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Sustainability Considerations in the German Case Practice

Pros and Cons of Sustainability
Considerations

Stockholm, 30 May 2022

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Agenda

- Animal welfare initiative “Initiative Tierwohl”
- Quantification of sustainability effects: Need for a measurable indicator

The views expressed are those of the presenter and do not necessarily reflect those of the Bundeskartellamt.

BKartA´s experience with sustainability considerations

- Several cases regarding sustainability considerations in recent years: Arguments were brought up mostly in cases in the retail sector
- Typically concerning agreements to raise certain compensations within the supply chain of a certain product in order to establish a new sustainable standard in the industry
- Recent sustainability arguments that were accepted by the BKartA did not involve a detailed quantification of the countervailing effects
- Recent arguments that were rejected failed to qualify as a sustainability effect in the first place
 - Example: Surcharges without improved sustainability in the milk sector

The animal welfare initiative “Initiative Tierwohl” Bundeskartellamt open markets | fair competition

- “Initiative Tierwohl” (ITW) started in 2014, based on an agreement between the agricultural, meat production and food retail sectors
- ITW is mainly financed by the food retailers EDEKA, REWE, Aldi and the Schwarz Group
- Key component of ITW is paying participating livestock owners a premium for improving the conditions in which animals are kept
- Amount of the premium depends on the additional costs borne by the average livestock owner and is calculated based on the difference without influence of ITW (e.g. 5.28 € per pig)



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- Financing model changed over time
- In the beginning, ITW only covered the production of poultry meat and pork, in 2022 introduced this model for cattle fattening and dairy production
- Participation in ITW is voluntary, no superfluous exchange of information, mechanism and standards of ITW are transparent
- Market coverage of ITW increased over time and differs for the agricultural products
 - Example: 40% of the fattening pigs in Germany are produced according to ITW criteria and approx. 80-90% of the fresh pork sold by German food retailers are ITW products

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- BKartA tolerated the agreement on paying a standard premium in 2014 for a transitional period due to the project’s pioneering nature
 - ...encouraged the initiative to introduce a clear labelling for meat produced in line with animal welfare criteria to increase transparency for consumers
 - ...also tolerated the further development of the compensation model with increased market elements and its expansion to the beef sector
 - ...stressed that the uniformly agreed animal welfare price as a whole cannot be considered as a permanent industry solution
- The concept of ITW is to be further developed for the next project phase starting in 2024

Quantification of sustainability effects: Need for a measurable indicator

- BKartA's cases concerning sustainability arguments did not involve a quantification of the countervailing effects
- Despite low case practice even on an international level, many methods for the quantification of sustainability benefits are already being discussed
- Starting point for each quantification should be the choice of a suitable measurable indicator and an appropriate method
- Even this starting point can be difficult to determine – e.g. when estimating the WTP of consumers for increased animal welfare

