

AUSTRIA			
COMPETITION FRAMEWORK			
Competition Law	The Cartel Act 2005 (“Kartellgesetz 2005”), which replaced the Cartel Act 1988, constitutes the main provisions of competition law in conjunction with the Competition Law 2002 (“Wettbewerbsgesetz 2002”) and the Act on Improvement of Local Supplies and Market Conditions 1977 (“Nahversorgungsgesetz 1977”). The current amendment for the Cartel Act/Competition Act is currently pending for parliamentary approval (“Kartellrechts-und Wettbewerbsrechtsänderungsgesetz 2012”).		
Competition Authority	The Austrian system knows several “Competition Authorities”: (i) the Austrian Federal Competition Authority (“FCA”), (ii) the Competition Commission (i.e., an advisory body to the Competition Authority); (iii) the Federal Cartel Prosecutor (i.e., second statutory party – “FCP”) and (iv) the Cartel Court and the Upper Cartel Court. They all started in July 2002. Website: http://www.en.bwb.gv.at/AustrianCompetitionAuthority/Seiten/default.aspx		
STATUS OF THE COMPETITION AUTHORITY			
Accountability			
Does the Competition Authority have obligations before the executive?	No	X	Obligations to report to the executive on on-going investigations upon request.
		X	The decisions of the Competition Authority may be vetoed by a ministry or by the executive branch.
		X	The Competition Authority has to report on an annual basis to the executive.
		Other obligations/comments: The FCA was established as a monocratic authority with the Competition Act 2002. One of the major amendments in July 2002 was the creation of an independent FCA whose main function is the investigation and detection of possible restrictions on competition, as well as the filing of petitions with the Cartel Court. Decisions in cartel cases, abuse of dominance cases and phase II mergers, however, are met by the Cartel Court. The director general of the FCA is independent in carrying out its tasks and is not bound by instructions of a minister or any other institutions although the FCA administratively belongs to the Ministry of Economics.	
Does the Competition Authority have obligations before the legislature?	Yes	X	Obligation to publish an annual report on its activities.
		√	Obligation to stand before parliament and to respond to congressmen on an annual basis. The director general has the obligation to present annual reports to the parliament.
		X	Its activities are monitored by an independent auditor or by oversight committees.
Does the Competition Authority have obligations before the judiciary?	Yes	√	Decisions of the Competition Authority are subject to judicial review. The Cartel Court has the sole right to issue binding decisions and is responsible for administering all competition proceedings provided for in the Cartel Act. The only remaining criminal law aspects of cartel behavior, namely bid rigging and fraud, are not dealt with by the Cartel Court but by the ordinary criminal courts. The Cartel Court has exclusive jurisdiction to decide whether a certain agreement or behavior violates competition law. The parties in a proceeding before the Cartel Court may appeal against its decision before the Upper Cartel Court.
Independence			
Are the criteria for appointment and removal of the head/board members clear and transparent?	Yes		
Does the executive have powers to decide on specific cases based on public interest?	No		
Does the executive retain decision-making powers over the Competition Authority?	No		
Is the Competition Authority obliged to publish its reasoned decisions to ensure transparency?	No		The Cartel Court is able to publish formal decisions on the Legal Information System of the Republic of Austria (“RIS”) (www.ris.bka.gv.at) and FCA publishes summaries of decisions of major interest and summaries of clearance decisions in merger cases on its website.
Is there a provision of the national budget allocated by law to the Competition Authority to ensure its proper functioning?	Yes		Fiscal year budget for 2012: EUR 2.687.
Can the Competition Authority be financed by its own means (notification fees, fines, etc.)?	No		
GOVERNANCE OF THE COMPETITION AUTHORITY			
Is the Competition Authority governed by a single chairman or by a collegiate body?	Chairman		Note that there is a Competition Commission (Wettbewerbskommission—“CC”) that serves as an advisory body to the FCA. The CC, as a board of experts, provides expert opinions—on request of the FCA and the Minister of Economic Affairs—on questions, regarding competition policy and gives recommendations in merger cases. The CC also provides expert opinions. The social partners, whose influence was generally diluted by the 2002 amendments, among others, nominate half the members of the CC. The FCA, however, is not bound by the Commission’s

