

National Reports

Austria

ANTI-COMPETITIVE PRACTICES

Investigation—restrictive business practices—construction sector—cartel—exclusionary conduct—fine requested

☞ Anti-competitive practices; Austria; Cartels; Construction industry; EU law; Fines; Market sharing; Price fixing

Federal Competition Authority requests fine in construction cartel case

As part of its ongoing investigations into the Austrian construction industry, the Federal Competition Authority (*Bundswettbewerbsbehörde*—BWB) filed a further application with the Cartel Court in early December 2023 requesting that a fine of €1.1 million be imposed against Konrad Beyer & Co Spezialbau GmbH and Mandlbauer Bau GmbH (Beyer/Mandlbauer).

Beyer/Mandlbauer participated directly in price agreements and price fixing, market sharing and exchanging information with competitors, particularly in the provinces of Carinthia and Styria, in violation of antitrust law, in relation to public and private construction tenders.

Beyer/Mandlbauer's antitrust violations are part of an overall infringement affecting the entire territory of Austria. Due to the comparatively short infringement period and its regional area of activity, Beyer/Mandlbauer is considered a secondary party to the overall infringement. The large number of collusive construction projects throughout Austria concern both civil engineering and building construction, with road construction playing a particularly important role.

The aim of these practices was to minimise or exclude competition in order to help each other win contracts and thus secure market share. Numerous companies were involved in the cartel to varying degrees.

Beyer/Mandlbauer cooperated with the BWB outside the leniency programme to fully clarify the facts of the case and in this context made a comprehensive admission of guilt. The BWB therefore applied for a reduced fine, with the involvement of the Federal Cartel Prosecutor.

Both public and private clients are affected. A large number of construction projects are involved. Some of the proceedings have already been completed whilst other investigations are still pending.

The Austrian Cartel Act prohibits practices that hinder or distort competition. This includes, for example, price fixing or the division of markets or territories. The Cartel Court can impose fines of up to 10% of the total turnover in the previous financial year at the BWB's request, based on the severity and duration of the infringement, fault and economic performance and cooperation of the company concerned.

Melanie Gassler-Tischlinger

Partner, GPK Pegger Kofler & Partners, Innsbruck