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More house searches under Cartel Law?

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The Supreme Court, acting as Higher Cartel Court, recently rendered its first decision on the preconditions for the Federal Cartel Authority (FCA) to conduct house searches in Austria on behalf of other EU antitrust authorities.⁽¹⁾ The decision allows for the execution of house searches in Austria even in cases that do not affect the Austrian market.

The Supreme Court's decision was triggered by a request from the German Federal Cartel Office (FCO). The FCO had conducted house searches in Germany to uncover potential infringements of Article 81 of the EC Treaty. Such searches included searching the German subsidiary of an Austrian undertaking. The FCO asked the FCA for help in investigating the Austrian parent company, since under international law the principle of territoriality restricts the authority and power of each antitrust authority to its own territory. The FCO hoped to find more proof of suspected illegal collusions concerning the German fire engine market.

Article 22 of EU Regulation 1/2003 empowers EU antitrust authorities to conduct investigations into potential infringements of Article 81 or 82 of the EC Treaty on behalf of any other EU antitrust authority according to national law. Pursuant to Austrian law (Section 12 of the Competition Act), in order to search a house, a warrant must be obtained from the Cartel Court. Such warrant will be granted upon motion by the FCA based on sufficient suspicion of Austrian or European competition law violations. The FCA applied on behalf of the FCO for such warrant to permit a house search of the Austrian parent company.

The Higher Regional Court of Vienna, acting as Cartel Court, initially rejected the FCA's motion.⁽²⁾ The Cartel Court ruled that it did not have jurisdiction to apply Article 81 of the EC Treaty without applying the Cartel Act. However, according to Section 24(2) of the Cartel Act, the act is applicable only in cases that will affect the Austrian market (irrespective of whether the relevant actions occur in Austria or abroad). The Cartel Court denied that this case had any effect on the Austrian market.

However, the Supreme Court overruled the Cartel Court and allowed the requested house search. According to the Supreme Court, the FCA and FCO had sufficiently proven that Article 81 of the EC Treaty must be applied. The Supreme Court ruled that it was irrelevant whether the FCA or the Cartel Court would have jurisdiction to investigate the case under national cartel law.

The Supreme Court's decision facilitates cooperation between EU antitrust authorities and could lead to more house searches in Austria.

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Endnotes

⁽¹⁾ Supreme Court as Higher Cartel Court, July 15 2009, 16 Ok 7/09.

⁽²⁾ Higher Regional Court of Vienna as Cartel Court, May 26 2009, 24 Kt 15/09.

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