

# GUIDANCE

on dawn raids

**BWBB**



Austrian Federal Competition Authority

# **Dawn raids by the Austrian Federal Competition Authority Guidance Paper<sup>1</sup>**

October 2017

The Austrian Federal Competition Authority (BWB) was established on the basis of the Austrian Competition Act<sup>2</sup> (WettbG). Its powers result from national cartel and competition law as well as from Council Regulation (EC) No 1/2003 on the implementation of the rules on competition. It is an independent and autonomous authority, mandated in particular to conduct investigations into suspected infringements of Austrian and European competition law.

Where there is reasonable suspicion of anti-competitive conduct, the BWB is entitled to carry out a dawn raid following an order of the Cartel Court pursuant to Section 12 WettbG. A dawn raid of premises may also, pursuant to Article 22 of Regulation (EC) No 1/2003, be carried out at the request of another competition authority or of the European Commission. This is not to be confused with an inspection by the European Commission, during which the BWB only assists. The legal framework applicable in such cases is not covered by this Guidance. Reference is therefore made in this document to the European Commission's practice.<sup>3</sup>

This Guidance corresponds to the applicable law, to the most recent court judgements made by the courts<sup>4</sup>, and also to national and European best practices. In order to improve legal certainty and transparency for companies and their employees, this Guidance describes the whole process of conducting a dawn raid from beginning to end, listing the rights and obligations of BWB staff as well as the rights and obligations of the company and its employees. As electronic data is a big factor nowadays, this Guidance also explains how the BWB collects electronic data.

This Guidance is not binding on Austrian courts, other national authorities and courts, or the European institutions, and in particular does not interfere with judgements made by Austrian or European courts of law. Additionally, it does not deal with investigations conducted by other national authorities or the European institutions.

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<sup>1</sup> In case of any divergence the German version of the guidance paper prevails.

<sup>2</sup> Federal Act on the Establishment of a Federal Competition Authority (Competition Act – WettbG; *Wettbewerbsgesetz*), original version: Federal Law Gazette I No. 62/2002.

<sup>3</sup> Explanatory note on Commission inspections pursuant to Article 20(4) of Council Regulation No 1/2003,

[http://ec.europa.eu/competition/antitrust/legislation/explanatory\\_note.pdf](http://ec.europa.eu/competition/antitrust/legislation/explanatory_note.pdf) (retrieved on 10 August 2017).

<sup>4</sup> This refers to the Vienna Higher Regional Court acting as the Cartel Court, the Austrian Supreme Court of Justice acting as Supreme Cartel Court, and the European Court of Justice.

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## A. Conduct of a dawn raid

### How will I be informed that my business premises are going to be searched? What happens during the dawn raid itself?

1. The BWB starts the process on the basis of a **search warrant** issued by the Vienna Higher Regional Court acting as the Cartel Court (KG). As a rule, the search warrant is handed over to a company representative at the beginning of the dawn raid. The BWB must at any rate serve the warrant **within 24 hours** of it being enforced.<sup>5</sup> Usually, the KG instructs the BWB to hand over a copy of the warrant including the underlying application filed by the BWB as well as copies of any evidence. In this way the company is able to obtain all of the information that it needs about the suspected offence while the dawn raid is being carried out without having to inspect the case files at the KG. **Search warrant**
2. The BWB case team is always led by a **team leader**, who is the point of contact for the company and/or its legal representative. Any questions, for example relating to procedures, duration or type of the dawn raid, should only be discussed with the team leader. **Team leader**
3. At the beginning of the dawn raid, the company concerned will be interviewed by the team leader during a **preparatory meeting** about basic information related to the dawn raid (such as the company name, company address and purpose of business) and informed about the subject matter of the dawn raid and anticipated procedures. Only in cases where not starting the dawn raid immediately could pose a risk (for example when the alleged conduct might relate to a criminal offence, giving staff a strong incentive to destroy evidence) will the dawn raid begin without delay, with the preparatory meeting being arranged for as soon as possible after the start. **Preparatory meeting**
4. Employees working for the company concerned as well as any person of trust such as a **lawyer** are entitled to be present throughout the entire investigation in the form of the dawn raid (cf. paragraph 16). This right does not include internal meetings held by BWB staff. The BWB will not generally wait for the lawyer to arrive before beginning its dawn raid. It is up to the company to decide who represents it during the investigation (e.g. a member of the works council). Employees may move around freely and continue to conduct their daily business, provided that they do not jeopardise or thwart the BWB in its investigation. However, it is recommended to discuss the matter with the team leader before employees resume their usual tasks and use their email for instance. **Lawyer**

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<sup>5</sup> Cf. the judgement of the Federal Administrative Court of 31 July 2014, W138 2002756-1, regarding the date of a KG order to conduct a search versus the date on which the warrant is served.

