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Competition Policy in the Wake of the Economic Crisis

A lack of competition is creating a bottleneck in Austrian growth. A lasting intensification of competition would substantially enhance national innovation and growth. Independent measures to bolster competition and supplement EU-level requirements are sensible, feasible and necessary. Due to past failings the scope for an Austrian competition policy that fosters innovation and growth is relatively large and could be carried out with little impact on the budget.

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Innovation and competition as growth drivers: lessons from Scandinavia

In a market economy competition provides for an efficient allocation of scarce resources, incentivising the efficient organisation of goods production and service delivery as well as product and process innovation. Not only enhanced efficiency but also incentives for intensified efforts at innovation can result from an increase in the intensity of competition. Competition intensity is important for growth and employment, with the assumption of an indirect effect through innovation activity: competition forces companies to innovate; entrepreneurial innovation brings about economic growth (*Ederer – Janger,* 2010, *Böheim et al.,* 2006).

Empirical literature confirms a (strong) positive correlation between competition intensity and innovation activity up to a very high level of competition intensity (*Aghion et al.,* 2005, *Crespi – Patel,* 2008). Through the empirically well-supported channel to growth via innovation (see *OECD,* 2007), functioning competition can thereby have a positive impact on macroeconomic development. Long-term, a combination of innovation and competition appears to be a promising two-pronged economic policy strategy to enhance competitiveness and produce more dynamic economic development (*Aiginger,* 2008).

Scandinavian countries have been particularly successful in applying this two-pronged strategy. Their economic success is not only due to a well-known focus on future-orientated investments (research, technology, innovation and education), but also on an orientation towards competition barely perceived by the public. As the Scandinavian example shows, a large public sector and a comprehensive social system need not stand in contradiction to a strict competition regime; they can instead be excellent complements.

Austria has ground to make up in future-orientated investment as well as in the area of competition. This paper is dedicated to the economic policy options in relation to competition[1].

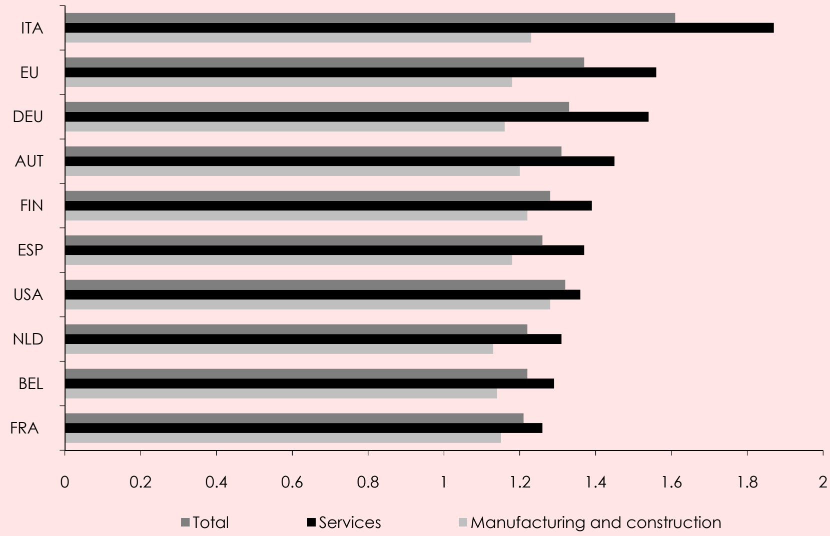
[1] *Janger et al.* (2010) deals with the topic of future-orientated investment.

The Austrian economy's competetive intensity

In Austria, as in all EU countries, competitiveness (as measured by mark-ups)[2] is markedly lower in the service sector than in the manufacturing sector (*Janger,* 2009; Figure 1). This confirms the difference between tradable goods and those that are either non-tradable or tradable only in limited fashion: in those areas in which international trade takes place with relative ease, such as in many industries of the manufacturing sector, competition intensity due to foreign competition is relatively high[3].

Figure 1: International comparison of mark-ups by sectors

Weighted average mark-ups 1981-2004



Source: *Christopoulou – Vermeulen* (2008). The difference between the price and the marginal cost relative to the price.

In many service industries, international or interregional trade is often only possible to a limited extent, whether because of regulation, or because of (natural) local constraints to many services. Here different national characteristics such as product market regulation, consumer behaviour, competition policy, country size etc., determine competition intensity. The lever for a innovation oriented competition policy is correspondingly larger here.

The competition intensity of the Austrian service sector is very mixed. While the intensity of competition in food retailing and in the field of home improvement stores (despite very strong market concentration; *Böheim,* 2003) should be high, the large price differences for very similar or homogeneous services, for example in the fields of banking, insurance and in liberal professions, point toward a low competitive intensity (*Janger,* 2010).

According to recent analyses, the export potential for Austrian commercial services is far from exhausted (*Wörz,* 2008, *Brandicourt – Schwellnus – Wörz,* 2008), and insurance companies in particular seem only partially competitive (*Wolfmayr,* 2008).

In some less-competitive domestic markets, the incentive seems to be low or (because of a lack of international competitiveness of domestic suppliers) the possibility of international expansion limited. Therefore, liberalisation of the service sector – principally through competing foreign suppliers entering the market – would be expected to substantially boost the competitiveness in domestic Austrian markets pro-

[2] The mark-ups, calculated as the difference between the price and the marginal cost relative to the price, represent a standard measure of competition intensity in the literature of industrial economics.

