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**ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN AUSTRIA**

-- 2009 --

*This report is submitted by Austria to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 27-28 October 2010.*

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## Executive Summary

1. In 2009 - 2010 the Federal Competition Authority (Bundeswettbewerbsbehörde, BWB) could further intensify its efforts to tackle hard core cartels. In the period under review (1 July 2009 - 30 June 2010) several important cases were brought before the Cartel Court. In the printing chemical wholesalers' case the Cartel Court already rendered a decision: When imposing the fines, the Cartel Court fully accepted the amount proposed by the BWB, i.e. € 1 500 000. An interesting aspect of this case is that the immunity applicant failed to comply with the duty to fully co-operate with the BWB so that immunity was ultimately withdrawn and a 50% reduction of fines was granted. This underlines the importance of fully co-operating with the BWB. Another focus of BWB's work was the liquid fuel market where many investigations were carried out which should also help to build up further knowledge on the functioning of the market. Last but not least, the BWB continued to put emphasis on intensifying international co-operation not only within Europe but also outside the European Community.

### 1. Changes to competition laws and policies

#### 1.1 Broadcast

##### 1.1.1. Digitisation of terrestrial TV broadcasting

2. Distribution of Digital TV (DVB-T) via the first (MUX A) and second (MUX B) terrestrial multiplex platform is almost completed in Austria (coverage: >95% on MUX A and 88% on MUX B). The last analogue turn-offs are being planned for summer 2011. MUX A now distributes the Austrian public service broadcaster's programmes ORF 1 and ORF 2, further the nationwide private TV programme ATV; MUX B now distributes Puls 4, ORF Sport Plus, 3sat, Servus TV and Red Bull TV and an electronic programme guide (EPG).

3. During the reporting period KommAustria (Austrian Communications Authority) carried out another licensing procedure for local and regional multiplex platforms for terrestrial TV (MUX C). As a result three licences were issued; one is still to be granted so that now there exist 18 regional terrestrial multiplex platforms (MUX C) in various parts of Austria, that each allow distribution of several different local and regional TV programmes. The platforms are required by law as well as by their licence to grant open and non-discriminatory access and conditions to these programmes.

##### 1.1.2. Broadcasting market definition and analysis

4. Having reviewed the first ordinance concerning the definition of the relevant markets pursuant to Article 15 of Directive 2002/21/EC respectively § 36 TKG 2003 (Austrian Telecommunications Act 2003), KommAustria set out a new ordinance in 2009, defining three different markets therein:

- The market for the multiplexing of broadcasting signals via the multiplex platforms MUX A and MUX B and the transmission of digital terrestrial TV broadcasting signals to end users;
- The market for analogue terrestrial FM radio broadcasting, and
- The market for access to broadcasting facilities and digital terrestrial transmission of television signals to end customers.

5. Market analysis was consequently started and at the end of the reporting period still in the state of data collection.

### 1.1.3 *Broadcasting legislation*

6. New broadcasting legislation has been adopted within the reporting period and will come into force on October 1<sup>st</sup>, 2010. Besides new regulatory issues especially concerning audiovisual media services and the supervision of the Austrian public broadcaster ORF, it includes the restructuring of the broadcasting regulatory authority which in the future will be fully independent from the government.

## 1.2 *Telecommunication*

### 1.2.1 *Amendment to the Telecommunication market ordinance 2008: Definition of the market for Bitstream wholesale access for non-residential customers*

7. Art. 36 of the Austrian Telecommunications Act 2003 (TKG 2003) stipulates a mandatory regular review of all markets susceptible to ex ante regulation.

8. In order to account for current as well as expected market developments, Rundfunk und Telekom Regulierungs-GmbH (RTR) in its role as competent National Regulatory Authority carried out preparations for the renewed market definitions of the Austrian telecommunication markets.

