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IV. Product market competition and macroeconomic performance

The rate of growth in per capita income in Austria over the past decade or so has been above the OECD average, due notably to a more favourable productivity performance. Stronger product market competition has been instrumental in boosting growth over this period. In particular, preparation for membership of the European Union and privatisation of public enterprises were helpful in promoting competition. External factors such as the opening of the eastern European economies worked to the same effect. However, the boost to productivity growth from these factors is likely to have been temporary. Looking ahead, further strengthening of product market competition will be helpful, and possibly necessary, for maintaining high productivity growth. This may be incited, to some extent, by stiffer competition from EU accession countries. Nevertheless, regulatory reforms targeted at service industries such as distribution and professional services are warranted too. While manufacturing industries have performed well, owing in part to favourable external shocks, the picture is somewhat bleaker for services, where performance was comparatively weak in some industries, including distribution, transport and communications (Table 1 above).

The scope for competition enhancing policies

The aim of this chapter is to assess what role policies that bear on competition have played for economic performance in the past and what potential they may hold for the future.⁶⁰ While recognising the progress made on many counts, the analysis seeks primarily to identify areas where policies continue to impair performance, thereby preventing Austria from exploiting its full capacity. The remainder of this section gives a broad review over useful indicators on the stance of competition. Next, the chapter provides a discussion of the effects of international trade and market openness on product market competition over the past decade. Then, the chapter turns to discussing current policies and recent reforms in two areas. The first policy section provides an overview of competition law and enforcement one year after the coming into force of a new legal framework. Next, a review and an assessment are made of regulatory policies towards network indus-

tries, the distribution sector and professional services. The concluding section draws these partial analyses together by providing a set of policy recommendations and an assessment of the magnitude of the macroeconomic gains that Austria might realistically envisage by undertaking further product market reforms. Public sector issues – procurement and privatisation – are considered in Chapter II above.

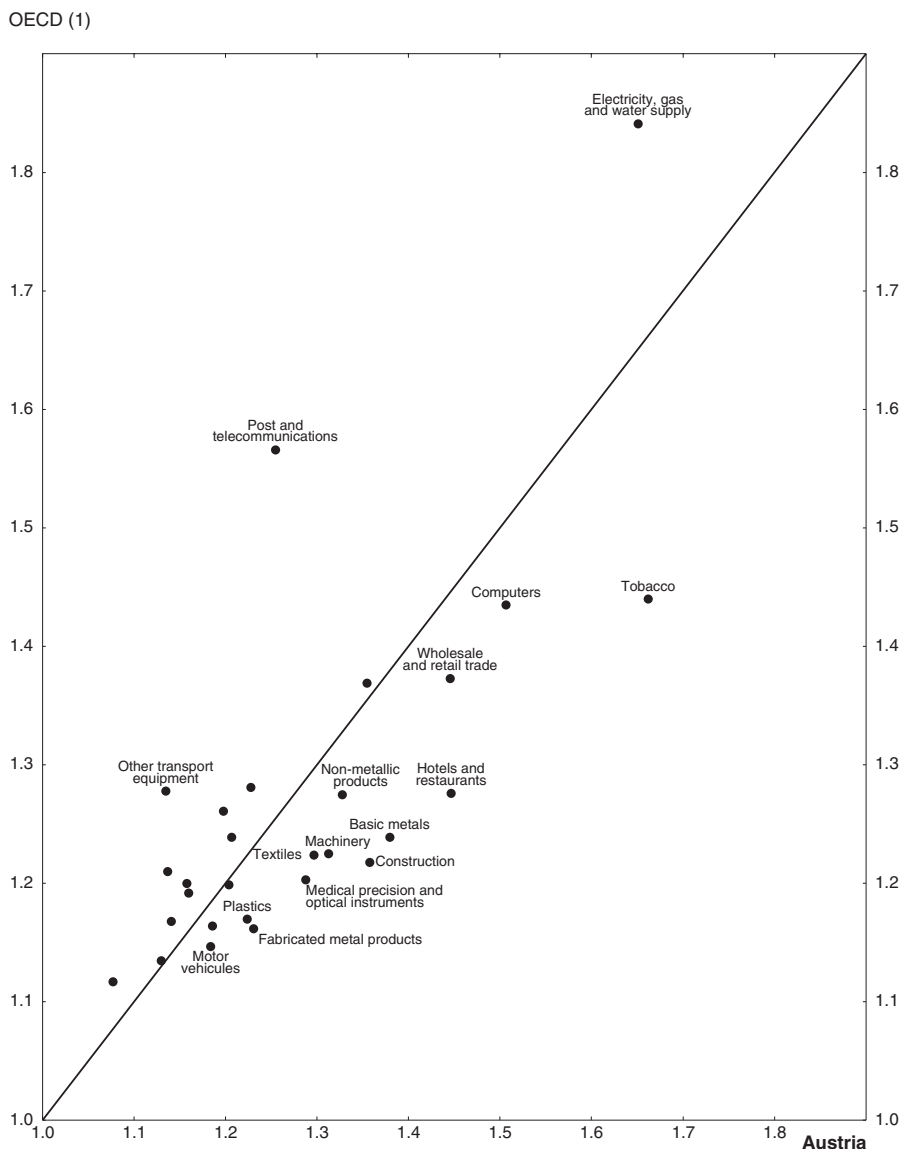
The underlying question that ties together the analyses below is whether the relatively comfortable growth record has occurred because of pro-competitive structural reforms, or rather in spite of the absence of such reforms. As a starting point, a few observations can usefully be made on the basis of available quantitative indicators of the stance of competition such as mark-ups or concentration rates. Separately, these need to be interpreted cautiously and are often subject to considerable measurement problems. Still, when taken together such indicators may convey useful insights or point to areas where further analysis is warranted.

- For Austria, estimated price-cost margins are higher than the average of other OECD countries in some industries, but lower in others (Figure 17). Above-average mark-ups are found mainly in non-manufacturing industries such as retail distribution, hotels and restaurants and construction. In manufacturing, the only sector with particularly high mark-ups is the steel industry, where public ownership has traditionally been high.
- As in other small countries, concentration indices are generally above average, but must be seen together with a relatively high exposure to foreign competition (see next section).
- There is some evidence that firm turnover rates are comparatively low in Austria, while survival rates are unusually high. As this might indicate significant barriers to entry, a separate section in the chapter looks at regulations of trades and services.
- Finally, Austria scores comparatively low on most indicators of innovation activity (Table 11), although this appears mainly to be the result of a low specialisation in high R&D industries (rather than owing to within-sector effects). In any case, for a small open economy such as Austria, it may be more important that adequate incentives exist to adopt new technologies from abroad and, more generally, that diffusion of new technology functions smoothly.

Policies and other forces acting on competition via international trade

The strong productivity performance in manufacturing over the past decade has taken place against the background of fiercer international competition and greater globalisation. The decline in tariff and non-tariff barriers has been comparable to developments elsewhere, and the feasibility, prior to joining the

Figure 17. **Industry-level mark-ups in Austria and other OECD countries**
From 1981 to the latest available year



1. Average of Austria, Belgium, Canada, Finland, France, Germany, Italy, Japan, Netherlands, United Kingdom and United States.

Source: OECD, STAN database. OECD estimates based on the Roeger method.

Table 11. Specialisation patterns and indicators of innovation in selected countries

| | Austria | Germany | EU ¹ | Japan | USA |
|--|-------------------------------|---------|-----------------|-------|------|
| | Per cent of total value added | | | | |
| Industrial structure, 1999 | | | | | |
| Agriculture | 2.3 | 1.2 | 2.4 | 1.7 | 1.4 |
| Manufacturing | 20.7 | 22.3 | 20.4 | 22.8 | 17.3 |
| Electricity, gas and water | 2.6 | 2.1 | 2.2 | 2.9 | 2.3 |
| Construction | 8.1 | 5.5 | 5.4 | 8.9 | 4.6 |
| Business sector services | 45.9 | 47.5 | 48.0 | 42.8 | 53.9 |
| Distribution | 12.7 | 10.7 | 11.5 | 11.3 | 17.1 |
| Restaurants and hotels | 4.0 | 1.3 | 2.8 | | 0.9 |
| Transport and communication | 7.0 | 5.8 | 6.7 | 6.3 | 6.7 |
| Finance and insurance | 22.2 | 29.7 | 27.0 | 25.3 | 29.3 |
| Public sector services | 20.4 | 21.5 | 21.6 | 20.9 | 21.3 |
| Indicators of innovation activity | | | | | |
| Investment in knowledge ² | 3.5 | 4.1 | 3.8 | 4.7 | 6.0 |
| Business sector R&D: | | | | | |
| Expenditure ³ | 1.6 | 2.5 | 1.8 | 3.1 | 2.8 |
| Share of total R&D spending, 2000 | 40.2 | 65.8 | 55.8 | 72.4 | 69.3 |
| Output share of high-R&D industries ⁴ | 41.3 | 55.7 | – | 48.6 | 49.6 |
| Per cent of ICT patents in all patents, 1997 | 4 | 8 | 11 | 19 | 16 |

1. The industrial structure pertains to the euro area, excluding Ireland, Luxembourg and Greece.

2. Total investment in higher tertiary education, R&D and software. Per cent of GDP, 1998.

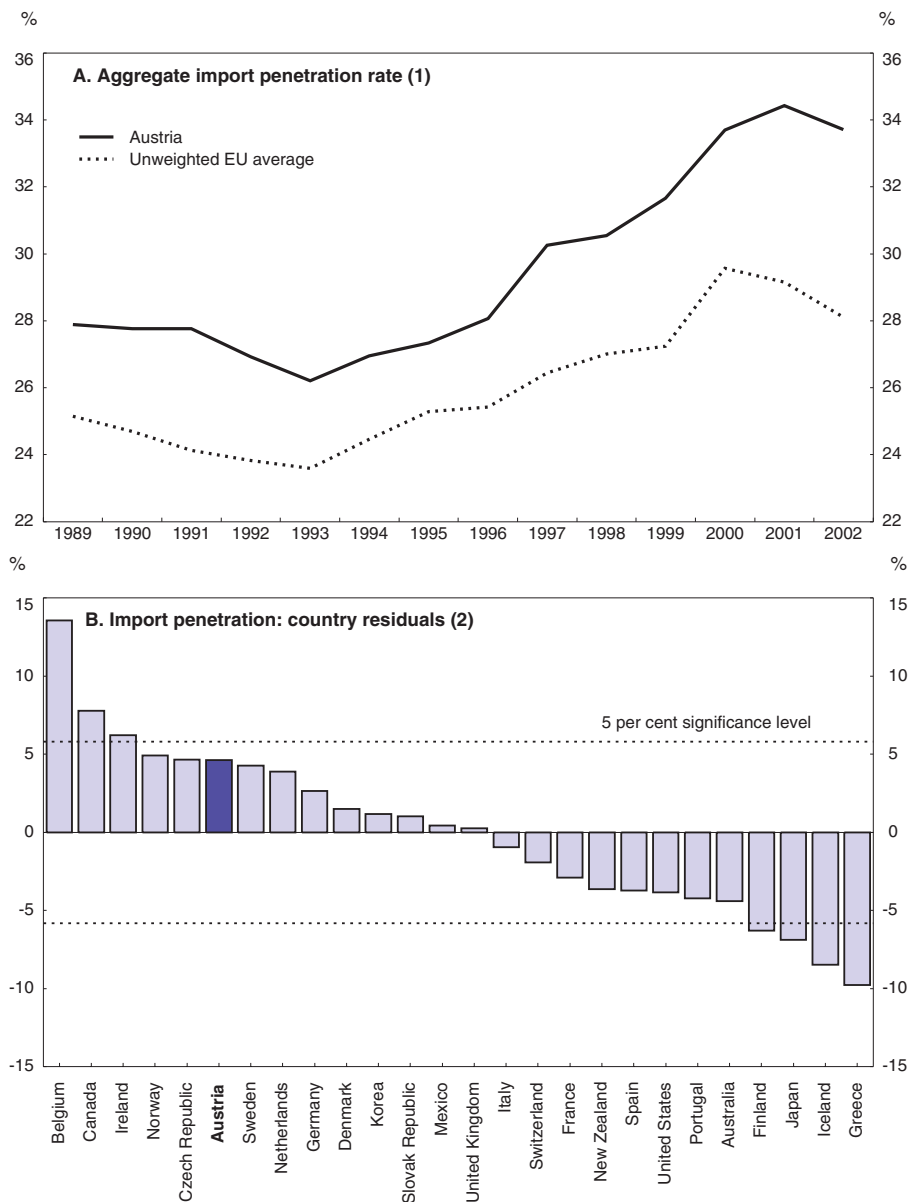
3. R&D expenditure as a percentage of domestic product of industry in 1999 (1998 for Austria).

4. High-R&D industries' share of manufacturing value added. The figures pertain to 1997 for Japan; 2000 for Germany and the United States; and 2001 for Austria.

Source: OECD, STAN database, OECD (2001).

European Union, of unrestricted parallel importing also contributed to market openness.⁶¹ The opening of the eastern European economies has been particularly important for Austria. Estimates indicate a cumulative boost to output of more than 3 per cent over the 1990s, although the long-term effect is likely to be significantly smaller (Breuss and Schebeck, 1999).⁶² These gains have come about via lower import prices and higher import penetration. The aggregate import penetration rate rose by 6 percentage points between 1990 and 2002, while the average (unweighted) increase for all EU countries was 3 percentage points over the same period (Figure 18). When adjusted for country size, standards of living and transportation costs, the import penetration rate slightly exceeds the international norm. The comparatively sharp rise in import penetration since 1990 is likely to have been spurred by the preparation for the EEA (from 1993) and subsequent full EU membership, which imposed comprehensive structural reforms over a short period. Starting from a backlog position, Austria caught up considerably on the transposition of internal market directives between 1992 and 1995 (European Commission, 2002a). According to some studies, EU membership boosted GDP growth by as much as ½ percentage point per year in the second half of the 1990s (see for example Breuss, 2001).

Figure 18. Indicators of market openness



1. Imports relative to import + GDP.

2. Residuals after control for effects of country size, GDP per capita and transportation costs.

Source: OECD, *Monthly Trade Statistics* and OECD Secretariat.

