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Competition in the Healthcare Sector – Contribution from Austria

- Session II -

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More documentation related to this discussion can be found at: oe.cd/chthc.

Mr Antonio Capobianco [Antonio.Capobianco@oecd.org]

JT03576367

Austria

1. 1. Introduction

1. The healthcare sector enjoys special significance due to its regulatory and public policy function. Healthcare systems have normative goals, such as the general improvement of health, the provision of needs-based care, equality in healthcare opportunities and a fair distribution of the financial burden.[1] Several factors play a role in achieving these goals including quality, efficiency in service provision, efficient administration, and the equitable use and provision of health services.

2. Competition theory for markets with many suppliers and consumers suggests that competition in service provision has a positive effect on efficiency since competition acts as a driver of innovation. However, extensive literature shows that healthcare sectors are not perfect markets.[2] This is showcased, among other things, by information asymmetries between patients and healthcare providers regarding prices and services as well as through specific regulatory requirements creating barriers to market entry. Depending on the legal framework, competition in this market is often determined not by price, but by quality, access, and efficiency.. Regulation is therefore needed to steer competition in healthcare sectors in the direction that best meets overarching societal objectives.

3. In recent years the healthcare sector has come under increasing scrutiny by the Austrian Federal Competition Authority (AFCA). Numerous complaints have been brought to the AFCA's attention, dealing with potential competition concerns across various segments of the sector. In addition, merger control examinations have led to in-depth analyses of specific areas of the healthcare sector. Structural changes in the healthcare sector such as hospital mergers have also given rise to a closer examination of competition in this market. Furthermore, since the SARS-CoV-2 pandemic, the impact of supply chain disruptions on the availability of pharmaceuticals has increasingly come into focus.

4. Against this background, the AFCA conducted an in-depth market study of the Austrian healthcare sector taking these aforementioned developments into account. Over a period of four years (2017-2021) the AFCA published three reports which each analysed specific sub-sectors of the healthcare sector. The final report is divided into sub-reports: 1) the market for public pharmacies, 2) healthcare in rural areas, 3) the supply of medicines from a competitive perspective.[3]

5. The objective of the market study was to identify potential distortions of competition in this market and based on the findings, to suggest possible corrective measures, such as options for deregulation and market liberalisation. Just like in other sectors, competition in the healthcare sector can increase innovation and lead to an improved provision of products and services, benefiting consumers through better offers. However, the specific characteristics of the healthcare sector and its inherent market failures need to be taken into account.

[1] https://irihs.ihs.ac.at/id/eprint/5018/1/ihs-report-2019-riedel-czypionka-spitalstraegerschaft.pdf

[2] Rice, T. (1998). The Economics of Health Reconsidered. Chicago: Health Administration Press.

[3] https://www.bwb.gv.at/news/news-2019/detail/branchenuntersuchung-zum-themengebiet-gesundheit-uebersicht

6. This report presents important findings of the market study on the Austrian healthcare sector as well as insights drawn from AFCA's case work. The note addresses key questions such as how competition considerations can ensure that Austrian patients have access to affordable, high-quality medical products and services. First, the report will provide insights into the Austrian healthcare system, focusing on competition aspects. The report will then examine healthcare accessibility, with a particular emphasis on the hospital market. The final section deals with the role of competition in ensuring accessible and affordable medicines in Austria.

2. The Austrian healthcare landscape

7. The organisational and financial framework of the Austrian healthcare sector is divided into different structures. The legal framework is established at the federal level and includes the regulation of social insurance, healthcare providers, and most areas of healthcare provision. The nine individual federal states are responsible for hospital services and financial investments in the hospital sector within their federal state. Funding for remaining healthcare providers is shared between the federal and state governments as well as social insurance institutions.

8. Austria has a statutory compulsory insurance system, whereby an individual's insurance provider either depends on their place of residence or their employment. In 2020, the number of statutory social insurance institutions was reduced from 21 to five providers, resulting in the consolidation of nine regional and several company insurance providers into one large entity that now covers over 80% of the insured population. The reform aimed to reduce fragmentation in the healthcare system.

