



**BUNDESWETTBEWERBSBEHÖRDE**

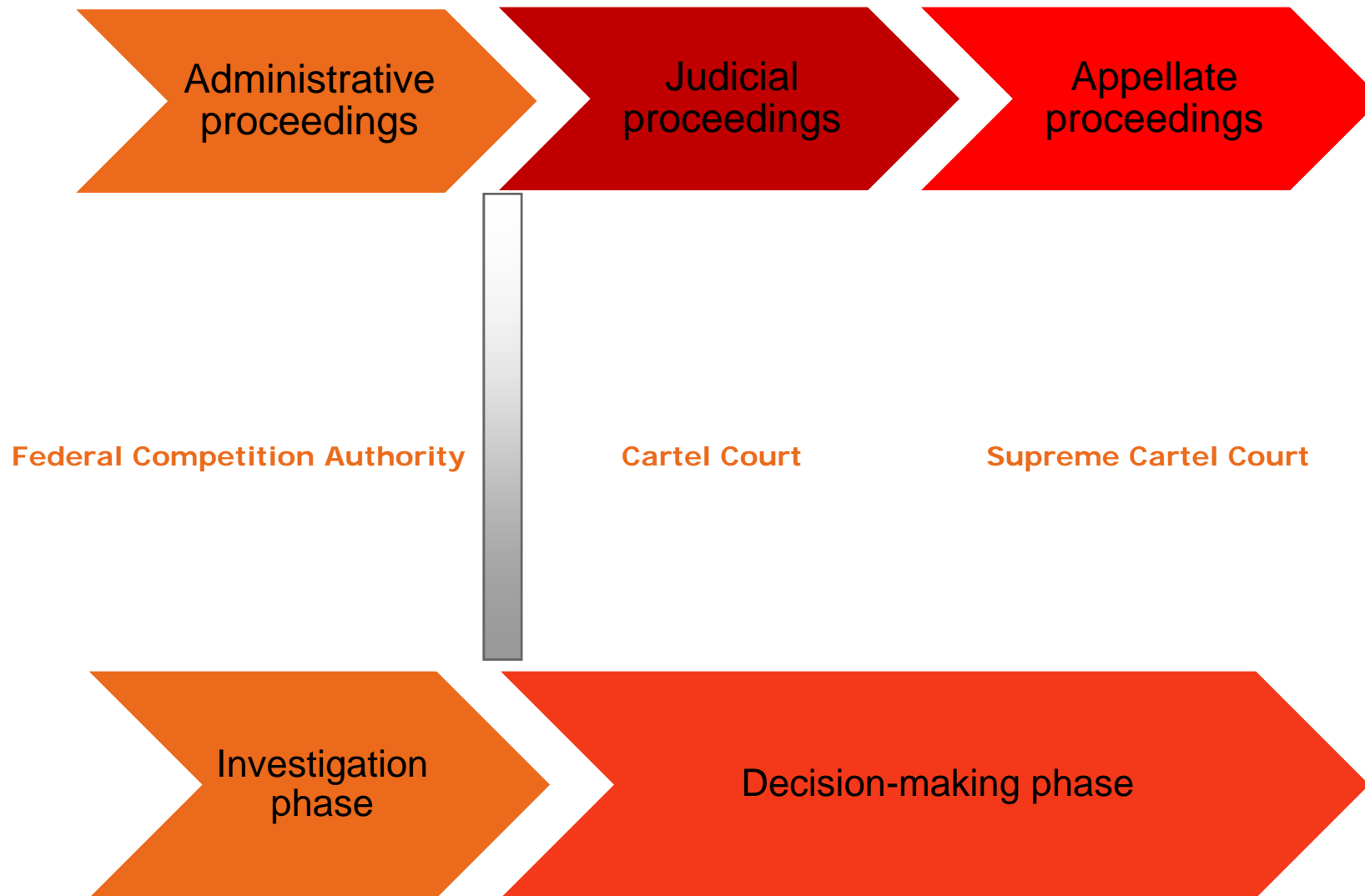
**AD HOC MEETING OF DIRECTORS' GENERAL  
FOR COMPETITION**

**1 June 2010**

***Berlaymont Building, Rue de la Loi 200, 1000 Brussels***

## **Competition Law enforcement in Austria**

- Structure of the Austrian enforcement system:  
Institutional dichotomy – separation between  
investigative and decisional powers
  - Federal Competition Authority (BWB) – Investigative body
  - Cartel Court (and Supreme Cartel Court) – Decision-making  
body



## **Competition Law enforcement in Austria**

- **Compatibility with fundamental/human rights**
  - Separation of prosecutorial and decision-making functions fully respects the European Convention on Human rights.
  - Adversarial system better respects the principles of fairness and due process than an inquisitorial system.
  - No need to create artificial “Chinese walls”, ie an additional systems of internal checks and balances.
  - In Switzerland, discussions are under way to opt for a separation of investigation and decision-making functions.

## Competition Law enforcement in Austria

- Formal separation between investigation and decision-making power – how does it work in practice?
  - *Elevator and Escalator cartel:*  
FCA proposed a fine totaling € 88 m → Cartel Court imposed a fine of € 75.4 m
  - *Industrial chemicals wholesale cartel:*  
FCA proposed a fine of € 1.9 m → Cartel Court imposed a fine of € 1,9 m
  - *Printing chemicals wholesale cartel:*  
FCA proposed a fine of totaling € 1.5 m → Cartel Court imposed a fine of € 1.5 m

## **Due Process in Austria (I)**

- **Right to be heard**
  - Access to file
    - No access to file during the investigation phase.
    - Unrestricted access of all parties to all documents submitted by the BWB in support of the case including the written replies of the other undertakings after initiation of the Cartel Court proceedings.

## **Due Process in Austria (II)**

- **Right to be heard**
  - Right to reply to the BWB's initial court pleading
    - All parties are afforded the opportunity to make known their views on the truth and relevance of the facts and circumstances alleged by the BWB and the documents used to support its claim.

## **Due Process in Austria (III)**

- **Right to be heard**
  - Oral hearing
    - Parties may express their views also orally.
    - Both the BWB and the parties may ask the court to hear persons who may corroborate or clarify the facts.
    - Cross-examination of witnesses.
    - Cartel Court may evaluate unfettered the documentary evidence and the oral testimonies.



## **Due Process in Austria (IV)**

- Right to be heard
  - No right of third parties to participate in the proceedings
    - Cartel Court's hearings are regularly conducted *in camera*.
    - Both third parties and complainants may not attend the Cartel Court hearings.

## **Judicial review**

- **Supreme Cartel Court**
  - Only the Cartel Court's legal reasoning can be appealed.
  - Supreme Cartel Court has full jurisdiction to review the fines imposed by the Cartel Court.

## Current developments (I)

- New Initiative: The Merger Information Exchange Platform: Unique Feature of Marchfeld Regional Cooperation
  - Electronic Database for exchange of information between Members
  - Facilitate the information exchange on mergers and concentrations concerning more than one country
  - Participating Members of the MCF update their data on mergers on a daily basis
  - Benefits:
    - Valuable Tool for Case Handlers in their daily work
    - Overview of developments in the markets
    - Statistics

## Current developments (II)

- Review of the design and implementation of commitments offered and accepted by the FCA in previous merger cases in order to identify areas where improvements to the FCA's practice may be necessary:
  - 140 remedies imposed in 55 cases are under review
  - Relevant time period for review: 2002 - 2010