[3] This does not exclude the possibility, however, that competitive intensity in other manufacturing sectors is slight. According to *Janger* (2008), competition in Austrian cement production and noodle production is less pronounced.

tected in part by outdated regulations (*Böheim – Friesenbichler – Sieber,* 2006). Medium-term, the competitiveness of the (remaining) Austrian service companies will increase, and service sector exports will rise. The welfare gains from a liberalisation of trade in services would be substantial for Austria: the removal of existing barriers could increase gross domestic product by an additional 0.3 percentage points per year and employment by 0.2 percentage points per year (*Fritz – Streicher,* 2008).

Lack of competition as a bottleneck to growth

The strengthening of competition – especially in times of public budget consolidation – is an attractive economic policy option to increase Austrian growth and employment, because implementation of such a policy requires relatively limited public funds. Many problems can be handled by changing existing regulations with little impact on the budget.

A lack of competition in Austria has been identified in specific service and industrial sectors (energy economy, liberal professions – particularly chemists and notary publics; banks and insurers, trade and commerce, real estate agents and property managers, public transport) as well as in specific production industries (for example, locally limited competition in the cement or brick industries) as bottlenecks to growth. In addition, in international comparison, Austria's entrepreneurial dynamism is relatively low, particularly in the area of innovative companies which dampens growth; while new market entrants and long-lasting market activities intensify competition (see *Ederer – Janger,* 2010).

The causes of these bottlenecks stem first from the limited effectiveness of the general competition policy (*Böheim – Friesenbichler – Sieber,* 2006): Austria lacks a proactive competition policy, one that takes action not only when laws are broken, but one that also seizes the initiative to make proposals to intensify competition in certain sectors. In addition, the causes stem from the general regulation of the economy, for example in the form of business start-up regulations (for example, the cost and length of time needed to found a limited liability company, certificates of competencies, qualification regulations, etc.), in sector-specific regulations (energy sector[4]), liberal professions[5] etc.) and in part from the long-term development of structures lacking competition orientation in certain economic sectors. (energy economy, banks, insurers). Another reason is the lack of pressure for competition from the consumer side due to deficiencies in the education system[6].

Another significant cause of low competition intensity are Austria's relatively high corporate subsidies compared to international levels. In Austria in 2008, corporations received payments of € 15.6 billion in direct aid and capital transfers across all "development areas", the equivalent of 5.5 percent of gross domestic product. With that amount, Austria assumed the peak position among the EU-15 countries (+3.3 percentage points compared with the average of the EU 15 excluding Austria; *Aiginger et al.,* 2010)[7]. According to current econometric estimates, Austria spends

[4] The Austrian energy market continues to suffer from a lack of competition more than ten years after market liberalisation, because this liberalisation was not accompanied by strict regulation and did not provide for a sufficiently empowered supervisory body. For a detailed overview of the existing limitations to competition, which can mainly be attributed to persistent conflicts of interest from the state's multiple roles as legislator and owner as well as regulatory and supervisory authority see *Böheim* (2005); proposals for solutions can be found in *Böheim* (2008). A current overview of the shortcomings with regard to incentives to change and information transfer can be found in *VKI* (2010).

[5] The intensity of restrictive regulations varies considerably among the "liberal" professions (see *Paterson – Fink – Ogus,* 2003). The most harmful regulations to market competition are found among chemist's (economic needs test, third-party ownership ban, ban on postal order of medicines, requirement that non-prescription drugs still be dispensed by chemist's) and notary publics (statutory tasks, restrictions on the number of notary jobs as in a planned economy).

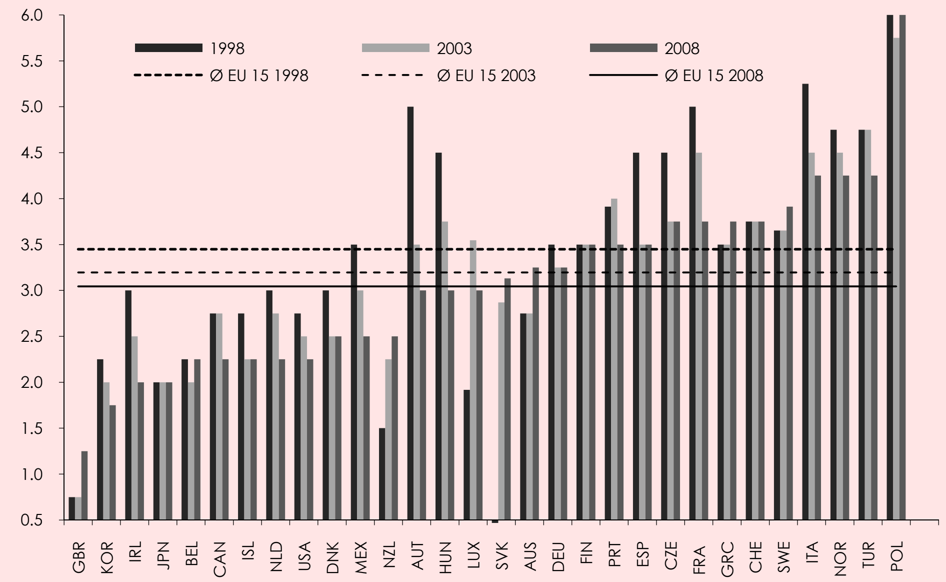
[6] According to recent studies, people with more education are more likely to compare prices and are also more willing than the average to switch suppliers (*Janger,* 2010). Therefore, it would be important to systematically teach in school the basics of economics and business administration from as early as Year 5. The *FAZ-Institut* (2010) recently identified deficits of young adults in Germany that should, mutatis mutandis, also apply in Austria.

