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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

**Working Party No. 2 on Competition and Regulation**

**Market Studies and other Market Analysis Tools for Competition Authorities – Note by  
Austria**

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This document reproduces a written contribution from Austria submitted for Item 4 of the 80th meeting of Working Party 2 on 3 December 2025.

More documentation related to this discussion can be found at: [oe.cd/msmat](https://oe.cd/msmat).

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## *Austria*

### 1. General Comments

1. Under Austrian law, the Austrian Federal Competition Authority ('AFCA') is entitled to conduct two different kinds of market studies:
  - It may either conduct general investigations of an economic sector if circumstances suggest that competition in the sector concerned is restricted or distorted (i.e. **Sector Inquiries**; Section 2 para 3 Austrian Competition Act); or
  - carry out competition monitoring, in particular on the development of competition intensity in individual economic sectors or markets relevant to competition law (i.e. **Competition Monitoring**; Section 2 para 5 Austrian Competition Act).
2. Whereas the AFCA has published Sector Inquiries on twelve different sectors so far with the 13th on its way,<sup>1</sup> the AFCA has not yet published a Competition Monitoring Report.
3. Sector inquiries covered areas such as health, mobile communications, ATM fees, taxi and rental car market, fuel market, gas and electricity, food industry as well as an upcoming report on district heating.

### 2. Sector Inquiries

#### 2.1. Prerequisites

4. To start a Sector Inquiry, Austrian Law requires an indication for a restriction or distortion of competition in the specific sector under scrutiny.
5. Indications can come from various sources: First, it can be sectors prioritized by the government or legislator. In this context, Sector Inquiries can help inform the policy process and either help to introduce pro-competitive measures or preventive measures with preventable anti-competitive impacts or identify opportunities for regulation or deregulation. Sector Inquiries conducted in such sectors are also more likely to translate into legislative measures on a shorter notice.
6. Second, sectors can be put under scrutiny that are severely affected by economic or other significant changes and that are furthermore of utmost importance from a consumer perspective. Indications in this context can be rising prices, problems in supply chains or increasing inflation that indicate a need to analyze a market more closely from a competition perspective (see e.g. the AFCA's considerations to carry out a Sector Inquiry in the food industry: this inquiry was launched amidst significant price increases for consumers, global and European developments in the supply chain and rising inflation). Additional arguments can be market structure. This was the case, e.g., in context with the district heating Sector Inquiry where the AFCA found initially that district heating networks are regionally or locally limited and connected customers have either limited or no alternatives available to them, offering suppliers a special market position in their

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<sup>1</sup> All Sector Inquiries can be found on the AFCA's website: <https://www.bwb.gv.at/branchenuntersuchungen> (available in German).

respective regions. Furthermore, the AFCA will take into consideration the importance of the market under scrutiny from a consumer's perspective and evaluate information received on a specific market or sector.

7. Third, the AFCA can use its own information to identify sectors with competition concerns. Therefore, it may either rely on competition cases related to a specific sector that indicate broader competition concerns than those prosecuted in the specific proceedings. Similarly, it may identify certain trends in specific sectors from merger control cases. Additionally, the AFCA receives several complaints every day which normally show a certain pattern pointing to problems in specific sectors.

8. The AFCA may therefore also refer to indications found in the course of its Competition Monitoring (see below), hinting to sectors that show some conspicuousness.

9. As a competition authority, the AFCA has the possibility to bring its unique perspective to market failures and other policy issues, which could be missed if the analysis of a sector is left to other institutions that do not focus on competition problems.

10. In such Sector Inquiries, the AFCA assesses the competitive framework from both a legal and economic perspective to gain insights into the specific sector and evaluate its market conditions.

11. The fact that a specific sector is regulated does not fundamentally change the AFCA's legitimacy to conduct a Sector Inquiry. In fact, such high degree of regulation might even prevent competition from developing sufficiently and lead to the establishment of structures and market conditions that are detrimental to consumers and innovation, which require an in-depth investigation of remaining competition. Due to the objective and possible impact of an industry investigation, its purpose goes beyond the mere investigation and combating of distortions or restrictions relevant to competition law and serves to ensure functioning competition within a specific market.

12. The AFCA has also carried out Sector Inquiries together with Austrian regulators, such as the Austrian regulator for electricity and natural gas markets in Austria (E-Control) with regards to its Sector Inquiry on the electricity and gas market.

