

Sector Inquiry Food

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1 Executive Summary

1.1 General remarks

As one of its central functions pursuant to the Federal Competition Act (WettbG), the Austrian Federal Competition Authority (AFCA) is able to initiate sector inquiries, investigating whole industries and business sectors if circumstances suggest competition may be restricted or distorted in them. Here, the priorities set depend on – among other things – the business sector’s relevance for consumers, its economic significance and recent developments that point to the necessity of a competition analysis.

For inquiries of this kind - which are not directed against a single undertaking - the AFCA has the instruments of the request for information and the request for the disclosure of documents at its disposal. Where necessary, information can be obtained from persons and entities domiciled in Austria by issuing an administrative decision, which requires them to answer the questions put and submit the requested documents.

The results of such sector inquiries are, on the one hand, the acquisition of a well-founded stock of data about the markets and/or business sectors investigated and, on the other hand, the identification of competition/structural problems and formulation of concrete recommendations for action to remedy any irregularities that are identified. In addition, where there is anti-competitive conduct or a sufficiently concrete initial suspicion of such conduct, the AFCA has the option of opening concrete investigation proceedings against the undertakings concerned and subsequently bringing the case before the Cartel Court or the Supreme Cartel Court.

The data and analyses supplied by the Österreichische Nationalbank (OeNB), the Austrian Consumers’ Association (VKI) and AgrarMarkt Austria (AMA) have enriched this report.

1.2 Results/findings of the sector inquiry

- The reasons for and background to the sector inquiry were (i) the shifts in global flows of goods and commodities triggered by the attack on Ukraine, the corollary of which was price volatility on the global crude oil, fuel, energy and other commodities markets, as well as downstream markets (e.g. the markets for unprocessed and processed agricultural products and foodstuffs), and (ii) the disparity between the development of prices for foods and non-alcoholic beverages (FNABs) and the other Consumer Price Index (CPI) categories, which meant the prices for FNABs rose by 3.8 per cent more between January 2022 and September 2022, a discrepancy that grew to 6.7 per cent by the end of 2022 and even reached 7.9 per cent by June 2023 (see section 2.1 *[german version only]* on the **reasons for and background to the sector inquiry**).
- In order to facilitate and guarantee the comparability of the data gathered on the relevant product groups and the different stages in the value chain, a reference basket of goods was compiled by the AFCA that was based on the one used to measure the CPI in Austria. The weighting of foods and non-alcoholic beverages in the CPI is 11.35 per cent of the total basket, while the reference basket used by the AFCA for the sector inquiry would have a weighting of 8.49 per cent in the total basket of goods used to calculate the CPI. The AFCA's focus was on everyday foods, and therefore foods and non-alcoholic beverages. The AFCA basket of foods and non-alcoholic beverages was equivalent to approximately 64 per cent of the 2022 GfK household panel shopping basket (see section 5 *[german version only]* on the **AFCA's reference basket of goods**).
- Various sources were drawn on to build up a reliable, meaningful stock of data for the sector inquiry:
 - (i) Some of the data from the GfK household panel were purchased. Overall, the dataset covers thirty-four product groups, which can be assigned to eighteen baskets of goods.
 - (ii) Industry indicators and location data for the Austrian food retail sector were acquired from RegioData, specifically RegioData's key industry figures on the state of the food retail sector in Austria in 2022.
 - a) Consumer spending per resident in euros overall and broken down into various product categories (meat & fish, dairy products & eggs, fruit & vegetables etc.),
 - b) turnover volumes in the Austrian food retail sector for the years from 2009 to 2022, including forecasts for 2023, and

- c) the individual market participants in the food sector in 2022 for the whole of Austria (sectoral data). Sectoral data on individual market participants with reported figures or estimates for the following indicators in 2022:
- a) Turnover in million euros, b) number of locations, c) turnover in euros per location, d) retail floorspace in m², e) retail floorspace per location in m², f) turnover per m² retail floorspace in euros, g) market shares in per cent.
- (iii) Other data were compiled from, for example, Agrarmarkt Austria, Statistics Austria, the RollAMA household panel, KeyQUEST etc.
- (iv) About 700 owners of food trading businesses and more than 1,500 suppliers were surveyed by the AFCA in ten rounds of requests for information.

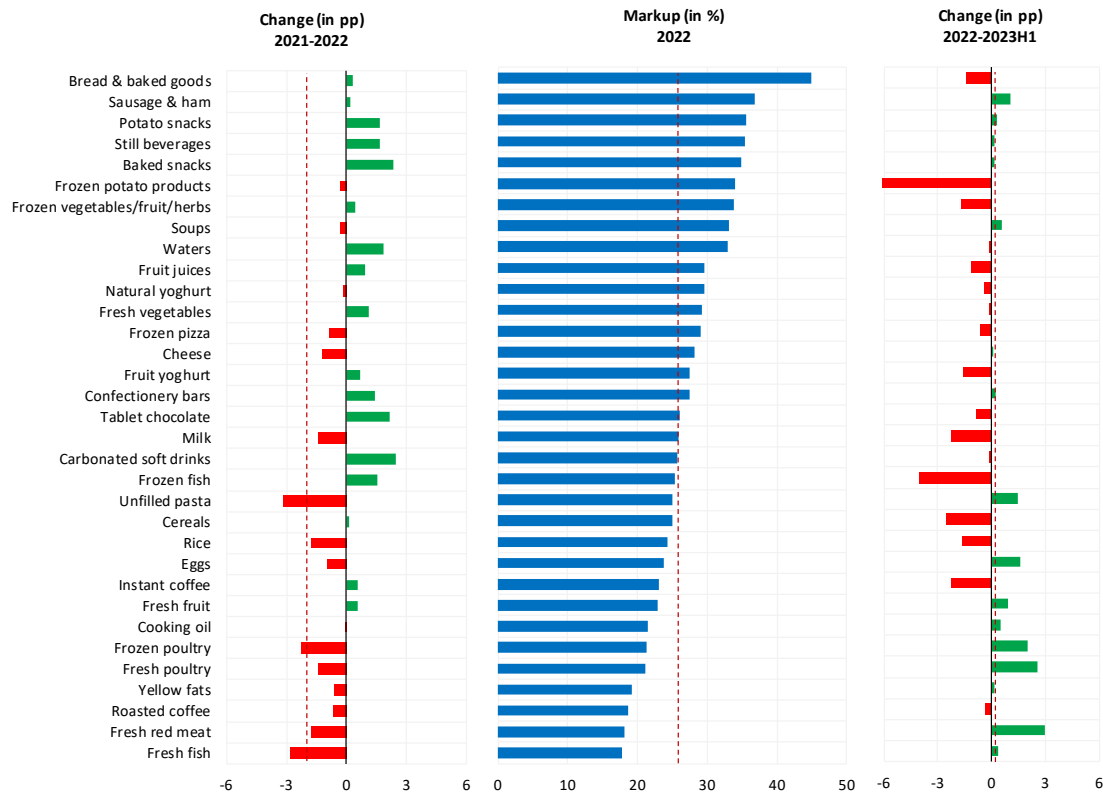
(See section 4 *[german version only]* on **data and requests for information.**)