Thus, there is clear evidence that product market competition was invigorated during the 1990s by closer international integration, to the benefit of consumers. It is not unlikely that the combination of the eastern opening and the EU accession may account for the larger part of the difference between Austria's productivity growth over the 1990s and the European average. It is also possible that the boost to productivity growth from these factors will soon start to peter out, or is already fading. This would be consistent with the observed decline in average annual labour-productivity growth from 2½ per cent between 1990 and 1998 to 1¾ per cent in the four years to 2002.⁶³ However, this deceleration in productivity growth may be temporary or may reflect factors unrelated to product market competition. Looking ahead, the imminent EU enlargement could stiffen competition from abroad and may induce a further temporary boost to productivity. On the other hand, additional competition-enhancing structural reforms may be required if the favourable growth record of the 1990s is to be preserved in the years to come.

Competition law and enforcement

The most important general competition rules are set out in the Cartel Act and the Competition Act.⁶⁴ The former contains all rules on cartels, vertical agreements, abuse of dominance, mergers and enforcement procedures, while the latter contains provisions relating to the Federal Competition Authority (FCA), which was established as part of a new legal framework for competition policy that came into effect on 1 July 2002. This reform has brought Austrian competition law closer to the international mainstream, although certain special features have been preserved.

The institutional settings

The principal responsibility for applying competition law rests with the FCA and the Cartel Court. The FCA is not bound by instructions of the government. The FCA has no independent rule-making powers and it cannot impose fines on its own accord. Instead, the Cartel Court is the court of first instance in practically all proceedings that relate to the Cartel Act. Prior to the reform in 2002 the panels of the Cartel Court consisted of a professional judge and two expert lay judges nominated by the social partners (chambers). Moreover, decisions were strongly influenced by the expertise of the Joint Committee on Cartel Matters, an official advisory committee in which solely the social partners were represented. This dominant influence of interest groups seriously compromised the Cartel Court's impartiality and had become subject to increasing criticism (OECD, 2001a). Following last year's overhaul of competition law, the advisory committee was abolished and court panels now comprise two expert lay judges and two professional judges including the head of panel, who has the casting vote (Table 12).

Table 12. **Competition law enforcement: the institutional settings**

| | Federal Competition Authority (FCA) | Public Prosecutor in Cartel Matters (PP) | Competition Commission (CCom) ¹ | Cartel Court (CC) |
|--|--|--|--|--|
| Main functions | Investigate notified mergers and possible violations of the Cartel Act. Start proceedings against offenders before the CC. Co-operate with and support the EC Commission in its own antitrust cases. | According to the Cartel Act the role of the PP is to "represent the public interest in competition matters". The PP is intended a supplementary role only. | The CCom is an advisory body to the FCA in merger cases. Also, it issues annual recommendations on priority areas for the FCA's work. | Court of first instance in all matters of competition law (all CC rulings may be appealed by the FCA, the PP or the companies involved to the Cartel High Court) |
| Initiating rights | May initiate examination proceedings in all matters provided for by the CC and may appeal CC-decisions to the Cartel High Court. | The PP has the same rights as the FCA to initiate CC examinations and to appeal CC rulings. | The CCom may request the FCA to start examination of notified mergers. While the FCA is not bound to comply with such recommendations, it must make public its arguments for not doing so. | The CC has no rights to initiate proceedings. |
| Investigative powers | Comparable to international norms. Include requests for information and, where there is reasonable suspicion of an infringement, official searches on business premises based on a CC-issued search warrant. | The PP has no investigative powers of its own, but may ask the FCA to start investigations. | None. Members of the CCom have the right of access to merger notification documents. | Following the Austrian procedural law in competition matters, the court is obliged to participate actively in the fact finding procedure. It can do so by questioning witnesses, appointing an official consultant to the court, requesting the FCA to obtain information and other means. |
| Decision making powers | None. | None ² | None ² | The Cartel Court takes all decisions in subject matters. |
| Members/staff resources | Some 20 staff. | No staff resources over and above the Public Prosecutor and the Deputy Public Prosecutor. | The CCom consists of eight, in principle independent, expert members. It does not have its own secretariat. | The CC has 6 professional judges. It has formed 5 panels, each consisting of two professional judges (including the court president, who has the casting vote) and two lay judges. |
| Relationship with policy makers and chambers (social partners) | Fully independent. The Director General is appointed by the government. | Bound by instructions from the Minister of Justice. | The members are appointed by the government, four of which following a proposal by the social partners (one by each of the three main chambers and one by the Austrian Trade Unions' Association). | The chambers of labour and commerce each appoint one lay judge. |

1. In terms of competition law enforcement, the role of the CCom is more limited than the roles of the other three bodies.

2. If the FCA and the PP decide, however, not to refer a case to the CC (possibly after having negotiated remedies with the parties to address competitive concerns) the merger is deemed approved.

Source: Stockenhuber (2002), Ministry of Economic Affairs and Labour (2002); Kartellrecht (2002).

The Public Prosecutor in cartel matters (PP) and the Competition Commission (CCom) have supplementary and/or advisory functions. The PP is a legal institution under the Ministry of Justice, and is bound by ministerial instructions. Its main function is to represent the “public interest”. In merger cases, for example, if the FCA is prepared to issue a clearance, the PP may request an examination to be conducted by the Cartel Court. The CCom is a permanent advisory body to the FCA with two main functions.⁶⁵ The first is to recommend, in an annual report, areas of priority for the future work of the FCA. Secondly, in merger cases the CCom can give recommendations. Most importantly, it may recommend that the FCA initiate an in-depth review at the Cartel Court. While the FCA is not obliged to comply with such recommendations, it must make public its arguments if it chooses not to do so. Notwithstanding the FCA's independence, this intricate system which allocates competencies to several players makes competition enforcement less transparent than in most other OECD countries and may adversely affect its effectiveness, particularly in the area of merger control.

Key features of the legal framework

In its substantive rules, the legal framework for competition policy has converged toward EU law, although material differences remain in a number of areas. The concept of market dominance plays a key role in the Cartel Act (Box 5).

Merger control regulation

The Cartel Court must prohibit mergers, acquisitions, joint ventures and certain other concentrations, which create or strengthen a dominant market position.⁶⁶ However, the Cartel Act includes a “general interest” exemption, stating that a merger must be allowed if it leads to “an improvement of the conditions of competition, which surmounts the disadvantages of market dominance” or if it is “necessary for the maintenance or improvement of the international competitiveness of the undertakings involved and is at the same time justified from a national economic point of view”. While similar exemptions exist in some other countries' laws, in Austria their applicability has not clearly been established.

The merger review process differs from the international mainstream in two major aspects. First, up to four different bodies may be involved in the first phase review of a notified merger. There is a question whether this institutional set-up results in an efficient use of resources, provides enough opportunity for expedited reviews of uncontroversial mergers, and furthers the goal of greater transparency in the review process. Second, the FCA is not responsible for second phase examinations. While such investigations can be initiated only if FCA or the PP files a request, it is for the Cartel Court to decide how the review process should be organised. Because the Cartel Court does not itself have the resources to carry out in-depth examinations – due to requirements of the Austrian procedural

Box 5. Definition of market dominance in Austria

Abuse of a dominant market position, such as discrimination, predatory pricing or resale price maintenance is prohibited. Market dominance is defined in the Cartel Act by the use of both qualitative and quantitative criteria. A dominant position exists if an undertaking:

- is exposed to no or no substantial competition;
- has, in relation to its suppliers or users, an overreaching market position (economic dependence). Such a situation is deemed to exist if the suppliers or users depend crucially on the maintenance of the business relation with the merging undertakings concerned;
- has, in relation to its competitors, an overreaching market position (dominance);
- if an undertaking reaches one of the following market shares in the whole of Austria or in a smaller relevant market it has to prove that such market dominance does not exist; i) a market share above 30 per cent; ii) a market share above five per cent and exposure to only two competitors, and: iii) a market share above 5 per cent and belonging to a group of four undertakings with a combined market share of at least 80 per cent.

Only a minority of OECD countries applies explicit quantitative criteria to define – or create (reputable) presumptions of – market dominance. The United Kingdom applies a 30 per cent threshold as in Austria, while Denmark, Sweden and Australia all use a 40 per cent threshold.

law – is part of the standard procedure that the Cartel Court assigns an outside expert as official consultant to the court to provide an expert opinion. The CC can rely on the FCA's expertise only to a very limited extent, primarily because of the rules governing investigations by the CC. It would seem preferable to entrust a more central role during both the first phase and the second phase reviews to the FCA. This would help to build expertise in one single entity and ensure greater consistency and transparency in the review process.

Restrictive agreements

Agreements between competitors that restrict competition are subject to rules which are both detailed and rather complicated. While in principle such agreements and concerted practices are always prohibited, they may be exempted from the prohibition by ministerial regulation⁶⁷ or authorized by the Cartel Court upon application. Even hard-core restrictions, such as price fixing and group boycotts are not *per se* unlawful and can in principle in certain circumstances be authorized by the CC. So-called *de minimis* cartels are not prohibited, but can be

prohibited upon request.⁶⁸ Likewise, agreements and concerted practices that have only the effect (but not the purpose) of restricting competition are legal, unless prohibited by the Cartel Court. The complexity of the law tends to make compliance and effective enforcement unnecessarily burdensome. On balance, restrictive agreements among competitors appear to be treated more leniently than in other OECD member countries.

Since theoretical predictions about the economic effects of vertical restraints depend on the circumstances, it is maybe not surprising that policy differs across jurisdictions. The prohibition principle, supplemented by certain exemptions, has been adopted in EU law and in the majority of EU member states. In contrast, Austrian competition law rests, fundamentally, on the abuse principle. With the exception of resale price maintenance (RPM), in general ties between upstream and downstream firms are allowed unless they are “not economically justified”.⁶⁹ All agreements must be notified to the Cartel Court (*i.e.* there are no *de minimis* rules) and can be prohibited by the Court upon request of the FCA, the PP, the Chambers and certain other interested parties.

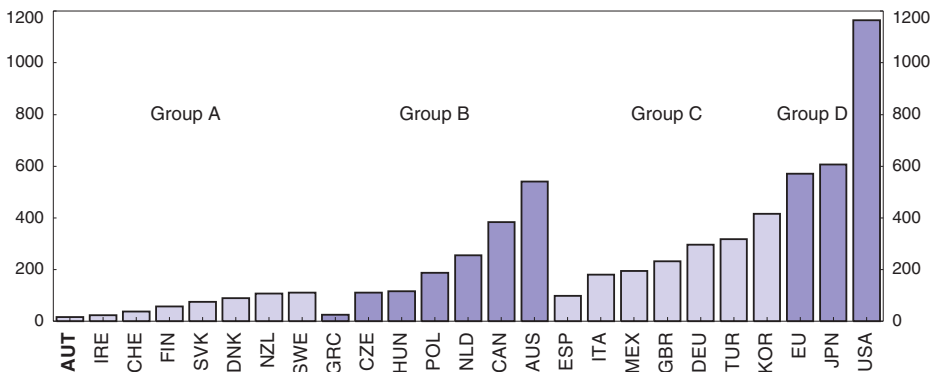
In the past, the obligation to notify was but a formality and virtually no enforcement action took place.⁷⁰ The only certain effect of the regulation was to impose unnecessary work and costs upon firms. The FCA recently has begun to review all newly notified agreements and urges modifications in certain cases. Special emphasis is given to automobile distribution as the industry is currently restructuring its distribution system on account of the Commission Regulation (EC) 1400/2002. Generally, firms follow the FCA's requests as otherwise a request for prohibition would be filed before the CC. There is a question whether the current situation in which the FCA reviews all agreements limits the FCA's ability to set enforcement priorities and, more generally, the effectiveness of competition law enforcement in this area. It should be considered adopting a regime that focuses on vertical agreements where at least one party has appreciable market power, as those agreements are most likely to have anticompetitive effects. In this context, approximation of the Austrian rules concerning vertical arrangements to EU competition law rules should be considered.⁷¹

Enforcement

The Cartel Act is subject to various exemptions, which tend to reduce its effectiveness. RPM is allowed for books, art, music recordings, newspapers and magazines. Furthermore, the law is not applicable to state-owned monopolies and affairs under the legal authority of regional governments (except electricity companies). The scope of these immunities is difficult to assess. They appear to be relatively generous by international standards.⁷² Some of them, such as those concerning state-owned monopolies and government regulated conduct, appear to be of minor practical importance.

While the FCA is entrusted with standard investigative powers, including on-site “dawn raids,” its capacity to effectively enforce competition law remains inadequate. Understaffing is the most obvious short-term problem. With staff of 22 persons, the FCA has fewer resources than competition authorities in virtually all other OECD countries (Figure 19). The lack of economic expertise is of particular concern. At present, almost all activity is reactive rather than proactive, and largely confined to dealing with pending merger cases. The new, more decentralised, EU enforcement regime coming into force as from 2004 is likely to increase the FCA’s workload.

Figure 19. **Staff resources of competition authorities in OECD countries¹**
2001²



1. Public resources for enforcement and for development of general competition policy, the figures may include ministry policy office as well as the enforcement office or agency, and may include resources of public prosecutors that are applied to competition enforcement. Countries have been grouped according to population (millions): group A: 0-10, group B: 10-40, group C: 40-100 and group D: +100. Within each group, countries are ranked from lowest to highest staff level.

2. Except Netherlands, 2002.

Source: OECD.

Besides the initiation of investigations on its own, important priorities for the FCA should be to create a public record of its activities and to engage in competition advocacy. Such activity is important in order to promote overall transparency and strengthen awareness about competition issues in the general public and among businesses. However, owing to inadequate resources, the short time that the FCA existed, and an FCA policy to informally resolve cases, these fields have been neglected so far.⁷³ By way of illustration, the few publications which the FCA has released to date are very general and lack any specific information about competition policies pursued by the FCA that could serve as guidelines to private parties. This applies to the handful of notices concerning cases in which the

authority decided to intervene, including recent conspicuous merger cases,⁷⁴ but also to the FCA's first Annual Report. No explanatory guidelines have been published.

