

## **Update**

### **Sugar Cartel Case Austria**

First substantive meeting of the Working Group on  
Cross-Border Cartels of UNCTAD  
28 February 2023

*Presented by:*

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Acting Director General

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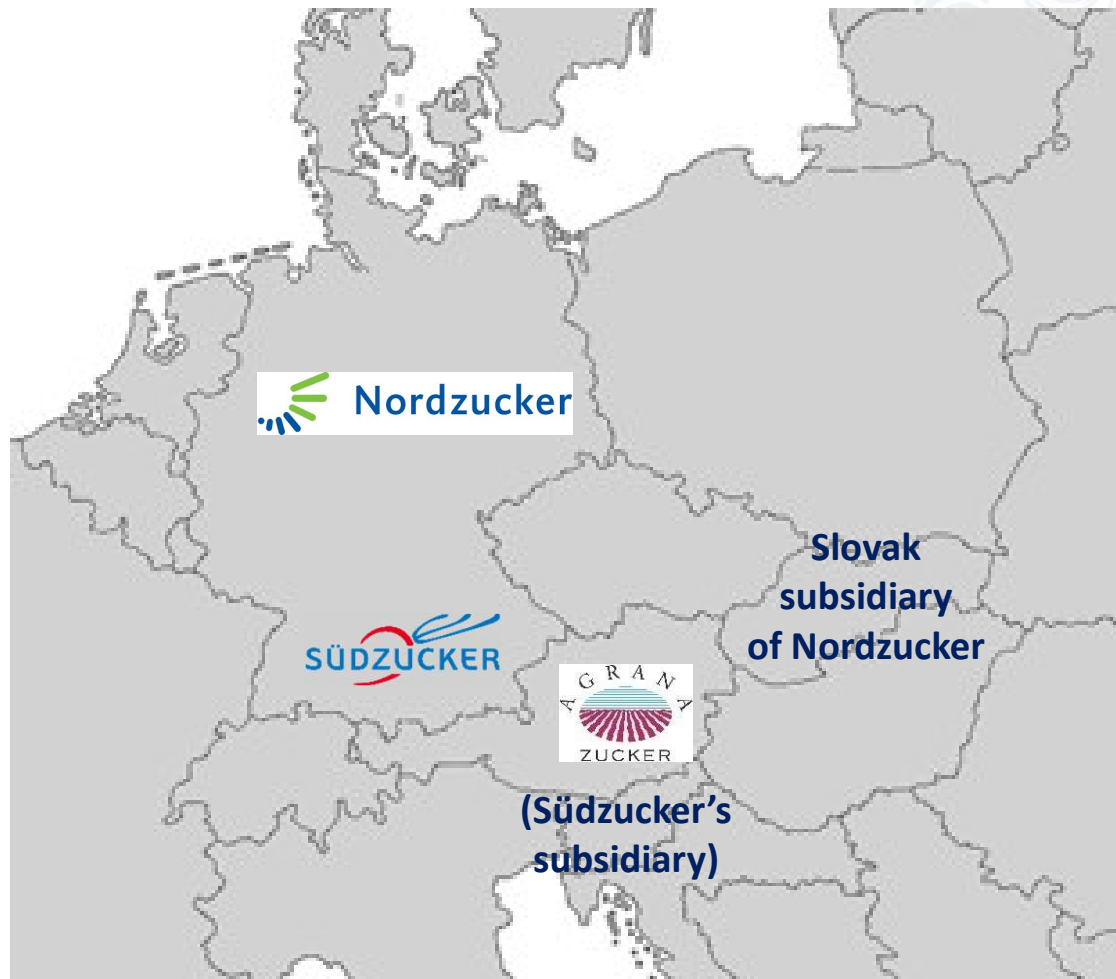
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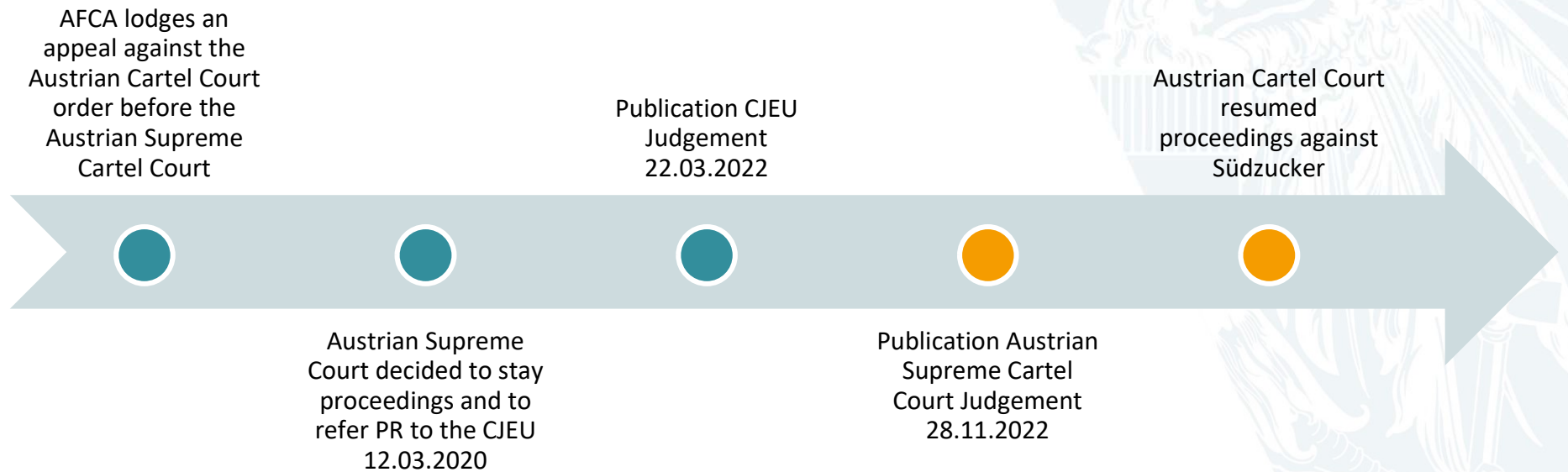
Austrian Federal Competition Authority



