

Annual Report 2023



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Preface

AFCA delivers strong performance for competition in 2023!

I would like to thank everyone in my team, whose hard work has achieved so much over the past year, as well as all the stakeholders who collaborated with us. At a time when prices for almost all goods and services have risen rapidly within a short space of time, it has been more important than ever to be able to rely on the power of competition.

With over 40 applications to the Cartel Court, a total of M€ 51.2 in fines imposed by the Cartel Court and 294 national mergers examined, it has been a busy and successful year for the authority.

The results of the food industry survey were published in November 2023 after a period of just one year. The report runs to almost 300 pages and aims to take a 360-degree view of the competitive situation in the food industry. During the investigation, 700 retail companies and over 1,500 suppliers were appraised by means of formal information requests. In addition, 1,000 consumers between the ages of 18 and 65 were surveyed.

In view of the rise in electricity and gas prices, the AFCA set up a task force with E-Control with the aim of analysing the situation in both markets. The first interim report identified the causes of a decline in competition on the electricity and gas markets and presented proposals for countermeasures.

Further milestones were reached during the investigation into the construction cartel in 2023. Several proceedings were concluded and a total of M€ 175.81 in fines imposed. Other areas of cartel prosecution involved opinion research and the markets for welding technology and façade construction.

Digitisation issues were a key focus for the AFCA. This concerns key future markets that must remain open to competition. In this context, the AFCA also plays an active role in connection with the Digital Markets Act.

Legal certainty and transparency are essential, especially at a time of multiple crises. I am therefore delighted that the AFCA presented a newly revised edition of the Compliance Guidelines and the Settlement Guidelines in 2023 and has published new guidelines on the topic of pre-notifications in mergers.

Dr. Natalie Harsdorf-Borsch, LL.M
Director General for Competition



Dr. Natalie Harsdorf-Borsch,
LL.M Director General for
Competition

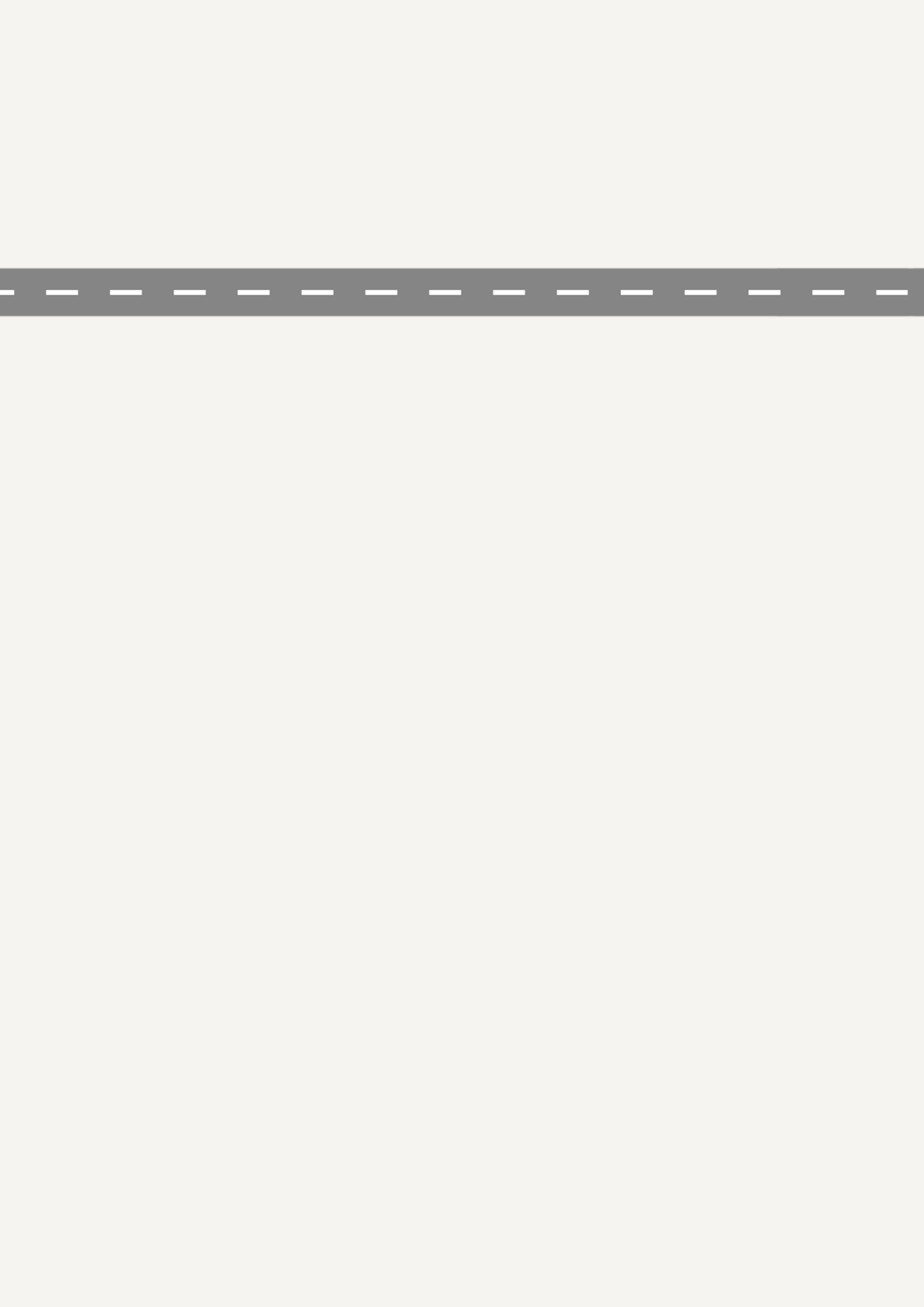
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1 This was
the year 2023



2 Dawn
raids



6 Leniency
requests



1 Cartel Law
Moot Court



3 Sector
inquiries



97 Whistleblowing
reports



334 EU mergers
examined



294 National
mergers
examined



40 Court
applications



51,2 Mio.
Fines imposed by the Cartel Court

2 The Austrian Federal Competition Authority

The Austrian Federal Competition Authority is a monocratically organized enforcement and investigative authority. The authority is led independently and without instruction by the Director General for Competition. The independence is established by simple statutory law (WettbG) and under EU law (EU RL 2019/1).

2.1 What are the main objectives?

- ensuring functioning competition in Austria
- elimination of distortions and restrictions of competition
- preventing market concentration through efficient merger control
- information and prevention measures
- prevention of violations
- competition advocacy

The legal bases for achieving these goals are the Cartel Act and the Competition Act, the Fair Competition Conditions Act, the prohibition of cartels under Art 101, the prohibition of abuse of market power under Art 102 of the TFEU, as well as the EU Merger Control Regulation (ECMR).

2.2 What tasks does the Austrian Federal Competition Authority have, in particular to achieve the objectives?

- investigations (dawn raids, interrogations, requests for information)
- conducting sector inquiries
- examination of mergers
- prosecution of violations of the cartel prohibition or abuse of market power prohibition
- issuing of opinions on general questions of competition policy, as well as, in particular, in the context of review procedures on legislative projects and in the enforcement of competition law on questions of competition law and competition policy
- advocacy: organizing various events with different institutions; exchange programs and bilateral meetings with “sister agencies”; publication of guidelines, position papers, and communication efforts for information and awareness-raising
- applications to the Cartel Court
- conducting competition monitoring
- asserting claims for injunctive relief under the Unfair Competition Act before civil courts
- standing to bring actions under the Platform-to-Business Regulation (P2B Regulation)
- providing administrative assistance to courts and administrative authorities as well as to the European Commission and competition authorities of other EU Member States
- participation in the preliminary examination of contracts pursuant to § 6 of the Austrian Broadcasting Corporation Act (ORF Act) when the ORF intends to introduce a new offering
- proceedings under the Fair Competition Conditions Act
- new since 2023: monitoring of interbank fees
- new from 2024: general investigations of an industry, if circumstances suggest a violation of the obligation to pass on tax reductions pursuant to § 7 of the Price Act

Let's work together.



3 European Cooperation

3.1 Cooperation with the European Commission

Enforcement of European rules of competition in Austria comprises two main aspects. On the one hand, the national competition authorities directly enforce the competition rules under Union law. On the other hand, the national authorities assist the European Commission in its investigative actions in the course of the procedures carried out by the Commission (Directorate General for Competition) in application of Union law and are entitled to contribute their experience in these procedures.

In addition, there is ongoing and close cooperation, combined with a regular exchange of experience and information and the development of best practices within the framework of Regulation 1/2003 in order to ensure coherence in the decentralised application of Union law in the context of the network of competition authorities, known as the European Competition Network (ECN).

3.2 Cooperation within the European Network of Competition Authorities – European Competition Network, ECN

Pursuant to § 3 (1) of the Competition Act, the AFCA is the competent authority in Austria for implementation of the European rules of competition in Austria. Its more detailed tasks and powers originate in particular from its resulting position as a national (administrative) and independent competition authority within the meaning of Article 35 of Regulation 1/2003 and Article 2 (1) 2 of Directive 2019/1.

Directly to this end and in order to further support enforcement, the Commission and the competition authorities of the EU Member States jointly form a network of authorities that work together closely to protect competition (ECN). The ECN is a forum for discussion and cooperation on the application and enforcement of the EU rules of competition. It establishes a framework for cooperation between European competition authorities in cases where Articles 101 and 102 of the TFEU are applied. Pursuant to Article 5 (2) of Directive 2019/1, this close cooperation within the framework of the European Competition Network in order to ensure the effective and uniform application of Articles 101 and 102 TFEU is one of the core tasks of the independent national competition authorities. Independence in the sense of freedom from instructions and from any political and other external influence, and adequate resources are among the minimum standards according to the Directive.

Within the European Network, the AFCA has participated in the following working groups in 2023:

Table 1: European Competition Network Working groups 2023

ECN Working Group	
Directors General Meeting	ECN Plenary Meeting
ECN Cooperation Issues and Due Process Working Group	ECN Cartels Working Group ECN Fines Subgroup
ECN Merger Working Group	Chief Economist Working Group
ECN Digital Working Group	ECN Digital Investigations and Artificial Intelligence Working Group
ECN Vertical Working Group ECN Art. 101 Working Group	ECN Horizontal & Abuse ECN Art. 102 Working Group
ECN Banking and Payments/Financial Services Working Group	ECN Pharma & Health Working Group
ECN Environment Working Group ECN Food Subgroup	ECN Telecom Subgroup ECN Energy Subgroup

In addition to these regular meetings of the European Competition Network, ad-hoc meetings were also held in 2023 on topics such as sustainability in anti-trust law or questions of the implementation of the Digital Markets Act.

In the context of its participation in the enactment of legal acts of the European Commission, the AFCA, together with representatives of the BMAW, took part in advisory committees on the block exemption regulations for horizontal and vertical agreements as well as the notices on the delineation of the relevant market, on informal consultations and on the application of competition law to collective agreements on the working conditions of solo self-employed workers, as provided for in § 3 (2) of the Competition Act.

3.3 EU Digital Markets Act

The European Regulation on contestable and fair markets in the digital sector (Digital Markets Act – DMA) entered into force on 1 November 2022. The Act prohibits companies that provide digital platform services and act as so-called gatekeepers from engaging in certain practices that are detrimental to competition. Gatekeepers are digital platforms that provide an important gateway between business users and consumers, and whose position can grant them the power to act as a private rule maker, thus creating a bottleneck in the digital economy. To address these issues, the DMA defines a series of obligations for these gatekeepers, including prohibiting them from engaging in certain behaviours.

Dos and don'ts for gatekeepers

Gatekeeper platforms will have to, for example:

- allow their business users to access the data that they generate in their use of the gatekeeper's platform
- provide their business users with access to the platform's marketing or advertising data
- allow their business users to promote their offer and conclude contracts with their customers outside the gatekeeper's platform
- inform the European Commission of acquisitions and mergers they carry out
- ensure that logging off platform services is as easy as logging in.

Gatekeeper platforms may no longer, for example:

- rank their own products and services more favourably than those offered by other market participants (self-preference)
- use personal data collected while one service is being used for another service
- request that app developers use certain services (e.g. payment systems) in order to be listed in an app store.

Enforcement

The European Commission is the sole enforcer of the DMA. Specifically, it is entitled to impose fines and other sanctions. However, the national competition authorities should initiate proceedings in relation to potential breaches and inform the Commission of their findings.

Advisory committee and high-level group

To assist the European Commission and facilitate its work, an advisory committee and a high-level group were set up.

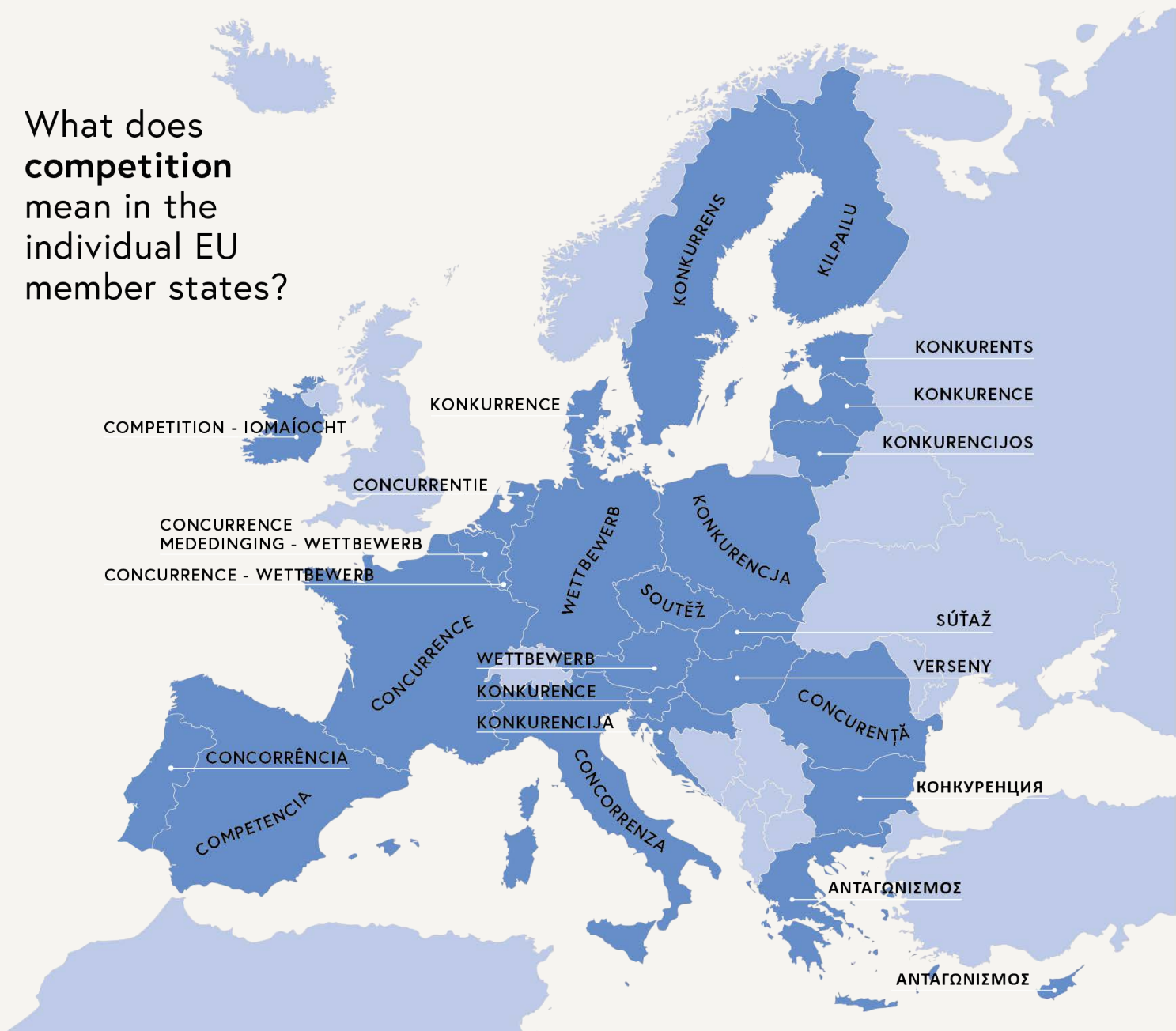
The advisory committee is made up of experts from the competent authorities within the Member States, among them the Austrian Federal Competition Authority (AFCA), and chaired by the European Commission.