Criminal sanctions were largely abolished with the recent reform. Participation in bid rigging cartels, however, continues to be subject to criminal sanctions.⁷⁵ Financial penalties comparable to those applied in EU law, *i.e.* with a maximum of € 1 million or 10 per cent of total annual company turnover, were introduced instead. The abolition of criminal sanctions followed pressure from business organisations and was justified by the Austrian authorities by the fact that criminal sanctions were virtually never imposed in practice. However, criminal sanctions have proved to be an important element in an effectual overall enforcement regime in some other countries. Therefore, criminal sanctions should be considered for hard core cartels and co-exist with financial penalties. Leniency programmes exist in some OECD countries, offering, on certain conditions, a lenient treatment, and possibly amnesty, to companies or individuals that have been involved in cartels and who approach the authorities with information and co-operate in disclosing such activities. In particular, a leniency programme could impair the stability of cartels and reduce overall enforcement costs, but has been deemed unfamiliar to Austrian legal traditions.⁷⁶

Regulatory policies

With a view to assessing the role of regulatory policies, this section addresses key competition issues in network industries, retail distribution and professional services. These activities account for some 35 per cent of Austria's total value added and 50 per cent of output in the non-agricultural business sector. Compared with manufacturing these services industries have traditionally been subject to more extensive regulation and are much less exposed to international competition.

Network industries

All OECD countries have undertaken regulatory reforms in network industries over the past two decades. There is solid evidence that, most often, such reforms have paid off to the benefit of consumers. However, there are also examples of less successful reforms or outright failures, which demonstrate that careful attention to the design of reforms is key. Austria has fully opened up its telecommunications (1997), electricity (2001) and gas (2002) sectors in advance of the deadlines imposed by EU directives. Likewise, the railway sector will be opened up as of 2003, one year ahead of the EU-imposed deadline.

Separate regulatory bodies have been set up for each of the network industries (energy, telecommunications and railways). Their responsibilities typically include general monitoring of the competitive situation, arbitration of disputes between incumbents and other market participants, setting of network

access charges and handling of various industry-specific issues. The application of competition law proper, *i.e.* merger control and antitrust rules, is mostly under the remit of the FCA and the Cartel Court. Regulators, however, can bring actions pertaining to abuse of dominance before the Court. Each of the sector regulators has significantly higher staff levels than the FCA. The legal frameworks under which the regulators operate share some key features. For example, Austria has appropriately opted for regulated third-party access to networks in all areas. The regulators are all independent of the government in their current operations and decisions, but their directors are appointed directly by ministers rather than by a professional board or parliament.

As in other countries, liberalisation has progressed furthest in the telecommunications industry. The incumbent's market share, while still very high, has declined noticeably and new service providers have entered the market (OECD, 2001a). Nonetheless, the telecommunications regulator needs to maintain a proactive stance, as there remains considerable scope for reducing prices (see Box 8 below). On balance, however, barriers to entry and still-to-be-addressed regulatory issues are fewer, and less significant, than in most other network industries. In the energy sectors, for example, supply structures generally remain characterised by very high concentration and market segmentation, which seriously limit consumer choice. The subsequent section analyses in more detail the state of play in the electricity sector, while the scope for further reforms in network industries at large is discussed in the concluding section of the chapter. The rationale for singling out the electricity sector for a closer review is that, in contrast to gas and railways, some first post-reform experience has been obtained, while, on the other hand, the scope for further policy action is greater than in the telecommunications industry.

Electricity

Starting with the introduction in early 1999 of free supplier choice for large customers, a step-wise reform of Austria's power sector has been implemented in recent years. A new sector regulator, E-Control, was set up at the beginning of 2001. Formally E-Control consists of two different working parts. E-Control private limited company serves as the operating office for the three-member E-Control Commission, which is independent of the government and has been entrusted with considerable strength and jurisdictional reach. The Commission takes the formal decision on network charges, arbitrates disputes between market participants and decides on most issues specific to compensation in the electricity sector. The main task for E-Control plc is to promote competition in the electricity sector. This involves, *inter alia*, ongoing monitoring of compliance with current law, promotion of market transparency and issuing of (or providing input to) new market rules.

The Electricity Act prescribes regulated third-party access. When E-Control started to operate, network charges were very high relative to long-term costs and

displayed huge regional differences. At that time the most imminent task for the E-control was therefore to have network access charges reduced. Considerable progress has been made on this count. The average charge has been cut by half and regional disparities have diminished. Nevertheless, network access is still some 50 per cent more expensive than the rates typically seen in other EU countries (Table 13), and further reductions are required.

Full liberalisation of the demand side was accomplished in late 2001, when the possibility to choose supplier freely was extended to all customers. Consumer switching rates have risen gradually since then, following broadly the same pattern as in countries that liberalised the electricity sector earlier. In this process, market transparency has been furthered by easy-to-access on-line price information provided by E-Control. The combined effect of market forces and regulator-imposed lower access charges has resulted in lower prices to the benefit of consumers. Pre-tax electricity prices have declined for all customer groups, from large scale business consumers to households.⁷⁷ Between early 1996 and early 2002 prices for small and medium sized business consumers and for households fell by 10 and 45 per cent, respectively (Figure 20). The greater decline for business customers is similar to patterns seen in other countries, although it is more pronounced in Austria.⁷⁸

The full liberalisation of the demand side has not, as yet, been accompanied by any major changes of the ownership structure. Constitutional provisions stipulate that federal or provincial governments must have majority shareholdings in electricity companies, and private investors' voting rights are limited to five per cent of the share capital.⁷⁹ These ownership restrictions obviously create high entry barriers and allow public enterprises to preserve extensive dominance at all stages of production and distribution (Box 6), a situation that is unlikely to change anytime soon. At some 65 per cent the market share of the three largest generating companies is high, albeit not above the average of other EU countries. In addition to the high-market concentration, the company structure is tangled into a web of cross-holdings, the federal incumbent having sizeable stakes in some regional utilities and *vice versa*.

The trend towards greater concentration is ongoing, most recently with the agreement on the so-called "Austrian energy solution". This alliance (*Energie Austria*) is a joint venture between the federal incumbent (*Verbund*) and a group of provincial utilities of their sales and distribution activity *vis-à-vis* large industrial customers. The participating companies' share of total power generation is almost 70 per cent. Since more than one third of the new company's turnover is outside of Austria, the merger falls under the exclusive jurisdiction of the European Commission. The Commission initiated an in-depth examination because it is concerned that the transaction might lead to the creation of dominant positions in several electricity markets in Austria, but ultimately cleared the merger with conditions.

Table 13. Indicators of regulation and competition in the electricity market in EU countries, 2002¹

| | Date of full opening of demand | Unbundling | | Reserve capacity per cent | Concentration (CR3) | | Concentration HHI ⁵ | Potential competition from imports ⁶ | Net access charge ⁷ | |
|--------------------|--------------------------------|---------------------------|---------------------------|---------------------------|-------------------------|--------------|--------------------------------|---|--------------------------------|-------------|
| | | Transmission ³ | Distribution ³ | | Generation ⁴ | Retail sales | | | Medium voltage | Low voltage |
| Austria | 2001 | L | A | 34 | 45/70 | 67 | 2 028 | 21 | 20 | 65 |
| Belgium | 2003 | L | L | 2 | 96 | 53 | 6 118 | 25 | 15 | n.a. |
| Denmark | 2003 | L | L | – | 78 | 38 | 4 018 | 39 | 15 | 25 |
| Finland | 1997 | O | M | – | 45 | 33 | 2 472 | 22 | 15 | 35 |
| France | – | M | A | 16 | 92 | 90 | 9 606 | 12 | 15 | 50 |
| Germany | 1999 | L | A | 5 | 64 | 50 | 1 756 | 11 | 25 | 55 |
| Greece | – | L | A | 7 | 97 | 100 | 10 000 | 12 | 15 | n.a. |
| Ireland | 2005 | L | M | –2 | 97 | 90 | 9 418 | 7 | 10 | 40 |
| Italy ² | 2004 | O | L | 9 | 69 | 72 | 5 560 | 14 | 10 | n.a. |
| Luxembourg | – | M | A | – | n.a. | 100 | 8 158 | 100 | 20 | n.a. |
| Netherlands | 2003 | O | M | 7 | 59 | 48 | 1 814 | 19 | 10 | 35 |
| Portugal | 2003 | L | A | 13 | 82 | 99 | 4 008 | 30 | 15 | n.a. |
| Spain | 2003 | O | L | 16 | 83 | 94 | 2 466 | 4 | 15 | 45 |
| Sweden | 1998 | O | L | – | 90 | 47 | 2 538 | 29 | 10 | 40 |
| United Kingdom | 1998 | O | L | 12 | 36 | 42 | 1 044 | 3 | n.a. | 40 |

1. The information to 2002, except for the concentration rates (2000).

2. The market opening in 2004 concerns non-household customers only.

3. Unbundling concerning operators. A = Accounting, L = Legal, M = Management and O = Ownership.

4. The European Commission's estimate (45 per cent) is too low. The combined market share of the federal incumbent and the two largest regional utilities is approximately 70 per cent.

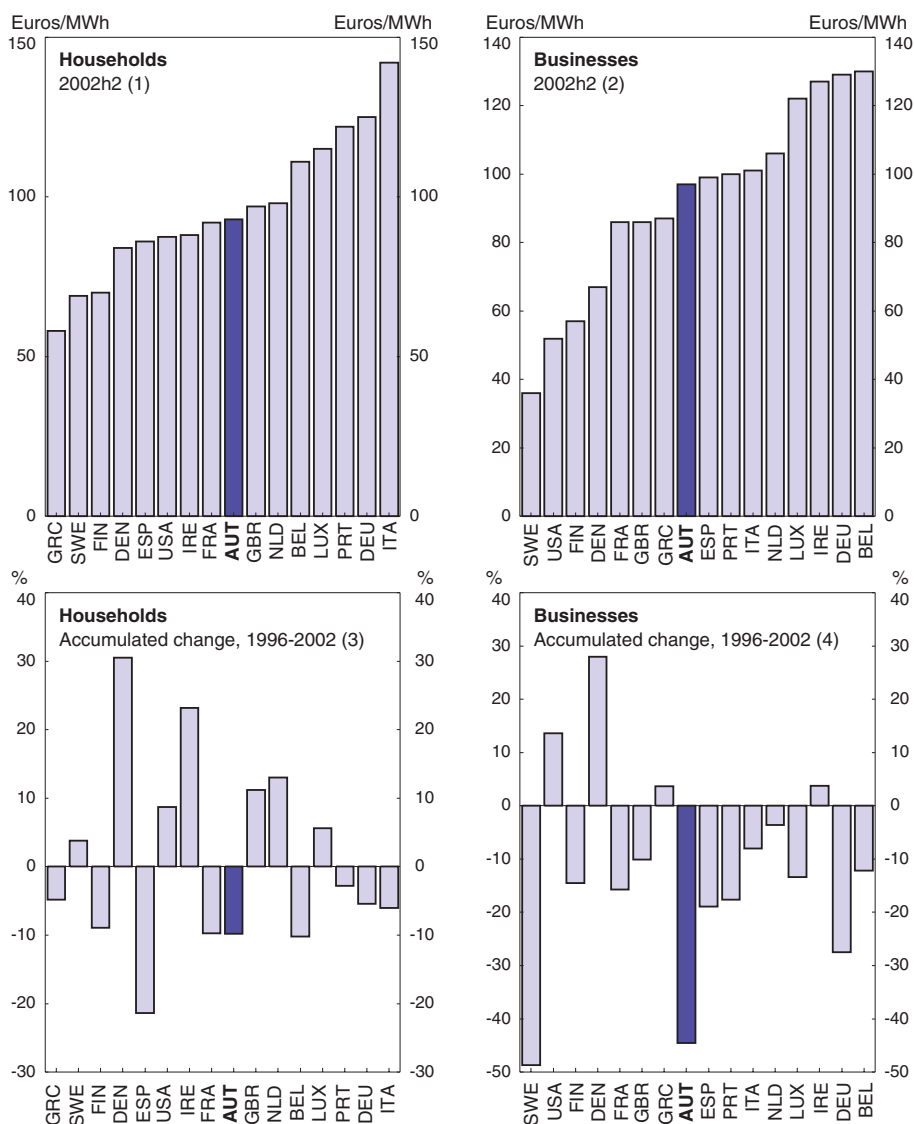
5. A market is generally considered competitive with a HHI < 1 000, moderately concentrated with HHI < 1 800, and highly concentrated with HHI > 1 800.

6. Per cent of domestic generating capacity.

7. Estimated average charge, €/MWh.

Source: European Commission (2002b); AEEG (2002).

Figure 20. Electricity prices in Austria and selected OECD countries



1. Except United States: 2002q3.

2. Except Netherlands: 2001h2 and United States: 2002q3.

3. Changed from 1996h1 to 2002h2, except Sweden: 1996h2-2002h2 and United States: 1996q1-2002q3.

4. Change from 1996h1 to 2002h2, except Netherlands: 2002h1-2001h2, United Kingdom: 1996h2-2002h2 and United States: 1996q1-2002q3.

Source: Eurostat and IEA, *Energy Prices and Taxes*.

Box 6. Electricity market fact sheet

Austrian law requires federal, provincial or local governments to have a shareholding of at least 51 per cent in all electricity producing companies with a generating capacity above 200 kW or with a supply greater than two times their self-generation (OECD, 2002b). Electricity utilities exist at each of the three levels of government. In addition to the majority shareholdings by the respective governments, there are considerable horizontal and vertical cross-holdings.

The largest producer, *Verbund*, operates throughout the country. The federal government holds a 51 per cent stake, while utilities controlled by provincial and local governments own an additional share of 25 per cent. In 2000, the *Verbund* supplied 49 per cent of total generation, the large majority being based on hydro-electric power. The company also owns and operates Austria's high voltage transmission grid. Most of its generation is sold on the wholesale market to provincial utilities, which in turn re-sell this power onto final consumers. However, *Verbund* sells some 15 per cent of its production directly to end customers, mostly large manufacturing companies. Hence, *Verbund* is not only omnipresent geographically, it is also active at all levels of the value chain, except household retailing. The company's different activities are functionally unbundled into separate companies, but these all operate under the *Verbund* holding company structure.

