Federal Cartel Act 2005, as amended on 21 September 2017 (complete version)[1]

Full title

Federal Act against Cartels and other Restrictions of Competition (Cartel Act 2005 - KartG 2005[2])
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Amendments

Federal Law Gazette I No. 2/2008 (1.BVRBG) (No: GP XXIII RV 314 AB 370 p. 41. BR: 7799 AB 7830 p. 751.)
Federal Law Gazette I No. 51/2012 (No: GP XXIV RV 1618 AB 1771 p. 155. BR: 8730 AB 8731 p. 809.)
Federal Law Gazette I No. 13/2013 (No: GP XXIV RV 1804 AB 2035 p. 184. BR: AB 8847 p. 816.)
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Preamble/Promulgation clause

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1) Translator's note: Only the German version of this Federal Act is authentic.
2) Kartellgesetz 2005 (KartG 2005)

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Chapter I

Cartels

Ban on cartels

§ 1. (1) Any agreements between undertakings, decisions of associations of undertakings and concerted practices which have as their object or effect the prevention, restriction or distortion of competition (cartels) shall be prohibited.

(2) Pursuant to para. 1, it shall particularly be prohibited to:

1. directly or indirectly fix purchase and selling prices or any other trading conditions;
2. limit or control production, markets, technical development or investments;
3. share markets or sources of supply;
4. apply dissimilar conditions to equivalent transactions with other trading partners, thereby placing them at a competitive disadvantage;
5. make the conclusion of contracts subject to acceptance by the other contract parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

(3) Any agreements and decisions prohibited pursuant to para. 1 shall be automatically void.

(4) Any recommendations to maintain certain prices, price limits, calculation guidelines, trade margins and discounts which aim at or result in the restriction of competition shall be equivalent to a cartel under para. 1 ("recommendation cartels"). This shall not apply to recommendations which explicitly state to be non-binding and which are not or shall not be enforced by exerting economic or social pressure.

Exemptions

§ 2. (1) Cartels which contribute to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefits and which do not

a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives, or

b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question

shall be exempt from the prohibition pursuant to § 1.

(2) In any case, the following cartels shall be exempt from the prohibition pursuant to § 1:

1. Cartels in which undertakings are involved which compete with each other and jointly hold a total share of not more than 10% of the relevant market, or cartels in which undertakings are involved which do not compete with each other and which hold a total share of not more than 15% each of the relevant market, provided that in both cases they do not aim at fixing selling prices, restricting production or distribution, or sharing markets (minor cartels);
2. Agreements on the resale price maintenance between the final seller trading with books, art prints, sheet music, magazines and newspapers and the publisher setting the selling price, as well as agreements between newspaper and magazine publishers on the one hand and undertakings on the other hand which obtain newspapers or magazines with an option of returning them and selling them with the same option to the final seller (press wholesalers), to the extent that such agreements are required to guarantee a nation-wide and non-discriminatory distribution of a range of newspapers and magazines by stationary retail trade;
3. Restrictions of competition among members of cooperatives as well as between the cooperative and its members, to the extent that such restrictions of competition are justified in order to fulfil the cooperatives' statutory mandate to provide benefits to its members (§ 1 of the Act Concerning Commercial and Industrial Cooperatives, Imperial Law Gazette No. 70/1873[3]).

(Note: subpara. 4 repealed by Federal Law Gazette I No. 13/2013)

3) Gesetz über Erwerbs- und Wirtschaftsgenossenschaften, RGBl. Nr. 70/1873

5. Agreements, decisions and practices of agricultural producers, associations of agricultural producers or associations of such producer associations on

a) the production or sale of agricultural products, or

b) the use of joint facilities for the storage, treatment and processing of agricultural products,

as far as they do not include any obligation to charge identical prices and competition is therefore not excluded. Agricultural undertakings involved in plant breeding or animal husbandry as well as any undertakings active on this stage of agricultural production shall also be deemed to be agricultural producers. Agricultural products shall be products listed in Annex II to the Treaty Establishing the European Community as well as the goods arising from the treatment or processing of such products, insofar as they are commonly treated or processed by agricultural producers or their associations.

Exempting regulations

§ 3. (1) The Federal Minister of Justice, in agreement with the Federal Minister of Economy, Family and Youth, may determine by regulation that certain categories of cartels pursuant to § 2 para. 1 shall be exempt from the ban on cartels. Such regulations may refer to a regulation as amended from time to time pursuant to Art. 101 para. 3 TFEU.

(2) To the extent that a regulation pursuant to para. 1 contains special provisions for credit institutions, undertakings in the insurance business or pension funds, such regulation shall be issued also in agreement with the Federal Minister of Finance.

Chapter 2

Market Dominance

Definitions

§ 4. (1) Under this Federal Act, an undertaking shall be deemed to be dominant where as a supplier or purchaser it

1. is exposed to no or only insignificant competition, or
2. holds a predominant market position in relation to its competitors; in this regard, particular attention shall be paid to the undertaking's financial strength, its relations to other undertakings, its opportunities to access supply and sales markets as well as other circumstances that restrict market entry for other undertakings.

(1a) Two or more undertakings shall be deemed to be dominant if no substantial competition exists between them and if they, in their entirety, fulfil the conditions laid down in para. 1.

(2) If an undertaking as a supplier or purchaser on the relevant market

1. has a market share of at least 30%, or
2. has a market share of more than 5% and is exposed to competition by not more than two undertakings, or
3. has a market share of more than 5% and is one of the four biggest undertakings on this market, which together have a market share of at least 80%,

such undertaking shall bear the burden of proof that the conditions laid down in para. 1 are not fulfilled.

(2a) If a number of undertakings as suppliers or purchasers on the relevant market together

1. has a market share of at least 50% and consists of three or fewer undertakings, or
2. has a market share of at least two thirds and consists of five or fewer undertakings,

the undertakings involved shall bear the burden of proof that the conditions laid down in para. 1a are not fulfilled.

(3) An undertaking shall also be deemed to be dominant if it has a predominant market position in relation to its purchasers or suppliers; such position is, in particular, deemed to exist if such purchasers or suppliers depend on maintaining business relations in order to avoid serious economic disadvantages.

Ban on abuse of a dominant market position

§ 5. (1) The abuse of a dominant position shall be prohibited. In particular, the following shall be deemed to be an abuse:

1. demanding purchasing or selling prices or other business terms which differ from those which would be very likely to arise if effective competition existed, particularly taking into account the conduct of undertakings in comparable markets where effective competition exists;
2. limiting production, markets or technical developments to the detriment of consumers,

3. discriminating contract partners in competition by applying dissimilar business terms to equivalent transactions;
4. making the conclusion of contracts subject to acceptance by the other contract parties of supplementary obligations, which neither by their nature nor according to commercial usage are related to the subject of the contract;
5. selling goods below cost price without any objective justification.

(2) In the case of para. 1 subpara. 5, the dominant undertaking shall bear the burden of proof for the rebuttal of the presumption of sales below cost price as well as for providing an objective justification for such sale.

Prohibition of retaliatory measures

§ 6. Proceedings in order to terminate an abuse of a dominant position (§ 26) or a complaint to an official party (§ 40) regarding such an abuse must not be taken as a reason by the dominant undertaking to exclude an undertaking directly affected by such abuse from further supply or purchase on reasonable terms.

Chapter 3
Mergers

Definitions

§ 7. (1) Under this Federal Act, the following shall be deemed to be mergers:

1. the acquisition of an undertaking, as a whole or of a substantial part of it, by an undertaking, especially by way of merger or conversion,
2. the acquisition by an undertaking of rights in the business of another undertaking by means of operational lease or management agreements,
3. the direct or indirect acquisition of shares in an undertaking by another undertaking if as a result the participation held after the acquisition is or exceeds 25%, or is or exceeds 50%,
4. as a result, at least half of the management or members of the supervisory boards of two or more undertakings are identical;
5. any other connection of undertakings which allows one undertaking to have a direct or indirect dominant influence over another undertaking;

(2) The establishment of a joint venture that fulfils all functions of an independent economic entity on a lasting basis shall also be deemed to be a merger.

(Note: Para. 3 repealed by Federal Law Gazette I No. 13/2013)

(4) If all undertakings concerned are part of a group of companies (§ 15 Stock Corporation Act 1965, Federal Law Gazette No. 98[4], § 115 of the Act on Limited Liability Companies, Imperial Law Gazette No. 58/1906[5]), this shall not be deemed to be a merger.

Media mergers

§ 8. (1) A merger shall be deemed to be a media merger if at least two of the undertakings concerned are undertakings of the following categories:

1. media companies or media services (§ 1 para. 1 subparas. 6 and 7 Media Act, Federal Law Gazette No. 314/1981[6])
2. media support companies (para. 2) or
3. undertakings that directly or indirectly hold a share of at least 25% in a media company, media service or media support undertaking.

(2) Under this Federal Act, the following shall be deemed to be media support undertakings:

1. publishing companies, unless they are media companies,
2. printing plants and companies in the pre-press business (repro and typesetting businesses)
3. undertakings procuring or placing advertising requests,
4. wholesalers of media products,
5. film distributors.

4) Aktiengesetz 1965, BGBl. Nr. 98
5) Gesetz über Gesellschaften mit beschränkter Haftung, RGBl. Nr. 58/1906
6) Mediengesetz, BGBl. Nr. 314/1981

(3) A merger shall also be deemed to be a media merger if only one of the undertakings concerned is an undertaking as defined in para. 1 subparas. 1 to 3 and one or several media companies, media services or media support companies directly or indirectly hold at least 25% in at least one other undertaking concerned.

Notification requirements

§ 9 (1) Mergers shall be notified to the Federal Competition Authority prior to their implementation if in the last business year preceding the transaction the combined aggregate turnover of the undertakings concerned was

1. more than EUR 300 million worldwide,
2. more than EUR 30 million on the domestic market, and if
3. at least two of the undertakings concerned had an annual turnover of more than EUR 5 million each worldwide.