The high-level group is composed of the following European bodies and networks:

- Body of European Regulators for Electronic Communications (BEREC)
- European Data Protection Supervisor (EDPS)
- European Data Protection Board (EDPB)
- European Competition Network (ECN)
- Consumer Protection Cooperation Network (CPC)
- European Regulators Group for Audiovisual Media Services (ERGA).

Natalie Harsdorf-Borsch was nominated for a two-year period as representative of the ECN in the high-level group for the Digital Markets Act, alongside her Director General counterparts from the Danish, German, Greek, Polish and Spanish competition authorities.

What does
competition
mean in the
individual EU
member states?



The word “competition” in
all EU languages.

4 International Cooperation

International cooperation between competition authorities is an important instrument for detecting and eliminating violations of anti-trust law and abuses of market power. Be it in the case of transnational offences, when joint investigations are required, in the case of mergers involving several countries, or for the exchange of best practices.

4.1 United Nations Conference on Trade and Development (UNCTAD)



The UNCTAD Intergovernmental Group of Experts on Competition Law and Policy (IGE) met from July 5th to 7th, 2023, in Geneva. Discussions included current topics such as issues related to the enforcement of competition law in the context of monopsonies, the interaction between competition and industrial policy, as well as competition law and sustainability. The focus of the written and oral contributions by the AFCA related to monopsonies and sustainability.

Additionally, comprehensive progress reports were provided on the working group addressing cross-border cartels. The corresponding mandate was extended and supplemented with aspects of bid rigging. It was decided that a background document prepared by the secretariat for the discussion on the enforcement of competition law in digital markets and ecosystems will be presented at the IGE 2024 session. Other topics include competition policy and poverty alleviation, as well as recent developments in merger control standards.

Further information is available at

<https://unctad.org/meeting/intergovernmental-group-experts-competition-law-and-policy-twenty-first-session>

4.2 Organisation for Economic Cooperation and Development (OECD)

An important forum for the discussion of competition policy issues is the Organisation for Economic Co-operation and Development (OECD) with its Competition Committee and the two working groups “Competition and Regulation” and “Cooperation and Enforcement”. In the course of these forums, there is a regular exchange on relevant competition law issues. The AFCA actively contributes to these discussions with written and oral contributions.



The Competition Committee and its working groups meet in Paris twice a year. Once a year, on the occasion of the meeting of the Competition Committee, the “Global Forum on Competition” is held with an expanded group of participants. In this context, OECD members exchange views and experiences with more than 110 delegates from around the world.

Natalie Harsdorf-Borsch was re-elected as the OECD-UNCTAD Coordinator in the Competition Bureau of the OECD for the year 2024. She has been holding this position since 2019. Consequently, Austria is now represented for the first time in the Competition Bureau of the OECD. The AFCA actively participates with written and oral contributions in these discussions, most recently on topics such as Out-of-Market Efficiencies in Competition, Enforcement Competition in the Circular Economy, and Theories of Harm for Digital Mergers.

Further information on these topics can be found at
<http://www.oecd.org/daf/competition/roundtables.htm> and
<http://www.oecd.org/competition/globalforum/>.



4.3 International Competition Network (ICN)

Founded in 2001 by 14 competition authorities and now expanded to over 130 member authorities, the International Competition Network (ICN) offers competition authorities around the world an informal, project-oriented network to intensify their cooperation in questions of the application of anti-trust law, with the involvement of civil society.

The 22nd Annual Conference of the ICN took place from October 18th to 20th, 2023, in Barcelona. Diverse discussions were held on topics including the role of and interaction with courts in cartel cases, challenges in unilateral conduct, and the interaction between antitrust law and regulation in digital markets.

Further Information is available at <https://icn.cnmc.es/>

4.4 Bilateral cooperations

The Austrian Federal Competition Authority signed two Memoranda of Understanding (MoUs). This is a common form of informal cooperation among competition authorities internationally, aimed at facilitating the exchange of experiences and knowledge in enforcing competition law. It does not entail any legal obligations or binding commitments.

One MoU was signed bilaterally with the Georgian competition authority, another was signed multilaterally with the competition authorities of eight EU member states (Poland, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Romania, and Slovakia), as well as the competition authorities of EU accession candidates Moldova and Ukraine.

In September 2023, the Five-Country Meeting of the heads of the German-speaking competition authorities (Germany, Switzerland, Austria, Liechtenstein, and Luxembourg) took place in Vienna. The exchange focused particularly on current competition enforcement issues such as handling whistleblowers and competition dynamics in the food sector.



4.5 Twinning project „National Competition Agency of Georgia“

The specific objective of the project titled “Strengthening Capacity of the Competition Agency of Georgia” is to prepare the Georgian competition authority, the National Competition Agency (GNCA), for the effective enforcement of competition and consumer protection laws and policies in Georgia in line with EU best practices by strengthening the institutional and personnel capacities of the authority.

The Federal Competition Authority (AFCA) applied for this project as a junior partner along with the Lithuanian Competition Council (CCRL) and the Lithuanian State Consumer Rights Protection Authority (SCRPA), who have taken on the main leadership role in this project.

On February 12, 2020, supported by the Austrian Ambassador to Georgia, Arad Benkö, the AFCA, together with the Lithuanian colleagues, presented their project plan in Tbilisi. From this selection process, which included three submitted projects, the AFCA emerged as the winner with its Lithuanian partners.

Due to the COVID-19 pandemic, the start of the project, which was scheduled for 24 months and funded with 1,200,000 euros, was delayed until June 2022.

The Director General and the experts conducted their activities exclusively in their free time.

From left to right: Silke Hossenfelder, Competition Authority (Germany), Gabriele Binder, Office of Economic Affairs (Liechtenstein), Danièle Wüthrich-Meyer, Andreas Mundt, Competition Authority (Germany), Pierre Barthelmé, Competition Authority (Luxemburg), Natalie Harsdorf-Borsch, Competition Authority (Austria), Patrik Ducrey, Competition Commission (Switzerland)

Photo: AFCA

5 The Federal Cartel Prosecutor

In addition to the AFCA, as a further official party for proceedings before the Cartel Court the Federal Cartel Prosecutor was established in July 2002, who is bound by instructions and reports to the Federal Minister of Justice. Since 1 September 2020, the position of Federal Cartel Prosecutor has been held by Heinz Ludwig Majer MBA. He has two deputies and one legal assistant.

The Federal Cartel Prosecutor is responsible for representing the public interests in matters of competition law, and has the right to file petitions before the Cartel Court. Unlike the AFCA, however, he/she has no investigative powers. This arrangement takes into account the legislator's intention to avoid duplications. Both the Competition Act and the Cartel Act provide for close cooperation between the official parties not only but especially in the area of merger control.

The annual report on the activities of the Federal Cartel Prosecutor can be downloaded from the BMJ website.

Further information: <https://www.justiz.gv.at/justiz/justizbehoerden/bundeskartellanwalt.36c.de.html>

6 The Competition Commission

The Competition Commission (CoCo) is an advisory body to the Federal Competition Authority. It consists of eight members who have special knowledge and experience in economics, business administration, social policy, technology or economic law. The members of the CoCo are appointed every four years by the Federal Minister of Labour and Economic Affairs. The Austrian Federal Economic Chamber, the Federal Chamber of Labour, the Austrian Federation of Trade Unions and the Presidential Conference of the Austrian Chambers of Agriculture each have the right to nominate one member (substitute member). The members (substitute members) are not bound by any instructions in the performance of their duties and are subject to official secrecy.

Reference is made to Chapter 20.3 for the CoCo's priority recommendations for the year 2023.

7 Outcome orientation

The AFCA had set itself the following targets for the year 2023:



Goal 1: Improving/Maintaining competition

Primarily, investigations into competition violations, merger control, as well as European and international cooperation were the AFCA's top priorities. These goals were indeed achieved through successful performance of investigative actions, effective merger control, and constructive continuation of cooperation with other EU authorities.



Goal 2: Building awareness

This objective was characterised by continuation and improvement of the educational work. In order to fulfil its mission of informing the public about its activities, the AFCA operates its own website (www.bwb.gv.at), on the one hand in order to comply with the legal publication obligations (§ 10b of the Austrian Competition Act) and on the other hand to ensure transparency. Furthermore, the AFCA disseminates information via LinkedIn and Youtube. The account on Twitter was discontinued in 2022. Increasing transparency by maintaining an informative and clear homepage and continuing effective presswork was implemented. The AFCA also receives a large number of press enquiries (national and international) on procedures and general economic contexts on a daily basis.



Goal 3: Quality management

AFCA work is demanding, as the staff are in direct contact with the market (companies and consumers) and have to defend the public interest before the courts in merger and cartel proceedings. In order to perform these tasks successfully, it is necessary for the AFCA staff to meet the same quality standards as the legal representation or economic consultation of the companies.

With a customised training programme (ongoing internal training, expert meetings, job rotation, study visits, etc.), the AFCA ensures that the high quality standard is maintained and improved. In 2023, we were again able to implement and develop many measures for staff training and development.



Goal 4: Consolidation

Effective and modern anti-trust law enforcement requires constant development of the authority professionally and structurally. Evaluation of its own processes, assessment of the authority's inputs and outputs and implementation of the insights gained from this are striven for, making the AFCA future-proof for its daily work and the resulting challenges.



Goal 5: Digital challenges

Digitalization affects all areas of the economy, including competition. The AFCA recognized these developments early on and has been employing future-proof methods for several years. This includes investigations, such as using IT-supported tools for analysis, as well as prevention campaigns and the training of the agency's staff. Since autumn 2021, the AFCA has been using the electronic file (ELAK) for its file management. Additionally, digital competencies were enhanced by establishing a dedicated IT forensics department.

Facts and figures about the Federal Competition Authority



8 Budget and staff

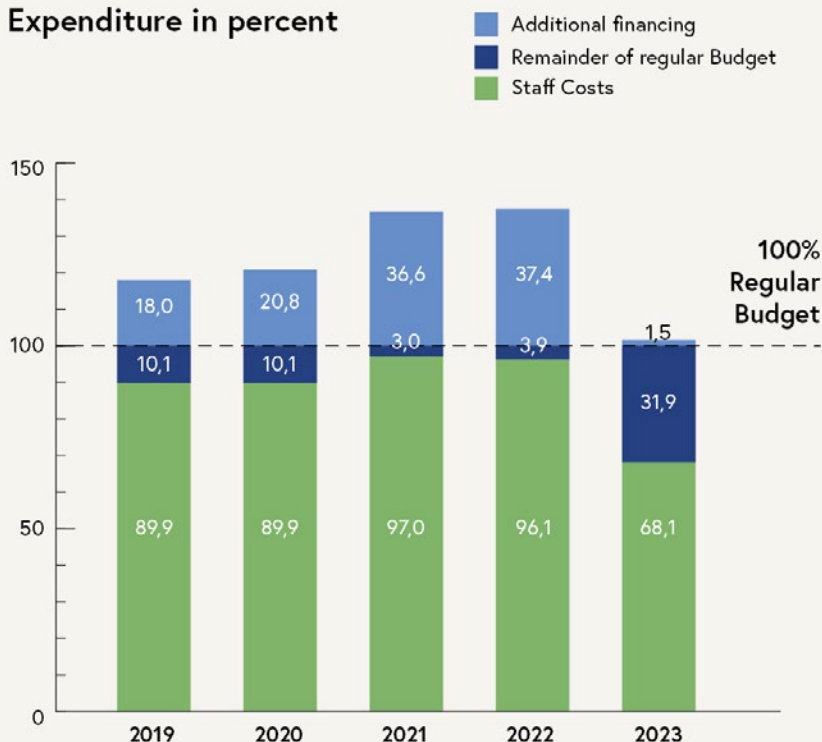
8.1 The AFCA's budget development

As outlined in previous activity reports, the regular budget provided for in the BFG did not cover basic expenses such as personnel, rent, and general IT infrastructure costs over several years. For 2023, the regular budget was increased by M€ 2.4 to a total of M€ 5,901.

Therefore, for the first time in many years, the AFCA was fundamentally able to cover the necessary minimum operations from the regular budget in 2023 and to plan essential investments sensibly and cost-effectively from the beginning of the year. However, due to the underfunding of the personnel budget, including the unbudgeted increase of 3 positions as part of the implementation of the IEVG, a certain level of planning uncertainty arose again, which could only be resolved in the autumn of 2023 by submitting a budget overrun application (MVÜ) for EUR 306,000.

The provision under § 32 (2) of the Austrian Cartel Act that – if fines of a corresponding amount have been paid – further funds of up to M€ 1.5 can be applied for from the Federal Ministry of Finance was maintained by the legislator in order to be able to make necessary extraordinary investments.

Expenditure in percent



Expenditure in percent 2023

Source: Annual Report of the AFCA

8.2 Revenue from fines and fees

The revenue from fines and the fees for merger notifications generated on the basis of AFCA applications is paid not into the budget of the Federal Competition Authority but, as a rule, into the general federal budget.

Pursuant to § 10a (1) of the Competition Act, a flat-rate fee amounting to € 6,000 is to be paid for a merger notification. With 294 merger notification in 2023, this results in revenues amounting to 1,764,000.00 EUR. Fines totalling M€ 51.19 were imposed by the Cartel Court in 2023.

