



11 January 2010

Bundeskartellamt publishes interim report on its milk sector inquiry

With its interim report on its milk sector inquiry published on 11 January 2010 at www.bundeskartellamt.de the Bundeskartellamt presents an in-depth analysis of the German milk sector. The interim report examines structures and market power distribution in the relationship between the milk producers and the dairies and in the relationship between the dairies and retailers (“from the producer through to the shop counter”).

For this purpose the authority questioned 36 dairies, which together account for about 75% of the total milk production in Germany, and virtually all food retail companies in Germany. In addition, the Bundeskartellamt held talks with companies and interest groups at all the market levels concerned. The interim report is also based on findings from merger control proceedings and from working group sessions at the European Commission focusing on the food retail sector.

The main findings are:

- Although many producers are integrated in cooperative dairies, an imbalance of power can be observed which is to the detriment of the producers. Some of the cooperative dairies are faced with a distinct dilemma between their duties of loyalty within the cooperative and the challenges of a liberalised market, especially so since the phasing-out of the European milk quota scheme.
- The exemption provisions under competition law which have been created by the legislator to facilitate the establishment of regional milk producers associations can strengthen the producers’ negotiating position with the dairies. However, the producers have so far made rare use of their scope for action.
- Due to the current practice of long-term milk supply contracts and the high level of transparency of milk prices and milk quantities, there has been little competition for raw

milk among the dairies. This extensive exchange of information can be problematic not only from a competition law perspective; current findings show that not the milk producers but above all those market participants which already have a stronger market position have benefited from this.

- Calls from various market participants for nationwide price and quantity agreements as well as for cartels across all market levels with the aim to bypass the European Union's liberalisation course for the milk markets are viewed with criticism. These initiatives are neither compatible with German nor with European competition law. Moreover, as the market investigations also show, neither are they enforceable in the market place.

- In its business relations with the dairies the retail sector is strategically considerably better positioned because the dairies have few alternatives to sell their products. However, there are distinct differences between the individual negotiating positions, which depend among other factors on the general market situation (relation between supply and demand) and the product portfolio of the individual dairy. The high market transparency already makes it easier for the retail trade to take advantage of its negotiating position with the dairies. On the other hand, there has been no concrete evidence so far of anticompetitive conduct by the retail trade: For example, there are no substantiated indications that the retail companies have not passed on to the consumer the price advantages achieved in their negotiations with the dairies.

The interim report is to serve as a basis for a dialogue with the market participants and interested political groups. All interested parties have the opportunity until

1 March 2010

to send in their comments to the following address: Bundeskartellamt, 2nd Decision Division, Kaiser-Friedrich-Str. 16, 53113 Bonn

It is then planned to hold a consultation to discuss the interim report with representatives of the milk producers, dairies and the retail trade in due consideration of the written comments. Invitations to the consultation will be sent out separately. The consultation can be followed up by further investigations.