5. When conducting a dawn raid, any commotion, disruption and disturbance will be limited to the absolute minimum, and any **ownership and personal rights** of the person concerned protected as much as possible (Section 12 para. 4 WettbG). The dawn raid will be carried out in a manner that is as unobtrusive as possible in order not to interfere in daily business dealings, and only for the required duration. Depending on the individual circumstances of the case (e.g. company size, type and extent of suspicion, type of IT used), a dawn raid may take a few hours or last for several days. The BWB is not required to adhere to the company's business hours in terms of when it conducts its dawn raid.

**Ownership and personal rights**

### **Which documents may the BWB inspect during a dawn raid?**

6. The BWB is entitled to inspect and examine any and all business **documents** during dawn raids. This includes the right to check whether documents found on the premises are actually business documents within the meaning of the law. In this context, the BWB is entitled to inspect both physical documents (paper documents, notebooks etc.) and business documents in electronic form (see also Item B). This includes all documents that are **legally and economically connected** to the matter at hand.
7. Dawn raids are not only carried out on the premises of a company that is suspected of anti-competitive conduct. A search warrant may also be issued for the premises of third companies or private homes if there is a reasonable suspicion that documents might be found on those premises that could serve as evidence of a third party having breached antitrust law.
8. The BWB is entitled to **seal** rooms or individual items (such as filing cabinets or laptops) for the duration of the dawn raid. To this end, the BWB uses official seals. Damaging or removing such a seal constitutes a criminal offence.<sup>6</sup> It is therefore recommended that the company informs its employees accordingly and takes appropriate precautions in order to avoid official seals being broken (e.g. by locking sealed rooms and affixing warning notices).
9. The BWB will expressly point out the official seal's significance to the company concerned, and inform it of the legal consequences of it being broken. The authority recommends taking appropriate precautions to avoid official seals being broken and also recommends informing employees (such as cleaning staff) accordingly. If the BWB becomes aware that an official seal might have been broken as set forth in Section

**Business documents**

**Search of third parties or private individuals**

**Seals**

**Breaking official seals**

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<sup>6</sup> Section 272 para. 1 of the Austrian Criminal Code (StGB): "Any person who damages or removes a seal that a government official has attached in the execution of his or her official duties in order to keep a thing under lock, confiscate or label a thing, and who in whole or in part renders the purpose of the seal useless is liable to imprisonment for up to six months or a fine not exceeding 360 penalty units."

272 para. 1 of the Austrian Criminal Code, it will be obliged to make a report.

10. The BWB is also entitled to **seize** evidence. The BWB will draw up an official record of the seizure detailing the items seized, and provide a copy to the company. The seizure of a laptop or smartphone, for instance, might be required to ensure that data can be properly collected by the police officers whose support is enlisted during the dawn raid process. Copying electronic data does not constitute seizure.<sup>7</sup>

**Seizure**

11. The subject matter of the dawn raid is detailed in the search warrant, and the BWB is bound by this when conducting the dawn raid. If the BWB comes across documents during the dawn raid that are not covered by the warrant but point to another competition law infringement (**accidental finds**), the BWB will not be allowed to use such an accidental find directly as evidence in antitrust proceedings (**prohibition of exploitation**). However, such accidental finds may be used to initiate new investigations or to expand the scope of ongoing investigations.<sup>8</sup>

**Accidental finds**

12. During an ongoing dawn raid, a warrant's scope may be expanded by the Cartel Court (KG) upon the BWB's request. Such **expansion of scope** may be ordered by the KG verbally, followed by written confirmation. In this case, the BWB informs the company verbally in the first instance before subsequently serving a written copy (within 24 hours).

**Expansion of scope**

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<sup>7</sup> Cf. Supreme Court of Justice of 20 December 2011, 16 Ok 7-13/11.

<sup>8</sup> Cf. Supreme Court of Justice of 26 November 2013, 16 Ok 5/13.