8.3 Staff in figures

In 2023, a total of 50 people were working for the AFCA at the reporting date of 31 December 2023. In addition, the AFCA employed one apprentice in vocational training as administrative assistant and 10 administrative trainees, of which 4 started their internship in 2023.

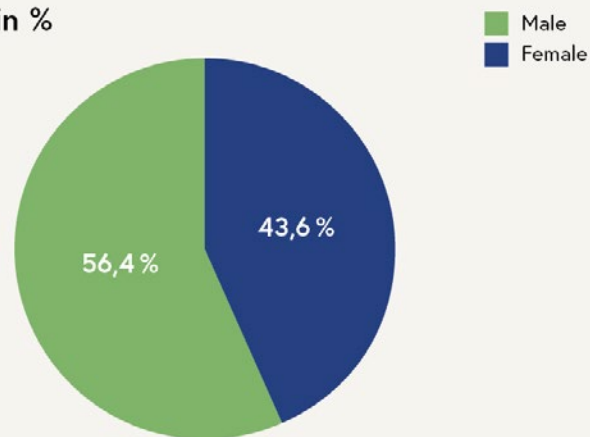
There were eleven part time working employees in the Competition Authority, consisting of eight female and three male employees. Additionally, a total of eight employees were on parental leave, including three women and five men. The option of early parental leave ("baby month") was taken by two male employees in 2023.

In 2023, the fluctuation rate remained low, as in previous years. Only two persons have left the Competition Authority. Nine new employees were hired (three women and six men).

Table 2: The AFCA's employment status in 2023 (as per 31 December 2023)

Distribution of active staffer	female	male	total
v1	18	24	42
v2-v4	3	5	8
total active staff	21	29	50
Apprenticeships (4 administrative trainees and 1 apprentice	3	2	5

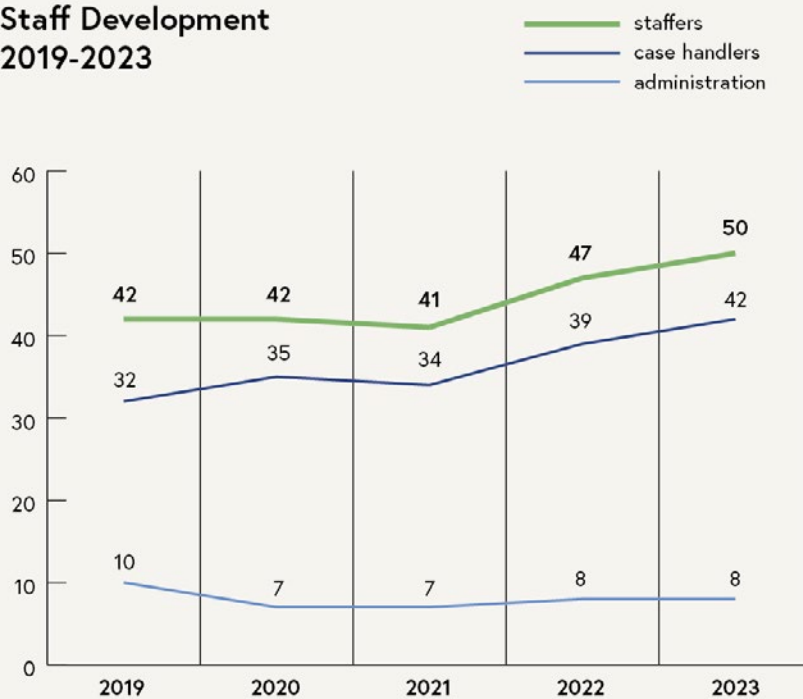
Gender Ratio in %



Gender ratio in %, as of 2023

Source: AFCA

Staff Development 2019-2023



Staff development 2019-2023

Source: Annual report of the AFCA

8.4 Natalie Harsdorf-Borsch appointed as Director General for competition

On 8 November 2023, Natalie Harsdorf-Borsch was officially inaugurated by Federal Minister of Labour and Economy, Dr Martin Kocher. Natalie Harsdorf-Borsch was appointed as Director General for Competition of the Austrian Federal Competition Authority (AFCA) by the Federal President on the proposal of the Federal Government; the appointment is for a five-year term of office with effect from 1st November, 2023.

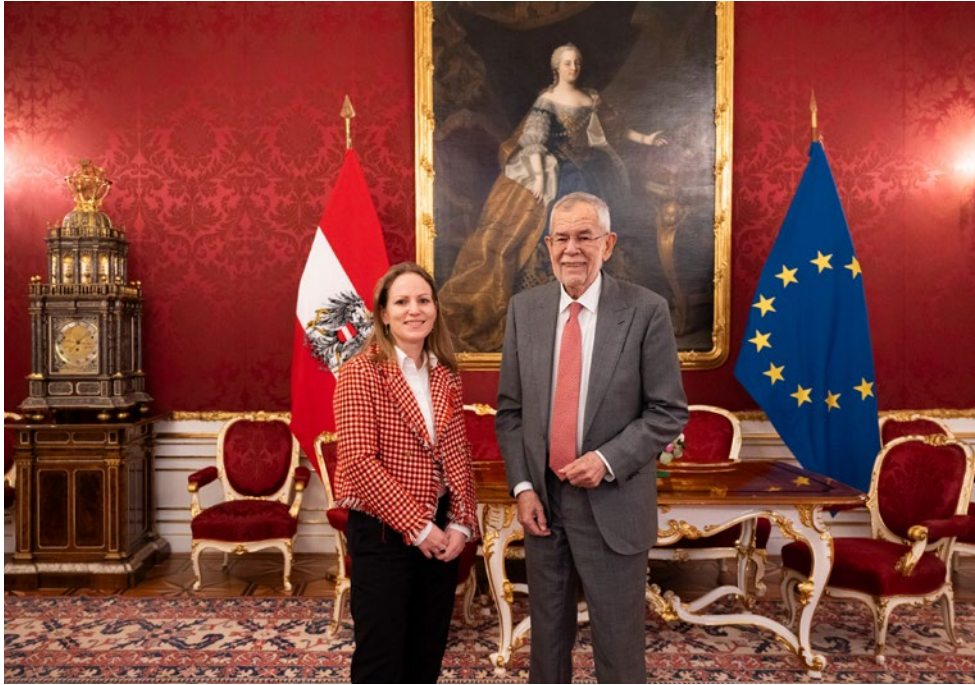
Natalie Harsdorf-Borsch has worked at the AFCA since 2009, holding several key positions over the past 14 years. Before becoming Director General, she also headed the legal department and was the Authority's Managing Director. Since December 2021, she has been interim Director General while simultaneously performing as Managing Director.

According to GCR's Rating Enforcement 2023, Natalie Harsdorf-Borsch is "a perfect fit for the role". Global Competition Review provides annual analysis of the performance, personnel and administrative resources of competition authorities around the world.

The new Director General summed up the current challenges:

"Markets need to remain open so that competition can work properly in the interests of consumers. To achieve this, we, the competition authority, must take resolute action against any market concentration tendencies through merger control and we must vigorously pursue artificial barriers such as cartels or market abuse. At the same time, recognising structural competition risks is crucial, which we particularly track through our sector inquiries. Effective competition benefits customers and consumers, while also ensuring that Austrian businesses remain successful on the international stage."

— Dr. Natalie Harsdorf-Borsch, Director General



Federal President, Alexander Van der Bellen and Natalie Harsdorf-Borsch, Austrian Federal Competition Authority © HBF/Karlovits

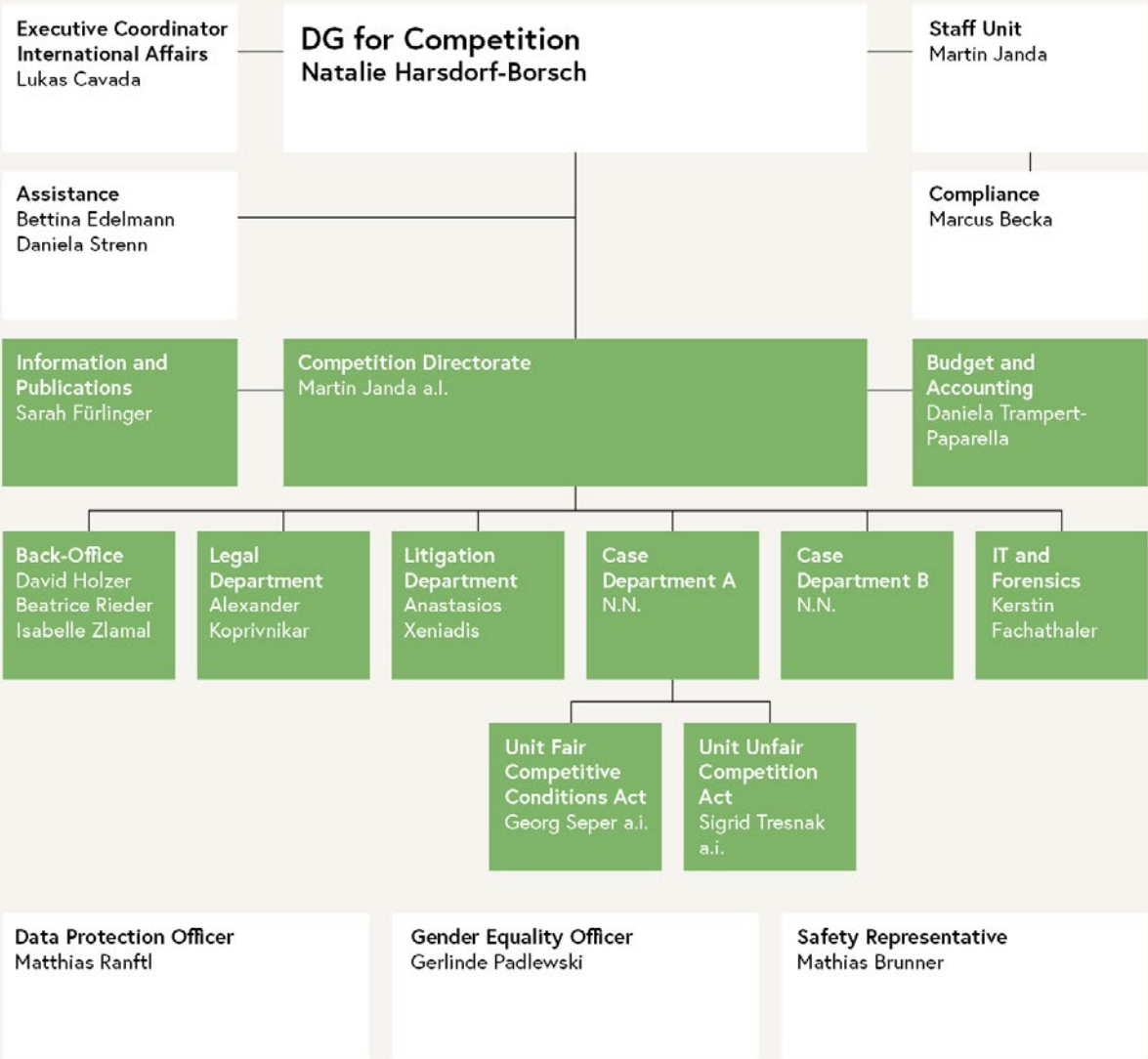


Martin Kocher, Federal Minister of Labour and Economy, and Natalie Harsdorf-Borsch, Director General of the AFCA © BMAW/Holey



8.5 The AFCA’s organisational chart

In 2023, intensive work was carried out on the organizational structure of the authority to increase efficiency in workflows and investigation procedures. The new organizational chart will come into effect on January 1, 2024.



Organisational chart of the AFCA

Source: AFCA

8.6 GCR rating enforcement 2023: AFCA receives high international rating

The magazine Global Competition Review (GCR) is an internationally recognized source for competition policy and antitrust enforcement. Each year, GCR evaluates national competition authorities. The result for the AFCA was once again impressive in 2023.

Once again, the good work of the AFCA was highlighted despite a relatively low number of staff and a limited budget. The AFCA was described as an ambitious enforcement agency making solid use of its legal powers and resources. Although some criticize the duration of the AFCA's investigations, lawyers view the AFCA as an active, organized, effective, and efficient authority.

Regarding the new additional domestic turnover threshold for mergers introduced in 2021, it is rightly noted that this has relieved the authority and allowed the reallocation of resources to other important and necessary tasks of the AFCA.

GCR Rating Austria's Federal Competition Authority

Source: Global Competition Review 2023

GCR Rating Austria's Federal Competition Authority



8.7 Quality management and professional development

Employees are required to meet high qualification standards. Therefore, training measures are an essential criterion for the quality management of the AFCA.

Professional development measures in 2023:

- IT-Forensics
- Compliance and Risk Management
- Public Relations
- Competition Economics
- Project Management
- Rhetoric
- Consumer Law and Unfair Competition Act

The AFCA also operates an exchange programme with the European Commission, which allows AFCA staff to be assigned to the Directorate General for Competition (DG Competition) in Brussels in order to gain experience. In 2023, an employee participated in the European Commission's exchange program.

The AFCA regularly organises seminars on the economics of competition and invites researchers to present current findings related to competition economics and enforcement.

Table 3: Speakers at the FCA 2023

Date	Speaker	Institution	Topic
28.3.2023	Associate Prof. Dr. Christian Bellak	University of Economics and Business of Vienna	<i>Has the economic power of companies in Austria increased?</i>
	Prof. (FH) Dr. Christian Reiner	Lauder Business School	
25.5.2023	Assistant Prof. Dr. Johannes Muthers	Johannes Kepler University Linz	<i>Manufacturer Cartels and Resale Price Maintenance (RPM)</i>
25.10.2023	Nenad Njegovan	Competition and Markets Authority, UK	<i>Exploitative abuse investigations in pharmaceuticals in the UK</i>
	Senthuran Rudran	Competition and Markets Authority, UK	
	Adriano Basso	Payment Systems Regulator, UK	

8.7.1 Expert workshop on competition economics 2023

In December 2023, the Federal Competition Authority organized an expert conference in collaboration with the Austrian Institute of Economic Research (WIFO) and the Austrian National Bank (OeNB). The event focused on the macroeconomic challenges in Europe, with a particular emphasis on the challenges for competition in Austria.

The conference was attended by numerous distinguished experts from academia and competition enforcement. Among the speakers were WIFO Director Gabriel Felbermayr and AFCA Director General Natalie Harsdorf-Borsch, who discussed “Strengthening Competition in the Face of Current Challenges.” The main focus was on comparing theory and practice. The subsequent expert panel included Prof. Dr. Justus Haucap (DICE, University of Düsseldorf), Prof. Mag. Dr. Viktoria Robertson (Vienna University of Economics and Business), KOG Senate President Prof. Dr. Georg Kodek (Vienna University of Economics and Business), Prof. Dr. Tomaso Duso (DIW, Monopolies Commission), and Prof. Philipp Schmidt-Dengler, PhD (University of Vienna).

