

Sector inquiry in the health care market

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Overview

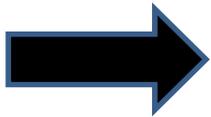
- I. Legal basis**
- II. Previous sector inquiries**
- III. Competition in the health care market**
- IV. Health care and competition law (Examples)**
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 - 2. Pharmacies**
 - 3. Hospitals, nursing homes, rehab hospitals**
 - 4. Laboratories**
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 - 6. e-Health**
 - 7. Social insurance**
 - 8. Large equipment**
- V. Sector inquiries in der EU**

I. Legal basis

- **Sector inquiry**

§ 2 (1) Z 3 Competition Act (WettbG)

„general investigations of industries, so long as circumstances provide grounds for suspecting that competition in the concerned industry has been restricted or distorted“ **(Sector inquiry)**



No concrete reasoned suspicion, therefore no official investigation

I. Legal basis

- **Powers of the BWB within the scope of a sector inquiry**
 - **Request for information** (§ 11a Abs 1 WettbG)
 - **Request for information by administrative decision** (§ 11a Abs 3 WettbG)
 - **No inspections** (§ 12 WettbG)
- **Further actions of the BWB**
 - **Dialogue/Discussions with *stakeholder***
 - **Research**

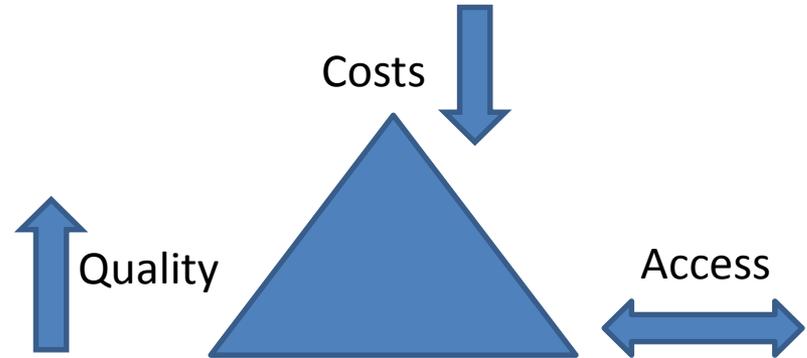
II. Previous sector inquiries

- ATM fees (2017)
- Telecom (2016)
- Fuel (2011/2010)
- Cement (2010)
- Electricity & Gas (2010/2006)
- Food trade (2007)

See also on www.en.bwb.gv.at

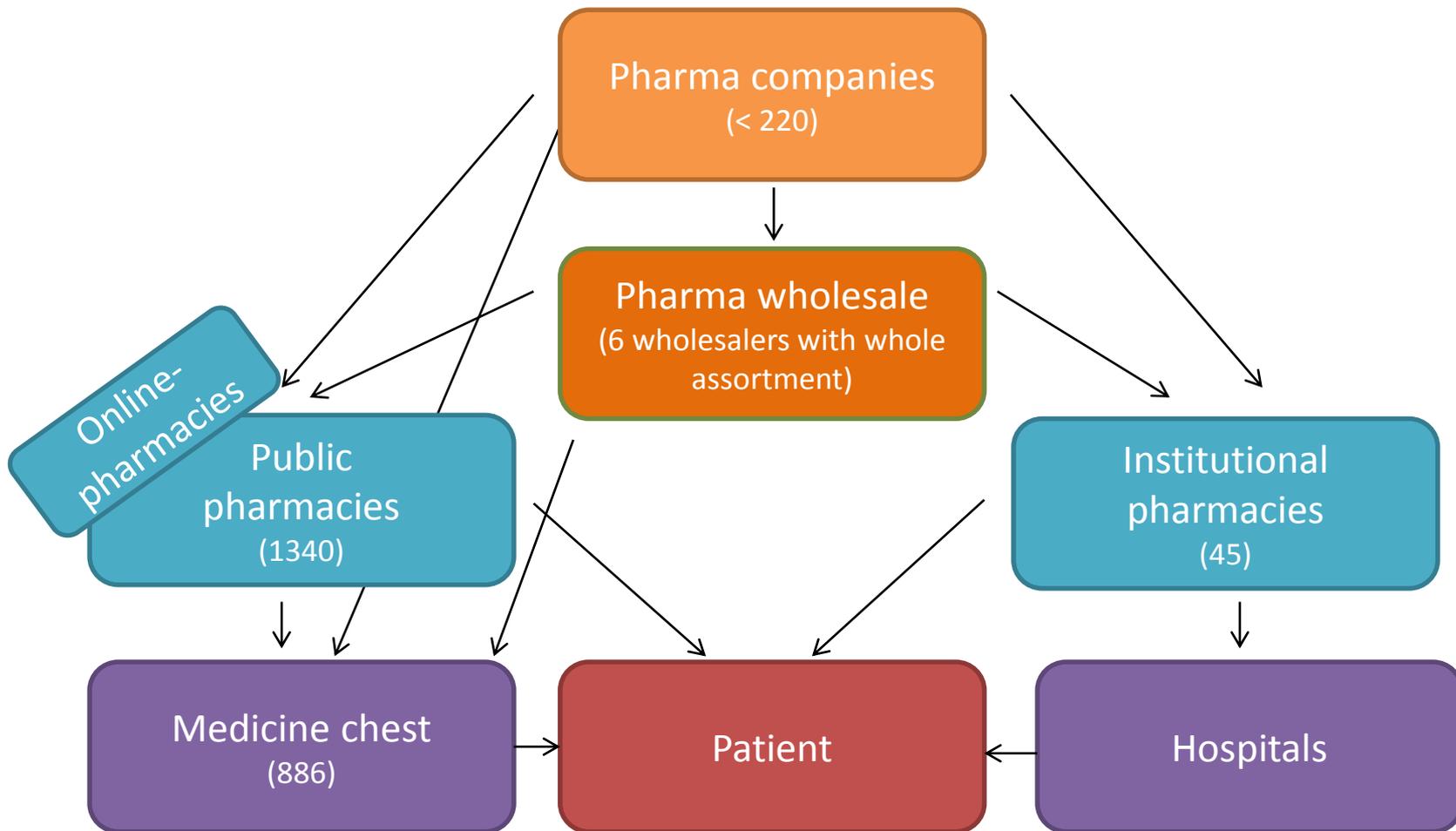
III. Competition in the health care market