		recommendations. They are appointed as “social partners” (i.e., deputies of the representative bodies of business, farmers, and labor) and the other four members nominate four members and their deputies of the CC. The federal minister nominates their deputies for Economy, Family and Youth and Labor.	
Are the heads appointed by a minister?	Yes	The director general is appointed by the President on proposal of the federal government.	
Are the heads appointed by representatives of more than one government branch?	No		
Is there a fixed period during which removal is prohibited?	Yes	Five years.	
Is the tenure of the heads renewable?	Yes	The chairman may be reappointed as often as he is endorsed by the federal government.	
Are the heads required to have certain minimum qualifications (degree in law or economics, age, experience)?	Yes	He must have a degree in law or economics and work experience of five years in the field of competition law	
ARCHITECTURE			
Is the Competition Authority a stand-alone agency with an independent physical location or is it part of a bigger entity such as a minister?	Stand-alone agency	The FCA administratively belongs to the Ministry of Economics but was established as a monocratic independent authority in 2002.	
POLICY-MAKING AGENTS -DIVERSIFICATION-			
How many agencies are responsible for competition enforcement?	More than one agency. Regulators exist in the areas of energy, electricity and gas (E-Control), Broadcasting and Telecommunications set up (“RTR”—Rundfunk & Telekom Regulierungs-GmbH) rail (Schienenkontroll GmbH SCG). These “special competition authorities” have been introduced for those special industries, where liberalization processes are going on during the recent years. In these areas a (natural) monopoly partly persists. With exception of application because of merger control regulators can appeal in antitrust law court proceedings. Concerning the application of the Competition Law the Austrian Competition Authority has to work in order to ensure consistency with decisions of the regulators. According to the principles of data protection competition authority is allowed to give regulators the information they need to perform their duties. The financial market supervision is a separate independent regulatory authority in the field of banking and insurance.		
What is the scope of the mandate on competition policy enforcement for each of the agencies?	Sector-specific competition rules exist for telecommunications and energy industries, postal services and the railway sector. The respective rules are laid down in the Telecommunications Act 2003, the Energy Liberalization Act 2000 and certain electricity and gas laws, the Postal Services Act 1997 and the Railway Act 1957, as amended. Further, sector-specific regulators have been established for the following markets: broadcasting and telecommunications, energy and railway.		
Do sector regulators have competition policy enforcement mandate?	Horizontal Agreements	Yes	
	Vertical Restraints	Yes	
	Abuse of Dominance	Yes	
	Merger Control	No	
Have the Competition Authority and other agencies signed protocols or memoranda of understanding with sector regulators?	No		
POLICY DUTIES			
Does the Competition Authority have exclusive mandate on competition or multiple mandates?	Multiple mandates	√	Concurrent consumer protection mandate.
		X	Concurrent IP mandate.
		Other mandates: Yes.	
PORTFOLIO INSTRUMENTS			
Law Enforcement			
Does the Competition Authority have powers to investigate cartels?	Yes		
Does the Competition Authority have powers to conduct dawn raids at premises?	Yes		
Can the Competition Authority investigate <i>ex officio</i> cases?	Yes		
Does the Competition Authority have powers to accept leniency applications?	Yes		
Does the Competition Authority have powers to accept seek criminal punishment?	Yes	The only remaining criminal aspects of cartel behavior, namely bid rigging and fraud, are not dealt with by the Cartel Court but by the ordinary criminal courts	
Advocacy			
Can the Competition Authority issue opinions on draft legislation?	Yes	The opinions are not binding.	
Is the executive and/or the legislature obliged to request the opinion of the Competition Authority	Yes		

when drafting legislation that may impact competition?			
Rulemaking			
Can the Competition Authority issue guidelines or other type of secondary legislation?	Yes	X	Guidelines on the calculation of fines.
		√	Guidelines on merger control. Guidelines have been published regarding the issuance of a waiver in phase I.
		X	Guidelines on the economic analysis of abuse of dominance cases.
Research & Reporting			
Can the Competition Authority carry out market studies?	Yes	The FCA is able to carry out sector inquiries (e.g., food retail markets; gas prices, etc.).	
Can the Competition Authority report to the legislature on the results of market studies?	Yes		
DECISION-MAKING FUNCTIONS			
Aggregated Functions			
Does the Competition Authority make the decision to investigate and to prosecute cases?	No		
Does the Competition Authority make guilty findings?	No		
Does the Competition Authority impose punishments?	No		
Is there a single body that carries out the investigation and the guilty findings within the Competition Authority?	No		
Can the Competition Authority's decisions be appealed to a court?	No		
Disaggregated Functions—Prosecutorial Model			
Are there different authorities that make the decision to investigate and to prosecute cases?	Yes		
Are disputes presented for decision to a separate entity/tribunal?	Yes		