## Background



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- **US DoJ** and **German FCO** supported AFCA's arguments as **amicus curiae**
- German FCO
  - unlawful content and impact of the decision by German FCO **limited to Germany**
  - **parallel sanctioning** of several NCA **possible** (in favour of AFCA)
- US DoJ
  - German decision **does not address** the harm to Austrian markets
  - consideration of **deterrence and comity**
  - **parallel sanctioning** of several NCA **possible** (in favour of AFCA)

## Background

- **Summary CJEU' findings**
  - Identity of the **facts**
  - Identity of the **protected legal interest**
  - Application regarding **leniency**



## Summary of the findings of the Austrian Supreme Court

[8] Das Justizministerium der Vereinigten Staaten von Amerika (Antitrust Division of the U.S. Department of Justice) übermittelte eine Stellungnahme zum vorliegenden Verfahren, in dem es auf die Bedeutung einer umfassenden

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**Oberster Gerichtshof  
als Kartellobergericht**

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Sanktionierung von Kartellverstößen mit Auswirkungen auf mehrere nationale Märkte durch sämtliche betroffenen Jurisdiktionen hinwies. Nur durch eine Berücksichtigung sämtlicher internationaler Auswirkungen solcher Wettbewerbsverstöße könne diesen (auch präventiv) effektiv entgegengewirkt werden. Blieben Auswirkungen auf einzelne Märkte unsanktioniert, bestünden weiterhin Anreize für ein wettbewerbswidriges Verhalten. Zum vorliegenden Fall ging das U.S. Justizministerium davon aus, dass das deutsche Bundeskartellamt die Auswirkungen des von ihm sanktionierten Kartells auf den österreichischen Markt nicht berücksichtigt habe.

## Summary of the findings of the Austrian Supreme Court

Based on the **CJEU' findings**, the **Austrian Supreme Court** hereby rules:

- Highlighting the arguments of the **US DoJ** as *amicus curiae*
- Assessing **all the relevant circumstances**
  - Whether the German FCO's final decision sought to determine and penalise the cartel
    - German market and Austrian market? Only German market?
  - Findings based on the FCO's final decision, the FCO's Statement of Objections and the FCO statement as *amicus curiae*



## Summary of the findings of the Austrian Supreme Court

- *Non bis in idem* principle did **not** apply due to the lack of identity of the material facts
  - **FCO** had fined Nordzucker AG and Südzucker AG for effects **in German territory**
- Nordzucker AG and Südzucker AG violated competition law
  - Nordzucker AG proceedings **concluded** (Leniency applicant, AFCA had not requested for a fine)
  - Südzucker AG case **referred back** to the Austrian Cartel Court mainly concerning the setting of the fine (currently pending)

# Thank you for your attention!

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