13. Based on the prerequisites set out above, there is no general rule on how many Sector Inquiries the AFCA conducts per year, but this decision is solely based on sectors identified that meet the above-mentioned preconditions. However, as an average it can be suggested that the AFCA conducts around one Sector Inquiry per year.

14. Some of the investigations conducted by the AFCA were split in multiple reports (e.g. the Sector Inquiry on the electricity and gas market, where an interim report was published in 2023, a second one in 2024 and a final report in 2025).

15. As mentioned above, the AFCA is bound by law to carry out Sector Inquiries only in those sectors where it has an indication for a restriction or distortion of competition. It will thus also justify why it chose a specific sector and is not completely free in doing so.

### **a. Tools**

16. Sector Inquiries are usually based on requests for information ('RFI') from various market participants, representative surveys (e.g. of consumers or customers), discussions with experts, relevant literature and experience reports as well as investigations conducted by other national competition authorities on a specific industry.

17. Undertakings are, under Austrian law, obliged to cooperate with the AFCA (provided that the company is based in Austria). Accordingly, a fine can be imposed on undertakings that are not cooperating, either by not answering to RFIs at all or submitting misleading or incorrect answers. This is particularly important since timely and comprehensive provision of information is essential in the context of any Sector Inquiry.

18. In order to reach out to a large number of undertakings with its RFIs, the AFCA often relies on digital tools or specific programs to simplify the handling of questions and answers received.

19. The AFCA will also carry out online surveys. This was e.g. done in its food industry Sector Inquiry, where an online survey was sent to more than 1,500 suppliers of Austrian food retailers. Its aim was to identify competition problems and assess the relationship between suppliers and retailers including experiences in negotiations with the retailers.<sup>2</sup>

20. The AFCA always announces pro-actively that it is conducting a Sector Inquiry in a specific area also indicating the main concerns it seeks to address in its report. In this context, it will usually also contact relevant industry associations and give an indication on information and data it will gather during this process.<sup>3</sup>

21. Normally it will then also indicate the anticipated duration of the Sector Inquiry (which is generally around one year).

22. The processed results of the sector inquiry are published by the AFCA in accordance with Section 2 (4) Austrian Competition Act.

## **2.2. Steps**

23. Based on the preconditions outlined above, the AFCA will first define a sector or market that will be scrutinized as well as relevant topics or competition problems that shall be addressed - whereas on the other hand such topics are identified that are not suited for a Sector Inquiry (e.g. because they are not problems stemming from competition law concerns).

24. In this respect, the AFCA makes sure that the scope is sufficiently broad to respond to the original concerns, but at the same time allows a swift and efficient conclusion of the inquiry. However, the initial thoughts on this point may be reevaluated in the course of the inquiry in order to react flexibly to provisional results.

25. The Sector Inquiry will then be publicly announced, if necessary, after consultations with relevant stakeholder or industry associations. These announcements can always be found on the AFCA's website (and are available in German and English). If

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<sup>2</sup> See <https://www.bwb.gv.at/en/news/detail/bwb-fuehrt-online-befragung-bei-lieferanten-des-lebensmittelhandels-durch-1>.

<sup>3</sup> See e.g. in the context of the district heating Sector Inquiry: <https://www.bwb.gv.at/en/news/detail/bundeswettbewerb-behoerde-startet-branchenuntersuchung-im-markt-fuer-fernwaerme>.

appropriate it will also hold a press conference or the like to attract a broader public attention for its topic.

26. Internally, a team will be defined, normally consisting of lawyers and economists to address topics from different perspectives. The team will start with an initial research and gather information from different AFCA departments. It might also liaise with national and international authorities to discuss the topic.

27. It will then draft a first round of RFIs. Such RFIs must - according to Austrian law - stipulate the concrete purpose the answers will be used for. The RFIs will also indicate a date until when they shall be answered.

28. In most cases, at least a second round of RFIs was found necessary. As an example during its Sector Inquiry in the food industry, the AFCA had ten rounds of RFIs, surveying a total of 700 trading firms and more than 1,500 suppliers.

29. The AFCA may also directly survey consumers, which is generally done using an online survey tool. It may furthermore purchase data (e.g. from market research companies or Austria's official statistics office).

30. The main work then lies in the evaluation of the data received and drafting of the report.

31. Whereas it is not possible for undertakings to deny submission of data with reference to business secrets or data protection, the AFCA is of course held responsible to handle all data received with care and in accordance with existing data protection laws. To this purpose, the AFCA will also only include aggregated data in its report.

