Kluwer Competition Law Blog

Main Developments in Competition Law and Policy 2024 – Austria

Michael Mayr (MMRA) · Thursday, April 24th, 2025

Cartels and Restrictive Agreements

Cases

Construction Cartel

In 2024, the Cartel Court imposed several significant fines on additional construction companies for their participation in a nationwide cartel in the Austrian construction sector. The cartel is believed to have had a duration of more than 15 years from at least July 2002 to October 2017 and to have covered the entire territory of Austria.

Not all companies involved in the cartel participated in the cartel throughout the entire cartel duration or across the whole of Austria (e.g., some companies colluded specifically on projects in certain regions of Austria) and the companies involved in the cartel include not only Austria's largest construction companies but also a larger number of medium and small construction companies.

As of December 2024, total fines imposed by the Cartel Court in the construction cartel amount to c. € 192 million. Procedures against several additional construction companies are still ongoing and it is expected that additional fines will be imposed against several additional companies also in 2025.

Austria – Construction Cartel – Overview of Fines

Company	**Fine**	**Cartel Court Decision Date**
Strabag	€ 45,370,000	October 2021[1]
Porr	€ 62,350,000	February 2022
Habau	€ 26,330,000	November 2022
Swietelsky	€ 27,150,000	March 2023
Pittel + Brausewetter	€ 4,810,000	May 2023
Kostmann	Full immunity	June 2023
Granit	€ 9,800,000	November 2023
Hitthaller + Trixl	€ 1,360,000	November 2023
Gebrüder Haider	€ 3,510,000	February 2024

Beyer and Mandlbauer	€ 1,100,000	April 2024
Steiner Bau	€ 1,300,000	May 2024
Fröschl	€ 1,400.000	June 2024
Bodner	€ 1,050,000	June 2024
Leyrer + Graf	€ 5,800,000	September 2024
Leithäusl	€ 1,250,000	September 2024
Malaschofksy	€ 98,000	November 2024
Status: December 2024		

Waste Disposal Cartel

In October 2024, the Cartel Court granted full immunity to FCC Austria Abfall Service following FCC's cooperation under the Austrian leniency programme. Saubermacher, another large waste disposal company, also cooperated with the Austrian Federal Competition Authority (AFCA) under the Austrian leniency programme (the proceedings against Saubermacher are ongoing). The AFCA requested the Cartel Court in September 2024 to impose a fine of € 7.085 million on Saubermacher (reflecting Saubermacher's cooperation) but no fine has yet been imposed (as of December 2024).

The proceedings were initiated following dawn-raid inspections by the Austrian Federal Competition Authority (AFCA) at more than 20 undertakings active in the waste disposal sector in Austria in March 2021 and in April 2022 at three additional undertakings. The alleged Austria-wide waste disposal cartel is suspected to have involved price coordination, market sharing arrangements and the exchange of competitively sensitive information, specifically with regards to the collection and transport of waste.

Abuse of Dominance

Cases

Peugeot

In September 2024, the Cartel Court imposed a fine of € 15 million on Peugeot for the abuse of its dominant position in the distribution of Peugeot vehicles and spare parts in Austria between 2017 and 2021. The decision follows an earlier decision by the Cartel Appeals Court from April 2021 confirming that Peugeot had abused its dominant position *vis-à-vis* an independent distributor of Peugeot vehicles (Case 16 Ok 4/20d – *Peugeot / Büchl*).

Peugeot's abusive behaviour consisted in several price-related abusive practices *vis-à-vis* an independent distributor, including price discrimination between Peugeot-owned dealerships and independent distributors resulting in a margin squeeze (i.e., the independent distributor was not able to compete with Peugeot's own vehicle retail activities), the application of unfair and arbitrary conditions for the calculation of annual bonus payments, the application of excessive and unrealistic sales targets, and forcing the independent distributor to carry out certain warranty repair services below cost. Peugeot's abusive behaviour also included non-price-related practices such as particularly onerous and unjustified audit procedures for warranty repair services.

The fine of € 15 million is the largest fine imposed for an abuse of a dominant position in Austria to date.

Österreichische Post

In October 2024, the Cartel Court imposed a fine of € 9.2 million on Österreichische Post (Austrian Post) for the abuse of its dominant position in the distribution of personalised mass mail by applying discriminatory pricing terms to third-party intermediaries between 2017 and 2022 (Case 25 Kt 1/24w – *Österreichische Post*). The case follows earlier proceedings in which the Cartel Appeals Court confirmed the abuse by Austrian Post (Case 16 Ok 3/21h – *Österreichische Post*).