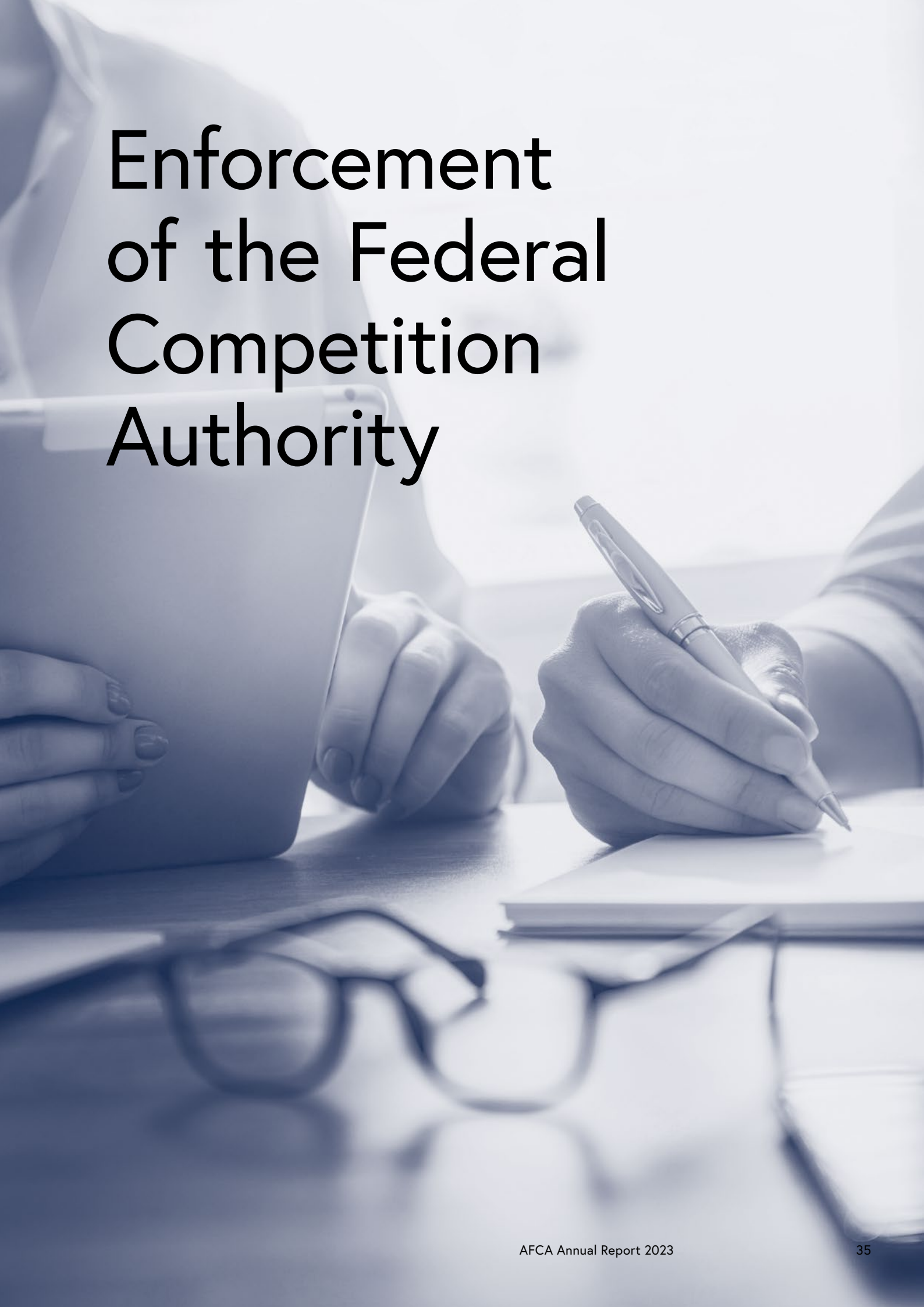
Professor Fiona Scott Morton from Yale University, Prof. Dr. Tomaso Duso from the German Monopolies Commission, and Univ.-Prof. Philipp Schmidt-Dengler, PhD from the University of Vienna delivered engaging lectures on competition and market concentration, emphasizing the scientific perspective and empirical viewpoints.

From left to the right:
Gabriel Felbermayr; Robert
Holzmann, OeNB; Professor
Philipp Schmidt-Dengler;
Natalie Harsdorf-Borsch,
AFCA; Tomaso Duso, Monop-
olkommission, DIW; Professor
Fiona Scott Morton, Yale
University;

Photo: © Katharina Schiff



Enforcement of the Federal Competition Authority

A blue-tinted photograph of a person's hands holding a tablet and a pen writing on a notepad, with a pair of glasses resting on the desk in the foreground.

9 Dawn raids

In 2023, a total of two dawn raids took place. The investigative activities included construction industry and the distribution of refrigeration and freezing equipment.

9.1 Investigations in the market for distribution of refrigeration and freezing equipment

In April 2023, the Austrian Federal Competition Authority (AFCA) was carrying out a dawn raid in the distribution of refrigeration and freezing equipment. The undertaking is suspected of anti-competitive practices specifically the binding of resale prices (so-called vertical price fixing) in the distribution of refrigeration and freezing equipment. The affected undertaking is active in the development and production of refrigeration and freezing equipment for private and commercial use, among other things.

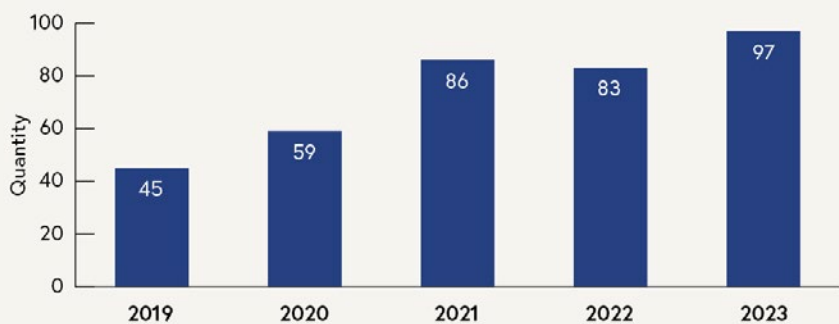


10 Whistleblowing system

As of February 2018, following a legal amendment the AFCA’s whistleblowing system was put into operation. This makes it possible to contact the AFCA and report violations of anti-trust law anonymously. Due to the bidirectional communication with the whistleblower, questions can be asked and further information obtained.

The number of whistleblowing reports total grew consistently reaching 97 in 2023.

Whistleblowing Reports 2019-2023

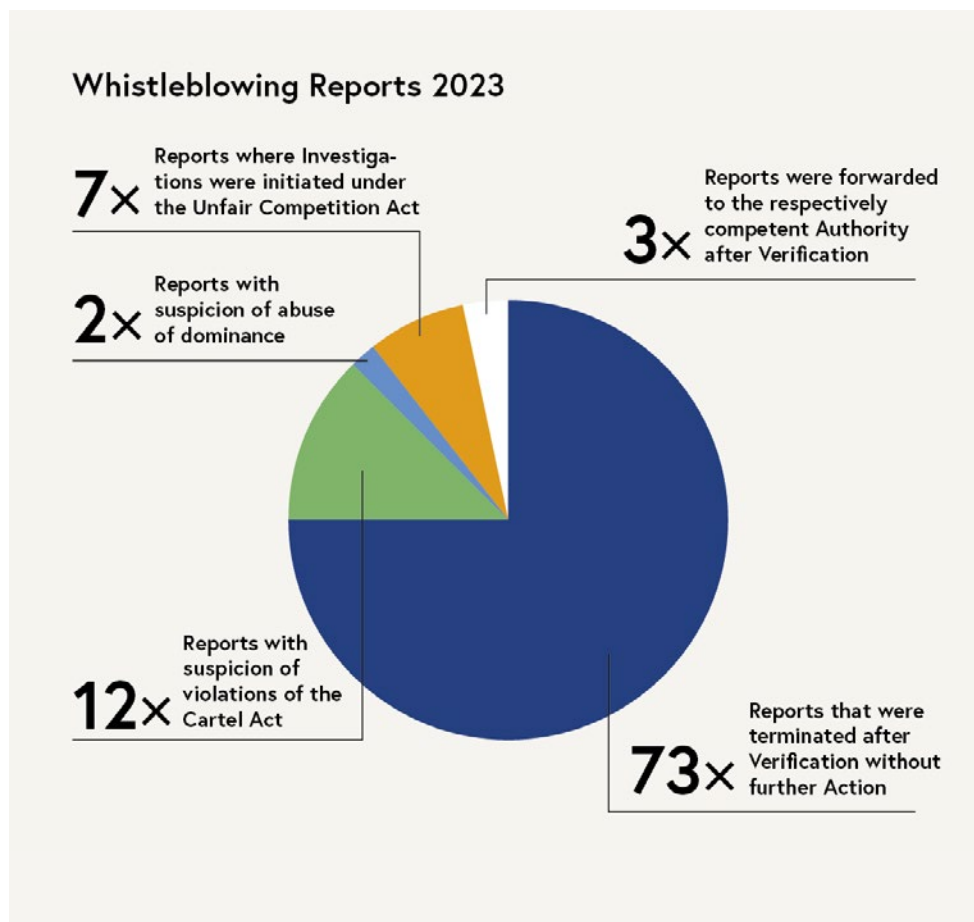


Whistleblowing Reports
2019-2023

Source: AFCA

Whistleblowing reports
broken down into categories

Source: AFCA



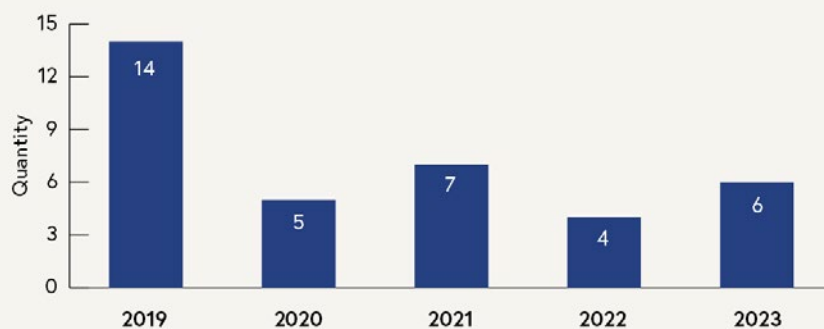
Since the Whistleblower Protection Act (HSchG) came into force on 25 February 2023, AFCA has been authorized as an external reporting office in accordance with Section 15 (2) HSchG to receive and process information from whistleblowers that falls within its remit and forward it to other competent authorities. In 2023, 11 reports were processed in accordance with the HSchG.

11 Leniency programm

The AFCA may refrain from requesting imposition of a fine or apply for a reduced fine for entrepreneurs or associations of entrepreneurs which, through their cooperation, contribute to disclosure of an infringement of § 1 of the Austrian Cartel Act or Article 101 of the TFEU. Thus, the leniency programme of § 11b of the Austrian Competition Act is an essential instrument for enforcement of the prohibition of cartels.

In 2023, six requests to proceed pursuant to this regulation were submitted to the AFCA.

Leniency Applications 2019-2023



Leniency applications
2019-2023

Source: FCA



12 Prosecution of cartels¹

Table 4: Case summary cartels, Source: AFCA

Case	Infringement	Procedural Information	Status
Welding Technology Cartel <ul style="list-style-type: none"> • Fronius International GmbH • Haberkorn Holding AG • Zultner Metall GmbH 	<ul style="list-style-type: none"> • Distribution agreements between Fronius, Haberkorn and Zultner including illegal rules relating to market divisions with absolute territorial protection, price fixing and the prohibition of competition. 	<ul style="list-style-type: none"> • Fronius was granted leniency • Haberkorn and Zultner each submitted settlements 	<ul style="list-style-type: none"> • Fronius: M€ 3.00 (decision still pending) • Haberkorn: € 870,000 • Zultner: € 505,000
Civil Engineering Cartel <ul style="list-style-type: none"> • Strabag AG 	<ul style="list-style-type: none"> • illegal price fixing, market divisions and the exchange of information with competitors in relation to public and private tenders in the sector of building construction and civil engineering • STRABAG submitted a comprehensive leniency statement and acknowledged its infringement. • AFCA was subsequently made aware of new facts, therefore filed an application for amendment requesting that the Cartel Court review and, if necessary, amend its final decision to mitigatedly fine Strabag M€ 45.37 due to leniency. • Cartel Court rejected the AFCA's application • Supreme Cartel Court ordered first-instance Cartel Court to continue proceedings against STRABAG 	<ul style="list-style-type: none"> • a fine of M€ 45.37 was imposed 	<ul style="list-style-type: none"> • Cartel Court's new decision is pending.

¹ Reference is made to the Competition Commission's key recommendations for 2023.

