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Austria

1. Introduction

1. This contribution gives an overview on the structure of the Austrian healthcare system as well as Austrian health care markets. It focuses on the Austrian pharmacy market due to current developments and activities by the Austrian Federal Competition Authority (FCA) in this area. Competition in the health care sector is a heavily discussed topic because competition rules need to be applied to a market characterised by asymmetrical information (between patients and doctors), economic interests vs a public interest in the best supply of health services to patients, the difficulty to measure quality and finally in the particularities of different jurisdictions. Some argue, there is no place for competition in services aimed at protecting the sick whereas others believe that competition is the antidote for bloated, inefficient services and even „saves lives“. ¹ Furthermore it is considered that „competition in health care“ does not capture adequately the different variations and meanings of the term and the debate in this context should be about the degree of competition and the degree of regulation in the health care sector rather than between competition versus no competition. ²

2. The application of competition rules to health care markets in general needs detailed knowledge of the regulatory framework and competition authorities need to take into consideration the particular circumstances of these markets as, for example, patients inability to determine quality or the existing lack of market transparency.

2. The Austrian health care system³

2.1. General remarks

3. The Republic of Austria has a population of 8.77 million inhabitants and a predicted live expectancy of around 79 and 84 years for women and men respectively with an upward trend (data from 2017). ⁴ As in many other European countries, the Austrian health care system is based on a social insurance model. The Main Association of Austrian Social Security Institutions (Hauptverband der Sozialversicherungsträger, HVB) is the main organisation in which 18 sickness funds and three further social insurance institutions (pension funds, general accident insurance organisation etc.) are organised. The sickness

¹ Pollok A, Macfarlane A, Kirkwood G, et al. No evidence that patient choice in the NHS saves lives. *Lancet*. 2011; 378(9809):2057-2060.

² Goddard M. Competition in Healthcare: good, bad or ugly? *Int J Health Policy Manag*. 2015; 4(9):567-569.

³ Zimmermann N., Rainer L. Short PPRI Pharma Profile Austria. *WHO Collaboration Centre for Pharmaceutical Pricing and Reimbursement Policies*. 2017; Austrian Federal Competition Authority. Sector inquiry - 1st interim report on the Austrian Pharmacy Market.2018. <https://www.bwb.gv.at/en/news/detail/news/the-austrian-federal-competition-authority-publishes-the-first-interim-report-on-the-austrian-pharm/>.

⁴ <https://de.statista.com/statistik/daten/studie/18642/umfrage/lebenserwartung-in-oesterreich/>.

funds are organised by profession (e.g. self-employed, civil servants etc.). Currently 99.9% of the Austrian population are covered by statutory social health insurance and in addition to that Austrians can decide for private health insurance.

2.2. Stakeholder, spending and funding

4. As far as the responsibilities and duties in the health care system are concerned these are divided among several institutions. The Federal Government of Austria, represented by the Ministry of Labour, Social Affairs, Health and Consumer protection (Bundesministerium für Arbeit, Soziales, Gesundheit und Konsumentenschutz, BMASGK), the regions (states), the Main Association of Social Insurance Institutions (subsequently called „HVB“), professional bodies (e.g. Chamber of Medical Doctors, Chamber of Pharmacists etc.), statutory associations and hospital associations somehow participate in the decision making process of the Austrian health care system. According to Art 12 Federal Constitution Act (Bundes-Verfassungsgesetz, B-VG) the Federal Government is responsible for setting basic principles and laws and the implementation and enforcement of these provisions is up to the regions.

5. The key legal basis for the Austrian health care system is the Austrian Social Insurance Law (Allgemeines Sozialversicherungsgesetz, ASVG). There also exist different provisions for the professions in the health care system as for example the Austrian Pharmacy Act (Apothekengesetz, ApG) which covers the main provisions for the profession of pharmacists and the Austrian Medicinal Products Act (Arzneimittelgesetz, AMG) which is applicable to pharmaceuticals.

6. With regard to spendings Austria spent around € 40 million (or 11.2% of its GDP) for health care in 2016 (around € 36.9 mio. without investments, € 39.6 incl. investments). Within the total health care spendings, public health care expenditure accounts for more than three quarters (€ 28.7 mio.) and private health care expenditure for almost one quarter (€ 10.9 mio.) of the total health expenditure.⁵ These expenses are currently financed through a mix of health insurance contributions (about 45%), personal contributions (about 23%) and tax contributions pooled from federal, provincial and municipal budgets (about 31%).

