

**Visegrad 4 Competition Conference
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**“Recent developments regarding cartel
enforcement in Austria”**

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I. Amendments to Competition & Cartel Laws 2013

II. Best Practices Investigations

III. Preliminary References

IV. Resale Price Maintenance

I. Amendments to Competition/Cartel Act **came into force with 1st March 2013**

1. Inspections (§ 12 Competition Act):

Seizure possible (before copies only); limitation of review of documents by Court; questioning rights widened; right to seal premises/offices etc.

2. Hard core cartels (§ 2 Cartel Act):

hard-core infringements no longer benefit from the de minimis exception

3. Private Enforcement strengthened (§37a Cartel Act):

e.g. civil courts are explicitly bound to the decisions of the Cartel Court, the European Commission or other National Competition Authorities (of EU member states) finding a competition law infringement

II. Cartel Investigations: Experiences & Best Practices

- ✓ Over the past 3 years inspections have become more common tool to detect hard core cartels
- ✓ Enabled authority to do cases ex officio
- ✓ Over 50 inspections over the past two years → overall very positive experience
- ✓ Decision by High Cartel Court 16 Ok 7/13 (7.11.2013): Inspection decision can be based on anonymous complaint
- ✓ Decision by High Cartel Court 16 Ok 5/13 (16.11.2013): Accidental findings outside the scope may be used as evidence to widen existing order or to initiate new proceedings
- ✓ Ongoing proceedings regarding electronic/forensic search

II. Cartel Investigations: Experiences & Best Practices

- ✓ Close cooperation with Federal Criminal Police
- ✓ Police secures inspections (can use force) + electronic/forensic search (§ 14 Competition Act)
- ✓ The Criminal Police, Public Prosecution and Court can submit evidence to the Competition Authority gathered in the course of other proceedings

Problems:

- Lack of resources
- No fine for non-cooperation during inspection
- delimitation period does not stop with inspection

Preliminary References (2013)

I. C-681/11 Schenker e.a.

- ✓ Legal advice given by a law firm or a decision of a national competition authority does not exempt an undertaking from anti-competitive conduct or from imposition of a fine
- ✓ National competition authorities may by way of exception refrain from imposing a fine where the infringing undertaking has participated in a national leniency programme

II. C- 536/11 Donau Chemie e.a.

The CJEU insisted that “*any request for access to the [cartel file] must be assessed on a case-by-case basis [by the national courts], taking into account all the relevant factors of the case*” (para. 43). The CJEU also dismissed the Austrian government’s point that broad access to the cartel file could undermine leniency programmes: “*[g]iven the importance of the actions for damages brought before national courts in ensuring the maintenance of effective competition in the EU... the argument that there is a risk that access to evidence contained in a file in competition proceedings... may undermine the effectiveness of a leniency programme... cannot justify a refusal to grant access to that evidence*” (para. 46).

IV. Resale Price Maintenance

- ✓ 2013: Around 26 Mio € in fines: Food retail, electronic devices, insulating material
- ✓ 2013: Around 30 inspections
- ✓ Elements of hub & spoke (trilateral elements)
- ✓ Draft guidelines published: review ongoing
- ✓ Public discussion on how to assess RPM
- ✓ Ongoing proceedings against producers and retailers

BUNDESWETTBEWERBSBEHÖRDE

Thank you very much for your attention!

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