(2) The provisions laid down in para. 1 shall not apply if in the last business year preceding the transaction the undertakings concerned achieved the following turnovers:

1. only one of the undertakings concerned achieved, on the domestic market, a turnover exceeding EUR 5 million, and
2. the combined aggregate worldwide turnover of the other undertakings concerned does not exceed EUR 30 million.

(3) When applying para. 1 subparas. 1 and 2 and of para. 2 subpara. 2 to media mergers (§ 8), the turnover of media companies and media services shall be multiplied by a factor of 200, the turnover of media support companies by a factor of 20.

(4) Mergers to which para. 1 does not apply also require notification to the Federal Competition Authority if

1. the undertakings concerned achieved an aggregate worldwide turnover of more than EUR 300 million in the last business year preceding the transaction,
2. the undertakings concerned achieved an aggregate domestic turnover of more than EUR 15 million in the last business year preceding the transaction,
3. the value of the transaction is more than EUR 200 million, and
4. the undertaking to be acquired is active to a large extent on the domestic market.

Notification

§ 10. (1) Each undertaking concerned may submit a notification. Notification of a merger shall be submitted in four identical copies including the required annexes. Such notification shall include:

1. exact and exhaustive information on circumstances which might create or strengthen a dominant position, particularly information on
   a) company structure, and in particular for each undertaking concerned information on
      – the ownership structure of the undertaking, including mergers as defined in § 7,
      – the turnover (quantities and revenues) achieved in the business year preceding the transaction, separately specifying certain goods and services as defined in § 23
   b) for each undertaking concerned information on the market shares it holds regarding the goods and services as specified in (a),
   c) the general market structure;
2. in case of a media merger, furthermore exact and exhaustive information on circumstances that might affect media plurality.

(2) The Federal Minister of Justice may, in agreement with the Federal Minister of Economy and Labour, issue regulations containing further provisions on the format and contents of notifications.

(3) Upon receipt of notification, the Federal Competition Authority shall, without delay,

1. transmit the notification including its annexes in two identical copies to the Federal Cartel Prosecutor;
2. publicly announce the notification. The announcement shall include the names of the undertakings concerned and a brief description of the nature of the merger, the affected economic sectors as well as any other circumstances relevant for the implementation of the merger. Furthermore, any modification to the notification that concerns facts to be publicly announced shall also be published.

(4) Each undertaking, whose legal and economic interests are affected by the merger, may within 14 days of publication of notification pursuant to para. 3 submit a written statement to the Federal

Competition Authority and the Federal Cartel Prosecutor; such right to comment shall be referred to in the publication. The intervening party shall not have any right to a specific treatment of his statement. The official party (§ 40) that receives such a statement shall inform the other official party about it without delay.

Requests for examination

§ 11. (1) Within four weeks from receipt of a notification pursuant to § 10a Competition Act[7] by the Federal Competition Authority, the official parties (§ 40) may request the Cartel Court to examine the merger.

(1a) The period of time specified in para. 1 may be extended to six weeks if the notifying party requests the Federal Competition Authority to do so within the set four-week period. The Federal Competition Authority shall transmit such request to the Federal Cartel Prosecutor without delay. The request for examination shall include a reference to such extended period of time, attaching the respective request.

(2) When a request for examination has been submitted, the Federal Competition Authority shall make a public announcement without delay.

(3) Each undertaking whose legal or economic interests are affected by the merger may submit a written statement to the Cartel Court during the examination proceedings; such right to comment shall be referred to in the publication. By doing so, the intervening party shall not become a party to the proceedings.

(4) Before the set period of time expires, the official parties may refrain from submitting a request for examination against the notifying party. In the event they have not refrained from submitting such request for examination, but have failed to submit such request within the set period of time, they shall inform the notifying party about it without delay.

Examination of notification

§ 12. (1) In the event that an examination of a merger has been requested, the Cartel Court shall

1. reject the request if the merger is not subject to notification;
2. prohibit the merger when it is likely that due to such merger a dominant position (§ 4) is created or strengthened; or if this is not the case,
3. declare that the merger shall not be prohibited.

(2) Notwithstanding any existing conditions to prohibit a merger pursuant to para. 1, the Cartel Court shall declare that such merger shall not be prohibited if

1. it is expected that following such merger also improvements to competitive conditions may occur which outweigh the disadvantages of market dominance, or
2. such merger is necessary and economically justified to maintain or improve international competitiveness of the undertakings concerned.

(3) If the conditions are not fulfilled otherwise, the Cartel Court may attach respective restrictions or obligations to its declaration not to prohibit the merger. In the event that the relevant conditions change after such declaration, the Cartel Court may, upon application of one of the undertakings concerned, change or revoke such restrictions and obligations.

Examination of media mergers

§ 13. (1) A media merger shall be prohibited pursuant to § 12 also if it is likely that such merger might affect media plurality. § 12 para. 2 subpara. 2 shall also apply to this case.

(2) Media plurality shall be deemed to be the diversity of independent media companies that are not affiliated to each other as defined in § 7 and that ensure media coverage that takes into account a variety of opinions.

Decision periods

§ 14. (1) The Cartel Court may prohibit a merger only within five months of receipt of a request for examination or of the first of two requests for examination. This period of time shall be extended to six months if the notifying party requests the Cartel Court to do so within the set five-month period. After expiry of these periods of time and after withdrawal of the request or requests for examination, the Cartel Court shall terminate the examination proceedings.

7) Wettbewerbsgesetz (WettbG)

(2) The Supreme Cartel Court shall decide on any appeals lodged against the decision of the Cartel Court within two months of receipt of the files.

Publication of decisions

§ 15. The Federal Competition Authority shall publish its decisions that a merger subject to restrictions or obligations as defined in § 12 para. 3 shall not be prohibited after such decisions have become final decisions.

Subsequent measures

§ 16. After the lawful implementation of a merger subject to notification, the Cartel Court may impose subsequent measures on the undertakings involved in the merger, taking into account the principle of proportionality of such measures, in order to reduce or eliminate the effects of a merger in the event that

1. non-prohibition of the merger, the waiver for filing a request for examination of the merger, non-request or the withdrawal of such a request respectively were based on false or incomplete information provided by one of the undertakings involved, or
2. an obligation attached to non-prohibition of such merger is infringed.

Standstill obligation

§ 17. (1) A merger subject to notification may be implemented only when the official parties have refrained from submitting a request for examination or have not filed a request for examination within the set period of time. In the event that a request for examination has been filed, the merger may only be implemented after the examination proceedings have been terminated or after the decisions of the Cartel Court to reject the application or not to prohibit the merger have become final.

(2) If a merger subject to restrictions and obligations pursuant to § 12 para. 3 has not been prohibited, the implementation of such merger not respecting such restrictions or obligations shall be prohibited. The same shall also apply if the undertakings involved in the merger have committed themselves towards an official party (§ 40) to respect restrictions or obligations imposed on them in order to achieve that a request for examination be waived or withdrawn.

(3) Any contracts in violation of the standstill obligation shall be ineffective.

Power to issue regulations

§ 18. (1) The Federal Minister of Justice, in agreement with the Federal Minister of Economy, Family and Youth may, after hearing the Competition Commission, order by regulation sales revenues achieved on a specific market (§ 23) to be multiplied by a specific factor when applying § 9 paras. 1 and 2.

(2) A regulation pursuant to para. 1 may be issued in the event that due to the peculiarities of the market concerned mergers of undertakings achieving low turnovers may also result in severely affecting competition on this market and such harm cannot be prevented by means of other competition policy or trade measures. In this context, particularly the following circumstances shall be taken into account:

1. the total volume of turnover achieved on the affected market,
2. circumstances that restrict market entry of other undertakings,
3. interdependence between the affected market and foreign markets.

Exemptions

§ 19. (1) §§ 7 to 18 shall not apply to the acquisition of shares in an undertaking,

1. if a credit institution acquires shares for the purpose of reselling them;
2. if a credit institution acquires the shares with a view to restructuring an undertaking in difficulty or securing claims against such undertaking;
3. if the shares are acquired exercising equity or capital financing business (§ 1 para. 1 subparas. 14 and 15 Federal Competition Act) or are otherwise acquired by an undertaking whose only purpose is to acquire shares in other undertakings as well as to manage such shares and resell them.

(2) In the event that the acquisition of shares, without the exemptions laid down in para. 1, were a merger subject to notification, the following restrictions shall apply to the acquirers of shares:

1. The acquirer must not exercise voting rights in respect to the shares in question for the purpose of determining the competitive behaviour of that undertaking; such voting rights may, however, be exercised only for the purpose of preserving the full value of the investments and of preparing the

disposal of all or parts of the shares of the undertaking or the disposal of the entirety or of parts of the business or its assets;

2. such disposal of shares pursuant to para. 1 subpara. 1 shall take place within one year of the date of acquisition pursuant to para 1 subpara. 2 after the reorganization or securing purpose respectively have come to an end.

(3) The Cartel Court shall order an acquirer of such shares to terminate any conduct infringing para. 2. In this case, the Cartel Court shall extend the one-year period pursuant to para. 2 subpara. 2 if the disposal was not reasonable within the set period of time.

Chapter 4

Joint provisions

Economic approach

§ 20. When assessing circumstances under this Federal Act, the principle of substance over form shall apply, with the actual substance of business being relevant rather than external manifestations of such circumstances.

Calculation of market shares

§ 21. When applying this Federal Act, market shares shall be calculated according to the following principles:

1. market shares shall be calculated for a specific type of goods or service (§ 23);
2. undertakings that are affiliated to each other as described in § 7 shall be considered as one single undertaking;
3. when calculating market shares in the domestic market, market shares of foreign undertakings in the domestic market shall also be taken into account.

Calculation of turnover

§ 22. When applying this Federal Act, turnover shall be calculated according to the following principles:

1. Undertakings that are affiliated to each other in the way described in § 7, shall be considered as one single undertaking; turnover resulting from the sales of products or the provision of services between such undertakings (intra-group sales) shall not be considered in this calculation;
2. For credit institutions, the following revenue items shall be used in place of turnover:
   a) interest income and similar income,
   b) income from shares, other equity and variable yield securities, income from participating interests and income from shares in affiliated undertakings,
   c) commissions receivable,
   d) net revenue on financial operations, and
   e) other operating income;
3. For insurance undertakings, the revenue from premiums shall be used in place of turnover.