[7] The Figure does not take account of the indirect subsidies through tax breaks which burden the public budget on the revenue side. The Federal Government's 2008 subsidies report showed indirect subsidies (tax credits) of € 10.2 billion (3.6 percent of GDP). This results in a total state subsidy rate of 9.1 percent.

some 1.5 times as much on corporate subsidies as would be justified by the economic structure (*Pitlik et al.,* 2008). The subsidies not determined by the economic structure do not eliminate market failures, but instead prevent the emergence of efficient market solutions, as uncompetitive economic sectors are preserved and established companies protected from competition.

The high subsidies are associated in international comparison with a markedly above-average *size of public company sector* (Figure 2). Although the accelerated privatisations since the end of the 1990s have significantly decreased the portion of firms under federal ownership[8], there are still a large number of Austrian publicly-owned companies at all levels (federal, state and local; *Böheim – Handler – Schratzenstaller,* 2010).

Figure 2: Scope of public enterprise in international comparison



Source: OECD product market regulation indicators, WIFO representation. Composite indicator: 0 . . . low, 6 . . . high.

As the positive experience of Sweden's continuous privatisations since the mid-1990s show (*Jonung – Kiander – Vartia,* 2008, *OECD,* 2008), substantial one-off contributions to the state budget[9] and significant positive regulatory effects could be expected after only a partial realisation of the potential privatisations.

Starting points for an innovation-orientated competition policy

Possible measures to strengthen the incentives for innovation by fostering the intensity of competition are presented in broad terms below (see *Janger et al.,* 2010, *Janger,* 2009).

Competition policy in the wider sense[10] takes advantage of a broad range of available measures, which can be segmented in principle between the supply and demand side (Figure 3):

[8] OECD product market regulation (PMR) indicators (2008) take into account the following privatisation of state equity stakeholdings largely from the recent past: divestiture of 17 percent of Telekom Austria AG, full privatisation of VA Tech and Voestalpine AG, divestiture of 49 percent of the Österreichischen Post AG; not included is the 2009 sale of the remaining stake of 41.56 percent of Austrian Airlines to Lufthansa.

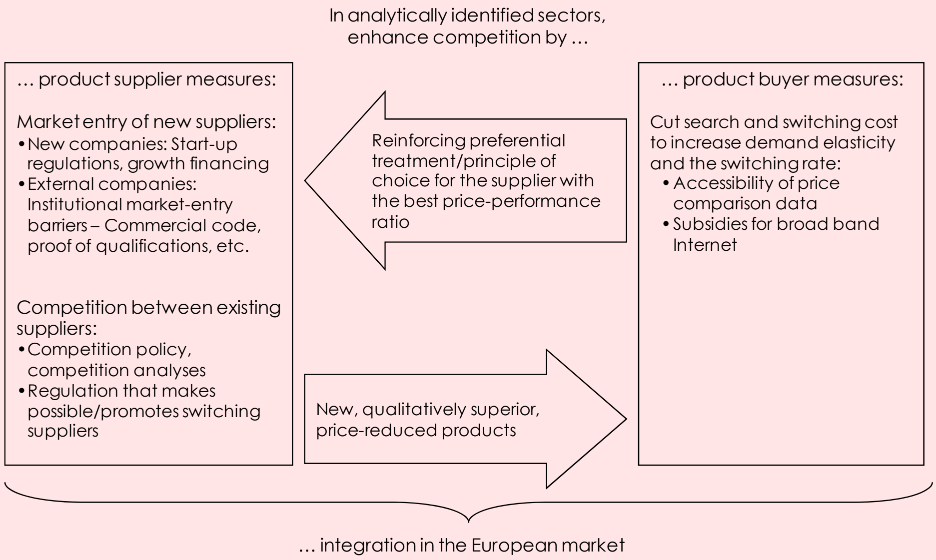
[9] Recent studies (*Böheim – Handler – Schratzenstaller,* 2010) estimate the potential for Austria of a partial privatisation of selected state enterprise equity holdings (Verbundgesellschaft, federal energy-supply companies, OMV AG, Österreichische Post AG, Telekom Austria AG, Austrian Real Estate company and the Austrian National Forestry Administration) at up to € 25 billion.

[10] Competition policy in a narrow sense includes only the traditional instruments like control of merger, market power abuse and cartels.

Intensifying competition

Competition can be encouraged by intensifying competition among existing companies, the market entry of newly founded or foreign companies as well as by an increase in consumers' demand elasticity.

Figure 3: Levers to intensify competition



Source: *Janger* (2009).