9. Austria has one of the most expensive healthcare systems in the EU and had the third-highest per capita healthcare expenditure in 2021.[4] Although Austria has the second-highest density of doctors in the EU, studies indicate a shortage of general physicians, particularly in rural areas. Furthermore, there is a structural trend of an ageing medical workforce, combined with fewer young successors, leading to many vacant positions for publicly contracted general practitioners in Austria. Industry forecasts indicate that this development will continue to intensify in the coming years.

10. To address this structural challenge and to relieve pressure on Austria's hospitals which are increasingly consulted as alternatives to the missing medical practices, significant public resources have been allocated into the creation of interdisciplinary primary care facilities. To date, there are 106 primary care facilities across Austria, with plans to raise the number to 300 by 2030. Despite this development, the Austrian healthcare system remains largely hospital-centered.

11. A sub-report of the market study focused on healthcare in rural areas and deals with both access to medical care and access to medication. It shows that medical and pharmaceutical care in smaller municipalities is largely provided by general practitioners operating in-house pharmacies. The operation of in-house pharmacies is subject to strict regulatory safeguards, which, however, may also limit their establishment in certain areas. . For example, statutory minimum distances between a medical practiceand public pharmacies must be respected for the approval of in-house pharmacies. It is for this reason that the opening of 155 new public pharmacies between 2009 and 2018 led to the closing

[4] https://health.ec.europa.eu/system/files/2024-01/2023_chp_at_german.pdf

of 62 in-house pharmacies. This predominantly affected communities between 1000 and 5000 inhabitants.

12. Data from the market study on provider density show that not only publicly funded general practitioner positions are unevenly distributed across the country but the same applies to pharmacies. Of the 26% of Austrian municipalities without a general practitioner, 66% are located in rural areas. Furthermore, 38% of Austrian municipalities dispose neither of a pharmacy nor an in-house pharmacy. 61% of the affected municipalities are located in rural areas. Average distances to the nearest in-house or public pharmacy are also greater in small municipalities. Overall, Austria has a below-average number of pharmacies per capita compared to other OECD countries. As the market study shows, the operation of doctors' in-house pharmacies is to some extent in competition with established public pharmacies. The study concludes that this situation neither enhances the security of pharmaceutical supply nor is it necessary to ensure high-quality provision of medicines.

13. The third sub-report of the market study focused on the supply of medicines in Austria. As the timeframe of the study coincided with the emergence of the global SARS-Cov-2 pandemic, it provided the opportunity to examine the availability of medicines in Austria and point potential competition issues out.

14. Across the European Union, medicine shortages increased twenty times between 2000 and 2018. Since 2020, manufacturers are required to report any restrictions on the availability of prescription medicines to the Austrian Federal Agency for Safety and Heath Care (BASG) if they are unavailable for more than two weeks. Recent studies indicate that around 30% of patients in Austria are affected by medicinal shortages.[5] The main causes cited are production capacity constraints, delays in production and shortages of active ingredients. The geographical concentration of active ingredient producers also plays a significant role. Over the past 30 years, the pharmaceutical industry has undergone a major consolidation process, with the number of pharmaceutical companies declining from 110 to around 30.[6] This has resulted in a concentration of knowledge and production and affects innovation and prices and can lead to supply chain disruptions, affecting the availability of medicines.

15. Parallel trading practices, whereby products are exported from distribution channels in low-price countries to countries with typically higher prices, can also reduce product availability. For these reasons, a parallel export ban may be imposed in Austria under certain conditions. Pharmacists often try to refer customers to generic drugs in the event of shortages. However, discussions with several stakeholders in the market study revealed that generic drugs are considered to be particularly affected by distribution restrictions. This is largely because follow-on products are subject to strong statutory price pressure and it may happen that pharmaceutical companies withdraw products when production is not economically viable.

