Distribution Law Center
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Austrian legislator provides an updated framework on relative market power

Current regime

The concept of relative market power was contained in one of the paragraphs of Section 4 Austrian Cartel Act (i.e. the definition of market power). It also was absent of any specifics regarding market power in a digital environment.

New regime

The new regime reflects the importance of this concept (see e.g. the 'Peugeot'-judgement) as it provides a completely new Section 4a. This section also references the concept of market power in a digital multi-platform environment.

According to this new provision an undertaking who has a superior market position in relation to its customers or suppliers shall also be deemed to have market dominance; such a position exists in particular if the latter are dependent on the maintenance of the business relationship in order to avoid serious business disadvantages. An undertaking who acts as an intermediary in a multi-sided digital market shall also be deemed to have a dominant market position if the customers of his intermediary services are dependent on the establishment of a business relationship in order to avoid serious business disadvantages.

Entry into force

The new provisions of the Austrian Cartel Act entered into force as of 10 September 2021.

Commentary

The new section on relative market power reflects the significance of this concept in the recent Austrian distribution case-law and promotes the Austrian Cartel Act into the digital era.