Food retail sector (see section 6 *[german version only]*)

- In its current form, the structure of the food trade sector may be regarded as ossified **with slight ongoing tendencies towards greater concentration**. Since 2019, for example, more than 200 local stores have left the market, probably as a consequence of the pandemic. By contrast, the top four Austrian food retailers have been able to further expand their branch networks. Three to five food retailers usually dominate local markets, sometimes with multiple branches.
- As far as their market conduct is concerned, the comprehensive **market observations** carried out by undertakings in the food trade sector are to be emphasised. For instance, the standard and discounted prices charged by other competitors for the most-significant food products are regularly observed. External service providers are also commissioned to observe other competitors. Building on these data, food retailers sometimes engage in **systematic price matching**, which results in parallel pricing behaviour, with the most important competitors in a segment setting very similar prices for comparable products.
- The **weighted markup** for the basket of goods the AFCA has used in its analyses **remained largely unchanged from 2021 to the first half-year of 2023**. Increases in the markups on individual product groups were to be observed in 2022, as well as the first half-year of 2023, in each case compared to the preceding year. These increases have, however, been offset by reductions in the markups on other product groups, as Figure 1 shows. Overall, there was no evidence that attempts had been made by

the food retailers to increase their markups against the background of the rising and high inflation rates of 2021, 2022 and the first half-year of 2023.

Figure 1: Markups by product group in the AFCA basket of goods



Note: One product group (filled and ambient pasta) was not included in the graph because insufficient data were available. The red dashed lines indicate the weighted average for each set of data: (i) change 2021–2022: +0.06pp, (ii) markup in 2022: 28.89%, (iii) change 2022–2023H1: +0.16pp.

Sources: Requests for information, authors' calculations.

Since markups remained largely unchanged, **profit margins did not improve in the Austrian food retail sector** either. The supermarkets and discounters' markups developed very similarly during the period from 2020 to 2022. The analyses conducted by the AFCA accordingly permit the conclusion that the Austrian food retail sector has not exploited the inflationary environment to increase its profits and profit margins over the last two years.

- Against the background of these relatively low profit margins, the differences between the prices on the supermarket shelves in Austria and Germany appear at least partly attributable to **multinational food corporations' country-specific pricing strategies**. The significance of higher overheads, in particular due to the higher density of branches, and the larger proportion of discounted goods in Austria appear to be of merely **secondary explanatory importance**.

- On account of the economies of scale achieved in purchasing (bulk discounts, delivery costs etc.), the effects of bundling on sales (low transaction costs for customers), the intense competition for customers (extensive market observation, price matching, low profit margins) and the countrywide dominance of a few undertakings on locally defined markets (approx. 10–15-minute travelling time), the market structure of the food trade sector may be perceived as an **oligopoly**.
- High levels of concentration in the food trade sector may pose a **raised risk of collusion**, as has been shown in the past by the fines imposed for vertical agreements. In addition, the strong demand power of the food trade may act as a barrier to market entry at the upstream stages of the value chain and therefore constrain competition.
- Both the practice and problems of shrinkflation and skimpflation must not be disregarded when looking at price transparency for consumers on the Austrian food retail market because there are certainly actors engaging in these practices. They involve a hidden price rise being imposed that is disadvantageous for consumers, but difficult for them to detect. These topics are relevant to the food production industry just as much as the food retailers that determine the range of goods available. The AFCA therefore suggests that **transparency be increased about food packaging and the extent to which the size of packaging reflects the weight or volume of a product it actually contains**. In particular, consumers should be in a position to easily detect hidden price rises – for instance as a result of products’ weight or volume being reduced (see section 6.4 [*german version only*] on **shrinkflation and skimpflation**).
- In the course of the sector inquiry, a situation analysis of the growing **online food retail trade** was drawn up for the first time. **Considerable increases in turnover** have been achieved in the last few years, ranging between 30 and 70 per cent, even though the share of the whole food retail sector’s turnover earned by online food retailers has generally been of minor significance to date (approx. 1%). The gross turnover of online food retailers in Austria was about 216 million euros in 2022, of which roughly 67 per cent (144 million euros) was generated in Vienna (this equates to approx. **3 per cent** of the food retail sector’s total turnover in Vienna). In Austria, competition between online food retailers is limited very much to the cities with the largest populations, primarily Vienna, and the areas that surround them. As a matter of principle, it is possible to categorise market participants in online food retailing as either multichannel providers (who offer their foodstuffs both in physical shops and online) or pure players (who offer their foodstuffs exclusively online). On average, consumers buy larger baskets of goods from online food retailers and have lower shopping frequencies, which suggests online purchases are more often planned weekly shops than at physical outlets. Online food retailing consequently has massive

potential for development and will gain considerably in significance in future (see section 6.5 *[german version only]* on **online food retailing**).

- **Food inflation has various social effects** because rising food prices place relatively heavier financial burdens on households and individuals with lower incomes, meaning the significance of competition therefore includes distributional aspects as well. Overall, it is apparent that the lower-income stratum are affected more than the middle-income stratum by price rises in several important product groups such as dairy products (+5.6pp), yellow fats (butter, margarine and blended spreads; +7.0pp), staple foods (+11.4pp) and frozen foods (+18.1pp). Please see the AFCA's focus paper on **price comparison platforms in the food sector** for a discussion of how to close a possible transparency gap, which would also benefit the lower-income stratum to a particular extent. In this paper, the AFCA proposes that the data basis for food price comparison platforms be improved. If the transparency gap is to be closed, it will be important for them to utilise information on the broadest feasible range of product groups. Price comparison instruments become more useful if they cover as many products as possible (see section 6.6 *[german version only]* on **the effects of competition and how they vary depending on household income**).

