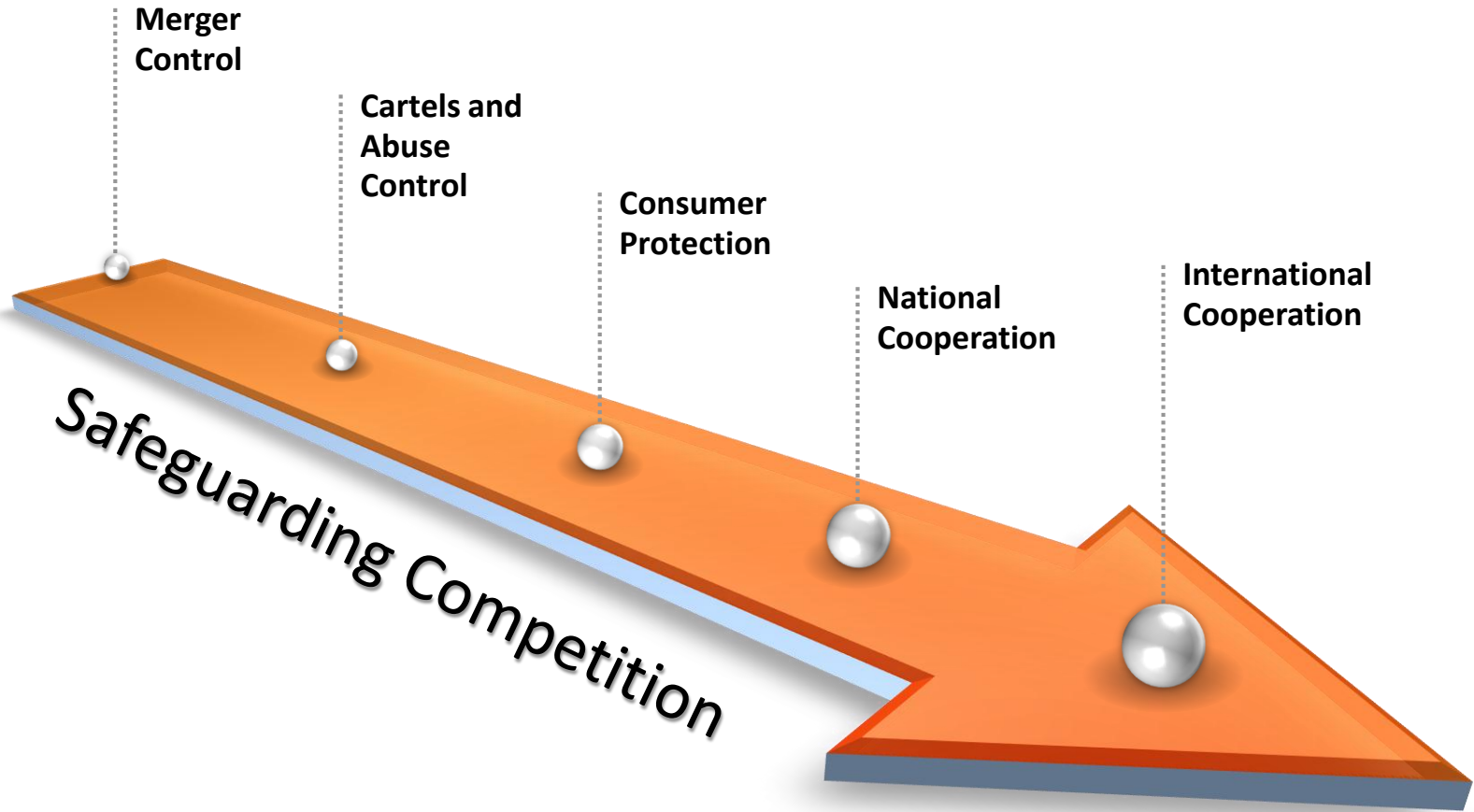


Recent developments in Legislation concerning digital Questions

Austrian Competition Authority
Dr. Theodor Thanner, Director-General

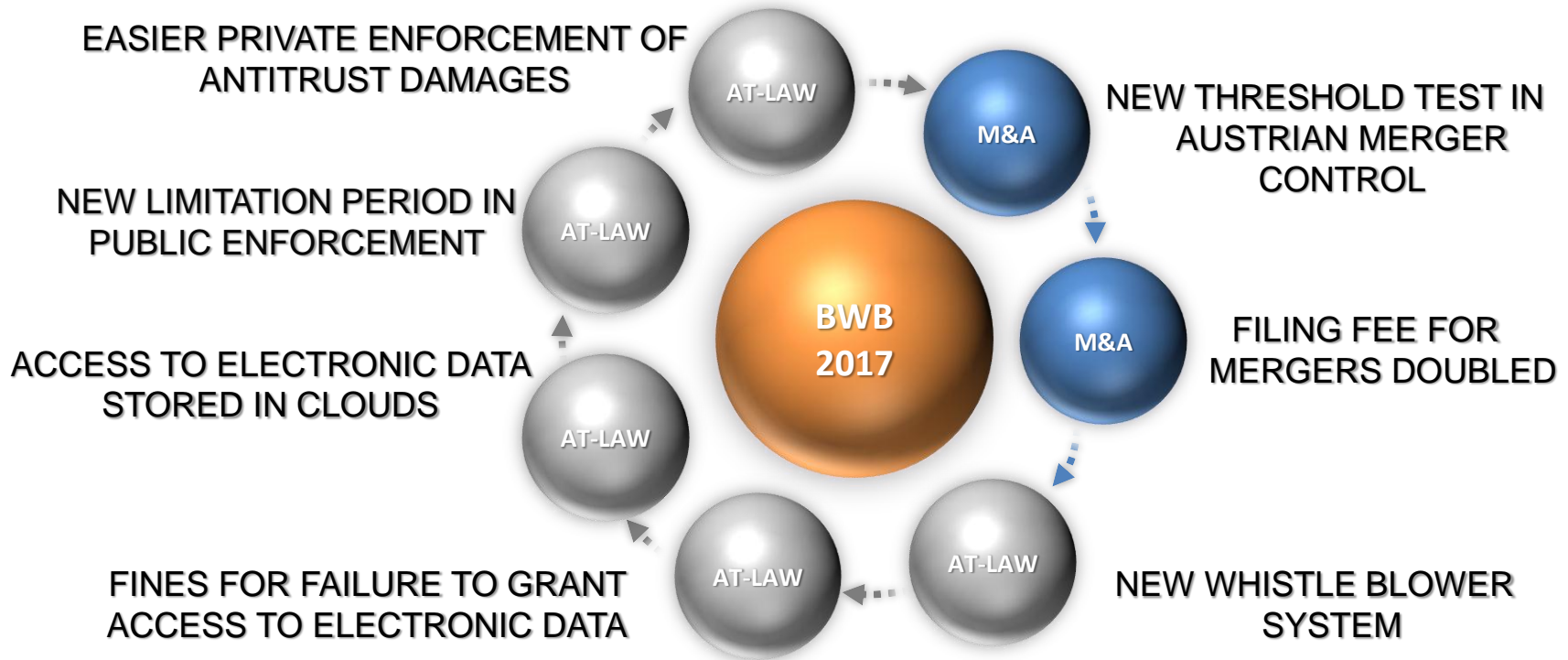
Russian Competition Week
September 21st 2017

AUSTRIAN COMPETITION AUTHORITY





2017 - CHANGES IN AUSTRIAN COMPETITION LAW



- **THRESHOLD TEST** in merger control, capturing transactions where the value of an undertaking is not (fully) based on the turnover the undertaking generates (digital companies):

Concentrations trigger a merger control filing requirement, if:

(1) the undertakings' combined worldwide turnover exceeds EUR 300 million,

(2) their Austrian turnover exceeds EUR 15 million,

(3) the value of the consideration for the transaction exceeds EUR 200 million and

(4) the target is active to a significant extent in Austria (business location or services are significantly used in Austria – website visits).

- **FILING FEE** for mergers is increased from EUR 1,500 to EUR 3,500.

ANTITRUST LAW

- **NEW WHISTLE BLOWER SYSTEM:** Implementation of a web-based tool at to anonymously disclose information on potential competition law infringements.
- **FINES FOR FAILURE TO GRANT ACCESS TO ELECTRONIC DATA DURING DAWN RAIDS:** Sanctions can be imposed on undertakings, if in the course of a dawn raid, they fail to grant access to electronic data that is accessible from the premises concerned. The fines can amount to up to 5% of the average daily turnover for each day of delay.
- **ACCESS TO ELECTRONIC DATA STORED IN CLOUDS:** During dawn raids the federal competition authority (FCA) can take any data which is accessible from the premises, no matter where the data is stored.

➤ NEW LIMITATION PERIOD IN PUBLIC ENFORCEMENT:

Until 1st May 2017 application for fines has had to be submitted to the Cartel Court within 5 years from the end of anticompetitive behaviour without any possibility to interrupt this period.

This period is suspended now in case the FCA informs at least one of the cartel members of an investigatory activity, e.g. a dawn raid or a request for information.