- **Magical triangle** with conflict of aims
- **Information asymmetry**
- **Double function of medical practitioners**
- **Moment of demand** not certain
- **High demand because of** solidary model
- Health care market is not fully subject to market and competition principles
- **Highly regulated sector**



IV. Health care and competition law

1. Pharmaceuticals



IV. Health care and competition law

2. Pharmacies

- Highly regulated (Territorial protection)
- Interdependence between pharmacies and pharma wholesale market
- Pharmacy exception for prescription free / opening of OTC market
- Online pharmacies

3. Hospitals, nursing homes, rehab hospitals

- Supply market (market distortion with medical products)
- Free pharmaceutical delivery to hospitals
- Private hospitals (Market concentration)
- Nursing homes (more demand from patients and investors)

IV. Health care and competition law

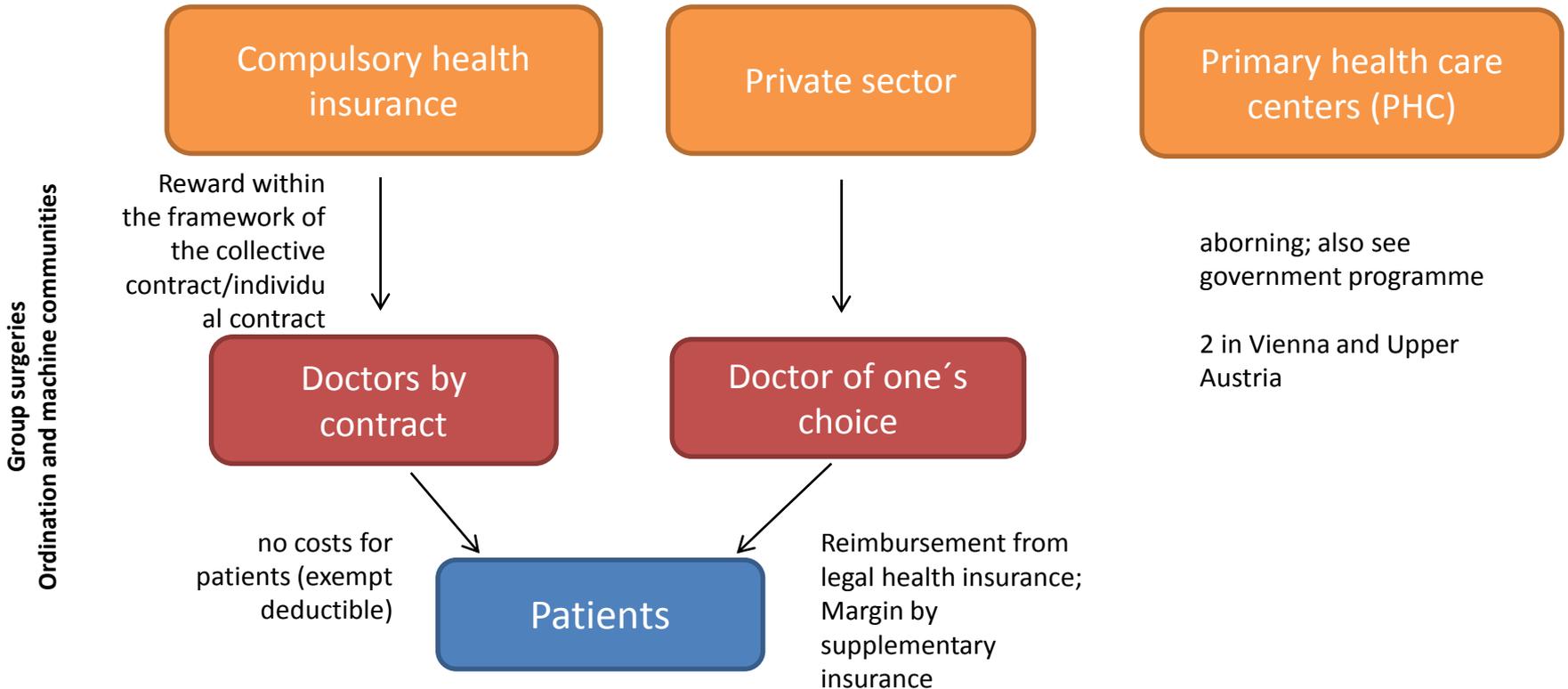
4. Labors

- Signs for less costs for ordinations but higher reimbursement from social insurances
- Specific control concerning choice by sozial insurance
- Small labors purchased by big companies

5. Medical practitioners

- Less doctors by contract regulated by the social insurance
- More doctors by one's choice
- Two-tier medical system through the backdoor (outsourcing of duty to supply by insurances)
- Development of parallel market

IV. Health care and competition



IV. Health care and competition law

6. e-Health

- Data of social insurance / patients is becoming a product
- Less software suppliers (Threat of monopolies)
- Predictable indolence to change