9. For this purpose, an amendment to the Telecommunication market ordinance 2008 (TKMV 2008), which basically has already entered into force on December 30<sup>th</sup>, 2008, was prepared for the market for bitstream wholesale access for non-residential customers. After carrying out a public consultation, the mentioned amendment of the TKMV 2008 entered into force on December 16<sup>th</sup>, 2009.

10. It is noteworthy that this market definition is not in full compliance to the Commission recommendation of December 17<sup>th</sup>, 2007 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (OJ L 344/65 as of December 28<sup>th</sup>, 2007).

11. In the mentioned market recommendation the Commission defined the wholesale market for Bitstream wholesale access both for residential and non-residential customers. Although the Commission according to Article 7 (4) Framework directive could require the National Regulatory Authority to withdraw any notified draft measure on market definition, it accepted the TKMV 2008 as it was notified according to Art 7 (3) Framework directive. The following market analysis procedure on this market is currently ongoing.

### 1.2.2 *Market analysis*

12. Within reporting time the following market analysis procedures were carried out and concluded:

- Market for “Call origination on the public telephone network provided at a fixed location”:

According to the market analysis procedure, the Telekom-Control-Kommission as National Regulatory Authority concluded that A1 Telekom Austria AG (formerly: Telekom Austria TA AG) has significant market power on this market.

In order to counter the identified competition problems on this market the following obligations were imposed on A1 Telekom Austria AG:

- Obligation to interconnect on request,
- Cost oriented tariffs in form of exact defined tariffs,

- Non-discrimination obligation, including the obligation to publish a reference interconnection offer concerning origination services and
- Accounting separation.

The final decision entered into force on July 26<sup>th</sup>, 2010.

- Market for “Call termination on individual public telephone networks provided at a fixed location”:

The undertakings in the relevant market are A1 Telekom Austria AG (formerly Telekom Austria TA AG and mobilkom austria AG), aicall telekommunikations-Dienstleistungs GmbH, Aplus Informationstechnologie GmbH., Colt Telecom Austria GmbH, Hutchison 3G Austria GmbH, Informations-Technologie Austria GmbH, „IT-Technology“ Gesellschaft für industrielle Elektronik und Informationstechnologie mbH, Liwest Kabelmedien GmbH, mediainvent Service GmbH, MITACS Telekomservice GmbH, MultiKom Austria Telekom GmbH, NeoTel Telefonservice GmbH & Co KG, Orange Austria Telecommunication GmbH, Telecomservice GmbH, Teleport Consulting- und Systemmanagement Gesellschaft m.b.H., Tele2 Telecommunication GmbH, T-Mobile Austria GmbH, UPC Telekabel Wien GmbH, Verizon Austria GmbH, WNT Telecommunication GmbH, xpirio Telekommunikation & Service GmbH.

According to the market analysis procedure, the Telekom-Control-Kommission as National Regulatory Authority concluded that each of the above mentioned operators has significant market power on the relevant market for call termination on its respective individual public telephone network provided at a fixed location.

Differences between large (only A1 Telekom Austria AG) and small operators concerning the potential competition problems in the analysed markets caused the imposition of different remedies:

a) A1 Telekom Austria AG

The following obligations were imposed on A1 Telekom Austria AG only:

- Obligation to interconnect on request,
- Cost oriented tariffs in form of exact defined tariffs,
- Non-discrimination obligation, including the obligation to publish a reference interconnection offer concerning origination services,
- Obligations to prevent foreclosure strategies and leveraging of market power and
- Accounting separation.

b) Alternative Operators

The following regulatory obligation was imposed on all operators (except A1 Telekom Austria AG):

- Price control on the basis of national benchmarking.

The final decisions entered into force on July 26<sup>th</sup> 2010.

- Market for “Wholesale Terminating Segments of Leased Lines with low bandwidths up to and including 2,048 Mbit/s”:

The undertakings in the relevant market are among others A1 Telekom Austria AG, Tele2 Telecommunication GmbH, Wienstrom GmbH, EVN AG, ÖBB Telekom Service GmbH and Salzburg AG.