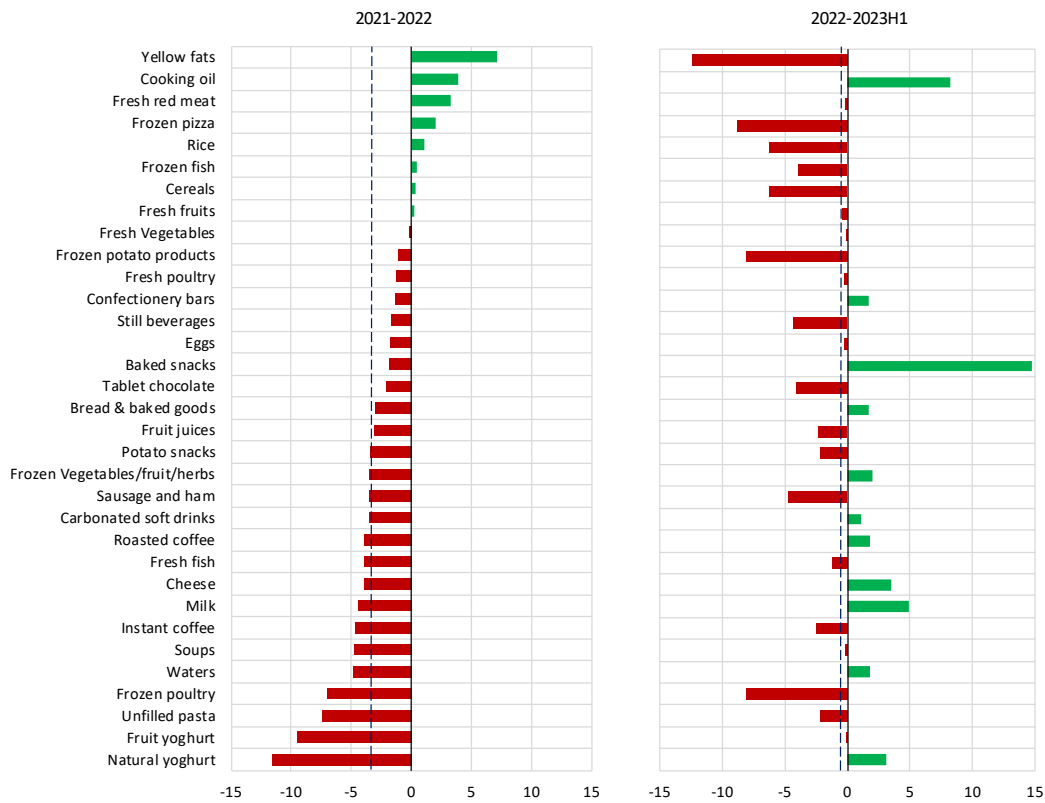
The food industry (see section 7 *[german version only]*)

- A **disparate picture** emerges **on the supermarket shelves** in the product groups investigated by the AFCA. The levels of concentration can be classed as low in eight of the thirty-three product groups examined for the sector inquiry (e.g. sausage & ham), while **ten product groups are highly concentrated (e.g. soups)**. Moderate levels of concentration are to be observed in the remaining fifteen product groups.
- **International food corporations** dominate nine out of twenty-five of the product groups looked at in the inquiry (fresh products were excluded) and therefore account for more than 50 per cent of household spending. For example, nearly 70 per cent of spending on tablet chocolate and soups goes on products from multinational brand manufacturers.
- Fundamentally, the relationship between the industry and the food trade sector is largely characterised by an asymmetrical distribution of negotiating power that favours the food trade. Ultimately, the **food trade sector's strong demand power** is also expressed in its ability to obtain company and competition-sensitive information, which is disclosed by suppliers as a (probably involuntary) negotiating strategy and,

in turn, the negotiating power exercised by food retailers with extensive knowledge of the market.

- When it comes to the procurement of its raw materials, the food industry is highly exposed to **developments on the international markets**. This is true in particular of agricultural products (e.g. cereals, oilseeds, coffee, cocoa etc.), but also fuels, power and gas. With a few exceptions, bilateral price negotiations play a secondary role in many fields. The price hikes on the international commodities markets in 2021 and 2022 consequently had a powerful impact on the food industry.
- Despite significant cost increases, the majority of the undertakings surveyed with requests for information had been able to pass on at least most of their higher costs to food retailers in 2022. Nevertheless, product-specific profit margins developed largely to the disadvantage of suppliers, as shown by Figure 2. Overall, the weighted profit margin on the AFCA's basket of goods fell by more than 2 percentage points in 2022 compared to the preceding year. It hardly changed in the first half-year of 2023. Two product groups, cooking oil and baked snacks, stood out above all during the period from 2021 to the first half-year of 2023.
- However, the discussions of individual undertakings in the cooking oil and baked snacks industries show the AFCA has not found a historically abnormal rise in product-specific profit margins, as happened for instance in its sector inquiry into the fuel market in 2022. **Overall, the AFCA has therefore observed no increases in the food industry's profit margins on the product groups analysed that give rise to competition concerns.**

Figure 2: Changes in product group-specific profit margins in the food industry (in pp)



Note: One manufacturer was removed as an outlier in the cooking oil product category because their profit margin was highly negative in 2021. One product group (filled and ambient pasta) was not included because insufficient data were available. The dashed lines indicate the weighted changes in profit margins: (i) 2021–2022: -2.24pp, (ii) 2022–2023H1: -0.25pp. The cooking oil market is not highly concentrated and is driven by indices (e.g. MATIF rapeseed oil); cf. baked snacks, the only product group in which “some” undertakings (only Kelly’s in fact) had been able to increase their profit margins, but merely compared to 2020 and 2021. The markup levels seen in 2019 have not yet been reached again (i.e. by Kelly’s).

- The existence of **price differences between Austria and Germany** has previously been the subject of academic studies, and there are significant price disparities between the two sides of the border. Food retailers and national and international manufacturers were asked about this issue, with both sides blaming the other for the price premium currently paid in Austria, while citing international factors that do not fall within the AFCA’s investigative remit. In concrete terms, there is clear evidence that the **different purchasing prices for the food retail sector** in the two countries explain a large part of these price disparities and that food manufacturers, in particular the big international corporations, charge **different prices** for the same products on various national markets in accordance with their **country-specific strategies**. The Austrian price premium is therefore a topic that transcends the national level while, as a matter of principle, the AFCA has no powers to investigate the German market. In view of its internal market dimension, the AFCA has referred

this matter to the European Commission (see section 7.4 *[german version only]* on the “**Austrian price premium**”).

- The inquiry into the **agricultural sector and agricultural inputs markets** has shown there are sometimes far-reaching overlaps between the agricultural inputs markets and the inputs markets for the food industry. The Austrian agricultural sector, which can be described as dominated by small-scale structures compared to its international counterparts, has also been affected by falls in the numbers of agricultural operations for years, meaning it has been becoming increasingly concentrated. Given how integrated the Austrian agricultural sector is into the world economy, trends in prices and earnings also have to be viewed in the context of international developments. For instance, national and international market indices are frequently consulted in price negotiations between agricultural operations and industrial companies. The increases in the costs of agricultural products are attributable to various factors such as (i) disrupted global supply chains, (ii) geopolitical conflicts, primarily the Russian war of aggression against Ukraine, (iii) freezing weather/drought/rain/floods – as a result of which there have been falls not only in harvest yields but also in the quality of products – and (iv) a global supply shortage, due as well to ever more frequent and increasingly dramatic extreme weather events such as El Niño. The agricultural inputs markets (e.g. for fertilisers, plant protection products, fuels, power, gas etc.) imposed considerable additional costs on the agricultural sector during the period under observation. Simultaneously, however, increased earnings drove a strong rise in profitability in 2022 (see section 8 *[german version only]* on **the agricultural sector and agricultural inputs markets**).
- Consumers wish to benefit from using **price comparison platforms**. About 85 per cent of consumers are prepared to use a price comparison platform with functions that are useful for them, as shown by the **AFCA’s consumer survey** (see next paragraph). A quarter of them would even be willing to pay for this. If private price comparison platforms were empowered to do so, they could enable consumers to compare prices comprehensively with useful functions that allowed whole baskets of goods/shopping lists to be compared. It is of essential significance in this respect that the platforms, which make it possible to compare large numbers of individual products and product groups, covering all the types of foodstuffs sold by food retailers, are afforded **unbureaucratic, decentralised access to data**. The AFCA previously published a focus paper on this issue in September 2023, which can be downloaded from the AFCA website and makes four key points about how to strengthen price transparency for customers (see section 9.2 *[german version only]* on **price comparison platforms**). Regulatory restrictions, for instance limiting platforms’ coverage to just a fraction of

the foodstuffs on sale, would jeopardise the success of this recommendation and prevent the aim of cost savings for consumers being attained.

