

Experience with leniency in Austria

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6th UN Review Conference
Geneva, 9th November 2019



Overview

- Legal principles
 - Legal framework
 - Scope of application and substantive tests
- The leniency program in practice
 - Overview of cases
 - Advocacy efforts



Legal framework

- The Austrian leniency regime entered into force on 1 January 2006
- 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
- Application of the leniency programme rests solely with the BWB
 - Motion for a declaratory decision (Immunity)
 - Motion for the imposition of a reduced fine (Reduction of fines)
 - Cartel Court must not impose a fine in excess of the amount applied for by the BWB



Scope of application and substantive tests

- Scope of the Austrian leniency covers more than only secret horizontal collusion:
 - Vertical agreements
 - Non secret agreements
- Threshold for immunity are low:
 - Applicant needs to be the first to report the cartel
 - BWB was not aware of the anti-competitive practice before the application
 - No evidential threshold foreseen; though, the applicant must submit all evidence in her possession under her duty to cooperate.



Overview of cases

- Since the introduction of the leniency programme in January 2006:
 - 21 applications in total
 - 6 cases have been already brought before court
 - Escalators and elevators (€ 75.4 mn)
 - Industrial chemicals (€ 1.9 mn)
 - Printing chemicals (€ 1.5 mn)
 - Plumbing (pending)
 - Freight forwarders (pending)
 - Sugar (pending)
- 4 out of 6 court cases – only one leniency applicant



Advocacy efforts

- Introduction of the leniency system is an important step towards establishing a real culture of competition in Austria
- Efforts to make the leniency programme more attractive and to generate more leniency applications:
 - apply the EC fining guidelines
 - *Ex officio* cartel investigations (eg driving schools cartel)
 - Pragmatic application of the leniency system
 - Seminars
 - Articles



Thank you for your attention!

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