According to the market analysis procedure, the Telekom-Control-Kommission as the National Regulatory Authority concluded that A1 Telekom Austria AG has significant market power on the relevant market.

In order to counter the identified competition problems on this market the following obligations were imposed on A1 Telekom Austria AG:

- Access to terminating segments according to reasonable request by customer, especially
  - access to terminating segments with different data rates at customer-specified locations,
  - provision of terminating segments to customer’s own infrastructure or to third parties' infrastructure according to customer requirements and
  - access to ancillary services necessary for access to terminating segments
- Price-cap regime: RPI – 0%; price-cap adjustment admissible in case of a cumulated inflation > 5% based on the Austrian consumer price index 2005 (value 2009); obligation to notify an intended price increase of a market product to be accompanied by proof of price-cap compliance; compliance control by NRA within the next market analysis; extra 10% discount for resellers,
- Non-discrimination obligation,
- Obligation to publish new reference offers regarding low-bandwidth terminating segments of leased lines and terminating segments of Ethernet services with guaranteed bandwidth within 4 weeks from entry-into-force of measure and
- Obligation to separated accounts.

The final decision entered into force on May 17<sup>th</sup>, 2010.

- Market for “Voice call termination on individual mobile networks”:

The undertaking concerned was Mundio Mobile (Austria), acting as a Mobile Virtual Network Operator (MVNO, using the network of former mobilkom austria AG).

According to the market analysis procedure Telekom-Control-Kommission concluded, that also Mundio Mobile (Austria) has significant market power in the relevant market for termination of voice calls on its respective mobile network.

In order to counter the identified competition problems on this market the following obligations were imposed on Mundio Mobile (Austria):

- Obligation to interconnect on request (Art 12 Access Directive/2002/19/EC)
- Non-discrimination obligations concerning quality and price (Art 10 Access Directive)
- Obligation to publish a reference interconnection offer concerning termination (Art 9 Access Directive)

- Price control: Cost oriented tariffs on the basis of the Long run additional incremental cost (LRAIC) of an efficient operator (Art 13 Access Directive). The concrete – below mentioned – rates for mobile termination have been set in line with a glide path, which foresees a target level of Cent 2,01 (costs of the operator with the lowest costs in the year 2010). This level has to be reached (also) by Mundio Mobile (Austria) on June 1<sup>st</sup>, 2011.

	Mundio Mobile
Till 30.6.2010	3,50
Starting from 01.07.2010	3,01
Starting from 01.01.2011	2,51
Starting from 01.06.2011	2,01

- Relief of obligations on the market for terminating segments of leased lines and on the market for transit services:

As the two mentioned markets were not susceptible to ex ante regulation any more, the Telekom-Control-Kommission with decisions of August 6<sup>th</sup>, 2009 relieved all imposed obligations on A1 Telekom Austria AG referring to the mentioned markets.

### 1.3 Energy

#### 1.3.1 Price developments and switching behaviour

13. Electricity prices for household and small commercial customers increased by 1%, the pure electricity price by some 3%. Electricity prices for industrial customers were reduced by 5% in 2009. This shows that the dramatic decrease in wholesale prices led to small decreases in prices for industrial customers only. Household and commercial customers did not benefit from the decrease so far. Total electricity prices increased by some 1%.

14. Gas prices for household and small commercial customers decreased by 2%, the pure energy price by 4%. Gas prices for industrial customers decreased by 13%. Total gas prices decreased by some 4%. After a steep decrease the import price started increasing again in midyear 2009 but remains at the same level as three years ago.

15. In 2009 only 1.3% of all customers switched supplier. Due to the fact that the decrease of wholesale prices has not been forwarded to the customers the saving potential in many parts of the country remained very low. Studies of E-Control, the sector regulating authority, show huge psychological switching costs for customers based upon uncertainty and lacking knowledge.

