

Living Income Webinar Series

Competition law

25th April 2019

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Federal Ministry
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Deutsche Gesellschaft
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Anti Trust Statement

All participants need to be mindful of the constraints of competition law.

There shall be no agreements or concerted actions that may restrain competition. There shall also not be any exchange of commercially sensitive information concerning individual prices, rates, coverages, market practices, claims settlement practices, or any other competitive aspect of an individual company's operation.

Each participant is obligated to speak up immediately for the purpose of preventing any discussion falling outside these bounds.

Thank you!

Today's webinar facilitators



Adam Romo
Senior Coordinator,
Innovations
ISEAL Alliance



Alessandra Ramacci
Intern, Impacts
ISEAL Alliance

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Agenda

1. **Introduction** to the Living Income CoP, and guest speakers.
2. **Fairtrade Foundation and Fairtrade Advocacy Office:** Overview of the papers 'Competition Law and Sustainability – A study of industry attitudes towards multi-stakeholder collaboration in the UK grocery sector' and 'EU Competition Law and Sustainability in Food Systems - Addressing the Broken Links'.
3. **Discussion and debate** – Specific examples and action points to address the challenge
4. **Open Q&A and CoP updates.**

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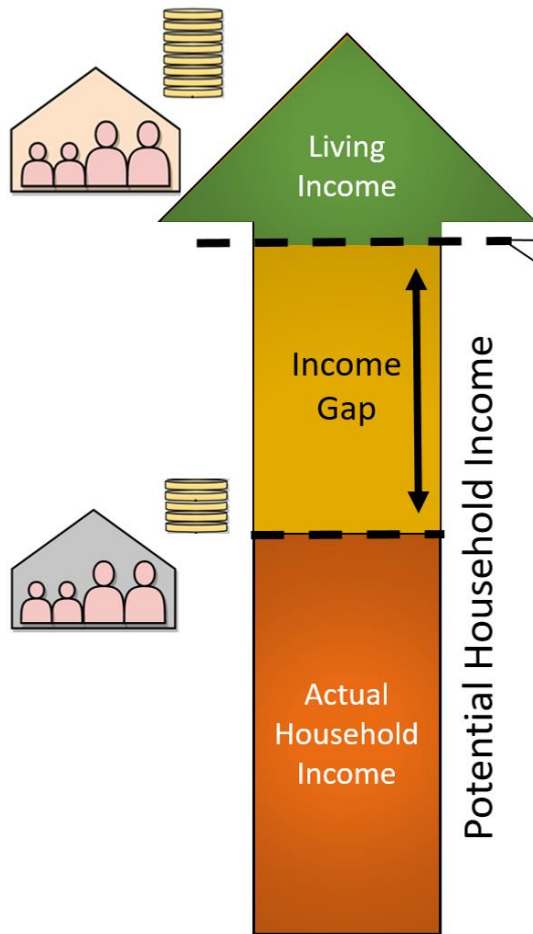


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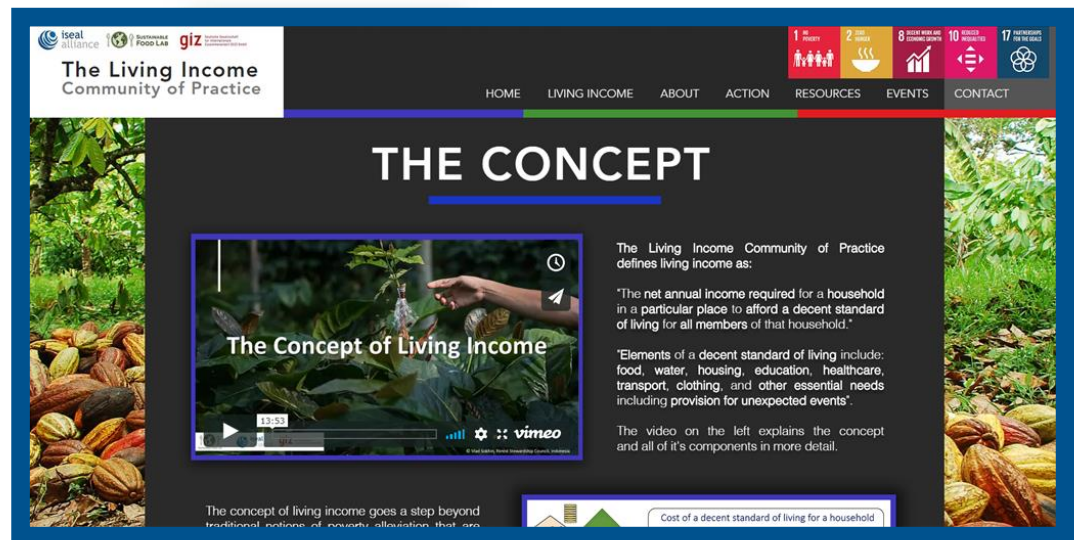
The Living Income Community of Practice

Foster collaboration and support organisations in their journey towards improving farmer incomes, and enabling farmers to achieve a decent standard of living.