- In order to be able to identify and better understand consumers' priorities and needs as the demand side of the food retail market as well, the AFCA commissioned a consumer survey on the food retail sector with twenty-five questions to be answered. 1,000 people aged between 18 and 65 were interviewed for this survey, comprising a representative cross section of the Austrian population. The questions dealt with various topics of relevance to the sector inquiry, including: (i) branch density in the food retail sector, (ii) price transparency and price comparison platforms, (iii) competition from online food retailers and (iv) own brands. The findings are of particular significance with regard to the competition recommendations that have been put forward (see section 9.1 *[german version only]* on the **food retail sector consumer survey**).
- It was found in the course of the sector inquiry that a large number of the suppliers surveyed had been affected by **unfair trading practices** listed in the Austrian Fair Competitive Conditions Act (FWBG). **14.3 per cent** of them had experienced unilateral modifications being made to contracts, **13.6 per cent** had received demands for payment unrelated to the supply of agricultural and food products, **13.4 per cent** had received at least one demand for payment for a deterioration in goods for which they were not at fault and that had occurred on the premises of an undertaking operating in the retail food sector. Contraventions of the FWBG's protective provisions occur to a not insignificant extent along the Austrian food sector value chain, and their prosecution and investigation are prioritised by the AFCA (see section 10 *[german version only]* on **fair supply relationships in the agricultural and food industries**).
- The results of the sector inquiry give reason to suspect that unfair trading practices within the meaning of the FWBG occur to a not insignificant extent on the Austrian market. As the competent enforcement authority, the AFCA will place its focus on combating such practices, in doing which it will give consideration to the findings reached during the sector inquiry into the food sector. The AFCA will report on its activities in this field on an ad hoc basis.

1.3 Competition recommendations

1.3.1 Implementation of the measures to increase price transparency for consumers in the food retail sector recommended by the AFCA in its focus paper on price comparison platforms.

In the focus paper it published in September 2023, the AFCA drew attention to the significance of measures to increase price transparency for customers. In particular, it argued for the activities of digital comparison platform developers and operators to be facilitated. The Federal Ministry of Labour and Economy (BMAW) has announced it intends to implement at least some of the recommendations set out by the AFCA in its focus paper on price comparison platforms. However, a sufficient density of information will be required about the products compared if the potential offered by well-functioning, informative price comparison platforms is to be exploited to the full – to the benefit of all consumers and quite especially people on lower incomes. Price comparison platforms are only attractive to consumers if they are given access to information about all foodstuffs and not merely limited to a few “staple foods”. Otherwise, the utility of such price comparison platforms for consumers would be heavily restricted. Another essential cornerstone of the AFCA’s recommendations is that the successful model of the decentralised private price comparison platforms should not be restricted by the creation of regulatory structures and processes that would negate their purpose.

1. Strengthening of the internal market and referral of varying purchase prices in the EU Member States on account of food corporations’ country-specific strategies to the European Commission

The application of varying pricing policies by suppliers on the EU internal market is a problem that transcends the national level. The AFCA will therefore refer the “Austrian price premium”, as it is known, to the European Commission since this is an issue of relevance for a functioning internal market.

2. Improvement of transparency about foodstuffs

It is suggested that measures be taken to increase transparency about changes made to packaging for foodstuffs, especially the extent to which the size of packaging reflects the weight or volume of its contents. In particular, hidden price rises – resulting for instance from reductions in the weight or volume of products’ contents – should be easy for consumers to detect. In essence, this is a problem of consumer protection law that could

be resolved by amending or tightening up the current provisions of the relevant legislation to this effect. Since the food retailers enjoy the independence to determine the prices on their shelves and, in so far as this is the case, function as interfaces between manufacturers and consumers, they should also take responsibility for transparently communicating changes made to products' weight, volume or characteristics.

3. Strengthening and enhancing the status of consumer protection

Consumer protection is to be strengthened in substantive terms and, where relevant, institutionally as well in response to recent developments. In this connection, the AFCA welcomes the discussion process instigated by the Federal Ministry of Social Affairs, Health, Care and Consumer Protection in its report on a funding concept intended to ensure the long-term financing of consumer protection organisations, in particular the VKI.¹

4. No misleading price reductions

In the interests of better price transparency for consumers about discounted products and a consistent practical approach to this issue on the part of food retailers, it is suggested steps be taken to clarify one unresolved legal question about price reductions on physical goods: whether such reductions have to be explained by stating the amount or percentage by which the lowest price during the previous thirty days has been reduced or whether the prior price is merely to be indicated as an additional piece of mandatory information?²

¹ *Bericht zur Entschließung des NR vom 14.12.2022 - 285/E XXVII. GP: Förderkonzept zur Sicherstellung einer langfristigen Finanzierung von Verbraucher:innenschutzorganisationen insbesondere des VKI, parlament.gv.at.*

² These matters are governed by the Price Indication Directive (98/6/EC), which stipulates among other things that, whenever a price reduction is announced, the prior price is to be indicated the retailer has charged for a particular period of time before the price reduction. The prior price is the lowest price the retailer has charged within a period of at least thirty days previous to the application of the price reduction. The practice followed by undertakings in Austria is inconsistent. For instance, additional information about the lowest price in the previous thirty days is provided in some cases when prices are reduced, but there are also other cases in which no lowest prior price at all is indicated.

5. Market inquiries under the FWBG

Suppliers affected by unfair trading practices refrain from submitting complaints to the AFCA out of fear of reprisals (e.g. delisting). Evidence essential for the initiation of proceedings can, however, be gleaned from market inquiries. In order to ensure efficient enforcement, the AFCA therefore suggests that the FWBG's provisions be clarified, with the AFCA being given the power to initiate targeted market inquiries, and also that this be possible purely on account of the suspected use of unfair trading practices.

6. Legal certainty for suppliers with requirement for written form

In order to make the legal environment more secure for suppliers, the AFCA proposes that, as a matter of principle, written form be stipulated for contracts subject to Chapter 2 of the FWBG – or at least for practices listed in Annex II – and that this should no longer be dependent on a request being made by the supplier.

