



Situated in the centre of Europe, Austria is land-locked between Germany, Italy, Switzerland, Slovakia, Hungary, Slovenia, Liechtenstein and Czech Republic.

Austria is a Federal Republic; it joined the EU in 1995. A top priority of the current Coalition Government is the implementation of a package of measures designed to boost the competitiveness of Austria as a European business location.

Economy

The joining of the EU, the introduction of the European single currency, the increasing internationalisation of the economy and a rapid economic structural change, have all characterised and fundamentally changed the framework conditions and scope of action, of Austrian economic policy, within the last few years. Austria's accession to the EU forced the government to accelerate structural reforms and open the economy, removing many non-tariff barriers (NTBs) to merchandise trade and fully liberalising cross-border capital movements.

Austria has a well-developed social market economy with a high standard of living, in which the Government has played an important role. Its economy is dominated by services, accounting for 70 percent of employment, followed by manufacturing. Small and medium-sized companies are predominant.

The Government has implemented during the last years an ambitious privatisation programme, which will considerably reduce government participation in the economy. Austria enjoys well-developed industry, banking, transportation, services, and commercial facilities.

Importantly, the government has been less bound than its predecessors by the Austrian tradition of setting economic policy in consultation with the so-called 'Social Partners',

PROFILE	
Population:	8.1 million***
GDP (Current US\$):	253.1 billion***
Per Capita Income: (Current US\$)	26,810 (Atlas method)*** 29,220 (at PPP)**
Surface Area:	83,860 sq. km
Life Expectancy:	78.5 years**
Literacy (%):	98 (of ages 15 and above)
HDI Rank:	14***
Sources: - World Development Indicators Database, World Bank, 2004 - Human Development Report Statistics, UNDP, 2004 (**) For the year 2002 (***) For the year 2003	

consisting of the representative bodies of business, farmers, and labour. Designed to minimise social unrest, this consensual approach has come under criticism for slowing the pace of economic reforms. The government broke precedent by not consulting with the social partner institutions on important economic policy decisions such as social benefits reform and balancing the budget.

Competition Law and Institutions

The main Austrian competition regime comprises of two laws: the *Cartel Act of 1988 (Kartellgesetz 1988—'the Cartel Act')* and the *Competition Act, 1993*. *Cartel Act* came into force in 1989 and has been amended several times, most recently with the amendments that came into force on July 01, 2002 and January 01, 2006. The *Cartel Act* contains all the rules on cartels, vertical agreements on distribution, abuse of dominance, mergers and enforcement procedure. The latest revision included several substantial changes, especially regarding the enforcement agencies and procedure.

* Original paper written by Vikas Batham of CUTS in November 2004. Revised in January 2006. Comments received from the Federal Competition Authority, Vienna, Austria

Furthermore, the *Competition Act (Bundeswettbewerbsgesetz)* contains provisions relating to the Federal Competition Authority and its powers, and the Competition Commission (Wettbewerbskommission), an advisory body to the FCA.

Substantial amendments to the Austrian competition regime came into force on July 01, 2002. These included changes to the institutional structure, and the enforcement procedure regarding cartels, as well as several other substantial modifications. The aims of the amendments included:

- to achieve consistency with EU law in the area of competition;
- to introduce more efficient enforcement; and
- to establish simpler and faster proceedings.

These aims were to be guaranteed by the following measures:

- the establishment of two new competition agencies – an independent Federal Competition Authority (FCA) and a Federal Cartel Prosecutor (FCP) – bound by instruction from the Ministry of Justice;
- the abolition of the Joint Committee on Cartel Matters; and the abolition of the right of the Cartel Court to initiate proceedings *ex officio*;
- the debilitation of the politically-influenced interest groups (Social partner) – the former official parties – at all levels of the cartel proceedings;
- stricter supervision of abuse of dominant position;
- aggravation of sanctions in the field of mergers; and
- a reduction in the influence of lay judges in the course of cartel jurisdiction; and the replacement of penal sanctions with administrative fines.

Recently, there has been a new amendment of both laws, which came into force on January 01, 2006. The new amendment has been carried out with the ultimate aim to bring the Austrian Competition Law in line with the European Competition Law by introducing the system of legal exception in cartel matters and by harmonising the Austrian law with the European Treaty especially Art 81 EC.

Federal Competition Authority (FCA)

One of the major amendments in July 2002 was the creation of an independent FCA, whose main function is the investigation and detection of possible restrictions on competition, as well as the filing of petitions with the Cartel Court.

The Federal Competition Agency is independent in carrying out its tasks and is not bound by instructions of a Minister or other institutions.