The provincial electricity utilities generated some 40 per cent of the country's total power supply in 2000. These companies also engage in non-electricity activities such as natural gas sales, district heating and transportation. Furthermore, they own a small share of the high-voltage transmission lines and all of the lower voltage distribution lines in their respective territories. Following the liberalisation of demand, five of the provincial utilities formed a strategic alliance, *Energie Allianz*, in 2001. The participating companies have agreed to market their electricity together on the retail market and to work together in the trading on the wholesale market. Retailing of electricity to household consumers is managed mainly by smaller utilities at the municipal level, which also own both low-voltage distribution lines and occasional power stations.

Owing to heavy investment in power generation over the past twenty years and long-term import contracts, electricity supply is abundant in Austria. While minor distribution bottlenecks exist in a few areas (OECD, 2002b), aggregate generating capacity is one-third higher than peak demand. Excess capacity of this magnitude is higher than in most other countries and the implied low capacity utilisation rate tends to reduce capital productivity and might act as a deterrent to entry. There are some 150 grid operators, but the ten largest (*i.e.* the *Verbund* and the nine provincial utilities) own 98.5 per cent of the transmission and distribution system.

The E-Control, too, had expressed its concern. However, although it had raised concerns as well, the FCA did not request that review of the merger be referred to it, by the Commission, even though the potential competition problems pertain only to domestic markets. The FCA justified its decision on the grounds that questions concerning the electricity industry are deeply imbedded in the Internal Market

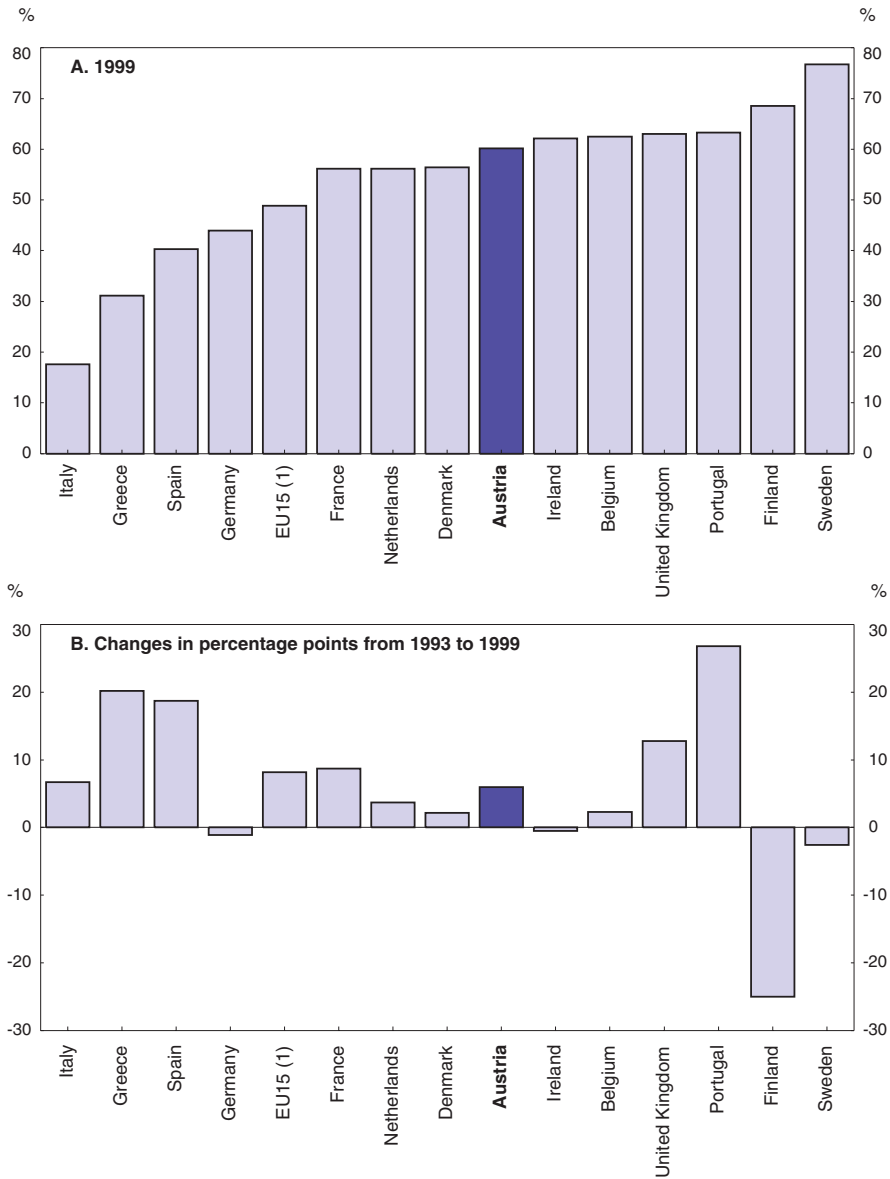
project and that an examination of the case by the Commission avoided speculation of political interference. The merger has strong domestic political support,⁸⁰ partly due to a widespread perception in Austria that further consolidation in the electricity sector is vital in order to safeguard the future competitiveness of domestic firms in the liberalised EU market. This is a misguided aim if it leads to higher prices for domestic customers, and it would tend to weaken the competitiveness of other firms. Moreover, if the merger is approved on the basis of a broad definition of the relevant market, *Energie Austria* might take advantage of its current dominant position in domestic markets to impede entry and prevent the larger market from ever materialising. Thus, there is a risk, at least in Austria, that the liberalisation at the EU level could elicit pressure to cement incumbents' already strong market power.

In summary, the liberalisation of demand and the action taken by E-Control have led to measurable benefits for consumers. Nevertheless, network access charges are still considerably higher than the international norm. These high charges are jeopardising competition, since they boost potential entrants' cost level, while making it possible for incumbents to pursue predatory pricing strategies. Little change has occurred on the supply side of the industry, which remains characterised by extensive vertical integration and is dominated by government-owned companies. The scope for cross-subsidisation is considerable and such practices are believed to be widespread (E-Control, 2002). Further reforms are required, aiming, *inter alia*, to ensure greater vertical separation, thereby curbing the scope for cross-subsidisation. This would facilitate a continued reduction of network access charges. Moreover, the current restrictions on ownership and voting rights should be discontinued as they, too, increase entry barriers and undermine those reforms that have been implemented. Unfortunately, concentration in the sector has risen further of late.

Retail distribution

Market concentration has risen considerably in retail distribution over the 1990s (Aiginger *et al.*, 1999), a trend that Austria shares with many other countries. In food retailing, the combined market share of the largest five retail groups grew from 54 per cent in 1993 to 60 per cent in 1999 according to Dobson *et al.* (2001), and it has risen further since then.⁸¹ Among the EU countries, this share is significantly higher only in Finland and Sweden, while it is of similar size in Belgium, Ireland, Portugal and the United Kingdom (Figure 21). In addition to fairly high concentration there is some evidence that mark-ups are comparatively high (see Figure 17 earlier). The high and increasing concentration is driven, in large part, by the mounting importance of economies of scale and scope.⁸² Concern has been voiced, for example by the CCom, that weak downstream competition may prevent such benefits from being passed on to consumers, and the FCA has

Figure 21. **Five-firm market concentration in grocery and daily goods retailing in EU countries**
1993-1999



1. Weight average.

Source: Estimates based on data from Corporate Intelligence on Retailing's European Retail Handbook. Reported in Dobson *et al.* (2001).

identified food retailing as a priority area for the imminent future. Increasing market concentration raises other issues as well. In particular, it affects vertical relationships, as the balance of power between suppliers and retailers changes. In cases where suppliers have substantial upstream market power the upshot may be the creation of bilateral oligopoly structures. This may be more conducive to competition than dominant suppliers or retailers, particularly if inter-brand competition between different vertical structures is fierce. By contrast, in segments where large retailers face suppliers without similar leverage in upstream markets, buyer power might be exercised to tie suppliers and squeeze their profitability, and to limit shelf space for new producers, thereby creating or raising barriers to entry.⁸³

Austria's distribution sector is characterised by a relatively low outlet density, while the average number of employees per outlet is among the highest in the EU (Table 14). This reflects a very low incidence of small owner-operated shops, which, in turn, may be due to the fact that entry into commerce has been regulated by strict qualification requirements until recently (see later). The low outlet density and high number of employees per outlet might be expected to be

Table 14. **Key structural features of the retail distribution sector, 2000**

| | Outlet density ¹ | Employees per enterprise | Retail distribution, total value added per employed person ² | Value added per unit of labour costs ² | Non-specialised stores ³ | |
|---|-----------------------------|--------------------------|---|---|--|---|
| | | | | | Share of total output in retail distribution | Value added per unit of labour costs ² |
| Austria | 43 | 7.7 | 100 | 100 | 20 | 100 |
| Belgium | 80 | 3.5 | 100 | 97 | 35 | 111 |
| Denmark | 47 | 8.1 | 95 | 101 | 39 | 110 |
| Finland | 46 | 5.0 | 121 | 112 | 44 | 126 |
| France | 64 | 4.2 | 123 | 106 | 37 | 127 |
| Germany | 35 | 9.0 | 104 | 118 | 33 | 124 |
| Ireland | 36 | 9.3 | 87 | | 41 | |
| Italy | 130 | 2.2 | 75 | 73 | 31 | 92 |
| Netherlands | 54 | 8.5 | 74 | 119 | | |
| Portugal | 150 | 2.5 | 40 | 83 | 31 | 114 |
| Spain | 133 | 2.8 | 68 | 99 | 32 | 123 |
| Sweden | 65 | 4.3 | 120 | 90 | 34 | 103 |
| United Kingdom | 36 | 14.2 | 91 | 126 | 43 | 147 |
| European Union excluding Italy, Portugal, Spain | 71 | 6.3 | 92 | 102 | 35 | 116 |
| | 51 | 7.4 | 102 | 108 | 36 | 119 |
| Norway | 68 | 6.0 | 103 | 100 | 40 | 116 |
| Switzerland | 56 | 6.8 | 91 | | | |

1. Number of enterprises per 10 000 inhabitants.

2. Austria = 100.

3. Includes large-format outlets such as hypermarkets and department stores.

Source: Eurostat, New Cronos.

conducive to high productivity. However, productivity appears to fall short of the levels in many comparable countries. Moreover, the prevalence of large-format outlets is remarkably low, and unit costs are high. These features can be traced down to the “non-specialised stores” segment, where productivity is some 16 per cent below the EU average. This loss of efficiency is only partially offset by higher productivity in other parts of the retail sector.⁸⁴ An alignment of productivity in retail distribution to top European levels would imply a boost to the level of aggregate productivity of at least ½ per cent and possibly more than 1 per cent.

The likelihood is that the weak productivity performance results directly from prevailing regulatory policies. OECD indicators suggest that, next to France, Austria had the most restrictive regulation of retail distribution in 1998 (Boylaud, 2000) and reforms that have been implemented since then remain incomplete. Both shop opening hours and establishment of large stores are subject to stiff regulations, which should be reconsidered since they impede the development of large-format stores, thereby preventing economies of scale and scope from materialising.⁸⁵

- The setting up of new outlets, particularly large ones, is regulated both by federal and provincial governments, while enforcement is largely with the latter. Of particular importance, the Trade Act prohibits the establishment of outlets with a surface of more than 800 square metres in out-of-town shopping centres if these threaten the “local supply of daily necessities”. In practice this has been administered stringently and very few large outlets have been permitted. In part, this reflects the fairly broad range of goods being considered as daily necessities, but it may also be relevant that the social partners, representing incumbents’ interests, take part in the decision-making bodies.
- The Shop Closing Act limits shops’ maximum weekly opening time to 66 hours per week within certain intervals. The law also stipulates a near-total ban on Sunday trading. These provisions are stricter than in virtually any other OECD country and, as a result, the average effective weekly opening time up to now is the shortest in the EU area (Table 15). Several exemptions exist, though, and it is not surprising that shops for which more liberal provisions apply take advantage of the freedom to expand their product ranges.⁸⁶ Moreover, the federal government has recently widened the legal scope for extended shop opening hours. The states can now extend the maximal opening time to 72 hours per week. Clemenz (2002) strongly questions the possible justifications for strict regulation that traditionally have been advanced in Austria. They have not protected small shops, their number being low by international standards, as has already been mentioned. Furthermore, they are unlikely to protect employment, as the experience from countries that have liberalised opening hours mostly indicates a small gain in aggregate

Table 15. **Opening hours in retail distribution in the EU, 1999**

| | Average weekly opening hours | Share of outlets open 66 hours or more per week | Maximum weekly opening hours |
|----------------|------------------------------|---|------------------------------|
| Austria | 48 | 4 | 66 |
| Spain | 48 | 6 | Variable |
| Portugal | 49 | 14 | variable |
| Denmark | 51 | 13 | – |
| Italy | 53 | 24 | 78 |
| Sweden | 54 | 9 | No limit |
| Germany | 54 | 6 | 70 |
| Netherlands | 55 | 11 | No limit |
| EU average | 56 | 22 | – |
| United Kingdom | 57 | 19 | No limit |
| Greece | 57 | 50 | – |
| Ireland | 61 | 34 | No limit |
| France | 61 | 45 | 75 |
| Belgium | 67 | 56 | 91 |

1. Data for Finland are not available.

Source: European Commission (2000), *European Economy Supplement B*, No. 5, May 2000; OECD, International Regulation Database.

employment. Also, shopping patterns *have* generally responded in those countries, which illustrate the positive effects on consumers' welfare from greater flexibility in opening hours. Even after the most recent reform, opening hours regulations are generally more liberal in neighbouring countries, and while some Austrian consumers can benefit from cross-border shopping, it would be preferable to further liberalise domestic regulations. In the same vein, the Länder should make full use of their option.

