

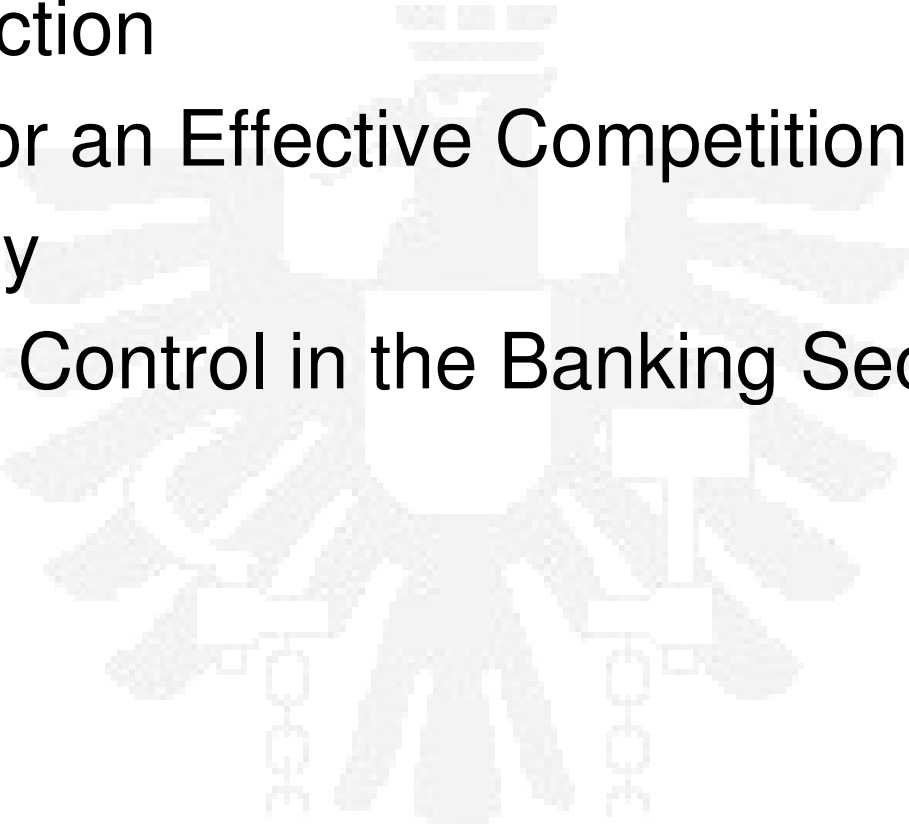


**FEDERAL COMPETITION AUTHORITY**  
**Austria**

“The Financial Crisis and Competition-  
Antagonism and Common Ground“

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Director General

# FEDERAL COMPETITION AUTHORITY

- i. Introduction
  - ii. Need for an Effective Competition Policy
  - iii. Strategy
  - iv. Merger Control in the Banking Sector
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# FEDERAL COMPETITION AUTHORITY

## What is Competition/Antitrust?

Competition is a basic mechanism of the market economy and encourages companies to provide consumers products that consumers want.

It encourages innovation, and pushes down prices.

In order to be effective, competition needs suppliers who are independent of each other, each subject to the competitive pressure exerted by the others.

The antitrust area covers two prohibition rules set out in the Treaty on the Functioning of the European Union.

## **Article 101 (ex Article 81 TEC):**

Agreements between two or more firms which restrict competition are prohibited by Article 101 of the Treaty, subject to some limited exceptions. This provision covers a wide variety of behaviors. The most obvious example of illegal conduct infringing is a cartel between competitors (which may involve price-fixing or market sharing);

## Article 101 (ex Article 81 TEC):

- 1. The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which:*

## **Article 101 (ex Article 81 TEC):**

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;*
  - (b) limit or control production, markets, technical development, or investment;*
  - (c) share markets or sources of supply;*
  - (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;*
  - (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.*
- 2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.*

## Article 101 (ex Article 81 TEC):

3. *The provisions of paragraph 1 may, however, be declared inapplicable in the case of:*
- *any agreement or category of agreements between undertakings,*
  - *any decision or category of decisions by associations of undertakings,*
  - *any concerted practice or category of concerted practices, which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:*
    - (a) *impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;*
    - (b) *afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.*

## **Article 102 (ex Article 82 TEC):**

Firms in a dominant position may not abuse that position (Article 102 of the Treaty). This is for example the case for predatory pricing aiming at eliminating competitors from the market.

