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**SANCTIONS IN ANTITRUST CASES**

**Contribution by Austria**

-- Session IV --

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## SANCTIONS IN ANTITRUST CASES

### -- Austria --

1. Despite the fact that the Austrian Federal Competition Authority (FCA) is one of the smallest authorities within the OECD, it has been very active in enforcing antitrust cases. Therefore numbers and amounts of fines have been increasing in particular in the last 10 years, amounting to approximately EUR 190 million in total. Although the vast majority of these cases are cartels, fines amounting to more than EUR 2 million have also been imposed for the abuse of market dominance. Since a leniency programme was established in Austria in 2006, 73 applications have been filed and fines to an amount of more than EUR 110 million have been imposed in connection with this programme.

2. When it comes to the calculation of fines, an Austrian peculiarity is interesting with regard to **judicial scrutiny**: In Austria fines are imposed by the Cartel Court upon application by the FCA. The FCA can apply for a maximum fine or for an **“appropriate” fine**. The courts cannot impose a higher fine than applied by the FCA, but are free to decide if the FCA applies for an “appropriate” fine. In a case of resale price maintenance in the food retail market (see table below on fines in this market) in which the Cartel Court had imposed a fine of EUR 3 million on a single company the Supreme Cartel Court increased this amount tenfold to EUR 30 million due to an appeal by the FCA.

## Fines in the Food Retail Market since 2011

Undertaking	Amount of fine (€)	Year
Spar Österreich-Gruppe II	10.210.000	2016
RAUCH Fruchtsäfte GmbH & Co OG	1.700.000	2016
Spar Österreich-Gruppe	30.000.000	2015
Pago International GmbH	152.460	2015
Pfeiffer HandelsgmbH und die Zielpunkt GmbH	562.500	2015
Vöslauer Mineralwasser AG	653.775	2015
Brauerei Joseph Baumgartner GmbH	56.250	2014
NÖM AG	583.200	2014
MPREIS Warenvertriebs GmbH	225.000	2014
Sutterlüty Handels GmbH	78.750	2014
Stieglbrauerei zu Salzburg GmbH; Stiegl Betriebsholding GmbH; Stiegl Getränke & Service GmbH & Co. KG	196.875	2014
Brauerei Hirt Gesellschaft mbH	58.500	2014
AFS Franchise-Systeme	225.000	2014
Braucommune in Freistadt	52.500	2014
Mohrenbrauerei August Huber KG	82.500	2014
Privatbrauerei Zwettl Karl Schwarz Gesellschaft m.b.H.	82.500	2014
Brauerei Schloss Eggenberg Stöhr GmbH & Co KG	57.000	2014
Vereinigte Kärntner Brauereien AG	195.000	2014
Kärntner Milch reg.GenmbH	375.000	2013
Vorarlberger Mühlen- und Mischfutterwerke GmbH	58.500	2013
Brauerei Ried e.Gen.	52.500	2013
Emmi Österreich GmbH	210.000	2013
REWE International Lager und Transport GmbH; Merkur Warenhandels-AG; Billa AG	20.800.000	2013
Berglandmilch eGen	1.125.000	2013
BRAU UNION Österreich Aktiengesellschaft	750.000	2012
Ottakringer Brauerei AG	190.000	2012
Stieglbrauerei zu Salzburg GmbH; Stiegl Betriebsholding GmbH	170.000	2012
<b>Total amount of fines in the food retail market</b>	<b>68.902.810 Euro</b>	

3. As regards **alternatives to fines** it is interesting to mention that in 2002 a **decriminalisation** of competition law came into effect and criminal sanctions were substituted by the current fining system. However, section 168b of the Criminal Code still provides for up to three years' imprisonment for collusive tendering (bid-rigging). Beside the criminal liability of individuals there also exists a possibility to impose criminal sanctions on certain legal entities like companies ("Verbandsverantwortlichkeitsgesetz").

4. An important and Austrian specific provision in this respect is section **209b of the Criminal Procedure Code**: If 1) a leniency programme is applied by the FCA, the European Commission or an NCA of an EU-Member State and 2) criminal prosecution of the staff of the undertaking involved in the infringement of competition law would be disproportionate, the Public Prosecutor has to be informed of this fact. Subsequently, the Prosecutor has to stop preliminary proceedings against those persons who have agreed to cooperate with him and with the court.