

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

ROUNDTABLE ON COMPETITION ISSUES IN FOOD CHAIN INDUSTRY

-- Note by Germany --

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1. Introduction

1. Access to food products of sufficient quality and quantity at affordable prices is vital for a society and its economy. Rising food prices worldwide have therefore led to an increasing interest in the markets on the side of governments as well as legislators. Recently, the European Commission launched the consultation about its Green Paper “Unfair trading practices in the business-to-business food and non-food supply chain” (Green Paper), with a view to finding a way to address trading practices in these markets that are deemed “unfair”.

2. At the same time, competition authorities have increasingly had to intervene on the relevant markets. The markets falling under the general category of the food chain industry have been investigated by the Bundeskartellamt on several occasions and concerning all types of anti-competitive conduct, including merger reviews and sector inquiries. Markets investigated included the markets for potatoes, meat, flour production and milling, sugar, chocolate and confectionery, candies, coffee and coffee-based products, beer and the milk and the food retail sectors in particular. Competition issues raised in these markets ranged from evident horizontal price fixing over different forms of vertical restraints to abuses of dominance or market power.

3. This contribution will first provide an overview of food price developments in Germany (B.) and a comment on relevant legislative activities at the level of the European Union (EU) concerning the Green Paper (C.). This will be followed by a selection of recent enforcement activities by the Bundeskartellamt (D.), showing areas of the food chain sector that are being or have been investigated and highlighting some of the competition issues relevant in these markets, including buyer power. The contribution closes with a few concluding remarks (E.).

2. Price Developments in Germany

4. Rising prices for food products have a large impact on a society and its economy. The food industry (i.e. the markets in the food supply chain downstream of the agricultural sector) is the fourth largest industry sector in Germany. Consumers spend around 200 billion euro on food products per year. Food prices have been rising considerably in the last years. According to the Federal Statistical Office, non-alcoholic beverage and food prices increased by 12, 5 % between 2005 and 2011, while overall living

costs (as measured in the consumer price index) increased in the same time by only 8,2 % ¹ Prices for non-alcoholic beverages and food products are also higher in Germany than the EU-average.²

5. Food prices generally are quite volatile over time; this is due i.a. to seasonal changes or reflects increasing scarcity, such as e.g. diminished fish stocks. However, German food prices saw two major and permanent increases around 2001 and 2008. According to the Federal Statistical Office, the first increase was connected to rising prices of products of animal origin following i.a. several animal epidemics, such as bovine spongiform encephalopathy (BSE). The second rise was linked to dairy and cereal products becoming more expensive during a time in which market prices for these products rose world-wide.

6. This can be seen quite clearly in a graph published by the Federal Statistical Office depicting the development of the consumer price index for food³:



7. A study conducted in 2010 revealed that consumers are not aware of many of these price increases.⁴ The study concluded that price competition has to be fierce only in 40 out of 275 “groups of the fast moving consumer goods”. Only in these 40 segments, e.g. bread, yogurt, and milk, are consumers familiar with prices and so are aware of price increases. Indeed, these segments cover 50% of the revenue earned with the 275 groups. But this also means that half of the revenue can be earned without strong price pressure.

¹ Federal Statistical Office, Preise auf einen Blick, 2011:
https://www.destatis.de/DE/Publikationen/Thematisch/Preise/Verbraucherpreise/PreiseAufEinenBlick0170005107004.pdf?__blob=publicationFile, p. 60

² *Statistic by eurostat, comparing prices in 2012. Available at:*
http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/2-21062013-AP/DE/2-21062013-AP-DE.PDF

³ Federal Statistical Office, Preise auf einen Blick, 2011, p. 36. Prices are not inflation-adjusted, however, prices for food increased more than the general inflation rate (as measured by the consumer price index) as mentioned above.

⁴ Joint survey of GfK and SAP, Preisoptimierung im deutschen Lebensmitteleinzelhandel – von einer wettbewerbs- zur kundenorientierten Preisfindung, 2010, available at: <http://www.sap-nah-am-kunden.de/>.