## 2. Enforcement of competition laws and policies

16. While most cases were dealt with by the Federal Competition Authority BWB (BWB) and the Federal Cartel Prosecutor (FCP) jointly, some were followed only by the BWB or the FCP. The annual report of the FCP for the year 2009 can be viewed at [www.justiz.gv.at/internet/html/default/8ab4a8a422985de30122a92c3e89637f.de.html](http://www.justiz.gv.at/internet/html/default/8ab4a8a422985de30122a92c3e89637f.de.html)<sup>1</sup> The annual report of the BWB can be found at [www.parlinkom.gv.at/PAKT/PR/JAHR\\_2010/PK0575/index.shtml](http://www.parlinkom.gv.at/PAKT/PR/JAHR_2010/PK0575/index.shtml).

<sup>1</sup> [www.justiz.gv.at/internet/file/8ab4a8a422985de30122a92c3e89637f.de.0/bkanw\\_jahresbericht\\_2009.pdf](http://www.justiz.gv.at/internet/file/8ab4a8a422985de30122a92c3e89637f.de.0/bkanw_jahresbericht_2009.pdf)

## **2.1 *Action against anticompetitive practices, including agreements and abuses of dominant positions***

### **2.1.1 *Summary of activities***

17. In the period under review (1 July 2009 - 30 June 2010) 15 new cartel cases and 14 new cases concerning the abuse of a dominant market position were examined. In several cases the Cartel Court has not rendered a decision yet.

### **2.1.2 *Description of significant cases, including those with international implications - Agreements, recommendations and sector inquiries***

- **Cartel investigation of the freight forwarding sector**

In February 2010, the BWB filed an application for the imposition of fines against all members of the trade association for freight forwarding and logistics ("Zentralverband für Spedition und Logistik") for regulating the tariffs for domestic freight forward services concerning general cargo. The BWB contended that the circulation of tariffs among the members of the association is liable to prompt them to align their tariffs, irrespective of their costs. Also, the BWB applied to the Cartel Court to impose a fine against a subsidiary of the state-owned Austrian-based railway company ÖBB for exchanging commercially sensitive information with the association with a view to align its tariffs for general cargo with those of the association.

The information that prompted the BWB to start its investigation came from an undertaking that self reported its involvement in the cartel infringement. Since the Cartel Court's proceeding is still in the early stages, the fines have not been set yet.

- **Fines imposed on printing chemical wholesalers**

On 14 April 2010, the Austrian Cartel Court imposed fines totalling € 1 500 000 on the Donau Chemie, DC Druck-Chemie, Brenntag and the Ashland groups for having infringed Article 101 TFEU. All of the addressees of the Cartel Court's decision are active in the wholesale of printing chemicals.

The Cartel Court proceeding was initiated by the BWB following a thorough investigation triggered by an application for immunity within the Austrian leniency program by the Donau Chemie Group. In this case, however, the immunity applicant failed to comply with the duty to fully co-operate with the BWB so that immunity was ultimately withdrawn. The DC Druck-Chemie group was granted a 50% reduction of fines for providing significant added value to the BWB's case.

The Cartel Court established that the cartel participants pursued a strategy of stabilising the printing chemicals wholesale market thereby making it a principle that every distributor keeps its own customers. In order to ensure the implementation of the customer sharing principle, the cartel participants coordinated their pricing policy towards their respective customers which ultimately led to higher prices. The Cartel Court also found that the cartelists fixed selling prices for certain types of printing chemicals. The compliance was monitored mostly through multilateral and bilateral meetings during which the parties exchanged commercially sensitive information on negotiations with customers, including on volumes and prices.

When imposing the fines, the Cartel Court fully accepted the amount proposed by the BWB. In determining the fine, the BWB took into account the methodology as envisaged in the European Commission's guidelines on fines.

The decision was appealed to the Supreme Cartel Court.

- Ongoing investigations in plumbing/fitting sector

In June 2009, the BWB filed an application with the Cartel Court for the imposition of fines against plumbing firms for having infringed cartel law. The case is still pending.

In February 2007 a company of the City of Vienna issued an invitation to tender for a 3-year framework contract for gas, water and heating fittings to be done in its apartment buildings. Tenders could be placed for specifically defined geographic areas. Contract volume was estimated at € 200 million.

