Austrian Antitrust Watchdog Introduces its Whistleblowing System

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In February 2018, the Federal Competition Authority (*Bundeswettbewerbsbehörde* – "BWB") introduced an electronic whistleblowing system, which allows individuals to inform the BWB about (alleged) antitrust infringements on an anonymous basis.

- **Legal Background**

By amendments to the Austrian Competition Act (*Wettbewerbsgesetz*), which entered into force on 1 May 2017, the Austrian legislator authorised the BWB to introduce a whistleblowing system (the legislation concerning leniency applications was amended accordingly). After developing the necessary technical back-up, the BWB has now introduced its whistleblowing system via its website.

- **How does it work?**

The whistleblowing system is bilingual. Therefore, after entering the system via https://report.whistleb.com/de/bwb, submissions can be also made in English.

The BWB justifies the introduction of its whistleblowing system by referring to the fact that without special protection measures, potential informants are concerned

by and confronted with potential reprisals, especially from employers, who are involved in the infringement. As a result, communication between the whistle-blower and the BWB takes place only via secured anonymous mailboxes, and it is technically ensured that information cannot be traced back.

In the future, individuals, but also undertakings involved will be able to submit information and documents (e.g., emails, but also SMS / WhatsApp messages) with regard to antitrust infringements on an anonymous basis. "Antitrust infringements" hereby include cartels and market abuses according to Article 101 and 102 TFEU (and the national equivalent, i.e. Sections 1, 5 and 6 of the Austrian Cartel Act [*Kartellgesetz*]), while infringements concerning Austrian Merger Control are not covered by the system (e.g., prohibition to implement a transaction before clearance).

In order to establish the system, the BWB produced two videos (with English subtitles), which can be even watched on Youtube (key words "BWB / whistleblowing").

- **Authors' comments**

In the authors' view, the introduction of the BWB's whistleblowing system might likely have positive effects concerning antitrust enforcement in Austria. The more information a competition authority receives, the more likely it is that the authority will also in fact enforce competition law.

However, it has to be seen in practice whether the newly introduced whistleblowing system will in fact result in an increased number of investigations and proceedings. E.g., in order to establish the system in practice, guaranteeing anonymity is an essential criterion. Though, if the BWB uses the whistleblowing system in order to initiate proceedings with the Austrian Cartel Court, the BWB could be forced to disclose the information concerned in the proceedings. Undertakings involved might be then able to trace back the identity of the individual whistle-blower (e.g., by looking at the addressees of an email concerned).

Furthermore, if applied, the whistleblowing system might also have effects on leniency practice in Austria. Applications will in future be more likely rejected by the BWB, if the authority has already knowledge of the infringement concerned based on information provided by a whistle-blower.