## What legal protection do I have against a search warrant?

### Appeal

13. The company concerned may **appeal** (by way of a *Rekurs*) to the Supreme Cartel Court (KOG) against a warrant issued by the Cartel Court (KG) (cf. complaint against measures lodged because of the BWB's approach during the dawn raid, see paragraph 36). Such appeal allows for a review of the prerequisites of the dawn raid warrant at the time of its issuance, i.e. whether the dawn raid had been lawfully ordered by the KG. The approach taken by the BWB and the modalities during the dawn raid, however, may never be the subject of a *Rekurs*. In order to proceed against those modalities, companies may file a complaint against measures to the Federal Administrative Court (BVwG) (see also paragraph 36). A *Rekurs* does not have any suspensory effect, meaning that the BWB must proceed with the dawn raid in any case. The period for filing an appeal is 14 days from the warrant being served.
  
14. The 2017 Cartel and Competition Law Amendment Act (KaWeRÄG 2017) introduced a new ground for *Rekurs* to Section 49 para. 3 of the Cartel Law (KartG), i.e. if the related files give rise to serious concerns regarding the accuracy of the facts on which the KG based its judgement. The provision is based on the notification of incorrect facts (*Tatsachenrüge*) defined in Section 281 para. 1 no. 5a of the Code of Criminal Procedure (StPO).<sup>9</sup> The requirement for "serious concerns" has been interpreted narrowly by the Supreme Court of Justice applying Section 281 para. 1 no. 5a StPO,<sup>10</sup> i.e. basically only "grossly unreasonable" use of discretion in relation to considering evidence would qualify.<sup>11</sup>

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<sup>9</sup> Explanatory notes on the KaWeRÄG 2017 (government bill in annex 1522 to the shorthand verbatim records of the National Council, 25th legislative period on no. 11, Section 49).

<sup>10</sup> Cf. Supreme Court of Justice of 16 December 2004, 12 Os 120/04: "*The formal grounds for nullity set forth in Section 281 para. 1 no. 5a StPO will essentially only apply where there is evidence on file that, on the basis of general human experience, raise serious concerns about the accuracy of the assumptions made in the judgement that is being disputed.*"; cf. Supreme Court of Justice of 14 April 2004, 14 Os 163/03: "*The Tatsachenrüge in no. 5a of Section 281 para. 1 StPO is only intended to prevent absolutely intolerable statements on decisive facts (i.e. the set of circumstances relevant to guilt or characterisation of facts but not the circumstances described in the judgement or any deliberations made during consideration of evidence) as well as any results of evidence consideration that are completely out of touch with everyday life by referring specifically to evidence on file (while at the same time taking account of all considerations by the trial judge of the value of evidence). Tatsachenrügen which, apart from such special cases, are aimed at a review of evidence consideration, will be answered by the Supreme Court of Justice without detailed own deliberations in order to avoid any misunderstandings arising about the extent of its powers of intervention.*"

<sup>11</sup> Schroll/Schillhammer, Austrian Lawyers' Magazine Anwaltsblatt 2006, 453.

## Is the BWB allowed to search a company without a warrant? What is a voluntary dawn raid?

15. A **voluntary dawn raid** may be carried out by the BWB where the company voluntarily agrees to it. This authorises the BWB to search business documents. The scope of a voluntary dawn raid is not determined by a court warrant but by the scope of the individual (revocable) consent given by the company, which is recorded by the BWB in writing. The BWB will only propose a voluntary dawn raid to the company under certain circumstances.

**Voluntary search**

**For example:** *The BWB learns during an ongoing dawn raid that an archive of the company concerned is located in an adjoining building – at another address. The company concerned consents to a voluntary dawn raid in the adjoining building for the purpose of the BWB’s investigation. The BWB may immediately start searching the documents archived there. In the past the BWB considered such cooperation as a ground of mitigation pursuant to Section 30 para. 3 KartG when a fine had to be calculated following an application for imposition of a fine to the KG.*

## Can I call in a lawyer for the dawn raid and if yes, will the BWB wait for the lawyer to arrive before starting it?

16. Every company is entitled to call in a **person of trust**. Such a person of trust may also be a **lawyer**. However, the BWB is not obliged to wait for this person of trust before starting its dawn raid but will usually begin it before their arrival in order to avoid delays and in order not to jeopardise the investigation’s success.