Following an initiative of three plumbers, representatives of 50 to 60 local plumbing firms met in March 2007 in order to share information on the forming of consortia. Right after this meeting some of these representatives allegedly met to actually start the process of forming the consortia. Allegedly the consortia agreed on which consortium should tender for which geographic area.

After thorough investigations the BWB filed an application with the Cartel Court as it suspects the relevant firms to have fixed regions and prices. As mentioned above, the case is still pending.

### 2.1.3 *Investigation into the liquid fuel markets*

18. In the reporting period the BWB continued to focus on the liquid fuel market. Therefore the following investigations were carried out which should also help to build up further knowledge on the functioning of the market.

- Liquid fuel prices and their factors of influence in the province of Vorarlberg: reasons for the ongoing west-east price differential in Austria

Liquid fuel prices are traditionally higher in the western part of Austria. The oil companies argue that this is mainly due to higher transportation costs caused by specific geographical conditions (mountainous terrain). These issues gave reason to analyze the liquid fuel market in the province of Vorarlberg (located most west in Austria) and particularly the question why this west-east divide exists. The main results are the following:

- Cargo costs are not necessarily causal for the higher-than-average price level. In fact, the west-east price differential in Austria is mainly due to the reasons mentioned below:
- The province of Vorarlberg shows the highest proportion of petrol stations owned by international oil companies. Traditionally, these stations charge a higher price than their independent counterparts.
- The high liquid fuel consumption in the province of Vorarlberg due to transit traffic and liquid fuel tourism contributes to the higher-than-average price level. In fact, liquid fuel tourism caused by significantly higher petrol prices in the neighbouring country Germany (particularly since the introduction of the ecological tax in the year 1999) is one of the principal reasons for the prevailing price level in Vorarlberg.
- Analyzing the relationship between pump and product prices by an EGARCH Error-Correction-Model for the time span August 2004 to July 2009, no asymmetries in the data can be found. Neither price asymmetry (i.e. retail prices in Vorarlberg follow the Platts notations more slowly downwards than upwards) nor an amount asymmetry (i.e. the sum of upward price changes differs from the sum of downward price changes) can be detected.

In order to view the report, please see [http://www.bwb.gv.at/NR/rdonlyres/6BB6DB74-62AD-4320-9999-256CC1C572C2/36804/EnderichtVorarlberg\\_August2009.pdf](http://www.bwb.gv.at/NR/rdonlyres/6BB6DB74-62AD-4320-9999-256CC1C572C2/36804/EnderichtVorarlberg_August2009.pdf).

- Market entry in the province of Salzburg: Reaction of the incumbents to market entry

Traditionally, the average liquid fuel prices in the province of Salzburg ranked among the highest in Austria. At the end of June 2009 a new competitor built up self-service gasoline stations on parking areas of a discount food store chain, true to the philosophy "making a good bargain and tank up".

After the opening, a price spiral downwards started in the surrounding area until a fuel price of about 50 cents per liter was reached (before, the average price in the province of Salzburg was somewhat more than 1 euro). After two days the fuel prices have stabilised but did not reach the original price level again:

Before the market entrance the average liquid fuel prices in the province of Salzburg were the third highest in Austria whereas since July 2009 they belong to the cheapest or second cheapest out of 9 provinces.

The corresponding report published on BWB's homepage describes the situation regarding the market entry as well as the development of the fuel prices in the province of Salzburg and the specific factors which will influence them (see [http://www.bwb.gv.at/NR/rdonlyres/B07A9310-272F-438F-BC82-1D2338E769E8/36820/EndberichtTreibstoffmarktSalzburg\\_20091.pdf](http://www.bwb.gv.at/NR/rdonlyres/B07A9310-272F-438F-BC82-1D2338E769E8/36820/EndberichtTreibstoffmarktSalzburg_20091.pdf)).