Competition among existing companies can be promoted through, among other means, an effective competition policy. According to the OECD synthetic indicator for the assessment of competition policy (*Høj,* 2007), Austria's competition policy and legislation put it in fourth-from-last place among the countries studied with regard to its promotion of competition (Figure 4). This assessment derives from a legal framework which is considered a weak competition promoter because of the relatively far-reaching exceptions to competition law as well as insufficient competition enforcement[11].

The resources of the Federal Competition Authority (Bundeswettbewerbsbehörde, BWB) remain under the international average. The Scandinavian countries mentioned above as models, such as Denmark, Finland and Sweden, are far more generous in provisioning their competition authorities. The BWB's current staffing levels are about one-fifth that of the Danish competition authority, one-fourth that of the Swedish authority and half of the Finnish. This is also reflected in international assessments of the work of competition authorities: Austria's BWB puts in an (only) average performance, which although better than Sweden's is markedly worse than Denmark's or Finland's. The staff's insufficient qualifications are seen as a persistent shortcoming. A particular criticism is the wide variance of skills among the staff. Although the nominal number of BWB employees has (nearly) doubled since the Authority took up its duties in 2002, the team has not been complemented by experts with many years of international experience in the field of competition enforcement and deeper roots in international networks. In addition to the lack of transparency and accountability in the BWB's activities (*Böheim,* 2003, *GCR,* 2010), the management's insufficient competition expertise came in for particular criticism (*GCR,* 2010).

The overall assessment of the BWB's activities is equivocal. The antitrust successes are due more to the introduction of the very successful crown witness programme and less to any pro-active investigatory work by the BWB. The intensification (though fo-

[11] The data from the OECD study date from 2003. The Austrian position has improved since the introduction of the "crown witness programme" (2006) and the doubling (from an initially very low level) of the Federal Competition Authority's budget.

cused strongly on Eastern Europe) of international contacts stand in contrast to the poorly articulated profile of the BWB and the associated reputational deficit among the relevant peer group in Austria (*GCR*, 2010). In the independent pursuit of deficits in competition in Austria, the BWB appears in international comparison anaemic – its activities are concentrated on "popular" public areas (e.g., petrol prices), while highly problematic but difficult to resolve competition issues in the national economy (e.g., in the energy and construction sectors) are not pursued with sufficient firmness and persistence. These shortcomings are due more to an inappropriate internal strategic focus rather than to a lack of resources (see *Frey*, 2010, *Kattinger*, 2010).

Figure 4: Assessment of the effectiveness of competition policy in OECD countries

2003

Source: *Høj* (2007). Composite indicator: 0 . . . effective, 6 . . . not effective.

Against this backdrop, *Böheim's* (2008) proposed reform option – to transform the BWB into a first-instance decision-making authority (similar to the German Federal Cartel Office) from a fact-finding and policing authority – seems unfeasible in the short- to medium-term[12]. Instead, the optimisation scope within the existing institutional system should be used more (see *Böheim – Friesenbichler – Sieber*, 2006). The BWB's cooperation with the Cartel Court in particular, but also with Federal Cartel Attorney and the Competition Commission, can be improved. To this end, all the institutions involved are required to contribute their share to efficient cooperation. One way to formalise this cooperation would be to create a platform on competition policy that systematically brings together all the institutions to exchange views and lessons learned.

In order to sustainably raise the intensity of competition, a "Quality offensive" designed to strengthen the competition regulator and work on the fundamentals of competition policy are particularly important. Comprehensive and ambitious analyses, investigations and decisions needed for an innovation-orientated competition policy must be carried out (*Böheim*, 2009).

[12] A rushed legislative initiative of the (then) Federal Ministry of Economic Affairs and Labour (draft Competition Authorities Reorgnisation Act, http://www.parlinkom.gv.at/PG/DE/ XXIII/ME/ME_00224/pmh.shtml), which referred to *Böheim's* (2008) proposals and provided for the transfer of all first-resort decision-making powers to the BWB in all antitrust proceedings found no political consensus. Attempts to operationalise this underlying idea remained without political support (*Thanner – Paulus*, 2009).

The competition authority is unable to meet expectations regarding fundamental questions of competition policy due to a lack of support from competition policy-makers. Competition enforcement can only complement competition policy at the operational level, but not replace it at the strategic level (*Böheim,* 2009). Instead of providing strategic guidelines for competition policy the activities of the Austrian ministry in charge of related issues are spent on one-off cases. These activities result in "populist" interventions such as the regulation of the market price formation process of petrol[13] or payments to real estate agents[14] that are not sufficiently thought through with respect to their effects on regulatory policy and economic competition. Such selective interventions in the market price formation process require a careful regulatory rationale and economic competition impact analysis[15]. Political activism in competition runs counter to an evidence-based economic policy and in the long-term is damaging to the reputation and the competitiveness of a industrial location. A reliable regulatory framework and a long-term orientated competition policy are key to securing the competitiveness of Austria as a industrial location.

At the start of a reform process, therefore, an overarching competition policy strategy should be developed, upon which competition enforcement[16] would be based. In addition, the effectiveness of competition law could be increased substantially through relatively small interventions. Concepts for this purpose have already been available for some time (see proposals from *Böheim,* 2003, and *Böheim – Friesenbichler – Sieber,* 2006, as well as their further development in *Böheim,* 2008). The cornerstones of these proposals are[17]:

- further long-term development of the competition policy institutional landscape,
- improvement of the resource base of the competition regulator (quantitatively and qualitatively),
- development of a proactive competition monitoring tool based on economic indicators,
- strengthening of the independence and qualifications of BWB's management through a reform of the appointment procedure,
- increasing the transparency and accountability of the BWB's activities,
- toughening market power abuse supervision by reversing the burden of proof[18].

