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**Statement by the German Monopolies Commission
on the Revision of the UTP-Directive
Call for Evidence for an Impact Assessment - Ares(2025)10746149**

1 Preliminary Remarks

The Monopolies Commission welcomes the opportunity to contribute to the European Commissions call for evidence on the revision of EU rules on business-to-business unfair trading practices in the food supply chain. The Monopolies Commission is an independent advisory body to the German Federal Government, mandated to provide expert analysis and recommendations on competition policy and law. The present statement is based on the findings and recommendations of the Monopolies Commissions Special Report No. 84 “Competition in the Food Supply Chain” (“Wettbewerb in der Lebensmittellieferkette”) published in November 2025. It provides a comprehensive empirical, economic, and legal analysis of the competitive conditions in the food supply chain in Germany with a particular focus on the position of farmers and the functioning of Directive (EU) 2019/633 (UTP-Directive).¹

The Monopolies Commission recognises the central role of agriculture in ensuring food security, sustainability, and the preservation of rural livelihoods. At the same time, it is aware of the significant economic pressures faced by farmers, which are exacerbated by structural changes, increasing market concentration in downstream sectors, and the growing influence of large retailers and food manufacturers. Against this background, the Commission considers the effective regulation of unfair trading practices and the strengthening of farmers’ bargaining position to be of utmost importance.

2 The situation of the food supply chain (in Germany)

The main findings of the Monopolies Commissions Special Report can be summarized as follows:

Agriculture faces pressure from several sides: food supply must be guaranteed at all times. At the same time, food production is expected to become more sustainable and more climate- and environmentally-friendly while at the same time upholding an idealistic image of rural agriculture. Despite high subsidies, economic pressure is strong: world markets dictate national pricing while disregarding national cost structures. This renders production of many goods unprofitable. Bureaucratic costs are rising. Dominant food manufacturers and retailers are active downstream the value chains, increasing pressure on agriculture. The German food retail sector, in particular, is dominated by four large companies, which increasingly extend their influence to the stage of food manufacturing. A concerning concentration process is also taking place at the manufacturer level in many markets.

Agriculture benefits less and less from rising food prices. While consumer prices have risen strongly in recent years, the prices that farmers receive for their agricultural products rise at a much slower rate. This gap continues to widen. Profit margins increasingly shift to the downstream stages of the supply chains, in particular food manufacturers and food retailers. Agriculture usually has little impact in price negotiations because world market prices dictate national pricing. This leads to strongly fluctuating profits and profitability of agricultural businesses. In

¹ The full report (in German) as well as an executive summary is available at <https://www.monopolkommission.de/en/reports/special-reports/special-reports-on-own-initiative/486-special-report-84-competition-in-the-food-supply-chain.html>

some financial years, certain businesses may well record significant profits. However, they always bear the risks associated with possible disruptions on world markets.

Clear indications of competition problems can be found in the stages downstream of agriculture. In the German food retail sector, the Edeka Group, Rewe Group, Schwarz Group, Aldi Nord and Aldi Süd account for more than 85 % of the market. Market concentration has increased significantly over the last two decades. At the same time, average profit margins have increased. Consumer prices have also risen noticeably in recent years, especially in comparison with other EU countries. Concentration processes are also taking place at the manufacturing level throughout the entire food supply chain. The degree of concentration varies depending on the supply chain. It is striking that the increase in price mark-ups at the respective stages coincides with the increase in market concentration.

The Monopolies Commission's analysis focused in particular on three supply chains that account for a large part of the value added of agricultural products: milk, meat and cereals. Comparisons reveal differences: Dairy farms have seen the greatest increase in productivity. As with cereals, pricing is largely determined by global markets rather than operational efficiency. Cooperative structures for milk processing play an important role here, as they enable greater integration of agriculture into later stages of the value chain. The rising cost of animal feed, farm equipment and veterinary services are not fully reflected in producer prices. In the meat sector, on the other hand, efficiency gains have been lower. Here, the downstream industry is highly concentrated and has considerable bargaining power. In the cereal market, agriculture is in a comparatively good economic position. The downstream stages are more competitive than in the meat sector, but less vertically integrated than in the dairy sector. These differences in structure and concentration show that a differentiated analysis of the individual supply chains is necessary in order to assess the economic situation of agriculture appropriately.

Based on these findings, the Monopolies Commission considers that the levers for improving the competitive position of agriculture primarily are to be found on the cost side of agriculture. Structural change towards more cost-efficient production and a strengthening of the competitive position of agriculture in the value chain should be supported. Smaller farms can also increase efficiency by implementing innovative technologies. On top of that, stricter merger control and more effective measures against the abuse of market power within the food supply chain are recommended.

3 Recommendations regarding the revision of the UTP-Directive

In light of the high market concentration at the level of food retail and, to some extent, at the manufacturer level, the Monopolies Commission considers effective instruments to prevent an abuse of market power to be indispensable. Without such control, there is a risk of abusive pricing and non-pricing behaviour to the detriment of food suppliers, especially farmers. In this context, the UTP rules constitute an **important regulatory supplement** to the general prohibition of abuse of a dominant position (TFEU Art. 101 and its member states' equivalents). The specific prohibitions of the UTP Directive ensure legal certainty and facilitate compliance and enforcement. The German enforcement authority („Bundesanstalt für Lebensmittel und Ernährung“) reports that the prohibitions are increasingly gaining relevance as arguments in contractual negotiations and, in

this way, strengthen the bargaining position of suppliers. This is possible, inter alia, because the rules, due to their focus on individual, explicitly defined practices, require less judicial and administrative concretisation.

The Monopolies Commission therefore recommends to **retain the specific prohibitions of the UTP-Directive**. However, it considers it necessary that the list of prohibited practices be regularly reviewed and, if necessary, adapted to new developments in the market. This ensures that the rules remain effective and relevant in the face of changing market conditions and business practices.

