

Sector Inquiry

Health

 Bundeswettbewerbsbehörde

Part II:

Healthcare in Rural Areas

October 2019

Executive summary

The Federal Competition Authority (“FCA”) has been analysing the Austrian healthcare sector since the beginning of 2017. In this sector inquiry the FCA evaluates the competitive environment in certain submarkets of the healthcare market. The inquiry is based on information requested from market participants, academic literature as well as experience reports and surveys provided by national competition authorities. In addition, in-depth discussions have been held with undertakings, interest groups and other institutions active in the healthcare market. The goal is to identify possible distortions in competition and to show possible liberalisation measures that provide undertakings with a greater scope of action and bring benefits to the consumers. Studies have demonstrated that also in the healthcare sector a certain extent of competition can lead to better healthcare and to improved quality of products and services.

The first interim report “The Austrian Pharmacy Market” was published on 18th May 2018. It analyses possible restraints on competition on the market for community pharmacies, in particular market entry for pharmacies (needs assessment), ownership of pharmacies (no prohibition of third-party ownership, wholesalers, branch pharmacies) as well as rules on operating pharmacies (no opening hours, provision of services, online sales, prerogative of pharmacies to sell OTC medicines).

In the past few years there has been increasing evidence of a partial deterioration of primary healthcare in rural areas, in particular due to growing problems to fill vacant posts of general practitioners under contract to health insurance funds. The age pattern of general practitioners in private practice and the expected retirements associated with it, as well as a lack of interest of succeeding physicians to step in suggest that the situation is likely to further deteriorate in the near future. Taking into account these alarming recent developments, the FCA has therefore decided to focus its next interim report especially on the above-mentioned aspect of healthcare in rural areas from a competition perspective.

Chapter I describes the status quo of medical and pharmaceutical care in Austria. In the survey it becomes apparent that in small municipalities medical and pharmaceutical care is provided to a large extent by local general practitioners with their own medical dispensary. Especially in rural areas, however, municipalities do exist that depend on neighbouring municipalities. In the years 2009 – 2018, 155 new community pharmacies were opened, mostly in municipalities with a growing population. Especially in municipalities with 1000 to

5000 inhabitants, the opening of new community pharmacies has led to a decreasing number in doctors' dispensaries.

Chapter II analyses public health policies and measures taken by regional authorities, social insurance institutions and interest groups in order to guarantee primary healthcare covered by public health insurance schemes. The great variety of support measures ranges from different monetary and non-monetary incentive schemes to considerations on direct government control such as bans on medical services provided by private doctors ("*...and if you are not willing, I will use force.*"). It goes without saying that the FCA does not regard the latter prohibitive approaches as appropriate.

Chapter III particularly focuses on the question if and to what extent regulatory restrictions on doctors' dispensaries might impair the attractiveness of a country doctor's practice and if such restrictions are justified from a primary healthcare perspective. When conducting the survey, the FCA soon realized that in rural areas a country doctor's dispensary is an essential aspect in judging the attractiveness of a fund doctor's practice and can thus be considered as a vital element in full and reliable primary healthcare in rural areas. Doctors operating their own medical dispensaries compete to a certain extent with local community pharmacies and are currently faced with very restrictive regulations laid down in the Austrian Pharmacy Act (ApothekenG). The interim report therefore analyses the existing situation, the applicable legal provisions and their impact on pharmaceutical supply in rural areas. As a result of the survey it can be stated that different treatment under competition law of community pharmacies and dispensing doctors does neither improve supply security nor is it required to guarantee a certain level of quality regarding the administration of medicines. Unlike in the past, the vast majority of products sold in community pharmacies is no longer produced in these pharmacies themselves. Consequently, one reason for the almost exclusive distribution of medicines by community pharmacies has ceased to exist. Therefore, it is recommended to deregulate the provisions applicable to dispensing doctors laid down in the Austrian Pharmacy Act.