Case	Infringement	Procedural Information	Status
Submetering Cartel <ul style="list-style-type: none"> • Techem Messtechnik GmbH • ista Österreich GmbH • Meßtechnik Gesellschaft m.b.H. & Co KG Energieverrechnung-Contracting-Facility Management • Meßtechnik FMB GmbH Funk- und M-Bus-Technologie 	<ul style="list-style-type: none"> • exchange and coordination of market-related information such as prices, fees and other business practices 	<ul style="list-style-type: none"> • dawn raids conducted in 2019 • Techem was granted leniency without a request for imposition of a fine • Ista was granted leniency after Techem (2022), fine of M€ 2.2 • Meßtechnik: request for imposition of an appropriate fine 	<ul style="list-style-type: none"> • Meßtechnik case pending
Market Studies Cartel <ul style="list-style-type: none"> • KARMASIN RESEARCH & IDENTITY GMBH • BB Research Affairs GmbH and Beinschab Business GmbH • Edeltraud Geppel-Mikes 	<ul style="list-style-type: none"> • price fixing and concerted practices, specifically in relation to the award of contracts and tender procedures • companies coordinated their bids and bid prices in order to induce the client to accept a specific bid, namely the bid submitted by the “cheapest” bidder, KARMASIN RESEARCH & IDENTITY GMBH 	<ul style="list-style-type: none"> • AFCA initiated investigations on the basis of its cooperation with the Central Public Prosecutor for Economic Crime and Corruption (WKStA) in the “Sabine Beinschab” criminal case due to suspected anti-competitive concerted practices in relation to tender procedures (§ 168b para. 1 of the Austrian Criminal Code – StGB) in the area of studies and opinion polls. 	<ul style="list-style-type: none"> • BB Research and Beinschab Business: € 6,000 • Karmasin: request for imposition of an appropriate fine; pending • Edeltraud: request for imposition of an appropriate fine; pending
Facade Construction Cartel <ul style="list-style-type: none"> • NFS Bau GmbH • Simsek Bau GmbH • Riegerbau GmbH 	<ul style="list-style-type: none"> • anti-competitive, horizontal price fixing, market divisions and the exchange of sensitive information with competitors 	<ul style="list-style-type: none"> • All companies have submitted settlements. • Court decision regarding Riegerbau is pending. 	<ul style="list-style-type: none"> • NFS Bau GmbH: € 54,000 • Simsek Bau GmbH: € 63,000 • Riegerbau GmbH: pending
Sugar Cartel <ul style="list-style-type: none"> • Nordzucker AG • Südzucker AG 	<ul style="list-style-type: none"> • Agreements were based on the principle of recognizing core sales territories. • Agreements lasted from early 2004 to the end of 2008 and covered all sugar products (industrial and household sugar) throughout Austria. • Nordzucker AG and Südzucker AG had engaged in concerted practices in the form of a territorial agreement in 2006, thus breaching the European and Austrian ban on cartels. 	<ul style="list-style-type: none"> • After the Cartel Court had rejected AFCA's application arguing that <i>ne bis in idem</i> applied, the AFCA filed a partial appeal to the Supreme Cartel Court. • Supreme Court submitted a number of questions to the European Court of Justice in the context of a request for a preliminary ruling. • In line with the ECJ references, the Supreme Cartel Court judged that the <i>ne bis in idem</i> principle did not apply in this case. 	<ul style="list-style-type: none"> • Nordzucker was granted leniency with no request for imposition of fine. • Südzucker: M€ 4.2

13 Market abuse

Table 5: Case Summary Market abuse, Source: AFCA

Case	Infringement	Procedural Information	Status
<p><u>AFCA filed application for a fine for market abuse in the automotive industry</u></p> <p>Austrian sole importer of new vehicles and original spare parts of the Peugeot marque</p>	Abuse of a dominant market position	<ul style="list-style-type: none"> Following an application by a car dealership and servicing garage and subsequent antitrust proceedings, the Supreme Cartel Court issued a decision instructing the Austrian sole importer of new vehicles and original spare parts of the Peugeot marque to end its abuse of a dominant market position. AFCA has applied for the imposition of an appropriate fine with regard to these infringements. 	Case pending

14 Sector inquiries

Table 6: Summary sector inquiries, Source: AFCA

Sector	Investigation period	Focus	Findings	AFCA recommendations
<u>Sector inquiry into food industry</u>	October 2022 - November 2023	Inquiry was launched amidst significant price increases for consumers, global and European developments in the supply chain and rising inflation.	<ul style="list-style-type: none"> Food retail market in Austria is highly concentrated. The four largest food retailers (Spar, Rewe, Hofer, Lidl) continue to hold a combined market share of 91%. Households with lower income profit to a disproportionate extent from stronger competition and therefore cheaper food prices. Price comparison platforms could close the transparency gap for consumers, as they could obtain a quick overview of prices and offers. Food retailers with international operations are more likely to charge different prices for the same product in line with their country strategies. A considerable number of suppliers stated that they were affected by unfair trading practices. 	<ol style="list-style-type: none"> Implementation of the recommended measures to increase price transparency for consumers. Strengthening of the internal market and involvement of the European Commission to deal with varying retail prices in EU Member States owing to food groups' country-based strategies. Increasing transparency regarding food products. Enhancing and strengthening consumer protection No misleading price cuts Market inquiries based on the FWBG. Legal security for suppliers by using the written form. No pressure to accept practices contained in Annex II to the FWBG. Tightening of laws to enforce competition measures based on sector inquiries.

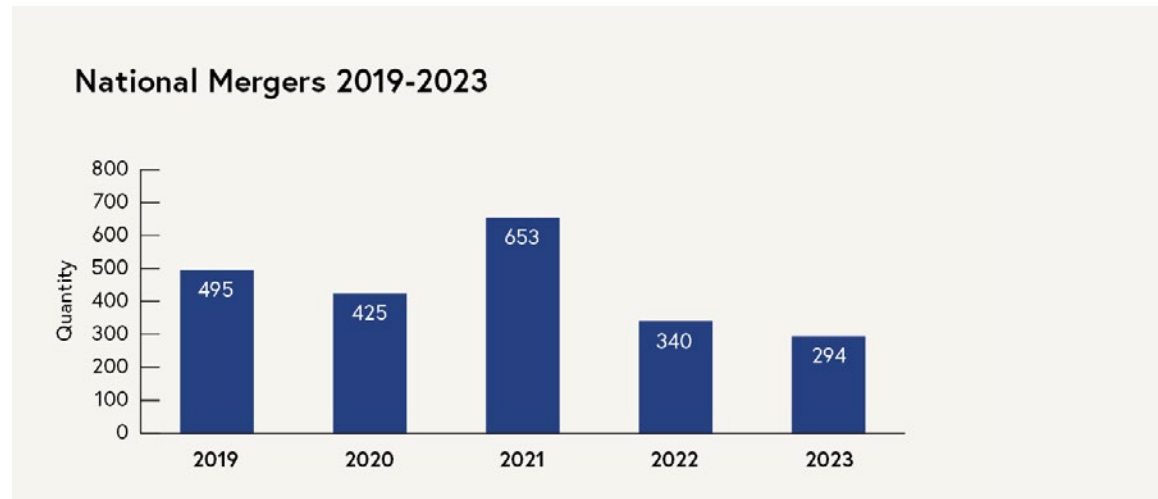
Sector	Investigation period	Focus	Findings	AFCA recommendations
<u>E-Control and AFCA set up task force to investigate situation on the electricity and gas market</u>	Start of investigation: January 2023	<p>E-Control/AFCA task force focuses on the following energy market topics:</p> <ul style="list-style-type: none"> • Plausible explanations of changes in electricity and gas prices and monitoring of the dynamics between wholesale and retail prices. • Differences in the contracts offered by suppliers to different customer groups. • Supply strategies • Impact of the energy price cap • Market structure and positions • Investigation of any signs of potential cartels or market abuse. 	<p>The first interim report provided initial results on:</p> <ul style="list-style-type: none"> • Changes in market concentration in the network areas • Switching and offer behaviour on the consumer electricity and gas markets • Development of electricity and gas prices to date during the crisis, as well as links between wholesale prices and prices for end consumers • Development of prices on introduction of the electricity price cap • Effects of legal uncertainty around price adjustments. <p>(Further findings can be found here)</p>	<ul style="list-style-type: none"> • Sector inquiry is pending.
<u>Food delivery platforms</u>	Start of investigation: March 2023	<p>The aim is to analyse the market conditions and the market concentration of online ordering platforms for the delivery of food and beverages.</p>	<ul style="list-style-type: none"> • AFCA conducted a survey of over 2,500 restaurants and catering businesses in Vienna. • The final report is planned for 2024. 	<ul style="list-style-type: none"> • Sector inquiry is pending.
<u>EV charging infrastructure</u>	Sector inquiry was published in 2022, update published in November 2023.	<p>The update gave an overview of the developments in the industry and described new legislation from which both competition and consumers benefit.</p>	<ul style="list-style-type: none"> • Since the publication of the sector inquiry the E-Control charge point registry, has recorded a 40% increase in both charging stations and charge points. • E-Control's charging tariff calculator allows consumers to compare the charging offers of different e-mobility providers in real time. • At the time of the sector inquiry, there were no legal requirements for usage-based (by the kWh) or time-based billing at public charge points. A new regulation now mandates that users can choose usage-based billing. 	<ul style="list-style-type: none"> • The AFCA has recommended providing grants for charging stations and charge points in order to promote the expansion of infrastructure and local competition. • The BMK has acted on AFCA's recommendation by launching the "LADIN - Ladeinfrastruktur" project to boost the expansion of (fast) EV charging infrastructure in less-developed areas.

15 Mergers

A total of 294 national mergers were notified in 2023. Thus, each case handler therefore processed an average of eight mergers in average.

Mergers
2019-2023

Source: AFCA



290 cases (this corresponds to 98.6 % of the notified mergers) were completed in the four-week Phase I proceedings. Usually, mergers are approved by the expiry of a deadline or by an audit waiver.

Two mergers were approved with conditions in phase I. In three cases the review period was extended. In general, the deadline can be extended to six weeks in phase I.

In four cases, applications for review were submitted to the Cartel Court, although these were not yet completed in 2023. 18 cases were notified to the AFCA under the transaction value threshold pursuant to § 9 (4) of the Austrian Cartel Act.

15.1 EU mergers

In 2023, a total of 334 mergers notified to the European Commission due to their EU-wide significance and then brought to the attention of the Member States in accordance with the relevant EU law, were also examined for possible negative effects on Austria.

15.2 Pre-notification talks

If there are any doubts about the need for notification, or if a merger is very complex or the market shares after the merger are going to be very high, a pre-notification meeting can be advised in many cases. It is in the interest of both the notifying parties and the AFCA to conduct merger control proceedings as expeditiously and smoothly as possible. In 2023, 10 prenotification requests were processed.

In March 2023, the AFCA published its first guidelines on “Prenotification procedures in merger control”, which can be downloaded from the AFCA website under the heading “Mergers”. The guidelines explain, among other things, the requirements for pre-notification proceedings, the objectives, the expediency and the involvement of the Federal Cartel Prosecutor in this stage of the proceedings.

15.3 Notification requirement for mergers

As in previous years, entrepreneurs and legal representatives were supported by the AFCA's Legal Department with questions on the subject of the obligation to notify. In total, the AFCA provided informal legal assessments of 30 enquiries.

15.4 Merger statistics

Table 7: Merger Statistics 2022-2023

Notifications	2022	2023
Total application for registration	340	294
Release due to expiry of deadline	324	270
Waiver of examination	10	13
Withdrawal of the application	1	5
Approved with conditions		2
Case closure in Phase I	335	290
these are in % of the applications	98,53 %	98,64 %
Withdrawal of application	2	0
Prohibition by Cartel Court	0	0
Non-prohibition with requirements	2	0
Case closure with Cartel Court decision in Phase II	1	0



15.5 Prohibited transactions or incorrect/misleading information in merger proceedings

If mergers of companies are not notified to the Federal Competition Authority despite the obligation to notify, or if incorrect or misleading information is provided in the notification, the Cartel Court may impose a fine at the request of the AFCA. In 2023, fines of EUR 355,000.00 were imposed on three companies (Vivendi SE, Oras Invest Oy, ADOMO Beteiligungs GmbH) for prohibited practices. Since the AFCA was established, a total of EUR 15,044,410.00 have been imposed by the Cartel Court in 51 cases due to prohibited practices.

15.6 Supreme Cartel Court reaches leading decision on illegal merger by REWE

Table 8: Case Summary Mergers, Source: AFCA

Case	Infringement	Course of proceedings	Status
<u>REWE International AG</u>	On 30 June 2018, with the lease contract entering into force, REWE's subsidiary Merkur Warenhandels AG (now "Billa Plus") took over a food retail outlet in the WELAS Park shopping centre in Wels in which Weiß Handels GmbH had previously operated a supermarket. REWE did not notify the AFCA of the transaction.	In October 2021, AFCA filed an application with the Cartel Court to terminate REWE's unnotified merger and impose a fine. The Cartel Court acknowledged the merger but dismissed the fine due to lack of criminal liability on the part of REWE. AFCA made an appeal with the Supreme Cartel Court against this decision. In June 2023, the Supreme Cartel Court ruled in favor of AFCA, confirming the merger and REWE's antitrust liability.	Decision pending.

15.7 Judicially examined mergers and mergers approved subject to conditions

Table 9: Case Summary Judicially Examined Mergers and Mergers Approved Subject to Conditions, Source: AFCA

Case	Course of Proceedings	Remedies
<u>MFE MEDIAFOREUROPE N.V. and ProSiebenSat.1 Media SE</u>	<ul style="list-style-type: none"> The media merger of MFE MEDIAFOREUROPE N.V. (MFE) and ProSiebenSat.1 Media SE (P7S1) was notified to the AFCA in November 2023. MFE planned to raise its current stake in P7S1 by the time of P7S1's next ordinary annual general meeting, thereby gaining de facto sole control over P7S1. AFCA identified several specific media plurality issues. MFE has agreed to several commitments. 	<ul style="list-style-type: none"> MFE undertakes to focus P7S1 Austria Group's programming and producing local content and maintaining a relevant share of news. MFE undertakes to ensure the independence of P7S1 Austria Group's managers and editors-in-chief. MFE is committed to P7S1 Austria Group's existing editorial values, standards, and guidelines for editorial practices. P7S1 Austria Group's independence is to be secured by setting up a separate budget for these companies. P7S1 Austria Group is to market its ad inventory independently. The head office and administration of the P7S1 Austria Group companies are to remain in Austria.

Case	Course of Proceedings	Remedies
<u>ORF / RIG Radio Innovations GmbH / Radioplayer Österreich GmbH</u>	<ul style="list-style-type: none"> In April 2023 the AFCA was notified of a merger that involved the Austrian Broadcasting Corporation acquiring shares in Radioplayer Österreich. The merger has been cleared subject to conditions. 	<ul style="list-style-type: none"> The conditions ensure all Austrian-licensed radio broadcasters to have non-discriminatory access to Radioplayer's platform and services. No exclusivity agreements are allowed, and the participation fee will be cost-based. RPÖ GmbH will also follow transparency rules and reporting obligations.
<u>Wienerberger AG and Terreal Holding S.A.S.</u>	<ul style="list-style-type: none"> AFCA received notification of the merger of Wienerberger AG with Terreal Holding S.A.S. in December 2022 AFCA applied to the Cartel Court for an in-depth review. In June 2023, the Cartel Court approved the merger subject to conditions. 	<ul style="list-style-type: none"> Wienerberger AG committed to supply clay and concrete roof tiles to the Austrian market and grant licensing rights for the "Creaton" brand for a transitional period after the merger. They are also prohibited from enticing away members of Creaton's Austrian sales team for a set period. Terreal Holding S.A.S committed to converting a Hungarian production site to ensure sufficient clay roof tile production for Austria.

15.8 Mergers referred to the European Commission

Table 10: Case Summary Mergers which were referred to the European Commission, Source: AFCA

Case	Procedural information	Status
<u>Adobe Inc., USA and Figma, Inc. USA</u>	<ul style="list-style-type: none"> In December 2022, a merger was notified according to which Adobe Inc, USA ("Adobe") intended to acquire the entire issued share capital of and thus sole control over Figma, Inc, USA ("Figma"). The proposed merger threatened to significantly affect trade between Member States. AFCA referred examination to the European Commission. The European Commission also identified competition problems for different global markets and therefore initiated an in-depth investigation. Adobe withdrew the notification again in December 2023. 	Adobe withdrew the notification in December 2023.