Deregulation of product and service markets

Another significant factor influencing the competition between existing companies is the regulation of product and service markets[19].

Austria's position and development of product market regulation (Figure 5) from 1998 to 2008 corresponded largely to the OECD average (unweighted average). Denmark, Finland and Sweden are markedly ahead of Austria, and Switzerland surpassed Austria during this timeframe.

[13] Regulation of the Federal Minister for Economic Affairs, Family and Youth with regard to the Registry rule for petrol station operators over the petrol pricing time at petrol stations (Federal Law Gazette II 190/2009).

[14] Regulation of the Federal Minister for Economic Affairs, Family and Youth, which changes the Regulation on the Registration and Rules of Practice for real estate agents (Federal Law Gazette II 268/2010).

[15] The *Wettbewerbskomission* (2009) recommended the new petrol price regime be evaluated. To date, the Federal Minister for Economic Affairs, Family and Youth has yet to announce such an initiative.

[16] The social partners' study on the future of competition policy in Austria (*Beirat,* 2010) represents a politically agreed paper that could serve as a starting point for a comprehensive competition policy strategy process and supplies valuable inputs for the reform debate.

[17] These proposals will be elaborated in detail in the later chapter "Conclusions and competition policy recommendations".

[18] In this context the reversal of the burden of proof means that in the case of abuse of a market-dominant position, the burden of proof lies with the company. A similar regulation is found in paragraph 29 of the German Restrictive Practices Act (Gesetzes gegen Wettbewerbsbeschränkungen, GWB), (see remarks in *Böheim,* 2008).

[19] When interpreting the OECD's product market regulation indicators it must be born in mind that regulations can also be avoided (legally). An analysis by *Janger* (2008) showed, for example, one (on paper) relatively liberal product market regulation in the energy sector and a relatively strict regulation in the retail trade, when, in fact, the intensity of competition in these markets is exactly reversed.

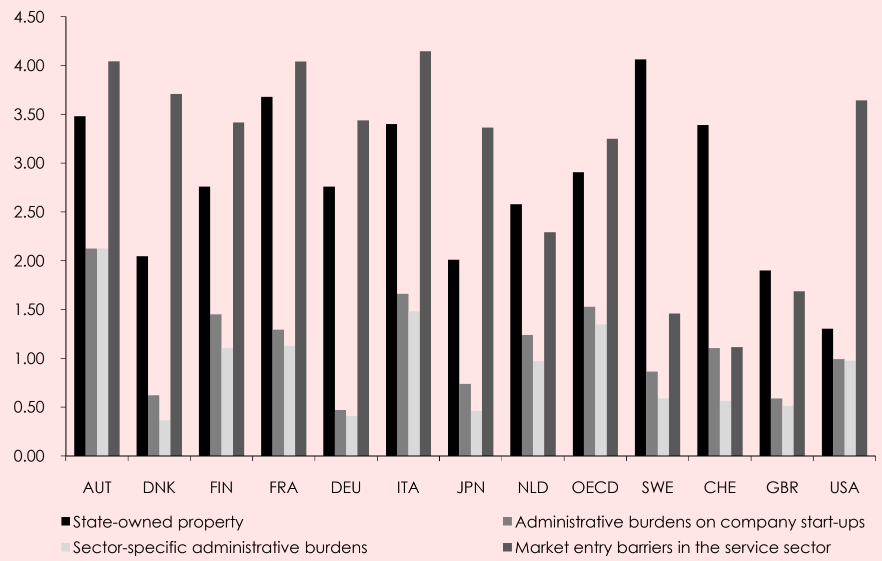
Figure 5: Composite indicator of the stringency of product market regulation

Source: OECD Product market regulation indicators, WIFO representation. Composite indicator: 0 . . . low, 6 . . . high.

Austria's position is largely determined by rigid regulation in the areas of public ownership, administrative burdens for corporate start-ups, sector-specific administrative burdens as well as market entry barriers in the service sectors (Figure 6).

Figure 6: Detailed elements of the OECD product market regulatory indicators

2008



Source: OECD Product market regulation indicators, WIFO representation. Composite indicator: 0 . . . low, 6 . . . high.

The stimulation of competition through foreign entrants to the market could take place by further integrating the EU internal market. In some manufacturing sectors, the common market is already relatively highly developed, but especially in the service sector there are different national regimes. EU market integration is not only important from the standpoint of competition incentives, but also with regard to the size of the market. A large "home market" is a key determinant of the market penetration of innovations and also an important factor in decisions to establish multinational companies or their research centres. Additional institutional market entry barriers in Austria are sector specific and act, for example, on the stipulations of qualifications in trade and commerce fields (Trade Code).

Competition through new domestic corporate start-ups is influenced by the regulation establishing start-up requirements. It is not just about intensifying competition in existing markets or increasing innovation incentives by enhancing competition, but also about innovation through company establishment itself or the creation of entirely new markets through company start-ups[20].

