

National Reports

Austria

ANTI-COMPETITIVE PRACTICES

Judgment—abuse of market power—postal sector—discriminatory practices—art. 12 Directive 97/67—fine

☞ Abuse of dominant position; Anti-competitive practices; Austria; EU law; Fines; Postal services

Austrian Cartel Court imposes fine of €9.2m on Austrian Post AG for abuse of market power regarding “Info.Mail”.

The Austrian Post AG (“Austrian Post”) offers the product “Info.Mail” which consists of machine-processable, personally addressed and printed materials with a minimum amount of 400 items that are identical in format.

The Austrian Post typically concludes long-term agreements with so-called mail consolidators as well as its other customers with regard to “Info.Mail”-services. Such agreements also include conditions under which discounts are granted to customers when using the service of the Austrian Post, as well as confidentiality clauses.

In the period between 2017 and 2022, the Austrian Post granted consolidators limited/lower discounts or lower annual rebates for the same annual volume in comparison to other major customers and imposed a confidentiality obligation on discount scales and discount rates upon the latter.

In 2022, various applicants called upon the cartel court requesting that the alleged abusive behaviour by the Austrian Post be prohibited.

The basis of this dispute was the fact that consolidators provide preparation services regarding large quantities of printed materials (often “Info.Mail”), however they depend on Austrian Post for end-to-end delivery, which is a significant cost factor for the consolidators. This limits their ability to market their services to bulk mailers, where they are sometimes in competition with Austrian Post. The Cartel Court granted the application and the appeal against the decision filed by the Austrian Post was not upheld by the Austrian Supreme Court.

According to the statements made by the Austrian Federal Competition Authority in these proceedings, the practices of the Austrian Post were considered discriminatory and incompatible with competition law. The Cartel Court identified these practices as an abuse of market power.

The Austrian Supreme Court in its decision stated that Austrian Post, as the market-dominant company (with over 90% of the market value in the sector “Info.Mail”), was obliged to apply non-discriminatory tariffs in its relationships with business partners and the decision of the ECJ in *bpost SA v Institut belge des services postaux et des télécommunications (IBPT)* (C-340/13) ECLI:EU:C:2015:77, did not justify a general waiver of this obligation. It held that, with regard to fault, the different discounts granted by Austrian Post were aimed at interfering with competition in its favour.

It also ruled that the principles of transparency and non-discrimination according to art. 12 of Directive 97/67 of the European Parliament precluded the confidentiality of the agreed tariffs.

As a result of the individual proceedings initiated by various applicants, the Austrian Federal Competition Authority filed an application to the Cartel court dated 23 January 2024, requesting that an appropriate fine be imposed on Austrian Post, which the Cartel Court €9.2m.

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