Chapter IV deals in greater detail with the new primary healthcare units ("**PHU**"), which are fostered especially in order to reduce burden on out-patient departments in hospitals. It also analyses which impacts such primary healthcare units might have on healthcare in rural areas. Furthermore, this chapter considers the possibility to employ medical doctors as well as GP specialty training in a training practice.

Chapter V analyses the suggestions made by the Austrian Chamber of Pharmacists of 25th April 2019 to modernise the Austrian Pharmacy Act and relates them to the recommendations published in the first interim report "The Austrian Pharmacy Market". This analysis points out that several suggestions presented by the Chamber of Pharmacists clearly

correlate with the FCA recommendations, a fact which from the FCA's point of view is definitely welcome.

In compliance with section 2 para. 1 of the Austrian Competition Act, all inquiries and analyses contained in the second interim report are based on the FCA's fundamental understanding that the patients' freedom of choice, the comparability of medical services and the prevention of artificial restraints to competition must be seen as the main columns of competition in the healthcare sector.

Approach and methodology: This interim report is primarily based on discussions with representatives of interest groups of both doctors and pharmacists as well as with representatives of the Main Association of Austrian Social Insurance Institutions. Furthermore, documents and statistical data provided by these institutions were analysed. Based on the data provided by the Austrian Medical Chamber, the Austrian Chamber of Pharmacists and the Main Association of Austrian Social Insurance Institutions a map was drawn up that depicts (the geographic and time dimension of) practices of dispensing fund doctors. Moreover, scientific publications, court rulings as well as reports and studies were analysed, and the FCA also participated in various relevant discussion meetings with stakeholders and market participants.

Recommendations

- 👍 Fostering comprehensive support measures as well as financial incentives for general practitioners with contracts with health insurance funds in rural areas.
- 👍 Substantially raising the status of general medicine in the theoretical as well as in the practical part of university studies of human medicine.
- 👍 Increasing flexibility and expanding development potentials for so-called "§2" fund doctors¹ in private practice.
- 👍 Awareness-raising measures (e.g. information campaigns) aiming at increasing esteem and appreciation of "§2" fund doctors.
- 👍 Complete elimination of the minimum distance as laid down in section 29 of the Austrian Pharmacy Act regarding the authorization of doctors to operate their own medical dispensaries in municipalities without community pharmacies.
- 👍 Elimination of the special provision regarding the minimum distance for doctors' dispensaries to community pharmacies as laid down in section 28 para. 3 of the Austrian

¹ "§2" fund doctors are self-employed doctors who are in a contractual relationship with a health insurance institution, with the relevant provisions laid down in §2 of the master agreements between the Main Association of Social Insurance Institutions and the Medical Association in charge.

Pharmacy Act in municipalities with only one health insurance fund doctor under contract and an existing license for a community pharmacy. Instead, legal equality of community pharmacies and medical dispensaries operated by fund doctors by way of reference to section 10 of the Austrian Pharmacy Act.

- 👍 Consideration of structural peculiarities of rural areas in needs assessment in terms of section 10 of the Austrian Pharmacy Act.
- 👍 Establishment posts at primary healthcare units should not be allocated at the expense of health insurance fund posts for general practitioners in rural areas. Instead there should be a systematic establishment post management based on a transparent catalogue of criteria.
- 👍 Authorisation of primary healthcare units to also operate their own medical dispensaries.
- 👍 Measures to guarantee the patient's freedom of choice regarding different doctors in non-acute cases also in primary healthcare units by accordingly adapting opening hours.
- 👍 For mobile dispensing facilities requiring authorisation, (minimum) criteria should be established by law regarding needs assessment by the Austrian Chamber of Pharmacists. Alternatively, in case no mobile dispensing facilities exist in a certain catchment area, authorisation of such mobile services might be conceivable in any case, unless the Austrian Chamber of Pharmacists proves a lack of need.
- 👍 Unless there are compelling reasons to the contrary in particular cases, branch pharmacies should be operated on a permanent basis. The period of protection of a branch pharmacy should correspond to the duration of the licence of the parent pharmacy.