Company start-up regulation has been simplified in Austria for unincorporated firms or partnerships, but administrative burdens and minimum capital requirements to found a limited liability company (Gesellschaft mit beschränkter Haftung, GmbH) are still high by international comparison. In the global Doing Business comparison of the *IFC* (2010), Austria ranked only 28th and has fallen continually in recent years[21] (2009: 26th place, 2008: 23th Place).

High costs in Austria stem from the requirement to notarise the articles of association[22]. The large number of steps needed to found a business is explained by the many necessary registrations at up to eight different contact points[23] (excluding a bank). In Denmark, the whole process can be accomplished at a single point, or one-stop shop. The minimum capital of € 35,000 needed to found an Austrian GmbH – of which half can be in-kind and all of which is entirely available for investment (i.e., does not have to be available in cash at all times) – however, appears only in individual cases to act as a start-up barrier. For purposes of liability, consideration should be given to whether this minimum GmbH capital requirement should optionally be substitutable by insurance solutions.

The notary public requirement for the establishment of a GmbH should be eliminated. In addition, the tax discrimination of the GmbH through the minimum corporate tax should be abolished. In the regular operation of a GmbH costs are incurred for the mandatory publication of year-end financial statements in the Official Journal of the Wiener Zeitung, which has become obsolete in the electronic age and has no discernible value to the community. A posting on the website of the Company Registry would certainly be sufficient to satisfy the legitimate information needs of the public.

Competition policy versus industrial policy

The new EU Internal Market Strategy (*Monti,* 2010) speaks openly of the "possibilities of an active industrial policy". The fact that industrial policy at EU level is (again) under discussion as an economic policy option represents a paradigm shift. This brings the primacy of competition policy to an end; competition policy is now to be placed at the service of industrial policy. The Monti report explicitly advocates a "forward-looking industrial policy" that uses all the synergies between competition and industrial policy and should flexibly control all regulatory and political instruments. Furthermore, it demands "vertical elements" for strategic support to "promising sectors" where, for example, in general terms, "energy, innovative industries and environmentally-friendly vehicles" are named.

As a recent empirical study (*Lin – Monga,* 2010) shows, industrial policy can only be successful under very narrowly defined conditions. In this regard, the prospects for a national industrial policy are greater the more it is built on existing national competitive advantages, the more a market trend is followed and the nearer the area

[20] The industrial economics literature makes a distinction in this regard between competition in markets and competition for markets (see *Geroski,* 2003).

[21] Other countries drove forward ambitious reforms and improved their position while Austria's framework remained unchanged.

[22] EU countries such as Denmark, the Netherlands and Sweden dispense with this expensive formal requirement.

[23] The following institutions must be traversed in the course of the start-up process: chamber of commerce, notary public, commercial court, district administration, tax office, health insurers, and the municipality in whose area the company has its headquarters.

funded lies to core state competencies and interests. Industrial policy successes are, in contrast to failures, extremely rare; collateral damage to non-assisted areas and the economy as a whole are largely discounted. Instead of selecting supposed "winners", all too often "losers" are saved (*The Economist,* 2010).

The open commitment to actively promote certain economic sectors at European level is all the more surprising as it comes from a former Competition Commissioner of the European Union: it is largely at odds with the previous doctrine of horizontal measures. Behind this new approach is the (incorrect) political conviction that through targeted interventions by the state in certain sectors "key industries" or "national champions" can be created that would be in a position to act as "global players" at the top of the world market. In reality, these politically promoted national champions typically prove, on the one hand, to be too small to be able to actually play a significant role in the world market; on the other hand, they are too big for the domestic market and hinder competition (see *Tichy,* 2002).

That government attempts to direct the production structure of the economy should be avoided is an idea that enjoys broad consensus among economists, unless there are special reasons responsible for a "market failure". This principle also applies to the correlation between production and trade in the international exchange of goods and services. As little as policy-makers and bureaucrats are in a position to assess what goods and services should be produced, so little are they able to assess which goods and services should better be purchased abroad or made at home. These decisions are also usually best left to the markets, which coordinate the activities of millions of companies (suppliers) and consumers (buyers). A state-promoted policy of "national champions", which intervenes in these structures by favouring one company or sector while burdening another, runs counter to this principle and is harmful to the economy in the long run (*Monopolkommission,* 2004).

An active industrial policy cannot be securely founded on a strategic foreign trade policy. The underlying theoretical model abstracts too much from the problem of the identification of appropriate technologies, companies and sectors as well as from the incentive effects of privileges bestowed by the state. Competition as an incentive to innovation and competition as a discovery process for new technologies are unavailable under this construct. Instead of pursuing a strategic trade policy, it seems more appropriate that the European Union works for further liberalisation of world trade and the dismantling of trade and investment barriers. In the long term, a pro-active competition policy remains the best form of industrial and business and commercial centre policy. The most pressing task for policy-makers (and their advisers) would be to bring home to the population these complex interactions in an intelligible form.

Conclusions and competition policy recommendations

A lack of competition is creating a bottleneck in Austrian growth (*Ederer – Janger,* 2010). A lasting intensification of competition would substantially enhance national innovation and growth. Independent measures to bolster competition and supplement EU-level requirements are sensible, feasible and necessary. Due to past failings the scope for an Austrian competition policy that fosters innovation and growth is relatively large and could be carried out with little impact on the budget (*Böheim – Friesenbichler – Sieber,* 2006).