8. On account of these price increases the legislator felt a need to become active – recently in particular on the level of the European Union (EU). At the same time, the activities of the Bundeskartellamt on these markets have become more important and received more attention in society.

3. Legislative initiatives at the EU level

9. The European Commission (Commission) felt the need to become active with regard to the food supply chain to address perceived problems caused by developments on these markets over the last decades. In its Green Paper “Unfair trading practices in the business-to-business food and non-food supply chain”, the Commission stated that the business-to-business food and non-food supply chain has changed considerably over the last two decades, due to economic, social and demographic reasons. Increased concentration and vertical integration that can be witnessed in Germany also take place across the whole EU and have led to structural changes in the food supply chain.

10. Germany welcomes that initiative and generally supports measures that enhance the functioning and competitiveness of the supply chain from the producer to the consumer. However, the Federal Government of Germany doubts that the lack of EU-wide rules dealing with so-called unfair trading practices constitutes a hindrance for a fully functioning internal market. EU-Member States address the problem with varying measures that might simply reflect their different legal systems.

11. Existing legislation in Germany does not provide for a specific definition of unfair trading practices. Situations of economic imbalance are addressed in the Act against Restraints of Competition; for example with provisions that are based on the concept of relative market power and allow an effective approach on a case-by-case basis. The concept of unfair trading practices is also recognised and addressed by existing legislation through contractual law (in particular provisions on the invalidity of provisions contrary to public policy (section 138 German Civil Code), of provisions contrary to good faith (Section 242 German Civil Code) or on unfair general terms and conditions.

12. The German competition law has its own prohibitions of abusive practices in Sections 19 and 20 of the Act against Restraints of Competition (ARC) which allow for a case specific assessment of whether a particular conduct constitutes acceptable „tough negotiations“ or an abuse of market power. The Bundeskartellamt's previous practice has shown that Sections 19 (2) and 20 (2) ARC are also appropriate for covering cases of abusive practices in the business-to-business supply chain, even where the market dominance threshold has not been reached. Section 20 (4) ARC is also of particular relevance for practical abuse control.

13. In view of the diversity and complexity of possible cases of potential unfair trading practises, the Federal Government considers regulation at EU level as not useful at this stage.

4. Selected enforcement activities by the Bundeskartellamt on food related markets

14. In view of the internationalisation of markets, competition authorities have also been increasingly active in the food chain sector.⁵ The Bundeskartellamt can look back on a considerable array of recent enforcement activities in the food chain sector. These can be grouped into cases relating to market distortions on the manufacturer level (1.), on the retail level (2.), and investigations, where the whole value

⁵ The European competition authorities have published a report on competition in the food sector in Europe. The report gives an account of all the examinations and proceedings conducted by the 27 national competition authorities and the European Commission in this sector. See the full report at the following website: <http://ec.europa.eu/competition/ecn/documents.html>.

chain of a specific product is covered (3.). In the following, some selected case examples and the issues relevant to them are presented.

4.1 Market distortions at the manufacturer level

15. In the last years, several food manufacturers active in different markets have been subject to investigations and sometimes fines imposed by the Bundeskartellamt. The following cases are selected examples of such investigations.

4.1.1 *Cartels*

4.1.1.1 Milling industry

16. Recently, the Bundeskartellamt concluded its fine proceedings, which were initiated in 2008, against companies in the milling industry and imposed fines amounting to approx. 65 million euros on 23 companies, the association of German mills (*Verband Deutscher Mühlen e.V.*), as well as their representatives involved.⁶ Since 2001 representatives of the milling companies involved had agreed on prices, customer allocation and supply volumes in regular rounds of talks. The agreements applied to all forms of flour distribution, i.e. to industrial customers (such as e.g. bakery product manufacturers and bakery chains), artisan bakers and the direct sale of flour in small packages (max. 1 kg packets) to food retailers. 17 of 24 proceedings could be concluded by settlement.