The FCA is there to oversee the functioning of Austrian competition regimes and has been given the following powers:

- to investigate national competition cases;
- to participate in proceedings before the EC, and give assistance in Commission investigations;
- to investigate economic activities where possible competition infringements are suspected;
- to oversee the consistency of Austrian and European competition law, as well as of the decisions issued by the regulatory bodies and the cartel jurisdiction;
- to cooperate, with regard to the Competition Law, with the Cartel Court, the Cartel Appeal Court (Supreme Court), the administrative authorities (including the regulatory bodies), and the Federal Cartel Prosecutor (FCP); and
- to provide the FCP with information, upon request.

In order to comply with its functions, the FCA is provided with extensive investigative powers, including dawn raids, if ordered by the Cartel Court. Furthermore, the FCA is authorised to undertake investigations of certain sectors of the economy, when it is assumed that competition in a sector is distorted. Companies must grant information and/or access to business-related documents on request, or risk criminal prosecution.

Public Prosecutor in Cartel Matters

In addition to the FCA, the position of ‘Federal Cartel Prosecutor’ (Bundeskartellanwalt) was created within the Federal Ministry of Justice. Like the FCA, (s)he is an Official Party, but bound by instructions of the Federal Minister of Justice. The Federal Cartel Prosecutor focuses on cases, which have a public interest dimension, and may have recourse to the investigative powers of the FCA.

Competition Commission (CC)

The Competition Commission (Wettbewerbskommission) serves as an advisory body to the FCA. The CC, as a board of experts, provides expert opinions – on request of the – FCA and the Minister of Economic Affairs – on questions, regarding competition policy and gives recommendations in merger cases. The CC also provides expert opinions. The social partners, whose influence was generally diluted by the 2002 amendments, among others, nominate half the members of the CC. The FCA, however, is not bound by the Commission’s recommendations.

The social partners and the other four members nominate four members and their deputies of the CC. Their deputies are nominated by the Federal Minister for Economic and Labour.

Box 62.1: Vienna Construction Bid Rigging Case

In this case, which attracted large public attention, the Criminal Court of first instance condemned nine managers of construction companies for breach of Cartel Law.

They were found guilty of rigging a public tender concerning road construction works in Vienna. The Court observed that, although the public procurer has not suffered any real damage, the pure fact of bid rigging was found harmful to public interest, and was economically unjustified.

The Court was supported, in its evaluation, by a senior economist of the Austrian Institute of Economic Research (Wifo).

Anticompetitive Business Practices

Since the new Competition and Cartel Act came into force in July 2002, the right of the Cartel Court to take up cases on its own initiative has ceased to exist. The provisions concerning criminal liability against an involved private person for anticompetitive behaviour was replaced by a sanction system for the involved undertaking. Sanctions are foreseen for any infringement of the Cartel Act. Only in the case of bid rigging is the criminal liability applicable.

Sectoral Regulation

Telecommunications Sector

Austria set up the Telekom Control Commission in late 1997. The Commission is an independent panel authority with the powers of a Court; and the Austrian Regulatory Authority for Telecommunications and Broadcasting (RTR GmbH; replaced Telekom-Control GmbH as of March 31, 2001) serves as its operative arm.

With three and a half years of regulating the Austrian telecommunications sector, Telekom-Control GmbH formally ceased to exist on March 31, 2001, in accordance with § 5 Par. 2 of the *Komm Austria Act (KOG)*, and was made part of the Austrian Regulatory Authority for Telecommunications and Broadcasting (RTR GmbH), which was established under Par. 1 of the Act.

Electricity¹ Sector

The Austrian electricity market was completely liberalised from October 01, 2001. The regulatory authority, Electricity Control Ltd. (E-Control GmbH), has been set up on the basis of the *Energy Liberalisation Act* and took up work on March 01, 2001. With the amendment of the Energy Liberalisation Act (2002), the scope of regulation by E-Control Ltd. was enlarged to the natural gas sector and some important tasks in the field of renewable energy. The amendment came into force in August 2002.

Box 62.2: Merger Prohibited

In the year 2001, the EC had prohibited the indirect takeover of the sole control of Lenzing AG by CVC Capital Partner Group Ltd., because CVC at that time already controlled Acordis, the biggest competitor of Lenzing in Europe and exclusive competitor in the USA.

In May 2004, Lenzing AG notified to the Austrian Cartel Court the same merger in a different way i.e. the indirect takeover of all shares in British Tencel Holding Company Ltd., which is a part of the CVC group. Lenzing produces the cellulose fibres 'Viscose' and 'Lyocell', Tencel produces Lyocell under the brand 'Tencel'. Lyocell is – just as viscose – a chemical fibre made from wood whose product features (durability with moisture, firmness, roughness) differ clearly from viscose and cotton.