Specific goods and services

§ 23. Under this Federal Act, all goods (services) that under specific market conditions satisfy the same needs shall be deemed to be specific goods (services).

Scope of application

§ 24. *(Note: Para. 1 repealed by Federal Law Gazette I No. 51/2012)*

(2) This Federal Act shall apply only in the event that specific circumstances affect the domestic market, irrespective of whether these circumstances arose domestically or abroad.

(3) This Federal Act shall not apply to

1. any circumstance that pursuant to legal provisions is subject to supervision by the Financial Market Authority of credit institutions, building societies or private insurance undertakings, or by the Federal Minister of Transport, Innovation and Technology of transport undertakings; this, however, does not apply to the premium income from business customer tariffs in motor vehicle insurance against civil liability,
2. state monopolies to the extent that such monopolies act exercising the powers of monopoly conferred on them by law.

Reference to other legal provisions

§ 25. Any legal provisions that fix prices, price limits or pricing guidelines or that allow fixing them shall not be affected by this Federal Act.

PART II

Law Enforcement

Chapter 1

Termination of infringements and findings

Termination of infringements

§ 26. The Cartel Court shall effectively terminate any infringements of prohibitions pursuant to Part I of this Federal Act and shall impose orders on the undertakings and associations of undertakings concerned requiring them to bring such infringements to an end. For this purpose, it may impose measures on such undertakings which shall not be disproportionate to the infringement committed. A change to company structure may only be imposed by the Cartel Court where no other equally effective measures are available or where other equally effective measures were more burdensome for the undertakings concerned.

Commitments

§ 27. (1) Instead of terminating an infringement pursuant to § 26, the Cartel Court may declare commitments made by the undertakings and associations of undertakings concerned to be binding if it is likely that such commitments exclude future infringements. By way of such decision, the proceedings shall be deemed to be closed.

(2) The Cartel Court shall reopen the proceedings

1. where there has been a material change in any significant fact on which the decision was based,
2. where the undertakings or associations of undertakings concerned act contrary to their commitments, or
3. where the decision was based on incomplete, incorrect or misleading information provided by the undertakings or associations of undertakings concerned.

Findings

§ 28. (1) Where an infringement against a prohibition as set forth in Part I of this Federal Act has already been brought to an end, the Cartel Court shall find that an infringement existed if there is a legitimate interest in doing so.

(1a) A legitimate interest pursuant to para. 1 shall also exists where

1. finding an infringement is requested against an undertaking or association of undertakings to which the Federal Competition Authority has granted benefits under a leniency programme, or
2. such finding is requested in order to claim damages for an infringement, unless the Cartel Court has already adopted a decision to bring such an infringement to an end, has imposed a fine or has found such an infringement, or legal proceedings are pending in this respect.

(2) In addition, the Cartel Court shall determine whether or to what extent a specific circumstance is subject to this Federal Act.

Chapter 2

Fines

Imposition of fines

§ 29. The Cartel Court shall impose fines as follows:

1. A fine not exceeding 10% of the total turnover achieved in the preceding business year shall be imposed on an undertaking or an association of undertakings that intentionally or negligently
   a) infringes the ban on cartels (§ 1), the ban on abuse of a dominant market position (§ 5), the prohibition of retaliatory measures (§ 6) or the standstill obligation (§ 17),
   b) fails to comply with an obligation pursuant to § 16,
   c) fails to comply with commitments declared as binding pursuant to § 27,
   d) infringes Art. 101 or Art. 102 TFEU;

2. A fine not exceeding 1% of the total turnover achieved in the preceding business year shall be imposed on an undertaking or an association of undertakings that intentionally or negligently
   a) fails to comply with a decision of the Cartel Court pursuant to § 19 para. 3;
   b) submits incorrect or misleading information in the notification of a merger pursuant to § 9.
   (Note: (c) repealed by Federal Law Gazette I No. 13/2013)

Assessment of fines

§ 30. (1) When fixing the amount of fines, particular attention shall be paid to the gravity and duration of the infringement, the enrichment due to such infringement, the degree of responsibility and the economic capacity.

(2) Aggravating circumstances exist in particular if

1. the Cartel Court has already imposed a fine on an undertaking or an association of undertakings because of the same or a similar infringement or has made a finding of such infringement, or
2. the undertaking or association of undertakings has participated as author or instigator in an infringement committed by several undertakings or has played a leading role in such an infringement.

(3) Mitigating circumstances exist in particular if the undertaking or the association of undertakings

1. has participated in an infringement committed by several undertakings only to a substantially limited extent,
2. has terminated the infringement on its own initiative,
3. has significantly contributed to the investigation of an infringement, or
4. has partially or fully repaired harm caused by the infringement.

Associations of undertakings

§ 31. When setting fines pursuant to § 29 subpara. 1 to be imposed on an association of undertakings whose infringement relates to the activities of its members, the relevant factor shall be the sum of the total turnover of each member active on the market affected by the infringement committed by the association of undertaking. This, however, shall not apply to associations of undertakings subject to compulsory membership.

Payment of fines

§ 32. (1) The fines shall go to the Federal Administration and shall be paid in compliance with the legal provisions on the collection of judicial fines.

(2) The amount of EUR 1.5 million of all fines collected shall annually be used for the purpose of the Federal Competition Authority and the Austrian Consumer Information Association.

Limitation periods

§ 33. A fine may be imposed only if an application to impose a fine was filed within five years of termination of an infringement. This limitation period shall be interrupted with effect from the date on which action aimed at the investigation or prosecution of the infringement by the Federal Competition Authority is notified to at least one of the undertakings or associations of undertakings which has participated in the infringement. Each interruption shall start time running afresh; however, the limitation period shall in any case expire no later than ten years from termination of such infringement. The duration of any proceedings before a Court shall not be included in the limitation period.

Chapter 3

Enforcement

Enforcement of the Cartel Court's decisions and settlements

§ 34. (1) Interlocutory injunctions of the Cartel Court, final decisions of the Cartel Court and the Supreme Cartel Court as well as any settlements reached by them constitute enforcement titles.

(2) Apart from the applicant in proceedings before the Cartel Court, also the undertaking directly affected by the abuse of a dominant position shall be entitled to file an application requesting the approval of enforcement based on decisions that bring an infringement of a prohibition to an end pursuant to §§ 5 or 6.

(3) Requests for approval and implementation of enforcement, based on enforcement titles issued by the Cartel Court, shall be filed at the district court of the legal district in which the party obliged has its

general place of jurisdiction in case of legal disputes (§§ 66, 75 Court Jurisdiction Act[8]), or at the competent enforcement court specified in §§ 18 and 19 of the Enforcement Act[9].

Periodic penalty payments

§ 35. (1) The Cartel Court shall impose on an undertaking or association of undertakings periodic penalty payments not exceeding 5% of the average daily aggregate turnover achieved in the preceding business year for each day of delay, calculated from the date set in the decision, in order to compel it or them,

a) to comply with a decision to terminate an infringement pursuant to § 26, an obligation pursuant to § 16 or an interlocutory injunction pursuant to § 48;

b) to comply with commitments made binding by decision pursuant to § 27;

c) to grant, during a search of premises (§ 12 Competition Act), access to evidence available electronically at the premises to be searched.

(2) Where the undertaking or association of undertakings has satisfied the obligations which the periodic penalty payment was intended to enforce, the Cartel Court may fix the definitive amount of the periodic penalty payment at a figure lower than that which would arise under the original decision.

Chapter 4

Joint provisions

Applications

§ 36. (1) As a matter of principle, the Cartel Court shall solely decide upon application.

(1a) An application to impose fines shall contain a specific request that shall include the names of the undertakings or associations of undertakings against which legal action is taken as well as details on the circumstances of the infringement. In addition, the application shall outline the results of any investigation proceedings conducted by the applicant official party and specify any evidence to be taken by the Cartel Court. If a fine of a specific amount is requested, justified reasons shall also be stated for such a request.

(2) An application requesting the examination of mergers, subsequent measures pursuant to § 16 subpara. 1, a finding pursuant to § 28 para. 1a subpara. 1 as well as fines and periodic penalty payments may solely be filed by the Federal Competition Authority or the Federal Cartel Prosecutor. The Cartel Court must not impose a higher fine or periodic penalty payment than requested in the application.

(3) In the event that the Federal Competition Authority has notified the Federal Cartel Prosecutor that it is proceeding against an undertaking or association of undertakings pursuant to § 11 paras. 3 and 4 of the Competition Act, the Federal Cartel Prosecutor shall not be entitled to submit an application requesting the imposition of a fine because of the infringement in question.

(4) In all other cases, applications may be filed by:

1. the Federal Competition Authority and the Federal Cartel Prosecutor,
2. authorities established under Federal Act regulating specific economic sectors (regulators),
3. the Austrian Federal Economic Chamber, the Federal Chamber of Labour and the Standing Committee of Presidents of the Chambers of Agriculture,
4. any undertaking and association of undertakings which has a legal or economic interest in the decision.

(5) The application may be withdrawn until the decision by the Cartel Court has been taken; such withdrawal, however, shall terminate the proceedings only if none of the official parties (§ 40) requests continuation of the proceedings within 14 days of receipt of the declaration of withdrawal. In the event that an admissible appeal has been lodged, the application – to the extent that it is subject matter of the appeal proceedings – may be withdrawn until the Cartel Court has taken a decision, however only upon approval of the opposing party and the official parties.

