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Valuing Sustainability? The ACM's analysis of "Chicken for Tomorrow" under Art. 101(3)

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On 26 January 2015, the Dutch competition authority announced its decision that industry-wide initiatives for the "Chicken for Tomorrow" in the Netherlands restrict competition. The ACM reached this conclusion on the basis of extensive economic research assessing the extent to which consumers value the benefits that the "Chicken for Tomorrow" would bring in terms of animal welfare and the environment. Although this particular initiative was not sufficiently valued by consumers to justify exemption under Article 101(3) and its Dutch equivalent, the ACM's analysis provides useful guidance for the future assessment of sustainability initiatives involving cooperation between firms.

The "Chicken for Tomorrow" initiative concerned an industry-wide agreement, comprising both suppliers and retailers, to improve the living standards of broiler chicken purchased by supermarkets. Specifically, the parties agreed on a new minimum standard for chicken welfare. Among other things, the new standard implied slower growing chicken (with a lifetime of 45 rather than 40 days), fewer chickens per square meter in broiler chicken barns (19 rather than 21 chickens per square metre), more dark hours and various environmental measures.

A key feature of this agreement was that the parties agreed to completely replace all regular chicken in the participating supermarkets with the new, more expensive product. In light of this feature and the fact that supermarkets account for 95% of all chicken meats sold to consumers in the Netherlands, the ACM concluded that the agreement was caught by Article 101(1) and its Dutch equivalent. The ACM went on to assess whether the agreement could be exempted on the basis of the four criteria in Article 101(3). It did so on the basis of the approach set out in the Vision document on Competition and Sustainability published in 2014 (discussed in this earlier blog post).

Most of the analysis that the ACM conducted focused on the extent to which consumers value the benefits that the initiative would give rise to in terms of animal welfare and the environment. In order to measure these benefits, the ACM's Office of the Chief Economist conducted a large-scale online consumer survey in which over 1600 consumers took part.

The consumer survey was based on a technique known as "conjoint analysis". Conjoint analysis can be used to measure consumers' valuation of certain product attributes by providing respondents with hypothetical choices between different products. For example, a respondent may be asked to choose between the following (simplified) options:

Option A: Lifetime 40 days; 21 chicken per square metre; €8 per kg

Option B: Lifetime 45 days; 19 chicken per square metre; €10 per kg

If option B is chosen, it can be inferred that this particular customer is willing to pay at least €2 per kg more for the animal welfare improvements under this option. By asking more questions (using different combinations of attributes) to a sufficiently large number of respondents, an estimate can be derived of the willingness of pay of all consumers for different attributes.

The study showed that consumers are willing to pay an additional 82 cents per kilo for the various benefits that the initiative would produce. Most of this was for the animal welfare benefits; the remainder was for the environmental benefits.

The ACM then compared consumers' willingness to pay to the additional costs that the measures would give rise to. At €1.46 per kilo, the ACM found these costs to be almost twice as high as the consumer benefits. The ACM assumed in this context that the additional costs that producers would incur would be passed on to consumers in full. Consequently, the ACM concluded that consumers would derive no net benefits from the agreement and would in fact be worse off. As a result, the ACM concluded that the first criterion of Article 101(3) was not satisfied.

The ACM also cast doubts on the extent to which the agreement was indispensable to achieve the claimed benefits. The ACM noted that supermarkets have been offering chicken meat produced in more sustainable ways for many years. That being the case, the ACM did not accept the argument that no supermarket would want to be the first to move to more sustainable chicken for fear of losing consumers to rivals (the "first mover disadvantage").

In its conclusions, the ACM stressed the fact that the study did support the notion that consumers are willing to pay for certain sustainability measures. In principle, there is therefore scope for agreements between competitors on sustainability issues to be exempted under the competition rules even if prices were to increase. The key question is whether consumers place a sufficiently high value on the benefits that the sustainability initiatives give rise to.

The ACM's analysis provides useful guidance for companies seeking to assess the scope for compliant collaboration on sustainability initiatives. By conducting a study similar to the one the ACM has undertaken, companies can gauge consumers' willingness to pay for particular measures and compare this to the additional costs that these measures would entail. If the willingness to pay for the measures exceeds the associated costs, a good case can be made that consumers will not be worse off by the measures and will indeed benefit.

Yet, a number of important questions remain.

First, the ACM's analysis of the "indispensability" criterion and in particular the "first mover advantage" is not convincing. It is surely the case that supermarkets have been introducing more sustainable chicken varieties (organic etc.) for many years now. These varieties appeal to a group of consumers that are likely to be less sensitive to price and more sensitive to quality aspects. However, these remain niche products: the majority of chicken meat sold is of the cheapest variety. For this, retailers compete fiercely on price. That being the case, it is by all means possible that any retailer unilaterally deciding to replace the cheapest varieties by more sustainable but also more expensive alternatives would risk losing significant numbers of customers to rivals. As such, the fact that certain more sustainable niche products have been introduced cannot be taken to imply the absence of a first-mover disadvantage in respect to the mass market products.

Second, many other worthwhile cases can be imagined where firms may need to collaborate in order to be able to pursue sustainability objectives but where these may not as readily be valued by consumers. In the Netherlands, the degree of consumer awareness of animal welfare issues in chicken farming is relatively high. Such high levels of consumer awareness do not always exist however. It would be somehow paradoxical if competition policy ended up permitting only the high-profile sustainability collaboration initiatives but ended up prohibiting other worthwhile forms of collaboration on sustainability only because these are less visible to consumers.

If cooperation between firms is the only way in which sustainable production can be achieved but if this is not sufficiently valued by consumers, a risk exists that competition authorities end up effectively forcing firms to compete at the expense of the environment, animal welfare or human rights. It is to be hoped that "Competition Policy for Tomorrow" will take a sensible (and sustainable) line in this area.

This entry was posted on Wednesday, February 18th, 2015 at 3:03 pm and is filed under Consumer welfare refers to the individual benefits derived from the consumption of goods and services. In theory, individual welfare is defined by an individual's own assessment of his/her satisfaction, given prices and income. Exact measurement of consumer welfare therefore requires information about individual preferences.

Source: OECD">Consumer welfare, Netherlands
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