## **Article 102 (ex Article 82 TEC):**

*Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States.*

## Article 102 (ex Article 82 TEC):

*Such abuse may, in particular, consist in:*

- a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;*
- (b) limiting production, markets or technical development to the prejudice of consumers;*
- (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;*
- (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.*

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## What are Competition Authorities dealing with?

There are Competition Authorities established in nearly each country all over the world.

For example:

in Germany: Bundeskartellamt  
[www.bundeskartellamt.de/](http://www.bundeskartellamt.de/)

in Austria: Bundeswettbewerbsbehörde  
[www.bwb.gv.at/BWB/default.htm](http://www.bwb.gv.at/BWB/default.htm)

## **What are Competition Authorities dealing with?**

European Union: There is the European Commission, where the DG Competition is established for Competition (and also state Aid affairs).  
[ec.europa.eu/competition/index\\_en.html](http://ec.europa.eu/competition/index_en.html)

The job of the Competition Authorities is to ensure a free, fair and transparent competition.

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“These are challenging times for us all: our economies have been badly affected by the crisis and history has shown that this is precisely when we have to be more determined to maintain the effectiveness of our competition rules” (Joaquín Almunia, April 2010, Istanbul)

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“Just try to imagine how much protectionism there would have been across Europe in the absence of Brussels and DG Competition. I know that we may sometimes feel angry towards DG Competition”

“I have experienced that myself. But overall the **Commission ensured that free trade and the internal market could function to a fair degree.**” (Angela Merkel, January 2010, Düsseldorf)

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“We are still fighting the biggest crisis in 70 years. There is high unemployment, lower potential growth, and higher levels of public and private debt. But we have no alternative: this is what we must do. Only a European strategy can succeed, given the interdependence of our economies, in particular within the Economic and Monetary Union”

(Joaquín Almunia, April 2010, Bonn)

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We need an effective competition policy especially in times of crisis because:

- Competition can help drive competitiveness, growth and jobs over the long term
- Competition encourages companies to innovate. Forced to come up with new/better products to retain old customers and gain new ones
- Companies are encouraged adapt their business strategies to customer demands and to make investments for the longer term

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- Competition encourages companies to allocate their resources in the most efficient way
- Competition contributes to achieving more choice, better quality and lower prices for consumers/businesses
- Competition helps boost productivity, commercially successful innovation, sustainable growth and high-quality job creation.

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## STRATEGY:

- I. Focus Enforcement efforts where they will have the greatest impact for consumers (certain types of infringements, certain key sectors); channel limited resources on most harmful practices
- II. Effective international and regional Cooperation

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I.

- a. Focus on Hardcore Cartels (Example: “Druckchemikalien“; “Speditionen“)
- b. Sector Example: Fuel Markets- close monitoring and informing the public (newsletter etc.); investigating PLATTS

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I.

- “Druckchemikalien Cartel“ (leniency):
  - Printing Chemicals
  - Price Fixing and Sharing of Customers
  - Longterm
  
- Alleged Cartel: “Speditionen“ (leniency)-  
pending
  - Freight Forwarding
  - Price Fixing and Sharing of Customers
  - Longterm

I.

Investigations in the liquid fuel market (**Salzburg**  
and **Voralberg**)

Platts Investigation

- Possibility to manipulate or allow others to manipulate prices?
- Systematic manipulation possible?
- Manipulation over a long time period possible?
- Transparency?
- Protection mechanisms against manipulation?

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I.

The point of the mentioned inquiries and investigations is to ensure that there is effective competition on the market, which helps the market function as well as possible, to the benefit of business and consumers!!!

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## II. The Value of Regional Cooperation

**Small is beautiful**, (Leopold Kohr: Disunion now: A Plea for a Society based upon Small Autonomous Units, The Commonweal from September 26, 1941)

Idea, that continued growth of economy can solve all the problems. Kohr was against it. He wanted people to go back to the human measure of things.

Competition Law and Enforcement- a Global Issue

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## II.

- Questions of competition law and enforcement are not limited by geographical borders
- Economies interconnected (e.g. financial crisis)
- Facing a well informed business community
- Regional Issues need regional solutions
- Need for cross-border cooperation & coordination
- Looking for common positions on common problems
  - Need to work in partnership
  - Need to look at subsidiarity as a principle

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### II. Example: Marchfeld Competition Forum I:

- Austria, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Romania, Slovakia, Slovenia, Switzerland, DG Competition
- Strengthening regional cooperation/coordination with regard to cross-border issues of common concern
- Exchange of Information; best practices; know-how flow
- Defining common positions

II.