4.1.1.2 Branded confectionery market

17. Also this year, the Bundeskartellamt concluded its fine proceedings against several manufacturers of branded confectionery. On account of several cartel infringements, fines of approx. 60 million euros were imposed on 11 companies and some of their sales representatives. The companies met regularly over several years in several discussion groups. In 2007, prices for important raw materials for the production of chocolate, such as milk and cocoa, increased significantly. The participants exchanged information on their negotiations with and on planned price increases for retailers. In one of the discussion groups some manufacturers of chocolate coordinated price rises. The proceedings were initiated after a leniency application filed by Mars GmbH, against which no fine was imposed in accordance with the Bundeskartellamt's Leniency Programme.

4.1.1.3 Consumer goods

18. In 2011 and 2013, the Bundeskartellamt imposed fines on three manufacturers of consumer goods: These had violated competition law with their exchange of competition-relevant information.

19. The companies involved were widely known manufacturers of consumer goods. The proceedings were triggered by an application for leniency filed by Mars.

20. The companies met regularly over several years in a discussion group. In these meetings high-ranking sales executives informed each other on the state of negotiations between their companies and several major retailers. In various product areas, i.e. confectionery, instant coffee, dry ready-to-eat meals, frozen pizzas, pet food and detergents, the main rivals sat face to face at these meetings. Some of the participants also exchanged information on planned price increases for retailers for some of the product areas.

4.1.1.4 Coffee roasters

21. During 2008 and at the beginning of 2009 the Bundeskartellamt opened a series of investigations into a cartel of coffee roasters and manufacturers of instant cappuccino. In December 2009 the Bundeskartellamt imposed fines totalling approx. € 160 million against the coffee roasters for price fixing: The aim of the cartel was above all to maintain the “price architecture” of the companies’ final sales prices and special offer prices for their major roasted coffee products. The infringement lasted from at least early 2000 until the dawn raids in 2008. Furthermore, in June 2010 fines totalling approx. € 30 million were imposed on coffee roasters for price fixing in the so-called “out-of-House” market and in October 2011

⁶ http://www.bundeskartellamt.de/wEnglisch/News/2013_07_16_Case_summary.php

finest totalling approx. € 9 million were imposed on manufacturers of instant cappuccino for having agreed on price increases for 'Family Cappuccino' in late 2007 / early 2008.

22. The Bundeskartellamt also investigated several other cases in the food manufacturing sector. Amongst others the investigations concerned sugar producers, sausage manufacturers, beer producers and – most recently – the potato market.

4.1.2 Mergers

23. Following an in-depth Phase II investigation, the Bundeskartellamt prohibited a merger in the market for curdled milk cheese. The Bundeskartellamt considered that the merger would have led to a dominant position of the Theo Müller group on the market for the manufacturing of this cheese in Germany. Important merger proceedings on the manufacturer level recently included decisions concerning ice-cream, aquavit. On 17 November 2011 the Bundeskartellamt also prohibited the intended acquisition of the slaughterhouse operator Tummel by Tönnies, which holds a dominant position in the procurement of cull sows and distribution of sow meat to meat processors in Germany. In the context of Nordzucker's acquisition of its Danish competitor, Danisco, the Bundeskartellamt found that the market for industrial sugar in Germany was characterised by an uncompetitive duopoly between the producers Nordzucker and Südzucker and that the acquisition would have further expanded their joint dominant position. To avoid the negative effects of the addition of production capacities and the elimination of a powerful competitor by the merger, the parties offered the up-front divestiture of a production plant in the north of Germany.

4.1.3 Boycott

24. The Bundeskartellamt also prohibited a boycott of raw milk sales to processors in 2008. In this case, a German milk farmers' association had requested farmers not to sell milk to all major dairies in Germany, with the aim of achieving a uniform price for milk in Germany. The boycott was accompanied by a physical blockade of the dairies that still received large quantities of raw milk from various sources. The boycott was called in order to force the dairies to agree on a uniform price to demand in their contractual negotiations with the retailers and to force the retailers to raise the price that end consumers would have to pay for milk above a certain level. The Bundeskartellamt found that this behaviour infringed the specific German national competition rules on boycott cases. The decision was upheld on appeal.

