

Part 2: Antitrust rules

1. Please provide actual or theoretical examples of desirable cooperation between firms to support Green Deal objectives that could not be implemented due to EU antitrust risks. In particular, please explain the circumstances in which cooperation rather than competition between firms leads to greener outcomes (e.g. greener products or production processes).

In 2014, Dutch supermarkets participated in a horizontal cooperation project to introduce higher minimum welfare for chicken as kept for retail poultry. The Dutch competition authority ("**ACM**") informed the trade association for food retail CBL of its view that the agreements among industry associations concerning initiatives for more animal friendly and sustainable chicken meat products ("**Kip van Morgen**" or "**KvM**") did violate the cartel prohibition and were not eligible for exemption. This conclusion was based on an analysis made by the Economic Bureau of ACM, which showed that the costs of the measures to be taken in order to come to more animal friendly and sustainable chicken meat products exceeded the benefits perceived by consumers. It focused on the price consumers are willing to pay for the measures adopted and compared this price with the actual cost increase caused by such measures.

In our view, it is doubtful whether this is the correct approach. The problem which the horizontal agreement between the industry associations aimed to solve was exactly that consumers might not be willing to pay the higher price resulting from the measures for more animal friendly and sustainable chicken products. That was the reason why an agreement between all market participants to take such measures was deemed necessary.

It would have been recommendable, that before concluding to any restrictions of competition, ACM, first had assessed whether these are not "inherent" and subordinate to certain overriding public interests. Furthermore, if ACM wanted to quantify the economic benefits for justification of the measures, it should at least also had investigated how future consumers and other users (instead of current consumers of chicken only) valued these measures. Moreover, it is doubtful

whether quantifying the effects of the measures in pure monetary terms is always meaningful and necessary.

The existing framework makes it difficult, if not impossible, to take into account non-economic benefits when analyzing whether the benefits of a restriction of competition outweigh the negative consequences.

2. Should further clarifications and comfort be given on the characteristics of agreements that serve the objectives of the Green Deal without restricting competition? If so, in which form should such clarifications be given (general policy guidelines, case-by-case assessment, communication on enforcement priorities...)?

Yes. In July the Dutch Competition authority has issued guidelines regarding horizontal cooperation agreements with regards to sustainability.

<https://www.acm.nl/en/publications/draft-guidelines-sustainability-agreements>

The ACM explains:

“In cases where agreements do restrict competition, they will be permitted if certain conditions are fulfilled. One such condition is that the benefits of the collaboration must outweigh the disadvantages. The benefits could include lower carbon emissions; the disadvantages could include a price rise for users. A new feature in these draft Guidelines is the way in which these benefits are weighed against the disadvantages. Under the new rules, the trade-off is different: the benefits for society as a whole must be equal to or greater than the disadvantages for users. If the benefits for all of society are taken into account, they will more quickly outweigh the disadvantages. The agreement will then be permitted, because society as a whole benefits from it and it contributes to the government’s objectives. The Guidelines also include some simplified conditions. For example, it is no longer necessary to carry out a numerical analysis in all cases. In some cases it will be sufficient to give a full account of the benefits and disadvantages,

for example if the combined market share of the businesses entering into the agreement is less than 30% or the benefits clearly outweigh the disadvantages.”

Also, the ACM provides the opportunity for parties that wish to enter into such a horizontal agreement to preliminary and informally discuss the possibilities with the ACM.

We are very pleased by this step of the ACM and value this initiative highly.

3. Are there circumstances in which the pursuit of Green Deal objectives would justify restrictive agreements beyond the current enforcement practice? If so, please explain how the current enforcement practice could be developed to accommodate such agreements (i.e. which Green Deal objectives would warrant a specific treatment of restrictive agreements? How can the pursuit of Green Deal objectives be differentiated from other important policy objectives such as job creation or other social objectives?).

See answer under 2.

Part 3: Merger control

2. Do you consider that merger enforcement could better contribute to protecting the environment and the sustainability objectives of the Green Deal? If so, please explain how?

We would consider that also in merger control the assessment should be made whether the benefits for society as a whole will be equal to or greater than the disadvantages for users. If the benefits for all of society are taken into account, they will more quickly outweigh the disadvantages. Society as a whole should benefit from it and it should contribute to the government's objectives.