

Competition and Sustainability – German animal welfare initiative abolishes compulsory premium

30 May 2023

Finding the right balance between strengthening cooperation pursuing sustainability goals on the one side and ensuring compliance with competition law on the other has been a major topic of competition authorities and regulators in recent years (see [our briefings of 26 January 2022](#) and [7 February 2021](#)). The competition community is eagerly awaiting the European Commission's second [draft](#) of the horizontal guidelines. Meanwhile, the German FCO [announced](#) on Thursday that the animal welfare initiative "Initiative Tierwohl" will abolish the compulsory premium because of competition law concerns.

FCO continues case-by-case approach

While other competition authorities, e.g. in the Netherlands and in the UK, have issued specific guidelines for cooperation agreements in the name of sustainability, and while the legislator in Austria has even introduced an express statutory exemption for such agreements where they substantially contribute to an ecologically sustainable or climate-neutral economy, the FCO has always stressed that it considers the existing competition law tools sufficient for dealing with sustainability agreements between competitors. Only last week, President Andreas Mundt confirmed at the International Forum on EU Competition Law, hosted by Studienvereinigung Kartellrecht, that the FCO will not publish guidelines because the case law is not mature enough; instead, it will continue its case-by-case approach and encourages stakeholders to bring cases so that the FCO can provide guidance. For sustainability agreements specifically in the agricultural sector and the application of Article 210a CMO, guidelines will be issued in December 2023 (see our [briefing of 11 January 2023](#)) and it will also be possible to request an opinion from the European Commission concerning the application of the exemption rule of Article 210a CMO.

Animal welfare initiative

One of the precedents the FCO has dealt with concerns the animal welfare initiative "*Initiative Tierwohl*". In fact, the initiative has been on the FCO's radar already since 2014 and has received guidance from the authority several times. In brief, the initiative is a

multi-sided cooperation between the agricultural, meat production and food retail sector aimed at rewarding livestock owners for improving living conditions of animals. It is mainly sponsored by the four largest German food retailer groups.

- In 2017, the FCO had called for the introduction of a clear labelling for meat products, namely an identification system in the pig meat sector for the benefit of transparency to consumers, and announced that it would tolerate the agreement only for a transitional period until 2020.
- In January 2022, the FCO requested the initiative to further develop its financing model because the agency considered it critical that a standard premium for animal welfare was required for poultry and pork. The FCO merely tolerated the agreement for the initial phase due to the project's "pioneering nature" while pointing out that competition elements needed to be gradually introduced and animal welfare criteria would have to be reflected in the structure of the financing model until 2024, the start of the next project phase.
- Last Thursday, the FCO announced that the animal welfare initiative has decided to abolish the so-called animal welfare surcharge as a reaction to FCO's competition law concerns. As from 2024, the current compulsory premium payable by buyers to participating farmers will no longer be charged. Instead, the initiative wants to introduce a recommendation-based system. The FCO had doubted that the standard premium could be considered *indispensable* within the sense of Art. 210a CMO, given that the animal welfare initiative is already well established in the market, it is widely accepted and there are competing labels that do not rely on compulsory price elements.

Outlook

The European Commission is soon to be expected to publish its final draft of the horizontal guidelines and hopes are still high that this will include some more specific guidance particularly for sustainability agreements. The Commission is also currently revising the draft guidelines in the agricultural sector, which will start to apply on 8 December 2023, following comments from interested parties.

In Germany, the Federal Ministry of Economic Affairs and Climate Action has recently conducted a consultation on the compatibility of competition and sustainability, including a study by Heinrich Heine University. While the 11th amendment of the Act against Restraints of Competition has still not yet come into force, the ministry is already using the study and the survey to prepare for the 12th amendment, where it intends to address sustainability and consumer protection. Depending on when this can be expected, the

BLOMSTEIN

FCO may actually be surpassed by the legislator with specific guidelines in the area of sustainability and competition.

BLOMSTEIN will continue to monitor developments regarding sustainability initiatives and competition law. If you have any questions on the topic, [Anna Blume Huttenlauch](#) and [Marie-Luise Heuer](#) will be happy to advise you.