4.2 Market Distortions at the retail level

25. In the last ten years Germany witnessed a strong tendency towards concentration. In 1990 eight retailers together reached a market share of about 70 percent. Today, the combined market share of the four largest undertakings, namely the REWE Group, EDEKA, the Schwarz Group and Aldi, amounts to approximately 85 percent. There is concern that the gap between the market leaders and their followers will widen even further. The largest retailer Edeka showed a sustained growth of 30% in the last 4 years according to its annual report of 2012 (€ 41,6 bn. turnover in 2012).⁷ Overall, it could be that already small changes to the market structures in this sector might gradually result in their substantial deterioration: Outstanding economies of scale and buyer power might develop a momentum of their own.

26. At the retail level, the issue of market power on the demand side (buyer power) has been the subject of an increasing number of expert and political discussions in the last years in particular. The topic has also been relevant for several cases investigated by the Bundeskartellamt. To get further insights into the issue and the driving factors of the balance of bargaining power in the food value chain, the Bundeskartellamt is currently conducting a sector inquiry into the food retail sector which will, inter alia,

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http://www.edeka-gruppe.de/Unternehmen/de/geschaeftsbericht/kennzahlen/kennzahlen_2012.jsp

contain a broad empirical analysis and econometric assessment of the actual results of negotiations between manufacturers and retailers for a representative sample of food products (a). In addition, the Bundeskartellamt has investigated a number of merger and unilateral conduct cases, where the “two faces” of buyer power have played an important role in the assessment – either as countervailing buyer-power (b.) or as a potentially problematic form of market power (c.).

4.2.1 *Food retail sector inquiry*

27. In 2011, the Bundeskartellamt launched its sector inquiry into the food retail sector. The examination focuses on the competitive conditions in the markets for the procurement of food and beverages by food retailers. The sector inquiry is not only relevant for the case practice of the Bundeskartellamt but is also meant to provide new information for the public debate of the issue. The ongoing debate on the concentration process in the food retail sector as well as the balance of bargaining power between retailers and manufacturers proves that there is a strong public interest in this issue. The launch of the sector inquiry has therefore been welcomed by a large part of the industry.

28. Contrary to the alternative view of buyer power as the perfect mirror image of seller power (known as “monopsony power”) – the sector inquiry conceptually considers bargaining theory to be the suitable theoretical framework for the analysis of buyer power in the food value chain. In this context, buyer power is considered to be equivalent to bargaining power with the outside options of each player determining their (relative) bargaining strength. The larger the buyer’s outside option, and the smaller the outside option of the seller, the greater the share of incremental surplus of the contractual relationship captured by the buyer. The value of the buyer’s outside option depends on its ability to switch to alternative suppliers. Similarly, the value of the seller’s outside option depends on its ability and willingness to substitute to alternative buyers.

29. Based upon the experience with complex inquiries into the food retail industry of other jurisdictions, the empirical analysis of the Bundeskartellamt is conducted in two steps: In the first investigative stage, the Bundeskartellamt conducted a survey on company and market structures in the food retail sector. The survey in particular focused on the data relevant to assess the market positions of retailers and the options available to producers to partially or completely bypass the major retailers. The second, still ongoing investigative stage was initiated in 2012 and intends to gather and assess the relevant panel data set for an econometric assessment of concrete results of negotiations between manufacturers and retailers in order to determine the most relevant factors determining their (relative) bargaining power.

30. The contents of the complex data request were based on numerous talks the Bundeskartellamt previously held with market participants. It contains detailed data requests on a stratified sample of approx. 250 individual products with regard to a time-series of quantities, turnover, list prices and terms and conditions, including non-monetary conditions and standardized discounts which do not refer to a specific product. To measure and assess the relative outside options of manufacturers and retailers and the most important drivers of their (relative) bargaining position properly, further detailed data are requested that allow for an estimation of e.g. the strength and “must-have character” of a specific brand and the competitive pressure exerted by other distribution channels and branded products or private labels for each of the products of the sample.