3.1 Introduction of a “general clause” not recommended

By contrast, **the introduction of a general clause** that would prohibit “unfair trading practices” in abstract terms, in addition to the specific prohibitions already contained in the UTP Directive, **is not recommended**. Such a general clause would create legal uncertainty and could lead to the prohibition of welfare-enhancing practices. For particularly serious cases, the existing antitrust provisions already provide an appropriate legal basis. The Monopolies Commission therefore considers the introduction of a general clause to be unnecessary and potentially counterproductive.

3.2 Refrain from interventions in free price formation

Furthermore, the Monopolies Commission recommends to refrain from political interventions in free price formation, such as minimum prices for agricultural products or a **ban on purchasing agricultural products below production costs**.

Such a rule would bear the risk of significantly impairing the international competitiveness of domestic food manufacturers and, as a consequence, also of upstream agricultural producers. By raising prices above internationally determined levels, it may reduce export opportunities, as domestically produced goods become more expensive by international comparison and lose competitiveness. At the same time, it may incentivise increased imports for domestic consumption, as foreign products become relatively more attractive in terms of price. As a result, such a rule may weaken the market position of domestic undertakings both in international and domestic markets. Reduced sales opportunities can jeopardise the economic viability of downstream processors and, in turn, adversely affect the economic situation of the agricultural producers supplying them.

Even in the limited number of cases when such a rule could be welfare-enhancing, it should be avoided. It is generally unlikely that a public authority would succeed in setting the welfare-optimal price. Moreover, substantial bureaucratic structures would be required for implementation. Both aspects give rise to significant doubts as to whether welfare-enhancing effects could in fact be achieved in practice.

3.3 Focus the Scope of the UTP Rules on Farmers and Their Cooperatives

The Monopolies Commission recommends that the scope of the UTP rules should in future be **limited to supply relationships in which farmers are directly involved**. Downstream stages should only be included if a ‘cascading of consequences’ is likely, as is the case with agricultural cooperatives. For other relationships in the supply chain, antitrust law provides sufficient protection.

The Monopolies Commission recalls that the purpose of the UTP Directive is to curb practices that are likely to have a negative impact on the living standards of the agricultural community (see Recital 1 UTP Directive as well as Art. 39 para 1 (b) TFEU). Nevertheless, the UTP rules apply to all relationships in the food supply chain, provided that certain turnover thresholds are (not) exceeded (Art. 1 para. 2 UTP Directive). This also includes downstream stages of the supply chain in which agricultural producers are not involved, e.g. supply relationships between food manufacturers and retailers. This is based on the assumption of a ‘cascading of the consequences of unfair trading practices’, i.e., that disadvantages faced by downstream suppliers will be passed on to farmers (Recital 7 UTP-Directive). However, it is not evident from the available data or from theoretical considerations that farmers benefit when manufacturers prevail in legal disputes with retailers. The analyses in the Special Report 84 indicate that the prices received by farmers are largely determined by world market prices and that strengthening the position of manufacturers only tends to shift margins between manufacturers and retailers, without benefiting farmers. Therefore, the Monopolies Commission considers it appropriate to **restrict the scope of the UTP rules to supply relationships involving farmers**. Only in cases where a cascading is likely – such as with agricultural cooperatives – should downstream stages be included. For the remaining relationships in the supply chain, antitrust law provides sufficient protection.

3.4 Strengthen the Legal Framework for Effective Enforcement

Given the dominance of the ‘fear factor’ in the food supply chain, procedural rules are needed to ensure effective enforcement of the prohibition of abuse and the UTP rules. Suppliers are reluctant to take legal action against their powerful contractual partners or to report them to the authorities.

In light of these limitations, the enforcement authorities play a crucial role in pursuing infringements ex officio. They must exercise their discretion in initiating proceedings in such a way that, through their **case selection, they contribute to ensuring the effective application** of the prohibition of abuse and the UTP rules precisely in those areas where private enforcement is difficult. To this end, priority should be given to cases characterised by pronounced power imbalances. Within the food supply chain, this particularly concerns supply **relationships involving agricultural producers** or small food manufacturers on the one hand and food retailers or large industrial undertakings on the other.

The Monopolies Commission advises to further strengthen the enforcement authorities. To that end, it proposes that they be given the possibility to **conduct market investigations independently of specific cases**. For example, the enforcement authorities could be granted the power to examine, on their own initiative, certain stages of specific supply chains that appear particularly susceptible to the abuse of buyer power for infringements of the UTP prohibitions. Possible models include sector inquiries conducted by competition authorities (e.g. pursuant to Section 32e of the German Competition Act) and the ‘sweeps’ carried out under Article 29 of Regulation (EU) 2017/2394 on consumer protection cooperation, which enable consumer protection authorities to detect infringements proactively and in a coordinated manner in specific markets. Such a proceeding should include the **right to request the submission of relevant contractual documents** (in anonymised form) and collect information on companies’ measures to ensure

compliance with the UTP prohibitions. The information gathered could then form the basis for individual enforcement proceedings.

In addition, **collective redress mechanisms** (e.g., association actions) should be introduced or extended to overcome the 'fear factor' and facilitate the enforcement of rights by suppliers. The introduction or extension of collective redress mechanisms would enable associations representing suppliers to take legal action against widespread unfair practices without having to name individual affected companies. This should **include the possibility of a declaratory action**. In such a proceeding, the applicant association would only be required to demonstrate the relevance of an unfair trade practice in order to establish its legitimate interest in obtaining a declaratory judgement. The naming of specific suppliers of agricultural products would not be necessary. This would help to overcome the fear of commercial retaliation and ensure effective protection for suppliers.