Publication of decisions

§ 37. (1) The Cartel Court shall publish any final decisions, both decisions granting and decisions rejecting or dismissing an action, on the termination of an infringement, a finding on an infringement, the imposition of a fine, applications to issue interlocutory injunctions or on applications pursuant to §§ 11

8) Jurisdiktionsnorm (JN)
9) Exekutionsordnung (EO)

and 16, by including them into the Edicts Archive (§ 89j Court Organisation Act[10]. The publication shall include data on the parties concerned and the main content of the decision including the sanctions imposed. It shall have regard to the legitimate interest of undertakings in the protection of their business secrets. In the event that a decision of the Cartel Court has been modified by a decision of the Supreme Cartel Court, the decision of the Supreme Cartel Court shall be published.

(2) The Cartel Court shall give the parties concerned the opportunity to specify the parts of the decision they want to be excluded from publication. It shall decide about the version of the decision to be published by the chairperson's decision.

Chapter 5

Damages for infringements of competition law

Scope and subject matter of this chapter

§ 37a. (1) The provisions laid down in this chapter regulate civil liability for harm caused by an infringement of competition law and claims for damages for such infringements.

(2) These provisions shall help implement Directive 2014/104/EU of the European Parliament and the Council on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union, OJ No. L 349 of 05/12/2014, p. 1.

Definitions

§ 37b. For the purpose of the provisions laid down in this chapter the following definitions shall apply:

1. Infringement of competition law: an infringement of the ban on cartels (§ 1), the ban of abuse of a dominant market position (§ 5) and the prohibition of retaliatory measures (§ 6), as well as of Article 101 or 102 TFEU, or of national law of a member state of the European Union or of a state that is a party to the Agreement on the European Economic Area, which predominantly pursue the same objective as Articles 101 and 102 TFEU and which are applied to the same case and in parallel to EU competition law pursuant to Art. 3 (1) of the Council Regulation (EC) No 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ No L 1 of 04/01/3003, p. 1, excluding provisions of national law which impose criminal penalties on natural persons, except to the extent that such criminal penalties are the means whereby competition rules applying to undertakings are enforced;
2. Infringer: an undertaking or association of undertakings which has committed an infringement of competition law (subpara. 1);
3. Competition authority: the Cartel Court, the Federal Competition Authority, the Federal Cartel Prosecutor, the Commission of the European Union or another competition authority pursuant to Regulation (EC) No. 1/2003;
4. Leniency statement: a statement provided voluntarily by a person involved in a cartel between competitors to a competition authority, describing the knowledge of that person of a cartel and describing its role therein, with a view to obtaining immunity or a reduction of fines to be imposed due to such involvement by means of decision or termination of proceedings; this shall also apply to the record of such statement;
5. Settlement submission: a voluntary presentation by an undertaking to a competition authority describing the undertaking's acknowledgement of, or its renunciation to dispute its participation in an infringement of competition law and its responsibility for that infringement of competition law, which was drawn up specifically to enable the competition authority to apply a simplified or expedited procedure;
6. Direct purchaser: a person who acquired goods or services that were the object of an infringement of competition law directly from a person that has committed the infringement of competition law;
7. Indirect purchaser: a person who acquired, not directly from a person who has committed an infringement of competition law, but from a direct purchaser or a subsequent purchaser, products or services that were the object of an infringement of competition law, or products or services containing them or derived therefrom.

10) Gerichtsorganisationsgesetz (GOG)

Liability

§ 37c. (1) Who culpably commits an infringement of competition law shall be liable to compensate for the harm caused by the infringement.

(2) It is presumed that a cartel between competitors causes harm. Such presumption may be rebutted.

Right to full compensation

§ 37d. (1) The compensation for harm caused by an infringement of competition law shall also cover loss of profit.

(2) Correspondingly applying § 1333 of the General Civil Code[11], the party liable to pay damages shall pay interest on the claim for damages from the moment the harm has occurred.

Joint and several liability

§ 37e. (1) Undertakings which have infringed competition law through joint behaviour shall be jointly and severally liable for the harm caused by the infringement of competition law.

(2) The infringer shall, however, only be liable to its own direct and indirect purchasers or suppliers where

1. the infringer is a small or medium-sized enterprise as defined in Commission Recommendation 2003/361/EC concerning the definition of micro, small and medium-sized enterprises, OJ L 124 of 20/05/2003, p. 36, which employs fewer than 250 persons and either has an annual turnover not exceeding EUR 50 million or an annual balance sheet total not exceeding EUR 43 million,
2. its market share in the relevant market was below 5% at any time during the infringement of competition law, and
3. unlimited liability would irretrievably jeopardize its economic viability and cause its assets to lose all their value.

This, however, shall not apply where the infringer has led the infringement of competition law, has coerced other undertakings to participate in such an infringement of competition law or has previously been found by a competition authority (§ 37i para. 2) to have infringed competition law.

(3) A person who has voluntarily disclosed to a competition authority knowledge of and participation in a secret cartel between competitors and who in turn by decision or termination of proceedings benefits from immunity from fines to be imposed for the infringement (leniency), shall only be liable to his own direct and indirect purchasers or suppliers, unless the other injured parties would otherwise be unable to obtain full compensation from the other liable parties.

(4) An infringer held liable to pay compensation may recover a contribution from the co-infringers (compensatory amount), the amount of which shall be determined in the light of their relative responsibility for the harm caused by the infringement of competition law. Such relative responsibility depends on the circumstances of each individual case, in particular on the turnover, market shares and roles of the infringers involved in the infringement of competition law. The amount of contribution of an infringer under a leniency programme (para. 3) for harm caused to its direct or indirect purchasers or suppliers shall not exceed the amount of the harm it caused to its own direct or indirect purchasers or suppliers.

Burden of proof in passing-on of overcharges

§ 37f. (1) In an action for damages for harm caused by an infringement of competition law, the defendant may invoke as a defence against a claim for damages the fact that the claimant passed on the whole or part of the overcharge resulting from the infringement of competition law. The burden of proving that the overcharge was passed on shall be on the defendant. A successful defence shall be without prejudice to the right of the claimant to claim compensation for loss of profits.

(2) Where an indirect purchaser claims compensation for damages against the infringer passed on to him as specified in para. 1 from a purchaser at an earlier stage in the supply chain, the indirect purchaser shall bear the burden of proving that such overcharge has been passed on to him.

(3) In a situation as described in para. 2, the indirect purchaser shall be deemed to have proven that a passing-on of overcharges to the indirect purchaser occurred where that indirect purchaser has shown that

1. the defendant party has committed an infringement of competition law,

11) Allgemeines bürgerliches Gesetzbuch (ABGB)

2. such infringement has resulted in an overcharge for their direct purchasers, and
3. he has purchased the goods or services that were the object of the infringement of competition law, or has purchased goods or services derived from or containing them.

The defendant party may rebut the presumption that he has passed on overcharges by credibly demonstrating that this was not the case.

(4) On matters of passing-on overcharges, the following may give third-party notice (§ 21 Code of Civil Procedure[12]):

1. the party sued by a direct purchaser for being an infringer to the indirect purchaser;
2. the party sued by an indirect purchaser for being an infringer to a direct purchaser;

The direct or indirect purchaser who has been given third-party notice in good time by the party sued shall be bound by the final decision of the court on passing-on of overcharges.

(5) Para. 1 to 4 shall be applied by analogy in the event that the infringement of competition law affects supply to the infringer and the harm results from too low prices.

Effects of consensual dispute resolution

§ 37g. (1) In the event that an injured party settles with an infringer on a compensation for harm caused by the infringement (consensual settlement), the claim of the settling injured party against the co-infringers shall be reduced by the share the settling infringer is liable for.

(2) An infringer who has settled with an injured party shall not be liable to pay compensation to non-settling co-infringers for claims raised by this injured party. The settling infringer shall be liable to pay a reduced compensation pursuant to para 1 to the injured party only to the extent that damages cannot be paid by the co-infringers. Liability in case damages cannot be paid may expressly be excluded by contract.

(3) When determining the amount of contribution (§ 37e para. 4 first sentence) for payments to a non-settling injured party that may be claimed from an infringer who has settled with an injured party, any payments made as a result of settlement shall be considered proportionately to the relative responsibility.

(4) If consensual settlement between the parties is likely to take place, the court which decides on the compensation for harm caused by an infringement of competition law may suspend the proceedings. Proceedings in a specific case may only be ordered to be suspended for a maximum period of time of two years; otherwise § 29 paras. 2 to 4 of the Non-Contentious Proceedings Act[13] shall apply.

Limitation periods

§ 37h. (1) The right to claim compensation for harm caused by an infringement of competition law shall expire after five years starting from the time the injured party has gained knowledge or is reasonably expected to have gained knowledge of the identity of the infringer, of the harm, of the conduct causing the harm as well as of the fact that such conduct represents an infringement of competition law. Irrespective of knowing or of having to know the facts, a claim for compensation shall expire after ten years from the time when the harm was caused. Limitation periods shall not begin to run before the infringement of competition law has ceased.

(2) The limitation period for bringing actions for damages shall be suspended:

1. for the duration of the proceedings against an infringement of competition law aiming at a decision by a competition authority,
2. for the duration of investigations conducted by a competition authority against an infringement of competition law, and
3. for the duration of consensual dispute resolution pursuant to § 37g.

In the case of subparas. 1 and 2, the suspension shall end one year after the infringement decision has become final or after proceedings to bring an infringement of competition law to an end are otherwise terminated or after termination of investigative measures. In case of subpara. 3, when a consensual dispute resolution process has been discontinued, legal action shall be taken within a reasonable period of time, and proceedings shall be duly continued in order to prevent expiry of the limitation period.

(3) For an injured party which is not a direct or indirect purchaser or supplier of a cooperative witness benefiting from a leniency programme (§ 37e para. 3), the limitation period to raise claims for compensation against such a cooperative witness shall be suspended for the duration of proceedings

12) Zivilprozessordnung (ZPO)
13) Außerstreitgesetz (AußStrG)

conducted to raise and enforce claims for contributions from the co-infringers. Suspension shall end one year after an unsuccessful attempt of enforcement against the co-infringers.

Effects of proceedings before a competition authority

§ 37i. (1) A legal dispute on the compensation for harm caused by an infringement of competition law may be interrupted until the proceedings by a competition authority concerning such infringement of competition law have been discharged.

