

## **The tricky issues of exploitative abuse:**

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### **The case of jet-fuel at Vienna Airport**

- I. The views expressed in this presentation contain the personal opinion of the author and do not necessarily reflect statements and policy of the FCA.
- II. The information presented is only for the internal use of competition authorities; the case is pending.

**Rainer Kaltenbrunner**

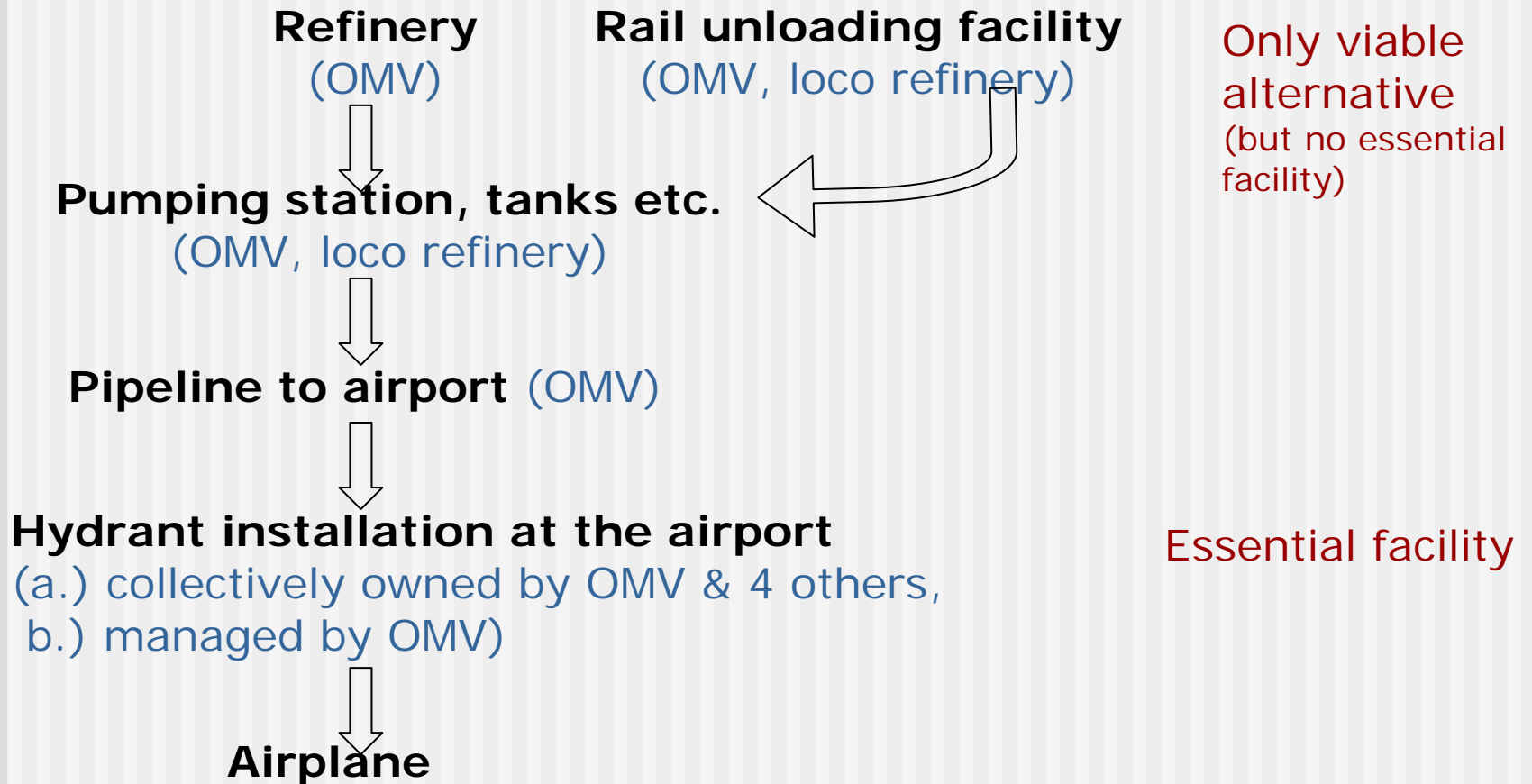
**Austrian Federal Competition Authority (FCA)**

# Outline of the presentation

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# Chain of supply of jet fuel at Vienna International Airport (VIE)



# Dominance I

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## ■ Only refinery in Austria

- Generally (= taken all Austrian airports together) low import intensity (10% to 20%).
- Part of imports from OMV refinery in Bavaria.
- No actual competitive pressure from closest refineries abroad (MOL).