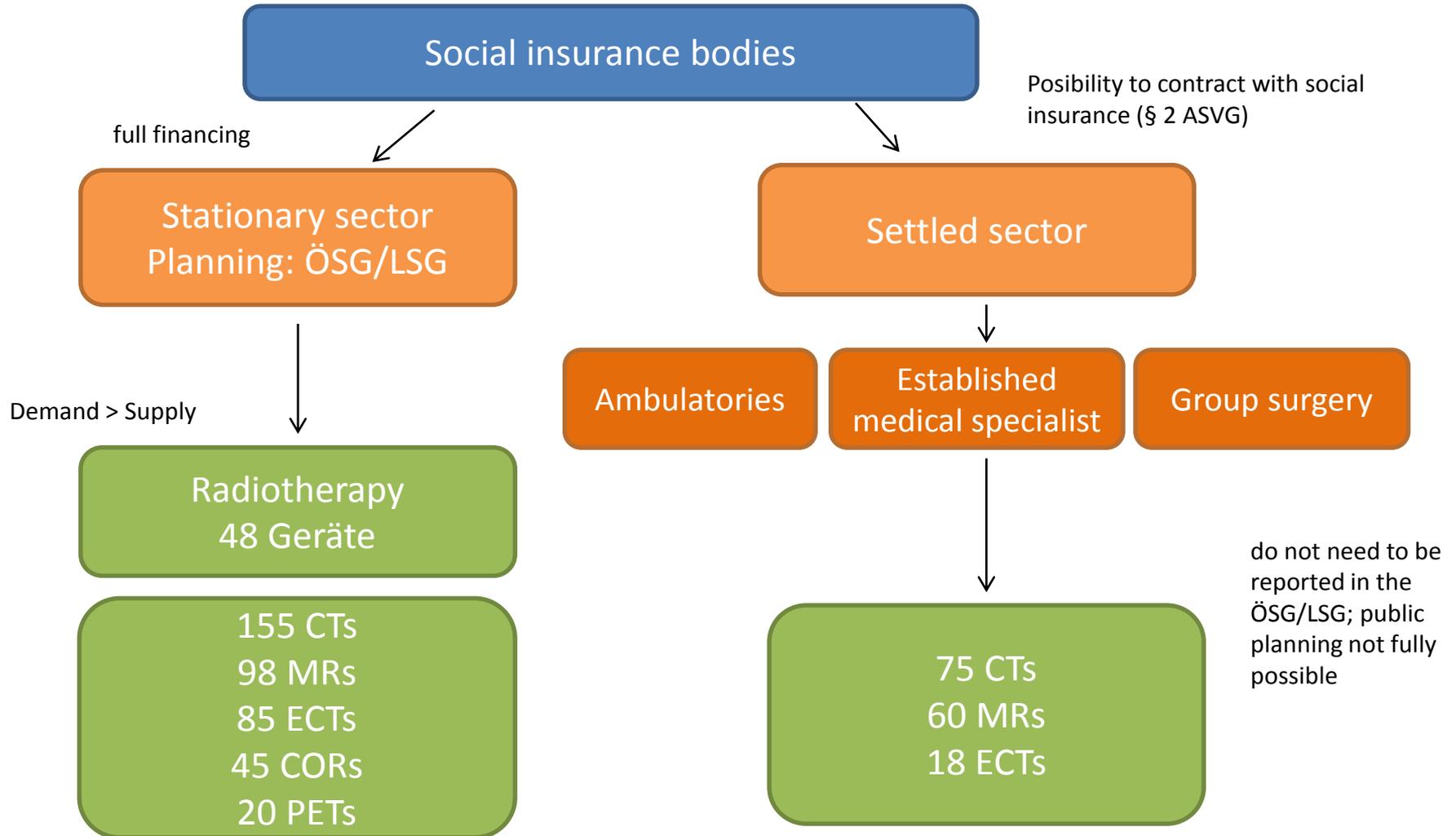
7. Health insurance

- Intensification of competition because of increasing administrative cost of administrative bodies
- Centralisation of social insurance bodies (abuse of dominance / Power of demand)
- Definition of social insurance bodies as untrading

8. Large equipment

- Hospitals in the stationary field
- Two-tier shortening of resources:
 - Regulation because of allocation of § 2 ASVG-Contracts
 - Within social insurance contracts broad control through cap

IV. Health care and competition



V. Sector inquiries/Cases in the EU

BWB sent a request for information to other competition authorities within the European Competition Network concerning sector inquiries/Cases in the health care sector (Examples):

- **Germany**: SI – **Hospitals** - ongoing/cases (reports)
- **Italy**: SI – **Human Vaccines** „A more transparent market on drug costs and prices“/ cases: abuse of dominant pos: ASPEN; Pfizer, cartels: Roche/Novartis; advocacy report, provisions and roundtable
- **Sweden**: NO/advocacy: primary care and health care centre; public procurement of pharmaceuticals in hospitals (ECN meeting); cases: mergers/deregulation/pharmacy market
- **Belgium**: NO/cases: Phase II (wholesalers of pharmaceuticals to pharmacies)