(2) A court which decides on the compensation for harm caused by an infringement of completion law shall be bound by the finding of an infringement of competition law as made in a final decision of a competition authority or a court which decided on the decision of a competition authority at the respective stage of appeal.

Disclosure of evidence

§ 37j. (1) In proceedings relating to an action for damages for harm caused by an infringement of competition law, it shall be sufficient to substantiate the claim to such an extent that any facts and evidence are contained which are reasonably available to the claimant and which sufficiently support the plausibility of the claim for damages.

(2) Upon justified application by a party, the court in proceedings pursuant to para. 1 may order the defendant or a third party after hearing them to disclose evidence under their control, including such evidence that contains confidential information, if disclosure of such evidence is deemed to be reasonable taking into account the legitimate interests of all parties and any third parties concerned. Also a third party that is requested to disclose evidence may be heard before the court in accordance with § 307 para. 1 of the Code of Civil Procedure.

(3) The claimant or the defendant shall circumscribe any evidence or relevant categories of evidence whose disclosure is requested pursuant to para. 2 as precisely and narrowly as possible on the basis of reasonably available facts.

(4) When assessing, in accordance with para. 2, whether any disclosure requested by a party is proportionate, the legitimate interests of all parties and third parties concerned shall be considered. In particular, the following shall be considered:

1. the extent to which the claim or defence of the parties is supported by available facts and evidence justifying the request to disclose evidence;
2. the scope and costs associated with disclosure, especially for any third parties concerned, including preventing non-targeted searches for information which is unlikely to be of relevance for the parties in the proceedings, and
3. whether the evidence the disclosure of which is requested contains any confidential information – especially concerning any third parties – and what arrangements exist for protecting such confidential information.

(5) The interest of undertakings to avoid actions for damages following an infringement of competition law shall not constitute an interest that warrants protection and shall therefore not be considered during the assessment of proportionality.

(6) The court shall order effective measures to protect confidential data; in particular it may

1. request the submission of a specifically redacted extract from a document that does not include any confidential data,
2. conduct hearings in camera,
3. restrict the number of persons allowed to see the evidence to the parties and their legal representatives to the extent that the rights of the parties concerned are not unreasonably restricted, or
4. instruct an expert to produce a summary of the information that does not include any confidential information.

(7) The party obliged to disclose evidence may request that certain individually specified items of evidence shall solely be disclosed to the court, due to its legally recognised obligation of secrecy or its right to refuse to make a statement pursuant to § 157 para. 1 subparas. 2 to 5 of the Code of Criminal Procedure[14]. In such case, the court, after having inspected the evidence in the absence of the parties, shall give a decision whether such evidence is also to be disclosed to the party requesting such disclosure of evidence.

14) Strafprozessordnung (StPO)

(8) The decision ordering disclosure may be challenged by the party obliged to disclose information. A refusal to disclose evidence may be challenged by the party requesting disclosure only after the final decision.

(9) A decision pursuant to para. 2 shall be enforced after it has acquired the authority of a final decision. For enforcing such a decision, § 79 of the Non-Contentious Proceedings Act shall apply accordingly.

Disclosure and use of evidence included in the files

§ 37k. (1) The court may also request the disclosure of evidence included in the files of courts or authorities by way of legal and administrative assistance if such evidence cannot be reasonably obtained by the parties concerned or by a third party concerned.

(2) Where the application requesting disclosure concerns information included in the files of a competition authority, the court, when assessing proportionality of a request of disclosure, shall, apart from § 37j para. 4, also consider the degree of details to which individual documents have been described regarding their nature, subject matter or content and whether there is any necessity to restrict disclosure in order to safeguard the effectiveness of public enforcement of competition law. Before deciding on the application, the court shall grant the competition authority the opportunity to give an opinion on the circumstances; the competition authority may, also on its own initiative, submit its opinion on the proportionality of requests for disclosure to the court.

(3) A competition authority may only be ordered to disclose the following categories of evidence included in its files when the competition authority has closed the proceedings:

1. information that was prepared specifically for the proceedings before the competition authority,
2. information that the competition authority has drawn up and sent to the parties in the course of its proceedings, and
3. settlement submissions associated with such proceedings that have been withdrawn.

(4) The disclosure of leniency submissions or settlement submissions must not be ordered at any time. This prohibition does not comprise information that is available irrespective of proceedings before a competition authority even though such information is included in the files of a competition authority.

(5) Restrictions on the disclosure of evidence included in the files of a competition authority pursuant to paras. 3 and 4 shall also apply to orders to the parties concerned to submit such evidence. The use of evidence included in the files of a competition authority shall not be permissible where its submission cannot be ordered.

(6) Evidence that a person has obtained solely by inspecting the files of a competition authority may without prejudice to para. 5 (second sentence) be used by this person only in actions for damages for an infringement of competition law or by a person who has succeeded to the rights of such person.

(7) If it is stated that the request for disclosure concerns a leniency submission or settlement submissions, the court may order submission of such evidence in order to assess whether and to what extent its contents are subject to a prohibition pursuant to para. 4. In that assessment, the court may request assistance solely from the competent competition authority, and the author of the evidence may also have the possibility of being heard. The court shall give a decision whether and, where applicable, which parts of the evidence are subject to a prohibition pursuant to para. 4 and shall therefore not be included in the files. Such a decision may only be challenged by the party obliged to disclose evidence or the author of the evidence. Other parties or third parties may be granted access to such evidence by the court solely and exclusively and to the extent to which according to the court's final decision such evidence is not subject to a prohibition pursuant to para. 4.

(8) If only parts of evidence are subject to differing restrictions under this provision, the disclosure of the parts concerned shall be decided taking into account the respective provisions.

Assistance from the Cartel Court, the Federal Cartel Prosecutor and the Federal Competition Authority

§ 37l. The Cartel Court, the Federal Cartel Prosecutor and the Federal Competition Authority may, upon request of a court, assist such court in fixing the amount of compensation.

Administrative penalties

§ 37m. The court shall impose administrative penalties of up to EUR 100,000 on parties and their representatives as well as on third parties if they

1. withhold relevant evidence from the party bearing the burden of proof, destroy relevant evidence or make such evidence unusable,

2. fail or refuse to comply with an obligation imposed in order to protect confidential information,
3. use evidence that is not admissible pursuant to § 37k paras. 5 and 6.

PART III

Proceedings before the Cartel Court and the Supreme Cartel Court

Nature of proceedings

§ 38. The Cartel Court and the Supreme Cartel Court shall decide in matters under this Federal Act by way of non-contentious proceedings. In proceedings on the imposition of fines, § 39 para. 4 of the Non-Contentious Proceedings Act shall not apply.

Protection of business secrets

§ 39. (1) The joinder of proceedings shall not be allowed where this would grant a party access to business or trade secrets whose disclosure such party would otherwise not be entitled to request, unless the person that has a legitimate interest in non-disclosure agrees to a joinder of proceedings.

(2) Persons not being a party to the proceedings may inspect the files of the Cartel Court only upon agreement of the parties concerned.

Official parties

§ 40. The Federal Competition Authority and the Federal Cartel Prosecutor as official parties shall be parties to the proceedings even if they are not applicants in such proceedings.

Reimbursement of costs

§ 41. In proceedings on the termination of infringements (§§ 26 and 27), on findings (§ 28) and on the imposition of fines and periodic penalty payments, the provisions of the Code of Civil Procedure regulating the reimbursement of costs shall apply accordingly, with the proviso that the unsuccessful party's obligation to reimburse costs shall only arise to the extent that its action or defense was frivolous. If a party has borne fees of witnesses, experts, interpreters, translators or remunerations for the expert lay judges, it may raise a claim against an opposing party liable to pay court fees to be reimbursed the costs to the extent it has prevailed. § 273 of the Code of Civil Procedure shall apply accordingly to the decision on costs.

Written pleadings

§ 42. A sufficient number of identical copies of each pleading including its annexes shall be submitted so that one copy can be transmitted to each of the parties concerned, including the official parties.

Rectification of notifications of mergers

§ 43. (1) If examination of a merger has been requested pursuant to § 11 and the notification of the merger does not meet the provisions laid down in § 10 paras. 1 and 2, the chairperson shall, ex officio or upon application, order the notifying party to rectify the notification within an appropriate period of time or otherwise reject the notification; such application shall be filed no later than together with the request for examination.

(2) Rectification of a notification may only be ordered within one month of receipt of the request for examination. In the event that rectification is ordered, the period of time to take a decision pursuant to § 14 para. 1 shall be calculated from the date of receipt of the rectified notification.

Time limits

§ 44. Where time limits are not set by law, the chairperson shall set reasonable time limits; upon application of a party concerned, the chairperson shall extend such time limits under specific circumstances worthy of consideration.

Opinions of the Chambers

§ 45. The Federal Economic Chamber, the Federal Chamber of Labour and the Standing Committee of Presidents of the Chambers of Agriculture shall have the right to give their opinions in any cartel proceedings.

Opinions of the regulatory authorities

§ 46. The Cartel Court may request authorities established by Federal Act in order to regulate specific economic sectors (regulators) to give opinions on matters concerning the respective economic

sector also in proceedings in which they are not applicants; the regulators shall be entitled to give such opinions even without being requested to do so by the Cartel Court.

Hearings

§ 47. (1) Upon request of a party, a hearing shall take place. Such hearing shall be a public hearing; however, the hearing shall take place in camera upon application of a party if this is required to protect business or trade secrets. Regulators shall have access to the hearing even if it takes place in camera and they are not a party to the proceedings.

(2) Each party shall be provided with a copy of the minutes of the hearing.

Interlocutory injunctions

§ 48. (1) Where it is found that the conditions to terminate an infringement are fulfilled, the Cartel Court, upon application of a party, shall give the necessary orders by way of interlocutory injunctions.

(2) Before issuing an interlocutory injunction, the opposing party shall be heard. Any appeal against such a decision shall not have any suspensive effect. Upon application by the party appealing against such decision, the Cartel Court shall grant suspensive effect of such appeal where this is justified considering all interests concerned.

