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# Merger Control – Transaction Value Threshold

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## New provision in the law

- ✓ **Section 9 (4) KartG** introduced the criterion of merger considerations as an additional, subsidiary threshold for the notification requirement
- ✓ Mergers where companies or assets, which (as yet) generate little or no turnover, are purchased at a high price can now be examined under competition law
- ✓ Aim of the threshold is to cover cases where current turnover and the purchase price for the company differ to a disproportionate extent
- ✓ High purchase price in such takeovers is often an indication of innovative business ideas with great competitive market potential

# Guidance Paper

- ✓ Similar clause introduced in Germany
- ✓ Common guidance paper published in July 2018 after consultation process:

[https://www.bwb.gv.at/fileadmin/user\\_upload/Downloads/standpункte/2018-07\\_Guidance\\_Transaction\\_Value\\_Thresholds.pdf](https://www.bwb.gv.at/fileadmin/user_upload/Downloads/standpункte/2018-07_Guidance_Transaction_Value_Thresholds.pdf)

- ✓ Both provisions rely on two main elements:

**1. Transaction Value** (200 Mio € Austria)

**2. Nexus Requirement**

# Transaction Value

Points of discussion:

- ✓ Current value of future payments
- ✓ Confidentiality of information provided
- ✓ Value of considerations in securities transactions
- ✓ Assumed liabilities
- ✓ Formation of a new joint venture

# Nexus Requirement

Points of discussion:

- ✓ Measurement criteria
- ✓ Location of the target company as a criterion (Austria)
- ✓ Marketability of domestic activities
- ✓ Significance of domestic activities

# Conclusio

- ✓ Number of notifications not more than expected
- ✓ Specific sectors more targeted than others
- ✓ Nexus requirement more difficult to tackle; however, guidance paper provides legal security
- ✓ Debate should continue at a European level

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Thank you  
for your attention!