Third-party intermediaries compete with Austrian Post in the preparation and collection of mass mail (but not in the downstream distribution of mass mail). Austrian Post had applied a less favourable rebate scheme, lower rebate percentages, and lower annual bonus payments to third-party intermediaries compared to other commercial customers. The Cartel Court found that Austrian Post's discriminatory practices were specifically intended to restrict competition from third-party intermediaries and that therefore Austrian Post must be held liable for these practices. The Court however does not rule out that Austrian Post would have been held liable also absent a specific intent to harm competitors.

The fine amount was set by the Austrian Competition Authority (AFCA) and reflects Austrian Post's cooperation during the proceedings, including Austrian Post's acknowledgement of the infringement. In case the AFCA requests the Court to impose a specific fine amount, the Court cannot impose a higher fine than requested by the AFCA.

Brau Union

In June 2024, the Austrian Federal Competition Authority (AFCA) requested the Cartel Court to impose a fine on Brau Union, Austria's largest brewing company and a subsidiary of the Heineken Group, for the alleged abuse of Brau Union's alleged dominant position in the wholesale distribution of beer in Austria and for alleged market sharing arrangements and the exchange of competitively sensitive information.

According to the AFCA, Brau Union's alleged abusive practices include exclusivity agreements with customers, abusive rebate schemes, single branding requirements, and the bundling of Brau Union beverages.

The AFCA requested the Cartel Court to impose an appropriate fine based on the circumstances of the case, i.e., the Court will be able to determine the fine amount on a largely discretionary basis within the statutory limit of 10% of Brau Union's worldwide revenues. The proceedings before the Cartel Court are ongoing (as of December 2024).

Merger Control

Cases

Lenzing / Palmers / Hygiene Austria

In June and October 2024, the Cartel Court and the Cartel Appeals Court imposed fines of € 75,000 on Lenzing and € 100,000 on Palmers for having violated the Austrian standstill obligation in connection with the pre-clearance implementation of a joint venture for the production of face masks during the Covid-19 pandemic (Case 28 Kt 2/24i and Case 16 Ok 4/24k).[2]

Lenzing and Palmers notified the intended formation of the Hygiene Austria joint venture to the AFCA on 11 May 2024 and the transaction was granted early clearance on 26 May 2024. However, Lenzing and Palmers were found to have violated the Austrian standstill obligation because the joint venture commenced its operative activities prior to the receipt of the Austrian merger clearance:

- Lenzing and Palmers issued a press release on 24 April 2024 announcing that (i) the Hygiene Austria joint venture had been formed, that (ii) Lenzing and Palmers had invested significant amounts in the acquisition of production infrastructure and raw materials, and that (iii) the joint venture would start producing and marketing face masks as of May 2024.
- Employees of Lenzing had been working for the joint venture already as of mid-April.
- The parties had acquired new production equipment and entered into raw material supply agreements in the weeks before 24 April 2024 and contributed assets to the joint venture prior to 24 April 2024 and capital on 30 April 2024.
- The joint venture started the production of face masks at the latest at the beginning of May 2024 and potentially already as of 24 April 2024.

The Cartel Court accepted that the duration of the infringement – around 1 month – was short. The Court also accepted that, against the background of the Covid-19 pandemic, the supply of face masks was in the public interest and considered it as a mitigating circumstance that the parties intended to contribute to safeguarding public health during the Covid-19 pandemic, a finding that was however reversed by the Cartel Appeals Court in the appeals proceedings against Palmers. The Cartel Court considered it as an aggravating circumstance that the parties were aware of the intensive competition for the supply of masks at the time and would have had sufficient time to submit a merger notification and to obtain clearance prior to the implementation of the joint venture.

Lenzing, in addition, was found to be a recidivist, as it had been previously fined for the infringement of the Austrian standstill obligation in *Lenzing / Tencel* (2005). According to the Cartel Court, in the absence of an express statutory rule to the contrary, previous infringements of the standstill obligation can never become time-barred, although the Court did not specify what proportion of the fine amount was attributable Lenzing being a recidivist.

Acerinox / Haynes

On 15 November 2024, the Austrian Federal Competition Authority (AFCA) and the Austrian

Federal Cartel Attorney cleared the acquisition by Acerinox (Spain) of Haynes (USA) in Phase I subject to conditions requested by the Federal Cartel Attorney.