**Person of trust, lawyer**

## Will the BWB record the whole dawn raid in writing and will I get a copy of that record?

17. The BWB records the whole dawn raid procedure in **the form of an official record**. This record covers all details relevant to the dawn raid such as company address, contact persons within the company, time of the warrant being served, time of the dawn raid actually having started, time of the dawn raid having ended, information about copied paper documents and any electronically collected IT data, noteworthy incidents during the dawn raid, as well as any comments and statements made by company representatives during the dawn raid. The company is free to make a copy of the official record at the end of the dawn raid. The official record will subsequently be submitted to the KG.

**Official record**

## Are the police present during a BWB dawn raid?

18. The BWB is entitled to request official assistance and call in **police officers** to enforce the dawn raid (Section 14 WettbG). This includes uniformed police officers and/or officers in plain clothes who may help the BWB in the physical securing of buildings and premises and with

**Police**



electronic data collection. The dawn raid will be led by the BWB team leader, who is the sole contact person for the company concerned.

### **Which BWB questions do the company and its staff have to answer?**

19. The BWB is entitled to request any **information** from the company and its staff that it needs to carry out the dawn raid unhindered. Questions may, for instance, be related to corporate structure, the location of relevant employees' workstations, document archives or corporate IT landscape.
20. The BWB is also entitled to request **documents** and **explanations** from all staff in connection with facts or documents that are related to the subject and purpose of its investigation (Section 11a para. 1 no. 3 WettbG) such as, for example, explanations about the meaning of abbreviations used in email communication or access to sales representatives' laptops.
21. In addition, the BWB is also authorised to question the company's staff during the dawn raid about matters that extend beyond explanations of facts or documents. Prior to the questioning, witnesses or involved parties are informed of their rights and obligations, particularly their right to refuse to give evidence. As a rule, representatives of the company such as the managing director are questioned in the capacity of parties involved, with other company staff being questioned as witnesses. An involved party<sup>12</sup> is entitled to have a personal legal adviser present during questioning. This need not necessarily be the company's lawyer. The BWB carries out these investigations independently as an administrative authority and not as part of the enforcement of the search warrant. In this context, the BWB has full authority pursuant to Section 11 para. 2 WettbG in conjunction with Section 19 of the Code of Administrative Procedure (AVG) (e.g. witness summons).

**Information**

### **What are my legal options if I do not want certain documents to be examined?**

22. Subject to the provisions of Section 12 para. 5 WettbG, the company may **object** to the examination, inspection or seizure of certain specified documents. Such an objection is however only possible to a very limited extent. The person concerned must, for instance, plead an applicable legal duty to observe secrecy or an applicable right to refuse to testify (Section 157 para. 1 nos. 2 to 5 StPO). In such a case, the BWB then seals

**Objection**

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<sup>12</sup> Involved parties are those parties whose conduct the BWB is investigating and whose actions could give rise to antitrust proceedings. They may be natural persons who are entrepreneurs or authorised bodies of legal entities (chairpersons, managing directors or persons holding a general managing power of attorney). In addition, other staff who are suspected of having committed acts that are in contravention of competition law (e.g. sales representatives) may also be considered as involved parties.

the documents concerned and submits them to the KG, which decides on whether there is a lawful right to object.<sup>13</sup> If the person concerned is not able to specify single documents because of the sheer volume of documents, the BWB will seal categories of documents and keep these separate from its general case file. The BWB then grants the person concerned an appropriate time limit (at least two weeks) to inspect the documents and to indicate those that are covered by the right to object. Companies will usually not require inspection at the authority's premises as they are given the opportunity to make copies of all the data collected at the end of the dawn raid (see paragraph 31). If the time limit is not observed, the documents will become part of the general case file.

### **What happens if I resist execution of the dawn raid or obstruct the BWB investigation?**

23. If necessary, dawn raids will be executed **by coercion**, and the BWB may call in police officers for that purpose (Section 14 WettbG).

**Coercion**

## **B. Collection of electronic data**

24. Companies are more and more frequently communicating via digital technologies. Paper documents and physical archives are increasingly being replaced by emails and electronic data files. The BWB must adapt to these technological and social changes in order to be able to fulfil its statutory remit.

### **Which electronic data is the BWB interested in?**

25. The BWB is entitled to inspect or examine business documents, irrespective of their form, or to have them inspected or examined by suitable experts, and to make copies and extracts from those documents (Section 11a para. 1 no. 2 WettbG). This covers both **physical documents** (e.g. paper documents, notebooks) and **electronically saved documents** (e.g. on laptops, USB flash drives, smartphones, external servers, in the cloud). In this context it is of no consequence whether the electronic data is stored on a storage medium on the premises to be searched or on external storage sites (including cloud services).<sup>14</sup> What matters is that those storage media on which the BWB expects to find certain documents relevant to the investigation can be inspected on the premises that are being searched.<sup>15</sup>

**Electronic documents**

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<sup>13</sup> Cf. Supreme Court of Justice of 6 March 2014, 16 Ok 2/14.