16. To counteract potential supply shortages, Austrian law enshrines the obligation to ensure the supply of medicines in §57a of the Medicines Act. This obligation applies to both manufacturers and pharmaceutical wholesalers who must provide sufficient quantities of medicines for the Austrian market and avoid any quotas that could jeopardise supply.

17. Another factor highlighted by the market study is increasing vertical integration through the participation of pharmaceutical wholesalers in public pharmacies. From 2013

[5] https://www.ots.at/presseaussendung/OTS_20251013_OTS0021/arzneimittelknappheit-forschungsergebnisse-zeigen-ursachen-und-loesungsansaetze-auf

[6] AFCA's second market study sub-report on healthcare in rural areas.

to 2020, the average shareholding of pharmaceutical wholesalers in pharmacies rose from 21 to 33. From a competition perspective, these developments may enable pharmaceutical wholesalers to influence sales and prices and could have an impact on the breadth of the product range offered by public pharmacies.

3. Accessible Healthcare - Focus on the hospital sector

18. The observable shortage of doctors especially in rural areas, has an impact on the availability of healthcare in general. In rural areas, patients may therefore have to resort to hospitals in order to access public healthcare services. This situation creates artificial barriers to competition and reduces the freedom of choice of patients.

19. Hospital mergers may also play a role in this context. The consolidation of public hospitals, such as those recently announced in some regions of Austria, is closely linked to structural policy considerations. The main objectives are structural optimisation, cost efficiency, and addressing capacity issues. Achieving these objectives requires a balancing of priorities. On the one hand, consolidation changes the regional healthcare landscape and reduces the number of regional healthcare providers. On the other hand, larger hospitals can centralise medical specialist services, reduce investment costs, and improve quality. Mergers in the private hospital sector are generally driven by cost and efficiency considerations.

20. While the consolidation of public hospitals reduces the availability of inpatient and outpatient care facilities in a region, mergers of private hospitals lead to greater market concentration of hospitals under a single private owner. Since the public hospital market is under public administration, it can be assumed that prices will not change as a result of a merger. In the case of private hospitals, if relevant thresholds are exceeded, the AFCA will examine whether the merger has any competitive impact on the private hospital market in Austria.

21. As an illustration of the latter, the AFCA requested a phase 2 merger review before the Cartel Court in connection with a private hospital merger in 2015. The merger concerned the purchase of 75% of the shares in a private hospital in Vienna by a subsidiary of a private health insurance company. The AFCA reviewed the merger at the horizontal and vertical level. It argued that the proposed merger would further strengthen the position of the private insurance company, which would own three out of five private hospitals in Vienna post-merger. This could have negative effects on the remaining private hospitals in Vienna.

22. At the vertical level, vertical integration would pose the risk of foreclosure effects. In particular, this could have an impact on direct billing agreements concluded between private hospitals and private health insurers. These direct billing agreements are highly relevant for the billing of treatments for both private hospitals and patients. The merger was subsequently approved by the Cartel Court subject to conditions. Remedial measures such as a non-discrimination commitment were imposed to counter the foreclosure risk for the remaining two private hospitals in Vienna.

23. The AFCA has previously also taken into account the impact of mergers on the availability of medical care. For instance, one merger notification in 2025 concerned the establishment of a joint venture aimed at creating a regional health center for patients and people insured with a specific social insurance carrier. The merger was approved as it seems plausible that the merger could relieve the burden on hospitals on the one hand and on medical specialists on the other. It was further noted by the AFCA that hospitals and

medical specialists in all Austrian regions are consistently operating at high capacity, which is why the establishment of a new health center was viewed positively.

24. Overall, AFCA's second sub-report of the market study, highlights that the ensuring of accessible and sustainable healthcare in Austria requires targeted structural reforms. For the area of access to medical healthcare services, the recommendations include comprehensive and financial incentives to fill vacant doctor positions. Against the backdrop of an aging population, rising hospital costs, and overburdened hospitals, it is important to strengthen and establish general practitioners and primary care facilities as the first point of contact. The creation of more comprehensive primary care facilities is expected to substantially relieve hospitals and counteract shortages of general practitioners in rural areas.