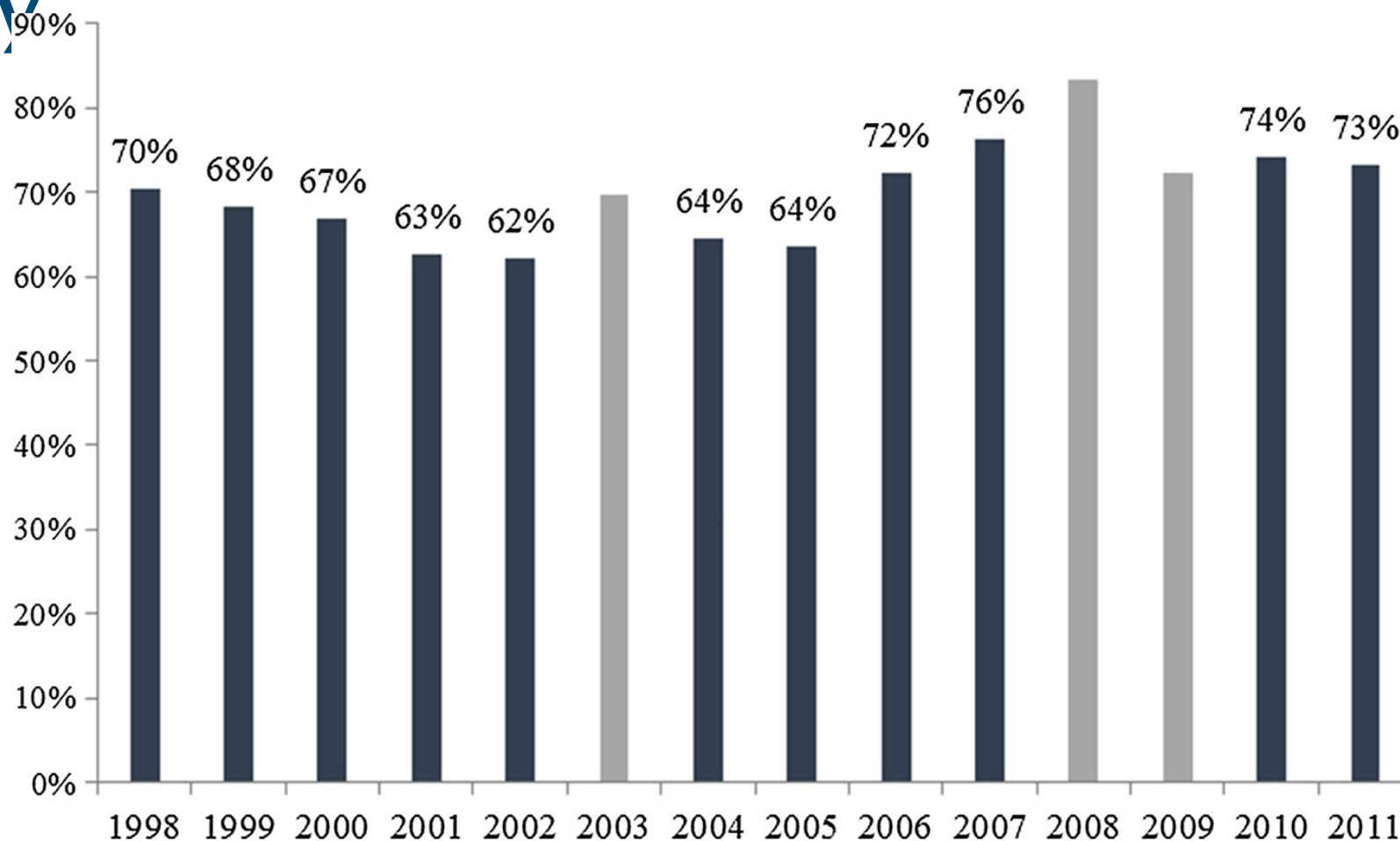
Measuring Sustainability Effects – Example from the German waste compliance scheme market

- Example for an measurable impact on the environment can be seen in the German waste compliance scheme market
 - Market was monopolized by compliance scheme DSD until 2003
 - Several antitrust proceedings by BKartA and DG Comp accompanied by legislative changes paved the way for several market entries and established competition
 - One argument against these changes: Competition would reduce recycling to the minimal legal requirements, since competition induces firms to reduce operating costs



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Recycling ratios for lightweight packaging waste in Germany



Source: Rasek & Smuda, "Ex-Post Evaluation of Competition Law Enforcement Effects in the German Packaging Waste Compliance Scheme Market", 2017. Note: The ratios for the years 2003, 2008 and 2009 are slightly distorted due to end of period effects associated with legislative changes.

Measuring Sustainability Effects – Example from the German waste compliance scheme market

- A following Sector inquiry showed: Decrease in recycling ratios could not be observed
- Instead: Competition induced innovation and market entrance in the sector of the lightweight packaging sorting facilities
- Sustainability argument ignored the value of recycled lightweight packaging waste, environmental arguments to defend DSD's monopoly lacked substance
- Recycling quotas are a good example of measurable sustainability effects that could serve as a starting point for a more detailed quantification
- Example also recalls the condition of indispensability: Higher recycling ratios even with competition due to the value of recycled waste



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Thank you for your attention!

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