31. Since it would be disproportionate to investigate each product listed in the food retail trade, the Bundeskartellamt has concentrated on a selection of products. The sample was carefully selected so that the 250 products included are representative of the full product range of the German food retail trade with up to 50,000 products. This is why the sample does not only include top brands of large producers but also products that are typically part of the food retail product range but are less well-known as a brand.

32. After the evaluation of both surveys the Bundeskartellamt will present the results of the empirical analysis in a report and publish them for discussion. It is expected that the results will be published in 2014.

4.2.2 *Countervailing buyer power*

33. Although the Bundeskartellamt has intervened in some cases where buyer power had negative effects on competition, this must not necessarily always be the case. A company's power to supply can not only be limited by competitors but, under certain circumstances, also by countervailing buyer power. A powerful buyer can thus counteract the effect of (relative) power of supply, if he can credibly threaten to switch to another supplier within a short time frame or to take other effective retaliatory measures. Moreover, a powerful buyer can feel induced (and be able) to distribute his demand over several suppliers (thereby possibly facilitating market entry). He can thus already prevent the emergence of market power on the supply side. The concept of countervailing buyer power is also part of the analysis in i.a. merger review.⁸

34. One case example where countervailing buyer power was one relevant factor, amongst others, concerned a merger of ice cream manufacturers that the Bundeskartellamt cleared in March 2013.

35. In second phase proceedings the Bundeskartellamt cleared the plans by DMK Eis GmbH to acquire the Roseneis group. The merger was considered to mainly affect the German production of ice cream sold by food retail companies under their own private labels (so-called private-label ice cream). Although the level of concentration in the private-label ice cream sector is very high and still increasing, the merger could be cleared following an in-depth examination of the project. The Bundeskartellamt was of the opinion that the food retail sector would continue to have enough scope in its procurement activities. In the production of ice cream there are free capacities of the remaining competitors, which lead to competitive pressure.

36. In addition, the manufacturers of ice cream face a strong demand side with the food retail sector. The food retailers usually invite new tenders for the production of private-label ice cream each year and largely specify the recipes. This enables them to change supplier on a short-term basis, an opportunity which they have actually made use of in the past. According to the Bundeskartellamt's investigations, one undertaking active on that market in particular is, and will continue to be, a key competitor of the parties to the merger. For these reasons, the merger could be cleared.

4.2.3 *Buyer power as a problematic form of market power*

37. In addition to its potential to counteract market power, buyer power also has the potential to cause market distortions. In the Bundeskartellamt's practice so far buyer power has played a role in the following three case constellations: (i) two or more large buyers merge to form one buyer, (ii) buyers conclude joint purchasing agreements, and (iii) dominant or powerful buyers induce suppliers who depend on them to grant them advantages without any objective justification.

⁸ See the discussion of countervailing buyer power in the Bundeskartellamt's 2012 Guidance on Substantive Merger Control. Available at: http://www.bundeskartellamt.de/wEnglisch/download/pdf/Merkblaetter/2012-03-29_Guidance_final_neu.pdf

4.2.4 *Buyer power and market dominance*

38. In merger control, buyer power plays a particular role with regard to the creation or strengthening of a dominant position. Buyer power can create a dominant position directly in the relevant procurement market concerned. At the same time, it can also be an aspect to consider within the framework of the assessment of a supply-side market position, namely with regard to access to procurement markets.⁹

39. As for market definition, the demand-side oriented market concept which is tailored to supply markets has gained acceptance in practice. Under this concept it is primarily the actual ability of the opposite market side to resort to other sources which limits a supplier's scope of action. In the case of buyer power it is the procurement markets, not the supply markets, which have to be defined. The demand-side oriented market concept is applied inversely in this context. From the suppliers' point of view the market definition is thus based on their ability to switch to alternative sales opportunities. In practice, the inverse application of the demand-side oriented market concept to procurement markets leads to application problems. In those cases of buyer power which have proved relevant in practice, the number of companies on the demand side, and usually also on the supply side, is relatively low. In such a constellation the companies' individual differences in the products they produce, their individual sales alternatives and individual flexibility to switch to other sources, become much more apparent.