- Monthly newsletter regarding the fuel market

Since November 2009 the BWB publishes a monthly newsletter regarding the liquid fuel market in general and the prices in particular. It aims at providing a monthly brief updated market overview for interested parties.

The following key subjects are covered in every issue:

- the development of liquid fuel prices in Austria
- a price comparison with all other EU Member States
- crude oil prices and their development over time

The newsletter is published on the 10<sup>th</sup> of each month on the homepage of the BWB, focusing on the current developments within the previous month. Issues already published can be found at [www.bwb.gv.at/BWB/treibstoffnews/default.htm](http://www.bwb.gv.at/BWB/treibstoffnews/default.htm).

- Report on Platts price assessments

In the cause of its past market inquiries in the liquid fuel market, the BWB found that most contracts on the upstream markets (ex-refinery and wholesale markets) are closely linked to the Platts notations. Furthermore, in the past vertically integrated players regularly justified their price changes at the retail level by the corresponding changes of the Platts notations. Thus, on the basis of data provided by Platts the BWB carried out an extensive analysis from which the following conclusions can be drawn:

- The bidding process (individual bids and offers as well as contracts concluded) is transparent to all market participants having subscribed to the system.

- The price assessment process does not follow a pre-fixed set of inputs or parameters (like economic models, algorithms or fixed weights for individual factors). Platts reaches a qualitative judgment on the assessment on an individual day-to-day basis.
- In carrying out its price assessments Platts preserves some editorial latitude. It looks at a range of factors in addition to actual contracts, including bids, offers and developments in adjacent markets. This is especially the case on days where no contracts have been concluded. Days without contracts are particularly frequent in the cargo markets.
- The structure of traders concerning the proportion of vertically integrated companies (majors) versus other traders varies across the different product markets. Majors will mostly account for 40 to 60% of all participants. Independent traders play a considerable role, financial institutions only a marginal but, as Platts stated, a growing one.
- It is estimated that Platts covers between 5 and 9% of the total consumption in the respective geographic markets, with the exception of the gasoline cargoes market where the coverage of Platts only accounts for some 2.6%. However, Platts likely covers a substantially greater proportion of spot trades (as opposed to term contracts) in the markets in question.

In order to view the report, please follow this link:  
[http://www.bwb.gv.at/NR/rdonlyres/A485689F-5A02-4FD2-A9C3-BB29E9087310/38070/Platts\\_FinalReport.pdf](http://www.bwb.gv.at/NR/rdonlyres/A485689F-5A02-4FD2-A9C3-BB29E9087310/38070/Platts_FinalReport.pdf)

- Review of all remedies since 2002

At the end of 2009 the BWB started to review all merger and antitrust cases with regard to the compliance with as well as the effectiveness of remedies and commitments. This concerns about 55 cases since the creation of the BWB in July 2002. The extensive project aims at 1) controlling if remedies/commitments were complied with; 2) understanding better what worked well and what did not and if remedies/commitments were effective; and 3) developing guidelines for the content, formulation and monitoring of remedies/commitments.

A first stock taking exercise of all remedies/commitments revealed that in about 55 cases about 140 remedies/commitments were imposed. In a next step the compliance with the remedies/commitments is being controlled.

#### 2.1.4 *Abuse of a dominant position*

- Distribution of liquefied petroleum gas in tanks

After thorough investigations since April 2006 the BWB filed an application with the Cartel Court for determination of the alleged behaviour and the imposition of fines in August 2009. The case concerns the abuse of collective dominance in the national market for distribution of liquefied petroleum gas in tanks. The case is still pending at the Austrian Cartel Court.

Five enterprises are collectively dominant in the market for distribution of liquefied petroleum gas in tanks. The alleged abuse of their collective dominance concerns 1) exclusionary conduct by tying tank ownership to an exclusive purchasing obligation and thereby foreclosing competitors. This leads to 2) exploitative conduct, i.e. price discrimination between different customer groups of the same distributor as well as excessive pricing between tied customers of the collectively dominant distributors and free customers of the cheapest distributors (Mavericks).