<sup>14</sup> See also Administrative Court of 22 April 2015, Ra 2014/04/0046 to 0051.

<sup>15</sup> See the amendment of Section 11a para. 1 no. 2 WettbG, enacted by the KaWeRÄG 2017, which now refers to business documents as those that "can be accessed at the company or from its premises".

26. Where storage media such as laptops or company smartphones cannot be found on the company site to be searched (e.g. in relation to sales representatives), the BWB is additionally entitled to demand production of those devices. Such a request to produce documents is made by the BWB in its capacity as an independent administrative authority and not as part of the enforcement of the search warrant (cf. paragraphs 20, 21).

### **Can staff members use their electronic devices (smartphone, laptop, tablet etc.) while a dawn raid is in progress?**

27. Companies are obliged to **tolerate** a dawn raid. It is therefore recommended that companies allow their staff to use their electronic devices only after consulting with the BWB team leader.

**Use of  
electronic devices**

### **Do I have to provide the BWB with access data for electronic devices?**

28. The company is obliged to give the BWB access to electronic data upon request. The company must provide access to this data and, upon request, submit the data on an electronic storage medium in a standard data format.<sup>16</sup> It might also be necessary to disclose passwords.<sup>17</sup>

**Access data**

29. The KaWeRÄG 2017 introduced a new offence in Section 35 para. 1 lit c KartG on penalty payments<sup>18</sup> imposed by the KG, in order to force companies during a dawn raid (Section 12 WettbG) to provide access to evidence that can be accessed electronically on the premises being searched. In this context, penalty payments are not imposed to sanction a certain conduct or failure to act but to force a company to provide access to evidence.<sup>19</sup> The penalty payment is imposed upon request and after giving the party concerned the opportunity to respond. A company may be deemed to be in default no earlier than one day after the search warrant has been served.<sup>20</sup>

### **What does the BWB do when collecting electronic data?**

30. In accordance with the subject of the investigation and consequently subject of the search warrant, the BWB restricts the relevant areas (e.g.

**Data collection,  
forensic software**

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<sup>16</sup> See the related amendment of Section 11a para. 2 WettbG, enacted by the KaWeRÄG 2017.

<sup>17</sup> Cf. government bill in annex 1084 to the shorthand verbatim records of the National Council, 24th legislative period, page 15; see also the related amendment of Section 11a para. 2 WettbG, enacted by the KaWeRÄG 2017.

<sup>18</sup> These may amount to no more than 5% of the daily turnover achieved on average during the previous business year for every day of the delay from the deadline stipulated in the administrative decision.

<sup>19</sup> Cf. in general on the purpose of penalty payments: Supreme Court of Justice of 21 January 2008, 16 Ok 8/07.

<sup>20</sup> Explanatory notes on the KaWeRÄG 2017 (government bill in annex 1522 to the shorthand verbatim records of the National Council, 25th legislative period) on no. 6 (Section 35 para. 1).

certain employees or PCs) for the dawn raid. It may be necessary, for instance, to fully copy a shared folder or a complete Outlook mailbox. The BWB is also entitled to use **forensic software** when dealing with the relevant electronic documents.<sup>21</sup> The data is saved as necessary on hard drives provided by the BWB. Both the party concerned and their person of trust are entitled to be present during each investigative step of the BWB.

31. Information about which **electronic data** has been collected will be included in the official record. The BWB produces an additional backup copy of each data copy, which will be sealed and stored on the BWB's premises. The company may make a copy of the entire collected data at the end of the dawn raid, at its own cost.

**Copy for  
the company**

### **What can I do to make sure that this is done correctly?**

32. Companies have the same **right to object** with regard to electronic data as they have in relation to physical documents (Section 12 paras. 5 and 6 WettbG; see paragraph 22). In view of the amount of electronic data to be collected, companies and their staff will not normally be able to specify single documents on site with regard to which they object to examination, inspection or seizure. This is why the BWB seals the electronic data and keeps it separate from its general case file. The BWB agrees with the company on an appropriate time limit (at least two weeks) during which the company may inspect the electronic data (see paragraph 22) and must indicate the data with regard to which it intends to make use of its right to object. If the deadline passes without any action by the company, the electronic data becomes part of the electronic working copy to be analysed in the course of further proceedings (see paragraph 33 et seq. below).