A clear lesson from the financial market and economic crisis is that the state should concentrate on its most important task: creating suitable frameworks for functioning markets. This goal is best achieved through a consistent regulatory framework and a strict internationally coordinated competition policy, as well as through "smart regulation" (*Lowe,* 2009). In certain sectors, such as banking or finance, this could lead to stricter regulation; in others, such as network industries or among the liberal professions, significant scope for deregulation seems to remain.

The financial market crisis has also shown that state ownership does not necessarily guarantee an organisation's stability. Public authorities' withdrawal from economic activity as an active player does not inevitably lead to market destabilisation, as long as the state succeeds in establishing the relevant framework, guaranteeing adherence to it and ensuring its long-term viability. This requires smart regulation and efficient competition oversight (*Böheim,* 2009).

The following competition policy recommendations are a further development of the proposals made in the WIFO White Book for Growth and Employment (*Böheim – Friesenbichler – Sieber,* 2006) and provide a general view of the thrust of such reforms.

Recommendations for an innovation- and growth-orientated competition policy

Top priority for a competition-friendly climate and overarching strategy

Establishing a competition-friendly climate as well as the development of an overarching competition policy strategy should have top priority.

Despite numerous measures to improve competition in targeted instances, Austria is still far from competition-minded. Contrary to economic theory and empirical evidence, the prevailing attitude is to rely on the benefits of size (increasing economies of scale) and to believe in the possibility of achieving international competitiveness through mergers (and not through innovation). Thus, in case of doubt, federal and state governments always opt for the "national champion" or for the solution that allows them to exercise their power to the greatest possible extent and for the interest groups that intervene for the benefit of their own stakeholders. Other features are an anaemic competition authority and "immature" and uninformed consumers.

After a first wave of liberalisation, which was marked by the reform of the Commercial Code and (genuine) privatisation, development in the area of deregulation stagnated. This is unfortunate, because international studies have shown that deregulation can be expected to boost growth by around ½ percent per year.

The suspension of further privatisation, too, can hardly be equated with a strengthening of competition. State stakes in commercial enterprises in Austria remain hefty. Beyond a financial consolidation contribution, continued privatisation and liberalisation appear to be a regulatory must in order to raise the intensity of competition in Austria and to secure its long-term competitiveness as a industrial location.

Competition policy is more than the mere working through of specific antitrust cases; a modern competition policy presupposes an overarching strategy, or grand design, that is coordinated with other policy areas (industrial policy, energy policy, environmental policy, etc.). Such a competition policy should be pushed for vigorously in Austria; to this end, policy-makers should provide clear goals that can be transformed into actual practice.

The proactive and investigative competition policy of Denmark could serve as a model. Based on clear policy guidelines, all Danish industries undergo quantitative competition monitoring.

To provide Austria's competition and regulatory policy with a comprehensible quantitative basis, Austria's participation in the OECD Review of Regulatory Reform should be ensured; in parallel, Statistics Austria should improve the database on competition economics, such as by establishing a national market concentration statistic following the German model. Reports on the state of competition in Austria, drawn from this database on competition economics, should be published annually; to ensure maximum independence, objectivity and transparency, the report should be written by an academically-orientated research and consulting institution selected by international tender. The competition report combined with the mandatory testimony of the companies concerned as well as those of the competition and regulatory authorities should be taken up by the Austrian Parliament. The competition and regulation authorities would need to present a concrete action plan to remedy the competition concerns raised in the report.

Effectiveness and implementation of competition law

The effectiveness of competition law and its implementation should be improved.

The multi-headed institutional landscape of competition policy in Austria calls out for better coordination among stakeholders, to ensure an efficient exchange of information and lessons learned and to exploit synergies. A networked platform of competition policy experts could fill this vacuum.

The resources of the Federal Competition Authority should be qualitatively strengthened. It should be given greater autonomy in budget and personnel matters; in exchange, the transparency of its work should be heightened and accountability and performance monitoring strengthened. A reform of the appointment procedure for the Authority's management should be considered.

The Competition Commission should be repositioned as an independent expert body modelled on the German Monopoly Commission. Freed from the daily work of the Federal Competition Authority, this body would focus on underlying issues of competition law. The main task of the Commission should be to provide advisory opinions on general competition topics.

The funds needed to improve the resource base of the competition oversight authority could be generated by an at least partial earmarking of fines levied on violations of competition rules[24].

To increase the effectiveness of antitrust market power abuse monitoring and enforcement before the Cartel Court, paragraph 5 of the 2005 Antitrust Act (Prohibition of the Abuse of a Market-dominant Position) should be restated: The market-dominant company would need to prove that it has not abused its dominant position (burden of proof reversal).

Regulation of entrepreneurial activity

The regulatory barriers to the development of entrepreneurial activity should be further reduced.

The in international comparison high administrative burden required for the start-up of a limited liability company (GmbH) should be reduced by creating an Internet-based one-stop-shop where the entire process can be completed electronically (Danish model). The tax discrimination of GmbHs through the minimum corporate tax should be abolished. For purposes of liability, this minimum GmbH capital requirement should optionally be substitutable by insurance solutions. The notary public requirement for the establishment of a limited liability company as well as the mandatory hard-copy publication of year-end financial statements in the Official Journal should be eliminated.

