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THE AUSTRIAN CARTEL ACT OF 2005

*AN EURO-AMERICAN LAWYERS GROUP BRIEFING ARTICLE PREPARED BY
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As of 1 January 2006 the new Austrian Cartel Act 2005 will enter into force, which will “implement” EC-Regulation No. 1/2003 into domestic law and bring about far-reaching changes vis-à-vis the existing anti-trust code:

In essence, the presently applicable variety of rules governing different types of cartels will be replaced by three provisions which nearly literally incorporate the wording of Article 81 EC. Vertical agreements on distribution which used to be subject to separate treatment under Austrian law, therefore, will follow the general prohibition of anti-competitive agreements and concerted practices under Section 1 Cartel Act 2005.

In line with the concept of EC Regulation No. 1/2003, the former notification system for all types of anti-competitive acting will be abolished and one will individually have to assess whether specific agreements or practices are in compliance with Austrian cartel law. For ease of legal security, the minister of justice remains empowered to issue block exemption regulations, which may literally refer to those issued by the European Commission.

The principal change in the field of merger-control will be the increase of the thresholds for compulsory merger-notification, which from 2006 on will apply to concentrations (i) if the combined aggregate of the worldwide turnover of all undertakings concerned exceeds EUR 300 million, (ii) if the combined aggregate turnover on the Austrian market of all undertakings concerned exceeds EUR 30 million (formerly EUR 15 million) and (iii) if each of at least two of the undertakings concerned achieves a worldwide turnover exceeding EUR 5 million (formerly EUR 2 million).

In summary, it can be stated that the innovations implemented by the Cartel Act 2005 will contribute to a unification of domestic and EC-cartel law. From a lawyer’s point of view, it will leverage the demand for cartel law advice, since the system of compulsory notification of cartels will be cancelled whilst the former assessment of the cartel court on legal compliance of notified cartels will shift to the parties involved.

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