Appeal proceedings

§ 49. (1) Even in proceedings before the Supreme Cartel Court, the official parties (§ 40) do not need to be represented by lawyers.

(2) The period of time to appeal against final decisions shall be four weeks, the period of time to appeal against interlocutory injunctions, decisions pursuant to § 37 para. 2 or interim decisions shall be fourteen days. The other parties may submit a reply to the appeal within the same periods of time from receipt of the appeal.

(3) An appeal may also be based on the fact that due to the contents of the files significant doubts exist regarding the correctness of the relevant facts on which the decision of the Cartel Court was based.

PART IV

Fees

Court fees

§ 50. In proceedings before the Cartel Court and the Supreme Cartel Court the fees shall be set on a sliding-scale such as follows:

1. for proceedings on the examination of a merger (§ 11) a fee of up to EUR 34,000;
2. for proceedings to terminate an infringement (§§ 26, 27 and 28 para. 1) a fee of up to EUR 34,000;
3. for proceedings on findings (§ 28 para. 2) a fee of up to EUR 17,000;
4. for proceedings on imposing a fine which are not joined with proceedings pursuant to subpara. 2, as well as for proceedings to skim off gains (§ 111 of the Telecommunications Act 2003[15], § 56 of the Postal Market Act[16]) a fee of up to EUR 34,000;
5. for proceedings on imposing periodic penalty payments (§ 35) and for proceedings on the search of premises, if an objection is raised against the inspection or seizure of documents (§ 12 para. 5 Competition Act), a fee of up to EUR 8,500;
6. for any other proceedings a fee of up to EUR 34,000.

Exemption from further fees

§ 51. Apart from the fees specified in § 50, no further court fees shall be charged; this shall also apply if an appeal is lodged.

Parties liable to pay

§ 52. (1) The party submitting the notification shall be liable to pay a fee pursuant to § 50 subpara. 1.

(2) Liability to pay fees pursuant to § 50 subparas. 2 to 6 shall be imposed on the applicant, the opposing party or both parties proportionally based on the outcome of the proceedings; the official parties, however, shall be exempt from payment of fees incurred by them.

15) Telekommunikationsgesetz (TKG 2003)
16) Postmarktgesetz (PMG)

Joint and several liability

§ 53. Several persons who are liable to pay one and the same amount of fees shall be jointly and severally liable.

Fixing of fees

§ 54. After closing the proceedings, the chairperson shall by way of decision fix the amount of fee at his own discretion; in doing so, particularly the economic significance of the proceedings, the administrative effort associated with the official act, the economic background of the party liable to pay shall be taken into account as well as the fact to what extent the party liable to pay has caused the official act to be taken. Proceedings that are interrupted or suspended shall be deemed to be closed if no application to continue the proceedings is filed within two years of interruption or suspension (§ 26 para. 3, § 28 para. 4 Non-Contentious Proceedings Act).

Judicial costs

§ 55. The parties liable to pay the court fees, shall also be liable to pay any other costs incurred in the proceedings, in particular fees for experts as well as, depending on the number of sessions or hearings, the remuneration for expert lay judges of the Cartel Court or the Supreme Cartel Court.

Exemption from fees for settlements

§ 56. Settlements shall not be subject to any fees.

Payment

§ 57. The payment of fees and costs shall be subject to the applicable legal provisions for civil matters.

PART V

Institutions

Chapter 1

Cartel Court and Supreme Cartel Court

Court organisation

§ 58. (1) The Vienna Higher Regional Court shall act as the competent Cartel Court for the whole federal territory.

(2) Appeals against decisions taken by the Cartel Court shall be referred in its second and final instance to the Supreme Court assuming the functions of Supreme Cartel Court.

Composition of court panels

§ 59. (1) When exercising jurisdiction in cartel matters the panels shall be composed as follows:

1. the panels of the Vienna Higher Regional Court shall be composed of one professional judge as the presiding judge, another professional judge and two expert lay judges,
2. the simple panels of the Supreme Court shall be composed of one professional judge as the presiding judge, two other professional judges and two expert lay judges,
3. the enlarged panels of the Supreme Court shall be composed of seven professional judges and two expert lay judges.

(2) The expert lay judges on a panel shall in equal numbers be sent by the Federal Chamber of Labour and the Federal Economic Chamber respectively.

(3) If a cartel solely and exclusively concerns goods specified in the Annex to this Federal Act, the panel of the Cartel Court must include an expert lay judge sent by the Standing Committee of the Presidents of the Chambers of Agriculture instead of the expert lay judge sent by the Federal Chamber of Labour. If a cartel concerns both goods specified in the Annex to this Federal Act and other goods, separate proceedings shall be conducted for the two categories of goods.

Allocation of business

§ 60. (1) §§ 45 and 46 of the Court Organisation Act, Imperial Law Gazette No. 217/1896, shall apply with the proviso that cartel matters under the jurisdiction of the Vienna Higher Regional Court shall be allocated to at least two and not more than five panels.

(2) § 13 of the Supreme Court Act, Federal Law Gazette No. 328/1968[17], shall apply with the proviso that that cartel matters under the jurisdiction of the Supreme Court shall be allocated to only one panel.

(3) The expert lay judges, who are part of the various panels, shall also be assigned by way of task allocation.

Rapporteur

§ 61. The presiding judge at the Vienna Higher Regional Court may appoint an expert lay judge as a rapporteur, unless he reports himself.

Decisions of the presiding judge and of the three-member panel of the Supreme Cartel Court

§ 62. (1) Interim decisions by the Cartel Court shall be taken by the presiding judge alone; except for in specific cases as set forth in this Federal Act, final decisions shall be taken by the presiding judge alone only if so requested by a party and agreed so by the other parties concerned.

(2) The Supreme Court, acting as Supreme Cartel Court, shall decide through a three-member panel (§ 7 of the Supreme Court Act) about any appeals lodged against decisions taken by the presiding judge alone, as well as against decisions on fees and costs.

Vote

§ 63. § 10 para. 2 of the Court Jurisdiction Act shall apply to votes with the proviso that the older expert lay judges shall vote before the younger ones. In case of a tie, the vote of the presiding judge shall decide.

Position of the expert lay judges

§ 64. (1) The expert lay judges shall be entitled to use the honorary title of "Kommerzialrat" (Councillor of Commerce). If an expert lay judge was a member of the Cartel Court or the Supreme Cartel Court for at least five years, he shall be entitled to use this title also after expiry of his term of office.

(2) The expert lay judges shall be independent when performing their office; in doing so, they shall have all powers associated with their office to the full extent.

(3) For each session or hearing, the expert lay judges at the Cartel Court shall be entitled to a remuneration of 4.68%, the expert lay judges at the Supreme Cartel Court to a remuneration of 6.68% of the salary of an employee of General Administration in Service Class V, Salary Grade 2, plus any inflation adjustments, if applicable. In the event that an expert lay judge also acts as a rapporteur, he shall be granted double remuneration.

(4) In the event that several sessions or hearings concerning different cases take place on the same day, the full remuneration for each session or hearing shall be granted.

(5) The expert lay judges shall be entitled to the reimbursement of their travel and accommodation expenses as well as to a compensation for their time input, in accordance with the provisions applicable to witnesses as set forth in the Fee Entitlement Act, Federal Law Gazette No. 136/1975[18], subject to the proviso that for the duration of the sessions and hearings no compensation for time input shall be granted and that the amount specified in § 18 para. 1 subpara. 1 of the above quoted Federal Act shall be increased by half.

Appointment

§ 65. The expert lay judges of the Cartel Court and the Supreme Cartel Court shall be appointed by the Federal President upon nomination by the Federal Minister of Justice in agreement with the Federal Minister of Labour.

Qualification

§ 66. In order to be eligible to be appointed as an expert lay judge, a person shall

1. be willing to accept this office;
2. be capable of exercising the office of a juror or lay judge;
3. have obtained a university degree in Law, Commerce or Economics from an Austrian university;
4. have acquired several years of professional experience in law, business or economics.

17) Bundesgesetzes über den Obersten Gerichtshof, BGBl. Nr. 328/1968
18) Gebührenanspruchsgesetz (GbaG)

Incompatibility

§ 67. An expert lay judge shall not

1. be appointed at the same time upon proposal by several bodies entitled to propose expert lay judges or be appointed to the Cartel Court and the Supreme Cartel Court at the same time;
2. be a member of the Federal Government or of a Provincial Government, of the National Council or the Federal Council.

Nomination

§ 68. (1) Five expert lay judges of the Cartel Court shall be nominated each by the Federal Minister of Justice upon each proposal by the Federal Economic Chamber, the Federal Chamber of Labour and the Standing Committee of the Presidents of the Chambers of Agriculture. Five expert lay judges of the Supreme Cartel Court shall be nominated each by the Federal Minister of Justice upon each proposal by the Federal Economic Chamber and the Federal Chamber of Labour.

(2) The bodies entitled to propose expert lay judges shall include at least two persons for each expert lay judge to be appointed in their proposals and shall rank the candidates accordingly. Such proposals shall also demonstrate that the requirements for nomination are met and the proposed persons have consented to their nomination.

(3) The Federal Minister of Justice may nominate only one person each of the candidates proposed to him; if, however, the right to propose candidates is not exercised within a reasonable period of time to be set by the Federal Minister of Justice, he shall not be bound in his proposal by any proposals submitted to him by the above mentioned bodies.

Term of office

§ 69. The term office of an expert lay judge shall end upon the expiry of the year in which he has completed his 65th year of life.

Removal from office

§ 70. (1) An expert lay judge shall be removed from office in the event that

1. the requirements for appointment were not met or ceased to exist at a later time;
2. circumstances existed or occurred at a later time that are incompatible with the office of an expert lay judge;
3. he repeatedly neglects the duties associated with this office without providing sufficient justification;
4. he has become guilty of a conduct that is incompatible with the reputation of his office.

