



Case summary

8 March 2022

German Retailers Working Group – Sustainability initiative to promote living wages in the banana sector

Sector:	Bananas
File number:	B2-90/21
Date of decision:	Letter from the Chair dated 25 November 2021

The Bundeskartellamt has no competition concerns regarding the sustainability initiative of Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH and the German Retailers Working Group on Living Income and Living Wages in the banana sector. No violation of Section 1 of the German Competition Act (GWB) or Article 101 TFEU was found.

The working group was founded within the framework of the United Nations’ “Agenda 2030” with the support of the Federal Ministry for Economic Cooperation and Development (BMZ) and GIZ. Its members are ALDI Nord and ALDI SÜD (referred to collectively as ALDI), Kaufland, Lidl (referred to collectively as Schwarz Group), Rewe, dm and tegut. This pilot project aims to achieve living income and wages along the banana supply chain (especially) in Ecuador. By 2025 and within the framework of a voluntary commitment, the project participants are to sell ideally 50 per cent of the private label bananas sold in Germany in accordance with the living wages criteria. The target for bananas from Ecuador is 90 per cent. At the start of the project in 2023, this share is to amount to at least 7 per cent and should initially be solely applied to Ecuador. The project expressly does not cover bananas sold under manufacturer brands as the initiative solely addresses private label products. The project starts with Ecuador which has set a statutory minimum price per box of bananas and also statutory minimum wages. However, in many cases these provisions are not respected in practice. The pilot project pursues four strategic goals to be implemented on a voluntary basis and in view of the Act on Corporate Due Diligence Obligations in Supply Chains (“Supply Chain Act”), which will enter into force in 2023. The goals are also to become applicable in the future to the other exporting countries active along the banana supply chain. They include responsible procurement practices to be observed by retailers, active workers’ representation in the country of production, the development of monitoring procedures ensuring transparent wages and

working conditions, complaint/appeal bodies and cooperation between stakeholders of the banana sector and the food retail sector in order to set a joint agenda for living wages.

The introduction of a binding progressive percentage rate for living-wages bananas in the private label sector which is coordinated by the pilot project's participants by means of a voluntary commitment constitutes coordinated behaviour within the meaning of Section 1 of the German Competition Act (GWB) based on an agreement between the participants. In the case at hand, the framework agreement of the participating retailers already represents a horizontal agreement. The coordinated contracts with direct buyers of bananas and intermediaries result in agreements being concluded along the supply chain.

From a competition perspective it is of interest that the project participants do not call for uniform wages in the producing countries as part of the voluntary commitment or plan to set up a compensation or redistribution mechanism. Furthermore, the cooperation does not extend to any commercial parameters. The level of minimum wage costs is not binding. It is crucially important that there is no exchange of information on purchasing prices, other costs, production volumes or margins and that binding minimum prices or surcharges are not introduced at any point of the supply chain. The envisaged relative sales volumes are solely target values without any sanctioning mechanisms in place. However, the participating food retailers are expected to keep the quantities of bananas they purchase from Ecuador at an at least stable level during the project period while at the same time taking into account the parameters for adequate wages in the setting of their individual purchasing prices.

The present case is fundamentally different from the traditional scenarios of a de-facto vertical resale price maintenance. Here we have a qualitative production standard that is established on a voluntary basis in order to ensure that the production of bananas in Ecuador complies with the relevant legal provisions in this country (statutory minimum wages) or that, in general, living wages are paid.

In the Bundeskartellamt's view the degree to which contacts are established between the project participants is to be assessed as low enough to assume that the joint understanding regarding living wages to be paid in producing countries has only a minor influence on the individual purchasing price autonomy of the stakeholders along the supply chain. In particular, there are no agreements or recommendations as to whether and how possible changes in costs incurred along the supply chain are passed on. Furthermore, project participation per se is voluntary and there is a lack of binding or non-binding pricing rules for bananas. For these reasons, price fixing in its traditional sense does not exist.

This means that no decision is necessary on whether the project is covered by the new exemption under Article 210a CMO added within the context of the amendment of Regulation (EU) No 1308/2013

establishing a common organisation of the markets in agricultural products (CMO) by Regulation (EU) 2021/2117, which has been in force since 7 December 2021.

The project participants will keep the Bundeskartellamt in the loop on the further evolution of the project.