Acerinox and Haynes are producers of specialised alloys, including nickel alloys. The Austrian competition authorities distinguished between nickel alloy strips and plates and several potential subsegments by type of alloy (high-performance, heat-resistant, corrosion-resistant, and electrical alloys) and by industry application (aerospace, energy, chemicals, oil & gas, automotive), but ultimately left the product market definition open. The relevant geographic market was considered to be Europe-wide.

The parties' combined market share in nickel alloy plates was around 40-50%, with Acerinox accounting for 30-40% and Haynes for 5-10%. The AFCA concluded that the transaction did not raise horizontal concerns, as in its view the parties' were highly differentiated competitors. Acerinox and Haynes offer nickel alloy plates with different product dimensions, different product characteristics, and different industry applications, with Acerinox focussing on corrosion- and heat-resistant alloys for the chemicals and oil & gas industries and Haynes primarily supplying high-performance alloys the aerospace industry. In addition, the parties were also competing in different price segments, with Haynes focussing on premium specialised alloys, and did not view each other as their closest competitors.

In contrast, the Federal Cartel Attorney, while largely agreeing with the AFCA's findings, was concerned that certain customers of high-performance alloys – e.g., alloys used for aerospace turbines or offshore gas pipes – would be locked-in with Haynes, potentially enabling the parties to impose significant price increases post-transaction. Although it remains unclear why the Federal Cartel Attorney considered this risk to be transaction-specific, given that there was no direct horizontal overlap between the parties in the high-performance alloy segment. Acerinox and Haynes nonetheless agreed to offer remedies in order to secure clearance in Phase I.

As part of the agreed remedies, Haynes committed to supplying its products to wholesalers in certain European countries, including Austria, based on a certain cost-plus pricing formula. This commitment was intended to enable these wholesalers to supply Haynes' products to customers in the chemicals and oil & gas and industries at prices competitive with those of Haynes' own service centre in Switzerland. In addition, Haynes agreed to apply a price cap with respect to its existing customers in the chemicals and oil & gas industries.

Gerresheimer / Bormioli

On 19 November 2024, the Austrian Federal Competition Authority (AFCA) and the Austrian Federal Cartel Attorney cleared the acquisition by Gerresheimer (Germany) of Bormioli (Italy) in Phase I subject to conditions.

Gerresheimer and Bormioli are manufacturers of glass and plastic packaging materials for the pharmaceuticals, cosmetics, foods & beverages industries. The Austrian competition authorities found that the transaction would result in significant combined market shares in soda-lime glass for the pharmaceutical industry, a segment that the authorities found to be highly concentrated and characterised by substantial entry barriers.

To address these horizontal concerns, the parties proposed a remedy package comprising (i) the divestiture of a portion of Bormioli's customer base for soda-lime glass products, including all of Bormioli's Austrian customers since 2021 as well as selected additional customers in Switzerland, Slovenia, Italy, and Hungary, to a potential new entrant, (ii) the transfer of certain production equipment and know how, (iii) the conclusion of a contract manufacturing agreement for certain soda-lime glass products for a term of 3 years (extendable by 2 years) with that new entrant, and (iv) a one-time contribution to the transferred customers' switching costs.

Miele / Metall Zug

On 4 June 2024, the Cartel Court cleared the formation of a joint venture between Miele (Germany) and Metall Zug (Switzerland) in Phase II subject to conditions.

Miele and Metall Zug are manufacturers of cleaning and disinfection equipment for hospitals.

The Austrian Federal Competition Authority (AFCA) identified preliminary concerns based on the parties' high combined market shares and the presence of entry barriers in relation to certain types of cleaning and disinfection equipment for hospitals (specifically high-temperature sterilisation equipment and cleaning equipment for endoscopes). According to the AFCA, not all of the remaining suppliers were able to provide repair and support services for their cleaning and disinfection equipment across Austria, limiting their ability to effectively compete with Miele and Metall Zug.

To address these concerns, the parties committed to support Servosan, a competitor in the distribution of cleaning and disinfection equipment, to enable Servosan to increase its presence in the provision of repair and support services to hospitals. The support measures offered by Miele and Metall Zug include (i) the payment of an annual fee of € 0.7 million to cover the costs of 3 service staff members for a period of three years, (ii) the transfer of one service staff member to Servosan upon Servosan's request, (iii) the payment of success-based fees to Servosan if Servosan is able to increase the volume of services provided to hospitals during this 3-year period, and (iv) the provision of technical support to Servosan by an independent third-party laboratory.

Swisspor / Creaton

On 21 February 2024, the Cartel Court cleared the acquisition by Swisspor of Creaton's Austrian roof tiles business in Phase II subject to conditions.