7. No pressure to agree to practices listed in Annex II to the FWBG

The food retail sector is able to exert pressure in order to gain suppliers' consent for practices listed in Annex II that are prohibited unless they have previously been agreed in clear and unambiguous terms. In order to address this problem, the AFCA proposes that, if objectively unjustified pressure has been exerted by the purchaser when practices are agreed, the practices in question be equated with the ones listed in Annex I that are prohibited in all circumstances.

8. Improved legislative basis for the enforcement of measures under competition law taken in response to sector inquiries

The Austrian Federal Government's commitment to tighten up cartel law, above all in connection with structural restrictions or distortions of competition found by sector inquiries, is welcome from a legal policy point of view. Legislative measures to achieve this, which are also being discussed in the EU and internationally or have already been implemented, may expand the range of options available to competition authorities for action to counter severe distortions of competition.

Feedback: Please send any comments and suggestions relating to this report to wettbewerb@bwb.gv.at.

2 Introduction

2.1 Reasons for and background to the sector inquiry

The start of the attack on Ukraine on 24 February 2022 and the political and economic consequences to which it led triggered shifts in global flows of goods and commodities, the corollary of which was price volatility on the crude oil, fuel, energy and other commodities markets. This brought about considerable spillover effects on the downstream markets (e.g. the markets for unprocessed and processed agricultural products, and foodstuffs), as a result of which significant price rises were seen on those markets as well. Inflation rates had already begun to accelerate all over the world at the beginning of 2021, but this situation was exacerbated significantly once again when the war broke out. It seems likely that the deeper causes for and background to the inflationary trends had probably already been shaped to some extent before the beginning of the war. Various national competition authorities such as the Austrian Federal Competition Authority (AFCA), the German Federal Cartel Office (BKartA) and the British Competition and Markets Authority (CMA) therefore saw good reason to initiate and conduct **sector inquiries into the fuel markets** and adjacent markets.³ The AFCA has focussed its competition investigations on those sectors where the price hikes have been particularly palpable and have had especially major impacts on the public's living costs. Apart from the fuel markets, this was true above all of the food and energy sectors.

The AFCA published the report on its last inquiry into the food sector in 2007. At that time it focussed on examining the food retailers' demand power, producing a report that was merely twenty-one pages long.⁴ In 2013 the AFCA contributed a written submission to the OECD Competition Roundtable, addressing the competition problems that existed in the

³ The final report on the sector inquiry into the Austrian fuel market was published by the AFCA in August 2022 (see <https://www.bwb.gv.at/en/news/detail/afca-publishes-final-report-on-sector-inquiry-into-austrian-fuel-market>), while an interim report from the Energy Taskforce was presented jointly with E-Control in June 2023 (see <https://www.bwb.gv.at/en/news/detail/energy-task-force-afca-and-e-control-deliver-interim-report>). An interim report on the BKartA's sector inquiry into refineries and fuel wholesale was published in Germany in November 2022 (see https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2022/28_11_2022_SU_Raffinerien.html;jsessionid=53E6ADF60C8DE6023A7EA96DE0FD3603.2_cid380?nn=3591568). In the UK, the CMA presented the final report on its study of the road fuel market in July 2023 (see <https://www.gov.uk/cma-cases/road-fuel-market-study>).

⁴ The final report, including brief conclusions, is available for download on the AFCA's website: https://www.bwb.gv.at/branchenuntersuchungen/untersuchung_lebensmittelhandel/.

food supply chain.⁵ Since then various investigations into and proceedings against individual undertakings in the food sector have been conducted, some of them resulting in large fines imposed by the Cartel Court. The proceedings – some of them very extensive – conducted in these cases have enabled the AFCA to gain far-reaching insights into the market structures that exist and, at the same time, also led to a large number of decisions being handed down by the Cartel Court.⁶ Against this background, and in view of the developments in food prices documented in the course of 2022 and the complaints made about them, which were mainly received by the AFCA in the second half of 2022, it felt there was a need to carry out a comprehensive sector inquiry that would revisit and expand upon its 2007 study. The result is an updated, more-wide-ranging assessment of the competition situation in the food sector against the background of recent developments. The sector inquiry has **identified and described the most important competition variables and connected them with the developments in prices that are summarised below.**

Foods and non-alcoholic beverages (FNABs) are factored into the Consumer Price Index (CPI) calculated monthly by Statistics Austria with a weighting of just over 11 per cent.⁷ As can be seen from Figure 3 below, the value of the price index for foods and non-alcoholic beverages began to rise systematically faster than the price index for other CPI categories (CPI less FNABs) as of January 2022. At the beginning of the sector inquiry discussed in this report, the CPI was based on price data gathered up to September 2022.⁸ It is evident from these data that the prices of foods and non-alcoholic beverages rose by 3.8 percentage points more than the prices of the other CPI categories during the period from January 2022 to September 2022. By the end of 2022 this discrepancy had grown to 6.7 percentage points. It was therefore not possible to observe prices converging again as they had the preceding year (2021). During the years from 2016 to 2020 and also in 2021 the prices of the overall basket of CPI goods fluctuated within a comparatively narrow corridor relative to one another, but not in 2022. This comparison highlights the particularly strong inflationary trend in prices for foods and non-alcoholic beverages that

⁵ OECD, *Competition Issues in the Food Chain Industry*: <https://www.oecd.org/daf/competition/CompetitionIssuesintheFoodChainIndustry.pdf>.

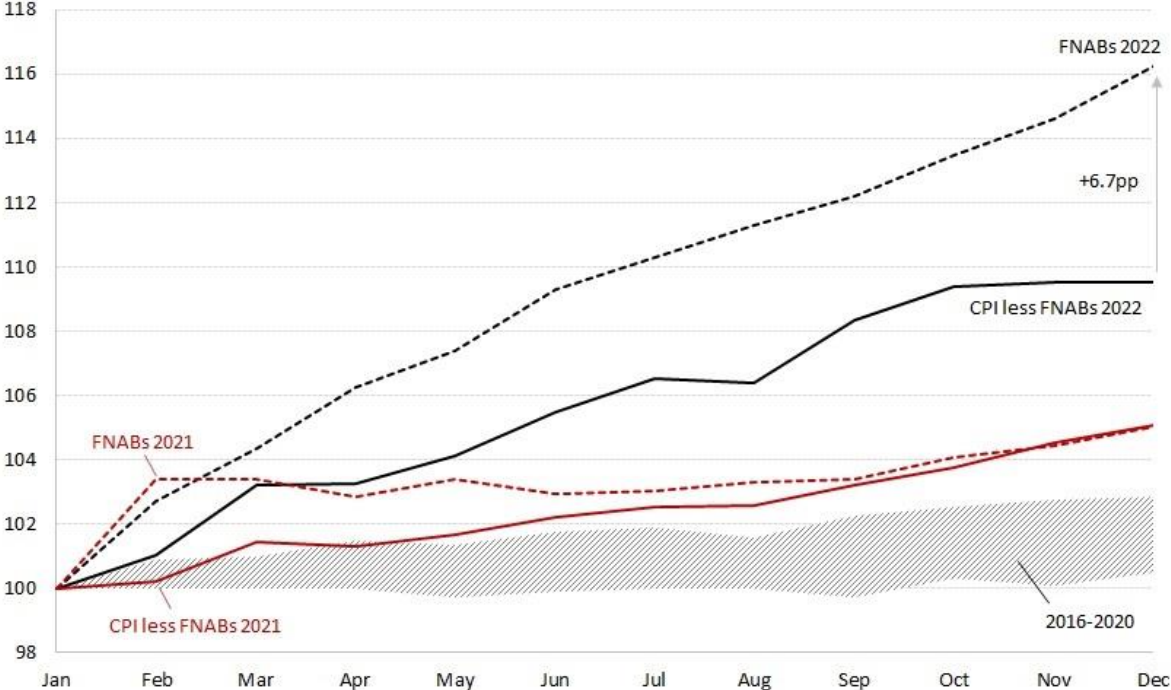
⁶ Mergers that have taken place recently, the investigation proceedings conducted by the AFCA and the decisions of the Cartel Court are discussed in detail in sections 6.2.6 and 7.2.3.