40. Another important issue in this context is the issue of market dominance and/or significant impediment to effective competition. In the case of supply markets the consideration of market shares generally allows for statements about the supplier's position vis-à-vis his competitors and the opposite side of the market. This approach cannot easily be applied to procurement markets. In this area, buyer power is less often expressed in the classical sense as market power affecting the opposite market side as a whole, but more often in the form of bargaining power exercised bilaterally vis-à-vis individual suppliers. However, market dominance or market power cannot simply be equated with an imbalance in bilateral power relationships and therefore the issue needs to be carefully assessed on a case-by-case basis.

41. In the light of an already high concentration in food retail; merger projects have to be assessed carefully in this sector. This is necessary even if a single merger may lead to just a small increase in concentration. What should be avoided are kinds of "creeping acquisitions": Instead of buying a whole retail store chain, parties could try to split up their acquisitions into several transactions. As such, every single one might be "too small to fail".

42. Maybe the most prominent retail merger case was the already mentioned acquisition of Plus by Edeka in 2008. This merger could only be cleared subject to the condition that several of the target stores were sold to a third party. In the acquisition of Plus by Edeka, the notified merger intensified the already high level of market concentration in the procurement of goods. To counterbalance the loss of purchasing power resulting for Tengelmann, the parent company of Plus, Tengelmann and Edeka planned a purchasing cooperation. The result of this would have been an even greater dependence on the supplier side. Lowered purchasing prices would have further strengthened Edeka's position in comparison to that of its competitors. It was unclear whether cost savings would be passed on to the consumer. Consequently, the planned purchasing cooperation between Edeka and Tengelmann, the former parent company of Plus, was denied. The acquisition of Plus by Edeka was cleared under remedies.

⁹ See the discussion of the assessment of buyer power in the Bundeskartellamt's 2012 Guidance on Substantive Merger Control. Available at:
http://www.bundeskartellamt.de/wEnglisch/download/pdf/Merkblaetter/2012-03-29_Guidance_final_neu.pdf

43. A more recent case involves the markets for drinks: Edeka planned to takeover trinkgut, one of the biggest drinks store chains in Germany. The case could again be cleared under conditions. In both cases the Bundeskartellamt also had a closer look at procurement markets and the problem of buyer power. In Edeka/trinkgut the Bundeskartellamt had some indications that the big retail chains together dominate the procurement markets for trade mark products in the non-alcoholic beverages sector. However, this aspect was not sufficient to support a prohibition decision.

4.2.5 Buyer power and anti-competitive unilateral conduct

44. The German legislator provided the competition law with specific rules to capture specific forms of market power that also apply to buyer power. Section 19 (1) of the ARC prohibits the abusive exploitation of a dominant position. Under Section 19 (2) No. 5 ARC such an abuse of a dominant position exists if a company uses its market position to invite or cause other companies to grant it certain benefits without any objective justification. According to Section 20 (2) ARC this also applies to the relationship between companies if one company is dependent on the other.

45. In one case of such unilateral anti-competitive conduct, a statement of objections was issued against the largest German retailer EDEKA in July 2013 for the use of "wedding rebates" after its takeover of Plus (another large retailer).