The transaction consists in the divestiture of Creaton's Austrian business by Wienerberger. This divestiture is part of the remedies offered by Wienerberger to obtain the conditional clearance of its prior acquisition of Terreal (Creaton is a subsidiary of Terreal) in June 2023. This divestiture was intended to address horizontal concerns in the segment of small-format clay roof tiles arising from Wienerberger's acquisition of Terreal. Additional commitments given by Wienerberger in connection with he acquisition of Terreal included a commitment to invest in a Hungarian clay roof tiles production plant to ensure this plant has sufficient capacity to serve the Austrian market.

As regards Swisspor's intended acquisition of Creaton's Austrian roof tiles business, the Federal Cartel Attorney – but not the Austrian Federal Competition Authority (AFCA) – identified horizontal concerns in the broader segment of small-format roofing products in Austria (including clay tiles, cement fibre tiles, concrete tiles, and metal tiles), where Swisspor and Creaton would have a combined market share of 30-40%. The Federal Cartel Attorney had particular concerns with regards to cement fibre tiles, where Swisspor would have a market share of 90-100%. Although there was no horizontal overlap between Swisspor and Creaton in cement fibre tiles, the Federal Cartel Attorney considered that the transaction would reinforce Swisspor's market position in this segment.

The Cartel Court defined a single relevant market encompassing all small-format roof tiles (including clay tiles, cement fibre tiles, concrete tiles, and metal tiles). The Court accepted that the transaction could lead to coordinated concerns given that only four suppliers (Swisspor/Creaton, Wienerberger, BMI, and Prefa) would remain post-transaction. The Court's conclusion was based on the assumption that coordination between Swisspor/Creaton and Wienerberger – each holding a market share of more than 30% — d was likely, even though the Court also acknowledged that each of these four suppliers primarily supply different types of roofing products, with Swisspor primarily supplying cement fibre tiles, Wienerberger focussing on clay tiles, BMI on concrete tiles, and Prefa on metal roofing).

To address the Federal Cartel Attorney's concerns, Swisspor agreed to ensure the implementation of the ancillary commitments previously given by Wienerberger in relation to the Creaton Austria business and to several all existing contractual and other links between Swisspor and Wienerberger.

Sector Inquiries

Electricity and Gas

In August 2024, the Austrian Federal Competition Authority (AFCA) and the Austrian energy regulator E-Control published their second summary report on their ongoing sector inquiry into the Austrian electricity and natural gas retail markets.

The authorities had launched the sector inquiry in January 2023 and published an initial summary report in June 2023 covering the period 2017-2022. That initial report found a high degree of market concentration in the Austrian retail energy markets, significant price increases in that period, and price discrimination between customers both geographically and across customer groups.

The second report, covering the year 2023, confirmed and expanded upon these findings:

- Market concentration in the Austrian retail markets for electricity and natural gas continued to increase, as several retail suppliers exited the market between 2022 and 2023.
- Most Austrian retail suppliers of electricity and natural gas operate only within their own grid or pipeline network areas and do not serve customers across Austria. In addition, following the 2022 energy price spikes caused by Russia's invasion of Ukraine, several suppliers stopped accepting new customers outside their coverage areas.
- Even suppliers with in-house electricity generation capacity raised retail prices significantly. This was largely explained by the fact that most retail suppliers – including those with own production capacity – purchase electricity at market-based wholesale prices from third parties or affiliated

group companies.

- The extent of the retail price increases however was significantly higher than what would have been justified based on the rise in wholesale prices. The report suggests that such potentially excessive price increases may indicate the existence of market power, and thus competition concerns, in the retail energy sector.
- A majority of retail customers (more than 50%) do not switch energy suppliers even in the face of substantial retail price increases and despite the availability of cheaper alternative suppliers.

At this stage it remains unclear whether the AFCA intends to initiate formal investigations into individual energy retail suppliers based on the findings of this report.

[1] Following a request for amendment by the Austrian Federal Competition Authority to the Cartel Appeals Court, based on the suspicion that Strabag had not fully disclosed all relevant facts during the initial proceedings before the Federal Competition Authority and the Cartel Court, the Cartel Appeals Court referred the case back to the Cartel Court to set an "appropriate" fine; see Cartel Appeals Court Case 16 Ok 8/22w, decision of 25 May 2023. The proceedings before the Cartel Court are pending (as of December 2024).

[2] The Cartel Court had initially imposed a symbolic fine of only € 5,000 on Palmers. Upon appeal by the Austrian Federal Competition Authority (AFCA) and the Austrian Federal Cartel Attorney, the Cartel Appels Court increased the fine on Palmers to € 100,000.

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