



Austria

Global merger control handbook – update

APRIL 2020

Merger control legislation changes since 1 July 2018

No new merger control legislation updates have taken place since 1 July 2018.

Landmark merger control cases since 1 July 2018

On 26 June 2019, the Austrian Competition Authority has cleared the merger between Österreichische Post AG (“Austrian Post”) and DHL Paket (Austria) GmbH a subsidiary of the Deutsche Post DHL AG (“DPDHL”). Austrian Post did not acquire all of DHL Austria but only certain assets from the DHL logistics network. The merger was cleared in Phase I but it was subject to conditions. Part of the conditions was that the Austrian Post has to provide infrastructure to other competitors for a fee. The Federal Competition Authority (“FCA”) provided a model contract regarding the provision of the infrastructure. In addition, a clause in the agreements between the two delivery companies is deleted, stipulating that a minimum quantity of parcels must be delivered.

In October 2019, the FCA prohibited the acquisition of Lekkerland AG in Austria by the REWE Group (“Rewe”). Rewe intended to acquire all shares in Lekkerland AG (“Lekkerland”). The proposed transaction was notified on 15 July 2019 to the European Commission (“Commission”) (M.9142) and cleared by the Commission on 7 August 2019. Following a partial referral request by the notifying parties, the Commission referred the proposed transaction to the Federal Cartel Office in Germany and to the FCA. While the merger was cleared in Germany, the FCA stated that after intensive examination and numerous responses from different market levels (including other food retailers as well as petrol stations), they came to the conclusion that there were strong Austria-specific concerns and the merger could not be cleared in Austria. For this reason, the operational part of Lekkerland in Austria was spun off.

On 3 December 2019, the FCA approved the acquisition of the Austrian company Barracuda Holding GmbH, which organizes, among other things, Austrian music festivals such as Frequency Festival, Electric Love and Nova Rock, by the German Eventim Live GmbH (“CTS Eventim”) under conditions. CTS Eventim operates in Austria the ticketing service “oeticket”. The conditions by the FCA stipulated that CTS Eventim has to offer “oeticket” without discrimination for the next five years. Teenagers (up to

16 years of age) shall continue to receive discounted tickets. The FCA provided both a model contract and the marketing application. A monitoring trustee was also appointed.

Web link to the national competition authority

<https://www.bwb.gv.at/en/>

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