16 Further competences of the AFCA

16.1 Proceedings under the Fair Competition Act

With the amendment to the Fair Competition Conditions Act, formerly known as the “Local Supply Act”, which came into force on 1.1.2022, the Directive on Unfair Trading Practices in Business Relations between Undertakings in the Agricultural and Food Supply Chain (UTP Directive) was transposed into national law; the fines contained therein have been applicable since 1.5.2022. Since this date, the AFCA has been able to apply to the Cartel Court for the imposition of a fine of up to EUR 500,000.00 per infringement. During the reporting period, AFCA received specific indications of infringements for the first time, which have since led to proceedings before the Cartel Court. The close cooperation with the independent Fairness Office, which advises suppliers affected by unfair trading practices, continued in 2023. In addition to the regular exchange of information on current developments, this also led to the initiation of proceedings.

16.1.1 Mpreis Warenvertriebs GmbH

Table 11: MPREIS Case Summary, Source: AFCA

Case	Description of infringement	Procedural information	Status
<u>Unfair trading practices:</u> <u>AFCA files applications with</u> <u>Cartel Court for fines on</u> <u>MPREIS in 16 cases</u>	<ul style="list-style-type: none"> • breaches of Fair Competition Conditions Act in 16 cases • related to unfair trading practices in the sale of agricultural and food products; MPREIS had issued pro forma invoices to suppliers demanding payments unrelated to the actual products purchased, to support a transformation. 	November 2023: AFCA filed applications with the Cartel Court to impose fines	Case pending

16.2 Unfair competition practices

Pursuant to §2 (2) 2 of the Austrian Competition Act, the AFCA is authorised to seek injunctive relief under § 14 (1) of the Unfair Competition Act (UWG) in order to achieve its objectives of ensuring functioning competition and countering distortions or restrictions of competition within the meaning of the Austrian Cartel Act 2005. The AFCA can therefore investigate complaints about unfair, aggressive or misleading business practices and bring them before the civil courts.

Unlike in cartel court proceedings, §§ 11 to 14 of the Competition Act, which describe the AFCA's investigative powers, do not apply in unfair competition proceedings. In civil proceedings, the AFCA has the same status as a private party and bears the full cost risk of the proceedings. The AFCA primarily examines matters that are subject to the Unfair Competition Act if they are in a public interest and in a context with the AFCA's core competences under antitrust law.

In 2023, 46 complaints under fair trading law were submitted to AFCA, 9 of which were submitted via the whistleblower website. In comparison, there were 25 complaints in 2022, of which 4 complaints were submitted via the whistleblower platform on the AFCA website.

16.2.1 Procedures in 2023

This year again saw a trend towards an increasing number of cases. The AFCA receives inquiries and complaints in the B2B and B2C sectors.

An increasing number of complaints were submitted to AFCA regarding violations of Section 1 UWG in the form of a missing or inadequate imprint on a website or violations of Section 2 UWG due to misleading or false information, such as taking a limited offer offline too early without specifying a quota.

Two examples of procedures:

Table 12: UWG case summary, Source: AFCA

Case	Infringement	Proceedings	Status
<u>Willhaben.at - Entrepreneur posing as a consumer</u>	<ul style="list-style-type: none">• The company was posing as a private individual on the website www.willhaben.at and offering around 170 car accessories for sale.• According to Item 22 of the Annex to the UWG, falsely posing as a consumer' is prohibited.	AFCA confronted the company with the infringement.	The company corrected the infringement immediately.

Case	Infringement	Proceedings	Status
<u>Max Energy Austria Handels GmbH - incorrect price information</u>	<ul style="list-style-type: none"> Company informed about a wrong VAT on its website for the delivery of the first 2,900 kWh of electricity, to which the federal government's electricity cost subsidy applies, based on the consumer price including the electricity cost subsidy (10 cents/kWh). According to § 2 para 1 no. 4 UWG, false information about the price of a product or its calculation is prohibited as misleading information. 	AFCA confronted the company with the infringement.	The company corrected the infringement immediately.

16.3 Preliminary contract reviews pursuant to §§ 6 et seq. of the Austrian Federal Broadcasting Act (ORF-G)

Since 2010, new ORF offerings have had to undergo a preliminary contract review pursuant to §§ 6 et seq of the Austrian Federal Broadcasting Act (ORF-G), in which KommAustria examines not only the contribution of these offerings to the fulfilment of the public service mission, but also their impact on competition and the diversity of offerings, and may attach conditions to the approval. In these proceedings, the Federal Competition Authority represents the interests of competition as an official party. In this function, the AFCA comments on the likely impact of the new offering on the competitive situation of other media companies operating in Austria.

No preliminary reviews were carried out by the AFCA in 2023.



17 Competition Advocacy

Advocacy refers to the totality of projects, events and initiatives that serve to bring about a change in awareness of a specific issue in society.

The AFCA specifically uses competition advocacy programmes to arouse and deepen interest in anti-trust and competition law. This is achieved in particular through preventive and informative measures. Despite its limited capacities, the AFCA tries to offer services in the field of prevention and information.

17.1 Cartel Law Moot Court 2023

The ninth annual Cartel Law Moot Court was staged on 2 June 2023 by the Austrian Federal Competition Authority (AFCA) in association with the law firm DORDA Rechtsanwälte GmbH and the European Law Students' Association (ELSA) Austria. Eleven teams consisting of two to three people each from six Austrian universities took part. They were supported by partner law firms in the preparation of the pleadings and the oral proceedings.

The winner was the team of the University of Salzburg (Marie-Christin Prechtel, Pia Möslinger-Gehmayr, Tania Veronica Loderbauer and Julia Helminger) supervised by CERHA HEMPEL. The Best Speaker Final was won by Adrian Mury, Team University of Salzburg/Linz/Graz, supervised by Burgstaller & Partner.

Students put their debating skills and legal knowledge to the test before a mock Cartel Court.



From left to right.: Othmar Karas, European Parliament; Adrian Mury; Natalie Harsdorf-Borsch, AFCA; Gabriel Paulus, ELSA; Heinrich Kühnert, DORDA

Photo: AFCA

17.2 Participation in the expert group on Inflation Monitoring and Analysis (EBAI)

Due to the high price increases in Austria, the Austrian federal government set up the “Expert Group for the Observation and Analysis of Inflationary Developments” (EBAI) at the request of the social partners, to which state institutions, economic researchers and representatives of important social groups were invited in addition to the social partners. The participation of the AFCA, which is required by law to ensure functioning competition by counteracting distortions or restrictions of competition, ensures that the principle of competition is incorporated into the discussion.

The AFCA provides its expertise at the regular meetings of the expert group and presented its sector inquiry into the food industry at the eighth meeting. The third EBAI report was completed in June 2023.

17.3 Central European competition authorities exchanged experiences with regard to combating unfair trading practices in the agricultural and food supply chain

In February, at the initiative of the AFCA, an exchange of experience took place between several competition authorities responsible for enforcing the provisions on combating unfair trading practices in the agricultural and food supply chain (UTP “Unfair Trade Practices”).

The meeting was attended by representatives of authorities from Croatia, Romania, Slovenia, the Czech Republic and Austria. The intention is to hold such regional meetings on a regular basis. The Austrian Fairness Office also took part in the event.



Meeting of the sister authorities of Croatia, Romania, Slovenia, Czech Republic, Austria

Photo Credit: AFCA

17.4 Bid rigging: AFCA and provincial courts of audit exchange experience

On the initiative of the AFCA, the regional audit offices of Burgenland, Carinthia and Upper Austria have exchanged information with AFCA on methods to prevent collusion in bidding procedures. As part of the joint initiative, AFCA will regularly exchange knowledge with the provincial audit offices. The initiative will be continued in 2024.

If a public or private contracting authority awards a contract, there may be collusion among the bidders that harms the contracting authority. The member countries of the Organisation for Economic Co-operation and Development (OECD) spend an average of 12% of their gross domestic product on public procurement. If collusive tendering could be avoided, public procurement costs would be reduced by one fifth, according to the OECD.

In Austria, the Austrian Federal Competition Authority (AFCA) has uncovered numerous rigged bids over the last few years. These bid rigging schemes were implemented in a variety of ways: through anti-competitive working groups and bidding consortia, illegal price fixing, market allocation and the exchange of competitively sensitive information relating, for example, to agreements on future behaviour when submitting bids.

Such illegal practices are hard to unearth, with the AFCA being made aware of them in various different ways. The provincial courts of audit may also have to deal with bid rigging since they regularly examine the contracts being placed at the level of the provincial governments. In relation to the so-called “joiner cartel”, the AFCA initiated investigations following the receipt of information from the City of Vienna Court of Audit; several companies have meanwhile been finally sentenced.

18 Comments on legislative projects

The AFCA has commented on proposed legislation relating to its area of responsibility as part of (pre-) parliamentary review procedures:

18.1 Interchange Fee Implementation Act – Interbank-enentgeltevollzugsgesetz, IEVG

The Act, which entered into force on 21.04.2023, established the necessary national rules to accompany Regulation (EU) 2015/751 on interchange fees for card-based payment transactions. In particular, the AFCA was declared the competent national decision-making authority responsible for ensuring compliance with the obligations arising directly from the regulation. To this end, the authority is equipped with appropriate powers of investigation and effective sanctioning powers.

In its statement during the review process, the AFCA pointed out in particular the need to make resources available for the enforcement of this law and pointed out inconsistencies in the penalty provisions. As a result, the system of sanctions was fundamentally revised and the level of penalties for material infringements was aligned with that of § 29 KartG.



18.2 Amendment to the Pharmacy Act

Due to the investigation of the Austrian healthcare market, which has been carried out in several stages since 2017 and which also dealt with aspects of the pharmacy market in three partial reports, the AFCA was able to draw on extensive expertise from the perspective of competition. This perspective included strengthening supply security and consumer interests, taking into account the special requirements of markets for healthcare services and public interests in its opinion in the review process.

It was positively emphasized in the opinion that several of the measures provided for in the draft, such as the extension of opening hours, the regulations on branch pharmacies and dispensing points as well as the implementation of health tests in pharmacies, were in line with the recommendations made by the AFCA in the interests of consumers.

However, reference was also made to the AFCA's recommendations regarding community pharmacies, some of which were not taken into account in the draft as part of the sector study "Healthcare in rural areas". In particular, this concerns the deletion without replacement of the minimum distances with regard to the authorization to maintain a medical practice dispensary in municipalities without public pharmacies. It also involves the deletion of the special regulation regarding the minimum distance for medical practice dispensaries to public pharmacies in municipalities with only one contract doctor's office and an existing license for a public pharmacy, as well as the consideration of the structural characteristics of rural areas in the needs assessment.

19 Other proceedings and reports

Table 13: Case summary ProPellets Association, Source: AFCA

Case	Investigation	Findings	Measures to strengthen competition
<u>AFCA concludes proceedings in wood pellets market with compliance obligations.</u>	<p>In October 2022: dawn raids in the market for wood pellets owing to suspected price fixing, customer sharing and collusive arrangements related to the sale of pellets.</p> <p>AFCA investigated several companies and one interest group in the provinces of Vienna, Carinthia and Tyrol.</p>	AFCA did not find evidence of anti-competitive conduct that would stand up in court.	<p>AFCA concluded proceedings in wood pellets market with compliance obligations.</p> <p>Self-commitment by ProPellets association:</p> <ul style="list-style-type: none"> • Holding its general meeting with the involvement of cartel law experts. • Organising a cartel law training session for association members. • Underlining the importance of compliance with cartel law during association meetings – at least once every year up until 2026. • Regular, annual reporting on all implemented and intended compliance measures to the AFCA up to and including 2026.

19.1 Interchange fees: AFCA given monitoring and investigation powers

The Austrian National Council unanimously adopted the Interchange Fee Implementation Act (IEVG), which is based on Regulation (EU) 2015/751 on interchange fees for card-based payment transactions, thereby giving the Austrian Federal Competition Authority (AFCA) the power to monitor interchange fees. Specifically, the AFCA has been granted investigation powers and the right to impose administrative penalties. It may send requests for information, demand any information on site that it requires to conduct investigations, and question witnesses.

Due to several parties being involved in payment card transactions, there is an incentive to set the fees for the use of these payment card schemes (interchange fees) above an economically reasonable level. These increased costs are then often incorporated into the prices of goods and services, which is detrimental to consumers, and they may also hinder or prevent (cross-border) providers with lower interchange fees from entering the market.

19.2 New brochure on antitrust law and compliance, position paper on settlements, new guidelines on pre-notification discussions

AFCA published three new guidelines in 2023:

- 2nd edition Brochure on Antitrust Law and Compliance
- 2nd edition Position Paper on Settlements
- 1st edition Guidelines on Pre-Notification Discussions

The first edition of the “**Cartel Law and Compliance**” folder was issued in October 2016. It was intended to provide comprehensive while also easily understandable information, helping companies to be made aware of the risks of cartel law infringements, as well as to identify and mitigate those risks.

The second edition is an updated version, with some important adjustments for practical purposes, and was presented today. Additions have been made, for example, to the chapters on unfair trading practices, sustainability, pre-notification procedures and whistleblower protection. The folder includes information on how to implement an effective compliance management system, as well as on the material risks in cartel law such as horizontal cartels, vertical price fixing and abuse of a dominant market position. Further topics include how to interact with AFCA employees in the event of a dawn raid, how to deal with requests for information and the merger control procedure. The

folder concludes with information on the potential legal consequences of cartel law infringements and contains recommendations on how to mitigate potential risks as well as providing further relevant information.

19.3 Updated position paper on settlements

In November, the AFCA has introduced an updated version of its position paper on settlements, which it had published for the first time in 2014. The new version was presented during a discussion on practice held at the AFCA with the Austrian working group of Studienvereinigung Kartellrecht. The AFCA has complemented its paper including additional important and topical issues. The settlement discount scheme has also been revised.

If the AFCA concludes at the end of its investigations that specific actions by companies were unlawful from an antitrust perspective, the Authority will inform the company concerned of these allegations by means of a statement of objections, guaranteeing the right to be heard. At this time, and before the AFCA initiates proceedings at the Cartel Court, companies may approach the AFCA and ask to bring proceedings to a consensual settlement in an accelerated non-contentious procedure.

The AFCA has expanded its position to include key aspects from the practice gained since 2014. For example, the requirements for settlement and the course of the process are defined in more detail, also with regard to the discount to be granted on the fine.

19.4 AFCA, KommAustria and RTR enter into cooperation agreement in relation to digital markets

Digitalised markets pose ever new challenges, making a precise understanding of the underlying market structures and developments increasingly important. With these challenges in mind, the Austrian Federal Competition Authority (AFCA), the Austrian Communications Authority (KommAustria) and the Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR) with its Telecommunications and Postal Division (RTR.Telekom.Post) and Media Division (RTR Medien) have decided to intensify their working relationships and signed mutual agreements covering their respective remits. The agreements are aimed at strengthening regulatory tools by using available synergies, as well as gaining in-depth knowledge of these marketplaces. This will help tackle the challenges posed by the digital age and also help answer complex questions more efficiently.