The distribution sector is very heterogeneous, and the most pertinent competition issues outside of food retailing may be quite different from those within. In particular, for many high-end consumer goods the balance of power between retailers and manufacturers is often the reverse, *i.e.* strong suppliers facing competitive retailers. Under such conditions, recommended retail prices (RRPs), rather than buyer power, may be the major concern. While resale price maintenance is subject to *per se* prohibition RRPs are generally allowed. In addition, the scope for selective distribution agreements is quite large both in Austria and elsewhere. If RRPs are *de facto* binding, for example because retailers expect sanctions from strong manufacturers for non-adherence, their economic effects are likely to be fairly similar to those of RPM. Evidence from the United Kingdom, Sweden and Denmark suggests that RRPs are widespread and can be costly.⁸⁷ For Austria, no information is available as regards the prevalence of – or retailers' *de facto* adherence to – RRPs, but the issue warrants the FCA's attention in the future.

Rules governing the importation of branded goods protected by intellectual property rights (IPR) became less liberal in the course of the 1990s. The scope for price discrimination (whereby manufacturers seek to maximise profits by setting different prices according to local market conditions and income levels) is greater if parallel imports are prohibited. Prior to entering the European Union, Austria had applied the principle of international exhaustion (*i.e.* parallel importing was generally allowed), but now follows the stricter community wide approach of regional exhaustion. The latter implies that parallel importing is feasible within the community – indeed, it is crucial for the functioning of the internal market – but not from non-member countries.⁸⁸ All else being equal, this is likely to have increased prices on some branded goods in Austria in the recent past. However, there is no clear evidence that Austrian consumers suffer from systematic price discrimination. Surveys of cross-country differences in prices of branded goods suggest that price levels in Austria are most often quite close to the average.

Regulation in trades and professions

Trades and professions in Austria are subject to a complex set of regulations, comprising both statutory provisions and significant elements of self-regulation. The most conspicuous element of the regulatory framework is perhaps the fact that membership of a Chamber is compulsory for all firms. Another salient feature is the Trade Act (*Gewerbeordnung*), which has its roots in the traditional guild-system. Attempts to assess the Trade Act's scope and significance are complicated by its immense complexity; the provisions are often specific to the individual trades and very diverse across trades. Yet, the code has undoubtedly inflicted significant distortions on competition in the past (OECD, 1990). On the other hand, regulations *have* gradually been eased over the latest decade or so. Most recently, a revised set of rules entered into force in 2002, which eased entry restrictions on a number of counts, particularly in wholesale and retail trade.⁸⁹

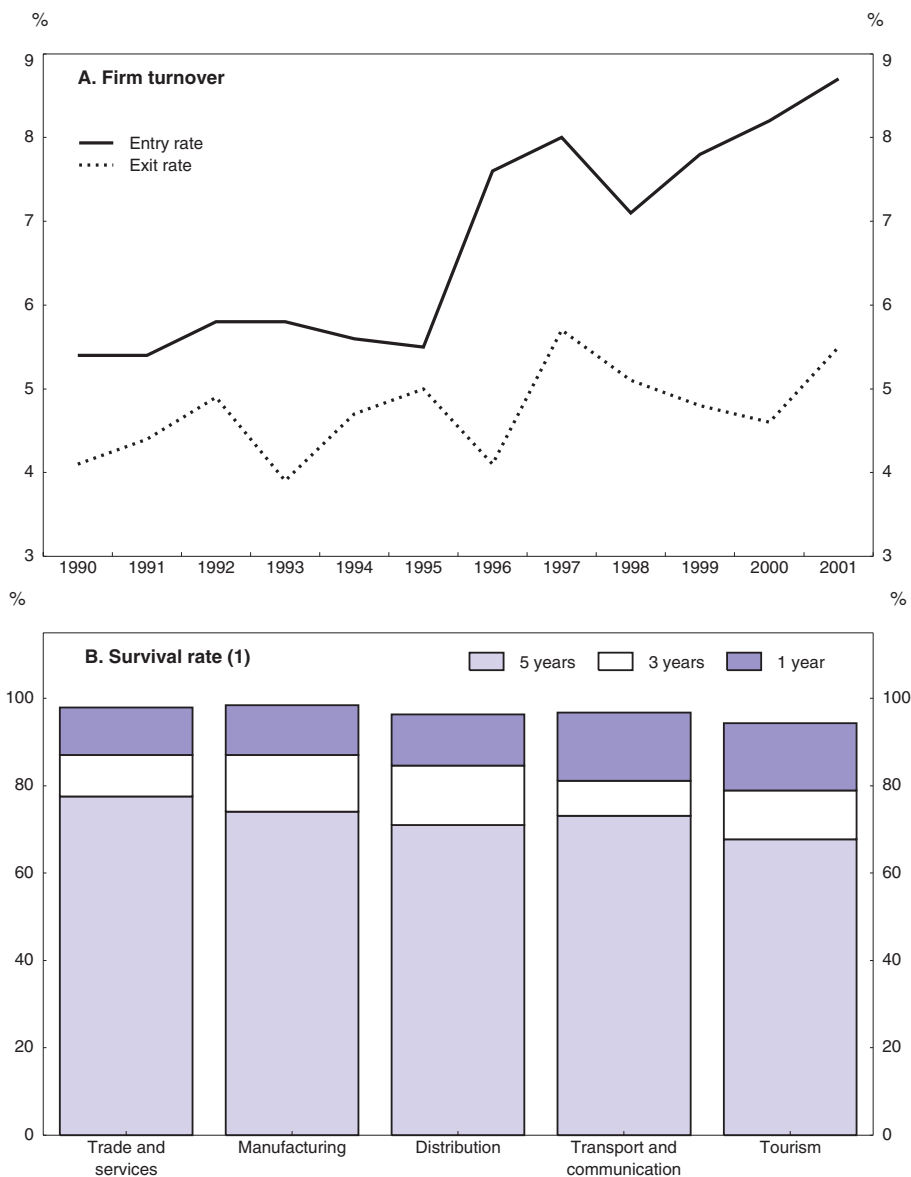
One important, quasi-general, feature of the Trade Act is the regulation of entry. In some trades, the eligibility to set up a firm is dependent on the owner having obtained a certificate of qualification. While the list of so-called regulated trades has shrunk considerably over the past decade, certificates are still required in 82 trades, including all crafts. This is likely to impede entry and lead to market segmentation. For example, individual firms are limited in their scope of operations by the owner's certificate of qualification, thereby hampering multi-disciplinary firms from emerging. Qualification requirements may help to safeguard the quality of the services being provided, but the coverage of such regulations should not be broader than necessary, and it would seem more natural if the requirements pertained to employees rather than those of the owner. In the Austrian environment, firm entry and exit rates could be expected to be fairly low. Although cross-country comparison of enterprise turnover rates is subject to considerable measurement

problems, the balance of evidence suggests that, indeed, the incidence of firm creation in Austria is low, even though it has risen in recent years.⁹⁰ Perhaps more remarkable, the survival rate of new firms is very high by international standards. More than 85 per cent of new firms are still active after three years and 75 per cent survive five years or more (Figure 22). By comparison, the typical five-year survival rate is in the range of 40-50 per cent in most other countries.⁹¹ This difference may have several explanations, but one possible interpretation is that, in combination, high entry barriers and market segmentation has reduced the threat of failure for those who manage to overcome the initial hindrances.

Regulation of liberal professions (*freie Berufe*), such as lawyers, accountants, architects, engineers and doctors, is set in separate laws, and firms operating in these areas are legally obliged to be members of their relevant Chamber. While only few studies are available which compare the regulatory framework for professions with policies in other countries, those that do exist lead to the conclusion that regulations are particularly strict in Austria. Felderer *et al.* (1998) conclude, on the basis of a comparative study of the regulatory regimes for the legal and accounting professions in Austria, Germany, England, Wales and the Netherlands, that in Austria more restrictive rules pertain to both entry conditions and ongoing operations. Barriers to entry arise from the compulsory membership of a Chamber, extensive exclusivity rights and stricter requirements to formal education and practical training. For certain professions (for example architects) the right to practice is limited to some extent by nationality requirements that exclude people without citizenship from an EEA country. Firms' possibility to compete is limited by pervasive price regulation, as recommended fee schedules tend to serve, *de facto*, as minimum prices. Furthermore, restrictions apply to advertising, and co-operation across professions is generally not possible or even prohibited. Finally, firms are generally not allowed to open local branches elsewhere in the country, thereby further cementing market segmentation.⁹² As for the institutional set-up, certain regulatory powers have been delegated to the respective Chambers, which thus function both as regulators and interest groups. For example, the Chamber for accountants (*Kammer der Wirtschaftstreuhänder*) is in charge of organising the legally prescribed entry tests as well as for appointments of individuals and recognition of corporations.

The effects of these regulations are apparent in performance. Felderer *et al.* (1998) find evidence of monopoly rents inasmuch as Austrian firms' profitability is higher than in the other countries reviewed. Furthermore, they conclude that scale economies are foregone and that the relative number of practising lawyers and accountants is well below levels elsewhere. The latter finding suggests that these professions may be underdeveloped in Austria due to distortions of resource allocation, and in particular the diversity of services appears overly restricted by the principle of universal personal responsibility, which prohibits cross-sectoral co-operation and specialisation.

Figure 22. Firm turnover and survival rates in Austria
1990-2001



1. Per cent of new firms that remain active after one, three and five years.

Source: The Austrian Chamber of Commerce.

The impression of excessive regulation and accompanying adverse effects on performance is corroborated by a study by Nguyen-Hong (2000), which develops synthetic indicators of the restrictiveness of regulations in four professions, legal services, accounting, architects and engineering, for 38 countries. In each of these professions, Austria is found to have the most restrictive policy among OECD countries (Figure 23). Econometric analysis, pertaining to engineering services, indicates that stricter regulation tends to boost price-cost margins, in the case of Austria possibly by as much as 10-15 per cent.

Overall assessment and scope for further action

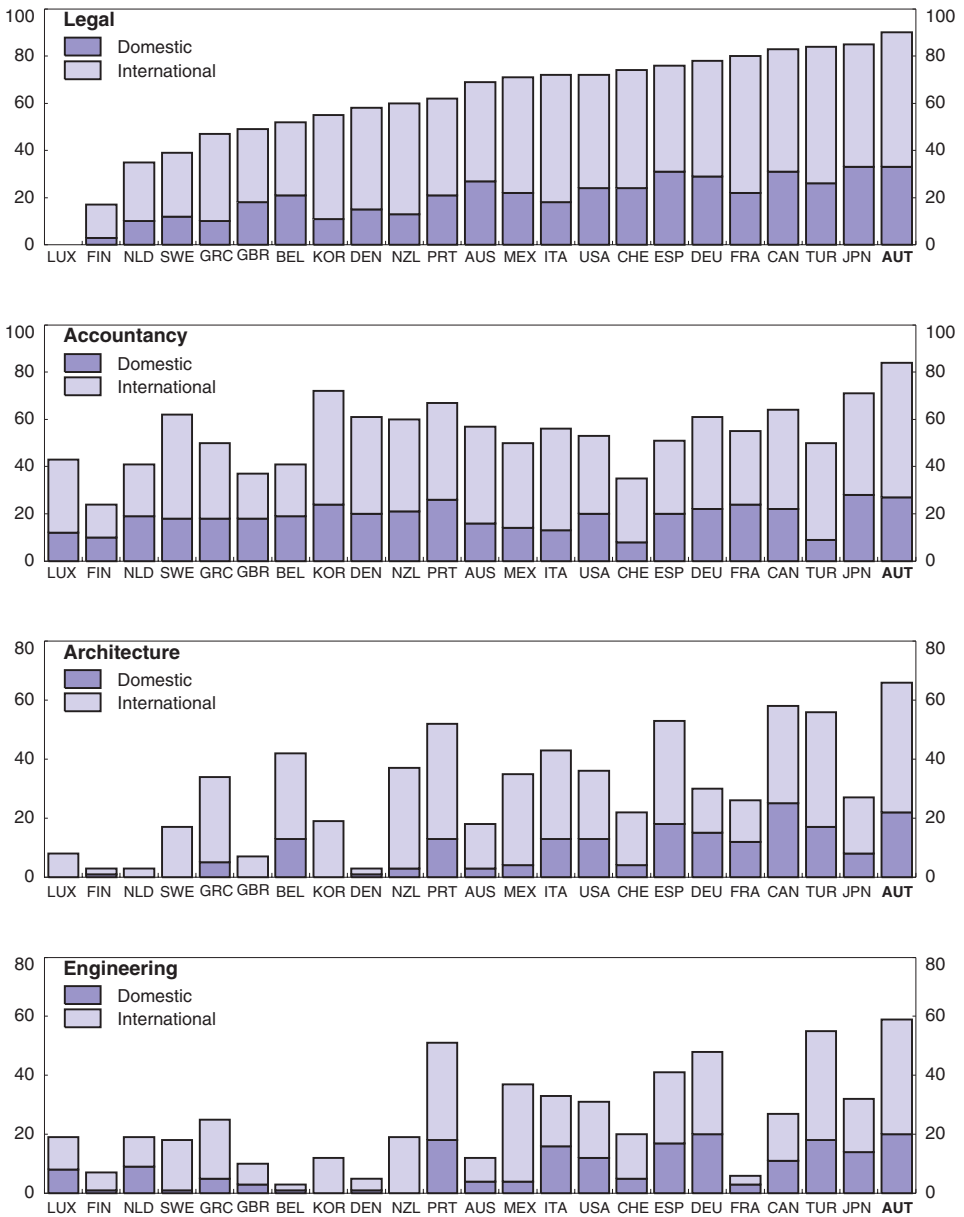
Productivity performance over the past decade has been good, perhaps enviable from some other OECD countries' perspective. Manufacturing industries have performed particularly well, owing to an increasing exposure to international competition and, probably less important, downscaling of the public enterprise sector. The boost to productivity growth from these sources may now be fading, though, and further product market reforms are required for Austria to continue to reap the benefits from increasing competition. On the whole, policy has been brought closer to the middle of the road, but in some areas policy makers have been more reluctant than elsewhere to abandon obsolete regulation that impedes competition. Indeed, the analyses above provide evidence that there is considerable scope for further action in several sectors. Furthermore, while competition law has recently been reformed, the framework now in place does not compare well to average, let alone best, practices and enforcement remains inadequate. This concluding section attempts to quantify potential effects of further reforms and provides a set of recommendations as to the policy changes required for these gains to materialise.