7. Concerning funding, the public sector and the private sector need to be distinguished. On the one hand, in the public sector hospitals are funded on the basis of the Diagnosis-Related Groups System (Leistungsorientierte Krankenanstaltenfinanzierung, LKF) and in the private sector financing depends on private contributions (in case of "for-profit" hospitals).⁶ The private sector also knows „non-for-profit“ hospitals who are in general owned by a religious order and who are not run profit-oriented as totally private hospitals.

2.3. Regulation

8. The Austrian health care system is characterised by very strict regulation starting from the authorisation of pharmaceuticals or medical devices over to delivery, pricing and

⁵http://www.statistik.at/web_de/statistiken/menschen_und_gesellschaft/gesundheit/gesundheitsausgaben/index.html.

⁶https://www.sozialministerium.at/site/Gesundheit/Gesundheitssystem/Krankenanstalten/LKF_Leistungsorientierte_Krankenanstaltenfinanzierung/.

reimbursement. In every stage of this process different stakeholders make different contributions or decisions. Very important authorities are the Austrian Federal Office for Safety in Health Care (Bundesamt für Sicherheit im Gesundheitswesen, BASG) which is a subordinate to the BMASGK and acts as a Medicines Agency. BASG is supported in its work by the Austrian Agency for Health and Food Safety (Österreichische Agentur für Gesundheit und Ernährungssicherheit GmbH, AGES). These agencies administrate important tasks in the regulatory decision making process such as the pricing for pharmaceuticals. In the pharmaceuticals markets but also in the pharmacies market a lack of competition is predominant because of very strict regulation which is necessary to ensure, for example, the public interest in the guaranteed and reliable supply of medicinal products.

3. The Austrian pharmaceutical system

3.1. Principles

9. For the comprehension of competition issues in health care markets in Austria it is necessary to get an idea on the principles of the Austrian pharmaceutical system (e.g. price formation and distribution channels) because the pricing of pharmaceuticals as well as obtaining a pharmacy licence and the operation of a pharmacy is marked by strict regulation. There is also a split of decision-making responsibilities between hospital organisations, the HVB and the chamber of Austrian pharmacists and as far as procurement and pricing are concerned it is very important to regard the hospital segment (in - patient) and the community segment (out - patient) separately.

3.2. Authorisation of pharmaceuticals

10. In order to sell drugs in Austria, pharmaceutical companies need to have a market authorisation, which is granted by the BASG under consideration of the criteria of quality, safety and efficacy. AGES, in coordination with the Pricing Committee (Preiskommission) of the BMASGK also decides on prescription, dispensing requirements and if a pharmaceutical fulfills the criteria of medicines. Finally AGES enforces EU law such as Directive 92/56/EEC⁷ and the Austrian Medicines Act (Arzneimittelgesetz), the Prescription Act (Rezeptpflichtgesetz) and Prescription Ordinance (Rezeptpflichtverordnung). By 2017, a total of 9.182 medicines was authorised in Austria and around 80 percent of these pharmaceuticals are prescription-only medicines, which means that they require the prescription of a medical practitioner. On the European level, the competent authority for the pricing of pharmaceuticals is the European Medicines Agency (EMA).

3.3. Pricing

11. First of all pricing of pharmaceuticals depends on whether it concerns the in-patient (hospital segment) or out-patient sector (community segment). In the hospital segment pricing of pharmaceuticals depends on individual negotiations between hospital organisations (who act on behalf of the public hospitals which receive public funds) and

⁷ Directive 2004/27/EC of the European Parliament and the Council of 31 March 2004 amending Directive 2001/83/EC on the Community code relating to medicinal products for human use.

pharmaceutical companies who may grant commercial discounts and rebates in exchange of pharmaceutical contracts. It is therefore organised in a decentralised way. Public hospitals also follow federal procurement law if necessary whereas private hospitals are not obliged to do so.