⁷ Foodstuffs have a weighting of just over 10 per cent in the CPI, while the weighting of non-alcoholic beverages is not significantly more than 1 per cent. In consequence, the trend in prices for foods and non-alcoholic beverages depicted in Figure 2 has been driven principally by the development of prices for foodstuffs.

⁸ The flash estimate for October 2022 was published on 31 October 2022. See the press release issued by Statistics Austria: <https://www.statistik.at/fileadmin/announcement/2022/10/20221031VPIFlashEstimateOktober2022EN.pdf>.

has been experienced, which did not affect the rest of the CPI categories as much and therefore appeared to be anomalous.

Figure 3: Price indices for consumer goods in Austria

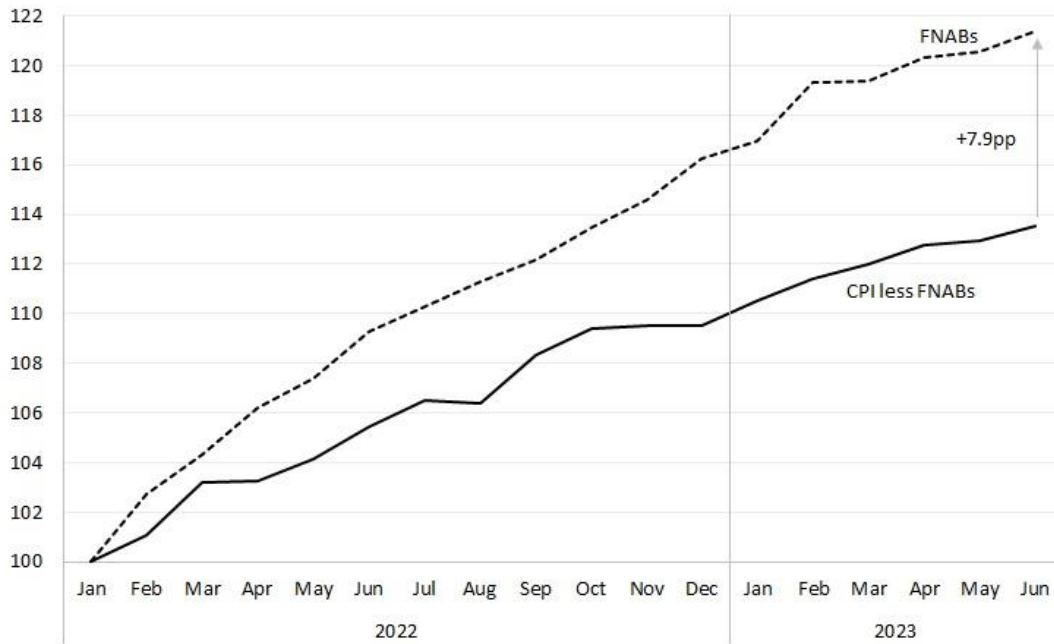


Note: The January of each year is the baseline month (price index = 100). The abbreviation FNABs stands for “foods and non-alcoholic beverages”. The grey-shaded band indicates the corridor within which the price index for FNABs and the CPI less FNABs fluctuated during the years from 2016 up to and including 2020. Sources: Statistics Austria; authors’ calculations.

The divergence that opened up between the prices for FNABs and the rest of the CPI categories during 2022 persisted in the first half-year of 2023 too, as is clearly evident from Figure 4. Overall, the prices of foods and non-alcoholic beverages rose by 7.9 percentage points more than those of the other CPI categories during the period from January 2022 to June 2023.

Such anomalous trends in prices – of the kind shown for foods and non-alcoholic beverages in Figure 3 and Figure 4 since 2021 – throw up various questions about how the causes that underlay this development can be accounted for and explained coherently. For the **AFCA as a competition authority, the concrete question that arises in this connection** is whether the developments that have taken place in prices for FNAB products and foodstuffs in general are at least partly attributable to shifts in the nature of competition or a lack of competition.

Figure 4: Development of prices, January 2022–June 2023



Note: The baseline month is January 2022 (price index = 100). The abbreviation FNABs stands for “foods and non-alcoholic beverages”.

Sources: Statistics Austria; authors’ calculations.

Apart from this, the anomalous trend in food prices discussed above raises the question of whether, to some extent, these price rises for foodstuffs compensated disproportionately for increases in production, marketing and distribution costs that had actually occurred, and it had by these means been possible for individual market participants’ profit margins to be increased at various stages of the relevant market.

Even though there does not have to be any necessary causal connection between the nature of the competition that prevails on a market and trends in prices, it can be noted that any **stimulation of competition will fundamentally have a price-dampening effect**. In the field of foodstuffs, the quality of competition is also of significance on account of its distributional aspects. **Above all, households and consumers on lower incomes would benefit to a relatively greater extent from more intense competition and lower food prices.**⁹

⁹ Cf. OECD, *COMPETITION AND INFLATION: OECD Competition Policy Roundtable Background Note, 2022*, <https://www.oecd.org/daf/competition/competition-and-inflation-2022.pdf>, accessed 6 October 2023; OECD Global Forum on Competition, *COMPETITION AND POVERTY REDUCTION: Background Note, 2013*, [https://one.oecd.org/document/DAF/COMP/GF\(2013\)1/En/pdf](https://one.oecd.org/document/DAF/COMP/GF(2013)1/En/pdf), accessed 6 October 2023.

Competition and distributional aspects may be relevant not merely to the relationships between food retailers and consumers, but also the relationships between food manufacturers, food suppliers and individual purchasers (primarily food retailers). At present the **considerable demand power exercised by the food trade sector** (both retailers and wholesalers), above all in dealings with domestic suppliers, is a widely accepted reality. Especially when negotiations about prices and contractual conditions take place between small and medium-sized enterprises, on the one hand, and the significantly larger players in the food trade sector, on the other, this can lead to disadvantageous and/or unfavourable results that are detrimental to smaller and medium-sized enterprises.

