best practices

→ Transparency, comprehensibility and clarity of administrative actions are essential

II. New Guidance on dawn raids

Selected Questions



Is another competition authority from the EU allowed to search a company?

- By way of official assistance, the FCA may be asked by other European competition authorities

Which documents may the FCA inspect during a dawn raid?

- Business documents (Physical and in electronic form)
- Third parties or private individuals
- Accidental findings

Is the FCA allowed to search a company without a warrant?

- A voluntary dawn raid if the company agrees to it
- No determination by a court warrant
- Individual (revocable) consent given by the company

II. New Guidance on dawn raids



Electronic data

- Daily penalty for non cooperation
- Cooperation with the police and the Criminal Investigation Department (Criminal Intelligence Service)
- Authority may use forensic software to search and copy electronic data
- No duties of information, warning or clarification concerning the use of forensic software (jurisprudence)
- No covert measure – representative’s right to be present (jurisprudence)
- Screening of data happens mostly in the authority (similar to German Bundeskartellamt, contrary to Commission)

Challenges

- Store and screen huge amounts of data
- Filter out data not covered by investigation (private, privileged...)
- Counter Measures

III. Additional Merger Transaction Test



Additional transaction test since 01.11.2017

“with a view to avoid monopolies in the sensitive **digital economy**”

e.g. Facebook / WhatsApp 2014

Even if the turnover criteria of Para. 9 (1) KartG are not met, a merger has to be notified if:

worldwide total turnover > € 300 Mio

domestic total turnover > € 15 Mio

value of consideration > € 200 Mio

Local nexus required

“...and the acquiring company operates to a considerable extent domestically.”

III. Additional Merger Transaction Test



- focus on digital companies, but valid for all industries
- worldwide turnover:
 - same threshold; 1 big company
- domestic turnover:
 - half of usual threshold: capture cases with relevance for Austrian market
 - free services in digital market
- “equivalent”: € 200 Mio
 - smaller Austrian economy
- “active to a considerable extent”:
 - local nexus

III. Additional Merger Transaction Test



- Joint guidelines of Austrian and German Competition Authority
 - Germany and Austria are pioneers in Europe
 - Identical or very similar provisions
 - Austrian explanatory notes explicitly mention German provisions



Level playing field



Easy implementation for companies

IV. Conclusion & Outlook



- In case of sensitive information the new whistleblower system is going to be an easy way to take up contact with the FCA. The anonymity of the whistleblower is granted.
- With the guidance on dawn raids contributes to transparency, comprehensibility and clarity of administrative actions.
- The additional merger transaction test is a forward-looking concept to react on the rapidly growing digital market.

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Thank you for your
attention!