The skills-based access regulation of the Commercial Code should be further liberalised. All non-essential quality control provisions should be stricken without replacement. Basically, all trades should have (at least) dual market access, for example, with appropriate work experience or additional training for qualified journeymen compensating for the lack of a master trade qualification.

Increasing competition in the liberal professions

An increase in competition in the liberal professions should be energetically pursued.

The intensity of the restrictive regulations varies greatly among the various "liberal" professions (see *Paterson – Fink – Ogus,* 2003). The regulations most harmful to market competition deal in particular with chemist's (economic needs tests, third-party ownership ban, ban on postal order of medicines, requirement that non-prescription drugs still be dispensed only by chemist's; *Böheim – Pichler,* 2010) and notary publics (statutory tasks, restrictions on the number of notary jobs as in a planned economy).

If the self-regulation of the liberal professions sets the wrong incentives for market opening, then the competent federal ministries should intervene in their role as regulatory authorities. The regulatory authorities should provide the self-regulating bodies of the professions (professional organisations, professional associations) with clear requirements to intensify competition. The fulfillment of these requirements must be documented in an annual report written by an independent institution; with sustained non-compliance, the self-regulating bodies should be overridden by the state regulatory authorities empowered by the legislature to sovereign acts to achieve these goals ('substitute undertakings').

A relaxation of access and practice regulations in the liberal professions would be expected to result in an intensification of new business start-ups in these fields, which

[24] The Austrian competition regime is to a large degree self-funding. The BWB's 2009 budget of € 2.4 million stands in contrast to antitrust fines of some € 10 million annually on average between 2002 and 2010 (see *Bundeswettbewerbsbehörde,* 2010, and http://www.bwb.gv.at/NR/rdonlyres/C5D0A1CF-3807-4F6E-B935-58CC4DACABC0/37942/GeldbussenTab05_2010.pdf).

would have a positive impact on competition intensity in the markets for liberal profession services.

Access and practice regulations of the liberal professions should be sifted through rigorously, striking all non-essential quality control provisions without replacement or adapting them to promote competition, in which case the requesting party would have to prove that the competition-limiting provision must be retained (burden of proof reversal).

Ways to unify professional-regulatory law for all professions should be considered. Through a subsidiary application of general commercial regulations (paragraphs 1-99 Trade code) equal treatment of all liberal professions with regard to professional rules and principles (professional education, acquisition of right to exercise the profession, extent of professional practice, protection of titles where applicable, boundaries to other professions, termination and termination procedure and the relevant authority's jurisdiction) could be established.

Competition-distorting subsidies

Competition-distorting subsidies should, in principle, be dispensed with.

Direct business subsidies in relation to economic performance are more than twice as high in Austria as in the other countries of the EU 15 (Austria 5.5 percent, EU 15 excluding Austria 2.2 percent). Austria thus gives in corporate subsidies some 1.5 times the amount that would be justified by the economy's structure.

This portion of the subsidies not justified by the economy's structure do not eliminate any market failures, instead it hampers the emergence of efficient market solutions in that uncompetitive economic areas are preserved and established companies are protected from competition. Medium-term, a decrease in subsidies to the level that corresponds to the domestic economic structure should be strived for.

All subsidies should be analysed in terms of their effects, particularly on market-economy competition. Distorting subsidies should be phased out after a short transition period. To this end, all key figures for an economic impact analysis should be captured in a subsidy-grants database.

Pending the achievement of subsidy levels that correspond to the domestic economic structure, new types of subsidies should only be authorised when old subsidies of at least the same volume expire ("subsidy brake").

The savings from unspent subsidies could be used to finance future-orientated investments.

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Competition Policy in the Wake of the Economic Crisis – Summary

A lack of competition has resulted in a bottleneck in Austrian growth. A lasting intensification of competition would substantially enhance national innovation and growth. Independent measures to bolster competition and supplement EU-level requirements are sensible, feasible and necessary. Due to past failings the scope for an Austrian competition policy that fosters innovation and growth is relatively large and could be carried out with little impact on the budget.

A clear lesson from the financial market and economic crisis is that the state should concentrate on its most important task: creating suitable frameworks for functioning markets. This goal is best achieved through a consistent regulatory framework and a strict internationally coordinated competition policy, as well as through "smart regulation". In certain sectors, such as banking or finance, this could lead to stricter regulation; in others, such as network industries or among the liberal professions, significant scope for deregulation seems to remain.

The financial market crisis has also shown that state ownership does not necessarily guarantee an organisation's stability. Public authorities' withdrawal from economic activity as an active player does not inevitably lead to market destabilisation, as long as the state succeeds in establishing the relevant framework, guaranteeing adherence to it and ensuring its long-term viability. This requires smart regulation and efficient competition oversight.

The following recommendations for fostering an innovation- and growth-orientated competition policy can be derived:

- The establishment of a competition-friendly climate as well as the development of an overarching strategy for competition policy should be given top priority.
- The effectiveness of competition law and its application should be enhanced.
- The regulatory obstacles hampering the development of entrepreneurial activity should be further reduced.
- The stimulation of competition in the field of liberal professions should be energetically pursued.
- Competition-distorting subsidies should be, to the greatest possible extent, abandoned.