Cost of a decent standard of living for a household

Cost of decent food + Cost of decent housing + Cost of other essential needs + Provisions for unforeseen events



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Learn more: www.living-income.com

The Living Income Community of Practice

Fostering collaboration and support organisations in their journey towards improving farmer incomes, enabling farmers to achieve a decent standard of living.

Facilitate learning and exchange around measurement

Understand the gap between actual and living income

Identify and discuss strategies to close the income gap

Learning across sectors
and helping organisations realise SDG commitments

Open community of practice

Sharing information about the efforts of different actors in this space

Learn more: www.living-income.com
Contact: adam@isealalliance.org

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Today's guest speakers



David Taylor
Policy Manager
Fairtrade Foundation



Peter Möhringer
Policy & Advocacy
Fairtrade Deutschland



Don Seville
Executive Director
Sustainable Food Lab

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Tea, Kenya © Ola Höiden for Fairtrade

Fairtrade's Research on UK Competition law

industry attitudes towards multi-stakeholder collaboration



The need for collaboration

- All interviewees told us that collaboration is necessary to ensure businesses commit to higher incomes/wages
- market actors will not act unilaterally on sustainability issues is due to a fear of competitive disadvantage
- We need mass-market brands to take action to achieve systemic change
- But are unlikely to move first – so collective action is needed

Competition law Is PERCEIVED TO BE a barrier

- The near-unanimous message that competition law is perceived to be a barrier to tackling low farm-gate prices and thus low incomes and wages.
- Competition law restricts any collaboration between competitors in relation to prices within a value chain (unless it can be justified essentially on the grounds of consumer benefit).
- Discussions on low farm-gate prices and wages are a highly sensitive issue
- That leads businesses to often preclude any discussion on the subject whatsoever

Interview QUOTES

“Price is the big elephant in the room no one dares to talk about”

- Arjen Boekhold, Tony's Chocolonely

“I don't think retailers are using competition law as an excuse. No one is able to talk about taking action on price”

- A senior sustainability manager at a major UK-based retailer

“Price is a piece of the sustainability puzzle but it is very simple: we cannot talk about it. Is there anything we can do?”

- A global chocolate company

RECOMMENDATIONS – TO UK GOVERNMENT

- The UK Government should consider the long-term environmental and social sustainability of supply chains alongside short-term consumer interest when reviewing how well markets are functioning.
- The UK Government should update its Strategic Steer to the Competition and Markets Authority in that it should work to facilitate markets that are sustainable in the long-term.

Recommendations – TO THE CMA

- The CMA should issue clearer communications to companies and retailers on how businesses can collaborate for sustainability purposes in order to address low farm-gate prices in a manner that would be consistent with competition law.
- Specifically, this means providing guidance or policies that would clarify the application of the prohibition and the exemption criteria under Chapter 1 of the Competition Act 1998 and Article 101 of the Treaty on Functioning of the European Union.
- We continue to ask that the CMA regularly report on how its assessment of competition law is affecting progress towards the Sustainable Development Goals and UN Guiding Principles on Human Rights

NEXT STEPS?