12. In the community segment pricing follows a different procedure. At first, pricing is the responsibility of the BMASGK which is assisted in doing so by the Pricing Committee (Preiskommission).⁸ On the manufacturer price level, manufacturers have to notify the ex-factory-price for new medicines and future changes in prices to the BMASGK and the Pricing Committee. These prices are maximum prices and must not be exceeded. The BMASG can start an official price-fixing process in order to ensure that a price is not too high in the Austrian economy according to the Price Act (Preisgesetz, PreisG). Then, manufacturers normally sell their medicines to a wholesaler who again sells and delivers the pharmaceuticals to a community pharmacy by adding a wholesale surcharge. If manufacturers apply for certain medicines to be included into the positive list (Erstattungskodex, EKO) and they are added to the EKO specific pricing rules exist. Medicines included in the EKO have to be priced at maximum at EU average price (EU-Durchschnittspreis)⁹ and for the determination of the price according to § 352c ASVG the EU average price is relevant. Responsible body for the calculation of the EU average price is the Pricing Committee and depending on the level of distribution channel different surcharges are added (wholesale price, retail price etc.). Medicines sold privately and not included into the price list follow a different schema and have a different price. They are consequently not reimbursed by the Social Insurance Funds.¹⁰

3.4. Pharmacies

13. In Austria pharmaceuticals are distributed via different types of pharmacies. Currently in Austria exist 1.357 community pharmacies, 52 online pharmacies (since 2015), 840 dispensing doctors, 28 branch pharmacies and 43 hospital pharmacies operated within hospitals.¹¹ In 2016 total sales by community pharmacies amounted to approximately € 3.98 billion, € 2.69 billion of which was borne by health insurance funds and € 1.29 of which represented private sales. From 2012 to 2016 there was an increase in total sale of € 600 million, with a similar rise having taken place with regard to both health insurance fund and private sales. The median pharmacy generated total sales of around € 2.9 million in 2016. Moreover, the total volume of the OTC market (non-prescription medicines) amounted to some € 821.3 million in Austria in 2016, at pharmacy sales prices.

14. The main requirements for obtaining an official authorisation (licence) for a community pharmacy according to section 10 Austrian Pharmacy Act (ApothekenG) are that a doctor is based permanently in the area and there is a need for a new pharmacy. The

⁸ The Pricing Committee's activities are based on the Price Act.

⁹ Regulation on Procedural Rules for Calculation of the EU average price (Regelung für die Vorgehensweise der Preiskommission bei der Ermittlung des EU-Durchschnittspreises) according to Sec. 351c par 6 ASVG.

¹⁰ For further information see also Association of the Pharmaceutical Industry in Austria (Verband der pharmazeutischen Industrie Österreichs, PHARMIG), Daten & Fakten 2018. http://www.pharmig.at/uploads/DuF_2018_Web_deutsch_FINAL_22216_DE.pdf.

¹¹ Austrian Federal Competition Authority. Sector inquiry - 1st interim report on the Austrian Pharmacy Market.2018.

term “need“ is defined in negative terms. Three criteria are defined in Section 10 para. 2 ApothekenG which, if applicable (alternatively), mean that there is no need for a pharmacy. Firstly, that is the case if at the time of the application there is already, in the municipality where the proposed pharmacy is to be located a doctor’s dispensary, and fewer than two positions for doctors [...] are occupied by general practitioners, or if the distance between the location of the proposed pharmacy and the closest existing community pharmacy is less than 500 metres, or if the number of patients who continue to be served by one of the existing surrounding pharmacies would fall below 5,500 as a result of the new pharmacy. A further legal prerequisite is that it is mandatory that the majority shareholder of a pharmacy is a pharmacist (Section 12 ApothekenG).

15. Although most pharmaceuticals are sold in community pharmacies and the online segment is not as important than in other industrial sectors (e.g. online trade for electronic devices etc.) the role of online-retail with pharmaceuticals is increasing. OTC pharmaceuticals may also be sold in online pharmacies but prescription-only drugs can only be sold in community pharmacies. Regarding the supply chain community pharmacies are mainly supplied by six so-called full-line wholesalers. The three top wholesale companies together hold a market share of 75-85% of the wholesale market for pharmaceutical products supplied to pharmacies and doctor’s dispensaries.¹²

3.5. Reimbursement

16. The positive list (Erstattungskodex, EKO), published by the HVB, defines which pharmaceuticals are reimbursed and therefore are paid by the responsible sickness funds and out from the budget of the social security system. It is divided into three boxes which differ between the status of inclusion into the EKO (green, yellow and red). For pharmaceuticals listed in the EKO the EU average price is applicable, for medicines outside the box (no-box) free price formation was possible until 31st December 2017. Since an amendment of section 351c par. 9 ASVG now the EU average price is relevant if the turnover of the named pharmaceutical exceeds € 750,000 per year. This change was made because the overall number of pharmaceuticals listed in the no-box has been rising steadily over the last years but the HVB increasingly also refunds medicines in the no-box.