## ■ > 80% to 100% of jet fuel supply from OMV refinery.

- Also other oil companies making bids at VIE draw their supply from OMV refinery.

## ■ Entrance:

- Only entrant: Austrian Airlines (AUA) - for own consumption - via rail unloading facility.

# Dominance II

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## ■ Information about OMV's competitors:

- For technical reasons OMV needs to know source, volume etc. of all „alternative“ shipments.

## ■ Conclusions:

- **No dominant position upstream** (ex-refinery and wholesale markets), but little competitive pressure (at least in central Europe).
- **Dominant position on the „retail level“.**

# Action taken

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## ■ The complaint entailed a wide range of issues:

Investigations resulting in:

- Foreclosure with respect to rail unloading facility no harm
- Foreclosure with respect to hydrant installations no harm
- Price abuse using Platts notations no harm
- Price abuse concerning rail unloading no harm
- Price abuse concerning differential court procedure
- Price abuse concerning statement of objections

→ **Weak point:** In many cases excessive pricing goes hand in hand with other types of abuse ....

# How to measure the price?

## Problem I

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### ■ Problem I:

- **Long value added chain:**

Crude oil → transport → refinery → ex refinery & wholesale markets → retail supply at a specific airport.

- **All markets concerned are characterized by vertically integrated companies.**
- **The overall price of jet fuel is influenced by factors which cannot be attributed to the position of OMV.**

**→ Differential was taken as the relevant price as it mirrors market position of OMV best.**

# How to measure the price?

## Problem II

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### ■ Problem II:

**a. Case law is widely interpreted in the way that excessive pricing should be checked by a two-stage test**

- the cost side as well as
- by price comparisons.

• **But: Jet fuel is a joint product**

→ no unambiguous distribution of costs possible (the more as the share of jet fuel in the value added by the refining process is small).

**b. Comparison of prices over time is not meaningful as the Austrian ex-refinery market was characterized by job processing of OMV for other major oil companies up to 2001.**

# How to measure the price?

## Approach & results

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- **Our approach:** Comparing differentials with other European airports using
    - a. different methods**
      - econometric estimates (size of airport, number of competitors, hydrant system)
      - simple mean averages.
    - b. different samples of airports**
      - all comparable data available (37 airports)
      - airports of similar size
      - sample group developed in a merger case.
  - **Results:** Differential at VIE is in all cases (approximately) 20% to 50% over the respective benchmark.
- **Is this enough? No useful case law.**

# How to measure excessive profit?

## Problems & Approach

### ■ Hydrant installations under the airfield are essential facility:

- No other access to tankering.
- Duplication not possible.

### ■ Problem I:

- How to measure excessive profits?

### ■ Our approach: Truncated Internal Rate of Return (IRR)

$$A_0 = \sum_{t=1}^{t=N} \left( \frac{C_t}{(1+r)^t} \right) + \frac{A_N}{(1+r)^t}$$

against the benchmark "Weighted Average Cost of Capital" (WACC)

$$WACC = r_E \cdot \frac{E}{E+D} + r_D \cdot \frac{D}{E+D} \cdot (1-s)$$

# How to measure excessive profit?

## Problems & Approach

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### ■ Problem II:

- There exist only a dozen hydrant installations in Europe, none of which is listed on a stock exchange.
- What is the appropriate cost of equity?  
→ Which is the risk-appropriate return?

### ■ Our approach:

#### Calculating a range of expected rates of return:

- Lower end: Utilites / gas regulator
- Upper end: Airports.

### ■ Results: Profits for the period 2001 to 2006 are 60% to 120% in excess of WACC.

### ■ → Is this enough? Regulators may say yes, but ...

# Remedies I

## Market entry

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- **Basic Idea: Lessening the dominant position as a cure against excessive pricing.**

→ **Structural remedies** (commitments) are now under negotiation with OMV.

### 1. Making market entry easier:

a. "Alternative" logistics (rail unloading facility, pipeline ...) must be made accessible to everybody on clear, transparent and foreseeable terms.

- Capacity management
- Costs
- Make information public

b. Commitment not to transfer sensitive information obtained by managing the "alternative" logistics.

# Remedies II

## Essential facility

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- c. **Lessening OMV's market power with respect to the essential facility** (= hydrant installations):
  - i. OMV relines management of the hydrant system.
  - ii. OMV sells her share in the enterprise.
- **Excessive prices for using the hydrant system:**
  - The ministry of transport initiated a reform of the ground handling act.
    - Prices for using the hydrant system will be subject to **regulation** (by the ministry).