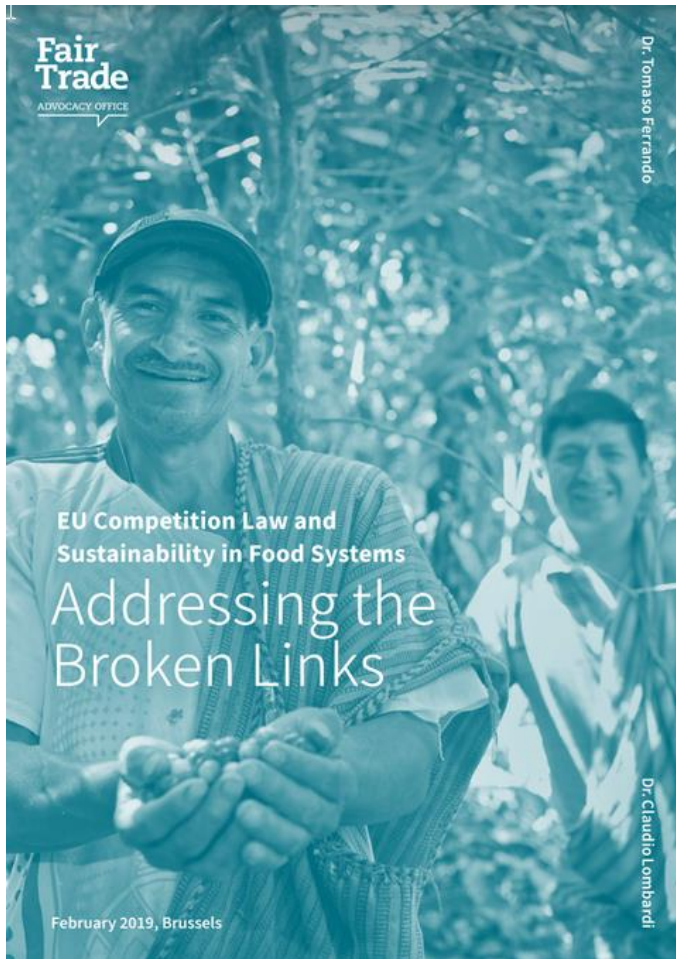
- CMA Meeting – The CMA suggested that they *would* be willing to offer a short form opinion on a sustainability initiative
- Putting it on the record - We continue to press them to state this in public (e.g. on their website)
- But this suggests the constraints may not be as serious as the perception – a challenge back to business and to us
- Design something competition law compliant? – as Malawi 2020 have tried to do with their self assessment tool
- Design a Collaborative initiative and bring back to CMA? Fairtrade is considering this as a possible next step

FTAO's Research on EU Competition law

Addressing the broken links between competition law and sustainability



The report



Commissioned by:

Fair Trade Advocacy Office (FTAO)

Written by:

- **Tomaso Ferrando (University of Bristol Law School)**
- **Claudio Lombardi (KIMEP University)**

www.fairtrade-advocacy.org/competition

KEY FINDINGS

- Aims and objectives of competition law have changed in the past according to dominant political contexts and ideologies.
- Present day competition law is reproducing the dominant economic thinking of homo economicus, efficiency and market equilibrium.
- This has played a central role in the construction of the contemporary EU food system and the maldistribution of value across the food chain.
- An artificial division has been created between market and non-market issues (environment, social, sustainability, employment) unless they have a market effect.
- A narrow definition of consumer welfare is prevailing in practice today that focusses mainly on price and to a lesser extent also on choice and quality.

RECOMMENDATIONS – TO THE EU AND ITS MEMBER STATES

EU competition law must be moved to more holistic vision.

- Institutional changes
 - special institutional bodies should incorporate public interest concerns
 - Global collaboration by institutions such as UNCTAD, the ICN, and the OECD should strongly encourage
- Regulatory changes
 - shift to direct regulatory intervention, when competition laws fails. E.g. facilitate collaboration among market actors
 - public interests such as human rights and the environment must be taken into consideration in the preliminary phase of the investigation.
 - Special laws on superior bargaining power should be introduced to tackle abuses, especially upstream against farmers.

RECOMMENDATIONS – TO THE EU AND ITS MEMBER STATES

- Interpretative changes
 - EU competition law need to be applied in conjunction with other EU laws, principles, and objectives, namely the SDGs and the Paris Agreement
 - Sustainability concerns need to be taken into account systematically across the board
 - Consumer welfare should be broadened to include also the welfare of
 - future consumers
 - producers
 - the environment

NEXT STEPS?

- Continuing the conversation
 - One-day conference at Sciences Po on 26 June in Paris
<https://wearecompetition.eu/competition-law-sustainability-conference-2019/>
 - High-level conference with the Global Competition Law Centre on 12 September in Brussels
- Bringing forward concrete cases
- Redefine “choice” and “quality”

Questions?



Community of Practice Updates

- **Blog:** [Learning from benchmarking Living Income: 1. Scoping the geography.](#)
- **Report:** [Craving a change in chocolate: How to secure a living income for cocoa farmers.](#)
- **Blog:** [Enabling food producers to earn a living income: how can business do its part?](#)

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A freshly-opened cocoa pod, Nicaragua © Sean Hawkey for Fairtrade International

Thanks!



Stay informed!

Living income

www.living-income.com

Living wage

<http://www.isealalliance.org/our-work/improving-effectiveness/global-living-wage-coalition>

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Questions? Email us at:

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And remember to add your upcoming, ongoing and finalised studies to the Sustainability Impacts Learning Platform

<http://www.sustainabilityimpactslearningplatform.org>

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