4. 4. Focus on accessible medicinal products

25. The following section on accessible pharmaceutical provision is divided into two parts. The first part discusses a recommendation from AFCA's report on improving the supply of medicines, focusing on proposed reforms to the operation of pharmacies. The second part draws on the authority's case practice and examines the impact of AFCA's investigations on the accessibility and affordability of pharmaceutical products.

4.1. Areas for potential reform in the regulatory framework

4.1.1. The relationship between public pharmacies and doctors' "in-house pharmacies"

26. Pharmaceutical care in Austria is provided by pharmacies and general practitioners who operate "in-house" pharmacies within their medical practices. The market study revealed that the distribution of pharmacies in Austria is marked by regional disparities, with smaller municipalities in rural areas often relying heavily on doctors' in-house pharmacies for their supply of medicines. However, the operation of in-house pharmacies is subject to strict regulation, including statutory minimum distance requirements between pharmacies.

27. For this reason, the AFCA recommended the liberalisation of the pharmacy market to make in-house pharmacies in rural areas more attractive. Specifically, it suggested considering a review of minimum distance regulations, as these may have unintended effects on competition and access to pharmaceutical services, particularly in rural areas.. A more flexible coexistence of public pharmacies and in-house pharmacies would better ensure the security of pharmaceutical supply. In-house pharmacies can make a decisive contribution to providing the population with the most comprehensive healthcare possible, especially in rural areas. Concerns that public pharmacies might lose customers can be mitigated by the fact that in-house pharmacies can carry only a limited range of medicines. Given the broader product range of public pharmacies, it can be expected that public pharmacies will continue to dispense the majority of medicines in the future.

4.1.2. Vertical integration between pharmaceutical wholesalers and pharmacies

28. The growing vertical integration between public pharmacies and pharmaceutical wholesalers is a concern from a competition perspective. As the market study has shown, pharmaceutical wholesalers are increasingly acquiring shareholdings in pharmacies, allowing them to influence prices and sales and potentially product portfolios of public pharmacies. According to the market study, due to high logistics costs, public pharmacies

may source an average of 50-90% of their total demand from a single pharmaceutical wholesaler. From the AFCA's point of view, vertical integration could thus massively increase the likelihood of negative consequences such as market entry barriers, the exclusion of other pharmacies, and a shift in the product range of a pharmacy in favor of the goods offered by pharmaceutical wholesalers. Such practices would improve the market position of pharmaceutical wholesalers.

29. The AFCA has therefore recommended to limit the permissible ownership shares of pharmaceutical wholesalers in public pharmacies. This recommendation is in line with an analysis by the Cartel Court from 2003, which discussed the influence of pharmaceutical wholesalers on the public pharmacy market from a competition perspective. The Court set a critical threshold for wholesaler shareholdings at 3% of total pharmacy sales in public pharmacies. As the AFCA concluded in its market study report in 2017, the largest wholesalers already exceeded this critical threshold. Based on these findings, the AFCA recommended enforcing limits on the permissible ownership shares of pharmaceutical wholesalers in public pharmacies.

4.2. Competition enforcement in the pharmaceutical sector

4.2.1. Predatory pricing strategy and consequences on the healthcare system

30. An investigation by the AFCA in 2020 highlighted the negative effects of predatory pricing strategies on both the guarantee of supply and competition in the healthcare sector. While medicine prices in Austria are generally regulated by law, manufacturers are free to set their own prices for the intramural sector (hospital sector). Manufacturers usually negotiate directly with the respective purchasing departments of hospitals or hospital operators. Medicines for the extramural sector (outpatient sector) are generally regulated by the 1992 Price Act.