(2) The Supreme Court shall decide on removal from office pursuant to para. 1 subparas. 1 to 3 in proceedings according to § 93 para. 1 of the Judges and Public Prosecutors Service Act[19], about the removal from office pursuant to para 1 subpara. 4 in proceedings according to §§ 112 to 120, 122 to 138, 142 to 144, 146 para. 1, §§ 147 to 149, 151, 152 (a), 153, 154, 155 para. 1, §§ 157, 161 to 163 and 165 of the Judges and Public Prosecutors Service Act, with the proviso that except for removal of office no other penalty shall be imposed.

(3) In addition, an expert lay judge shall, upon his own request, be removed from office by the Federal Minister of Justice.

Notification obligations

§ 71. The expert lay judges shall without delay notify the following circumstances to the President of the Court of Justice (the presiding judge):

1. any circumstance that may prevent them from complying with a summons as an expert lay judge,
2. any change of residence,
3. the beginning of a long-term inability to perform their duties,
4. any occurrence of incompatibility,
5. the loss of eligibility to be elected to the National Council.

Challenge of expert lay judges

§ 72. Expert lay judges may be challenged also because they do not meet the requirements for appointment or circumstances exist which are incompatible with the office of an expert lay judge.

19) Richter- und Staatsanwaltsdienstgesetz (RStDG)

Experts in cartel matters

§ 73. By way of derogation from § 3 of the Expert Witnesses and Interpreters Act, Federal Law Gazette No. 137/1975[20], the President of the Vienna Commercial Court shall keep a national list of experts for the specialty or specialized section "Competition Economics".

Annual activity report of the Supreme Cartel Court

§ 74. After the end of each year and after hearing the Cartel Court, the Supreme Cartel Court shall draw up a report about the activities of the Cartel Court and the Supreme Cartel Court as well as the experience gained from such activities, taking into account the legitimate interests of the undertakings concerned in the protection of their trade and business secrets; the annual activity report shall be transmitted to the Federal Minister of Justice. The annual activity report may also include suggestions for the preparation of legislative measures or the adoption of regulations.

Chapter 2
Federal Cartel Prosecutor

Duties

§ 75. (1) The Federal Cartel Prosecutor is appointed to represent public interests in matters of competition law before the Vienna Higher Regional Court acting as Cartel Court. In performing his duties, he shall act independently from the Cartel Court.

(2) The Federal Cartel Prosecutor shall directly report to the Federal Minister of Justice.

(3) One or several deputies shall be appointed to assist the Federal Cartel Prosecutor (Deputy Federal Cartel Prosecutor).

Appointment

§ 76. (1) The Federal Cartel Prosecutor and his Deputy shall be appointed by the Federal President for a five-year term of office. Appointments shall be renewable.

(2) The Federal Cartel Prosecutor shall be appointed upon proposal of the Federal Government, his Deputy shall be appointed upon proposal of the Federal Minister of Justice.

(3) The proposal of the Federal Government and the proposal of the Federal Minister of Justice shall be preceded by a vacancy notice inviting general applications to be advertised by the Federal Minister of Justice. The vacancy notice shall be published in the Official Gazette of "Wiener Zeitung".

Requirements for appointment

§ 77. (1) Only such person may be appointed Federal Cartel Prosecutor or Deputy Federal Cartel Prosecutor who

1. is personally or professionally qualified to perform the duties associated with this office,
2. has obtained a university degree in Law or Economics and
3. has at least five years of professional experience in the field of competition law in administration, jurisdiction or science.

(2) Persons who are entitled to pay under the remuneration scheme of the Federal or the Provincial Administrations shall not be appointed Federal Cartel Prosecutor or Deputy Federal Cartel Prosecutor. Neither may a person be appointed who was a member of the Federal Government or of a Provincial Government or a State Secretary at any time during the previous four years.

Term of office and removal from office

§ 78. (1) The term of office of the Federal Cartel Prosecutor (and his Deputy) shall end

1. upon expiry of his term of office unless he is reappointed for another term,
2. upon termination of employment,
3. upon removal from office,
4. upon expiry of the year in which he has completed his 65th year of life.

(2) The Federal Cartel Prosecutor shall be removed from office by the Federal President upon request of the Federal Government, his Deputy by the Federal President upon request of the Federal Minister of Justice if he

1. requests so in writing,

20) Sachverständigen- und Dolmetschergesetz, BGBl. Nr. 137/1975.

2. has become guilty of serious misconduct of such nature and severity that continuing his official duties would be detrimental to the interests of his office,
3. is unable to perform his duties as Federal Cartel Prosecutor (or Deputy Federal Cartel Prosecutor) due to his physical or mental constitution and he cannot reasonably be expected to regain capacity to execute his functions,
4. is unable to perform his duties for more than six months due to illness, accident or disability.

Provisions on employment and remuneration

§ 79. (1) Appointment as Federal Cartel Prosecutor (or Deputy Federal Cartel Prosecutor) shall not give rise to a change to the employment status applicable to federal staff under public law or contracted federal employees. For his term of office, the Federal Cartel Prosecutor (or his Deputy) shall be relieved from his previous duties with his salary being suspended. The administrative authority to which service of this function is rendered shall be the Federal Ministry of Justice.

(2) The following remuneration shall be paid:

1. to the Federal Cartel Prosecutor while in office, a fixed monthly salary in the amount of the salary of a judge in pay group R2, pay level 9;
2. to his Deputy while in office, a fixed monthly salary in the amount of the salary of a judge in pay group R2, pay level 7, plus a pensionable allowance amounting to half of the regular salary increment.

(3) The period of time while a federal employee is holding office as a Federal Cartel Prosecutor (or Deputy Federal Cartel Prosecutor) shall remain effective as regards any rights that depend on the length of service.

(4) If a person is appointed Federal Cartel Prosecutor (or Deputy Federal Cartel Prosecutor) who is neither in a public-law employment relation to the Federal Government nor a federal contract employee, his appointment shall, during his term of office, give rise to temporary contractual employment (§§ 76 para. 1) pursuant to the Contractual Public Employees Act 1948, Federal Law Gazette No. 86[21], entitling him to salary according to para. 2. When being reappointed, § 4 para. 4 of the Contractual Public Employees Act 1948 shall not apply; reappointment shall give rise to a new temporary employment relationship.

(5) The Federal Cartel Prosecutor and his Deputy shall perform their duties on a full-time basis. While in office, the Federal Cartel Prosecutor and his Deputy must not pursue any other activities which hinder them in fulfilling their duties or could give rise to doubts as to their full impartiality or jeopardize other strong interests associated with their offices; this particularly applies to the activities described in § 4 Incompatibility Act 1983[22].

Office work and expenses

§ 80. (1) The office work of the Federal Cartel Prosecutor shall be performed by the court office of the Vienna Higher Regional Court.

(2) Any submissions addressed to the Federal Cartel Prosecutor and his Deputy shall be filed through the court office of the Vienna Higher Regional Court.

(3) Any personnel and administrative expenses of the Federal Cartel Prosecutor shall be covered by funds of the Vienna Higher Regional Court.

Cooperation with the Federal Competition Authority

§ 81. (1) Submissions to the Federal Cartel Prosecutor suggesting to file an application to initiate proceedings before the Cartel Court or to conduct investigations in cartel matters may be forwarded by the Federal Cartel Prosecutor to the Federal Competition Authority for further action.

(2) Before filing a request for examination pursuant to § 11, the Federal Cartel Prosecutor shall grant the Federal Competition Authority the opportunity to give its opinion.

(3) To the extent that is necessary for performing his tasks, the Federal Cartel Prosecutor may

1. request information from the Federal Competition Authority,
2. inspect files of the Federal Competition Authority, and
3. request the Federal Competition Authority to conduct investigations.

21) Vertragsbedienstetengesetz 1948, BGBl. Nr. 86/1948
22) Unvereinbarkeitsgesetz 1983

Waiving requests for examination

§ 82. (1) The Federal Cartel Prosecutor may validly waive his right also vis-à-vis the Federal Competition Authority to file a request for examination with regard to the notification of a merger. In this regard the Federal Competition Authority may request the Federal Cartel Prosecutor to provide a written declaration on whether or not he plans to waive his right to file a request for examination. In the event that the Federal Competition Prosecutor does not give such declaration within 14 days of receipt of such request, it shall be deemed that he has waived his right to file a request for examination.

(2) Para. 1 shall also apply to planned notifications of mergers; in such a case a declaration to refrain from filing a request for examination shall only be binding for the Federal Cartel Prosecutor if the planned notification is identical with the actually submitted one and the declaration to refrain from requesting examination is not based on incorrect or incomplete information for which one of the undertakings concerned is fully responsible.

PART VI

Application of Community Law

Jurisdiction

§ 83. (1) With regard to the application of Art. 101 and 102 TFEU and the competition rules adopted based on Articles 42 and 43 TFEU in individual cases, the competent competition authority pursuant to Council Regulation (EC) No 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L1 of 04/01/2003, p.1 (Regulation 1/2003) shall be

1. the Cartel Court for the adoption of decisions;
2. without prejudice to § 3 para. 1 Competition Act, the Federal Cartel Prosecutor for applications before the Cartel Court.

(2) The Cartel Court and the Federal Cartel Prosecutor shall apply the procedural rules laid down in this Federal Act when applying Art. 101 and 102 TFEU and the competition rules laid down in Articles 42 and 43 TFEU.

Cooperation

§ 84. The Federal Cartel Prosecutor may make a declaration to the Commission and the competition authorities of other member states for the purpose of implementing the provisions of Regulation 1/2003 on cooperation of the Commission with the competition authorities of the member states; this particularly applies to compliance with the rules on the protection of applicants who have claimed the benefits of a leniency programme.

Transmission of judgements

§ 85. Where the member states are required to transmit a copy of any written judgement pursuant to Art. 15. para. 2 of Regulation 1/2003, the deciding court shall transmit without delay its judgement to the parties concerned and also transmit at the same time a copy of such judgement to the Federal Competition Authority to be forwarded to the Commission.

