
Green light for reuse system to reduce plastic waste in the plant trade sector

The Bundeskartellamt has no serious concerns about the introduction of a reuse system in the plant trade sector. Representatives of Euro Plant Tray eG – a cooperative of various European companies active in the trade and production of plants as well as industry associations – had asked the Bundeskartellamt to provide an assessment under competition law of their plans for a shared reuse system.

The current practice usually involves the use of single-use plastic trays to distribute plants across the different levels of the value chain. Euro Plant Tray eG wants to introduce a reuse system for B2B transport of pot plants to replace such single-use trays.

Andreas Mundt, President of the Bundeskartellamt: *“Sustainability initiatives must also comply with the rules of competition law. The Euro Plant Tray project does not only pursue a very worthwhile goal – reducing plastic waste in the plant trade sector – but, in its current form, it is also consistent with competition requirements. The project is yet another example of a sustainability initiative where the Bundeskartellamt supports the companies involved in complying with competition law criteria. Sustainability relies on effective competition which – also in the long term – fosters innovation and prevents excessive price increases and quality reductions.”*

Where parties agree on sustainability standards, this can also restrict competition and constitute coordinated behaviour which falls under the prohibition of anti-competitive practices. It therefore had to be examined whether this is the case for the shared use of reusable plant trays agreed between the various market participants. What was decisive for the Bundeskartellamt being able to support the project in its original form was, in particular, that coordination and the exchange of

information between (market) participants are reduced to the degree necessary for introducing and operating the reuse system. Company-specific, strategic data are collected through a neutral third party and can only be accessed by the project participants in an accumulated and aggregated form. Another particularly relevant aspect under competition law was that participation in Euro Plant Tray eG's reuse system is voluntary and open to all market participants at the different levels of the value chain, including non-members of Euro Plant Tray eG. In addition, it remains possible for members to use trays from other providers.

The Bundeskartellamt will publish a detailed case summary soon.

Background information on assessing sustainability initiatives

Sustainability initiatives often consist of agreements concluded between competing companies on competition-related, strategic issues so that the companies involved have to take competition law criteria into account. The Bundeskartellamt provides companies with guidance and orientation on these competition law criteria, thus ensuring that sustainability goals are achieved in a way that is consistent with competition requirements. Examples of sustainability initiatives which the Bundeskartellamt has examined in the recent past include an initiative on sustainable cocoa (**see press release of 13 June 2023**), the animal welfare initiative "Initiative Tierwohl" (**see press release of 25 May 2023**) and an initiative to introduce living wages in the banana sector (**see press release of 18 January 2022**).

At the European level the legal framework for assessing sustainability initiatives has been further developed. On 1 June 2023 the European Commission issued new guidelines on the assessment of horizontal cooperation agreements under competition law. The guidelines now also include a chapter on how to deal with sustainability initiatives. Furthermore, Article 210a of the European Regulation establishing a common organisation of the markets in agricultural products (CMO) entered into effect on 7 December 2021. Under certain conditions the Article provides for a special exemption from competition law for sustainability agreements concluded between producers of agricultural products, which the Bundeskartellamt takes into account in its cases. In December 2023 the European Commission issued guidelines on how to apply Article 210a CMO.