32. Accordingly, the reports themselves do not contain business secrets or confidential information, to prevent competitors from obtaining sensitive information.

### 2.3. Objectives

33. The reports drafted by the AFCA provide a comprehensive overview of competition in a specific sector in Austria, transparently describing the current situation in the market. It will usually contain a substantial number of facts and figures, which can be used to develop measures to strengthen competition and consumer protection.

34. Sector Inquiries have manifold impact: They can facilitate the handling of antitrust proceedings or even help to avoid otherwise necessary cartel proceedings. However, under Austrian law, it is not possible to use results of a Sector Inquiry directly in Court without further steps. Thus, if results found in Sector Inquiries present evidence for a competition law infringement (e.g. cartels or abuse of a dominant position), the AFCA can only take them as initial suspicion but will then have to engage in separate investigations to combat the antitrust violation.

35. In that regard, the AFCA publicly requests improved legal basis to enforce competition law measures based on results of Sector Inquiries since its report on the food industry 2023. However, this has, so far, not been introduced to Austrian law.

36. Sector Inquiries can also serve as a basis for economic policy measures from a competition perspective for legislators, administrators and stakeholders. In order to do so, every Sector Inquiry submitted by the AFCA contains precise suggestions based on the findings in the report how to ensure or improve markets from a competition law perspective.

37. The AFCA additionally actively engages in public debates that usually follow the publication of a report. In this context, it will not only organise press conferences to reach out to a large audience but also have meetings with ministers or their cabinets to discuss possible implementation of its recommendations, e.g. by introducing new laws. For example, the AFCA has included precise recommendations in its Sector Inquiry on the electricity and gas market for the upcoming Act on the Regulation of the Electricity Industry.

38. The AFCA furthermore closely observes reactions to its reports, identifying needs and expectations of consumers and industry players. A prominent example therefore is the AFCA's Sector Inquiry in the food industry, where consumers were found to welcome e.g. price transparency platforms or industry players that emphasized that they were unaware of the exact reasons for price markups in Austria prior to the AFCA's report.

39. The AFCA will also engage in discussions on EU level to foster potential measures on EU level to encounter identified competition concerns.

40. Due to the potentially wide reach and impact of such industry investigations, the AFCA always involves the industry concerned, interest groups, and other stakeholders in the process. It has shown that Sector Inquiries contribute to ensuring effective competition.

### 3. Competition Monitoring

41. Competition monitoring is intended to illustrate the intensity of competition in certain sectors or markets relevant to competition law by observing the development of indicators that are essential to these sectors over several years. Indicators include the degree of concentration, regulation of the sector, and price developments in international comparison and in relation to supply and demand factors, as well as the number of market participants and market entries and exits.

42. The possibility to conduct Competition Monitoring has been included in Austrian law in 2012. Just like Sector Inquiries, it is not intended to address individual companies but focusses on entire sectors of the economy. In contrast to Sector Inquiries, it does not need a suspicion of restriction or distortion of competition but seeks to give a broad overview of the Austrian economy, thus focussing on multiple sectors instead of a particular one.

43. Competition Monitoring was introduced as a reaction to allegedly increasing market concentrations and markups sparking concerns that competition in Austria is weakening. Accordingly, competition monitoring shall serve as an early-warning instrument to detect markets at risks of anti-competitive dynamics.

44. This is to be seen against the backdrop that markets may slide gradually from competitive to oligopolistic or monopolistic structures, before overt abuses - such as cartels or abuse of a dominant position - become evident.

45. The experience of other competition authorities shows that introducing a competition monitoring tool is not a quick process but implies considerable personnel and financial costs (especially with regards to data that need to be purchased from the Statistics office in Austria at the moment).

46. Whereas the AFCA is still about to set up its initial Competition Monitoring, the report shall then be updated on a regular basis giving an up-to-date impression of the state of the economy in Austria.

### 3.1. Prerequisites and Objectives

47. On request of the Advisory Council for Economic and Social Issues, the legislator introduced the possibility for the AFCA to carry out Competition Monitoring. Competition Monitoring refers to the systematic collection of various competition-related indicators in a large number of sectors or relevant markets to be able to compare the intensity of competition in these sectors or markets over several years. Competition monitoring thus also represents a kind of economic policy instrument that could be used to improve the country's economic development in the long term as part of a proactive competition policy.

48. In contrast to Sector Inquiries, Competition Monitoring is not concerned with mapping the structure of a particular market as accurately as possible. Instead, its aim is to use appropriate indicators to establish comparability between several markets. Competition Monitoring can thus also be seen as a kind of supplement to Sector Inquiries, as the result of monitoring can be used as a basis for targeted Sector Inquiries.