4. Health care services

4.1. Funding and providers

17. In general in Austria health care services are provided by public institutions as well as by private institutions. In the hospital sector there are 273 hospitals in Austria, 117 of them publicly financed by the LKF-system, 156 outside this system.¹³ Around 40 hospitals have a private owner and are organised within the Association of Private Hospitals

¹² Austrian Federal Competition Authority. Sector inquiry - 1st interim report on the Austrian Pharmacy Market.2018; 18-19.

¹³ These figures also include rehabilitation centres and different types of hospitals (general hospitals, emergency hospitals etc).
http://www.kaz.bmgf.gv.at/fileadmin/user_upload/Krankenanstalten/1_T_KH_Anzahl.pdf

(Verband der Privatkrankenanstalten).¹⁴ Legal basis for the organisation of hospitals is the Hospital and Convalescent Act (Kranken- und Kuranstaltengesetz, KAKuG).

18. Public health care services do not only cover public hospitals but also medical practitioners, namely about 45.000 general practitioners, doctors of one's choice and specialists (internal medicine, oncology, dermatology etc.) who ensure that patients are provided with the necessary medical services they need.¹⁵ Since 2015 primary health care is developed and the first primary health care centers already opened. The main goal of these primary health care centers is to ensure general medical support of the population in Austria in a way in which different medical practitioners (general practitioners as well as specialists) are centralised in a certain location.¹⁶ In order to simplify private insurance holders hospital visits the Association of Austrian Insurance Companies (Verband der Versicherungsunternehmen Österreichs, VVO) annually negotiates an agreement of direct charging (Direktverrechnungsvereinbarung, DVVB) individually with each private hospital. Consequently, patients do not have to pay for their treatment directly to the hospitals.

4.2. Public vs. private health insurance

19. With view to the health insurance situation, compulsory insurance by law exists for all patients in Austria. Compulsory insurance coverage includes health insurance, accident insurance and unemployment insurance. Patients insured in Austria are therefore allowed to use public health services provided by general practitioners and specialists who have signed a collective agreement (Gesamtvertrag) with the social insurance funds without additional cost. General practitioners in certain cases also refer patients to specialists but quite often there is no need of a referral and the specialist can be visited directly (e.g. dentist, eye specialist). Additionally patients can apply for additional health insurance and use services by private hospitals or additional services provided by public hospitals (special class). Many private health insurer also provide their customers with payments for hospitalisation and extra payments for choosing a doctor of one's choice.

20. In the field of private health insurance providers, in recent years a fast growing market developed with overall health insurance premiums of € 7.1 billion (2017). There are various providers of private health insurance and one insurance company has a dominant position on the market for private health insurance. With view to the market shares UNIQA Österreich Versicherungs AG holds 46%, followed by Wiener Städtische Versicherung AG - Vienna Insurance Group (18.48%), Merkur Versicherung AG (17.01%), Generali Versicherung AG (13.48 %) and some smaller insurance companies (<5%).¹⁷ In 2016 a merger between a subsidiary of UNIQA (PremiQaMed) and some private hospitals in Vienna was cleared with remedies. The acquisition would have increased the market power of UNIQA in the market for private hospitals in a certain

¹⁴ <https://privatkrankenanstalten.at/leitbild/>.

¹⁵ <http://www.aerztekammer.at/organisation>.

¹⁶ https://www.sozialministerium.at/site/Gesundheit/Gesundheitssystem/Gesundheitsreform/Das_Konzept_zur_Primaerversorgung.