The Austrian Cartel Court shared the doubts of the Federal Competition Prosecutor, which were confirmed

by an economic expert's opinion. Its conclusion was – in line with a decision of the EC of 2001 – that the relevant product market is Lyocell fibres where the merger would have led to a worldwide monopoly for Lyocell fibres. On the basis of these facts, the merger was prohibited by the Cartel Court. The merging parties appealed the decision to the Supreme Cartel Court, which upheld the lower court's decision.

This was the first prohibition of a merger following considerable changes in the institutional setup since 2002. As the parties had accomplished the merger despite the merger control procedure, the FCP joined the FCA's application for imposition of a fine for unlawful accomplishment of a merger. The Cartel Court followed this application and imposed a fine of •1.5mn. The merging parties then notified a considerably modified merger, which amongst other obligations ensured future competition by granting a licence for key parts of Tencel technology.

Source: OECD 2004-05

1 <http://www.oecd.org/dataoecd/33/60/2488862.pdf>

Box 62.3: Internet Service Providers vs Austria/ Telecom Austria

The organisation of alternative Internet Service Providers (ISPs) complained against the incumbent telecom company, which is also the largest internet service provider, for offering a product for internet access via conventional telephone lines with flat rates, and simultaneously denying the alternative service providers the same possibility. The case was dealt with at the Cartel Court.

The Telecom incumbent argued that conventional telephone networks capacity was not adapted for large-scale product variety. In fact, the Telecom incumbent had to withdraw its product from the market as local telephone network partially crashed.

The Joint Committee gave its opinion that the Telecom incumbent, a market dominant company, has to grant equal access to the network for all ISPs and that technical bottlenecks have to be regulated differently, than by denying network access to competitors.

Source: OECD 2000-2001

The first experiences of the liberalised electricity market have been very positive. Although international and national wholesale prices rose by about 20 percent from 2000 to 2001, retail prices in the domestic sector remained constant or declined by up to 10 percent in nominal terms. Industrial and commercial prices have been reduced by 30-50 percent. Customer switching was mainly registered in the commercial and industrial sector (10 percent); in the household sector only one percent of all customers changed their supplier. The unequal development is mainly due to historically low prices for residential consumers in Austria.

Interface between Competition Authority and Regulatory Agencies

The informal cooperation between the antitrust enforcement institutions and the sector specific regulators is an important and integral part of case handling in the everyday practice. The sector regulators (telecom and energy) are constantly invited to give their expert opinion in sector specific cases and also take part in the investigative measures of the Federal Competition Authority.

For instance, following announcement by various energy companies, electricity and gas tariffs in Austria increased

for the end users and industrial consumers in 2003 and 2004. The possibility of further price rises in subsequent years led to heated public discussion on the competitive situation in the Austrian electricity and gas market. This situation prompted the Minister of Economics and Labour to suggest to the FCA to undertake a general investigation in close cooperation with Energie-Control GmbH (E-Control – the sector energy regulator).

Consumer Protection

The Bureau of Consumer Affairs is part of the Federal Ministry of Social Security, Generation and Consumer Protection. As in several other countries, consumer policy and consumer protection *are not assigned to the authority of a single ministry, but competencies are shared by several ministries* (e.g. Ministries of Economic Affairs, Justice, Environment, etc). The Bureau is charged with acting as the general coordinator of consumer-related affairs.

Consumer policy and consumer protection were explicitly recognised as a government responsibility in 1970. Whilst the task was originally confined to quality control, prices, price marking and product information, it has since been extended to encompass a much wider range of activities.

At present, the Bureau is active, primarily in a co-ordinating capacity, in the following fields:

- General Consumer Protection Laws: cancellation of contracts, general standard terms and conditions; unfair contract terms;
- General Law of Contract: legal and commercial guarantees, errors, default, damages;
- Landlord/tenant Law, Housing Law, real estate agents, time-sharing;
- Financial services: Laws governing loans, insurance, banks, securities, leasing;
- Law on Competition: misleading advertising, competitions and prize draws;
- Trade Laws: regulations for trade practices, direct advertising, automotive sector, debt collectors, prices and price marking, data privacy; description of foodstuffs;
- Pharmaceuticals and patients' rights; and
- Telecommunications and public utilities (gas and electricity providers).

Concluding Observations and Future Scenario

The Austrian competition legislation changed in January 2006. The main content of the proposed amendments of the Cartel Act and the Competition Act are the following:

- The Austrian laws follow the wording of Article 81 and 82 EC;
- Abolition of the national system of cartel notifications and implementation of the system of legal exception;
- Introduction of a leniency programme; and
- Changes in merger procedures concerning competencies and new procedural provisions.

The Federal Competition Authority is of the opinion that these amendments will facilitate competition enforcement in all sectors. They bring the national Competition Laws fully in line with Council Regulation (EC) No 1/2003, which was the main aim of these amendments.