This case triggered several new analysis methods to prove exclusionary abuse that has caused exploitative abuse of collective dominance. First, the determination of the competition price in an abuse of collective dominance case; second, applying a real (not hypothetical) SSNIP-Test for the market delineation; third, parallel presence of single and collective dominance and the uncovering of a lack in guidance and case law regarding the investigation of collective dominance via interdependence by customer sharing (market sharing); and fourth, providing a solution by withdrawing the exclusive purchasing clause that triggers price reduction throughout incoming competition without any regulation.

## 2.2 *Mergers and acquisitions*

### 2.2.1 *Statistics on number, size and type of mergers notified and/or controlled under competition laws*

19. Between 1 July 2009 and 30 June 2010 a total of 215 national concentrations were notified. In 9 cases an application for in-depth-investigations was filed by one or more of the official parties leading automatically to phase II proceedings.

20. In three cases the parties withdrew their notification during phase II and did not notify again. In one case the application for examination with the Cartel Court was withdrawn by the official parties due to commitments of the parties and in four additional cases without any commitments after substantial new information was provided. In one case the Cartel Court decided upon application by the official parties that the merger was not notifiable and therefore rejected the notification.

### 2.2.2 *Summary of significant cases*

- Styria Medien AG/Moser Holding AG

In August 2009 Styria Medien AG and Moser Holding AG notified their intention to merge primarily their *regional daily* newspapers in the region of Carinthia, Styria and Tyrol. Both parties also edit free of charge weekly regional newspapers, mainly complementary in the nine Austrian regions. In this way the parties are active in nearly all Austrian regions. *National* media activities of the parties (e.g. national newspapers, radio, TV) should stay outside the scope of the merger.

Given the parties' wide-ranging activities and their turnover, the notified merger would have been the most important merger in the media sector in Austria. Furthermore, the merger affected many different markets, e.g. readers market of daily regional newspapers, advertisements in newspapers, radio, distribution of newspapers and printing of newspapers. A main aspect of that transaction was also the assessment of media plurality.

The BWB as well as the FCP filed an application for examination with the Cartel Court in September 2009. Concerns were focused on foreclosure effects regarding advertisements in newspapers and the detriment to media plurality. While the activities of the parties were mainly regionally complementary, the BWB and the FCP were worried that the dominant position of the parties in the advertisement market in their domestic markets (on the one hand the regions of Carinthia and Styria and on the other hand Tyrol) could lead also to dominant positions in other regions and on a national level. Regarding media plurality the BWB had concerns that the merger - also by means of the reduction of independent editorial staff - would have led to a coordination and/or duplication of the content in different (types of) newspapers throughout the whole country thereby seriously reducing media plurality and disregarding regional interests of the readers.

Before the Cartel Court could decide on the transaction and its compatibility with the rules on competition, the parties withdrew the notification in January 2010.

- Jet fuelling installations at Salzburg airport

In August 2009 the creation of a joint venture at Salzburg airport by three suppliers of jet fuel (each of them a larger vertically integrated oil company) was notified. The joint enterprise should make the fuelling installations at the airfield (i.e the tank for jet fuel and the specialised tanking trucks) jointly available. The supply of jet fuel as such was not covered by the agreement.

The BWB was convinced that the joint venture inaugurated a high potential for efficiencies as the size of the Salzburg airport only provides a limited scope for competing suppliers of fuelling services for airplanes. Nevertheless, the joint venture could raise concerns for unilateral as well as coordinated effects. Therefore the BWB filed an application for examination with the Cartel Court in September 2009. In negotiations with the companies the following commitments were agreed on and made legally binding:

- The joint venture has to be managed by a service provider which is fully independent.
- No information about the competing jet fuel suppliers may be passed on to one of the owners.
- Any outsider is empowered to use the fuelling installations under the same conditions as the partners of the joint enterprise.