¹⁷ [https://www.vvo.at/vvo/vvo.nsf/sysPages/x11A994E04D382D07C125828D002554A3/\\$file/170_VVO_Jahresbericht-2017_RZ2-X3_ES_WEB_Datenteil.pdf](https://www.vvo.at/vvo/vvo.nsf/sysPages/x11A994E04D382D07C125828D002554A3/$file/170_VVO_Jahresbericht-2017_RZ2-X3_ES_WEB_Datenteil.pdf), 130.

geographic market (region of Vienna) and would also have strengthened its position as a vertically integrated health insurance and health care provider.¹⁸

5. Competition in the health care sector - Activities of the FCA

5.1. Sector inquiry

21. In April 2017 the Austrian FCA launched a sector inquiry focusing on the entire health care sector. Contrary to sector inquiries conducted by other competition agencies in the past the Austrian investigation seeks to cover the whole health care system because of different phenomena recognised in the past (e.g. complaints, decisions and sector inquiries by the European Commission or other national competition authorities, judgements by (European) Courts, economical studies and surveys etc.). The range of health care sectors varies from pharmacies and pharmaceutical pricing over to private hospitals, private health insurances and health care transports. In May 2018, the FCA presented its first interim report on „The Austrian Pharmacy Market“.¹⁹

5.2. First interim report - The Austrian pharmacy market

22. In Austria there are currently 1,357 community pharmacies and with 15.4 pharmacies per 100,000 people, Austria has a lower pharmacy density than the European average (OECD-Ø of 25 pharmacies on 100,000 citizens). At € 3.7 billion, the expenditure for pharmaceutical products makes up around 13.5% of the overall public health costs of € 27.3 billion. In 2016 total sales by community pharmacies amounted to approximately € 3.98 billion (€ 3.7 billion thereof on pharmaceuticals).

23. The Austrian pharmacy market is highly regulated by provisions but especially by the Austrian Pharmacy Act. The main reason for this is that there is a public interest in the guaranteed and reliable supply of medicinal products, namely because pharmacies deal with credence goods for whom patients (= consumers) cannot ascertain the quality even after having purchased it and patients also do not know whether it really was the product they needed (the decision is made by the prescribing general practitioner).

24. **Anti-competitive regulations** exist in the following areas:

- Needs assessment and, consequently, near monopolistic position of community pharmacies
- Prohibition of chains and of third-party ownership
- Restriction of number of branches

¹⁸https://www.bwb.gv.at/news/detail/news/bwbz_2750_zusammenschluss_goldenes_kreuz_privat_klinik_betriebsgmbhpremiqamed_holding_gmbh/. See also Austrian Federal Competition Authority. *Annual report on competition policy developments 2016*. 2016. 6. https://www.bwb.gv.at/fileadmin/user_upload/Englische_PDFs/Annual_Reports/Annual_Report_2016_Austria_final.pdf.

¹⁹ The report is published on the website of the Austrian Federal Competition Authority and may be downloaded at https://www.bwb.gv.at/en/news/detail/news/the_austrian_federal_competition_authority_publishes_the_first_interim_report_on_the_austrian_pharm/.

- Restriction of opening hours
- Restrictions on provision of additional services
- Restrictions on online sales of OTC medicines
- Restriction of pharmacy delivery services
- Prerogative of pharmacies to sell OTC medicines

25. Based on these findings, the FCA conducted an analysis by determining the extent to which competitive processes could be implemented in the investigated areas of the pharmacy market (and/or for the services rendered by pharmacies) without threatening the reliable supply of medicinal products. Expected positive effects were also considered. The report finally resulted in eight recommendations on the Austrian pharmacy market.

- Abolition of needs assessment
- Liberalisation of branch system
- Retention of prohibition of chains and of third-party ownership
- Liberalisation of opening hours
- Liberalisation of services
- Liberalisation of online pharmacies
- Liberalisation of delivery services
- Liberalisation of OTC market

26. The expected positive effects of these measures mainly are an improved supply of medicinal products to consumers thanks to an increased number of pharmacies, increased quality competition among pharmacies, guaranteed supply of medicinal products, particularly in rural areas, prevention of negative impacts caused by increased vertical integration between wholesalers and pharmacies, prevention of barriers to market entry, improved (broader) supply of OTC medicines to consumers and stimulation of (price) competition among Austrian online pharmacies, between Austrian online pharmacies and bricks-and-mortar pharmacies, and between Austrian and international online pharmacies.