**Objection**

### **What happens with my electronic data?**

33. The BWB makes two copies of the electronic data collected on site. One copy serves as a **working copy** for analysing the electronic data on the BWB's premises. The other copy is sealed into seal bags and stored securely on the BWB's premises.

**Copy of  
electronic data**

34. Due to what is frequently a high volume of data, with electronic data also often being closely interlinked, it is not always possible to collect only the electronic data that is of immediate and obvious relevance to the subject of the dawn raid. This is why the BWG **sorts the relevant data** on its own premises at the end of the dawn raid. Any personal data of employees that is found on storage media relevant to the dawn raid is deleted. By the time the data is being sorted, the dawn raid will already have ended, which means that looking into the data is an internal procedure and no company representative(s) need be present. Afterwards the BWB informs

**Relevant data**

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<sup>21</sup> Cf. Administrative Court of 22 April 2015, Ra 2014/04/0046 to 0051.

the company which data has been included in the case file (= relevant data). The company may then submit a statement, which ensures that the parties are heard in accordance with the law (cf. Section 11 para. 1 WettbG). This statement may also be used later as the basis for asserting a prohibition of exploitation. Any other data that is not relevant to the investigation will be irrevocably deleted by the BWB from the working copy, and the company informed accordingly. In the event of any antitrust proceedings in connection with the subject of the investigation, the sealed backup copy will be deleted after a final judgement has been reached.

## C. End of a dawn raid

### How does the BWB end a dawn raid?

35. After the BWB has completed its investigation, the authority organises a **debrief** with the company. During this debrief the BWB provides the official record, explains what happens next, and answers any queries the companies might have. The company may then copy the official record, as well as the physical and electronically collected documents, at its own cost.

**Debriefing**

### Do I have a right to appeal against BWB measures during a dawn raid?

36. If the BWB takes measures during the search that are obviously not covered by the search warrant, the company is entitled to lodge a **complaint against measures** to the Federal Administrative Court (BVwG) pursuant to Article 130 para. 1 no. 2 of the Federal Constitutional Act (B-VG). Such a complaint against measures must be filed with the BVwG within six weeks from knowledge of the disputed measure.

**Complaint against measures**

### Can companies still apply for leniency once the BWB has started the dawn raid?

37. The BWB may refrain from applying for the imposition of a fine or a reduction in fines when companies help to uncover a breach of competition law by cooperating with the authority (Section 11b paras. 1 and 2 WettbG).<sup>22</sup> Where no other company has yet met the conditions for refraining from applying for a fine, it is generally possible, even after a dawn raid, to refrain from applying for a fine if the company applying for leniency submits additional information and evidence that enables the BWB to directly file a valid application for imposition of a fine.

**Application for leniency**

38. Otherwise, the only other option available is that of a reduction in fines. For the BWB to be able to apply to the KG for a reduction in fines, the

**Reduction in fines**

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<sup>22</sup> For more information please refer to the BWB Handbook on Leniency Programme (April 2014), downloadable at <http://www.bwb.gv.at/SiteCollectionDocuments/Leniency%20Handbuch%202014.pdf>

company must submit to the authority information and evidence about the alleged breach that greatly exceed any information or evidence already known to the BWB (Section 11b para. 2 WettbG).

### **Is another competition authority from the European Union/the European Commission allowed to search my company?**

39. By way of **official assistance**, the BWB may be asked by other **European competition authorities** to carry out a dawn raid in Austria through the European Competition Network (ECN). Such a dawn raid will be conducted in the same manner as above. The BWB will apply to the KG for a search warrant and then carry out the dawn raid according to applicable Austrian law. Staff from the competition authority that requested official assistance may, however, be present during the dawn raid.

**Official assistance,  
EU**

40. This is to be distinguished from a dawn raid conducted by the **European Commission** in accordance with Articles 20 and 21 of Regulation (EC) No 1/2003 (a so-called **inspection**). An inspection will be carried out by European Commission staff assisted by the BWB. The whole process of an inspection, as well as legal protection against it, is subject to European law. If it is necessary to enforce the dawn raid by coercion, the Commission will call on the BWB or other national enforcement authorities, i.e. a search warrant issued by the KG will be executed by the BWB. Such compulsory enforcement will then be subject to Austrian law.

**European  
Commission,  
inspection**