### **3. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies**

21. The BWB may comment on issues of general economic policy from a competition point of view and communicate the implications and benefits of fair competition to the general public, thus covering the field of competition advocacy.

22. Besides numerous press contacts the BWB regularly releases information on important cases. Due to the amendments in the Cartel Act and the Competition Act, the BWB now publishes also information on notifications, the application for the examination with the Cartel Court by an official party, the decision clearing a merger under certain remedies as well as decisions of the Cartel Court in other than merger cases.

23. On June 9<sup>th</sup>, 2010, the BWB in cooperation with the European Commission Representation in Austria and the Federation of Austrian Industries hosted the first international "Vienna Competition Conference", a one day conference with the working title "Industry vs. Competition?". More than 150 participants followed the discussions of three panels on the topics leniency, behavioural economics and private enforcement. Many high level speakers including Director General Alexander Italianer, European Commission and US Commissioner Tom Rosch, Federal Trade Commission, followed the invitation of Director General Thanner. The focus of the conference was to facilitate a dialogue between representatives of national competition authorities, the European Commission and the industry. It provided a great platform to encourage debate on different opinions as well as to analyse the complex issues. All presentations and speeches are available on the conference website <http://www.bwb.gv.at/BWB/Konferenzen/viennaconf2010/presentations.htm>

24. The BWB puts a great emphasis on intensifying international co-operation with other (Non-)European competition authorities both on bilateral and European level. In this context e.g. the BWB organised the Annual European Competition Authorities Director Generals' Meeting in Vienna in June 2010. The Director Generals discussed topics such as the special treatment of sectoral industries in competition law and the role of competition advocacy in the daily work of the competition authorities. The

main topic was the need of co-operation between competition authorities of EU-Member States and Non-EU-Member States. For that reason DG Thanner invited Mr Andrej Tsyganov, Deputy Head of FAS Russia, who is very much interested in a closer cooperation of the FAS with national competition authorities of other European countries. An important step forward would be the creation of a legal basis for information exchange between Russia and the European countries.

25. Furthermore, a bilateral agreement was signed in the reporting period with the Serbian competition authority.

26. On joint initiative of the BWB and the Czech Office for the Protection of Competition the Marchfeld Competition Forum (MFC) has been set up as a form of informal regional cooperation between the competition authorities of Austria, the Czech Republic, Slovakia, Hungary, Poland, Slovenia, Croatia, Estonia, Lithuania, Latvia, Bulgaria, Romania, Switzerland and the European Commission in a constitutive meeting in summer 2008 in Schloss Hof, Marchfeld/Austria. The main purpose of this initiative is the strengthening of regional cooperation between national competition authorities from EU Member States as well as non-members, e.g. by discussing topical competition-related issues in regular meetings and by exchanging experience and information, building on the European Union's framework (ECN).

27. To facilitate the information exchange on mergers affecting more than one country, the BWB suggested the creation of an information platform (merger database). This enables the members of the MCF to update their data on mergers on a daily basis, representing a unique feature of the MCF which allows closer co-operation in the field of merger control. One responsible person per authority provides the relevant data on national mergers, all case handlers of the competition authorities can view the information via the secure platform and get contact details of the case handler in charge. The platform operates in English.

#### **4. Resources of competition authorities**

28. By 30 June 2010 - additional to the Director General and the Deputy Director General - 15 lawyers, 7 economists, two other professionals and 6 persons as support staff, i.e. all together 32 persons, were working at the BWB. More staff is still needed. Each case handler is responsible for all cases (mergers and antitrust) in specific sectors.

29. The Federal Cartel Prosecutor and his Deputy are supported by the registry of the Cartel Court in administrative matters.

30. As the decision making body, the Cartel Court comprises five panels being composed of two professional judges and two lay judges. The Cartel Court employs currently seven professional judges who are partly involved in other matters and are supported by fifteen lay judges. Additionally, the Cartel Court relies on advisory opinions of independent economic experts of its own choice.

31. The Supreme Cartel Court comprises one panel being composed of three professional judges and two lay judges.