49. Austrian law does not define “Competition Monitoring”. In general, this term refers to a systematic collection of quantitative competition indicators in a large number of sectors, which allows the intensity of competition in these sectors to be compared with each other and over time.

50. Based on this abstract description, the AFCA has considerable freedom in shaping its Competition Monitoring.

51. Originally, Competition Monitoring was introduced by the Austrian legislator as an economic policy instrument, to help improve the economic development in the long term. Accordingly, it can serve as a basis for a proactive economic policy and, in particular, contribute to targeted incentives for productivity increases. For this purpose, the legislator suggests that development of indicators should be compared over several years to gain meaningful insights.

52. This is based on the assumption that competition is essential for long-term economic and employment growth.

### 3.2. Tools

53. Initially, the AFCA was only allowed to rely on “publicly available data” to conduct its competition monitoring, thereby massively limiting the AFCA’s possibilities to set up a serious, reliable and at the same time significant monitoring.

54. This is no longer the case: Since 2023, the AFCA is competent to rely on its investigation tools to conduct a Competition Monitoring. This implies essentially RFIs.

55. The AFCA thus has, in essence the same investigation tools compared to Sector Inquiries.

### 3.3. Objectives

56. The aim of competition monitoring is to identify anti-competitive dynamics as early as possible. A monitoring framework tracks structural and behavioural indicators over time, enabling authorities to spot worrying trends early and intervene before harms become entrenched.

57. By systematically collecting quantitative indicators across many sectors, monitoring allows cross-sectoral and temporal comparison of which industries are

becoming more concentrated or exhibit rising markups. This can be helpful when prioritizing enforcement or regulatory measures.

58. With such a competition monitoring, policymakers can more proactively identify sectors where competition is deteriorating and intervene before distortions become entrenched.

#### 4. Summary and Comment

59. As mentioned above, apart from Sector Inquiries or Competition Monitoring, the AFCA does not conduct any further market studies.

60. Sector Inquiries allow the AFCA to have a deep dive into an economic sector using its investigation powers (such as RFIs). It is thus able to gain knowledge on a sector, its functioning, its competitive dynamics, main concerns and developments.

61. Complementary, Competition Monitoring gives a broad picture on the economy in Austria with the aim of identifying anti-competitive risks before they manifest themselves. The AFCA can also rely on its investigation powers to conduct such Competition Monitoring.

62. With its clear recommendations, it can furthermore directly interfere with the agenda on future regulation or deregulation or any other laws or rules on the sector under scrutiny.

63. Additionally, the reports enable an informed public discussion and awareness. This is particularly important, since debates must be founded on reliable data and information in order to find tailor-made solutions for competitive issues.

64. If the AFCA identifies specific violations of competition law in the course of its investigations, it will initiate proceedings before the Cartel Court to prosecute the violations.

65. However, conducting Sector Inquiries and Competition Monitoring ties up resources within the AFCA. The AFCA is thus only able to conduct a limited number of Sector Inquiries per year with the challenge to identify those sectors where competition concerns are most pertinent and sectors that are of utmost importance for the economy and consumers. At the same time, the AFCA is about to set up a Competition Monitoring which shall then be updated on a regular basis.

66. Whereas the AFCA is able to reach out to a broad public - and debates following the publication of Sector Inquiry reports show that there is a large interest for the results found in the reports - it can only give recommendations in its report. Whether the recommendations will eventually result in new legislation or the like, is a decision to be made by the Austrian legislator. Furthermore, problems in a specific sector are often not only due to shortcomings from a competition law perspective, which can and will not be addressed in all its details by the AFCA.

67. On the other hand, the AFCA can use its market studies to proactively encourage the consideration of competition issues. Sector Inquiries offer a tool for competition authorities to address public pressure to intervene in a given sector when the authority has not identified concerns that would lead to enforcement action. Sector Inquiries can thus help to either dispel concerns or raise public awareness and knowledge on a given sector or ultimately identify competition concerns or distortions not associated with competition law infringements but e.g. regulatory distortions.



68. The like, a transparent, data-driven monitoring system strengthens the legitimacy of AFCA's interventions by grounding them in measurable evidence. It thereby also responds to legal and policy expectations for proactive oversights, not just reactive enforcement. Competition monitoring thus constitutes a useful tool to complement traditional enforcement tools.