31. The mentioned investigation identified a predatory pricing strategy in the intramural sector, which also had an impact on the extramural sector. The strategy involved the distribution of medicines containing the active ingredient temozolomide, which is used in standard therapies for the treatment of the most common type of malignant brain tumors. The concerned undertaking, which had a market share of more than 85% for temozolomide sold the drug in the intramural sector below cost. It accepted losses and occasionally provided the medicine free of charge for initial treatment. The losses were subsequently recouped through follow-up prescriptions for temozolomide in the extramural sector, after patients' discharge from hospital.

32. Hospitals play a crucial gatekeeper function for prescriptions in the extramural sector. Market entry in this area therefore only works via hospitals. Since market entry in this area primarily depends on price there is no incentive to switch to a generic drug when the originator drug is offered free of charge. The predatory pricing strategy thus removed the incentive for hospitals to switch to generics and made it more difficult for generics to enter the market. Consequently, it also prevented a successful market entry of generics in the extramural sector.

33. Although hospitals benefited from lower costs for initial prescriptions, the predatory pricing strategy increased costs for the domestic healthcare system in the long term. Another consequence was reduced supply security in the affected market, as high entry barriers discouraged alternative generic drug suppliers to enter the market. As a result of these proceedings, commitments to cease the predatory pricing strategy were agreed on.

4.2.2. Merger control

34. Effective merger control plays a crucial role in times of increasing market concentration. In the healthcare sector, it helps to prevent adverse pricing developments, maintain product quality, and safeguard security of supply.

35. In recent years, several merger cases in Austria have involved healthcare-related markets such as hospital equipment, pharmaceutical packaging, and distribution. These cases raised competition concerns related to high market shares, barriers to entry, and potential foreclosure effects.

36. Where necessary, commitments were imposed to preserve effective competition. In two merger cases competition concerns were addressed by inducing more competition in the relevant markets. In one case concretely, this meant the establishment of a new competitor ("remedy taker") who would be supported in developing its own production in Austria. In another case this included assistance services and bonus payments to a smaller competitor in order to expand their service network in Austria. Additionally, it aimed at incentivising more participation in regional tenders in the relevant market. Lastly, in a third case parties were ordered to guarantee an open procurement and sales system, ensuring independent management and preventing preferential treatment.

37. Such structural and behavioural commitments aim to maintain contestable market structures and ensure that healthcare institutions and patients continue to benefit from affordable and high-quality products and services.

38. Overall, merger control in the healthcare sector remains an important tool for ensuring that efficiency gains from consolidation are balanced with the need to preserve diversity, innovation, and accessibility in essential services.

5. Conclusion

39. As this contribution shows, the AFCA may well within the scope of its mandate as a competition authority play a role in ensuring a competitive healthcare landscape in Austria. Although healthcare sectors function differently to typical markets and are highly regulated, effective competition enforcement can have an important impact in ensuring that patients have access to affordable and high-quality healthcare services.

40. Through its market study on the healthcare sector, several merger assessments, and targeted investigations in the health sector, the AFCA has identified structural challenges, market distortions, and barriers to entry that could undermine both the provision of medical care and the security of supply in pharmaceutical markets.

41. In the healthcare sector, AFCA's findings highlight persistent challenges, particularly in rural areas including shortages of general practitioners and uneven distribution of medical facilities. With the creation of more interdisciplinary primary care centers, the AFCA expects a reduction of the burden on regional hospitals and a more equitable access to healthcare services for patients across Austria. At the same time, when it comes to private hospital mergers the AFCA will carefully balance efficiency gains with the need to preserve competition, quality, and service availability.

42. In the pharmaceutical sector, the AFCA has addressed issues such as vertical integration between pharmaceutical wholesalers and pharmacies, predatory pricing practices and market concentration in the medicine packaging markets. Through interventions such as recommending a limit to ownership stakes or the liberalisation of

pharmacy regulations as well as enforcing remedies in problematic merger cases, the AFCA ensures that markets remain open, competitive and affordable.

43. Overall, AFCA's work highlights the important role of competition enforcement in ensuring well-functioning healthcare markets.