

# „Administrative cooperation within the ECN“

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**BWB**

**15 years**

### Official Meetings

more than 240 meetings within the "European Competition Network"

more than 40 OECD/UNCTAD Meetings

315 meetings with the Austrian Competition Commission



### Budget vs. Fines

Budget spent 2002- 2017: approx. 33 Mio €

Fines imposed by the Cartel Court and Cartel Supreme Court: 196.2 Mio. €

### Procedures/ Activities

536 Cartel Cases

398 Abuse of Dominance Cases

78 Leniency Applications

6 sector inquiries

86 publications in the Austrian Cartel Law Magazine

### Human Resources

1 restructuring (two departments will be implemented in the 2<sup>nd</sup> half of 2017)

Number of employees 2002: 17

Number of employees 2017: 37

### Investigations

135 conducted dawn raids

1 Whistleblower-System will be implemented this year

### Mergers

more than 4.600 national Mergers have been examined

126 request for examination filed to the Cartel Court

more than 4.900 EU-Mergers have been analysed

### Events/Cooperations

31 Competition Talks with more than 1.500 participants

4 big conferences with more than 50 countries participating

3 Cartel Law Moot Courts

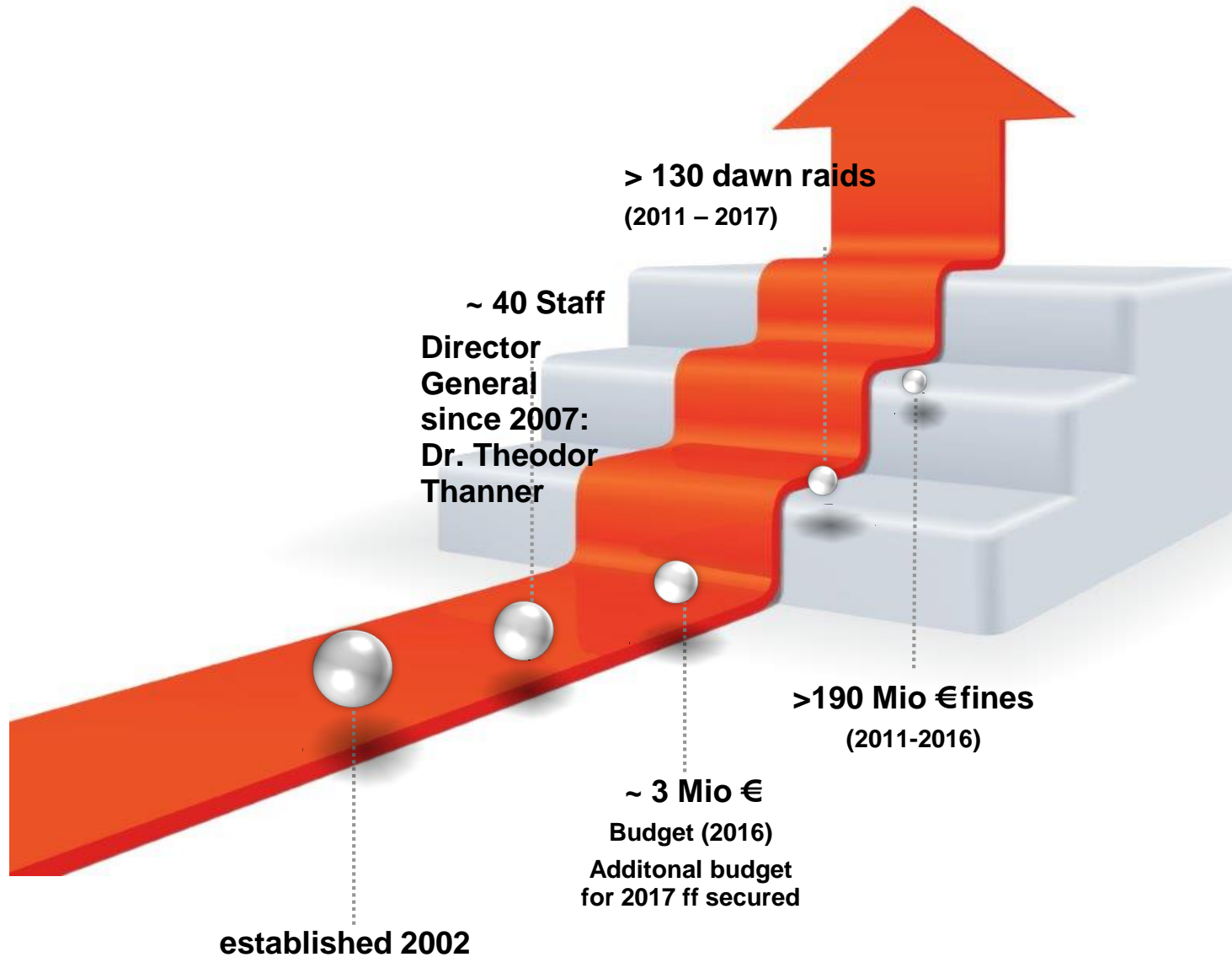
14 Memoranda of Understanding signed for exchange of experience and know-how

Active in 12 international cooperations with other Competition Authorities

1 Twinning with the Moldavian Competition Authority for expert advice in developing an efficient and effective antitrust authority in Moldova



## BWB: who we are



## ECN and more

- In coping with current challenges, **international cooperation is paramount** since challenges may be quite similar to the enforcers of most jurisdictions. The exchange of knowledge and information is therefore a prerequisite for successful enforcement.
- To this end, the **European Competition Network (ECN)** has been established.
- It should serve as a forum for discussion and cooperation of European competition authorities in cases where Articles [101](#) and [102](#) TFEU are applied.
- It should ensure an efficient division of work and an effective and **consistent application of competition rules.**

