

PRESS RELEASE**Florian Neumayr partner at bpv Hügel in the Global Competition Review: directional decision of the European Court of Justice regarding Austrian Joint Ventures**

From a competition law point of view there are two kinds of Joint Ventures: Enterprises can either appear on the market (sole control of an undertaking/full-function undertaking) or just supply their Joint-Venture partners (joint control of an undertaking/ community non-full-function undertaking or community full function undertaking). The incorporation of a joint control of an undertaking may be subject to registration at national level (no EU merger control). „... the Supreme Court’s question hinged on whether the test should apply only to cases where companies form a joint venture “from scratch”, or whether it applies to ventures that acquire shares in a pre-existing entity. [...] the case had helped “tremendously” in clarifying when joint ventures have to be notified to the European commission. “, noted Florian Neumayr, partner at bpv Hügel, competition law department, in the periodical CGR.

Vienna, 8 September 2017. There are two kinds of Joint Ventures under competition law: Enterprises can appear on the market (sole control of an undertaking) or supply their Joint-Venture partners (joint control of an undertaking). The incorporation of a joint control of an undertaking may be obliged to register on a national level (no EU merger control).

As explained by Florian Neumayr, competition law partner at bpv Hügel, in the periodical CGR, the question as to whether just the incorporation of a Joint Venture by way of “greenfield strategy” had to be measured by its “full function” so that merger control would apply, was debated over a fairly long period of time.

Using the example of an Austrian Case the European Court of Justice has now declared that the transfer of an existing undertaking or part of an undertaking from sole control by one company to joint control is subject to the benchmark of “full function” as well [only where the joint venture resulting from that transaction performs on a lasting basis all of the functions of an autonomous economic entity.]. In this particular case the court gave judgement on a Joint Venture between Austria Asphalt (STRABAG-Group) and Teerag Asdag (Porr-Group) each holding 50% of the partnership shares and 50% of the shares in the general partner. This Joint Venture concerns an asphalt production site of Teerag Asdag that is supposed to deliver asphalt solely to the Joint-Venture partners (non-full-function).

Earning joint control over an existing undertaking (without full-function) has to be registered nationwide (as in the present case: in Austria), but not on an European level.

About bpv Hügel

bpv Hügel Rechtsanwälte GmbH is one of Austria's leading law firms. The firm is frequently called upon in matters that require specialized legal knowledge, an understanding of commercial matters and extensive experience. The full-service law firm is represented in Austria with offices in Vienna, Mödling and Baden. bpv Hügel operates an office in Brussels and is also member of the alliance "bpv Hügel" with law firms in Bratislava, Bucharest, Budapest and Prague.

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