

Fifteenth Meeting of the UNCTAD Research Partnership Platform

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Global Food Markets and Competition and Consumer Policies Challenges

Presentation

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Speaking Notes
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Partnership Platform
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1. Verticals in the food/grocery sector

- In 2011 AFCA launched investigations into vertical price fixing in food retail sector
- From 2011 to 2016 approximately 50 dawn raids only in food retail sector
- Between 2012 and 2016, the AFCA concluded 27 cases against numerous producers and food retailers, amounting to overall fines of EUR 67.8 Mio for resale price maintenance concerning, in particular, dairy products, brewery products and non-alcoholic beverages.
- AFCA published guidelines on RPM. Background:
 - growing awareness of anticompetitive restricted agreements between producers and the retail market, especially in the area of retail prices
 - repeatedly identified cartel infringements in the years before leading to decision imposing fines of the Cartel Court in various branches
 - guideline should simplify recognizing infringing behaviour, especially for small and medium-sized firms
- Advantages of vertical cases, especially for younger authorities:
 - Legally (relatively) clear cases (case law), resource-efficient procedures when evidence is strong (dawn raids)

- RPM hard-core restriction by object (case law)
- A successful conclusion of proceedings is likely to be easier to achieve than in other areas (e.g. abuse of dominance)

2. Sector Inquiry into food industry

- Background:
 - significant price increases of food for consumers,
 - global and European developments in the supply chain,
 - rising inflation
- Approach:
 - Ten rounds of RFIs: 700 retail companies and more than 1,500 suppliers;
 - Analysis: use of purchased data from market research company; daily price data obtained from a selection of Austrian online food retailers and analysed by Austrian Central Bank.
 - Consumer Survey: around 1,000 persons aged between 18 and 65.
 - Reference basket used as basis for sector inquiry, containing everyday food items
 - RFIs aimed at evaluating competition situation in the food industry; covered *inter alia* sales figures, product ranges, costs, pricing and private brands;
 - Focus along value chain placed in particular on stages of processing industry and retail sector
 - AFCA competent authority for enforcement of UTP provisions; inquiry also dealt with prevalence of UTPs

- **Results food retail sector:**
 - Rise of trade margins in some product groups offset by lower trade margins in other product groups
 - Decrease of average trade margin from 31 % to 30 % (2021 to 2022)
 - No evidence that food retailers would have attempted to increase their margins against the backdrop of rising and high inflation rates (2021, 2022 & H1 2023)
 - Decrease of profit margins from 2020 to 2022

- **Results food processing industry:**
 - Higher international market prices of agricultural products due to significant price increases on international markets for raw materials especially in 2022
 - Only around 2-3% of suppliers stated that they were able to pass on 100% or more of their cost increase to the food retail sector in 2022 and 2023; companies with strong brand (i.e. high brand awareness)
 - Evolution of profit margin depends on product category
 - Average and weighted profit margin decreased by around 2,25%-Points from 2021 to 2022 and by 0,26 %-Points from 2022 to H1 2023

- **Results UTP:**
 - Suppliers most affected by unfair trading practices
 - Unilateral changes to contracts (14.3%)
 - Payments unrelated to deliveries (13.6%)
 - Payments for quality losses through no fault of their own (13.4%)

- Court proceedings
 - Initially, 16 applications for the imposition fines were submitted to the Austrian Cartel Court.
 - The applications relate to unfair trading practices in connection with the sale of agricultural and food products
- Recently, more applications for the imposition fines were submitted to the Austrian Cartel Court.
 - The application relates to unfair trading practices in connection with the sale of agricultural and food products, specifically certain apple varieties.

3. Useful lessons learned:

- Stakeholder discussions prior to and/or during sector inquiry
 - Helped us to gather interesting information and input on different topics (shrink- and skimpflation, prices in the online food retailing sector, etc.)
 - Sector inquiry helped to objectify the debate (fact checking)
- UTP proceedings are to some extent less formal (burden of proof and can deliver quicker results)
 - On the other hand
 - Max fine set by law (max. EUR 500,000 per infringement)
 - Sometimes difficult to obtain information from the market due to fear of sanctions in business relationships (strong market positions)