Annex



20 Annex

20.1 File accrual in 2023

Table 14: File Accrual in 2023, Source: AFCA

File Accrual 2023	1st Q	2nd Q	3rd Q	4th Q	TOTAL
National Cases					
Market Investigation	1	0	0	0	1
Investigations, Forensic IT	2	1	4	0	7
European Competition Network	35	43	56	31	165
ECJ proceedings	3	8	3	8	22
FWBG	1	4	1	14	21
Dawn Raids	2	1	4	0	7
International Affairs	12	9	17	21	59
Interchange fees	0	1	2	4	7
Cartel cases	19	24	25	29	97
Market power abuse proceedings	7	8	5	20	40
ORF Act	0	0	0	0	0
Parliamentary inquiries	5	4	11	12	32
UWG Proceedings	8	6	8	19	41
Prohibited implementation of mergers	6	6	2	1	15
Whistleblowing reports	23	30	23	19	98
Merger registrations	64	69	94	67	294
European Cases					
Merger Cases (EU) - EM	54	64	74	142	334
Cartells (EU) - EC	2	3	1	4	10
TOTAL National Cases and Cases in Europe					1250

20.2 Fining decisions in Austria in the last 10 years

Table 15: Fining Decisions in Austria in the last 10 years, Source: AFCA

Field	Company	Fines in €	Year	Case number
Cartel agreements				
Construction industry	Gebrüder Haider	3.510.000	2023	24 Kt 8/22i
Civil engineering	Granit Holding GmbH Bauunternehmung Granit Gesellschaft m.b.H. Klöcher Baugesellschaft m.b.H.	9.800.000	2023	28 Kt 7/23y
Joinery and cabinet-making services	Swietelsky	27.150.000	2023	24Kt10/22s
Market Studies	Beinschab GmbH	6.000	2023	28Kt2/23p-8
Joinery and cabinet-making services	Pittel + Brausewetter GmbH	4.810.000	2023	26Kt 3/23w
Joinery and cabinet-making services	Tischlerei Lechner GmbH	100.000	2022	27 Kt 6/22t
Civil engineering	HABAU Group (HABAU Hoch- und Tiefbaugesellschaft m.b.H./ Held & Francke Baugesellschaft m.b.H./ÖS- TU-STETTIN Hoch- und Tiefbau GmbH/STRAKA Bau GmbH)	26.330.000	2022	28 Kt 6/20x
Joinery and cabinet-making services	Thalia Buch & Medien GmbH	100.000	2022	25 Kt 4/22h
Joinery and cabinet-making services	Tischlerei Krumböck GmbH	128.000	2022	26 Kt 5/22p
Facade construction	NFS Bau GmbH	54.000	2022	128 Kt 1/22z
School bags	Kastner & Öhler Beteiligungs-Aktiengesellschaft Kastner & Öhler AG Kastner & Öhler Mode GmbH	70.000	2022	24 Kt 1/22k
Submetering services	ista Österreich GmbH	2.200.000	2022	25 Kt 1/22t
Submetering services	R+S Group Regeltechnik und Schaltanlagenbau GmbH	50.000	2022	26 Kt 1/22z
Joinery and cabinet-making services	Norer Tischlereigesellschaft GmbH	69.000	2022	127 Kt 1/22t
Civil engineering	PORR Group	62.350.000	2022	26 Kt 5/21m
Civil engineering	STRABAG AG; F. Lang u. K. Menhofer Baugesellschaft m.b.H. & Co. KG	45.370.000	2021	27 Kt 12/21y
School bags	Fond Of GmbH	340.000	2021	25 Kt 5/21d
Pool cleaning equipment	Zodiac Marine & Pool (Zodiac Pool Systems, Inc.)	294.000	2020	25 Kt 3/20h
Bikes	Specialized Europe B.V.	378.000	2020	128 Kt 2/19t
Electronic	Bose Ges.m.b.H.	665.000	2019	24 Kt 7/19p

Field	Company	Fines in €	Year	Case number
Waste material collection	Banner GmbH	60.000	2019	26 Kt 1/19w 26 Kt 1/19w
Bakery products	Anker Snack & Coffee Gastronomiebetriebs GmbH	210.000	2019	25 Kt 1/19p
Mobile Devices	Ingram Micro GmbH	288.888	2018	128 Kt 5/18g
Gas Station	A1 Tankstellenbetriebs GmbH	70.000	2018	27 Kt 3/18w
Electronic	Devol Austria GmbH	223.000	2018	26 Kt 2/18s
Rubber (disposable gloves)	Semperit Technische Produkte GesmbH	1.600.000	2018	27 Kt 5/16m 27 Kt 6/16h
Electronic	Pioneer & Onkyo Europe GmbH	120.000	2017	128 Kt 5/17f
Drywall construction	3P Trockenbau GmbH	185.000	2017	24 Kt 7/16h 26 Kt 2/17i
Drywall construction	Kaefer Isoliertechnik Ges.m.b.H	190.000	2017	24 Kt 8/16f 27 Kt 6/17k
Electronic	Robopolis GmbH	208.200	2017	24 Kt 7/17k
Drywall construction	Perchtold Trockenbau Wien GmbH	48.000	2017	27 Kt 7/17g
Drywall construction	E+H Trockenbau GmbH	110.000	2017	128 Kt 3/17m
Drywall construction	Tüchler Ausbau GmbH	130.500	2017	25 Kt 4/16z 128 Kt 1/17t
Drywall construction	Wagner & Jüptner GmbH	22.500	2017	27 Kt 12/16s 27 Kt 14/16k
Electronic	Makita Werkzeug Gesellschaft m.b.H.	1.560.000	2016	24 Kt 11/16m
Electronic	De'Longhi-Kenwood GmbH	650.000	2016	25 Kt 6/16v
Food retailers	Spar Österreich-Gruppe II	10.210.000	2016	29 Kt 10/16m 27 Kt 4/16i 26 Kt 4/16g
Food retailers	RAUCH Fruchtsäfte GmbH & Co OG	1.700.000	2016	26 Kt 2/16p
Freight transport	ETRANSA Spedition AG	3.500.000	2015	27 Kt 56, 57/14
Freight transport	Schenker & Co AG	317.000	2015	27 Kt 56, 57/14
Freight transport	PANALPINA Welttransport Holding GmbH	2.000.000	2015	27 Kt 56, 57/14
Freight transport	Rail Cargo Logistics Austria GmbH	184.000	2015	27 Kt 56, 57/14
Electronic	Hewlett-Packard Gesellschaft mbH	640.000	2015	29 Kt 34/15
Electronic	KTM Fahrrad GmbH	112.000	2015	29 Kt 6/15
Electronic	United Navigation GmbH	100.000	2015	25 Kt 8/15
Electronic	Samsung Electronics Austria GmbH	1.050.000	2015	24 Kt 35/15
Food retailers	Spar Österreich-Gruppe	30.000.000	2015	16 Ok 2/15b (16 Ok 8/15k)
Electronics	Nikon GmbH (Zweigniederlassung Wien)	170.000	2015	24 Kt 7/15

Field	Company	Fines in €	Year	Case number
Steeltrade	Frankstahl Rohr- und Stahlhandelsgesellschaft m.b.H	147.000	2015	24 Kt 29/15
Food retailers	Pago International Ges.mbH	152.460	2015	29 Kt 12/15
Food retailers	Pfeiffer HandelsgmbH und die Zielpunkt GmbH	562.500	2015	26 Kt 9/15
Steeltrade	Großschädl Stahlgroßhandel Gesellschaft m.b.H.	47.500	2015	29 Kt 4/15
Steeltrade	Eisen Wagner Gesellschaft mbH	150.000	2015	24 Kt 71/14
Steeltrade	Filli Stahlgroßhandelsgesellschaft m.b.H	32.500	2015	24 Kt 74/14
Steeltrade	Mechel Service Stahlhandel Austria GmbH	200.000	2015	24 Kt 1/15
Sports equipment	Sport Pangratz & Ess GmbH Alber Sport GmbH Sport Jennewein Martin e.U. Sport Fauner GmbH & Co KG	419.200	2015	27 Kt 5/15
Food retailers	Vöslauer Mineralwasser AG	653.775	2015	25 Kt 76/14
Food retailers	Brauerei Joseph Baumgartner GmbH	56.250	2014	24 Kt 62/14
Food retailers	NÖM AG	583.200	2014	29 Kt 60/14
Transport companies	Speditionssammelladungskonferenz ABX Logistics (Austria) GmbH*, Alpentrans Spedition und Transport GmbH*, Logwin Solutions Austria GmbH (vormals Logwin Invest Austria GmbH), DHL Express (Austria) GmbH, G. Englmayer Spedition GmbH, Rail Cargo Logistics-Austria GmbH (vormals Express-Interfracht Internationale Spedition GmbH), A. Ferstl Speditionsgesellschaft mbH*, Spedition, Lagerei und Beförderung von Gütern mit Kraftfahrzeugen Alois Herbst GmbH & Co KG*, Johann Huber Spedition und Transportgesellschaft mbH, Kapeller Internationale Spedition GmbH, Keimelmayr Spedition u. Transport GmbH*, Koch Spedition KG (vormals Koch Spedition GmbH), Kühne + Nagel GmbH, Lagermax Internationale Spedition Gesellschaft mbH, Morawa Transport GmbH in Liquidation, Johann Ogris Internationale Transport- und Spedition GmbH, Logwin Road + Rail Austria GmbH, Internationale Spedition Schneckenreither Gesellschaft mbH, Leopold Schöffl GmbH & Co KG*, "Spedpack"-Spedition- und Verpackungsgesellschaft mbH*, Johann Strauss GmbH, Thomas Spedition GmbH*, Traussnig Spedition GmbH, Treu SpeditionsgesmbH, Spedition Anton Wagner GmbH*, Gebrüder Weiss GmbH, Wildenhofer Spedition und Transport GmbH, Marehard u. Wuger Internat. Spedition- u. Logistik GmbH* und Rail Cargo Austria AG * Minor fines were imposed on these companies, as they had not generated any sales with national groupage transport despite being a member of the SSK. Moreover, they have played a very subordinate role within the framework of the SSK and have partly cooperated with the AFCA.	17.500.000	2014	24 Kt 7,8/10-266, 24 Kt 46/14-10

Field	Company	Fines in €	Year	Case number
Food retailers	MPREIS Warenvertriebs GmbH	225.000	2014	27 Kt 63/14
Food retailers	Sutterlüty Handels GmbH	78.750	2014	29 Kt 64/14
Insulating materials	Austrotherm GmbH	187.500	2014	25 Kt 52/14
Food retailers	Stieglbrauerei zu Salzburg GmbH; Stiegl Betriebsholding GmbH/Stiegl Getränke & Service GmbH & Co. KG	196.875	2014	24 Kt 25/12-15
Electronic	Grundig Intermedia GmbH	372.000	2014	24 Kt 17/14
Food retailers	Brauerei Hirt Gesellschaft mbH	58.500	2014	27 Kt 22/14
Electronic	SSA Fluidra Österreich GmbH	50.000	2014	29 Kt 21/14
Food retailers	AFS Franchise-Systeme GmbH	225.000	2014	29 Kt 27/14
Insulating materials	swisspor Österreich GmbH & Co KG	290.000	2014	29 Kt 15/14
Food retailers	Braucommune in Freistadt	52.500	2014	27 Kt 14/14
Electronic	Hans Lurf GmbH	100.000	2014	25 Kt 18/14
Food retailers	Mohrenbrauerei August Huber KG	82.500	2014	29 Kt 151/13
Electronic	Media-Saturn BeteiligungsgmbH	1.230.000	2014	26 Kt 19/14
Electronic	Pioneer Electronics Deutschland GmbH	350.000	2014	27 Kt 20/14
Food retailers	Privatbrauerei Zwettl Karl Schwarz Gesellschaft m.b.H.	82.500	2014	25 Kt 153/13
Food retailers	Brauerei Schloss Eggenberg Stöhr GmbH & Co KG	57.000	2014	27 Kt 160/13
Food retailers	Vereinigte Kärntner Brauereien AG	195.000	2014	24 Kt 152/13
Illegal mergers				
Forbidden implementation of a merger	Vivendi SE	120.000	2023	25 Kt 4/23k
Forbidden implementation of a merger	Oras Invest Oy	85.000	2023	28 Kt 6/23a
Forbidden implementation of a merger	ADOMO Beteiligungs GmbH	85.000	2023	24 Kt 9/22 m
Forbidden implementation of a merger	ADOMO Beteiligungs GmbH	65.000	2023	25 Kt 12/22 k
Forbidden implementation of a merger	Heise Medien GmbH & Co. KG	18.000	2022	25 Kt 9/22v
Forbidden implementation of a merger	SFS Gruppe	220.000	2022	24 Kt 3/22d
Forbidden implementation of a merger	Ondufin SAS	64.000	2021	27 Kt 13/21w

Field	Company	Fines in €	Year	Case number
Forbidden implementation of a merger	Naxicap Partners SA	83.000	2021	25 Kt 7/21y
Forbidden implementation of a merger	SMS group GmbH	30.000	2021	25 Kt 6/21a
Forbidden implementation of a merger	Facebook. Inc./GIPHY. Inc.	9.600.000	2021	28 Kt 6/21y
Forbidden implementation of a merger	OneMed Holding AB/SMEDICO AG	30.000	2021	24 Kt 6/21v
Forbidden implementation of a merger	Salesforce.com. Inc.. USA	100.000	2021	27 Kt 9/21g
Forbidden implementation of a merger	Castanea Rubra Assets GmbH	100.000	2020	25 Kt 2/19k
Forbidden implementation of a merger	Aktieselskabet af 5.5.2010	75.000	2019	27 Kt 9/19d
Forbidden implementation of a merger	Eurazeo SE	30.000	2019	24 Kt 13/19w
Forbidden implementation of a merger	KTM AG und Kiska GmbH	60.000	2019	24 Kt 13/19h
Forbidden implementation of a merger	WIG Wietersdorfer Holding GmbH	70.000	2019	25 Kt 3/19g
Forbidden implementation of a merger	Lagardère Travel Retail Austria GmbH/CP Convenience Partner GmbH	17.500	2019	27 Kt 4/18t
Forbidden implementation of a merger	REWE International AG	212.000	2018	24 Kt 8/18h
Forbidden implementation of a merger	Erne Group GmbH/TONOS GmbH	30.000	2019	26 Kt 3/18p, 26 Kt 4/18k
Forbidden implementation of a merger	TCH s.r.l.	55.000	2018	25 Kt 6/18x
Forbidden implementation of a merger	Containex Container-Handelsgesellschaft mbH/ Česko-slezská výrobní a.s	100.000	2018	24 Kt 13/19w
Forbidden implementation of a merger	Luxembourg Holdings 70 S.a.r.l/Texbond S.p.A.	40.000	2018	24 Kt 1/18d