Potential macroeconomic effects from further regulatory reform in selected industries

The way – and speed with which – sectoral regulatory reforms play out for the economy at large depends on many factors (Box 7). While acknowledging the complexity of the interplay, it may be useful to provide some rough indications of the potential aggregate effects of future reforms in the industries that have been reviewed above. At least two, simple, approaches lend themselves to that end. First, synthetic indicators of regulatory stance may be included in regressions of aggregate performance variables. This method is appealing because it does not require any assumptions about the character of reforms. The second approach would be, on the basis of cross-country performance benchmarking, to start out from explicit assumptions about the potential for reforms to reduce price-cost margins and boost productive efficiency and performance.

Following the former approach, some OECD studies have included time series indicators of the regulatory stance in network industries in regressions of

Figure 23. **Regulations of professions: restrictiveness indices for OECD countries¹**



1. Country order ranked by restrictiveness of legal services regulation.
 Source: Nguyen-Hong (2000).

Box 7. Economy wide effects of sectoral reforms

Pro-competitive regulatory reforms in particular industries may improve within-sector economic performance through multiple channels.

- First, they may reduce output prices directly via lower price-cost margins. This, in turn, may diminish the scope for rent-sharing, thereby putting downward pressure on wages in the industries concerned.
- Second, reforms may force firms to reduce slack in the use of input factors (*i.e.* boost X-efficiency), thereby improving labour and/or capital productivity.
- In addition to these static gains a more competitive environment could elicit greater efforts to innovate and adopt new technologies, which would tend to raise productivity growth, thereby increasing GDP per capita.

Attempts to quantify the possible magnitude of reforms' effects on sectoral performance, let alone their timing, are bound to be subject to considerable uncertainty. Assessing the possible effects in a macroeconomic context adds further complications. For example, reduced rent sharing (stemming from lower mark-ups) might have favourable spill-over effects on wage formation more generally. Furthermore, since the corollary of higher reform-induced productivity at the sectoral level is often a reduction of employment, it is crucial for aggregate labour market outcomes that redundant labour be rapidly re-employed elsewhere in the economy. Rigid labour market structures may thwart a speedy adjustment process, thereby leaving aggregate employment at a lower level than prior to reforms. Therefore, economy-wide effects of product market reforms cannot be seen independently of the structural settings in the labour market.

output, productivity and employment. For example, Nicoletti *et al.* (2001) found a significant effect of regulatory reforms on the employment rate in the (non-agricultural) business sector, probably reflecting the fact that reduced wage *premia* in the industries concerned had beneficial second-round effects on wage formation more generally. Reforms undertaken between 1978 and 1998 were estimated to have increased individual countries' employment rates by an average of 1½ and up to around 2½ percentage points. According to this study the pace of reforms in Austria was a bit slower than average, with an estimated reform-induced boost to the employment rate of 1¼ percentage points. As for the regulatory stance in the late 1990s, Austria held a position in the middle. Taken at face value the empirical findings indicate that by moving towards the situation in the least restrictive countries, Austria might envisage an increase in its employment rate by ¾-1 percentage point in the long term.

Following the second approach, Table 16 provides estimates of possible long-term effects on sectoral and aggregate performance of reforms in network industries, retail distribution and professional and community services. The numbers

Table 16. Assumptions and effects of pro-competitive regulatory reform in selected countries

| | Energy | Post and telecommunications | Road transport and railways | Retail distribution | Professional services ¹ | Community social and personal services ² | Total economy |
|--|--------|-----------------------------|-----------------------------|---------------------|------------------------------------|---|---------------|
| Assumptions (per cent change) | | | | | | | |
| Cost of intermediate inputs | 0 | 0 | 0 | -5 | 0 | -5 | |
| Labour costs | | | | | | | |
| Labour productivity ³ | -25 | -5 | -10 | -10 | -10 | -5 | |
| Wages ⁴ | -10 | 0 | -5 | 0 | -10 | 0 | |
| Capital costs | -25 | -10 | -20 | 0 | 0 | 0 | |
| Profits | -10 | -10 | -10 | -10 | -30 | 0 | |
| Price elasticity of demand | -0.5 | -0.5 | -0.5 | -0.5 | -0.5 | 0 | |
| Sectoral effects (per cent) | | | | | | | |
| Direct price effect | -11.0 | -6.7 | -9.2 | -6.5 | -7.8 | -4.2 | |
| Price-induced output effect | 5.5 | 3.4 | 4.6 | 3.3 | 3.9 | | |
| Employment, price induced effect ⁵ | -19.5 | -1.6 | -5.4 | -6.7 | -6.1 | | |
| Economy-wide effect on (per cent) | | | | | | | |
| Producer prices, direct effect | -0.3 | -0.2 | -0.4 | -0.8 | -0.3 | -0.9 | -3.0 |
| Producer prices, total effect ⁶ | -0.4 | -0.2 | -0.4 | -0.9 | -0.5 | -0.9 | -3.4 |
| Employment (after full labour market adjustment) | | | | | | | 0.0 |
| Labour productivity ⁷ | 0.7 | 0.1 | 0.5 | 1.3 | 0.4 | 1.1 | 4.1 |
| Output | | | | | | | 4.1 |
| <i>Memorandum items:</i> | | | | | | | |
| Share in aggregate employment | 1.0 | 1.3 | 4.8 | 14.4 | 3.9 | 22.6 | |
| Share in aggregate output | 2.8 | 2.5 | 4.8 | 12.8 | 4.1 | 22.0 | |

1. ISIC74, other business services.

2. Effects from improving public procurement policies and greater use of competitive tendering.

3. Reduced labour costs due to improved productive efficiency.

4. Reduced labour costs due to reduced rent sharing.

5. Resulting from the direct effect via productivity and the induced (offsetting effect via higher output).

6. Combines the direct effect of the fall in prices of the sector being deregulated with that resulting from the fall in prices in other sectors due to lower input costs.

7. Contribution from each industry to the increase in economy-wide productivity.

Source: OECD.

suggests that the scope for reforms in these sectors could amount to a substantial increase in aggregate labour productivity and decline in producer prices, respectively. The estimates rely on judgmental assumptions about the potential for reducing price-cost margins and increasing labour and capital productivity within each industry, if performance were to be aligned with observed best or average practices. These assumptions, in turn, are based mainly on the empirical evidence presented above (Box 8). The input-output table from 1995 is used to gauge the economy-wide effects. As a simplification, aggregate employment is assumed to be unaffected. On the one hand, this may be a conservative assumption, since, as mentioned above, there is some empirical evidence that regulatory reforms may have dynamic effects that tend to boost aggregate employment. On the other hand, aggregate employment may fall for a protracted period if rigidities in the labour market thwart the reemployment of redundant labour in other sectors of the economy. Overall, it should be stressed, that the effects reported in Table 16 do not take into account that more competitive markets could lead to higher

Box 8. **Potential effects of sectoral reforms**

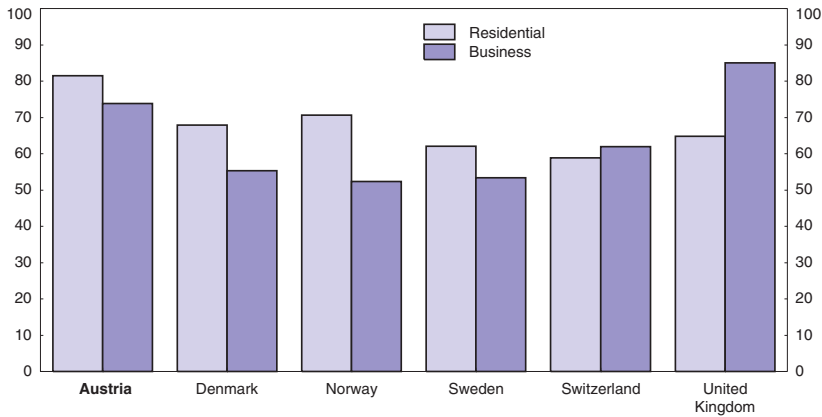
Electricity

In the electricity sector network access charges in Austria are roughly 50 per cent above the levels typically seen in other countries, with mark-ups relatively high. While retail prices depend also on technology and other factors, network access charges are an important cost component. Indeed, a simple correlation between network access charges and pre-tax retail prices are consistent with a 1:1 relationship. Finally, the fact that excess generating capacity is substantially higher than in most other countries indicates that there is a large potential for reducing capital costs in the long term.

Telecommunications

As emphasised in the previous Survey, Austria was early among the European countries to open up its telecommunications industry. Some market segments, notably mobile telephony, are highly competitive by now and, more generally, prices have converged toward levels in other countries. Nonetheless, the Survey also concluded that for typical baskets of services, prices were above average European levels and much higher than in the cheapest countries. This remains true. In particular, residential price baskets are some 20 per cent higher than the OECD average and more than 50 per cent higher than in those countries where prices are lowest (Figure 24). Available indicators, such as employment levels or the number of access lines per employee, do not suggest that productivity is particularly low. Nor do wage premia appear to be higher than elsewhere. Therefore, high profit rates more than high costs would seem to be the most important factor explaining the relatively high price level.*

Box 8. Potential effects of sectoral reforms (cont.)

Figure 24. Composite basket of telephone charges, August 2002
OECD = 100

Source: OECD, *Communications Outlook 2003*.

Other industries

Retail distribution in Austria is characterised by comparatively low labour productivity and high price-cost margins. It is assumed, therefore, that productivity could be boosted by 10 per cent and that mark-ups could be lowered by 10 percentage points. As for professional services, it is assumed that average price-cost margins could be reduced by 10 percentage points, which is consistent with the findings of the empirical studies cited above. Performance in the community services industry (public sector) could be improved via reforms that encourage greater use of contracting out and promote competition in public procurement markets. The former could directly boost labour productivity, while the latter might lower the costs of intermediate inputs.

* For more detailed information about price and market trends in the telecommunications industry, see OECD (2002d; 2003a) and European Commission (2002d).

dynamic efficiency; all else being equal, this implies a downward bias in the reported effects. Neither do the figures in Table 16 include the welfare gains resulting from a more efficient resource allocation.

A menu of reforms

A summary of recommendations that follows from the findings presented in this chapter is presented in Box 9. Warranted adjustments of competition law include changes of both the merger review process (making the Federal Competition Authority (FCA) responsible for in-depth examinations) and provisions concerning restrictive agreements (repealing notification obligations and focusing on agreements in which firms with significant market power take part). There is considerable scope left for strengthening enforcement: the FCA's resources should be significantly increased; re-introducing criminal sanctions should be considered; and a leniency programme would be helpful. In the electricity sector, current restrictions on ownership and voting rights are a straightjacket on the hoped-for effects of opening demand; hence more liberal entry conditions are strongly needed. Performance in retail distribution would benefit from a full liberalisation of shop opening hours and some easing of large-store regulations. Barriers to competition in trades and professional services, arising from the Trade Act or other regulations, should be removed; there is a need to lower entry barriers (for example easing the current, overly strict, qualification and training requirements) as well as to attenuate regulations of ongoing operations (for example recommended fee schedules and limitations on advertising and co-operation with other service providers). Finally, as considered in Chapter II above, reforms of public procurement policies and continued downscaling of the public enterprise sector would be instrumental in improving Austria's overall performance.

Box 9. Summary of recommendations

| Recommendation | Present situation | Elaboration |
|---|---|--|
| Competition law and enforcement | | |
| Simplify the institutional set-up and strengthen the role of the FCA. | The reform in 2002 was commendable on a number of counts, such as the change in the balance of powers between professional and lay judges in the Cartel Court and the creation of an independent authority. Still, the system now in place is overly complex and the FCA's powers are weaker than those of similar authorities in other OECD countries. | The Chambers' right to nominate lay judges to the Cartel Court should be discontinued. More discretionary powers should be assigned to the FCA with a view to more clearly establishing it as the key antitrust enforcement agency. For example, the Cartel Court's role in 2nd phase investigation of mergers should be transferred to the FCA. |
| Significantly increase the FCA's resources and strengthen its economic expertise. | The number of staff at the FCA is well below levels in comparable countries' competition authorities and economists are vastly underrepresented. | A doubling of resources would appear to the minimum increase required if the FCA is to adequately attend the responsibilities charged to it. This would still be a low level both by international standards, and taking into account the possible increase in workload when the more decentralised regime for enforcing EU law enters into force in 2004. |
| The merger control review process should be reformed. | The FCA's influences at different stages of merger control are unbalanced. It can independently negotiate and accept sufficient remedies. In contrast, it can only request the Cartel Court to initiate a 2nd phase examination and its role during such reviews is limited. The overlapping competencies assigned to the Cartel Court, the PP and the CCom tend to weaken the transparency of merger control procedures for the involved companies and reduce the possibility of issuing early clearances in uncontroversial case. | The FCA should have full responsibility for conducting 2nd phase investigations, while a role for the Court in merger control procedures should be preserved by requiring the FCA to bring a case before the Court if it wants to block a merger. |

Box 9. **Summary of recommendations** (*cont.*)

| Recommendation | Present situation | Elaboration |
|--|--|---|
| Align the treatment of vertical agreements with the mainstream. | All vertical agreements must be notified to the Cartel Court, even between companies with no market power. FCA reviews all notified agreements and urges modifications in certain cases. | It would be more effective to adopt a regime in which enforcement focuses on agreements where at least one party has market power. |
| Consider reintroducing criminal sanctions against cartel participants. | Criminal sanctions were abolished as part of the reform in 2002 except for bid rigging. | Criminal sanctions have proved to be an effectual deterrent in other jurisdictions. They should be reintroduced and co-exist with higher administrative fines, and should be enforced more stringently than in the past. |
| Strengthen the role of private action in competition law enforcement. | The legal system makes it difficult to pursue civil action to enforce competition. | The right to bring civil action should be expanded and obstacles for individual litigants should be reviewed. |
| Consider introducing a leniency programme (LP). | A leniency programme was considered during the preparation of the revision in 2002 of the Cartel Act but was deemed unfamiliar to Austrian legal traditions. | A leniency programme should be introduced. Yet, to be effectual such a programme must be accompanied by more vigorous enforcement efforts more generally in order to increase the perceived risk cartel participants of being detected. |
| Strengthen competition advocacy. | Competition advocacy is largely neglected, and transparency about rules and established case law is weak. | The FCA should give higher priority to promote awareness about competition policy, for example by issuing guidelines, analytical reports and other material. It should also take pro-competition positions where the government promotes transactions that could lessen competition. More resources are key if this is to be done adequately. |