Table 1. The Austrian Pharmacy Market - Recommendations from a Competition Law Perspective*

Problem Analysis	Consequences	Recommendations	Benefits
1	Entry regulations		
Operating a public pharmacy requires an official license by the competent authority. The license requires an existing need for a new pharmacy. The need is particularly guided by the current supply with pharmaceuticals (by another public	<ul style="list-style-type: none"> – Public pharmacies hold a monopoly-like competitive position in their territory – Pharmacies basically operate free from competitive pressure 	<ul style="list-style-type: none"> Abolition or modification of the entry regulations by legal measures Maintenance of the factual ban of pharmacy chains and third-party ownership. This avoids further vertical integration of pharmaceutical wholesalers into the pharmacy market and accompanying negative 	<ul style="list-style-type: none"> – Increased number of pharmacies and thereby improved supply with pharmaceuticals (especially in rural areas) – Increased quality

<p>pharmacy or a physician), a certain distance to an already existing pharmacy and the number of people to be supplied.</p>	<ul style="list-style-type: none"> – Even pharmacies, which are economically poorly managed or offer low quality products for customers, don't have to worry about economical continuance – Hardly any quality competition between public pharmacies – Hardly any price competition between public pharmacies 	<p>effects e.g. market foreclosure.</p>	<p>competition between public pharmacies (especially concerning the consultation and other services in pharmacies)</p> <ul style="list-style-type: none"> – Increased price competition in areas where there is no statutory price regulation
2 Branch pharmacies			
<p>The operator of a public pharmacy is allowed to run another branch pharmacy. The location of the latter may not be farther away than four kilometers from the main pharmacy. For the branch there are low-threshold provisions concerning opening hours and equipment.</p>	<ul style="list-style-type: none"> – Avoidance of economies of scale by limitation to two pharmacies 	<p>Increasing the permitted number of branch pharmacies run by a pharmacist by legal measures. Positive effects will compensate for the strengthened market position of a pharmacist within a certain territory.</p>	<ul style="list-style-type: none"> – Increased number of pharmacies and thereby improved supply with pharmaceuticals (especially in rural areas) – Creation of economies of scale for pharmacists
3 Opening hours			
<p>There is a complex system of regulations for opening hours and after-hours services of public pharmacies. Pharmacies are being highly restricted when scheduling their opening hours.</p>	<ul style="list-style-type: none"> – Restriction of pharmacies to schedule their opening hours – No quality competition between public pharmacies by means of individual opening hours – Restricted supply of customers with pharmaceuticals (especially at off-peak hours) 	<p>Alignment of opening hours of pharmacies with opening hours of shops by legal measures; maintaining after-hours services.</p>	<ul style="list-style-type: none"> – Extended opening times of pharmacies and therefore improved supply with pharmaceuticals – Increased quality competition between pharmacies by individual opening hours
4 Services			
<p>There are restrictive regulations for the</p>	<ul style="list-style-type: none"> – No quality competition 	<p>Legal measures to enable pharmacies to</p>	<ul style="list-style-type: none"> – Pharmacies will be established

provision of services in public pharmacies and the (joint) use of pharmacy premises.	between pharmacies by the provision of (other) services	provide services more easily and to use and share their premises.	as central healthcare facilities
	– Pharmacies as central healthcare facilities and their knowledge are not being sufficiently used		– Increased quality competition between pharmacies

5 Online Retail

Due to dense regulation, the entry into the market of online retail of pharmaceuticals is difficult for Austrian pharmacies. Currently, there is only a small number of Austrian pharmacies, which operate an online pharmacy.	– Substantial competitive disadvantage for Austrian pharmacies in comparison to foreign pharmacies, which ship to Austria	Partial liberalisation of the online retail market of pharmaceuticals by legal measures (e.g. by abandoning the requirement of a stationary pharmacy).	– Improved supply with pharmaceuticals (especially in rural areas)
	– Considerable entry barriers (eg requirement of a stationary pharmacy) and restrictions on the operation of an online pharmacy		– Increased price competition between online and stationary pharmacies
	– Little price competition		– Increased quality competition (improvement of the consultation and other services provided by stationary pharmacies)