Furthermore, an absolute limitation period of 10 years - not counting the time of procedures before courts - after the determination of the anticompetitive behaviour was introduced.

ANTITRUST LAW

➤ **EASIER PRIVATE ENFORCEMENT OF ANTITRUST DAMAGES;** implementation of the EU Damages Directive (2014/104/EU):

(1) Shift of the burden of proof in favour of the injured party;

(2) Limitation period of claims for damages: infringements will become time barred after five years; the new limitation period will only begin when the claimant knows or can be expected to know of the identity of the infringer, the relevant conduct, of the harm being caused by that conduct and of the fact that the conduct constitutes an infringement of competition law.

(3) Access to evidence (disclosure): civil courts are able to order, upon request of the claimant (or the defendant), the disclosure of evidence from anyone who has such evidence (possible with or after filing the claim). "Pre-trial discovery" is not admitted in Austria. Disclosure orders can also concern evidence in files of courts or authorities; leniency applications and settlement submissions are excluded.

AGENDA 2017/2018

RUNNING TASKS

- **Sector Inquiry in the Health Care Market:** Securing fair competition and consumer protection (pharmaceuticals; e-health; cost reduction by combating monopolies)
- **Focus on Online- and Shared Economy:** (1) Online shopping vs. Geoblocking; (2) fair market access for services like Uber, AirBnB

STRENGTHENING THE AUSTRIAN COMPETITION AUTHORITY

- **Expansion of Digital Forensics and eDiscovery:** BWB is upgrading its systems and digital analytics possibilities -> for accessing data stored abroad (Cloud Storage), in close cooperation with the Federal Criminal Police Office (*in 2009 the Austrian Federal Criminal Police Office and the FCA signed a cooperation agreement*)
- **Establishment of an Internet-Based Information System;** “Whistleblower-Hotline”, strengthening the enforcement of cartel and antitrust law



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