Box 9. **Summary of recommendations** (*cont.*)

| Recommendation | Present situation | Elaboration |
|--|--|--|
| Electricity sector | | |
| Repeal restrictions on ownership and voting rights. | Government shareholding of at least 51 per cent is required in all electricity companies above a certain size. Private shareholders' voting rights are limited to five per cent of the share capital in such companies. | The restrictions should be abolished with a view to reduce barriers to entry. |
| Impose sharper vertical separation. | The electricity sector is still characterised by extensive vertical integration. Cross-subsidisation appears widespread and network access charges are high by international standards. | Stricter unbundling requirements in transmission and distribution of electricity would reduce the scope for cross-subsidisation and facilitate a lowering of access charges. |
| Retail distribution | | |
| Liberalise shop opening hours. | Owing to stricter regulations, average opening hours is lower than in other EU countries. A near-total ban on Sunday trading applies. | All restrictions on shop opening hours should be repealed. |
| Liberalise large-store regulation | The prevalence of large-format outlets is low by international comparison. | The regulation of large stores should be better balanced between efficiency, consumer welfare and sustainable development.. In general, policy should focus on market dominance rather than on the size of outlets. The formal representation of insiders in decision-making bodies should be abolished. |
| Trades and professional services | | |
| Repeal anti-competitive regulations in the Trade Act | A pro-competitive step was taken with the revision of the Trade Act in 2002, not least the discontinuation of certificates of qualification in commerce. Still, more than 80 professions still require such certificates, which may prevent firms from offering multi-disciplinary services. | The range of trades requiring certificates of qualification should be narrowed, and the scope for offering multi-disciplinary services should be increased. Regulation that aims to safeguard minimum levels of quality could rely more on other means such as reputation. |

Box 9. **Summary of recommendations** (*cont.*)

| Recommendation | Present situation | Elaboration |
|---|--|---|
| Make entry easier. | Entry into professions is subject to stricter regulations than in most other OECD countries. There are more extensive requirements to formal education and practical training, and firms are legally obliged to hold membership in their relevant Chamber. | Align educational requirements with the international norm. Entry tests should be managed and evaluated by government authorities rather than by the professions themselves. Make Chamber membership voluntary. |
| Remove barriers for competition amongst existing firms. | Recommended fee structures, exclusivity-rights, restrictions on advertising and geographical segmentation tend to impair competition. | The scope of such restrictions should be reduced significantly. In particular, trade associations' recommended fee schedules should be prohibited. |
| Public sector issues | | |
| Strengthen competition in public procurement markets. | National rules on public procurement were introduced in 2002, while enforcement remains with the provinces. There is no tradition for systematically setting objectives, let alone follow up, in this area. | Governments and agencies should set measurable targets for public procurement activity, and economic incentives should be developed, which could encourage managers to meet set objectives. |
| Further reduce the scope of the public enterprise sector. | Considerable privatisation has taken place in recent years and OIAG operates under a clear mandate to further divest government shareholdings in some companies. | Complete the current OIAG mandate. Then reinvigorate the privatisation programme to include shareholdings in, for example, postal services, the energy sector and in the steel industry. |

Notes

1. Austria joined the EU in 1995.
2. Austria's export share to Germany increased from 37 per cent in 1988 to 39 per cent in 1993.
3. The countries under consideration are Denmark, Belgium, the Netherlands, Sweden and Ireland, the same as those considered in Figure 3 above.
4. See OECD (1998a, 2001a).
5. A decomposition of the evolution of labour force participation rates by the Secretariat shows that between 1990 and 2000 the change in the age distribution reduced the Austrian participation rate by some 0.8 per cent.
6. Between 1990 and 2002 the registered unemployment rate for persons aged 55 and older increased from 7.1 per cent to 11.2 per cent for males and from 6.0 per cent to 11.5 per cent for females. Over the same period the total unemployment rate rose from 5.4 per cent to 6.9 per cent (definition excluding self employed).
7. According to the statistics of the Austrian Social Security Association the entry age into old age retirement stood at 62.2 and 59.4 years for males and females, respectively.
8. The average effective age of retirement is based on labour force survey data and derived from the observed decline in participation rates over a 5-year period for successive cohorts of workers aged 40 and over.
9. In the employment statistics, people who do not work in the second phase of an *Altersteilzeit* spell are counted as employed.
10. See Nickell, S. and S. Nunziata (2000).
11. See OECD (2001a).
12. OECD (2003b).
13. Gross spending on research and development in Austria has increased continuously from the beginning of the 1980s. The Austrian government is targeting to increase gross R&D spending to 2.5 per cent of GDP by 2006, and endorses the EU target of 3 per cent by 2010. On the issues involved, see Sheehan, Jerry and Andrew Wyckhoff (2003), Pilat *et al.* (2002) and Aiginger, Karl (2003).
14. With respect to tertiary education see OECD (2001a).
15. Spending on *Altersteilzeit* totals 28 per cent in terms of outlays for "activating" labour market measures in a broad sense, with activating "passive" unemployment benefits added to spending on active labour market measures.
16. See Breuss, Fritz (2001).
17. See OECD (1999).

18. The number of federal civil servants was reduced from 166 491 (end of 1999) to 155 173 (end of 2002). The number of federal school and university staff increased from 59 809 (end of 1999) to 59 889 (end of 2002). For schools and universities compensatory saving measures such as lower payments for special tasks of teachers were introduced. The number of tenured civil servants of spun-off organisations, excluding Post and Telekom Austria, increased from 3 226 (end of 1999) to 3 901 (end of 2002).
19. See OECD (2002a).
20. Subject to the targeted fiscal balance, additional spending is admissible if it is covered by additional revenues.
21. Legal procurement procedures are set out in the Federal Procurement Act and are subject to control by the Federal Procurement Office (FPO). Tender provisions regulate the procurement of works contracts, supply contracts and service contracts by public authorities and certain related entities from the private enterprise sector, notably in network industries. During tendering procedures involving a federal authority every tenderer can call upon the FPO to protect his interests. The FPO may issue a decree either to stop the tendering procedure or to cancel decisions of the tenderee. In order to ensure the transparency of tendering procedures, tenderers also have to discharge extensive duties of notification towards the European and national procurement authorities.
22. See Schneider, Martin (2002).
23. See Doubek, Claudia (2002).
24. See Doubek, Claudia (2002) *op. cit.*
25. Changes in the allocation of responsibility for social assistance payments can be achieved via a contract between the federal government and the states in accordance with paragraph 15a of the federal constitutional law.
26. Older people living in nursing homes can be charged with up to 80 per cent of their pension by the nursing institution. The remainder is financed out of social assistance benefits.
27. For an account of the arrangement governing employment and remuneration of teachers, see Rossmann, Bruno and Pia Netuschill (2002). The paper takes stock of the state of administrative reform in Austria between 2000 and 2002.
28. See Aufgabenreformkommission (2001).
29. The findings of the Convent are planned to feed into the negotiations for the next tax sharing arrangements between the federal government, the states and the communities. The next tax sharing agreement will come into effect from 2005 onwards.
30. See McLure, C.E. (2000) and Oates, W.E. (1999).
31. These figures, based on CEEP (2000), conform well to earlier estimates contained in the OECD's International Regulation Database (see Nicoletti *et al.*, 1999). Information in this database also suggests that the size of the public enterprise sector in Austria is large, both in size and scope, by OECD standards.
32. Gonenc *et al.*, 2001; OECD, 2002c.
33. For Austria, Gugler (1998) provides evidence that internal rates of return amongst public enterprises are well below rates in private firms even when the effects of various background factors have been controlled for.
34. The steel industry was, and remains, characterised by high mark-ups by international comparison and cost-plus regulation often discouraged innovation efforts. Moreover it

- had become the norm that managers were appointed not only for their formal qualifications but also with an eye to their political orientation (Aiginger, 1998).
35. Some caution is warranted here, though. In addition to governments' determination to divest, the size of such proceeds is influenced also by overall share prices at the time of privatisation. The 5½ per cent of GDP is the total of proceeds in each year since 1990 relative to GDP in the corresponding year (see OECD, 2002). According to Aiginger (1998) divestments of central government assets worth some 2 per cent of GDP were made during the second half of the 1980s, but in some of the largest transactions the ownership was transformed to other public-sector entities (the Austrian National Bank in the case of the central mint and local governments and public companies in the case of the *Verbund* energy company).
 36. Both scenarios differ in assumed employment rates. The baseline scenario, which yields a more favourable spending path, assumes that the employment rate increases from 67 per cent in 2000 to 76 per cent in 2035, while the less favourable scenario assumes that the employment rate increases to only 72 per cent. See *Kommission zur langfristigen Pensionssicherung* (2002).
 37. This measure re-installs the situation prevailing until 1997, when the rate was lifted to its present level.
 38. See OECD (2003c).
 39. European countries that qualify for investment consist of the EU and the EFTA. Eligible stock market capitalisations must not exceed 30 per cent of GDP. This advantages holdings of Austrian stocks whose capitalisation is low by international comparison.
 40. For an account of company based pension funds see Url (2003).
 41. Administrative costs are limited to a maximum of 3.5 per cent of contributions plus a maximum of 1 per cent of administered funds. Additional expenses have to be stated in the contract.
 42. At present, part-time employment can be distributed over an admissible time span of up to 6½ years such that the employees work full-time in the first years and cease working in the remainder of this period. Working time reductions up to 60 per cent of the previous level qualify for financial support. At least 50 per cent of the income loss due to working time reductions is compensated by the government. The scheme can be utilised by males and females from 55 and 50 years onwards, respectively. If part-time employment is taken in blocks of full-time and no work, participants in the scheme are statistically accounted as employed during the no-work phase.
 43. Econometric evidence for Austria indicates a significantly negative effect of the duration of extended eligibility periods for receiving unemployment benefits on the transition out of unemployment for the long-term unemployed, both male and female. Moreover, longer benefit duration might also lead to higher unemployment entry. See Winter-Ebmer. (2003). The relevance of this relationship is also evident from various studies for other OECD countries. For references see OECD (2003d).
 44. See OECD Directorate for Employment, Labour and Social Affairs, Review of family-friendly policies in Austria, Ireland, and Japan, DELSA/ELSA(2003)5/ANN2. For a comprehensive analysis of the Austrian child care system see the main text of this document.
 45. Re-entry rates into the labour force appear to be positively related with the level of earnings prior to the non-participation spell. See Lutz (2003).

46. For example, for a couple with primary and secondary earnings equalling 100 per cent and 33 per cent of the earnings of an average production worker (APE) and two children aged one and four years, full-time child care costs amount to 25 per cent of the APE.
47. For school children, out of school hours care includes the care provided by all day schools.
48. See OECD (2003e).
49. Between 1997 and 2000 investment in child care facilities was increased.
50. The long run elasticity of real wages to unemployment has been found to be significantly higher in Austria than in other countries, notably Germany, France and Italy. See Roeger and in't Veld (1997).
51. For blue-collar workers per capita wages in Austria decline in the age group 60 and older. However, employment rates for this group almost collapse. Hence, the earnings profile might be subject to a selection bias in that only people working either fewer hours or on less well paid jobs stay in employment.
52. See OECD (1998b). In most other OECD countries wage profiles (based on 1995 figures) are less steep and hump shaped with earnings peaking at around age 50. Controlling for educational attainments of cohorts the tendency of age-earnings profiles to slope downward late in working life weakens but is not reverted.
53. The inter-sectoral wage dispersion appears to be relatively stable, see Mesch (2002), and Hofer *et al.* (2001). At the same time, high labour cost differentials across sectors appear to be weakly related to relative labour demand patterns. In particular, inter-sectoral cost differences have been found to be largely unrelated to labour qualification, see Pollan (2001). Similarly, empirical evidence suggests that for most sectors in manufacturing negative employment growth coincides with substantial growth in earnings. See Mesch (2002) *op cit.* The author finds a coincidence of positive income growth with an increase in employment for only two manufacturing sectors out of 11 over the period from 1980 to 1994. Wage flexibility was found to be low by international comparison. See Hofer and Weber (2002).
54. Empirical evidence for the metal industry suggests that Austrian enterprises have less scope than German and Italian firms in differentiating pay and setting incentives. See Auer *et al.* (1997).
55. See Auer and Welte (2001). There have also been conflicting views between employers and unions about the distributional consequences of allocations to employees for the purpose of supporting vocational training.
56. The transition to the new severance pay system affects labour costs differently across sectors, as previously exempted branches, like those with high seasonal fluctuation of workers, are now liable for severance pay. This will require some adjustment in relative wages across sectors.
57. There is a general tendency to put blue collar workers more on a par with salaried employees, and this has led to some tightening of EPL for blue collar workers. For example, in the iron and metal industry the notice period for dismissals was lengthened to equal that of salaried employees. Notice periods for blue collar workers are laid down in collective agreements between the social partners and hence differ between industry sectors. By contrast, notice periods for salaried employees are harmonised and coded in the labour law. Since 1999 a working group of the social partners negotiates on a harmonisation of regulations.

