

Cooperation with other domestic law enforcement agencies

Austrian Competition Authority

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Interplay criminal vs non criminal track

Competition Law Enforcement institutional set up: Prosecutorial Model

- **Quasi criminal** Fines
- **Administrative** Fines (non-compliance with RFI of the Authority)
- **Criminal** Sanctions

Austrian Competition Authority's main responsibilities:

- ✓ Prosecuting **cartels**
- ✓ Prosecuting **abuses of dominant position**
- ✓ Prosecuting **non notification of mergers**

In the area of cartels **other offences** might have been committed by individuals:

- ✓ Corruption
 - ✓ Embezzlement
 - ✓ Fraud
 - ✓ Bid rigging
- BWB hands over evidence & case to Public Prosecutor of the Anti Corruption Office

Building successful cooperation I

→ Create a clear and explicit legal basis

Administrative Assistance:

14 Comp Act allows for the police to assist us during searches (ensure compliance with warrant, secure electronic data...)

Exchange confidential data during investigation:

14 Comp Act also **allows** Public Prosecutors or the police **to submit confidential data and evidence** to authority that is relevant for competition law investigations

→ can use evidence

→ allows for cooperation during investigation

↔ The Competition authority does have the obligation to submit evidence that is relevant and necessary for criminal proceedings

Building successful cooperation II

Define when & how to cooperate

Establish contact Points within the organization

Education & Know How Exchange

- ✓ Competition Law included in regular Curriculum of Police Academy
- ✓ BWB officials take part in trainings of the police (interviews etc)
- ✓ Training for public prosecutors and vice versa

And then....put it into practice....!

Challenges:

- Procedures and standards of proof differ
- Access to file

Cooperation in leniency bid rigging cases

- ✓ Individuals of undertakings that are immunity or leniency applicants may not be prosecuted → 209b Procedural Criminal Code
 - ✓ May include individuals from leniency and not only immunity applicants
 - ✓ Has been applied successfully
 - ✓ Have to fulfil certain requirements
 - fully cooperate with both the competition authority and public prosecution
 - overall prosecution would be assessed as not proportionate because of contribution of undertaking to the investigation (no automatism!)
- Has led to very close and effective cooperation between Competition Agency and Anti Corruption Office
- Win-win for both

Bid Rigging recent and ongoing cases

→ Dry Construction Case:

- ✓ Two companies sanctioned (settlements)
- ✓ Against 1 company (immunity applicant) decision with no fine
- ✓ Ongoing

→ Major ongoing investigation into construction sector:

Dawn raids

Supreme Court upheld search warrant decision

Both cases show successful cooperation between different tracks of enforcement!

Thank you for your attention!

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