46. The Bundeskartellamt currently assumes that this constituted an abusive practise insofar as EDEKA demanded benefits from its suppliers without an objective justification. Tough negotiations between retailers and producers are normal in the food retail sector and, despite the strong market position of the few large retailers, generally not objectionable under competition law. According to the preliminary assessment, however, in the present case EDEKA may have crossed the line and abused its buyer power vis-à-vis its suppliers. After its takeover of the Plus stores, EDEKA had demanded special conditions from about 500 suppliers in different product areas without consideration. EDEKA had demanded that better purchase conditions granted to the Plus market stores also be offered to the EDEKA Group as a whole. The same applied to longer payment periods that had been granted to Plus in some cases. In addition, the suppliers were asked to pay certain amounts of money under the rubrics of "synergy bonus", "partnership compensation" or "bonus for product range expansion". The Bundeskartellamt takes a particularly critical view of those demands that were not met with corresponding compensation by EDEKA: The "cherry picking" of individual preferential conditions granted to Plus by suppliers in the past; the application and extension of the preferential conditions granted to Plus for specific products to the entire range of products purchased by EDEKA from the respective supplier; the demand of special bonuses on account of cost and turnover benefits allegedly resulting from the Plus takeover for suppliers, without sufficient explanation or substantiation of such benefits; and the fact that the demands were made retroactively.

47. Such demands can have negative effects not only for the suppliers. A large company such as EDEKA can also use them to further expand its market power to the detriment of smaller retailers. Competition may also be hindered by the fact that such demands induce suppliers to abstain from offering preferential conditions to smaller trading companies. This was confirmed by the Bundeskartellamt's investigations in this case. The suppliers feared that in the case of a future merger or purchase cooperation between retailers, they would be forced to offer such individual conditions to a significantly larger extent to the new partner as well.

4.5 Investigations covering the whole value chain of a specific product

48. Also investigations concerning the whole value chain of specific products have been conducted by the Bundeskartellamt. Important enforcement activities include cases of vertical restraints in branded consumer goods and the sector inquiry milk.

4.5.1 Vertical restraints and branded consumer goods

49. At the beginning of 2010, the Bundeskartellamt dawn raided 15 companies, 11 retailers and 4 manufacturers of branded consumer goods. The allegations concerned the fixing of end consumer prices for confectionery, coffee and pet food. In the course of the investigation, the proceeding was extended to the products beer; baby foods and body care products. In this context a lively debate had started about the need for collaboration between retailers and producers and the limits which competition law sets.

4.5.2 Sector inquiry milk

50. In 2012 the Bundeskartellamt published its final report on its milk sector inquiry. In the report the authority presents an in-depth assessment of the business relationships in the milk sector, identifying several distortions of competition on different levels of the food value chain.¹⁰

51. In its sector inquiry the Bundeskartellamt conducted an extensive analysis of the milk sector, ranging from the procurement of raw milk through the dairy to the retail sector. Whereas its interim report in January 2010¹¹ focused on competition structures and power relationships between the individual market levels, the final report concentrates on the classification under competition law of the competition problems identified and on the authority's case practice.

52. The Bundeskartellamt considers, for example, market transparency, in particular with regard to market information systems which publish current and dairy-specific data on the price of raw milk, as critical. The exchange of these data can facilitate the standardisation of such prices by dairies competing with one another in the same region.

53. The final report illustrates that the issue of power imbalances between dairies and the food retail sector must be addressed individually. The market position of a dairy depends strongly on the size of its share of supply to retailers, its product portfolio and whether it has distribution alternatives.

5. Conclusion

54. Food supply and food prices are extremely important issues not only for competition authorities but also for consumers, politicians and regulators. Competition can contribute to more innovation in production and distribution, lower prices and better services. The role of competition authorities therefore is to safeguard the competitive process and to help establish healthy competition in the food supply markets. The food sector does not differ much from any other sector from the point of view of a competition authority. In particular cartel infringements occur in a wide variety of sectors. Overall, there is no reason to fear an enforcement deficiency in the food industry, at least not in Germany. Therefore, Germany would caution against overreaching legislative intervention where private law and competition law already are sufficient to deal with remaining issues.

¹⁰ Available in English: http://www.bundeskartellamt.de/wEnglisch/download/pdf/2012-Milk_Sector_Inquiry_Final_Report.pdf

¹¹ http://www.bundeskartellamt.de/wEnglisch/download/pdf/10-006_Sektoruntersuchung_Milch-E.pdf