Field	Company	Fines in €	Year	Case number
Forbidden implementation of a merger	Stahl Lux 2 S.A.	185.000	2018	128 Kt 8/17x
Forbidden implementation of a merger	Comparex AG	40.000	2017	128 Kt 10/17s
Forbidden implementation of a merger	Comparex AG	30.000	2017	27 Kt 9/17a
Forbidden implementation of a merger	Vulcan Holdings. L.P. und Apollo Management L.P.	70.000	2017	128 Kt 2/17i-8
Forbidden implementation of a merger	SWOCTEM GmbH; Dr.-Ing. E.h. Friedhelm Loh	11.000	2017	29 Kt 35/16p
Forbidden implementation of a merger	Europapier International AG	750.000	2016	29 Kt 14/16z, 29 Kt 15/16x
Forbidden implementation of a merger	Grosso holding Gesellschaft mbH	50.000	2015	26 Kt 39/15
Forbidden implementation of a merger	W. Hamburger GmbH	40.000	2015	29 Kt 38/15
Forbidden implementation of a merger	VAMED Management und Service GmbH & Co KG	155.000	2014 2015	24 Kt 143/13 16 Ok 3/15z
Forbidden implementation of a merger	Graz-Köflacher Bahn- und Busbetrieb GmbH	40.000	2015	29 Kt 68/14
Forbidden implementation of a merger	Ankerbrot AG	20.000	2015	27 Kt 65/14
Forbidden implementation of a merger	21 Centrale Partners SA/Microcar S.A.S	30.000	2015	24 Kt 69, 70/14
Forbidden implementation of a merger	Stahlgruber Holding GmbH	23.000	2014	29 Kt 16/14
	Fines/penalties in total (2002 - 2024)	396.265.008		Source: AFCA (Date: 07/2024)

20.3 Key recommendations of the Competition Commission 2023

Proposals of the Competition Commission pursuant to § 16 (1) of the Austrian Competition Act to the Austrian Federal Competition Authority for priorities in the discharge of its tasks in the calendar year 2023:

20.3.1 Introductory remarks

As part of the annual submission of recommendations for priorities in respect of the Austrian Federal Competition Authority's (AFCA) work, as provided for in the Austrian Competition Act (WettbG), the Competition Commission (WBK) has taken the opportunity to highlight the areas which, in its view, require more in-depth and ongoing work in the interests of fair competition. In developing these recommendations, the WBK draws on findings from its current work as well as on information it has received, and endeavours to focus the recommendations for priorities on areas of competition policy where AFCA can be expected to derive the greatest possible benefit from in-depth treatment.

The WBK's previous recommendations can be found on AFCA's and the Federal Ministry for Labour and Economy's (BMAW) websites and are still largely up to date.

See the WBK's priority recommendations to AFCA for 2022, available at https://www.bwb.gv.at/fileadmin/user_upload/Wettbewerbskommission_Schwerpunktempfehlungen_2022.pdf and at <https://www.bmaw.gv.at/dam/jcr:e0d09bee-dab6-4688-84ed-3ec0b9e1525f/Wettbewerbskommission%20Schwerpunktempfehlungen%202022.pdf>.

Inflation at various levels of the economy is among the most pressing current challenges for companies and consumers. There are different reasons for this, including the rise in energy prices and supply chain problems due to geopolitical developments. Wherever there are increasing indications that additional price mark-ups are occurring in the slipstream of the crisis, increased competition control is required.

20.3.2 Priority recommendations for 2023 Competition monitoring / sector analyses

In recent years, the WBK has been recommending that targeted competition monitoring be carried out in a targeted manner in the form of **preliminary analyses of specific sectors**, which may subsequently lead to a full sector enquiry.

The **energy sector, online retail and service platforms** were mentioned as possible sectors (see below). Another sector to be mentioned is the **food sector** (along the value chain). Especially in times of high inflation, competition monitoring and sector analyses can provide valuable insights into the long-term development of economically significant sectors.

20.3.2.1 Food sector

In the food sector, inflation is visibly accelerating and complaints from consumers and companies are on the rise. In 2022, AFCA initiated investigations in a food sub-sector on suspicion of abuse of market power. AFCA recommends keeping a closer eye on that area, which is so important for both consumers and companies.

20.3.2.2 Energy sector

The WBK has repeatedly recommended that the **electricity** and **gas** sectors be prioritised and continuously monitored, including last year. The field of grid-based energy (electricity, gas, district heating) remains a “permanent topic of competition policy” due to the economic importance of these sectors, which has become extremely important in view of the current crisis-related energy price developments and their potential to jeopardise the prosperity of the country as a whole. In view of current developments in wholesale prices (especially gas prices, but also electricity prices), and of the measures taken by the federal government to limit energy costs, the WBK considers competitive monitoring (together with E-Control) in respect of the passing on of price changes to companies and consumers to be sensible and important. In addition, the WBK recommends – in cooperation with the regulatory authority E-Control as required – a review of whether specific anti-competitive practices are beginning to take hold on the supplier side in connection with measures taken by the federal government (keyword: electricity price subsidy).

Petrol, diesel and heating oil prices are key drivers of inflation. In its most recent industry study of the fuel market (final report July 2022), AFCA found that the gross refining margin has tripled since the start of the war in Ukraine. The WBK recommends that the fuel market continues to be monitored due to its high economic importance.

Due to current price increases in the **wood pellet** sector, the WBK also recommends focussing on this market.²

2 Immediately before the WBK passed the resolution, media reports (Die Presse 21 October 2022) revealed that AFCA had already begun investigations in this area. Current events have overtaken the recommendation. Faster implementation of a recommendation is hardly conceivable.

The federal government has announced the mandatory **replacement of heating oil boilers and gas heating systems** by 2040 as part of the decarbonisation target. Although the planned legal regulations for this (in the form of a “heating law”) are not yet in place and time periods are still of varying lengths

(heating oil³, gas⁴), there are already significant price increases and long waiting times for the replacement of heating oil boilers and gas heating systems. Due to the legal requirement, the WBK considers it important to establish continuous monitoring in this area to be able to identify any anti-competitive behaviour and put an end to it as soon as possible. The announced mandatory replacement of the heating supply system must not be made artificially more expensive through collusion.

20.3.2.3 E-fuelling

AFCA has (also at the suggestion of the WBK) examined the field of e-fuelling stations in more depth. In this context, the recommendation is to pay particular attention to the market for the installation of the private and public charging infrastructure (manufacturers) and to keep the sector under observation even after the conclusion of the current study.

Especially in view of current **developments in electricity prices**, price monitoring or an industry study – comparable to the “petrol price calculator” – is recommended for the near future, as well as the standardisation of information and purchase conditions for e-fuelling (with particular attention to the urban-rural divide and motorway service stations, as well as charging speeds). AFCA should support steps taken by E-Control in this regard within the scope of its possibilities.

20.3.2.4 Waste management

In Austria, it was decided to introduce a **one-way deposit** for drinks in plastic bottles and cans from 2025 (§ 14c of the Waste Management Act).

In light of this, the WBK recommends that the results of this market liberalisation process in waste management and the establishment of the new deposit system be examined in greater depth, taking into account the approach and successes in Germany.

3 Staggered ban on heating oil boilers for new builds from 2020; mandatory replacement of boilers older than 25 years from 2025 for heating system replacements from 2021; replacement of all boilers by 2035 at the latest.

4 Phase-out of gas heating system; no more gas boilers/new connections permitted in new builds from 2025. No further expansion of gas networks for space heating, with the exception of densification within existing networks.

20.3.2.5 Online retail

In view of the steadily growing market power of global and network-based international companies based outside the EU, it has been recommended in recent years that **the competitive situation in online retail** be examined and, if necessary, initiatives be taken to **ensure fair framework conditions** for all players (see the WBK's priority recommendations for 2019, 2020, 2021 and 2022 for further details). This recommendation will be renewed shortly before the Digital Services Act⁵ and the Digital Markets Act⁶ come into force.

The WBK therefore recommended that AFCA place **special focus on investigating on-line trade, especially in connection with deliveries from third countries** (particularly China), as part of its remit. This not only raises **competition law issues** in the narrower sense, which are relevant to AFCA, but also **location policy** issues. It can be assumed that Austria as a business location will lose jobs, income tax, VAT and social security contributions etc., and that companies operating in Austria will be increasingly exposed to **competitive disadvantages**.

An umbrella group exemption regulation and corresponding guidelines that pay particular attention to online trading have been issued.

In view of the fact that this is at least an **EU-wide problem**, the WBK has been recommending EU-wide cooperation between competition authorities (including the European Commission) and ministries. Despite the progress already made, this is a highly current issue that requires special attention from the political and enforcement sides.

20.3.2.6 Service platforms

Digitisation poses new challenges for competition enforcement, especially in connection with large platforms. The WBK therefore recommends that AFCA continue to monitor compliance with the competition law framework on various service platforms. In particular, companies whose main business activity is the collection of data, or which have corresponding market power, should be scrutinised more closely.

Another important building block is the BMDW's (the Federal Ministry for Labour and Economy, now BMAW) establishment of AFCA as an authority empowered to take legal action (together with the Protection Association and the Austrian Economic Chambers (WKÖ)) for the **enforcement of the P2B Regulation**. Close cooperation between AFCA

5 Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on a single market for digital services (Digital Services Act) and amendment of Directive 2000/31/EC COM/2020/825

6 Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amendment of Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act), OJ 2022 L 265/1 of 12 October 2022.

and the Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR) facilitates positive synergies here.

20.3.2.7 Digitisation – algorithms

AFCA should continue to deal intensively with future topics, including the **influence of algorithms**. It should further expand its expertise in these areas in collaboration with RTR and continue to focus its activities on this subject.

The various applications of **algorithms** in the digital economy carries the risk of the emergence of new forms of behavioural coordination. AFCA's active enforcement activities in the field of the digital economy are intended to generate experience and specific use cases on the basis of which the legal framework can be adapted in the future.

20.3.2.8 Bid-rigging

Bid-rigging not only **harms the tendering body** and therefore the taxpayer, but can also **lead to market foreclosure**, meaning that companies that do not participate in complicit agreements are not given a chance. By identifying and prosecuting such agreements, especially in the area of public procurement processes, AFCA can achieve both specific and general preventive effects. This serves Austria as a business location as well as the end customer. The main aim is to focus more strongly on the interaction between public procurement law and antitrust law – including procedural law – in the sectors concerned and to take measures to raise awareness and promote prevention.

20.3.3 Concluding remarks

Reliable and efficient enforcement of competition law is a significant advantage for Austria as a business location. AFCA should therefore continue to guarantee its independence, efficiency, transparency and rapid procedures.

The WBK would like to thank AFCA for the exchange of ideas and experiences and extends its best wishes for the continued success of its activities to improve the competition situation.

Vienna, 21 October 2022

Hon. Prof. DDr. Jörg Zehetner,
Chairman of the Competition Commission

21 List of abbreviations

Table 16: List of abbreviations

Abbreviation	Meaning
AFCA	Austrian Federal Competition Authority
Art.	Artikel (article)
BEREC	Body of European Regulators for Electronic Communication
BFG	Bundesfinanzgesetz (Federal Finance Act)
BKartAnw	Bundeskartellanwalt (Federal Cartel Prosecutor)
BMAW	Bundesministerium Arbeit und Wirtschaft (Federal Ministry of Labour and Economic Affairs)
BMJ	Bundesministerium für Justiz (Federal Ministry of Justice)
B2B	business to business
B2C	business to consumer
CCRL	Competition Council of the Republic of Lithuania
CoCo	Competition Commission
CPC	Consumer Protection Cooperation Network
DG Competition	Directorate-General for Competition
DMA	Digital Markets Act
Dr.	Doctor
EBAI	Expert Group on Inflation Monitoring and Analyse
ECN	European Competition Network
ECMR	EU Merger Control Regulation
EDPB	European Data Protection Board
EDPS	European Data Protection Supervisor
ELAK	Elektronischer Akt (Electronic File)
ELSA	European Law Students' Association
E-Ladeinfrastruktur	Electric charging infrastructure
E-Mobilität	Electromobility
etc.	et cetera
EU	European Union
EUR	Euro
FH	Fachhochschule (University of Applied Sciences)
FCA	Federal Competition Authority

Abbreviation	Meaning
FWBG	Faires Wettbewerbsbedingungen Gesetz (Fair Competition Conditions Act)
GCR	Global Competition Review
GNCA	Georgian National Competition Agency
GmbH	Gesellschaft mit beschränkter Haftung (limited company under Austrian law)
HSchG	HinweisgeberInnenschutzgesetz (Whistleblower Protection Act)
ICN	International Competition Network
IGE	International Group of Experts on Competition Law and Policy
IEVG	Interchange Fee Implementation Act
iHv	In Höhe von (in the amount of)
IT	Information Technology
KartG	Kartellgesetz (Cartel Act)
KG	Kartellgericht (Cartel Court)
KOG	Kartellobergericht (Cartel Supreme Court)
KommAustria	Kommunikationsbehörde (Austrian Communications Authority)
LL.M.	Master of Laws
Mag.	Magister/Magistra
M€	Million Euro
MoU	Memorandum of Understanding
MVÜ	Mittelverwendungsüberschreitungen (Cost Overruns)
OECD	Organisation for Economic Cooperation and Development
OeNB	Österreichische Nationalbank (Austrian National Bank)
ORF	Österreichische Rundfunk (Austrian Broadcasting Corporation)
ORF-G	ORF-Gesetz (Austrian Federal Broadcasting Act)
P2B-Regulation	Platform-to-Business-Regulation
PHD	Philosophical Doctorate
Prof.	Professor/Professorin
RPM	Resale Price Maintenance
RTR	Rundfunk und Telekom Regulierungs-GmbH (Austrian Regulatory Authority for Broadcasting and Telecommunications)
RTR. Telekom. Post	Telekommunikation und Post Abteilung (Telecommunications and Postal Division)
RTR Medien	RTR Media Division
SCRPA	State Consumer Rights Protection Authority of the Republic of Lithuania
TFEU	Treaty on the Functioning of the European Union

Abbreviation	Meaning
UK	United Kingdom
UNCTAD	United Nations Conference on Trade and Development
UTP	Unfair trading practices
UWG	Bundesgesetz gegen den unlauteren Wettbewerb (Federal Act against Unfair Competition)
VAT	Valued Added Tax
WB	Whistleblowing System
WettbG	Wettbewerbsgesetz (Cartel Act)
WIFO	Österreichisches Institut für Wirtschaftsforschung (Austrian Institute of Economic Research)

