More effective ways of market protection

Settlements in Cartel Cases - Experience of the Bundeskartellamt

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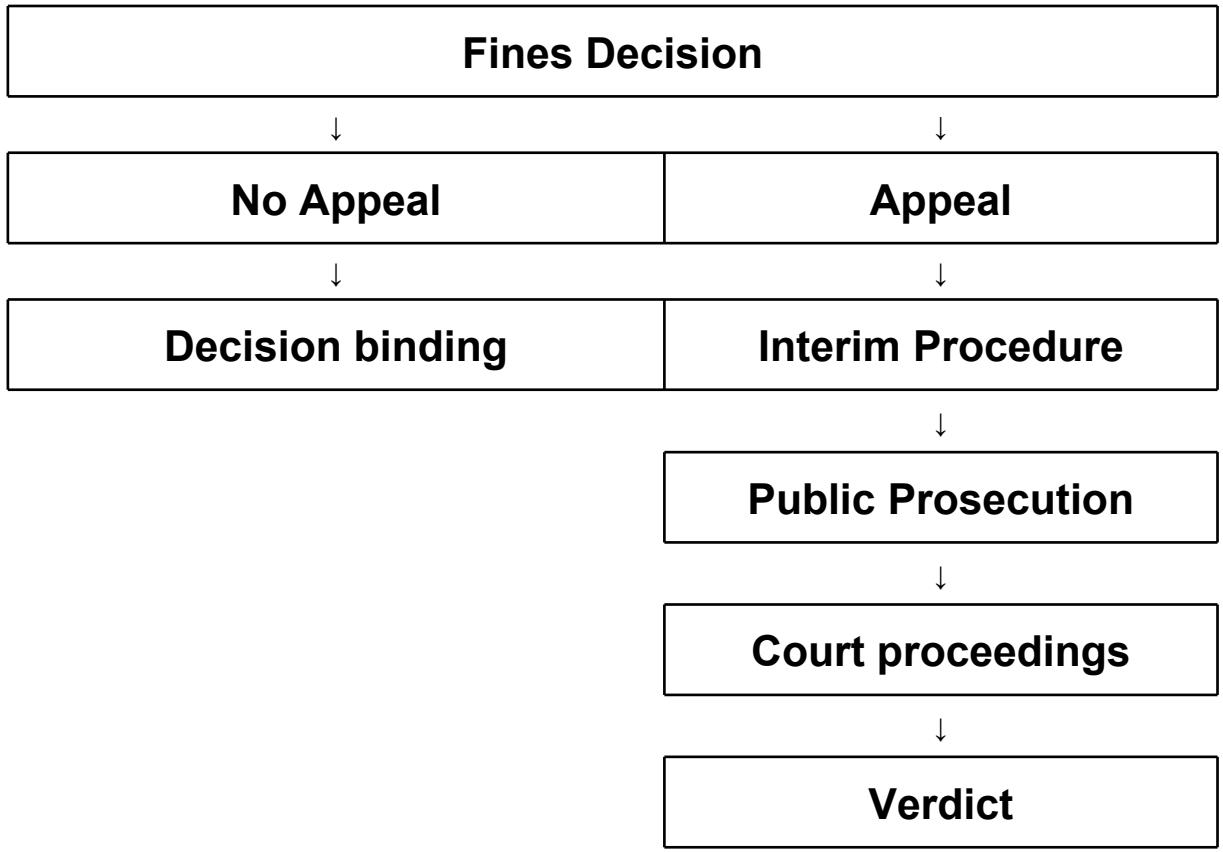
Legal Basis

- Administrative Fines Procedure as settlement procedure
- No separate Settlement Act or Notice
- Practical Rules of Proceedings published:
  - OECD Working Paper
  - Activity Report 2007/2008
  - Case Report

The Fines Procedure in General



Subject Matter

- **Agreement** between **BKartA** and **parties concerned**
- on the **conduct and outcome** of proceedings.
  - Parties:
    - confession / settlement submission
    - further procedural matters
  - BKartA:
    - maximum amount of fine (including a settlement discount)
    - possible: closing the file (natural persons)
- **Waiving the right to appeal must not** be part of a settlement.
- covers all infringements
- possible **in addition** to a leniency application

Limits of Settlements

- **Federal Constitutional Court (27.1.1987):** Judicial duty to investigate, the legal qualification of an offence and the sentencing guidelines are not at the disposal of the parties.
- **No „bargaining“ the sentence.**
- But **margin of discretion**: s. 47 (1) AOA

Binding Effect of a Settlement

- BKartA is **bound**. But:
- Two exceptions:
  - **Facts / Legal circumstances missed or arisen anew**
  - **Confession / Settlement submission not delivered.**
- If settlement loses binding effect: evidence must not be used!

Procedure (1)

- **Start**
  - Time
  - Initiative taken by BKartA adressing all parties concerned
- **Settlement-Offer**
  - maximum fine or closing case
  - written summary of investigation results
  - Short decision
  - Time limit to accept the settlement offer
  - always: Access to most important evidence

Procedure (2)

- (partly) access to file
- **Acceptance / Rejection of Settlement-Offer**
  - Rejection: normal procedure
  - Acceptance:
    - Confession / Settlement submission
    - Short decision or closing the case
  - Protocol of Acceptance/Rejection in the file
- In **case of an appeal:**
  - Short decision is revoked (s. 69 (1) AOA) and a reasoned fines decision
  - Increasing the fine with regard to settlement discount?
  - Use of confession/settlement submission?

Advantages for parties concerned

- Lower fine, cumulation of leniency discount and settlement
- Possible: closing the file
- Procedure much shorter
- Time and effort minimised and lower costs
- Short decision

Hybrid Settlements

- So far 9 cases
- Advantages:
  - Reduced time and effort in further proceedings
  - Confession and settlement submission as evidence
  - Individuals may be heard as witnesses after binding decision

Settlements 2007 – 2011

Infringement	Number of cases	Fines imposed altogether	Amount of settled fines
Hardcore Cartels	22 Settled completely: 11 Hybrid cases: 11	1.051 Mio. Euro 385 Mio. Euro 655 Mio. Euro	631 Mio. Euro 385 Mio. Euro 246 Mio. Euro
Vertical Restraints	5	38 Mio. Euro	38 Mio. Euro
Merger Control	2	0,6 Mio. Euro	0,6 Mio. Euro
Total Amount	26	973 Mio. Euro	568 Mio. Euro

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THANK YOU FOR YOUR ATTENTION !

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