58. See OECD (2001c). Major features of ongoing university reform have been considered in the 2001 *Economic Survey on Austria*.
59. For evaluation studies of active labour market programmes, see OECD (2001a) and Weber and Hofer (2003).
60. In-depth analyses of product market competition in Austria have been included in earlier *Surveys* (1990, 1994 and 2001). However, because political and analytical attention to competition issues and regulatory reform has increased considerably only over the past decade, the availability of cross-country evidence was scarcer when these studies were undertaken.
61. Parallel imports of products that are protected by intellectual property rights consist of genuine products (as opposed to counterfeits) which are sold without the consent of the rights owner in a country.
62. This study also argues that Austria stands to gain considerably from the imminent enlargement of the EU. Simulations presented in Breuss (2001) show that the size of these gains can be expected to be larger than in any of the other current EU member states. See Box 1 above.
63. Trend MFP growth has edged down by $\frac{1}{4}$ percentage point in the course of the 1990s.
64. In addition, various more narrowly focused laws exist, such as the Local Supply Act (*Nahversorgungsgesetz*) and those regulating competition in network industries. The Federal Procurement Act (*Bundesvergabe-gesetz*) aims at ensuring competition in public tenders.
65. The CCom consists of eight professional members, half of whom are appointed upon a proposal by the social partners.
66. Mergers must be notified to the Cartel Court if the combined relevant turnover of the involved undertakings is above € 300 million worldwide and above € 15 million in Austria, and if the total turnover of each of at least two participating undertakings is above € 2 million.
67. Certain agreements have been exempted by a Regulation issued by the Ministry of Justice, including agreements concerning joint purchasing and joint R&D.
68. Agreements may be considered de minimis. This is the case if parties have a combined market share of five per cent on the national level or even up to 25 per cent in a local sub-market.
69. The Cartel Act is not explicit about the criteria to be employed in the assessment of this, but states that the justifiable interests of both the binding and bound enterprises as well as those of consumers must be taken into consideration.
70. As part of the preparation of its 1997 Green Paper on vertical restraints the European Commission conducted a survey of member states' policy in this area, which provided information also on the practical application of the rules (European Commission, 1996). For Austria, this study revealed that in 1994 some 800 agreements were notified and that not a single one of these resulted in any action. In fact, the Cartel Court had not decided any cases concerning vertical restraints at that time.
71. Approximation of Austrian law concerning restrictive agreements to EU rules also would be advisable to fully realize the benefits of decentralised enforcement of EU law under Regulation 1/2003.
72. Still, insofar as the relevant conduct affects intra-Community trade, the exemptions under the Cartel Act are limited by the potential application of EU law.

73. Some have argued that transparency suffers from a preference on the part of the FCA to settle cases on the quiet without the involvement of the Cartel Court (Böheim, 2003).
74. The recent *EconGas* joint venture is a case in point. This case, which was the first to be reviewed under the new merger control regulation, involved the incumbent federal energy company, OMV, and five of the regional utilities. The new company, *EconGas*, has a market share well above the 30 per cent threshold that is considered to constitute a dominant position. Nonetheless, both the FCA and the PP withdrew their initial applications for examination on the basis of certain concessions from the involved companies. As a result, the case was settled without an examination by the Cartel Court and with no accompanying press release from the FCA that could motivate the clearance.
75. Criminal sanctions for collusive tendering were maintained, probably reflecting that such practice has been blatant and widespread in the past, notably in the construction sector.
76. It must be emphasised, though, that a leniency programme would need to be attuned to other elements of the enforcement regime. In particular, a lenient treatment is likely to be less potent if the perceived risk of disclosure is low in the first place, or if the sanctions that could be envisaged by infringers are disproportionately small compared with the gains from unlawful conducts.
77. No information is available on prices paid by large-scale consumers since these are typically set in bilateral contracts. However, price reductions have been particularly large in this segment according to the assessment of E-Control.
78. This might reflect, in part, price discrimination by incumbents in order to fend off entry and consumer switching in those segments of the market where the price elasticity is highest. In Austria, however, pre-liberalisation prices for business customers were much higher than for households, and the greater decline for the former group has only meant a convergence to the relative price levels seen elsewhere.
79. It seems uncertain whether the latter restriction is compatible with the non-discrimination rules under EU law.
80. For example, when co-signing the deal the responsible minister emphasised the importance of having found a “red-white-red” solution.
81. According to estimates provided by AC Nielsen, concentration is considerably higher, the two largest retail groups – REWE and SPAR – having a market share of two-thirds.
82. For example, increasingly efficient marketing and inventory management methods and larger trade areas facilitated by easier access to individual transportation are forces that work towards concentration and larger units.
83. Kelly and Gosman (2000) find evidence that in the United States high buyer concentration tends to reduce manufacturers’ profitability in competitive industries but not in sectors with weak upstream competition. Beyond the objective of short-term cost-minimisation, the rise in own brands could be another, more strategic, reason for retailers to squeeze suppliers’ profit margins if possible. If they succeed, such practices are likely to be detrimental to competition.
84. The “non-specialised stores” part of the distribution sector is the one where economies of scale and scope are likely to be most important, as it includes large-format outlets such as hypermarkets and department stores. This segment is considerably smaller in Austria than elsewhere and less than half the size in Finland, Ireland and

- Norway. The obverse to this is that the “specialised non-food stores” segment (excluding pharmacies) is relatively larger than in other countries. In this branch, as well as in specialised food stores, productivity is comparably high in Austria. As for food stores, this is due, in part, to a high penetration of (German owned) discount chains.
85. Environmental considerations could be addressed in general zoning regulations.
 86. The Shop Closing Act foresees that provincial governments may grant privileges to family-operated stores (maximum weekly opening time of 80 hours), shops in tourist resorts and shops in areas where more than half the population work outside the area. In addition, shops in railway stations, airports, theatres and petrol stations are exempted or operate under less restrictive regulations. In its general sales promotion the VIVA group of convenience stores, which are attached to some 160 of the OMV petrol stations, is offensively presenting itself as an around-the-clock supplier of a limited range of groceries – including fresh bread on Sunday mornings when the Shop Closing Act – with a few exemptions – prevents even bakeries to be open (www.omv.at). This is somewhat ironic given the fact that OMV is controlled by the government.
 87. For example, in a recent investigation the Danish Competition Authority (2000) concluded that RRPp were more widespread than had been thought previously. In specialised non-food stores, RRPp applied to more than half the lines. There was a significant positive correlation between the prevalence of RRPp and high prices by international standards. The study estimated an unfavourable welfare effect of ½-1 per cent of GDP.
 88. The principle of regional exhaustion was stated in the European Court of Justice’s (ECJ) ruling in the so-called Silhouette case. This case involved the importation into Austria, and hence the Community, of sunglasses first sold by the Austrian company Silhouette in Bulgaria. The company brought an action against the parallel importer for breaching its trademark rights in Austria, and the ECJ upheld the contention.
 89. The previously required certificates of qualification were abolished altogether for wholesale and retail trade. Moreover, the scope for fulfilling qualification requirements *via* accredited practical experience was extended and steps were taken towards introducing a one-stop shop principle for setting-up new firms.
 90. There is some variation in the findings of different studies, though. One study (European Observatory for SMEs, 1997) reports an average entry rate between 1988 and 1996 of almost 9 per cent in Austria, only slightly lower than the simple average for all EU countries and higher than in for example Finland and Belgium. In contrast, the European Commission (2000b) finds the start-up rate in Austria to be well below average, and lower than in Finland and Belgium. Both of these studies rely on national data, where cross-country comparability may be relatively weak. Scarpetta *et al.* (2002) provide comparable data on enterprise demography for 10 OECD countries over the period 1989-94. While Austria is not included, the smallest entry rates found in this study are larger than those from the Austrian Chamber of Commerce reported above in Figure 8. Comparable data for nine EU countries (not including Austria) were published in early 2003 by Eurostat (Hult, 2003). Enterprise birth rates (1998-2000) were in the range of 7 to 11 per cent across the nine countries.
 91. A recent Eurostat study of business demography in nine EU countries indicates that the typical two-year survival rate is around 75 per cent (Hult, 2003).
 92. Such geographical restrictions also apply to driving schools. Before 1 October 2002 learners were bound to pass the driving test in their local police jurisdiction, which meant that they were also geographically restricted in their choice of driving schools.

While this has now been changed, regulations prevail that limit driving instructors' right to supply their services outside narrowly delimited local areas. Also, recently introduced rules significantly raised the number of lessons required to pass a test for becoming a driving instructor, thereby increasing entry costs. Regulations such as these clearly impair competition and lead to higher prices. According to studies by the Chamber of Labour, driving-school fees are some 20 per cent higher in Austria than in Germany.

93. Given the dependence on hydro-electricity, emissions depend on rainfall. This factor was responsible for a significant part of the fall in emissions from the electricity sector between 1990 and 1999.
94. IEA (2003).
95. WIFO (2001), quoted in BMLFUW (2002).
96. Capros *et al.*, (1999).
97. IEA (2002) and Criqui *et al.*, (2002).
98. There would be additional transitory costs related to the required structural change.
99. As shown in the 2001 *Survey*, this policy would be very expensive.
100. IEA (2000).
101. Taxes paid by households reached € 174 per ton of oil equivalent (toe) for fuel oil, € 118 per toe for natural gas and € 428 per toe for electricity in 2000 (IEA, 2002).
102. OECD (2001a).
103. Capros *et al.*, (1999).
104. Indeed, if taxation of fuels were equalised on the basis of carbon content, then the taxation of gasoline and diesel could be reduced by 80 per cent with no increase in emissions, on the basis of sectoral cost curves.
105. European Commission (2001).
106. OECD (2002e).
107. Several landfills were affected, notably the *Fischer* and *Berger* sites. The latter was completely renovated at a cost of EUR 20 per ton.
108. A cost-benefit study has been commissioned to review the decision to ban the landfill of untreated waste by 2004 (*Umweltbundesamt*, 2001). The study compares the total costs, including externalities, of all available methods to dispose of waste. For landfills, the study adds to the externalities a risk factor, which is equal to the cost of cleaning the site if it were to prove to be contaminated. Under this scenario, landfill is costlier than all other methods of disposal.
109. IEA (2001).
110. RDC (2001).
111. Eurostat (2002).
112. OECD (2002), and OECD International Trade by Commodity Statistics electronic data base.
113. Welfare gains flowing from the reduction in tariff barriers by the European Union as a whole are estimated to exceed 1 per cent of GDP in countries such as Malawi and Tanzania (UNCTAD and *Commonwealth Secretariat*, 2001).
114. Gallezot (2002).

115. In the presence of a large degree of distortion in developing country agricultural markets, the small terms-of-trade loss could be transformed into a welfare gain, even if the domestic distortions are not ended.
116. Anderson *et al.*, (2001); Roberts *et al.*, (2002).
117. OECD, (2003).
118. EC (1999). This result is conditional on the particular assumptions used in the simulations, notably that it is the imperfectly competitive sectors that exhibit increasing returns to scale.
119. Fischler (2001), Agricultural Policy for the Future Changing Concerns, Changing Objectives. Speech to the 29th North American/European Union Agricultural Conference, Salzburg, 19 October 2001.
120. European Commission (2002).
121. The key element of the new, reformed CAP is introducing a single farm payment for EU farmers, independent from production, although limited coupled elements may be maintained to avoid abandonment of production. Further details about the reform can be found at http://europa.eu.int/comm/agriculture/mtr/index_en.htm.

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BASIC STATISTICS OF AUSTRIA, 2002

LAND

| | | | |
|-------------------------------|----|-----------------------------------|-------|
| Area (1 000 km ²) | 84 | Major cities (1 000 inhabitants): | |
| Agriculture (%) | 31 | Vienna | 1 550 |
| Forest (%) | 43 | Graz | |
| | | Linz | 226 |
| | | Salzburg | 143 |
| | | Innsbruck | 113 |

PEOPLE

| | | | |
|--|-------|-----------------------------------|-------|
| Population (1 000) | 8 033 | Labour force ¹ (1 000) | 4 302 |
| Inhabitants per km ² | 96 | Employment ¹ (1 000) | 4 067 |
| Natural increase in population, 2000 (1 000) | 1 | Agriculture (%) | 13 |
| Net immigration, 2000 (1 000) | 17 | Industry (%) | 24 |
| | | Services (%) | 63 |

PRODUCTION

| | | | |
|---|-----|---------------------------|----|
| GDP, current prices (billion euros) | 218 | Origin of value added (%) | |
| GDP per capita (1 000 USD in current prices) | 26 | Agriculture | 2 |
| Gross fixed investment per capita (1 000 euros) | 6 | Industry | 30 |
| | | Services | 67 |

GOVERNMENT

| | | | |
|---|----|------------------------------------|-------|
| Public consumption (% of GDP) | 19 | Composition of Federal Parliament: | Seats |
| General government total revenue (% of GDP) | 51 | Socialist Party | 65 |
| Public debt (% of GDP) | 67 | Austrian People's Party | 52 |
| | | Freedom Union | 52 |
| | | Greens | 14 |

Last general election: December 1999

FOREIGN TRADE

| | | | |
|--|----|--|----|
| Exports of goods and services (% of GDP) | 53 | Imports of goods and services (% of GDP) | 51 |
| Main exports (% of total merchandise exports): | | Main imports (% of total merchandise imports): | |
| Machinery and transport equipment | 43 | Machinery and transport equipment | 39 |
| Manufactured goods | 35 | Manufactured goods | 32 |
| Chemicals and related products | 10 | Chemicals and related products | 11 |

CURRENCY

| | | | |
|--------------------------------------|---------|----------------|------|
| Irrevocable conversion rate (1 euro) | 13.7603 | Euros per USD: | |
| | | Year 2002 | 1.06 |
| | | September 2003 | 0.89 |

1. Domestic concept.

Note: An international comparison of certain basic statistics is given in an Annex table.

This Survey is published on the responsibility of the Economic and Development Review Committee of the OECD, which is charged with the examination of the economic situation of member countries.

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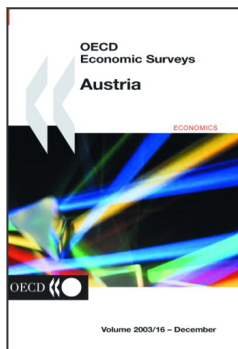
The economic situation and policies of Austria were reviewed by the Committee on 8 September 2003. The draft report was then revised in the light of the discussions and given final approval as the agreed report by the whole Committee on 3 October 2003.

•

The Secretariat's draft report was prepared for the Committee by Eckhard Wurzel, Friedrich Fritzer, Steen Daugaard, Richard Herd and Boris Cournede under the supervision of Andreas Wörgötter.

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