The fundamental thrust of the sector inquiry can be identified from the events that gave reason to initiate it, background information, suspicions and theories discussed above. As the surveys were carried out, they drew attention to topics with wider implications and factors that required consideration, which are discussed in detail in the present report (e.g. how to strengthen price transparency for customers using **price comparison platforms**¹⁰).

2.2 Questions dealt with by the sector inquiry

A sector inquiry can be initiated if circumstances suggest competition may be restricted or distorted in a specific business sector. The Federal Competition Act (WettbG) defines the conduct of general investigations into business sectors – **sector inquiries** – as one of the Austrian Federal Competition Authority's central duties. The circumstances, background information, evidence and developments in the prices for foodstuffs commented on above permitted the justified suspicion that there might recently have been shifts in the nature of competition, irregularities or a lack of competition on the market. It was not possible to affirm or rule out whether competition problems of this kind existed and whether potential competition irregularities might have been possible causes of the sharp price rises for foodstuffs – or had at least encouraged them – without investigating the matter in greater depth.

The following four core questions were analysed from a competition perspective:

¹⁰ See the comments in section 9 [*german version only*].

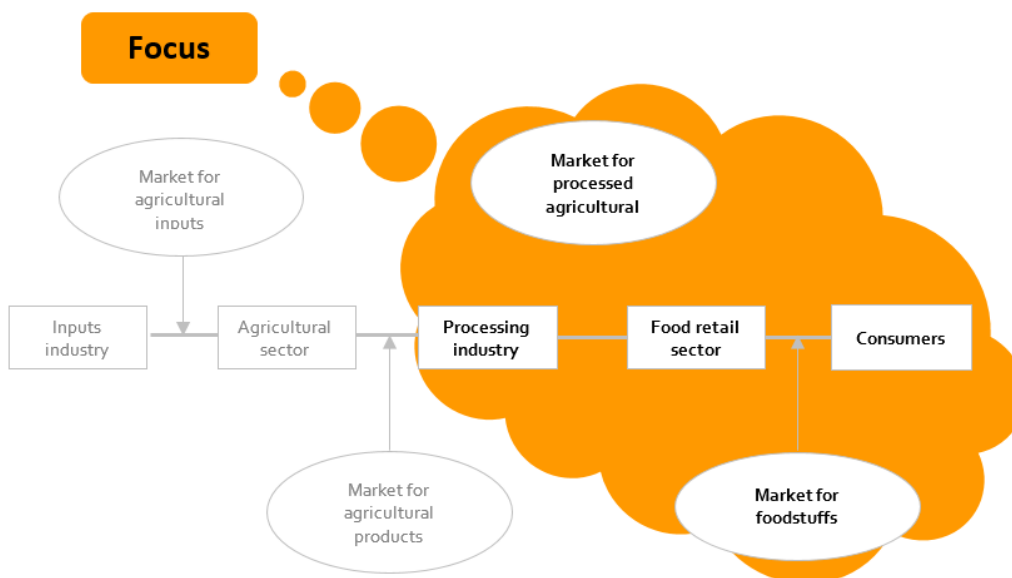
1. Where in the value chain (i.e. above all in processing or retail) have the price rises for foodstuffs in 2022 primarily flowed to?
 - a) What stages in the value chain have been able to profit to a particular extent from these rising food prices?
 - b) Have international food corporations been able to profit to a particular extent from the rising food prices?
2. How have various competition factors (number of and distances to local traders, product ranges, diversity of products etc.) developed in the food sector over the last few years?
 - c) How is the market structured at the individual stages of the value chain?
 - d) How do the market participants conduct themselves on the market at the individual stages of the value chain?
 - e) What is the competition situation – as a market outcome – at the individual stages of the value chain?
3. How have levels of concentration within a broad selection of product categories and the shares of own brands on food retailers' shelves developed?
4. What influence has the increasing role of online trading had on competition in the food sector?
5. To complement the work done on the core questions, a consumer survey was conducted to establish what wishes and needs customers have as the demand side on the food market, and how these wishes and needs are manifested.

The AFCA examined these questions with the aim of arriving at a better understanding of, firstly, the occurrence and/or frequency of unfair trading practices and, secondly, the distribution of the burdens and benefits that resulted from the food price rises of 2022. The second issue is decisive for the questions about which stages in the value chain have been responsible for the sharp rises in food prices since the beginning of 2022, which stages have potentially profited from them and whether competition factors are connected with these phenomena.

2.3 Focus of the sector inquiry

The present report is focussed on the level of the food industry (market for processed agricultural products) and the Austrian food retail sector (market for foodstuffs). Developments in the agricultural sector (market for unprocessed agricultural products) and a selection of markets for agricultural inputs have also been discussed in less detail. Figure 5 depicts the value chain for foodstuffs schematically with four connected markets. The sector inquiry concentrated on the **two markets at the end of the value chain**. Nonetheless – in the interests of completeness – a summary account is given of the general developments in prices and costs due to significant input factors on the upstream markets (e.g. fuels, power, gas and fertilisers). Food wholesalers, filling station shops and other outlets where consumers purchase goods but that cannot be assigned to the classic food retail sector remained largely disregarded in the sector inquiry on account of their comparatively modest shares of food retail turnover. Among food retailers, the focus has been placed on the four largest competitors: (1) Spar, (2) Rewe, (3) Hofer and (4) Lidl. Given MPreis’s significance in the west of Austria, a separate analysis of the competition situation in the food retail sector in Tyrol has been carried out.

Figure 5: Value chain for foodstuffs, focus of the sector inquiry



Source: authors’ graphic.

The sector inquiry focussed on answering the questions raised in section 2.2. It was examined whether competition factors or shifts in the nature of competition could be held at least partly responsible for the food price rises in 2022. Since it is to be expected,

above all, that the international food corporations will have a great deal of negotiating power when it comes to contractual conditions and terms of delivery in the food industry, the sector inquiry also analysed these corporations' significance to ascertain whether they had been partly responsible for the development of food prices in 2022. The specific approach chosen for this element of the inquiry is described in section 2.4 below.

The following points were examined in detail in the course of the sector inquiry:

- The market structure of the food sector, broken down into the various stages of the value chain: (i) the food retail sector (see section 6.1 [*german version only*]), (ii) the food industry (see section 7.1 [*german version only*]) and (iii) the agricultural sector and inputs markets (see section 8.1 [*german version only*]).
- The market conduct of the market participants in the food sector, broken down into the various stages of the value chain: (i) the food retail sector (see section 6.2 [*german version only*]), (ii) the food industry (see section 7.2 [*german version only*]) and (iii) the agricultural sector and inputs markets (see section 8 [*german version only*]).
- Assessment of the competition situation – as a market outcome – in the food sector, broken down into the various stages of the value chain: (i) the food retail sector (see section 6.3 [*german version only*]), (ii) the food industry (see section 7.3 [*german version only*]) and (iii) the agricultural sector and inputs markets (see section 8.3 [*german version only*]).
- The wishes and needs of consumers as the demand side of the food market and necessary improvements in price transparency for consumers (see section 9 [*german version only*]).
- Action to address the topics identified and/or dealt with by the sector inquiry: (i) fair supply relationships in the agricultural and food supply chain,¹¹ situation analysis, prospects and recommendations for action (see section 10 [*german version only*]), (ii) shrinkflation and skimpflation (see section 6.4 [*german version only*]), (iii) online food retailing (see section 6.5 [*german version only*]), the effects of competition on consumers depending on household income (see section 6.6 [*german version only*]), the Austrian price premium in the food industry (see section 7.4 [*german version only*]).

