

Abuse of dominance in digital markets

4th Arab Competition Forum

Riyadh, Kingdom of Saudi Arabia

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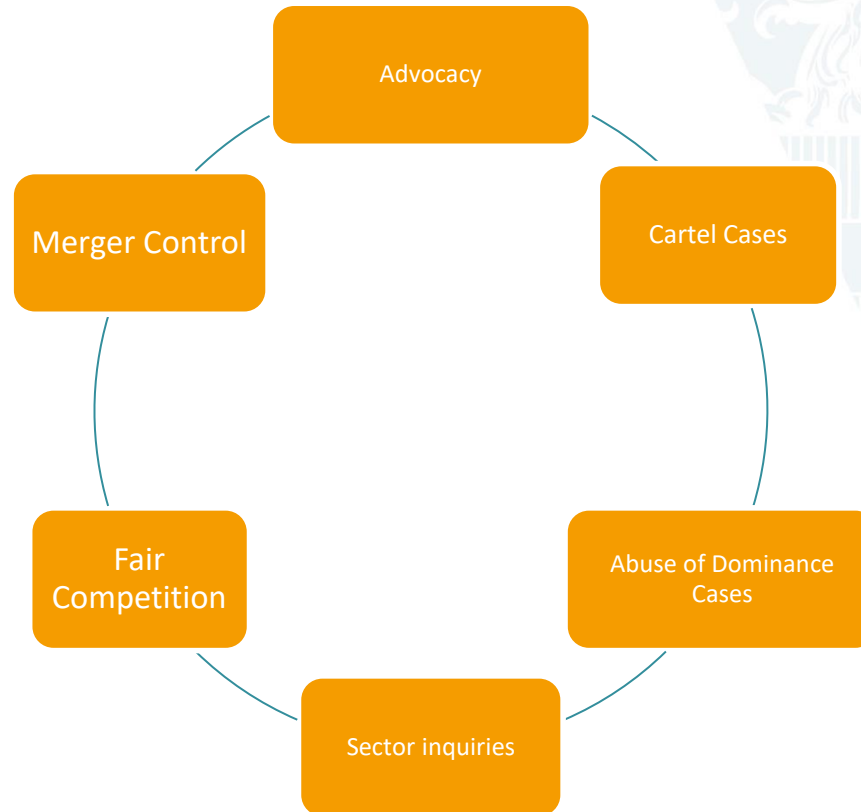
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Acting Director General

Austrian Federal Competition Authority



Austrian Federal Competition Authority (AFCA)



AFCA



ORGANISATION

- 49 staff members
- 3 departments
- 4 units (budget, IT forensics, public relations, compliance)
- 2 executive coordinators
- Legal, economic and forensic experts

MONOCRATIC AUTHORITY

- Director General a.i.
- Integrated in
 - European Competition Network (ECN)
 - International Competition Network
 - UNCTAD
 - OECD Competition Committee

AFCA



STATISTICS

2022

13
Dawn Raids

83
Whistleblower
notifications

340 Merger Control
Filings

Around € 100 million
in fines (more than €
300 million in total)

Proceedings ("judicial model")
I. Instance: Cartel Court (Vienna
Higher Regional Court)
II. Instance: Cartel Supreme Court
(OGH)

Austrian Cartel Act / EU legal framework

- Section 2 Austrian Cartel Act on Market dominance
 - Definition (Art 4 para 1 No 2 Austrian Cartel Act)
 - „A dominant undertaking is an undertaking which, as a supplier or buyer, is [...] take into account the importance of its intermediation services for other traders' access to procurement and sales markets, access to competitively relevant data, the benefits derived from network effects and the circumstances that limit other traders' access to the market.”



Austrian Cartel Act / EU legal framework

- Section 2 Austrian Cartel Act on Market dominance
 - Relative market power (Art 4a Austrian Cartel Act)
 - „An undertaking who is active as an intermediary on a multi-sided digital market is also deemed to be dominant if the demanders of his intermediary services are dependent on the establishment of a business relationship in order to avoid serious business disadvantages.”



Austrian Cartel Act / EU legal framework

- Section 2 Austrian Cartel Act on Market dominance
 - Determination of a dominant position (Art 28a Austrian Cartel Act)
 - „The Cartel Court shall find that an undertaking is dominant (Art 4) in a multi-sided digital market to the extent that there is a legitimate interest in doing so.”



Austrian Cartel Act / EU legal framework

- Art 102 TFEU
- DMA
 - prohibits companies that provide digital platform services and act as so-called gatekeepers from engaging in certain practices that are detrimental to competition
 - EC is the sole enforcer (entitled to impose fines and other sanctions)
 - NCA should initiate proceedings in relation to potential breaches and inform EC of their findings
 - Advisory Committee and High Level Group



Amazon market place

amazon marketplace



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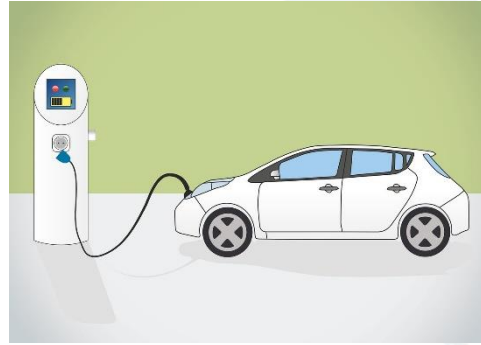


Amazon market place



- Complaints by several stakeholders in 2017 and 2018 regarding the Amazon market place (Amazon.de)
- Official proceedings opened in 2019 by the AFCA (and by the German Bundeskartellamt)
 - Art 5 Austrian Cartel Act / Art 102 TFEU
- During the on-going proceeding, Amazon submitted amended terms and conditions that have been examined by the AFCA and eventually accepted

Sector inquiries



- **E-Mobility**

- Barriers to properly functioning competition in the market for EV charge points
- Little transparency surrounding charging tariffs
 - making gaining an overview or comparisons difficult
- Recommendation (*inter alia*) to enable non-discriminatory access to navigation services and comparison platforms, and to promote innovative projects and business models at local level

Sector inquiries

- **Online food delivery platforms**



- Digital marketplaces where restaurants and end consumers are connected with each other
- Positive network effects are realized between these platform sides
- Possible competition issues arising from high market concentration in online food delivery platforms (*inter alia*)
 - exclusivity clauses
 - self-preferencing of own platform's products
 - non-transparent or discriminatory ranking
 - entry barriers for potential market participants

Thank you for your attention!

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