The Merger Information Exchange Platform: Unique Feature of Marchfeld Regional Cooperation

- Electronic Database for exchange of information between Members
- Facilitate the information exchange on mergers and concentrations concerning more than one country
- Participating Members of the MCF update their data on mergers on a daily basis
- Benefits:
  - Valuable Tool for Case Handlers in their daily work
  - Overview of developments in the markets
  - Statistics

## iv. Merger Control in the Banking Sector

➤ Austrian Mergers in the Sector:

Cerberus/Bawag PSK

Erste Bank/ 34 Saving banks

Erste Bank/ 10 Saving banks

Erste Bank/Steiermärkische

Kommunalkredit/Fimbag

ABV/Volksbanke/Immo-Bank

Hypo Bank Int./Republic of Austria

## iv. Different Markets

Retail Banking

Corporate Banking

Interbank Transactions

Public Financing

Investment Banking

Money Market Transactions & Business in Securities

Other financial transactions

## iv. Situation in the Austrian Banking Sector

811 banking institutions

Big “5“:

- Raiffeisenbanking-Group
- Erste Group (including Saving Banks)
- Bank Austria (UniCredit)
- Volksbankensektor
- Bawag PSK

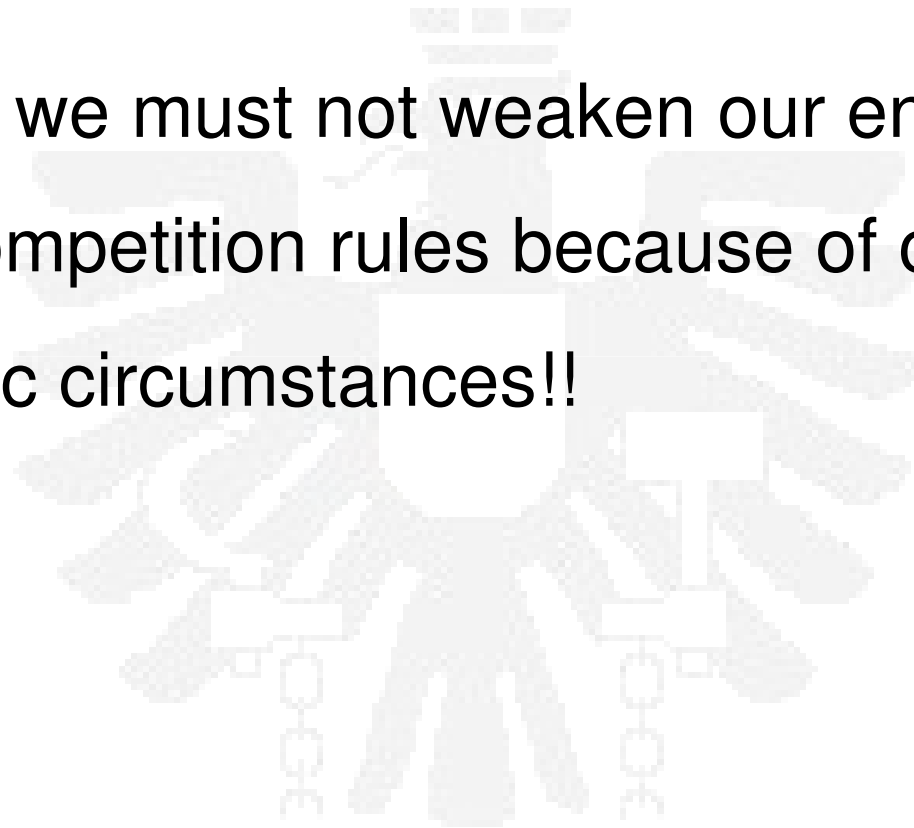
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iv.

- High Concentration Ratio in Retail and Corporate Banking
  - Hehrfindal-Hirschman Index over 2000
- In case of mergers concerning these areas the FCA would need to go for an in-depth investigation

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Key is that we must not weaken our enforcement of the competition rules because of current economic circumstances!!



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THANK YOU FOR YOUR ATTENTION!