- **Estonia**: Proposals: Sell over-the-counter medicines outside pharmacies; establishment of pharmacies; Medicinal Products Act and medical treatment funding
- **Romania**: 2 SI: **Production a. wholesale of pharmaceuticals**/cases: antitrust/distribution of pharmaceuticals: Fresenius, Bayer, Baxter; mergers: pharmacies, health services and wholesale distribution of medicines

V. Sector inquiries/Cases in the EU

- **Lithuania: Pharmaceuticals**/cases: merger: wholesale and retail of pharmaceuticals – commitments; cartels: fines 870 000 EUR – orthopaedic technical products; setting prices and production quantities; opened investigation in 2016 concerning the compliance of actions of undertakings engaged in the manufacturing and distribution of medical products
- **Netherlands**: SI – **Insurance, Hospitals, Pharma**/cases: mergers (hospitals and pharma); antitrust: health care, health care insurance and pharma
- **Czech Republic**: NO/NO/cases: Cartels (medical instrumentation, bidrigging, pharmaceutical services); mergers (2014: Phase II; clinical laboratory tests; cleared the case)
- **Spain**: SI – **Retail Medicine Distribution**/cases: Mergers (hospitals, cancer treatment comps, image diagnosis, pharmaceutical distribution, laboratories); Antitrust: pharmaceuticals (ongoing): 2 cases (ASPEN GROUP and its Spanish distributor DECO PHARMA involved in one)

Thank you for your attention!