6 Delivery Services

Public pharmacies are allowed to deliver urgently needed pharmaceuticals to customers within an area of six kilometers by means of proprietary delivery services. Modalities of delivery vary considerably. Both prescription and non-prescription pharmaceuticals may be delivered, but they must be required urgently. The regulatory “Apothekeneigene Zustelleinrichtungen” (pharmacy-internal delivery services) of the Austrian Chamber of Pharmacists	– Unequal treatment of pharmacies and lack of transparency by the provisions of the regulatory of the APC	Repeal of all provisions of the regulatory of the Austrian Chamber of Pharmacists, which diverge from statutory provisions. Removal of the designated area of delivery services by legal measures.	– Improved supply with pharmaceuticals (especially in rural areas)
	– No competition between comparable services of stationary pharmacies and online pharmacies		– Increased competition between stationary and online pharmacies

precisely governs the conditions for delivery services.

7 OTC Pharmaceuticals			
OTC pharmaceuticals are only allowed to be sold in pharmacies. However, a small amount of OTC pharmaceuticals is allowed to be sold by both public pharmacies and non-pharmacy retailers like drugstores.	Public pharmacies' monopoly in the area of OTC-pharmaceuticals Only little competition in quality and price between pharmacies	Liberalisation of the retail of OTC pharmaceuticals by legal measures Partial liberalisation of sales and advertisement of OTC pharmaceuticals Optionally: A wider range of OTC pharmaceuticals, which are allowed to be sold by non-pharmacy retailers like drugstores by legal measures Consultation by qualified pharmacists and high quality and safety standards for OTC pharmaceuticals have to be guaranteed in non-pharmacy retail businesses. No unrestricted sale of OTC-pharmaceuticals	Improved supply with OTC-pharmaceuticals Price competition between pharmacies and non-pharmacy retailers Price transparency Quality competition between pharmacies and non-pharmacy retailers, (especially concerning the consultation)

Note: * https://www.bwb.gv.at/en/news/detail/news/the_austrian_federal_competition_authority_publishes_the_first_interim_report_on_the_austrian_pharm/.

5.3. Other cases in the field of health care

27. The FCA - as many other competition authorities - applies and enforces competition law in different health care markets and there have been several cases such as merger cases in the markets for private hospitals, private insurances and medical transportation.²⁰ Furthermore, other competition authorities such as the European Commission, Directorate-General for Competition (“DG Competition”) used different tools. DG Comp launched a sector inquiry into competition in the pharmaceutical sector in 2008 to address competition issues and published its final report in 2009. Apart from sector inquiries, DG Competition also regarded certain agreements of pharmaceutical companies as an anticompetitive behaviour harming Article 101 Treaty of the Functioning of the European Union (TFEU) and consequently fined the accused companies for pay-for delay agreements.²¹ Other European competition agencies are also quite active in the field of the health care industry.²²

²⁰ Austrian Federal Competition Authority. *Annual report on competition policy developments 2016*. https://www.bwb.gv.at/fileadmin/user_upload/Englische_PDFs/Annual_Reports/Annual_Report_2016_Austria_final.pdf.

²¹ European Commission 19.06.2013, AT.39226 - *Lundbeck et al.*

²² http://ec.europa.eu/competition/sectors/pharmaceuticals/inquiry/staff_working_paper_part1.pdf. The French competition authority „Autorité de la Concurrence“ conducted a sector inquiry into the distribution of medicinal products and published its results in December 2013.

6. Outlook

28. In September 2018 the Austrian government made a proposal for a structural and administrative reform of the social security institutions as a part of a wider health care reform with a predicted spending of 1 billion until 2023 (200 mio. annually). The currently 21 social security institutions will be reduced to five institutions and insurance benefits will be harmonised for the nine states according to the plans.²³

29. From a competition law perspective after the first interim report on pharmacies, an amendment of the Austrian Pharmacy Act is expected for November 2018 when a draft of a revised Pharmacy Act will be discussed in the Austrian Parliament. There are good chances that at least several of FCA's recommendations concerning the highly regulated pharmacy market will be implemented in this amendment.

30. Finally, there will probably be a second interim report probably covering the markets for private health insurance and/or private hospitals market by the end of the year.

²³ <https://www.bundestkanzleramt.gv.at/-/bundeskanzler-kurz-sozialversicherungsreform-bringt-patientenmilliarde->.