## ECN and more

- ECN allows authorities to **pool their experience** and **identify best practices**.
- Importance of **contacts** between NCAs on a **regular basis** (note that cooperation can be time-consuming; e.g. translation of procedural documents).
- see Commission Notice on cooperation within the Network of Competition Authorities, OJ 2004/C 101/03, and “Joint Statement of the Council and the Commission on the Functioning of the Network of Competition Authorities“
- The Austrian authority’s horizon also goes **beyond the EU**
  - bilateral and multilateral level, e.g. MoUs, study visits, Mediterranean Cooperation, International Working Groups

## ECN and more

- **Within in the ECN, authorities should cooperate by**
  - **informing** each other of new cases and envisaged enforcement decisions;
  - **coordinating** investigations, where necessary;
  - **helping** each other with investigations;
  - **exchanging** evidence and other information; and
  - **discussing** various issues of common interest.  
([ec.europa.eu/competition](http://ec.europa.eu/competition))
  
- Cooperation between NCA`s is essential for the effective functioning of competition enforcement, in particular in the area of **inspections**.

## ECN and more

- **Art 22 Regulation 1/2003** stipulates that NCAs may in their own territory carry out any inspection or other fact-finding measure under its national law on behalf and for the account of the NCA of another Member State in order to establish whether there has been an infringement of Article 101 or 102 TFEU.

Exchange and use of the information collected is governed by **Art 12 Reg 1/2003**.

At the request of the Commission, NCAs undertake inspections which the Commission considers to be necessary under **Art 20 (1) and (4) Reg 1/2003**.

- Within the last two years the BWB has been confronted with several unresolved issues regarding cooperation in this field, both with regard to inspections carried out by and inspections carried out for other NCAs.

## ECN „plus“

- **Proposed directive to empower the competition authorities of the Member States (“ECN +”)** to be more effective enforcers is currently underway.  
[http://ec.europa.eu/competition/ecn/index\\_en.html](http://ec.europa.eu/competition/ecn/index_en.html)
- Directive aims to ensure that
  - all national competition authorities have the right **tools to detect and sanction violations** of EU competition rules;
  - all national competition authorities have effective **leniency programmes** that encourage companies to come forward, possibly in several jurisdictions, with evidence of illegal cartels; and
  - to safeguard the **independence of national competition authorities** when enforcing EU competition law, and ensure they have the resources and staff needed to do their work.
- **BWB**: Independence and sufficient resources of NCAs are of utmost importance; changes to functioning national leniency programmes should be undertaken carefully
- see Austria’s contributions to the consultation process at <http://ec.europa.eu/competition/consultations/closed.html>



## Case study I

- **BWB** received a request to carry out an inspection for the **German Bundeskartellamt**
- Background: Evidence of horizontal agreements regarding the German market
  - price fixing
  - quoting markets
- The evidence transmitted by the Bundeskartellamt was submitted to the **Austrian Cartel Court**
- The Court issued the **inspection order**.
- After the inspection was concluded, the inspected company brought an **appeal** against the court order. Company's arguments were
  - the issue investigated by the Bundeskartellamt only concerns the domestic (german) market, hence Art 22 (1) (EC) 1/2003 is not applicable
  - legal preconditions for issuing an inspection order in the home country of the requesting authority have to be met.

## Case study I

- The **Supreme Court dismissed the appeal** (Case No. 16 Ok 8/16m)
  - After reviewing the documents submitted, the Supreme Court reached the conclusion that it is sufficiently clear that the Bundeskartellamt based their investigation on Art 101/102 TFEU
  - The issuance of an inspection order is only permissible if the legal preconditions of the home country where the requesting authority is located are met
  - To **ensure this legal standard** the requesting authority has to provide information regarding all circumstances of the case, which allow for judging whether the prerequisites for an intervention are given.
- The complainant's legal view that the request should have been subject to judicial control by German courts would go too far: there is **no need for a preliminary review by the courts of the requesting authority**
- Issuance of the inspection order was proportionate and the documents submitted to the Austrian Cartel Court gave sufficient grounds for issuing an inspection.
- **no formal requirements** for a request for administrative request: Art 22 (1) (EC) 1/2003 doesn't specify formal requirements.
- The requested authority has to outline that it is acting on behalf of an other authority.

## Case study II

- **BWB** requested the **Dutch Competition Authority ACN** to carry out an inspection on its behalf
- Background: Evidence of vertical agreements
  - quoting markets
  - Resale price maintenance
- The complainants filed a complaint against the request for assistance at the Austrian federal administrative court.
- The federal administrative court rejected the complaint.
- Now the case is pending in front of the Austrian Constitutional Court
- Arguments submitted by the company inspected
  - BWB was not entitled to request administrative assistance according to Art 22 (EC) 1/2003 on its own, the request would require previous approval from the Austrian Cartel Court.
  - An inspection order needs to fulfil the requirements under the national law of both the requesting and the requested NCA.

**However, the principles outlined in the aforementioned Case No. 16Ok8/16m are applicable.**

## Cooperation between BWB and (inter alia) criminal investigators

- According to **Art. 22 of the Austrian Constitution (B-VG)**, *inter alia* **all authorities of the Federation (Bund)**, the States (Bundesländer) and Municipalities (Gemeinden) are bound to render each other mutual administrative assistance within the framework of their legal sphere of competence.
- According to **§ 14 Competition Act**, The **Criminal Police, Public Prosecutors and Courts** may submit to the Competition Agency data and information including personal data gathered according to the Criminal Procedure Act, which is relevant for the Competition Agency for the enforcement of § 1 of the Cartel Act and Art 101 TFEU.

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