PART VII

Final Provisions

Entry into force

§ 86. *(Note: Para. 1 deemed to be ineffective due to Art. 2 § 2 para. 2 subpara. 83, Federal Law Gazette I No. 2/2008)*

(2) Regulations based on this Federal Act may already be issued from the day following its publication; however, they shall become effective only upon entry into force of this Federal Act.

(3) § 2 para. 2 subpara. 1, § 3 para. 1, § 4 para. 1a, 2 and 2a, § 5 para. 1 subpara. 1, § 11 para. 1a, § 14 para. 1, § 18 para. 1, § 28 para. 1a, § 29 subpara. 1d and subpara. 2, §§ 30, 35 para. 1, § 36 para. 1a, 2 and 3, §§ 37, 37a, 39 para. 1, § 47 para. 1, § 49 para. 2, §§ 50, 52 para. 2, § 70 para. 2, § 73 para. 1, § 74, § 81 para. 1 and § 83 as amended by Federal Law Gazette I No. 13/2013 shall enter into force as of 01 March 2013. § 2 para. 2 subpara. 4 and § 7 para. 3 shall become ineffective as of 28 February 2013.

(4) § 2 para. 2 subpara. 1 of this Federal Act as amended by Federal Law Gazette I No. 13/2013 shall apply to cartels formed after 28 February 2013 and cartels formed prior to 01 March 2013 and not terminated after the day of publication of the Federal Act in Federal Law Gazette I No. 56/2017. § 2 para.

2 subpara. 1 as amended in Federal Law Gazette I Nr. 13/2013 shall apply to cartels formed prior to 01 March 2013 and terminated prior to the day of entry into force of Federal Law Gazette I No. 56/2017. § 4 para. 1a, 2 and 2a, § 5 para. 1 subpara. 1 as amended by Federal Law Gazette I No. 13/2013 shall apply to acts committed after 28 February 2013. § 28 para. 1a, § 36 para. 1a and para. 2, §§ 37, 39 para. 1, § 49 para. 2, §§ 50, 52 para. 2, as amended by Federal Law Gazette I No. 13/2013 shall apply to proceedings for which the application initiating such proceedings is filed after 28 February 2013. §§ 30 and 37a, as amended by Federal Law Gazette I No. 13/2013, shall apply to infringements of competition law committed after 28 February 2013.

(5) § 2 para. 2, § 33, § 35 para. 1, § 37 para. 1, § 41, § 49 para. 3, § 50, § 54, § 68 para. 1, § 73 and § 75, as amended by Federal Law Gazette I No. 56/2017, shall enter into force as of 01 May 2017. § 9 para. 4, as amended by Federal Law Gazette I No. 56/2017, shall enter into force on 01 November 2017. § 32, as amended by Federal Law Gazette I No. 56/2017, shall enter into force as of 01 January 2018. From the year 2019, the amounts mentioned there shall increase or reduce annually to the extent to which the ”Consumer Price Index 2015” published by “Statistics Austria” for the month of October of the respective previous year will have changed compared to the index for October 2017. Expediency of the funds used pursuant to § 32 para 2 and their index adjustment shall be evaluated in the year 2020. § 92 para. 2 shall become ineffective as of 30 April 2017.

(6) § 37 para. 1 as amended by Federal Law Gazette I No. 56/2017 shall apply to decisions which are adopted after 30 April 2017 if the application initiating proceedings is received after 28 February 2013. § 41, § 49 para. 3, § 50 and § 54 as amended by Federal Law Gazette I. No. 56/2017 shall apply to proceedings for which the pleading initiating the proceedings is submitted after 30 April 2017. The special list of experts pursuant to § 73 as amended by Federal Law Gazette I No. 56/2017 shall be discontinued after expiry of the five-year period pursuant to § 73 para. 2, as amended in Federal Law Gazette I No. 56/2017, running when the Federal Law Gazette I No. 56/2017 enters into force. Those experts who are summoned as experts in proceedings which are not terminated by this time shall maintain their status of sworn experts in the respective proceedings.

(7) After entry into force of § 68 para. 1 as amended by Federal Law Gazette I No. 56/2017, the Federal Minister of Justice shall nominate further expert lay judges of the Supreme Cartel Court for appointment only when the number of expert lay judges is lower than five.

(8) § 30 para. 3, §§ 37a to 37m as amended by Federal Law Gazette I No. 56/2017 shall enter into force on 27 December 2016. § 79 para. 2 as amended by Federal Law Gazette I No. 56/2017 shall enter into force on 12 February 2015.

(9) §§ 37a to 37g as amended by Federal Law Gazette I No. 56/2017 shall apply to compensations for harm caused after 26 December 2016. § 37h shall apply to claims that by 26 December 2016 are not yet statute-barred, unless application of law in force until this date is more beneficial for the injured party. §§ 37j to 37m as amended by Federal Law Gazette I No. 56/2017 shall apply to proceedings for which the pleading initiating proceedings is filed after 26 December 2016. Administrative penalties pursuant to § 37m may, however, only be imposed for conduct that took place after 30 April 2017. § 37a paras. 1 and 4 as amended by Federal Law Gazette I No. 56/2017 shall continue to apply to compensations for harm caused prior to 27 December 2016.

Repeal

§ 87. *(Note: Para. 1 deemed to be ineffective due to Art. 2 § 2 para. 1 subpara. 30 and Art. 2 § 2 para. 2 subpara. 83, Federal Law Gazette I No. 2/2008.)*

(2) §§ 142 to 143c Cartel Act 1988[23] shall continue to apply to circumstances that occurred prior to entry into force of this Federal Act; §§ 29 to 33 shall not apply to such circumstances.

(3) Art. V paras. 6 and 7 of the amended Cartel Act 2002[24] shall continue to apply to circumstances that occurred prior to entry into force of the amended Cartel Act 2002, Federal Law Gazette I No. 62/2002.

Cartel Register

§ 88. (1) The Cartel Register pursuant to Cartel Act 1988 shall be closed on the day prior to entry into force of this Federal Act. The register, together with the collection of documents and any auxiliary registers, shall be preserved for five years from this date; § 78 para. 2 and § 80 subpara. 11 Cartel Act 1988 shall continue to apply during this period of time.

23) Kartellgesetz 1988
24) Kartellgesetznovelle 2002, BGBl. I Nr. 62/2002

(2) The duty to preserve the registers and files specified in § 148 para. 3 Cartel Act 1988 shall end as of entry into force of this Federal Act.

Authorised cartels

§ 89. Cartels authorised by the Cartel Court may be implemented by 31 December 2006, even if they were otherwise prohibited under this Federal Act, however no later than the expiry of authorisation.

Continuation of pending proceedings

§ 90. For any proceedings before the Cartel Court or the Supreme Cartel Court that are pending at the time of entry into force of this Federal Act, the following shall apply:

1. Proceedings
   a) on applications for findings and notifications pursuant to § 19 Cartel Act 1988,
   b) on applications requesting the authorisation of cartels (§§ 23, 26 Cartel Act 1988),
   c) on applications requesting the duration of authorisation of a cartel or the authorised period of a cartel to be extended (§ 24 Cartel Act 1988),
   d) on applications requesting the repeal of an authorisation of a cartel pursuant to § 27 para. 1 subpara. 1 Cartel Act 1988,
   e) on notifications on vertical resale price maintenance (§ 30b Cartel Act1988),
   f) on notifications on non-binding recommendations by associations (§ 32 Cartel Act 1988),
   g) on the revocation of a non-binding recommendation by associations (§ 33 Cartel Act1988), and
   h) on notifications pursuant to § 60 subpara. 5 Cartel Act 1988.

   shall not be continued.
2. Pursuant to the provisions laid down in Cartel Act 1988, proceedings
   a) on judicial assistance for the adjustment of contracts (§ 30 Cartel Act 1988),
   b) on applications for findings pursuant to § 42a para. 5 Cartel Act 1988,
   c) on the notification and examination of mergers (§§ 42a and 42b Cartel Act 1988), and
   d) on applications to impose fines pursuant to § 142 Cartel Act 1988

   shall be continued.
3. Pursuant to the provisions laid down in this Federal Act, any other proceedings shall be continued, with
   a) applications for findings pursuant to § 8a Cartel Act 1988 being treated as applications pursuant to § 28 para. 2, and
   b) applications to prohibit the implementation of cartels (§ 25 Cartel Act 1988) and vertical resale price maintenance (§ 30c Cartel Act 1988), applications to revoke authorisation of a cartel pursuant to § 27 para. 1 subpara. 2 and on terminating abuse of a dominant market position (§ 35 Cartel Act 1988) and of retaliatory measures (§ 36 Cartel Act 1988) being treated as applications pursuant to § 26.

Fees for discontinued proceedings

§ 91. (1) For proceedings which shall be discontinued pursuant to § 90 subpara. 1, court fees as laid down in the provisions of Cartel Act 1988 shall be charged.

(2) Liability to pay a fee pursuant to § 80 subpara. 8 Cartel Act 1988 shall not apply where proceedings were initiated upon request of an official party; otherwise the applicant shall be liable to pay.

Continuing appointments and registrations

§ 92. (1) Any appointments of expert lay judges of the Cartel Court and of the Supreme Cartel Court pursuant to § 95 Cartel Act 1988 shall remain effective as appointments pursuant to § 65 of this Federal Act.

(Note: Para. 2 repealed by Article 1 subpara. 22 Federal Law Gazette I No. 56/2017)

Linguistic non-discrimination

§ 93. Where this Federal Act uses only the male form of person-related expressions, it shall apply to females and males equally. When applied to specific individuals, the gender-specific form shall be used.

References

§ 94. When this Federal Act refers to provisions of other federal acts and unless otherwise provided, such reference shall apply to the respective federal act as amended from time to time.

Enforcement

§ 95. This Federal Act shall be enforced by the Federal Minister of Justice

1. with regard to § 3 para. 1, § 10 para. 2, § 18 para. 1 and § 65, in agreement with the Federal Minister of Economy and Labour,
2. with regard to § 3 para. 2, in agreement with the Federal Minister of Economy and Labour and the Federal Minister of Finance, and
3. with regard to Part IV, in agreement with the Federal Minister of Finance.