¹¹ A brief explanatory overview of the Fair Competitive Conditions Act (FWBG) can be found on the AFCA's website: <https://www.bwb.gv.at/en/further-competences/unfair-trading-practices>.

- The formulation of competition recommendations to improve the current overall situation (see section 3 [*german version only*]).

2.4 Principle steps

Industry representatives were invited to an event held on **25 October 2022** at which they were informed about the launch of the sector inquiry into the food sector.¹² Once the AFCA had given initial consideration to the conception for the sector inquiry, various **stakeholders were invited for meetings**. The provisional concept, the background to the sector inquiry, general preliminary questions, possible goals and the anticipated schedule were discussed and/or presented on these occasions. Useful and pertinent comments and suggestions were made at these meetings, on the basis of which the concept for the sector inquiry was revised, expanded and optimised. The **data and analyses generously provided** by the Oesterreichische Nationalbank (OeNB), the Austrian Consumers' Association (VKI) and AgrarMarkt Austria have enriched this report.

The analysis centred on a previously defined **basket of foodstuffs**. It had also been found in past decisions of the German Federal Cartel Office and the European Commission that food retailers do not compete to sell individual product groups, but a basket of goods or, in certain circumstances, several comparable baskets of goods. The composition of the AFCA's basket of goods was at any rate to be based on Statistics Austria's Consumer Price Index (CPI), in order to guarantee it would approach representativeness. The AFCA focussed on a total of **thirty-four product groups** (e.g. milk, pasta, frozen pizza, bread and baked goods, fresh meat etc.).

During the period from December 2022 to February 2023 discussions were held with the two market research companies NielsenIQ and Consumer Panel Services GfK to clarify the extent to which they would be able to support the AFCA with data on the Austrian food retail sector. A **selection of product groups – based on ECR Austria's product group classification¹³ – and a list of meaningful, representative indicators** were prepared during this process. The bids submitted by both companies – after the AFCA invited them to tender – were scrutinised to assess their quality, their scope, the usefulness of the data that would be supplied and their price. Apart from data on turnover, spending, sales volumes and average prices, it was essential and of great significance to the AFCA above all that the information on the product groups could be broken down to gain insights about individual enterprises active in the food retail sector and various manufacturers. Only by basing the analyses on this data stock would it be possible for comparisons to be

¹² See the news report on the AFCA's website: <https://www.bwb.gv.at/en/news/detail/bwb-veroeffentlicht-finale-leitlinien-fuer-unternehmen-zu-nachhaltigkeitskooperationen-1-1-1-1>.

¹³ <https://ecr-austria.at/arbeitsgruppen/serviceplattform-warengruppenklassifikation/>.

drawn and important measures of price and concentration calculated for the competition analysis. Ultimately, the AFCA decided to procure the data required for the conduct of the sector inquiry from **Consumer Panel Services GfK**.

The sector inquiry did not cover **alcoholic beverages or non-food articles** (pharmacy goods, cleaning products, clothing, electronic devices etc.) that are usually/occasionally stocked by branches of Austrian undertakings active in the food retail sector. Rather, a conscious decision was taken to focus on everyday foodstuffs. Alcoholic beverages are purely indulgent, non-essential purchases. This product group, which includes beer, wine and spirits in particular, was consequently not incorporated into the AFCA's basket of goods. As a result, what remained in the investigated basket of goods were foods including non-alcoholic beverages (FNABs), although it only covered a subset of all the foods and non-alcoholic beverages on the market. More-detailed comments on the basket of goods compiled by the AFCA will be found in section 5.

The AFCA sent out ten rounds of **requests for information** and surveyed **700 trading companies** and more than **1,500 suppliers**.

In order to answer the questions about where the additional revenues from the price rises for foodstuffs had flowed to since the beginning of 2022, it was necessary to carry out **concrete calculations of individual profit margins**. The AFCA consequently asked both undertakings active in the food retail sector and manufacturers for cost data about the specific product groups analysed in the basket of goods, which it chose to obtain using the instrument of the request for information. In this respect, the focus was placed on the four largest undertakings active in the food retail sector (the Big Four): Rewe, Spar, Hofer and Lidl. When manufacturers were selected, the aim was to cover the widest possible range of brand and own-brand articles produced by these companies so that reliable, well-founded inferences could be drawn about total spending on the product groups in question. Please see the comments in section 4.4 [*german version only*] for a discussion of the requests for information issued in connection with the sector inquiry.

In the course of the sector inquiry **requests for information** were sent to a large selection of **suppliers** to the Austrian food retail sector as well in order to analyse the retailers' demand power and also examine the relevance of the Fair Competitive Conditions Act (FWBG) and any irregularities in its application – and thus the unfair trading practices listed in annexes I and II to the act. In this connection, developments in prices, costs and levels of concentration since the beginning of 2022 and the frequency with which unfair trading practices were used in the various product groups over the period were also surveyed so that, where applicable, conclusions could be reached about possible impacts

of the use of unfair trading practices on end consumers and manufacturers with weak negotiating positions.

These issues were also raised with the **Big Four** active in the food retail sector, who were asked about their perceptions in **requests for information**. Three of the Big Four food retailers answered the requests for information at length, coherently and persuasively, but one retailer refused to answer questions about the use of unfair trading practices. With a view to the rapid completion of the sector inquiry, the AFCA decided not to compel it to answer these questions by taking action through the courts. Please see the comments in section 4.4 [*german version only*] for a discussion of all the requests for information issued in connection with this sector inquiry.

The present report gives a transparent account of the process followed during the sector inquiry. In particular, care has been taken to provide sufficient details of both the immediate results from the analysis of data and the answers given to the requests for information. At the same time the respondents' interest in the confidentiality of commercial and trade secrets, and other legitimate interests have been respected. Where necessary and appropriate, the AFCA has interpreted and/or appraised the findings reached and the arguments put forward.

The results of the sector inquiry give reason to suspect unfair trading practices within the meaning of the FWBG are used on the Austrian market to a not insignificant extent. As the competent enforcement authority, the AFCA will place an even stronger focus on combating unfair trading practices of this kind and, in doing so, will also give consideration to the findings arrived at by the sector inquiry. The AFCA will report on its activities in this field on an ad hoc basis.

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